State of New Jersey

CONSTITUTIONAL CONVENTION

OF

1947

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Volume II

CONVENTION PROCEEDINGS

APPENDIX AND INDEX
to Volumes I and II

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

PREFACE

No record of the Proceedings of the Constitutional Convention of 1947 would be complete without including the background material relating to that historic assembly. It is important that researchers and others who might be interested in what transpired at New Brunswick during the summer of 1947, have collected in one place as much of the collateral material relating to the Convention as possible.

For this reason, there is included in this volume everything from the enabling act which brought about the Convention down to the results of the referendum held on November 4, 1947, at which the people of New Jersey overwhelmingly adopted the work of their chosen delegates. In fact, this volume completes Volume I in which the actual proceedings on the floor of the Convention appear. The index covers both Volumes I and II.

The report of the proceedings before each of the main committees of the Convention will have appended additional supplementary material submitted to or used by the respective committees. The committee proceedings and this additional supplemental material will be indexed at the close of Volume V.

Sidney Goldmann
Herman Crystal
Editors

Trenton
March, 1951.

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THE CONSTITUTIONAL CONVENTION ENABLING ACT

CHAPTER 8, LAWS OF 1947

AN ACT to provide for a State constitutional convention so instructed by the legal voters that it shall have no power to propose any change in the present basis of representation in the Legislature, providing for the nomination and election of delegates, at a special election, and for the submission of the proposals of the convention to the people for adoption or rejection, and making an appropriation therefor.

WHEREAS, All political power is inherent in the people, and government is instituted for their protection, security and benefit; and

WHEREAS, The people of the State have the right at all times to alter or reform the Constitution whenever the public good may require it; and

WHEREAS, The present Constitution of one thousand eight hundred and forty-four, adopted at an election in which the total number of votes cast for and against it was only twenty-three thousand eight hundred seventy-one, should be systematically reconsidered and conformed to the needs of a modern industrial and agricultural State with over two million registered voters among a population of over four million people; and

WHEREAS, It is the duty of the Legislature from time to time to enact legislation, as was enacted in the year one thousand eight hundred and forty-four, enabling the people through their delegates in a constituent assembly to exercise their inherent right to alter or reform the Constitution; and

WHEREAS, The people in the exercise of their sovereign power may commit their delegates to binding restrictions on the scope and subject matter of such a constituent assembly; now therefore,

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*:

1. A constitutional convention, comprised of delegates elected in the several counties shall, subject to a popular referendum as hereinafter provided, convene at New Brunswick, New Jersey, or at such other place as the Governor may designate by proclamation, on the twelfth day of June, one thousand nine hundred and forty-seven, at eleven o'clock ante meridian, or as soon thereafter as a quorum shall be present.

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 as the convention shall deem in the public interest; *provided, however,* that the convention shall in no event agree upon, propose or submit to vote of the people, either separately or included among other provisions, any provision for change in the present territorial limits of the respective counties, or any provision for legislative representation other than provision for a Senate composed of one Senator from each county and a General Assembly composed of not more than sixty members apportioned among the counties according to population so that each county shall at all times be entitled to at least one member, chosen for, and elected by the legal voters of, the respective counties.

3. The constitutional convention shall complete and agree upon its proposals on or before the twelfth day of September, one thousand nine hundred and forty-seven, and shall provide for submission thereof at the general election to be held on November fourth, one thousand nine hundred and forty-seven, for approval or for rejection by the legal voters, either as a whole or in such parts and with such alternatives as the convention may deem desirable.

4. Each county shall be entitled to the same number of delegates to the constitutional convention, to be elected by the legally qualified voters of the county, as the county is presently entitled to representatives in a joint session of the Legislature. Each delegate shall be a legal voter in the county for which he is elected.

5. To determine whether the constitutional convention instructed by the people as herein provided shall be convened, and to elect delegates to such a convention if the people vote in favor thereof, a special election shall be held on June third, one thousand nine hundred and forty-seven, at the same time, at the same places, using the same records and facilities and by the same officers and employees as conduct the primary election on that date, as hereinafter provided. In addition to the remuneration for services rendered at a primary election, as otherwise provided by law, each district board member shall be paid five dollars ($5.00) as payment in full for all services rendered in connection with the special election hereunder. All other public officials who perform services in connection with the special election shall serve without additional compensation. The provisions of Title 19 of the Revised Statutes, insofar as they are not inconsistent with the provisions of this act, shall apply to the nomination and election of delegates and to the submission of the questions hereunder.

6. Candidates for the office of delegate shall be nominated by

petition filed with the clerk of the county for which the nomination is made, on or before April fourteenth, one thousand nine hundred and forty-seven. Each nominating petition shall be signed by legally qualified voters of this State residing within the county in and for which the delegates nominated are to be elected, and the signers of each petition shall number at least three hundred in counties of the first and second class, and one hundred in all other counties.

7. Each nominating petition shall set forth the names, places of residence and post-office addresses of the candidate or candidates thereby nominated, that the nomination is for the office of delegate to the State constitutional convention which may be convened on June twelfth, one thousand nine hundred and forty-seven, and that the petitioners are legally qualified to vote for such candidate or candidates and pledge themselves to support and vote for the persons named in such petition. Every voter signing a nominating petition shall add to his signature, his place of residence, post-office address and street number, if any. No voter shall sign a petition or petitions for a greater number of candidates than are to be elected in the county in which he resides. Signers of petitions need not be members of the political party, if any, in which their nominees are designated, nor shall any member of a political party who signs the nominating petition of a member of another party or of a candidate permitted to use the designation of another political party lose his eligibility to vote in the primary election of the political party of which he is a member.

8. Any nominating petition may designate in not more than three words the political party, group, or principles with which the candidate or candidates therein named shall be identified on the official ballot; *provided, however,* that no such designation or slogan shall include or refer to the name of any person, corporation, association or political party unless the written consent of such person, corporation, association or political party is endorsed upon or annexed to and filed with the petition of nomination of the candidate or group of candidates desiring to use a slogan or designation. Consent to the use of the designation, name, derivative or any part thereof of any political party by any candidate, whether or not a member of that party, may be given and evidenced by a certified copy of a duly adopted resolution of the county committee of the political party in the county for which the nomination is made, and no such consent may be given to a greater number of candidates than are to be elected. Such consent may be given to any candidate or group of candidates by more than one political party, but nothing herein shall authorize or require the name of any candidate to appear on the official ballot more than once.

9. Two or more candidates for nomination as delegate may in

their nominating petitions request that their names be grouped and bracketed under such common designation or slogan to be named by them, and that such common designation or slogan shall be printed with their names on the official election ballot. If more than one candidate or group shall select the same slogan or designation, the petition first filed shall be entitled, if it otherwise complies with this act, to the use of such slogan or designation, and the county clerk shall so notify all candidates or groups whose petitions are thereafter filed with the same designation or slogan, and such candidate or group shall within two days select a new slogan or designation; subject to the consent required by this act.

10. Each nominating petition shall, before it may be filed with the county clerk, contain an acceptance of such nomination in writing, signed by the candidate or candidates therein nominated, upon or annexed to such petition, or if the same person or persons be named in more than one petition, upon or annexed to one of such petitions. Such acceptance shall certify that the candidate is a legally qualified voter in the county for which he is nominated. Such acceptance shall also certify that the nominee consents to stand as a candidate at the ensuing special election for the election of delegates to a State constitutional convention, and that if elected he agrees to take office and serve as a delegate from the county in which he is nominated.

11. Each nominating petition shall be verified by an oath or affirmation of one or more of the signers thereof, taken and subscribed before a person qualified under the laws of New Jersey to administer an oath, to the effect that the petition was signed by each of the signers thereof in his proper handwriting, that the signers are, to the best knowledge and belief of the affiant, legal voters of the county as stated in the petition, and that the petition is prepared and filed in good faith for the sole purpose of endorsing the person or persons named therein in order to secure his or their selection as stated in the petition.

12. All nominating petitions, their acceptances, requests for the use of designations or slogans and certifications shall when filed be and remain open for public inspection during regular business hours of the county clerk under such reasonable regulation for their proper care and custody as the county clerk may deem necessary. Objections to petitions, the determination of their validity, recourse to the courts by candidates believing themselves aggrieved, and amendment of defective petitions, shall conform to the provisions of Title 19 of the Revised Statutes relating to petitions directly nominating candidates for public office to be voted for in a general election. Vacancies in nominations which occur for any reason may be filled in the same manner as the original nomination by

petition filed with the county clerk on or before April twenty-second. Nothing in this act, or in Title 19 of the Revised Statutes, shall be construed to authorize or require any county clerk to defer the printing of ballots, or the mailing of military service ballots, beyond the respective dates herein specifically provided.

13. A public question shall 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:

"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, 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, *provided,* that the convention shall in no event agree upon, propose or submit to vote of the people, either separately or included among other provisions, any provision for change in present territorial limits of the respective counties, or any provision for legislative representation other than provision for a Senate composed of one Senator from each county and a General Assembly composed of not more than sixty members apportioned among the counties according to population so that each county shall at all times be entitled to at least one member, chosen for, and elected by the legal voters of, the counties respectively, *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?

Vote "for" or "against" such a constitutional convention by placing an × or + or √ mark in the proper box below:

	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.
	AGAINST such a constitutional convention.

Regardless of how you have voted on the constitutional convention question above, vote below for your choice of delegates to the convention if one is to be held."

14. The Secretary of State, on or before April fourteenth, one thousand nine hundred and forty-seven, shall certify the foregoing public question to the respective county clerks, and in so certifying shall prescribe the style and size of type and the layout of the question which shall be used by the several county clerks in printing the official ballots for the election of delegates and submission of the question. Except as herein provided, the foregoing question shall be submitted in the manner required by Title 19 of the Revised Statutes for the submission to the people of a public question to be voted upon by the electors or voters of the entire State, and it shall be the duty of the Secretary of State and of the several county clerks to arrange for the submission of such public question and for the election of delegates in accordance with the provisions of this act and of Title 19 of the Revised Statutes to the extent that such provisions are not inconsistent with this act. The mailing of sample ballots as hereinafter provided shall be in lieu of any other provision of law requiring publication, posting or notice of a special election or of the submission of a public question, except notices from the Secretary of State to the county clerks and county boards, and from the county clerks to the municipal clerks, and except the posting of sample ballots.

15. In all counties there shall be used for the election of delegates and for voting on the public question a paper ballot separate from the primary election ballot and from any other ballot used for any other election on that day. Voting machines shall not be used for the purposes of this act in any county. The ballot, including instructions to voters, shall in all respects, except as herein otherwise required, follow the form and practice provided by law with respect to the election of members of the House of Assembly. In counties using voting machines for the primary election, voting booths and ballot boxes shall be provided for the purposes of this act in the same manner as such equipment is required by law to be provided for general elections where voting machines are not used. In the event that voting booths and ballot boxes complying with the specifications of Title 19 of the Revised Statutes should not be on hand or available, without purchase, in sufficient number for all election districts in any county using voting machines for the primary election, such voting booths and ballot boxes used for school elections as may be made available by the various school districts may be used for the purpose of the special election hereunder. Any additional ballot boxes and voting booths which may be required in the several counties shall be provided by the Secretary of State

upon certification to him by the officials charged by law with the duties of providing and storing such equipment that some or all of it has been destroyed or otherwise disposed of pursuant to a duly adopted municipal ordinance or county resolution, as the case may be. Nothwithstanding any provision of Title 19 of the Revised Statutes, ballot boxes and voting booths provided by the Secretary of State hereunder shall be deemed sufficient if he determines that they are designed to protect the secrecy and security of the ballot and to guard against fraud.

16. Ballots shall be printed on colored paper clearly distinguishable from any other ballots used on primary day and from the color of sample ballots in connection therewith. The position of the names of candidates on the ballot shall be determined by the drawing of lots as in general elections in the manner provided by Title 19 of the Revised Statutes. The duly selected designation of each candidate or group of candidates shall be printed upon the ballot above, below or to the right of the name or names of each candidate or group and the names of such candidates as may have duly petitioned to bracket their names together with a single designation shall be so printed.

17. The detachable coupon on official ballots used for the purpose of this act shall be numbered consecutively from one to the number of ballots delivered to and received by the member or members of the district boards for their respective election districts, and all such numbers shall be preceded by the letter "X." For municipalities wherein elections have been held during the year one thousand nine hundred and forty-seven prior to June third, the Secretary of State shall provide a supplementary poll book for each district in such municipality, which shall serve for signature comparison and voting record for the special election only, wherein anyone who votes in the special election hereunder shall sign his name and address, and a member of the district board shall enter alongside each signature the number of the special election ballot given each voter. In all other municipalities, a voter who votes in the primary and in the special election shall sign the signature comparison record in the columns headed "Primary" and "Other elections" and the numbers of the ballots which he votes at the primary election and at the special election shall be indicated in their proper columns on the voting record. Sample ballots hereunder shall so far as practicable be mailed together with the sample primary election ballots for the same day.

18. All the ballots for the purposes of this act, including sample ballots, shall be printed by the respective county clerks in conformity with sections 13 through 17 hereof and as to all matters not covered here, with the requirements of Title 19 of the Revised Statutes. The

county clerk shall prepare and deliver to the printer complete copy for the ballots as herein required on or before the twenty-fourth day of April, and shall mail the ballots provided by this act together with the primary election military service ballots otherwise provided by law, as soon after the thirtieth day of April as shall be practicable.

19. After being voted, the ballots provided by this act shall be deposited in any of the ballot boxes which shall be provided for that purpose, including either ballot box used for the primary election. The ballots cast in the special election to be held hereunder shall be counted and strung and numbered separately from those cast in the primary election. The result of the votes cast for and against the adoption of the public question shall be returned by the election officers, and a canvass of such election had, as is provided by law in the case of the election of a Governor. The votes cast for delegate shall be counted, and the result thereof returned by the election officers, and a canvass of such election had as is provided by law in the case of the election of members to the House of Assembly. On or before the first Monday following the election, the board of county canvassers in each county shall complete the canvass of the votes cast in the county on the public question and for the election of delegates and determine the results of the election in the county; and the clerk of the county shall on the following day deliver the results to the Secretary of State. Ballots which have been cast, election records and ballot boxes shall be disposed of and preserved in the manner provided by chapter eighteen of Title 19 of the Revised Statutes.

20. On the tenth day of June, after the election, the Board of State Canvassers shall complete the canvass of the votes on the public question and for the election of delegates and determine and declare the results of the election on the public question. If a majority of those voting on the question shall vote "for" a constitutional convention, then such convention shall be held as provided in this act and the State canvass of votes cast for delegates shall be completed and the board shall determine and declare the persons elected as delegates. But if a majority of those voting on the question shall vote "against" a constitutional convention, then such convention shall not be held and the canvass of votes cast for delegates and the determination by the State board of the results thereof shall be abandoned. The adoption or rejection of said public question so determined shall be declared in the manner as the result of an election for Governor, and the Secretary of State shall forthwith certify the result of said election to the Legislature.

21. The Governor shall open the convention and preside at its first session and until permanent officers are selected. So long as he presides he may cast the deciding vote in the event of a tie. The

convention shall be the judge of the qualifications of its members, their election, or appointment. It shall have the power by the vote of forty-one of the delegates to choose a president and secretary and all other appropriate officers, to prescribe their functions, powers and duties, and to make rules and regulations for the conduct of its business. Before entering upon his office, each delegate shall take and subscribe an oath or affirmation, before any person qualified to administer an oath, that he will abide by the instructions of the people as contained in the referendum hereunder, and support the Constitution of the United States and faithfully discharge his duties as delegate.

22. If any delegate from any county shall die, resign, remove from the State or county or otherwise become disqualified from serving, or if a vacancy occurs for any reason whatsoever, the vacancy shall be filled by an appointment made by the remaining delegates or delegate from the county; and, in case there be no delegate therefrom, any and all vacancies then existing shall be filled by appointment made by the board of chosen freeholders of the county.

23. 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.

24. When the convention by a vote of forty-one of the delegates shall have agreed upon its proposals, and the manner of their submission as aforesaid, an original and two true copies thereof shall be prepared, and signed by the president and secretary of the convention and delivered to the Governor who shall cause the original copy to be filed in the office of the Secretary of State. A printed copy of the proposed Constitution shall be delivered to each member of the Legislature, whether or not it is then in session. 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. The Secretary of State shall forthwith certify his finding and determination to 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 by the Secretary of State, the convention may proceed to arrange for submission of the Constitution or parts thereof to the people. The convention shall adjourn sine die, and the delegates shall be discharged from their duties, on or before

the twelfth day of September, one thousand nine hundred and forty-seven.

25. The convention shall frame the question or questions, to be placed upon the ballot, submitting to the people for adoption or rejection the proposed Constitution or the part or parts agreed upon; and may frame, if it deems it appropriate, an interpretative statement to be placed thereupon or may dispense with any such statement notwithstanding any other requirement of law. The convention shall prepare an address to the people consisting of a summary and an explanation of the proposed Constitution or the part or parts agreed upon. Such an address shall be distributed together with the sample ballots for the general election, and shall be in lieu of any other summary statement which may be required by law. 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 or other person and at such times and in such manner as it shall determine. The convention may direct that its provisions, or any of them, for notice, publication and distribution shall be in lieu of any other such provisions of law relating to public questions.

26. The question or questions aforesaid shall be submitted to the people at the general election to be held in the year one thousand nine hundred and forty-seven, the ballots shall be counted, and the results thereof determined, 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, except as such provisions are inconsistent with this act or the directions of the convention; and, except as stated, all the provisions of that Title are made applicable to the provisions hereof and the acts to be performed hereunder.

27. The convention may require the submission of the question or questions which it may frame, either with the use of voting machines or with paper ballots either separate from or as part of the general election ballot, or with the use of voting machines, where available, and paper ballots elsewhere, as provided in Title 19; *provided,* that all persons qualified to vote in the general election shall be entitled to vote on the questions to be submitted.

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; 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.

29. The convention shall have power to incur such expenses as may be necessary in order to exercise the powers conferred and to perform the duties imposed by this act. The sum of three hundred and fifty thousand dollars ($350,000.00), or so much thereof as may be necessary, is hereby appropriated for printing, advertising and publication, for compensation of such clerical, technical and professional personnel as the convention may require, and for the other expenses of the convention, the same to be disbursed by the Treasurer of this State upon vouchers or warrants to be signed by the president and the secretary of the convention. Delegates to the convention shall be entitled to be reimbursed for their necessary expenses not in excess of ten dollars ($10.00) for each day the convention is in session, but shall receive no compensation whatever for their services.

30. All procedural requirements of this act, all provisions and requirements of Title 19 of the Revised Statutes made applicable hereunder and all directions of the convention as to the manner of the submission to the people of the Constitution or of a part or parts agreed upon, shall be directory only, and failure to comply or faulty compliance therewith shall not in any manner prevent the submission thereof; *provided,* that nothing herein shall authorize the submission of any constitution or part thereof in violation of section two of this act.

31. The additional costs incurred in the several counties, in connection with the special election hereunder, for the printing of sample and official ballots, and for compensation of election officials pursuant to section five of this act, and all other expenses incident to such special election, shall be paid by the State Treasurer upon vouchers certified by the county clerk and approved by the State Comptroller. For this purpose, and for the expenses of the Secretary of State in providing such ballot boxes and voting booths as may be required pursuant to section fifteen hereof and supplementary poll books pursuant to section seventeen hereof, there is hereby appropriated, out of any available funds in the State treasury, the sum of one hundred twenty-five thousand dollars ($125,000.00).

32. This act shall take effect immediately.

Approved February 17, 1947.

GOVERNOR'S PROCLAMATION DESIGNATING PLACE OF CONVENTION

STATE OF NEW JERSEY, EXECUTIVE DEPARTMENT

WHEREAS, The Legislature enacted Chapter 8 of the Laws of 1947, which was approved by the Governor on February 17, enabling the people of this State, through their delegates in a constituent assembly, to exercise their inherent right to alter or reform the State Constitution; and

WHEREAS, In pursuance of the enabling legislation a special election was duly conducted on June 3 to determine whether a constitutional convention, instructed by the people as therein provided, should be convened, and to elect delegates to such a convention if the people vote in favor thereof; and

WHEREAS, It appears that the people have voted overwhelmingly in favor of holding a State constitutional convention and have duly elected delegates thereto in the several counties, as officially to be determined by the Board of State Canvassers on the tenth day of June; and

WHEREAS, The constitutional convention is required by the enabling legislation to convene on June 12 at the city of New Brunswick, or at such other place as the Governor may designate by proclamation; and

WHEREAS, The Trustees and Administration of Rutgers University, the State University of New Jersey, have cooperated fully in offering the facilities of the University and in arranging for the convenience of the convention;

NOW, THEREFORE, I, ALFRED E. DRISCOLL, Governor of the State of New Jersey, by virtue of the authority vested in me by law, do hereby designate the gymnasium on the campus of Rutgers University, the State University of New Jersey, in New Brunswick, as the place at which elected delegates shall receive their credentials, and the State constitutional convention of 1947 shall convene, at the time and in the manner provided by law.

Given under my hand and the Great Seal of the State of New Jersey, this sixth day of June, in the year of Our Lord one thousand nine hundred and forty-seven, and in the Independence of the United States, the one hundred and seventy-first.

ALFRED E. DRISCOLL,
Governor.

By the Governor:
LLOYD B. MARSH,
Secretary of State.

BIOGRAPHIES *of* DELEGATES

The following biographies are based on those submitted by the delegates to the Constitutional Convention of New Jersey held at Rutgers University, the State University of New Jersey, from June 12 to September 10, 1947. The biographies appear in alphabetical order.

CHARLES K. BARTON (Passaic County)

Mr. Barton was born August 16, 1886, in Paterson, N. J.

He is a member of the bar with offices at 126 Market Street, and resides at 934 East 22nd Street, Paterson, N. J. He attended Paterson public schools and New York Law School.

He is Vice-President and Counsel of the United States Trust Company of Paterson, former Deputy Register of Deeds of Passaic County, former member of the Passaic County Sinking Fund Commission, former President of the Police and Fire Commission of Paterson, former President of the Paterson Welfare Commission, former President of the Board of Education of Paterson and now a member of the Finance Commission of Paterson.

Mr. Barton is married and father of two daughters and one son, and has three granddaughters.

He was elected to the Senate for the first time at the November, 1942, election, and was re-elected in 1945. In 1946 he was majority leader and in 1947 he was Senate President.

He served as Acting Governor during Governor Alfred E. Driscoll's absence from the State in July 1947.

JANE E. BARUS (Essex County)

Born in Kansas City, Missouri, in 1892. Family moved to New Jersey in 1895. Graduated from Miss Beard's School of Orange, and from Smith College in 1913. Member of Phi Beta Kappa Society. Taught Mathematics at Miss Beard's School. Married in 1915 to Maxwell Barus, now a partner in the law firm of Fish, Richardson and Neave of New York City. Four children, three of whom served in the Navy during the war, and one grandchild. Took a Master of Arts degree at New York University in 1942. Now living at 75 Llewellyn Road, Montclair, with summer home on Cape Cod.

Has done volunteer work in various civic and social welfare fields. Trustee of the Brookside School of Montclair, and of the Booker T. Washington Community Hospital of Newark. Lecturer on Parent Education. Chairman of Mayor's Committee on Housing in 1937, and Chairman of Montclair Housing Authority 1938-1943. Served on local USO Committee during war. Main interest and occupation the League of Women Voters, holding several local and state offices. President of the Montclair League and of the New Jersey League 1943-1947. Member of the Essex County Council against Discrimination, under the Fair Employment Practices Act of New Jersey.

FRANKLIN H. BERRY (Ocean County)

Born May 15, 1904, at Manahawkin, N. J., the son of J. Willits and Jessie Haywood Berry.

Graduate of University of Pennsylvania, A.B. and LL.B. Admitted to New Jersey Bar, October term, 1928. Engaged in general practice of law in Toms River under firm name of Berry and Whitson. Deputy Attorney General of New Jersey, 1946-47.

Director and former president, Beach Haven National Bank and Trust Co.; director, The First National Bank of Toms River, N. J.; past president, Ocean County Lawyers' Club, Ocean County Bankers Association, and Toms River Kiwanis Club; trustee, Admiral Farragut Academy.

Member, Sons of the American Revolution; The Holland Society of New York; Ocean County Lawyers Club; New Jersey State and American Bar Associations; The Judge Advocates' Association; Tuckerton Lodge No. 4, F. & A. M.; Excelsior Consistory, AASR; Crescent Temple, AAONMS.

Entered on extended active duty June 16, 1941, at Fort Jay, New York, as Captain, Infantry Reserve. Promoted Major, October 13, 1942, Lieutenant Colonel February 1, 1944, Colonel May 15, 1945. Reverted to inactive duty status March 24, 1946. Served overseas in Iceland, England, France, Belgium and Germany. Decorations: Legion of Merit and Bronze Star Medal. Colonel, JAG Reserve, U. S. Army.

One son: Franklin H. Berry, Jr., born February 6, 1936.

Residence: 28-30 Main Street, Toms River.

THOMAS J. BROGAN (Hudson County)

Thomas J. Brogan was admitted to the bar of this State in November, 1912. He practiced law until 1932, during the interval serving as corporation counsel of Jersey City for eleven years. He was nominated an Associate Justice of the Supreme Court by Governor Moore on April 25, 1932, and confirmed by the Senate the following day. On February 20, 1933, he was nominated as Chief Justice by Governor Moore and was confirmed by the Senate March 9, 1933. Reappointed at the expiration of his term in 1940, he served as Chief Justice until March 15, 1946, when he resigned that office to resume the practice of law.

Scholastic attainment: Graduated College of St. Francis Xavier, New York City, 1909, A.B.; Fordham University School of Law, 1912, LL.B.; received Master's Degree and Doctor of Laws Degree, Manhattan College, Seton Hall College and St. Peter's College.

Residence: 99 Gifford Avenue, Jersey City.

A. J. CAFIERO (Cape May County)

Born Philadelphia, Pa., February 11, 1900. Attended public and parochial schools and LaSalle Preparatory School in Philadelphia, Pa., and New Jersey Law School in Newark, N. J.

Is attorney and counsellor at law; also Special Master in Chancery and Supreme Court Commissioner.

Has been City Treasurer of the City of North Wildwood, N. J.; Clerk of the Board of Chosen Freeholders of Cape May County; Prosecutor of Pleas for said county, and at present is President Judge of the Court of Common Pleas.

Is former President of the Cape May County Bar Association; Wildwood Rotary Club; Wildwood Golf and Country Club; and The Association of Italian-American Citizens' Clubs of Cape May County.

Married Hazel Koenig in 1926 and lives with his family at 2010 Central Ave., North Wildwood, N. J. His son James, 19, is a student at Princeton; and his daughter, Andrea, 9, attends St. Ann's School in Wildwood.

PERCY CAMP (Ocean County)

Percy Camp was born at Cassville, Ocean County, N. J.; was educated in the public schools of Jackson Township and at the Lakewood High School. He took a course at Rider's Business College, Trenton, and then studied law with the late Judge William Howard Jeffrey and with Vice-Chancellor Maja Leon Berry, and was admitted as an attorney in May, 1926, and as a counsellor in 1932. He has been Assistant Prosecutor, State Senator, President of the County Bar Association and Common Pleas Judge.

He is now County Counsel and Solicitor for 14 municipalities. He resides in Toms River.

ROBERT CAREY (Hudson County)

Born in Jersey City, 1872, and have resided there all my life. Graduate of Jersey City High School and New York Law School; law degree LL.B. *cum laude*. While studying law for five years, was on the reportorial staff of the *New York World* and *New York Herald*, and a number of New Jersey papers.

Admitted to the New Jersey Bar in 1893 as attorney, and in 1896 as counsellor. Later admitted to practice in New York State Bar and all the federal courts, including the United States Supreme Court. Have practiced my profession continuously ever since, supplemented with official relationships.

Married Cora G. Curney in 1900. Have two children: Robert, a lawyer in the City of Newark; and Nan Neff, of Orange, N. J. Reside at 2595 Boulevard, Jersey City.

Public Offices:

First office, counsel for Jersey City Board of Health. Served six years as Corporation Attorney of Jersey City under Mayor Mark Fagan (a Republican mayor). In January, 1908, was appointed by Governor Fort a member of the State Board of Taxation, and later appointed by him as Judge of the Hudson County Court of Common Pleas. Served in that capacity from 1913. Appointed by Governor Fielder as trustee for the State Home for Boys. Later was appointed New Jersey counsel for the New York and New Jersey Bridge and Tunnel Commission, and served in that capacity for seven years. Only other offices ever held were incidental.

For five years during the last war was Chairman of the Appeal Board of Selective Service for Hudson County.

Civic:

For 35 years have been counsel for the Jersey City Chamber of Commerce (without pay). Have been one of the trustees of Christ Hospital of Jersey City, for 35 years. Have been for a long time and am now a member of the Advisory Board of the Young Women's Christian Association, and am still counsel therefor.

Have been director of several of the banks in our county, and have represented them legally for a number of years.

Have been constantly active in the Republican Party since 1896. Have attended five national Republican Conventions as delegate. Have been a member of the Republican State Committee and Hudson County Republican Committee.

Was twice a candidate for Governor in the Republican primary, and would

have made a "good governor" if elected. Have participated in every national and state campaign waged by my party during the past 50 years.

Have been active in Masonic service for 50 years and recently received a 50-year gold button as a Mason. Am to be elevated to the 33° in Masonry at the session of the Supreme Council to be held in Cincinnati in September. Have been active in Rotary service, and in 1941 was District Governor of the Rotary Clubs of New Jersey. Member of the Arcola Country Club, Masonic Club of Jersey City, and practically all the civic organizations in Hudson County.

For 40 years have given considerable time to addressing Bible classes throughout the United States. Am a member of St. John's Episcopal Church of Jersey City.

Am a member of the American Bar Association, the New Jersey State Bar Association, and the Hudson County Bar. Have been a member of the House of Delegates of the American Bar for the past 12 years. At present am a member of the Special Planning Commission appointed in an attempt to regenerate and reconstruct Jersey City.

Have been for years and am now a director of the Children's Home of Jersey City, and the Boys' Club of Jersey City.

Am head of the law firm of Carey & Lane, and have been for 25 years. Have not been on any public payroll of any sort, kind or character for over 20 years.

I was one of the committee which drafted the Commission Government Act as originally passed in New Jersey. In that connection, participated closely with the then Governor and afterwards President, Woodrow Wilson.

When Judge of the Court of Common Pleas, I drew the Juvenile Court Act which has been in operation ever since, and the Parental School Act which was adopted at that time.

DOMINIC A. CAVICCHIA (Essex County)

Born in Newark, N. J., January 18, 1901; was graduated from East Side High School, Newark, in 1919; studied law at New York University two years, and in 1922 received LL.B. degree from New Jersey Law School; has practiced law since 1924. Resides at 57 Keer Avenue, Newark.

Was a member of General Assembly from Essex County 1939-44; leader of Essex Assembly delegation 1940-1943; majority leader in the Assembly 1943; Speaker of the Assembly 1944.

In 1939, was member of joint legislative committee which investigated administration of emergency relief; in 1940, was member of joint legislative committee to study potable water supply problem; in 1941 and 1942 was member of joint legislative committee on railroad taxation; in 1942 was member of joint legislative committee appointed to hold public hearings on constitutional revision; in 1944 was vice-chairman of joint legislative committee to draft Revised Constitution.

Is Deputy Attorney-General of New Jersey; member of New Jersey State Commission on Post-War Economic Welfare; and trustee of New Jersey Historical Society.

ALFRED C. CLAPP (Essex County)

Born 1903. University of Vermont Ph.B., 1923; Harvard Law School LL.B., 1927. Resides at 17 Wayside Place, Montclair. Engaged in the general practice of the law at Newark; counsellor-at-law; Special Master in Chancery.

Of counsel to the 1944 Legislature in the preparation of the 1944 Constitu-

tion. Editor, *New Jersey Law Journal.* Member and Secretary of the Chancellor's Advisory Committee, appointed 1946, on Chancery and Probate Practice. Associate Professor, Rutgers Law School; New York University Law School; former Instructor of Chancery Practice at Mercer Beasley Law School. Deputy Surrogate of Essex County; Advisory Master, Essex County Orphans' Court. Author, *Wills and Administration in New Jersey* (2 vols.). Trustee, Essex County Bar Association. Trustee and former Director of New Jersey Institute for Practicing Lawyers. Member, American Law Institute, American Bar Association, American Judicature Society, New Jersey State Bar Association.

President, Phi Beta Kappa Association of Essex County. President, Brookside School of Montclair. Former President, Family Welfare Society of Montclair. Treasurer, Montclair Republican Club.

ROBERT C. CLOTHIER (Middlesex County)

Robert Clarkson Clothier, fourteenth president of Rutgers University, was born in Philadelphia, Pa., on January 8, 1885, the son of Clarkson Clothier and Agnes Evans Clothier. He attended Haverford School at Haverford, Pa., from 1894 to 1904, and was graduated from Princeton University in 1908 with the degree of Bachelor of Letters. At Princeton, he majored in political economy and history, was editor-in-chief of the *Daily Princetonian,* a member of the Senior Council, and otherwise active in campus affairs.

After a year as a reporter on the staff of the *Wall Street Journal,* Dr. Clothier left newspaper work in 1910 to enter the service of the Curtis Publishing Company of Philadelphia. He was employment manager when he left that firm in 1917 to go to Washington as a member of the Committee on Classification of Personnel in the Army organized by the War Department to discover the industrial and technical skills of the recruits flowing into the Army. This work extended into all army cantonments. He was later sent overseas to study the personnel procedures of the British and French armies and to establish liaison between the personnel work in the United States and in the AEF. He held the commission of lieutenant-colonel on the General Staff.

After the Armistice, Dr. Clothier joined in organizing the Scott Company, consultants in industrial personnel, and was vice-president of the firm from 1918 to 1923. In the latter year he returned to the Haverford School as assistant headmaster. He was acting headmaster of the school during the sabbatical leave of Edwin M. Wilson during 1928-1929. In 1929, Dr. Clothier was called to the University of Pittsburgh as dean of men. He remained in that position during the next three years.

Since Dr. Clothier's inauguration as president of Rutgers University on March 2, 1932, the institution has had a remarkable growth. Rutgers research, already world-renowned in the field of agriculture, has been greatly expanded. The University has acquired much property and participated in an extensive building program. Expansion of the university's academic program has kept pace.

In the post-war period, Rutgers has provided for nearly a 100 per cent expansion in the facilities of its men's colleges in New Brunswick, and made other provisions throughout the State to meet the emergency caused by an unprecedented demand for its educational services. At the same time, off-campus centers were established at strategic locations throughout the State, and an urban college center was acquired in the Newark Colleges.

During the war Rutgers had a prominent part in the training of students and civilians for the war effort, and was named as one of the pilot colleges in the War Department's Army Specialized Training Program. Dr. Clothier was one of the advisors to the War Department. Nearly 3,000 Army men were

trained as engineers or language and area specialists at Rutgers under this program.

Rutgers' growth was climaxed by its designation in 1945 as The State University of New Jersey.

On June 24, 1916, Dr. Clothier married Miss Nathalie Wilson, daughter of Mr. and Mrs. Edward H. Wilson of Philadelphia. They had three children: Agnes Evans Clothier, Arthur Wilson Clothier and Robert Clarkson Clothier, Jr. Arthur Clothier was killed in an airplane accident at Ellington Field, Texas, on February 20, 1942, while in training as an Aviation Cadet in the Army Air Corps. He was 22 years old.

Dr. Clothier has been the recipient of the following honorary degrees: 1932, Doctor of Laws, Princeton University, University of Pittsburgh, and Tusculum College; 1933, Doctor of Laws, Dickinson College; 1934, Doctor of Letters, Temple University; 1935, Doctor of Laws, New York University; and 1938, Doctor of Laws, Lafayette College.

Dr. Clothier is a member of the board of trustees of the Haverford School and the Baldwin School. He is a director of the Mutual Benefit Life Insurance Company, and the Public Service Corporation of New Jersey. He is a member of the following clubs: the Nassau Club, Princeton; the Princeton Clubs of Philadelphia and New York; the Marion Cricket Club at Haverford; the Century Association; and the University Clubs of New York and Philadelphia.

Dr. Clothier's hobbies are tennis, golf, yacht racing and cruising. Ordinarily he spends his vacation at his camp on an island off the Nova Scotia coast.

He is an independent Republican in politics and is a member of the Second Reformed Church, New Brunswick.

Residence: River Road, New Brunswick.

MARION CONSTANTINE (Passaic County)

Born in Seymour, Connecticut, daughter of Robert A. and Harriett Beecher Hamilton. Educated in the public schools of Connecticut and Brooklyn, New York. Graduate of the Fine Arts course, Pratt Institute; student at Teachers College and the Art Students League, New York City. Married to Joseph H. Constantine, Director of Industrial Education, Passaic Public Schools. Two daughters, Mrs. James E. Magee and Mrs. Spencer Dean Johnson, and two granddaughters, Phyllis Jean and Nancy Barbara Magee. Resides at 18 Idaho Street, Passaic.

President of the Passaic League of Women Voters for four years. Present member of Camp Hope Commission and the Passaic Board of Education.

JOSEPH W. COWGILL (Camden County)

Born April 24, 1908; son of William and Harriet Cowgill. Graduated Camden High School, 1925; University of Pennsylvania, 1929, with B.S. degree; University of Pennsylvania, 1933, with LL.B. degree.

Admitted to the Bar, 1934. Married Margaret E. Bittner in 1940; residence 2216-43rd Street, Pennsauken Township, New Jersey. Maintains law offices at 721 Market Street, Camden, New Jersey.

District Supervisor, 1940 Census, First Congressional District of New Jersey; member of the New Jersey House of Assembly, 1941; appointed Surrogate of Camden County in December, 1941. Entered United States Navy, 1943; discharged December, 1945, as Lieutenant. Appointed Assistant Prosecutor of Pleas, January 1, 1946; resigned December 31, 1946. A Democrat in politics.

ALLAN R. CULLIMORE (Essex County)

Educator; born in Jacksonville, Ill., March 2, 1884; son of Thomas and Mary Pearce (Joy) Cullimore. Educated at Belmont School; Massachusetts Institute of Technology, B.S. in C.E.; University of Newark, Sc.D.; Beta Theta Pi; Phi Kappa Phi. Married at Brooklyn, N. Y., March 25, 1912, to Edith Van Alst. Resides at 158 Garfield Place, South Orange.

Draftsman, American Bridge Co., 1906-08; Assistant Superintendent of Construction, City of St. Louis, 1909-1912; Dean of the College of Industrial Science, University of Toledo, 1912-16; Dean of Engineering, Delaware College, 1916-19; Dean, Newark College of Engineering, 1919-27; President, Newark College of Engineering, 1927-date.

Major, Sanitary Corps, U. S. Army, 1918-19; Regional Adviser, Region No. 5, EDT, ESMDT and ESMWT, U. S. Office of Education, 1940-45; 1st Vice-President, S. P. E. E., 1943-44; Member, Advisory Committee, Humanistic-Social Studies Division, S. P. E. E., 1944-date; Chairman, Committee on Student Selection and Guidance, E. C. P. D., 1943-45; Chairman, Subcommittee on Student Development, Committee on Engineering Schools, E. C. P. D., 1946-date; President, Robert Treat Council, Boy Scouts of America, 1941-44; Chairman, Finance Committee, Robert Treat Council, Boy Scouts of America, 1944-46; Chairman, Camp Mohican Development Committee, Robert Treat Council, Boy Scouts of America, 1945-date; Member, Regional Executive Committee, Boy Scouts of America, 1943-45; Member, Retirement Insurance Committee, Boy Scouts of America, 1943-date; Member, Rehabilitation Committee, ESMWT, 1943-45; Member, Newark Airport Commission, 1944-date; Member, Citizens' Advisory Committee to the Central Planning Board of City of Newark, 1945-date; Member, Soldiers and Sailors Municipal Aid Bureau Advisory Council of City of Newark, 1945-date; Member, Thomas A. Edison Centennial Committee, for 1947; Member, Advisory Committee to Bureau of Labor Statistics, U. S. Department of Labor, for study of utilization of impaired workers in industry, 1946-date; Chairman, Essex County Council, Division Against Discrimination, N. J. State Department of Education, 1946-date; Member, Visiting Committee for Department of Civil and Sanitary Engineering, Massachusetts Institute of Technology, 1946-date; Advisory Member, Engineers Civic Responsibility Committee, A. S. M. E., 1947-date; Member: American Society of Mechanical Engineers, American Chemical Society, A. S. E. E.; Newcomen Society. Clubs: Down Town (Newark), Technology, Maplewood Country, Engineers' Club of New York.

JOSEPH A. DELANEY (Passaic County)

Born in Paterson, Judge Delaney was educated in the Paterson schools, St. Peter's College, and received his law degree from New York Law School. He was admitted to the Bar in 1897 and became a counsellor-at-law in 1901. He became a member of the Paterson Board of Education, later serving as its president for two terms. He was elected to the Legislature in 1913. He was Judge of the Paterson District Court and served a term as U. S. Commissioner. Appointed Judge of the Passaic County Common Pleas Court in 1922, Judge Delaney served on that bench for 25 years, retiring on April 1, 1947. He resides at 388 Twelfth Street, Paterson.

AMOS F. DIXON (Sussex County)

Mr. Dixon was born on a farm near Victoria, Illinois, on December 5, 1877. He later moved to Keokuk, Iowa, where he attended elementary school and

graduated from high school. He studied engineering in Akron, Ohio; Chicago and New York, attending classes at both Armour Institute and Columbia University. He has been an engineer and an executive in the Bell System for 38 years and has been granted over 60 patents for inventions in the communications field. He retired from the Bell System in 1940 and since that time has devoted most of his time to the operation of his dairy farm at Stillwater, which he purchased in 1935.

He was Chairman of the New York Section of the American Institute of Electrical Engineers for one term and is a licensed professional engineer in both New York and New Jersey.

He has been Chairman of the Township Committee of Stillwater for 1942-44 and is now serving another three-year term.

He is a member of the New Jersey Society of Professional Engineers; member of Newton Rotary Club; Harmony Masonic Lodge; Enterprise Grange; a Director of the Sussex County Board of Agriculture; a past Director of the Sussex County Milk Producers Association; Vice-President of the New Jersey Dairymen's Council; President of New Jersey Association of Township Committeemen.

He was elected to the Assembly for the first time at the November 1944 election, and was reelected in 1945 and 1946.

LESTER A. DRENK (Burlington County)

Born Riverside, Burlington County, May 9, 1903. Attended elementary public schools in Riverside; Friends Central, Philadelphia, Pa.; Swarthmore College, Swarthmore, Pa.; Temple University Law School, Philadelphia, Pa. Admitted to practice law in New Jersey 1928; counsellor 1938. President of Board of Education, Riverside; member ten years. Served two three-year terms as solicitor of Board of Freeholders, Burlington County. Carried on general practice of law from admission to the present in the City of Camden. Presently member of the firm of Drenk & Walton, 113 North 4th Street, Camden, New Jersey. Member of Burlington County and Camden County Bar Associations; New Jersey State Bar Association; American Bar Association; American Judicature Society. Residence: Route 25, Riverside.

JOHN DREWEN (Hudson County)

Born in Jersey City 58 years ago. Graduate of Senftner Preparatory School in New York City and New York Law School.

Admitted to the New Jersey Bar as attorney in 1913, and as counsellor in 1916. Entered general practice of the law in Jersey City in 1920, in partnership with the late Randolph Perkins who was Congressman from the Seventh District of New Jersey from 1920 until his death in 1936. Resides at 40 Gifford Avenue, Jersey City.

As Acting Assistant Prosecutor of Hudson County, represented the State in the argument of the appeals taken in the Black Tom explosion cases.

From 1929 to 1934 served as Prosecutor of the Pleas of Hudson County. In 1946 appointed by Governor Edge to Hudson County Common Pleas Bench.

WILLIAM A. DWYER (Passaic County)

Born in Gregory, Montana. Educated in the local schools of Paterson, St. Peter's College, Jersey City and New York University. Degree of M.D. from New York University, 1911. Former member of the Board of Finance, City of Pater-

son. Member of the New Jersey State Surgical Society, member of the New Jersey State Medical Society, Fellow of American Medical Association, New York Academy of Medicine, American College of Surgeons and Diplomat of the American Board of Obstetrics and Gynecology.

Married Amelia M. Dunn. Three children, Wm. A. Jr., student at New York University, Arthur C. and James M., students at Newark Academy. Resides at 628 Broadway, Paterson.

WILLIAM J. DWYER (Hudson County)

Banker; born in Jersey City, New Jersey, March 20, 1888; son of William J. and Katherine Loretta (Cogan) D.; educated at St. Paul's Academy, Jersey City; married Clara Virginia Daniels, August 20, 1926; children—Nancy Elliott, William Daniels.

Salesman, traveled 12 years; field director, American Red Cross, 1920 to 1923; founder, Bailey, Dwyer & Company, Jersey City, 1925; reorganized Bergen Trust Company, Jersey City, 1940, president since October 1, 1940; director Westerleigh Hills Realty Corporation; vice-president, Bailey, Dwyer & Company, Jersey City; State Chairman for New Jersey, American Bankers Association war bond committtee, 1944 to 1945; vice-president, New Jersey Division American Cancer Society; state treasurer, Sister Kenny Foundation; trustee, men's advisory board, Jersey City Y. W. C. A. Served as private, U. S. Army; captain, September 10, 1917; A. E. F., October 1917 to July 1919, World War I. Member, American Bankers Association (trustee), American Institute Banking, American Legion, Community Chest. Republican. Electoral College nominee of New Jersey, 1939.

Clubs: Lake Mohawk Country, Lake Mohawk Horse Show Association (chairman); Theodore Roosevelt Association (Jersey City); Kiwanis, Jersey City Philharmonic (president 1945-46); Bond (New Jersey); Lotus of New York.

Home: 8 Linden Court, Jersey City; (summer) Lake Mohawk, New Jersey. Office: 26 Journal Square, and 921 Bergen Avenue, Jersey City.

FRANK H. EGGERS (Hudson County)

Born in Jersey City on February 22, 1901, he attended the public schools there, as well as Carleton Academy and Fordham University Law School.

He has been in public service for the past 23 years. He was Secretary to Corporation Counsel Thomas J. Brogan of Jersey City from 1924 to 1929; Criminal Court Judge from 1929 to 1934; was appointed District Court Judge by Governor A. Harry Moore in February, 1934; Secretary to Mayor Frank Hague, 1938 to 1942, and has been Commissioner of Jersey City since August 4, 1942. He became Mayor in June, 1947.

Mayor Eggers has been a practicing lawyer for 17 years since his admission to the Bar in 1930. He is a counsellor-at-law and was appointed as a Supreme Court Commissioner by the New Jersey Supreme Court in 1943.

During World War II Mayor Eggers served in the United States Coast Guard and is National Chairman of the Youth Promotion and Recreation Committee of the Amvets (American Veterans of World War II). He has been President of the Hudson Council of the Boy Scouts of America for the past seven years.

He resides at 334 Arlington Avenue, Jersey City, and is married to the former Mary L. McDonald. They have three children, Frank H. Eggers, Jr., age 16, Mary Louise, age 14, and Alice, age 6.

Mayor Eggers is a member of the Hudson County, New Jersey State and American Bar Associations.

SIGURD A. EMERSON (Union County)

Admitted to practice law in New Jersey, February, 1920; admitted as a counsellor-at-law 1923. Former president of the Union County Bar Association. Now practicing law at 744 Broad Street, Newark, New Jersey, under the firm name of Emerson, Emery & Danzig.

Married Clarinda Nelson Field and have three sons: Field, John and David. Residence: 231 Exeter Way, Hillside.

FRANK S. FARLEY (Atlantic County)

Born in Atlantic City, N. J., December 5, 1901. He attended local schools, University of Pennsylvania, and Georgetown University Law School, from which he graduated in 1925, receiving an LL.B. degree. He is a counsellor-at-law of New Jersey, with offices at 503 Schwehm Building, Atlantic City; also a Supreme Court Commissioner and a Special Master in Chancery of New Jersey. He resides at 6104 Ventnor Ave., Ventnor.

"Hap," as he is affectionately known to his many friends, is a member of D. K. E. Fraternity and member of New Jersey Football Association, and numerous civic and fraternal organizations. He is Chairman of the Atlantic County Republican Committee, and a member of the Crippled Children Commission of New Jersey. He is President of the Atlantic County Bar Association.

He was elected to the Assembly in 1937, and re-elected in 1938 and 1939. He was elected to the Senate for the first time in November, 1940, and re-elected in 1943 and 1946. He was Majority Leader of the 1944 session. Senator Farley was President of the 1945 Senate, and during the year served as Acting Governor when Governor Edge was absent from the State.

MILTON A. FELLER (Union County)

Born September 21, 1902, in New Brunswick, New Jersey, but has resided in Elizabeth, New Jersey since 1904. Graduated from St. Mary's Parochial School in 1917 and from Battin High School, Elizabeth, in 1921; graduated from Seton Hall College, South Orange, in 1925 with the degree of Bachelor of Arts, and received a degree of Master of Arts from Seton Hall College in 1927; graduated from New Jersey Law School, Newark, New Jersey in 1929, with the degree of Bachelor of Law.

Former instructor of English, History, Civics and Government in Seton Hall Preparatory School, and of Economics at St. John's University, School of Commerce, Brooklyn, New York; former baseball coach at Seton Hall College and High School from 1928 to 1932, inclusive.

Admitted to the Bar in February 1931, and has been practicing law in Elizabeth ever since that time. He was a member of the City Council of Elizabeth for four years, from 1934 to 1938, inclusive; a member of the New Jersey House of Assembly during the years 1942, 1943 and 1944, and Judge of the First Judicial District Court of Union County from June 1, 1944. At the present time he is an officer of the Elizabeth Lodge of Elks, a member of the Board of Governors of the Seton Hall Alumni Association, and counsel for the New Jersey Education Association. Also Professor of Law at John Marshall Law School since September, 1946.

Residence: 517 Burnham Rd., Elizabeth.

LELAND F. FERRY (Bergen County)

Born at Bethel, Connecticut, on February 12, 1900. A resident of Teaneck since 1911; the son of Fairchild N. Ferry, deceased, and Clara B. Ferry. Graduated from the Teaneck public schools and Englewood High School. Professional training in the Law School of New York University where he received the degree of Bachelor of Laws in 1924. He later studied advanced law in courses at Columbia University. Admitted to the Bar in 1925; counsellor-at-law in 1930. Law offices at 362 Cedar Lane, Teaneck.

Former Borough Attorney for Dumont, Westwood, Harrington Park; First Assistant Prosecutor of Bergen County, 1934-1936; Judge of the Criminal Court of the First Judicial District of Bergen County, 1936-1944. Director and Counsel of the Tenakill Building and Loan Association; United States Selective Service Government Appeal Agent; former President of Teaneck Rotary Club; member of the Teaneck Planning Board; 32nd degree Mason; member of the Bergen County Bar Association and New Jersey State Bar Association; warden of Christ Episcopal Church of West Englewood.

Married to Lois A. Curtis, daughter of the late Charles and Sarah (Haring) Curtis. Three children—Curtis F., Leland F., and Lorinda A. Resides at 1500 River Road, West Englewood.

Veteran of World War I, having served in the 211th Field Signal Battalion of the U. S. Signal Corps.

ARTHUR R. GEMBERLING (Salem County)

Real estate and mortgage broker of Woodstown, New Jersey. Born in Selinsgrove, Pennsylvania. After graduating from Lebanon Business College he spent 35 years as an instructor of commercial subjects in Philadelphia private colleges. He was a member of the Camden City Council for eight years; and one of the organizers and Vice-President of the East End Trust Co., Camden, New Jersey. For many years he was active in Parent-Teachers Association work and organized the Salem County Council of the P. T. A. Resides at Woodstown.

RONALD D. GLASS (Passaic County)

I. *Vital Statistics.*
   a. Born in Paterson, N. J., September 22, 1911.
   b. Third-generation Patersonian.
   c. Married Margaret Hunt, September 2, 1939.
   d. Two daughters, Cheryl and Ronna.
   e. Resides at 122 Ryerson Ave., Paterson.

II. *Education.*
   a. Eastside High School, Paterson, N. J.
   b. Paterson State Teachers College.
   c. Bachelor of Science degree, Columbia University.
   d. Master of Education degree, Rutgers University.
   e. Doctorate almost completed, Rutgers University.

III. *Employment.*
   a. Teacher of Social Studies and Mathematics, Fair Lawn, N. J., February 1933-March 1939.
   b. Principal, Lincoln School, Fair Lawn, N. J., March 1939-February 1947.
   c. Principal, School No. 21, Paterson, N. J., February 1, 1947—position now held.

IV. *Highlights.*
  a. Published numerous national magazine articles.
  b. Filled numerous speaking engagements throughout State.
V. *War Record.*
  a. Served 3½ years.
  b. Captain, Army Air Forces.
  c. Four major campaigns:
    1. Air combat over Balkans.
    2. Air offensive Germany.
    3. Appenines campaign.
    4. Po Valley campaign.
  d. 98th Heavy Bomb Group, 15th Air Force in Italy.
VI. *Organizations.*
  a. Phi Delta Kappa—National Honor Fraternity.
  b. American Legion.
  c. New Jersey Education Association.
  d. Air Force Association.
  e. Passaic County Schoolmasters Association.

MYRA C. HACKER (Bergen County)

Myra C. Hacker, Barnard College, B.A. degree; Columbia University, M.A. degree in Government and Public Law. Studies in Comparative Government in Europe, Latin America and Continental United States; graduate study in Education, Political Science and Social Problems at Columbia University, Fordham University, and New York University.

Former State Chairman of Legislation and Citizenship of the New Jersey State Federation of Women's Clubs. At present member of the Teaneck Board of Adjustment, since 1941. Chairman of Education of the Bergen County Women's Republican Club; member of the Board of Governors of Women's State Republican Club.

Vice-President of the New Jersey Chapter, Society for Constitutional Security; National Secretary for Organization for National Society for Constitutional Security.

Resides at 1545 Warwick Ave., Teaneck.

WILLIAM L. HADLEY (Union County)

Born in Staffordshire, England, July 7, 1883. Came to the United States when seven months old with my mother and three sisters and three brothers. Located at Bernice, Sullivan County, Pennsylvania, where my father, the late Benjamin Hadley, was engaged in the pursuit of coal mining, that having been his occupation in England. He was in America when I was born. The family later moved to Jefferson County, Pennsylvania.

My mother was the late Matilda (Robinson) Hadley. The farm which became Hadley Field Airport was her home for many years. Later she resided in Plainfield, N. J., prior to her death. Hadley Field was named for her. There were 12 living children in the Hadley family, seven boys and five girls. There are six now living, three boys and three girls.

My first business experience was selling newspapers. For 6½ years I was a coal miner in the Western Pennsylvania field. In the winter of 1898 I migrated to Pittsburgh, Pa., where I engaged in several pursuits over a period of 11 years, including newspaper work and the dramatic stage. Two very important events

transpired during my residence in Pittsburgh: (1) it was there I cast my first ballot at a local election; (2) I married Amy Elizabeth Swinbank, September 30, 1906.

I came east to New Jersey in 1908, locating first at the Hadley farm, and later moving to Plainfield where we have since resided. I have lived at 1111 Putnam Avenue, Plainfield since 1919.

In the fall of 1908 I returned to newspaper work as part of the staff of *The Eastern Underwriter,* a trade publication devoted to the insurance business, with which organization I am at present associated and employed, functioning in the capacity of publisher.

I was excluded from participating in the two World Wars—first, because of my married and children status; second, on account of my age. Mrs. Hadley and I adopted and raised five children, one boy and four girls. All are grown.

Our son, James William Hadley, has recently returned to civilian life after two four-year periods of service in the United States Marine Corps. He came home with a rating of Supply Sergeant. He functioned in that capacity with the 4th Marines, and saw active duty in the South Pacific.

Our youngest daughter, Mrs. Amy Ruth Chesser, wife of Captain Robert Lee Chesser, and their son Robert Lee Chesser, Jr., are living with us in Plainfield. Captain Chesser, member of the Army Air Corps, based in Italy, was reported missing in action on May 25, 1944, the day prior to the birth of his son here in Plainfield.

I am a communicant of Grace Episcopal Church, Plainfield; a member of Anchor Lodge No. 149, F. & A. M., Plainfield; a companion of Jerusalem Chapter No. 24, R. A. M., Plainfield, and Past High Priest (1943) of that chapter; and a member of Raritan Valley Country Club, of Somerville, the Economic Club of New York City, and of the Advisory Council of the Salvation Army in Plainfield.

Politically I am definitely an Independent—this from choice and because of my business affiliations.

LEWIS G. HANSEN (Hudson County)

Born in Jersey City on November 18, 1891. Awarded a Master's degree in law by New York University in 1913, he has been a counsellor-at-law in New Jersey since 1916 and is a Supreme Court Commissioner. He served in the New Jersey Legislature and has been First Assistant Prosecutor of Hudson County, Assistant Corporation Counsel of Jersey City, and was appointed by Governor A. Harry Moore as Judge of the Second District Court of Jersey City.

He has been President of the Franklin National Bank since 1938, and in 1945 was elected President of the Hudson County Bankers' Association.

He served in the United States Navy during World War I and was Director of Civilian Defense for Jersey City in World War II.

He was the Democratic candidate for Governor in 1946.

In March, 1929, Judge Hansen married Miss Medora Ritchie of Montclair. They have a daughter, Joan Dix Hansen, age 15, and reside at 43 Webster Avenue, Jersey City.

ALBERT H. HOLLAND (Morris County)

Born in New York City in 1891; has lived in Morristown since 1900. Graduated from New York Law School with the degrees of LL.B. and LL.M., was admitted to the Bar of New Jersey in 1913 as an attorney, and in 1916 as a counsellor. Enlisted in World War I; at war's end was Captain FARC.

A Democrat, he was appointed in 1921 by Governor Edwards as a member

of the Morris County Tax Board; in 1925 by Governor Silzer as Prosecutor of the Pleas for Morris County; in 1928, 1933 and 1938 by Governor Moore as Morris County Common Pleas Judge, and in 1943 reappointed by Governor Edison.

For seven years President of the Morris-Sussex Area Council, Boy Scouts of America. A former President of the Morris County Bar Association, and has been active in civic, legal, fraternal and social organizations. He is a member of the Board of Directors of Remington Arms Company, Inc.; a Director of the Morristown and Erie Railroad Company. Married in 1917, and has five children.

CHARLES P. HUTCHINSON (Mercer County)

Born in Trenton, New Jersey, on October 17, 1887, and has resided there ever since. He is the son of the late Barton B. Hutchinson, who served for two terms as a member of the Assembly and two terms as a member of the Senate of New Jersey. He was graduated from Princeton University in 1909, with the degree of A.B., and from New York Law School in 1912 with the degree of LL.B. He was admitted to the New Jersey Bar as an attorney in June 1912, and as a counsellor in June 1915, and practiced law with his father until the death of the latter in 1928.

He served as Assistant United States Attorney and Special Assistant to the United States Attorney from 1921 to 1924. In November 1927, he was elected County Clerk of Mercer County, to which office he was elected for three successive terms, serving in all some 17½ years in this office. On April 2, 1945, by appointment of Governor Edge, he became Judge of the Court of Common Pleas of Mercer County, in which office he is now serving.

He is a trustee of the Mercer County, and member of the New Jersey and American Bar Associations. He is also a member of Trenton Lodge No. 5, F. & A. M.; the Society of Colonial Wars; Sons of the American Revolution; the American Legion and other veteran organizations.

He is a member of the Chapter of Trinity Cathedral (Episcopal) of Trenton and of the Standing Committee of the Episcopal Diocese of New Jersey.

He is married to the former Laura D. Reading and they have two children, Sarah Ellen and Charles P., Jr. They reside at 846 Parkside Avenue, Trenton.

In politics he is a Republican.

NATHAN L. JACOBS (Essex County)

Born February 28, 1905. Attended elementary schools at Bayonne, New Jersey. Received B.S. in Economics from the University of Pennsylvania in 1925; LL.B. from Harvard Law School in 1928 and S.J.D. from Harvard Law School in 1931. Admitted to the New Jersey Bar as attorney in 1928 and as counsellor in 1931. Associate and Note Editor of *Harvard Law Review* (1926-1928) and holder of Sears Prize (1927) and Judah P. Benjamin fellowship (1930-1931). Practiced law with Arthur T. Vanderbilt from 1928 to 1934, and as a member of Frazer, Stoffer & Jacobs, 744 Broad Street, Newark, New Jersey, from 1934 to date. Residence: 284 W. Hobart Gap Road, Livingston.

Chief Deputy Commissioner and counsel to D. Frederick Burnett, State Commissioner of Alcoholic Beverage Control, from 1934 to 1939. State Attorney and District Enforcement Attorney of the Office of Price Administration, Newark, from 1942 to 1945. Professor of Administrative Law at Mercer Beasley School of Law and University of Newark (now Rutgers University School of Law), from 1929 to date.

Author of Study on State Administrative Agencies (1938), Proposed Election Law and Report Thereon (1940), and articles in *Harvard Law Review* and *Mercer Beasley Law Review*. Member of the New Jersey State Bar Association, Essex County Bar Association and American Bar Association.

CHRISTIAN J. JORGENSEN (Middlesex County)

Born in Perth Amboy, New Jersey, December 19, 1910, and received his preliminary education in the public schools of Perth Amboy, graduating from that city's high school in June 1929. Graduated Ohio University with degree of Bachelor of Arts in 1932, having completed prescribed four-year course in three years; attended Mercer Beasley School of Law and New Jersey Law School, graduating from the latter with degree of Bachelor of Laws in 1935.

He was admitted to the Bar as attorney in 1936; as a counsellor in 1939; appointed Special Master in Chancery, 1946, and Supreme Court Commissioner, 1947. Since admission he has been associated with former Attorney-General David T. Wilentz, in the practice of law, with offices at 117 Smith Street, Perth Amboy, New Jersey.

On January 21, 1937, he married Gertrude A. Bolte of Lakewood, Ohio, and they reside in Raritan Township, at 45 Lincoln Street, Post Office Fords, New Jersey. They have three children: Gertrude, 8; Pamela, 4; and Christian III, 2.

Appointed Commissioner of Edison Park by Governor A. Harry Moore in 1939; re-appointed by Governor Charles Edison in 1944; elected to New Jersey House of Assembly in 1942; Police Judge in Township of Raritan since 1943; Democratic State Committeeman, Middlesex County; member, Raritan Lodge #61, F. and A. M.; B. P. O. Elks #784; Perth Amboy and Middlesex County Bar Associations and numerous political, civic and sportsmen organizations. He holds a world's light tackle fishing record.

MARIE H. KATZENBACH (Mercer County)

Born in Trenton, New Jersey, on December 8, 1882, but has recently moved near Princeton. She is the daughter of Cleveland and Matilda E. Hilson, and the wife of Edward L. Katzenbach, who died in December, 1934. She has two sons, Edward L. Katzenbach, Jr., and Nicholas deB. Katzenbach. She served for a number of years as cataloger and chief of staff of the Trenton Free Public Library.

Mrs. Katzenbach was appointed to the State Board of Education by Governor Edwards in 1921; reappointed in 1929 by Governor Larson, and reappointed by Governor Hoffman in 1937. In 1945 she was appointed a member of the reorganized State Board of Education by Governor Edge for four years, her term expiring in 1949.

Mrs. Katzenbach is a member of the Board of Trustees of Rutgers University; President of the Board of Managers of the Union Industrial Home Association of Trenton, New Jersey; First Vice-President of the Family Service Association of Trenton, New Jersey; and member of the Board of Directors of the Trenton Community Chest and Council.

HENRY T. KAYS (Sussex County)

Vice-Chancellor Henry T. Kays was born at Newton, N. J., September 29, 1878. He is a son of the late Thomas M. and Marielle Ryerson (Anderson) Kays. He is a great grandson of Supreme Court Justice Thomas Cox Ryerson

and a grandnephew of Martin Ryerson, also a Supreme Court Justice of New Jersey and a delegate to the Constitutional Convention of 1844. The Vice-Chancellor is also a kinsman of Governor Daniel Haines.

Vice-Chancellor Kays was graduated from Princeton University with the class of 1903. During 1910-11 he was a member of the Board of Freeholders of Sussex County and in 1911-12 was appointed County Counsel; he was again appointed County Counsel in 1917, retaining the office until his appointment to the Court of Chancery.

Vice-Chancellor Kays represented Sussex County in the Assembly of New Jersey in 1913, 1914 and 1915. In 1918 he was elected State Senator from Sussex County, and was reelected in 1921. He was chosen minority leader for the 1921 session. During World War I he was Federal Food Administrator for Sussex County.

Vice-Chancellor Kays was appointed a Judge of the Court of Errors and Appeals by Governor Silzer in 1924 to succeed Judge Ernest J. Heppenheimer, resigned. In order to accept the appointment, he resigned as a State Senator on March 8, 1924, and on the same day was sworn in as a member of the Court of Errors and Appeals. He resigned as Judge of the Court of Errors and Appeals to accept the Vice-Chancellorship to which he was appointed by Chancellor Campbell. He was sworn into office on June 24, 1935, and reappointed June 24, 1942.

In politics, the Vice-Chancellor is a Democrat. He sits in Essex, Sussex and Warren counties. His Chambers in Newton are in the Sussex and Merchants National Bank Building.

He married Katherine Van Blarcom, the daughter of the late Captain Lewis Van Blarcom, and resides in Newton.

WESLEY L. LANCE (Hunterdon County)

Judge, Court of Common Pleas, Hunterdon County. Resides in Glen Gardner.

Education: Graduate of Glen Gardner Public Schools, Hampton High School, Lafayette College, and Harvard Law School.

Professional Experience: Attorney for various financial institutions in Hunterdon County. Professor of Trusts, John Marshall Law School.

Governmental:

(a) State: Assemblyman, Hunterdon County (1938, 1939, 1940 and 1941). As Assemblyman, introduced and secured passage of proposed amendment of Article IX of the New Jersey State Constitution, proposing that amendments be submitted to the people at a general, rather than a special, election. Elected State Senator from Hunterdon County in November, 1941. Member, New Jersey Commission on Statutes (1943), State Commission on Post-War Economic Development (1943), and Appropriations Committee in State Senate (1942, 1943).

(b) County: Former attorney for Board of Freeholders, Hunterdon County.

(c) Municipal: Attorney for various municipalities.

Business Experience: Director and Vice-President, Hunterdon County Trust Company (1937 to date); director of High Bridge Building & Loan Association (1937 to date).

Military: Resigned from State Senate, July 1943, to enter U. S. Navy; served aboard aircraft carrier; honorably discharged in February 1946.

Miscellaneous: Organized in 1937 and present President of Tri-County Baseball League, composed of teams from Northwest Jersey and Eastern Pennsylvania; president, Hunterdon County Basketball League; member, Sydney Progressive Grange.

LEON LEONARD (Atlantic County)

Born March 11, 1909. Graduated from Atlantic City High School and Dickinson Law School. Admitted as an attorney in 1930, and as a counsellor in 1933.

Member of the Elks (Past Exalted Ruler); Board of Directors of the Atlantic City Community Center; Board of Trustees of the United Jewish Appeal.

Married and has one child. Resides at 3 North Newton Avenue, Atlantic City.

Elected to the Assembly for the first time at the November 1940 election, and reelected in 1941, '42, '43, '44, '45, and '46. Majority Leader in the 1946 Assembly. Speaker of the House in the 1947 session.

City Solicitor of the City of Atlantic City.

ARTHUR W. LEWIS (Burlington County)

Born September 22, 1904. Practicing lawyer since 1931, maintaining law offices at 423 Market Street, Camden, New Jersey; Professor of Constitutional Law and New Jersey Practice at South Jersey Law School, where he received LL.B. degree in 1930.

Served in New Jersey House of Assembly, 1943-1944, and has been a member of the New Jersey Senate since 1945.

Trustee, West Jersey Hospital, College of South Jersey, Riverton Country Club; Director, Cinnaminson Bank and Trust Company, Fidelity Mutual Savings and Loan Association, Guarantee and American Building and Loan Associations; Member, Rotary Club, Union League of Philadelphia, Medford Lakes Colony Club, American Bar Association, National Republican Club, Calvary Presbyterian Church of Riverton.

Married Lillian Alberta Hess of Audubon, New Jersey, in 1936; has two sons, Robert S. and Russell C.; resides at 714 Thomas Avenue, Riverton, New Jersey.

MILTON C. LIGHTNER (Bergen County)

Born April 11, 1890, Detroit, Michigan; son of Edwin N. Lightner and Jane Cass Lightner. University of Michigan, A.B., 1910, and Harvard Law School, LL.B., 1913. Practiced law in New York, 1913-1927; thereafter Vice-President of The Singer Manufacturing Company.

Served in Squadron "A," National Guard, New York, 1914-1917, and in U. S. Army, 1917-1919, being discharged in 1919 as Captain Q. M. C.

A resident of Ridgewood, New Jersey, since 1919, and now resides at 300 Murray Ave. Office address: 149 Broadway, New York City.

FRANCIS V. D. LLOYD (Bergen County)

Francis V. D. Lloyd was born on April 26, 1896, in New York City, his parents being Grace Morris Van Duyne and Frank Austin Lloyd. He resides with his wife, the former Evelyn M. Roth, and family at 537 Teaneck Road, Ridgefield Park, New Jersey. He has three children—Anne, Eve and Frank V. D. Lloyd.

He attended the public schools and New York Law School, from which he graduated in 1917 with an LL.B. degree. He was admitted to the Bar of New Jersey in 1917.

Judge Lloyd served in World War I as an Ensign in the United States Naval Reserve. On his return from naval service in 1919, he took up the practice of

law in Hackensack, New Jersey, becoming a member of the firm of Morrison, Lloyd and Morrison, one of the oldest and leading firms of lawyers in Northern New Jersey, the name of which firm was recently changed to Morrison, Lloyd and Griggs. In addition to their extensive private practice, Judge Lloyd's firm is also counsel for the Bergen County Bankers Association, the New Jersey State Safe Deposit Association and a number of financial institutions and corporations. He has devoted a large part of his time to the affairs of thrift and home financing.

In this connection, he has been actively identified with the New Jersey Savings and Loan League, serving on its board of governors and also as its president during 1930-1931. He is a life member of its board of managers and has been active as a member of many of its important committees. He has also served as chairman of the Legal Committee of the United States Building and Loan League; was named by President Hoover as a delegate to his conference on home building and home ownership, and was one of the members of the New Jersey Building and Loan Finance Committee, cooperating with the Reconstruction and Finance Corporation.

Upon the organization of the Federal Home Loan Bank System, Judge Lloyd was named a director and was elected president of what is now the Federal Home Loan Bank of New York, a position he held until the bank was in full operation and upon a dividend earning basis, after which he resigned as president, becoming vice-chairman of its board of directors, a position he presently holds. On January 3, 1946, he was appointed as a Public Interest Director of the Bank by the Federal Home Loan Bank Administration in Washington, D. C.

In February, 1930, Judge Lloyd was appointed by the then Governor of New Jersey to be Judge of the Fifth Judicial District Court of Bergen County, to which office he was re-appointed by Governor Harold G. Hoffman in February 1938.

He is a member of the American, New Jersey and Bergen County Bar Associations and has been a member of important committees of those associations. He was also president of the Bergen County Bar Association during 1939-1940.

Judge Lloyd has been a director of the Bergen County Chamber of Commerce for many years, and served as its vice-president from 1940-1947.

In 1940, he was appointed by President Roosevelt as Government Appeal Agent under the Selective Training and Service Act.

Judge Lloyd is active in public and civic affairs. He is chairman of the board of trustees of Holy Name Hospital in Teaneck, New Jersey. He is also a member of the Arcola Country Club, Arcola, New Jersey, and the Lawyers Club of New York.

THORN LORD (Mercer County)

I was born in Plainfield, New Jersey, on August 24, 1906. I am a member of the Protestant Episcopal Church. I attended the University of the South, Harvard Law School, University of North Carolina and University of Pennsylvania. I have been Legal Assistant and Law Clerk to the United States Circuit Court of Appeals for the Third Judicial Circuit, Assistant United States Attorney, Chief Assistant United States Attorney and United States Attorney for the District of New Jersey, resigning in October of 1945. Subsequently, I served as a chairman of one of the Special Clemency Boards of the War Department, and I am now engaged in the practice of law in Trenton and Newark, in the firm of Lord and Hughes.

I am married and have two children. I reside on Province Line Road, Princeton (in Lawrence Township).

EDWARD A. McGRATH (Union County)

Admitted to the New Jersey Bar as attorney, 1916; as counsellor, 1919. Appointed by Governor Silzer to First District Court of Union County, 1924. Appointed by Governor Moore to Union County Common Pleas Court, 1932; reappointed by Governor Moore and Governor Edison. Professor of Constitutional Law at John Marshall College of Law, five years. Professor in Advanced Practice and Equity, two years. Author of *Trial Evidence,* a New Jersey textbook, and numerous articles for legal publications.

Member of Speaker's Committee of Governor Edison's Committee for Constitutional Reform. Appointed chairman of the Governor's Advisory Committee for the Selective Service Act by Governor Edison.

President of the U. S. O. of Eastern Union County; past president of Union County Bar Association; past member of the First National Committee of the American Legion; past State Adjutant and County Commander of the American Legion.

Residence: 829 Stanton Ave., Elizabeth.

WAYNE D. McMURRAY (Monmouth County)

Newspaper executive. Born in Gloucester City, N. J., May 11, 1897; son of John H. McMurray (deceased) and Helen M. (Dickensheets) McMurray. Educated, Asbury Park High School; New York University, 1917.

Editor and publisher, *Asbury Park Evening Press* and *Asbury Park Sunday Press;* President, Asbury Park Press, Inc. President, Monmouth County Welfare Board; chairman, Asbury Park Planning Board; member, New Jersey Council (1939-41); member, New Jersey Committee for Constitutional Revision (1944).

Served as Private, First Class, 220th Engineers, during World War I. Member, Monmouth County Press Association (president, 1930), New Jersey Press Association (president 1939, reelected 1940), American Legion Post #24; United States Power Squadrons (Shrewsbury Squadron); Chief Boatswain Mate (T) U. S. Coast Guard Reserve (1941-1945); member, Long Branch Ice Boat and Yacht Club.

Father, John H. McMurray, was editor of the *Camden Daily Courier* and member of the New Jersey Assembly.

Office, Asbury Park Press, Asbury Park. Residence, 606 Sixth Ave., Asbury Park.

GENE W. MILLER (Union County)

Descendant of Mathew Craddock, first Royal Governor of Massachusetts, and of David Williams, youthful capturer of Major Andre.

Born in Winterset, Iowa, 1906. Family moved to Grand Junction, Colorado, in 1909. Graduated from Grand Junction schools and from the University of Southern California with a major in English and Journalism. Taught English in schools of Grand Junction and Des Moines, Iowa, for four years.

Married Richard L. Miller in 1931, and moved to New Jersey. Two sons: Richard Williams, 8 years, and Damon Craddock, 4 months. Husband is Assistant General Manager of the Actuarial Department, Prudential Insurance Company. Resides at 152 Beekman Road, Summit.

Civic activities: President, Summit League of Women Voters, 1943-45; at present, Secretary of the State Board of the League of Women Voters. Appointed by Governor Edge to the Public Library Commission (now Advisory Council). Member of Local Assistance Board in Summit. Has been active in the constitu-

tional revision movement since 1940. Member, Speakers' Bureau, Constitutional Revision Committee and Constitution Foundation. Made some 100 speeches throughout State, taught classes on Constitution, and was co-chairman with Mayor in Summit's Constitutional Revision Committee.

Member of League of Women Voters, Presbyterian Church, American Association of University Women, Interracial Committee, Y. W. C. A., Fortnightly Club, Beta Sigma Omicron Social Sorority, and Phi Kappa Sigma, Education Fraternity.

SPENCER MILLER, JR. (Essex County)

Spencer Miller, Jr., was born in Worcester, Massachusetts, July 2, 1891. The same year his family moved to South Orange, his present home. He attended local private schools and the public high school, and was graduated from the Bordentown Military Institute in 1908. Four years later he was graduated from Amherst College with the degree of A.B., and pursued his graduate studies at Columbia University in Public Law and Government from 1912 to 1915. He received the degree of M.A. in Government in 1914 and was appointed Fellow in Public Law the same year. Continuing his studies in political science, he completed his resident requirements for Doctor of Philosophy in 1915. After 16 months in public administration as Assistant to the Warden of Sing Sing Prison, he returned to Columbia University for graduate training in mechanical engineering. Honorary degrees of LL.D. were conferred on him by Kenyon College in 1937 and Litt.D. from Rutgers University in 1943.

During World War I, he was associated first with the United States Labor Department and later served in the Industrial Division of the United States Navy Department. Returning to Columbia at the close of the war, he was appointed Instructor in Government. In 1921 he was elected Director of the Workers Education Bureau of America for the adult education of industrial workers. Subsequently he helped establish the first Institute of Labor in the United States at Rutgers University and extended the plan to 35 colleges throughout the country. Fordham University School of Social Service appointed him Lecturer on Labor Problems from 1933 to 1935. Subsequently he was appointed Consultant and Teacher Trainer in In-Service Training for Vocational Teachers in the New Jersey Department of Education, October, 1939, and served in that capacity until March 1942, lecturing extensively at universities throughout the United States and in Europe.

In 1935 he was appointed External Collaborator at the International Labor Office of the League of Nations at Geneva, Switzerland. In 1937 he was made Associate Director of the American Youth Commission and prepared a report on Technical Education in England, France and Germany. He served as Round Table Leader, Institute of Public Affairs, University of Virginia, 1930 to 1940.

From 1939 to 1944, he served first as Trustee, then as President of the Village of South Orange, and Commander of the South Orange Defense Council during World War II. In 1941 he was appointed Lecturer on Industrial Relations at the School of Commerce at New York University, and in 1946 Lecturer in the Graduate School of Business at the University. He was appointed Adjunct Professor of Industrial Relations in 1947.

In May 1942, Governor Edison appointed him State Highway Commissioner. He was also appointed a member of the State Planning Board, a member of the Highway Traffic Advisory Committee to the War Department, and the Commission on Interstate Cooperation. In addition he was elected Vice-President of the American Association of State Highway Officials, a member of the Executive Committee of the American Association of State Highway Officials

and the Board of Directors of the Association of Highway Officials of the North Atlantic States.

He is President of the New Jersey Constitution Foundation, former Chairman of the New Jersey Committee for a Constitutional Convention and a member of the Executive Committee of the New Jersey Committee for Constitutional Revision. He is a member of the Youth and Government Committee of the Y. M. C. A., State Chairman of the National Conference of Christians and Jews, and Co-Chairman of the United Negro College Fund for New Jersey; also a member of the American Society of Mechanical Engineers, the Academy of Political Science and other learned societies. He is a member of the Trenton Club, the Orange Lawn Tennis Club, the Amherst Club of New York, the Alpha Delta Phi and Pi Gamma Mu (honorary) fraternities.

He is the author of *The Church and Industry* with Joseph Fletcher, *The Church Must Decide, American Workers' Education* with Dr. Mollie Ray Carroll, and editor of *What the International Labor Office means to America,* and other publications.

Mr. Miller is a Trustee of Hobart and William Smith College, the Veterans' Center of the Oranges, and a member of the Church of the Holy Communion of South Orange, New Jersey.

In October 1928, Mr. Miller married Margaret Montague Geer of Nutley, New Jersey, and New York. They have three children—Ann Montague, Spencer III and Sidney Geer—and reside at 217 Turrell Avenue, South Orange.

JOHN MILTON (Hudson County)

Mr. Milton was born January 21, 1881. He was admitted to the Bar as an attorney at the February term, 1903, and as a counsellor-at-law at the February term, 1906. He was Assistant City Attorney of Jersey City from January 1908, until March 1911; Corporation Counsel of Jersey City from June 1913, to January 1, 1922; Prosecutor of Hudson County from 1923 to 1928.

He was appointed to the United States Senate by Governor A. Harry Moore, January 18, 1938, to succeed the latter, who resigned from the United States Senate to become Governor of New Jersey.

Mr. Milton married Margaretta A. Rickerich, and they have three children, John L., Charles J., and Anne D. O'Mara. They reside at 131 Kensington Ave., Jersey City.

JOHN L. MONTGOMERY (Monmouth County)

Born—May 6, 1885, in Hersman, Illinois.

Education—Topeka, Kansas, High School; Washburn College, Topeka, 1908.

Previous positions—Chief Probation Officer, Santa Clara County, Cal.; Superintendent of Preston School of Industry, Ione, Cal.

Present positions—Monmouth County Adjuster since 1921; Director of Welfare of Monmouth County since 1929; Chief Probation Officer of Monmouth County since 1936; Referee of the Juvenile and Domestic Relations Court since 1942.

Married—Gladys Hardy (deceased). One son, John L., Jr. Residence, 50 West Front St., Red Bank.

J. FRANCIS MORONEY (Warren County)

Educated in Phillipsburg, N. J., schools; A.B. from Villanova College, LL.B. from Georgetown Law School. Admitted to the New Jersey Bar in April 1931.

Assemblyman from Warren County in 1935. Resides at 93 South Main Street, Phillipsburg.

JOHN L. MORRISSEY (Camden County)

Mr. Morrissey was born December 30, 1908, in Camden, N. J. He was educated at Camden Catholic High School and South Jersey Law School, and is a lawyer.

He has held the chairmanship of Camden's Alcoholic Beverage Control Board, was Assistant City Solicitor of Camden, Assistant U. S. District Attorney and City Solicitor of Camden. Resigned as City Solicitor in April 1946, and was elected Solicitor of Camden County in September 1946.

Elected to the Senate for the first time at the November 1944 election. He was minority leader at the 1946 Senate session.

He resides at 3821 Myrtle Ave., Camden.

FRANCIS D. MURPHY (Hudson County)

Born in West New York, November 11, 1900. He attended the West New York public schools, Seton Hall Preparatory School, and Fordham College, and graduated from Fordham University School of Law in 1928.

He was admitted to the Bar of New York in 1930 and to the Bar of New Jersey in 1935. He is a member of the law firm of Murphy & Tierney, 52 Wall Street, New York City.

He is a member of the Board of Education, West New York, and was President of the Board in 1935. He was elected a Commissioner of the Town of West New York in 1935. He resides at 33 62nd St., West New York.

Mr. Murphy is a member of the North Hudson Lawyers' Club and the Knights of Columbus. Denis J. Murphy, his father, was formerly Mayor of West New York.

FRANK J. MURRAY (Essex County)

Mr. Murray was born in New York City, May 17, 1884, and was graduated from the Orange (N. J.) High School in 1902 and the New York University Law School in 1905. He was admitted to the New Jersey Bar as an attorney in 1907 and as a counsellor in 1911.

Mr. Murray was a member of Common Council of Orange in 1909, 1910 and 1911; member of the House of Assembly of New Jersey in 1912; Mayor of Orange in 1913 and 1914; City Commissioner of Orange from 1914 to 1922; and was again Mayor of Orange from 1922 to April 3, 1934, when he resigned.

Mr. Murray was State Comptroller from April 4, 1934 to September, 1941. He was president of the Orange First National Bank from 1933 to 1940, is counsel and a member of the Board of Managers of Orange Savings Bank, and Vice-President of the Sinking Fund Commisison of the City of Orange.

Mr. Murray is a Trustee of St. John's Church. He is married and the father of seven children, residing at 142 Cleveland St., Orange.

GEORGE T. NAAME (Atlantic County)

Born, October 27, 1901, Trenton, N. J. Attended public schools in Atlantic City and graduated from Atlantic City High School, June 1919. Attended Dickinson School of Law and received the degree of LL.B. in 1922.

Admitted to the New Jersey Bar, October term, 1924, and to practice in the

United States District Court for the District of New Jersey as attorney and proctor, 1924. Appointed a Master in Chancery, January 26, 1933. Became a counsellor-at-law, January 26, 1933. Admitted and qualified as counsellor and advocate, etc., to the United States District Court for the District of New Jersey, January 26, 1933. Appointed a Special Master in Chancery, February 16, 1939, and a Supreme Court Commissioner, June 7, 1945.

Appointed Judge of Atlantic City District Court, January 13, 1942, by Governor Charles Edison. Member of the New Jersey State Bar Association; member and presently First Vice-President of the Atlantic County Bar Association.

Member of Sigma Chi Fraternity, Corpus Juris (legal society of Dickinson School of Law), and Atlantic City Exchange Club.

Married to Margaret S. Schreadley on June 5, 1922. Three children, two daughters and a son. Resides at 19 North Dorset Avenue, Ventnor City.

Presently engaged in the practice of law at 522 Guarantee Trust Building, Atlantic City.

EDWARD J. O'MARA (Hudson County)

Born in Jersey City, May 6, 1897, the oldest son of Walter O'Mara and Margaret Bailey O'Mara. He was educated in St. Peter's Preparatory School, Jersey City, and Fordham University, from which he received the degree of Bachelor of Arts in 1919. He studied law at Fordham Law School and was graduated the honor man of his class in 1922, receiving the degree of Bachelor of Laws. He was admitted to the Bar of New Jersey as an attorney at the February term, 1922, and as a counsellor-at-law at the March term, 1925. He was a member of the faculty of Fordham Law School from 1924 to 1929.

He has been actively engaged in practicing law in Jersey City since his admission to the Bar, and since 1926 has been a member of the firm of Wall, Haight, Carey and Hartpence.

During World War I he served in the United States Navy.

He was counsel to the Hudson County Park Commission from 1924 to 1934, when he resigned to become Assistant Corporation Counsel of Jersey City, which office he resigned in 1938 to devote his entire attention to his private practice. He is Past President of the Hudson County Bar Association and a member of the New Jersey State and American Bar Associations.

On April 2, 1923, he was married to Margaret McOsker of Jersey City, and they have three sons and three daughters. The family resides at 139 Gifford Avenue, Jersey City.

He was elected to the Senate for the first time at the November 1940 election and was re-elected in 1943 and 1946. He was Minority Leader of the Senate of 1943 and 1945.

WILLIAM J. ORCHARD (Essex County)

Born November 15, 1888, at Boston, Massachusetts, the son of Edward and Elizabeth (Sayce) Orchard. Graduate Sanitary Engineer of the Massachusetts Institute of Technology, 1911. Married Marie Frances Singler on February 1, 1913. Children: John E., William, Robert, Sally Orchard Keating, and Jane. Eight grandchildren. Residence: 50 Sagamore Road, Maplewood.

Served as Sanitary Engineer with the Metropolitan Water Board, Boston, and the New Jersey State Department of Health. Entered Wallace & Tiernan Company, Inc., in 1915 to become General Manager. Now President and Director of Wallace & Tiernan Products, Inc.; Secretary and Treasurer of Wallace & Tiernan Sales Corporation; Vice-President, Treasurer, and Director of the Novadel-Agene Corporation and the Industrial Appliance Corporation.

President and Member of The Board of Governors of the Orange Memorial Hospital, Orange, New Jersey. Chairman of the Maplewood Citizens Committee; Past President and Director of Maplewood Civic Association. Past Vice-President and now Trustee of the Community Chest of the Oranges and Maplewood. Past President and Director of the Chamber of Commerce and Civics of the Oranges and Maplewood. Treasurer of Maplewood Community Service. Essex County Republican Committeeman. Trustee of the Essex County Parental School.

During war years was Chairman of the Maplewood Citizens War Bond Committee, as well as General Chairman of the Community Manpower Mobilization Committee of Essex, Hudson, and Union Counties—a voluntary effort to recruit manpower and solve labor problems of the area. Awarded the Roosevelt Medal by the Manpower Commission and the Medal of Merit for work in this latter activity.

Past President of the Water & Sewage Works Manufacturers' Association; Honorary Member and Director of the American Water Works Association; Fellow, American Public Health Association. Honorary Member and Director of the Federation of Sewage Works Association.

President of the Bay Head Improvement Association. Past Commodore of the Barnegat Bay Yacht Racing Association. Past Vice-Commodore of the Bay Head Yacht Club.

Member of Essex Club (Newark); Rotary (Belleville, N. J.); Chemists' Club (New York City); Maplewood Country Club; Bay Head Yacht Club.

Author of *Thoughts in Rhyme* and several musical numbers, as well as many articles on the chlorination of water and related subjects.

Hobbies: Music and sailing.

Office: 11 Mill Street, Belleville 9, New Jersey. Summer home: 56 Karge Street, Bay Head, New Jersey.

LAWRENCE N. PARK (Gloucester County)

Born, April 17, 1907, at Glassboro, New Jersey; father, Clarence J. Park (deceased); mother, Lyda Clouse Park (deceased). Married to Ruth Lewis Park; one son, Robert Lawrence Park. Resides at 219 East High Street, Glassboro.

Education: Glassboro High School, 1924; Temple University Law School, 1930, LL.B. Served clerkship with Hon. Frank F. Neutze, Camden.

Admitted to Bar as attorney in 1931; as counsellor in 1935. Associate of Robert J. Tait Paul, 300 Broadway, Camden, in general practice of law. Professor of Constitutional Law, Temple University School of Law, (other subjects, Contracts, Torts, Real Property, New Jersey Practice).

Military: Enlisted as Corporal in 1st Bn. 302nd Ord. Reg., in June 1942; Commissioned 2nd Lt. Ord. Dept., in April 1943, after graduation from Ordnance O. C. S. at Aberdeen Proving Ground, Md. Claims Officer, Headquarters, Aberdeen Proving Ground, Md. Now Captain, Ord. Dept. Res. AUS.

Organizations: Army Ordnance Association; Military Order of World Wars; American Legion, Shaw-Paulin Post, Glassboro; Rotary Club, Glassboro; Phi Alpha Delta (Legal); Camden County Bar Association; Gloucester County Bar Association.

WINSTON PAUL (Essex County)

Born, New York City, October 31, 1887; resided in Jersey City for over 20 years and in South Orange and Montclair for the past 30 years. Graduate, Newark Academy and Columbia College.

Engaged in the electrical merchandizing business in New York and New

Jersey for 20 years as distributor for Delco-Light and Frigidaire. Reorganized Huyler's, and Chairman of the Board for four years. President, Domestic Exploration Corporation and Rockcliffe Realty Corporation.

Was first president of the New Jersey Constitutional Foundation, later president of the New Jersey Committee for Constitutional Revision. Member of State Republican Committee.

Residence, 10 Crestmont Road, Montclair.

HENRY W. PETERSON (Gloucester County)

Born in Philadelphia, Pa., on December 31, 1892. He attended the Philadelphia public schools and Central Manual Training High School (Class of 1911). He married Elizabeth Gillis Brown on January 25, 1911, and, after six months at a university, elected to enter upon a business career rather than continue in school.

He became associated with the Philadelphia Transportation and Lighterage Company, engaged in dredging and water transportation, and filled various positions, from stenographer to president of the company. He moved to Woodbury, New Jersey, in 1929, after designing and building, at Paulsboro, the largest sand and gravel plant in New Jersey.

He has served as President of the Paulsboro Chamber of Commerce, President of the Gloucester County Chamber of Commerce, organizer of the first centralized relief association in Gloucester County, Chairman of the Gloucester County American Red Cross Camp and Hospital Committee, Chairman of the Civilian Defense Council of Woodbury, Commander of the U. S. Citizens' Defense Corps of Woodbury, and Gloucester County Chairman of the National War Fund; and is presently Chairman of the Disaster Preparedness and Relief Committee of the Gloucester County Chapter of the American Red Cross, Chairman of the Gloucester County U. S. O., Chairman of the Gloucester County American Cancer Society, Member of the Zoning and Planning Commission, City of Woodbury, and Trustee of Deptford Institute. He is one of the two civilians who have been elected President of Philadelphia Post, Society of American Military Engineers.

Elected to Woodbury City Council in January 1935, he held the post of Finance Chairman until his election as President of Council in January 1941, which post he still holds. He was appointed a member of the South Jersey Port Commission on July 1, 1936, and, upon the death of the Hon. Albert C. Middleton, was elected Chairman of the Port Commission on June 21, 1939, which post he resigned on April 1, 1943, to become Secretary of the Commission, which position he still fills.

He is also a member of the Engineers' Club of Philadelphia, Camden Rotary Club, Camden Traffic Club, B.P.O.E. No. 2, Philadelphia, New Jersey Society of Professional Engineers, Radiant Star Lodge No. 606, F. & A. M., of Pennsylvania.

His family is comprised of his wife, two daughters, Mrs. M. B. Elliott of Van Nuys, California, and Mrs. John G. Kolb of Maple Glenn, Penna., and two grandchildren. He resides at Delaware and Drexel Sts., Woodbury.

PAULINE H. PETERSON (Salem County)

Pauline Peterson was born in Philadelphia, and spent her early childhood in Camden, New Jersey. The greater part of her life she has lived in Salem County outside of Penns Grove in the ancestral home of her mother. Both parents were American-born, her father of German ancestry and her mother of English. She has one sister who is a teacher. Harold A. Peterson, her husband, is a wage

incentive employee at the E. I. duPont de Nemours Chambers Works. They have a daughter 13 years of age.

Mrs. Peterson received her education in the Camden Public Schools, Camden and Penns Grove High Schools, and Glassboro State Teachers College, graduating with a B.S. degree. She obtained her Master's Degree in Education at Temple University. Her teaching career began in the Penns Grove school system. Later she went to Deepwater Elementary School and became principal. At the present time she is Supervising Principal of the Lower Penn's Neck Township Schools.

Her affiliations with organizations include the following: Order of the Eastern Star, Executive Committee of the New Jersey Education Association, Vice-President, N. S. Schoolwomen's Club, Salem County, Soroptomist Club, American Association of University Women, Phi Delta Gamma, Delta Kappa Gamma, and many branches of educational organizations of the New Jersey Education Association and National Education Association.

The major part of her time has been spent in educational work and in educational and service organization.

HAYDN PROCTOR (Monmouth County)

Judge Proctor was born June 16, 1903, at Asbury Park. He was graduated from Neptune High School, 1922; Lafayette College, 1926, and Yale Law School, 1929. He is a counsellor-at-law, a Supreme Court Commissioner, and a Special Master in Chancery.

He served in the New Jersey House of Assembly in 1936 and 1937. He was Judge of the District Court of the First Judicial District of Monmouth County, appointed in 1937. Judge Proctor was elected to the Senate for the first time at the November 1938, election, and re-elected in 1941 and 1944. He was Senate Majority Leader in 1945 and President of the Senate in 1946, and served as Chairman of the Joint Appropriations Committee for the years 1942 and 1943.

On December 30, 1946, at a Senate special session Senator Proctor was nominated by Governor Edge to a Circuit Court Judge vacancy. He was at once confirmed, but announced that in justice to the people of Monmouth County he would continue in the Senate for the time. He took his place on the bench on March 12, 1947.

Judge Proctor resides at 1103 Sunset Ave., Asbury Park.

JOHN H. PURSEL (Warren County)

Born, Phillipsburg, 1896. Widower. Two children. Education: Phillipsburg public schools, Lafayette College, Harvard Law School. Residence: 550 Barrymore Street, Phillipsburg.

Counsellor-at-law, Supreme Court Commissioner, Special Master in Chancery, member of New Jersey State and American Bar Associations, and Harvard Club of New York City.

Three terms in New Jersey Legislature; two terms as Warren County Counsel; New Jersey Counsel for Delaware River Joint Toll Bridge Commission; member and Secretary, Board of Managers, Annandale Reformatory. Formerly President, Warren County Bar Association; member, Annandale Reformatory Selective Service Panel; President, Free Public Library of Phillipsburg; Chairman, Phillipsburg Chapter American Red Cross. Wrote article in *New Jersey Law Journal,* "Constitutional Convention of New Jersey."

H. RIVINGTON PYNE (Somerset County)

Senator Pyne was born January 16, 1892, in New York City. He is a member of the American Chemical Society and the Chemical Society of London.

He was graduated from Princeton University, 1914; Ph.D. in Chemistry from Columbia University. He was Attache of the American Embassy in Berlin, 1915, and a Second Lieutenant, U. S. Air Force, 1917-1918.

He served as a member of the Borough Council of Bernardsville and was a member of the New Jersey House of Assembly in 1936, 1937 and 1938. He was elected to the State Senate for the first time at the November 1941, election, and re-elected in 1944.

He is a member of the Somerset County Welfare Board and of the Board of Trustees of the Somerset Hospital, and is Vice-Chairman of the Somerset Hills Chapter of the American Red Cross. He resides at Far Hills.

JOHN J. RAFFERTY (Middlesex County)

Mr. Rafferty was born in Brooklyn, New York, April 17, 1896, and moved to New Jersey with his parents in 1905. He attended the public schools of Brooklyn and Piscataway Township, now Middlesex Borough, Middlesex County, N. J. Later he entered the New York Preparatory School, New York City, for evening study for the purpose of acquiring the equivalent of a high school education. Subsequently Mr. Rafferty studied law at the Law School of Fordham University, completing the course in 1926. He then served a law clerkship in the office of Hon. Fred W. DeVoe at New Brunswick, and was admitted to practice as an attorney in this State in 1929.

Mr. Rafferty is Past Exalted Ruler of Bound Brook Lodge of Elks, a member of the State Elks' Association, a member of Bishop McFaul Council, Knights of Columbus, and of the State Council K. of C., a member of the Exempt Firemen's Association of Middlesex County, and a member of various other civic and social associations. He also served as a member of the Board of Education of Middlesex Borough for four years, and in 1933 was elected Mayor of that borough. In 1934 Mr. Rafferty was elected chairman of the Middlesex County Democratic Committee.

Mr. Rafferty was elected to the Assembly in the 1930 election, and was re-elected in 1931, 1932, 1933, and 1934. He was Democratic leader in the House of Assembly at the 1933, 1934 and 1935 sessions.

Mr. Rafferty was appointed to the Court of Errors and Appeals by Governor Hoffman in June 1935, and reappointed by Governor Edison in 1941, serving until July 1947, when he returned to the private practice of law. He resides at 298 Easton Ave., New Brunswick.

OLIVER RANDOLPH (Essex County)

Oliver Randolph, a lawyer, is a resident of Newark, with offices at 128 Market Street. He is a graduate of Wiley College, Marshall, Texas, and of Howard University Law School, Washington, D. C.

He was elected as a Republican member of the New Jersey Assembly in 1922 and served one term. Before the conclusion of his term, he was appointed an Assistant United States Attorney. He served in that office for more than ten years.

He is the author and sponsor of the New Jersey Anti-Lynching Law.

He is a member and an officer of St. John's Methodist Church, Newark, and is active in civic as well as political affairs. He is a member of Sigma Pi Phi,

a graduate fraternity, Alumni House, Howard University North Jersey Alumni Club.

Mr. Randolph is married and lives at 123 South 13th St., Newark, with his wife, Mrs. Bertha Baumann Randolph, who is a graduate of New England Conservatory of Music.

WILLIAM T. READ (Camden County)

Mr. Read was born in Camden, New Jersey, November 22, 1878. He was educated in the public schools of Camden and the William Penn Charter School of Philadelphia, and was graduated from the University of Pennsylvania in 1900 with the degree of Bachelor of Science.

He registered as a law student of J. Willard Morgan, former State Comptroller, and attended the Law School of the University of Pennsylvania. He was admitted to the Bar of New Jersey as an attorney at the November term, 1903, and as a counsellor three years later.

In 1911 he was elected to the State Senate by Camden County and in 1914 was re-elected for a second term. During his term in the Senate, he was a member of the Jury Reform Commission, was the Minority Leader on the floor of the Senate in 1913 and 1914, and Majority Leader in 1915. He was President of the Senate in 1916.

He resigned his office of State Senator on March 29, 1916, and became State Treasurer on April 1 of that year. He was re-elected in 1919 for a second term, and in 1922 and again in 1925 he was selected unanimously for a third term and a fourth term, retiring in 1928. During his term as Treasurer he assisted in the establishment of the Teachers' Pension and Annuity Fund and the State Employees' Retirement System.

In 1930 he was appointed as a Trustee of the Teachers' Pension and Annuity Fund and was re-appointed for two successive terms. He resigned during the third term to become a member of the State Board of Control of Institutions and Agencies, to which he was appointed in 1937 and re-appointed in 1945 for a full term.

In the first World War he served on the staff of General Spencer of the Department of Rifle Practice of the National Guard of the State of New Jersey, which branch of the service was not taken into the National Army. In the second World War he served as Chairman of Appeal Board No. 11 of the State of New Jersey under the United States Selective Service System.

Mr. Read's residence is at 103 Greenleigh Court, Merchantville.

OLIVE C. SANFORD (Essex County)

Mrs. Sanford was born at Palmyra, N. Y., on December 19, 1875, was educated in the public schools of Palmyra and New York City, and graduated from Teachers College, Columbia University, in 1898.

After teaching for two years she was married in 1900 to F. H. Sanford. They lived in South America and abroad for the next 14 years, when they returned to the United States. She has resided in Nutley since 1915, her present residence being 144 Whitfield Avenue.

Mrs. Sanford is a member of the Women's Club of Nutley and served as president from 1919 to 1921; Nutley League of Women Voters, president from 1925 to 1928; New Jersey League of Women Voters, president from 1928 to 1934; American Woman's Association, New York City; New Jersey Committee on the Cause

and Cure of War, chairman from 1929 to 1934; American Association of University Women; Foreign Policy Association, and the Academy of Political Science, Columbia University. Mrs. Sanford is also a member of the Board of Trustees, University of Newark, Newark. Mrs. Sanford was elected to the Board of Education of Nutley for two successive terms, from 1928 to 1934, and again in 1937 and 1940 for the three-year term. She has always been active in church and civic affairs of the community.

Mrs. Sanford was elected to the New Jersey Assembly for the first time at the November 1934, election, and re-elected in 1935, 1937, 1938, 1939, 1940 and 1941. For six terms she acted as chairman of the Education Committee, as well as serving on many other committees of the Legislature. In 1943 she was appointed by Governor Edison to the State Board of Education and in 1945 was appointed as a member of the reorganized State Board of Education by Governor Edge for the six-year term.

WILBOUR EDDY SAUNDERS (Mercer County)

Wilbour Eddy Saunders, B.A., M.A., D.D., Ed.D., LL.D., Headmaster of the Peddie School, Hightstown, New Jersey, was born in Warwick, Rhode Island, in 1894. His early schooling was obtained in the public schools of Providence, after which he entered Brown University in the fall of 1912. At Brown he was captain of the varsity debating team and a letter man on the track team. His fraternity was Delta Tau Delta.

Dr. Saunders received his Bachelor of Arts degree in 1916 from Brown University and then entered the Union Theological Seminary in New York City from which he graduated in 1919. While obtaining his theological training he was for two years a master in the Choir School of the Cathedral of St. John the Divine, and at the same time he also obtained his Master of Arts degree at Teachers College, Columbia University.

In 1917 Dr. Saunders was pastor's assistant at the West Park Presbyterian Church in New York. A year later he became assistant pastor of the Emanuel Baptist Church in Brooklyn. In September 1919, he married Mildred A. Paige of Brookline, Massachusetts, after which he spent a year in graduate work at Christ's College, Cambridge University, England, during which time he was in residence at Westminster College. He received his college blazer as a member of the Christ's College first tennis team. He also played center forward on the Westminster College soccer team. In 1920 he returned to America to teach English and Latin at the Horace Mann School in New York.

Later he became assistant pastor of the Marcy Avenue Baptist Church, Brooklyn, remaining there two years and going from there to Rahway, New Jersey, as pastor of the First Baptist Church. Three of the four years in Rahway he was also chaplain of the New Jersey State Reformatory. In 1927 he returned to the Marcy Avenue Baptist Church, this time to become pastor for a period of six years. While in Brooklyn he became General Secretary of the Brooklyn Federation of Churches.

In 1932 Dr. Saunders was called to Rochester, N. Y., to become Executive Secretary of the Rochester and Monroe County Federation of Churches, and to serve as Special Lecturer in Urban Sociology at the Colgate-Rochester Divinity School.

Dr. Saunders again entered the field of education when, in February 1935, he became Headmaster of The Peddie School, where he succeeded the late Dr. Roger W. Swetland. Under Dr. Saunders the school has made rapid advances in the field of secondary education; the curriculum as well as the physical plant have been expanded and modernized.

In June 1936, Colgate University awarded him the honorary degree of Doctor of Divinity; in June 1941, Brown University awarded him the honorary degree of Doctor of Education; and in May 1943, Dickinson College awarded him the degree of Doctor of Laws.

Dr. Saunders is well-known as a public speaker, having addressed several hundred audiences in the last few years. He is a past president of the Hightstown, N. J., Y. M. C. A.; a trustee of Crozer Theological Seminary, Chester, Pa., Colgate-Rochester Divinity School, Rochester, N. Y., and of Wayland Academy, Beaver Dam, Wisconsin; a past president of the Association of Baptist Schools and Colleges; and a member of the Headmasters Association.

He resides at 321 South Main St., Hightstown.

JOHN F. SCHENK (Hunterdon County)

Born February 19, 1905, son of Henry Frelinghuysen Schenk and Mary Margaret Foran. Graduated Flemington High School, 1922, Canterbury School, New Milford, Conn., 1923, and Princeton University, 1927, B.S.,*magna cum laude*.

President, Foran Foundry & Manufacturing Company, Flemington; Director, Hunterdon County National Bank, Flemington. Member, Local Government Board of New Jersey (1938-1947), by appointment of Governors Moore, Edison and Edge.

President, Board of Trustees, Flemington Children's Choir School; member, Flemington and Hunterdon County Shade Tree Commissions, and Grandview Grange and Pomona Grange; active member, Hunterdon County Historical Society.

Great-great-great grandson of Jacob R. Hardenbergh, member of Constitutional Convention of 1776; relative of Ferdinand S. Schenk, member of Constitutional Convention of 1844.

Married Elizabeth Stryker; three daughters and one son. Residence, Flemington, N. J.

FRANK G. SCHLOSSER (Hudson County)

Born in Hoboken, New Jersey, on November 30, 1901, and is the son of Isabelle Thompson Schlosser and the late Frank J. Schlosser. He was graduated from Our Lady of Grace School, Hoboken, in 1916 and from Hoboken High School in 1920, and received the degree of Bachelor of Laws from Fordham University, from which he was graduated in 1924.

He was admitted to the New Jersey Bar at the October term, 1925, and as a counsellor-at-law in 1928. In 1935 he was admitted to practice before the Bar of the United States Supreme Court. From 1930 to 1934 he was Recorder of the City of Hoboken, and from 1934 until 1944 was Chief Legal Assistant to Daniel T. O'Regan, Prosecutor of the Pleas of Hudson County.

He is co-author with Judge O'Regan of two books on New Jersey criminal law. In 1944 he was a Deputy Attorney-General of the State of New Jersey under Walter D. Van Riper, Attorney-General, and then became Chief Enforcement Attorney for the Office of Price Administration in Northern New Jersey, which office he held until June 1945, when he became Executive Assistant to Daniel T. O'Regan, County Counsel of Hudson County, which office he now holds.

He is married to the former Louise H. Droste. They have one daughter, Louise Isabelle, age 10, and reside at 1310 Garden Street, Hoboken.

RALPH J. SMALLEY (Somerset County)

Judge Smalley was born in North Plainfield, Somerset County, New Jersey, on October 25, 1895. He attended Cornell University and received his LL.B. from the New Jersey Law School. He was admitted to the Bar of New Jersey as an attorney in February, 1920, and as a counsellor-at-law in February, 1923.

Judge Smalley served as District Court Judge for a period of four years and as Judge of the Court of Common Pleas for Somerset County for a period of some 6½ years. He was appointed to the Circuit Court by Governor Edge in September 1946.

He is married and has three sons. His residence is at 311 West End Ave., North Plainfield.

GEORGE F. SMITH (Middlesex County)

Born, Chicago, Ill., March 16, 1897. Educated in the Chicago Public Schools and night schools. He did not attend a recognized college. On September 20, 1919, he married Estelle Taylor. There are two children, Dorothy Smith Wilson (wife of Charles Hoffman Wilson), and Patricia Ann Smith. Residence, 110 Clive St., Metuchen.

Brief career summary: Left home at 17. Filled minor positions until Army enlistment, April 19, 1917. Served during war (17 months in A. E. F.) until discharged in 1919 as 1st Lieutenant. Joined R. M. Hollingshead Company, Camden, N. J., as salesman in its San Francisco Branch, advancing to position of Vice-President and General Manager in 1930. Joined Johnson & Johnson, New Brunswick, in June 1933. Elected President on July 19, 1943.

Principal professional or business activities: President and Director of Johnson & Johnson; director of certain subsidiary companies; member of Board of Managers of the New Brunswick Savings Institution. Serves on several industry advisory committees, including that of Army-Navy Munitions Board.

President of New Brunswick Chamber of Commerce 1942-1944; Chairman of the Middlesex County Planning Board; Director, New Jersey State Chamber of Commerce; Trustee, Middlesex General Hospital, New Brunswick; member, National Advisory Council of Junior Achievement, Inc.; member, Army Advisory Committee of New Brunswick. Active in various other civic activities.

Memberships: Union Club, New Brunswick, N. J. (member of the Board of Governors); Plainfield Country Club, Plainfield, N. J. (member of Board of Trustees); Pine Valley Country Club, Pine Valley, N. J.; Academy of Political Science, New York; Skytop Club, Skytop, Pa.

Religious affiliation: Protestant; political affiliation: non-partisan.

J. SPENCER SMITH (Bergen County)

Born in 1880. Family moved from Illinois to the East around 1883. Resides at 24 Park Street, Tenafly.

Was appointed by Governor Woodrow Wilson in 1911 to a Commission to Investigate Port Conditions. Served as President of the Commission until 1914 when the New Jersey Harbor Commission was created. Served as President of that Commission until 1915 when it was merged with the Board of Commerce and Navigation. Served as President of that Board until its merger with the Department of Conservation in July 1945. Now Chairman of the Navigation Council of the Department of Conservation.

Appointed by Governor Walter E. Edge to the New York-New Jersey Port and Harbor Development Commission. Served as Vice-Chairman until the Port

of New York Authority was created as a result of its recommendation. Served as Vice-Chairman of the Port of New York Authority until 1923.

President of the American Shore and Beach Preservation Association; ex-President and Honorary Member of the American Association of Port Authorities.

During World War I, was Chairman of the Board of Appraisal for the War Department, appraising the Bush Terminal and other properties. In World War II, was appointed as expert consultant to the Secretary of War in organizing the ports of embarkation and the location of staging areas for the troops going overseas. Now serving as member of Advisory Board on Utilization of Surplus Industrial Facilities. Appointed expert consultant to the Chief of Engineers.

Was elected to the Board of Education of Tenafly, N. J., in 1908. Served continuously until 1942, when I resigned because of my war duties. Was Vice-President and President the greater portion of the time I served on the Board.

Chairman of the Interstate Sanitation Commission of the States of New York, New Jersey and Connecticut. President and Director of the Tenafly Trust Company, and J. R. Smith Sales Co. Inc., New York City.

FRANK H. SOMMER (Essex County)

Born, Newark, N. J., on September 3, 1872. Admitted to practice of law in New Jersey as attorney in 1893, and as counsellor-at-law in 1897.

Teacher of law, 1893—: Metropolis Law School (N. Y.), New York University School of Law, Bryn Mawr. Dean of the New York School of Law, 1916-1943; Dean Emeritus, 1943-.

Degrees: LL.B., J.D., LL.D., D.C.L. (New York University), LL.D. (Lafayette, New Jersey Law School).

Member, Commission on Revision of General Public Law, 1935-1937; Chairman, Commission on Statutes, 1937-.

All other occupations were interludes.

Present office: Deputy Attorney-General assigned to Public Utility Commission of New Jersey.

Residence: 156 Heller Parkway, Newark.

FRANCIS A. STANGER, JR. (Cumberland County)

Born at Glassboro, Gloucester County, September 17, 1887. He was graduated from the University of Pennsylvania Law Department in 1910. Later he was given the honorary degree of Doctor of Laws by Asbury College. He was corporation counsel of the City of Bridgeton, 1911-1914, and Common Pleas Judge of Cumberland County, 1929-1934. He was a member of the State Home Rule Commission, and as such member helped codify the municipal and county laws. He was chairman of the State Crime Commission. He originated the Cumberland County Clinic for dealing with juvenile delinquents. He is lay leader of the New Jersey Methodist Conference. He resides at North Main St., Cedarville, and practices law as a member of the firm of Stanger and Howell, at Bridgeton.

RUTH C. STREETER (Morris County)

Born, Brookline, Mass., October 2, 1895. Married Thomas Winthrop Streeter, June 23, 1917; four children: Frank Sherwin (Lt. U. S. N. R.), Henry Schofield, (Lt. U. S. N. R.), Thomas Winthrop, Jr. (S/Sgt. A. U. S.), and Lillian Carpenter. Resides in Morristown, N. J.

Public service: 1932-41, Vice-President and later President of Morris County Welfare Board; 1930-33, member, New Jersey State Board of Children's Guardians; 1935-36, member, New Jersey State Relief Council; 1935-36, member, New Jersey Commission on Inter-State Cooperation; 1942-, Chairman for Fort Dix, N.J., of the Citizens Committee for the Army and Navy, Inc.

January 29, 1943-December 7, 1945, Director, U. S. Marine Corps Women's Reserve. Commissioned Major, U. S. M. C. R., January 1943; promoted to Lt. Colonel, November 1943 and to Colonel, February, 1944.

CLYDE W. STRUBLE (Cape May County)

Mayor Struble is a native of Swartswood, Sussex County, New Jersey, as were his parents and some of his ancestors. He was born here on March 25, 1895, son of William P. and Malvina Struble. His mother was born in 1865 and died in 1898. William P. Struble, born in Swartswood, October 4, 1861, lived to January 10, 1938. He was a farmer and merchant, important leader in the town, an ardent Republican and a member of the township committee.

Mayor Struble attended the schools of his birthplace, was graduated from the Newton (Sussex County) High School, class of 1914, and received a diploma from the Rider Business College, of Trenton, in 1916, having pursued the general business administration course, with emphasis on accountancy. He was principal of the Penns Grove High School, 1916-1918, but gave up an intended career as an educator to enter the Peoples Bank of Penns Grove, where he served in various capacities from 1918 to 1923.

Mayor Struble came to Cape May County in 1923, to accept the position of Assistant Cashier with the First National Bank of Ocean City. In 1925 he was made Cashier, and in 1932 was chosen Vice-President. On April 15, 1942, he was licensed as a certified public accountant.

In 1933 he was appointed City Treasurer, and in May 1943 he became mayor of Ocean City for a term of four years. He is chairman of the Republican City Committee of Ocean City.

Mayor Struble is a Past Master of Ocean City Lodge #171, Free and Accepted Masons; member of Ocean City Chapter, Royal Arch Masons, of which he is a Past High Priest; Atlantic Commandery, Knights Templar; and Crescent Temple, Ancient Arabic Order Nobles of the Mystic Shrine. He is also a member of Penns Grove Lodge, No. 1358, B.P.O.E., of which he is a Past Exalted Ruler; and a former president of the Kiwanis Club. He attends the Methodist Episcopal Church.

On January 29, 1927, he married Lucile Townsend, born in Ocean City, daughter of Adolph C. and Ella (Stites) Townsend, both natives of Cape May County. There is one son, Clyde W. Jr., born October 25, 1935. The family resides at 9th & Central Avenue, Ocean City.

WESLEY A. TAYLOR (Essex County)

Born in May's Landing, N. J., July 12, 1906, the son of Clarence A. Taylor and Almeda S. Taylor, *nee* Henry. Graduated Atlantic City High School in 1924.

Worked as timekeeper on a construction job, clerk in a combination tax office and insurance office, and as title searcher for the Chelsea Title & Guaranty Co., Atlantic City. He moved to East Orange in 1927 and worked as bookbinder in the Hall of Records, Newark, for 18 years.

He was elected Corresponding and Financial Secretary for Bookbinders Local Union #62 in 1942, and Business Representative for Bindery Women's Local

Union #88, and also Bookbinders Local Union #62, in 1946. He has been delegate to the following: New Jersey State A. F. of L., Union Label Council of New Jersey, Essex Trades Council, Allied Printing Trades Council, Graphic Arts Emergency Council, and the National Convention of the International Brotherhood of Bookbinders.

He is Vice-President, Allied Printing Trades Council; a member of Unity Lodge #96, F. & A. M., and the East Orange Chapter of Royal Arcanum; Secretary of Third Ward Republican Club, East Orange; and Republican County Committeeman.

He is married and has two sons, Barry and Michael. The family resides at 475 Norwood St., East Orange.

DAVID VAN ALSTYNE, JR. (Bergen County)

Born January 3, 1897 at Louisville, Kentucky, the son of David and Ella (Peay) Van Alstyne; one brother Ward.

Education and war record: Went through and graduated from Horace Mann School, New York City, where he was president of the student body. Went to Williams College, class of 1918 (the First World War Class). Played football and track. Took leave of absence from the College and in February 1917 volunteered in the French Army before the United States entered the First World War and became Section Commander in the Ambulance Corps. When the United States entered the war, was transferred to the United States Army and became a First Lieutenant in the Tanks Corps. Was awarded the Croix de Guerre by the French Government. After honorable discharge went on a trip around the world with his father, who was vice-president of the American Locomotive Co., for over a year. In 1920 returned to Williams College to finish the course and graduate, which he did in June, 1921, receiving a B.A. degree. 1921-2, member of New York State Militia Squadron "A."

Married: Janet Graham of Englewood, New Jersey, October 20, 1923 and has resided in Englewood ever since. They have four children, three daughters and one son. Present residence, 115 Chestnut St., Englewood.

Ancestry: Jan Martense Van Alstine from Holland prior to 1646, went to New Amsterdam and subsequently to Kinderhook, N. Y., and subsequent generations traced through to the present. Is a member of Sons of the Revolution; The Holland Society.

Church: Attends First Presbyterian Church, Englewood, New Jersey.

Clubs: Williams; Downtown Association; Downtown Athletic; Bond Club of New York; Englewood (N. J.) Field Club; Knickerbocker Club, Tenafly (N. J.); American Legion Post #78, Englewood (N. J.); John O'Brien Post, Veterans of Foreign Wars, Englewood (N. J.).

Political Activities: 1940-41, Assemblyman from Bergen County; 1942-47, Senator from Bergen County; 1947, Chairman of Joint Legislative Appropriations Committee; 1948, Chairman of Joint Legislative Juvenile Delinquency Committee.

Civic Activities: Member of Executive Committee, Englewood Unemployment (1931); Chairman, Reunion Committee Class of 1918, Williams College; Vice-Chairman, Community Chest Campaign, Englewood; Chairman, Republican Finance Committee (1937); City of Englewood, N. J., Councilman, 1938-41, inclusive; Chairman, Finance Committee, 1939-42; President, City Council, 1942-43; Member of Defense Council.

Business Activities: Investment banker. 1921-22, securities salesman, Peabody, Houghteling & Co., Inc.; 1923-4, Manager, Baltimore, Md., office, Dillon, Read & Co.; 1925-30, Vice-President in charge of sales, Peabody, Smith & Co., Inc. (suc-

cessor to Peabody, Houghteling & Co., Inc.); 1930-32, Vice-President in charge of sales, G. L. Ohrstrom & Co., Inc. In July, 1932, established own firm, Van Alstyne, Noel & Co., Inc.; was President and Treasurer until firm changed to partnership, March 1, 1937, and is now senior partner. In February 1943, partnership joined New York Stock Exchange and New York Curb Exchange.

Directorates: Chairman of the Board, St. Lawrence Corp., Ltd., Montreal, Canada, and Hercules Steel Products Corp., Galion, Ohio; Chairman of Executive Committee, Sonotone Corp., Elmsford, N. Y.; Director, New Idria Quicksilver Mining Co., San Francisco, Cal., American Phenolic Corp., Chicago, Ill., Buffalo Bolt Co., North Tonawanda, N. Y., United Piece Dye Works, Lodi, N. J., Emerson Electric Mfg. Co., St. Louis, Mo., Allen B. DuMont Laboratories, Inc., Passaic, N. J., Struthers Wells Corp., Titusville, Pa., and Continental Motors Corp., Detroit, Mich.

GEORGE H. WALTON (Camden County)

George H. Walton was born June 8, 1904, in Haddonfield, the son of Joseph and Addie Austin Walton. He was educated in the public schools, graduating from the Haddonfield High School in 1923; attended the University of Pennsylvania, graduating in 1927, and from the law school of that institution in 1930. From 1927 until 1932 he was an instructor in political science in the University. He was admitted to the New Jersey Bar in 1931, and is now a member of the Camden law firm of Drenk and Walton.

In 1938 he was appointed to the Camden County Board of Elections, and was reappointed in 1940. In 1939 he was elected Chairman of the Republican County Committee, and served in that capacity for four years, resigning upon his election to the Republican State Committee. He was an alternate District Delegate to the Republican National Convention of 1940. In 1947 he was appointed by Governor Driscoll as Associate Counsel to the Governor.

On October 1, 1942, he went on active duty as a Captain in the Army of the United States, and saw service with the 36th Infantry Division, Headquarters II Corps, and Headquarters Seventh Army in North Africa, Sicily, Italy, France and Germany. He made three D-Day invasions, Sicily, Salerno and Southern France. He holds the Bronze Star Medal with Oak Leaf Cluster, the European Service Ribbon with six battle stars and Bronze Arrowhead. In July, 1944, he was promoted to Major, and in March, 1945, to Lieutenant-Colonel. He went on inactive duty in November, 1945.

In 1932 he was married to Helen S. Scammell, daughter of Dr. Frank G. Scammell of Trenton. They have two sons, Frank G. S. and Joseph A. Walton. The family resides at 235 Washington Avenue, Haddonfield.

ELMER H. WENE (Cumberland County)

Elmer H. Wene, of Vineland, owns and operates the Wene Chick Farms Hatchery, the Wene Poultry Laboratories, also a general farm in Hunterdon County, and is the principal stockholder and president of two important radio stations in New Jersey. He resides on East Landis Avenue, Vineland.

He was born in Hunterdon County, N. J., the son of the late Emanuel S. and Mary J. Wene, *nee* Killy. He was reared on a farm in Hunterdon County and educated in the public schools of that county. He later completed a special course in agriculture at Rutgers University, New Brunswick.

He has lectured on the poultry industry in many of the leading agricultural colleges in the United States and served on the New Jersey State Board of Agri-

culture for nine years, five of which he was president. He is past president of the International Baby Chick Association, New Jersey Baby Chick Association, Cumberland County Board of Agriculture, Vineland-Landis Township Chamber of Commerce and Vineland Rotary Club.

He is at present on the Board of Directors of both the Newcomb Hospital, Vineland, and the Vineland Savings and Loan Association. He is a member of the Grange, Masons, Elks, Eagles, Moose, Red Men and is a member of the Methodist Church.

He has been active in every Democratic campaign since he became a voter and was elected to the 75th Congress in 1936. In 1939 he was elected a member of the Board of Chosen Freeholders of Cumberland County, and was re-elected to the 77th Congress in 1940 and to the 78th Congress in 1942, and was appointed Executive Advisor to the U. S. Secretary of Agriculture in 1946. He was elected to the New Jersey State Senate in 1946.

WALTER G. WINNE (Bergen County)

Born in Brooklyn, New York, in 1889. Is a graduate of Hackensack High School; entered Rutgers College in 1906 and received the degree of Bachelor of Letters in 1910, and that of Bachelor of Laws *cum laude* in 1912 at New York Law School. He was admitted to the New Jersey State Bar the same year and began his practice in Hackensack.

He was elected to the New Jersey Assembly for Bergen County in 1916 and re-elected for three succeeding terms. In 1922 he was appointed by President Harding as United States District Attorney for New Jersey, was reappointed by President Coolidge, and served until 1928, when he resigned to return to private practice with the firm of Winne and Banta in Hackensack.

He was made Counsel of Bergen County in 1934 and in 1944 was appointed Bergen County Prosecutor by Governor Edge. On June 8th, 1947, he was elected as President of the New Jersey State Bar Association.

Married Althea M. Sharp, 1916; two children, Eleanor and Barbara. Residence, 381 West Anderson Street, Hackensack.

Clubs: Southside Sportsmen's Club of Oakdale, Long Island; Beaverkill Trout Club, Beaverkill, N. Y.; B. P. O. E. and Oritani Field Club.

DAVID YOUNG, III (Morris County)

Mr. Young was born in San Francisco, Cal., on March 1, 1905. He attended Montclair High School and graduated in 1926 from Lafayette College as Civil Engineer. He subsequently attended New Jersey Law School, being admitted to the New Jersey Bar in 1931 and as a counsellor-at-law in 1935. He is also a Supreme Court Commissioner and a Special Master in Chancery of New Jersey.

Mr. Young is an attorney and maintains his office at 714 Main Street, Boonton, New Jersey, and is a member of a number of fraternal, civic and political organizations. He is a member of the New Jersey State Bar and American Bar Associations, and President of the Morris County Bar Association.

Mr. Young is married and has three children. The family resides in Towaco, N. J. He was elected to the Assembly for the first time at the November, 1940, election, and re-elected in 1941, 1942, 1943, 1944, and 1945. In 1946 Mr. Young was elected to the New Jersey State Senate from Morris County.

OFFICIAL RULES

ADOPTED BY THE CONSTITUTIONAL CONVENTION

THE PRESIDENT AND VICE-PRESIDENTS

Rule 1. The President shall take the chair each day at the hour to which the Convention shall have adjourned. He shall call the Convention to order, and, except in the absence of a quorum, shall proceed to business in the manner prescribed by these rules.

Rule 2. He shall possess the powers and perform the duties herein prescribed, viz.:

(a) He shall preserve order and decorum, and, in debate, shall prevent personal reflections, and confine members to the question under discussion. When 2 or more members arise at the same time, he shall name the one entitled to the floor.

(b) He shall decide all questions of order, subject to appeal to the Convention. On every appeal he shall have the right, in his place, to assign his reason for his decision. In case of such appeal no member shall speak more than once.

(c) He shall appoint all committees, except where the Convention shall otherwise order.

(d) He may substitute any member to perform the duties of the chair while he is present, but for no longer period than that day, except by special consent of the Convention.

(e) When the Convention shall be ready to go into Committee of the Whole, he shall name a Chairman to preside therein.

(f) When necessary or required, he shall, with the Secretary, certify all official acts and all vouchers for payment of expenditures of the Convention with the date thereof.

(g) He shall designate and assign to seats or authorize the designation and seating of the persons who shall act as reporters for the public press within the Convention Hall. Such reporters, so appointed, shall be entitled to such seats and shall have the right to pass to and fro from such seats in entering or leaving the Chamber. No such reporter shall appear before any committee in advocacy of, or in opposition to, anything under consideration before such committee. A violation of this rule will be sufficient cause for the removal of such reporter. Power of removal for this cause shall be vested in the President.

(h) He shall be a consulting member without vote in the several committees to which he is not specifically appointed.

(i) He shall declare the vote and announce the result according to the fact on all questions and divisions.

(j) He shall not engage in any debate, or propose his opinion on any question, except the assigning of his reasons for his decision on appeal therefrom, without first calling some delegate to occupy the chair.

Rule 3. In the event of a vacancy in the office of President, by death, resignation or otherwise, the Convention shall, by vote of not less than 41 of the delegates, elect a President to fill such vacancy.

In the temporary absence of the President, or in event of his temporary inability to preside, his duties shall devolve upon the First Vice-President, or if he also be absent, upon the Second Vice-President. For the purpose of this rule, the terms "temporary absence" and "temporary inability" shall mean an absence or inability not to exceed 5 consecutive Convention days.

In the event of the continued absence or inability of the President to preside for more than 5 consecutive Convention days the Convention shall, by the affirmative vote of at least 41 delegates, elect an acting President who shall have the same power and enjoy the same privileges as the President and who shall

serve as President only during the absence or inability to preside on the part of the President.

Rule 4. In the event of a vacancy in the office of either Vice-President by death, resignation or otherwise, the Convention shall, by the vote of at least 41 delegates, elect a new Vice-President.

In the temporary absence of both Vice-Presidents, or in the event of the temporary inability on the part of both Vice-Presidents to discharge the duties of their offices, the Convention shall have the power to designate and appoint some other delegate to discharge the duties of the office during such temporary absence, or temporary inability.

SECRETARY

Rule 5. The Secretary shall keep a journal of the proceedings of the Convention and, under the direction of the President, shall prepare and place on the desk of the President each day a calendar of the business of the Convention, as provided by these rules.

Rule 6. The Secretary shall prepare for printing all proposals and other documents which are required to be printed under these rules under the direction of the Committee on Printing and Authentication of Documents and shall see to it that they are properly and correctly printed.

Rule 7. The Secretary shall give to every proposal for revision, alteration or reformation of subject matter of the present Constitution, when introduced, a number and the numbers shall be in numerical order. When a Committee proposal is reported from a Committee, he shall give it a number, in separate series for each Committee, which shall be known as the Committee proposal number. He shall keep the several proposals on file in order by their numbers, unless otherwise ordered by the Convention.

Rule 8. He shall preserve all proposals, reports of Committees and all other records, books, documents and papers of the Convention and after the adjournment of the Convention shall deliver them to the Bureau of Archives and History in the State Department of Education or shall make such other disposal of them as the Convention shall direct.

Rule 9. When necessary or required, he shall, with the President, certify all official acts and all vouchers for payment of expenditures of the Convention with the date thereof, and he shall perform such other duties as are required of him by these rules and as from time to time shall be required of him by the Convention.

Rule 10. One copy of the final draft of any material or proposal presented to or prepared by the Convention, or any committee thereof, shall be retained by the Secretary and delivered by him to the Bureau of Archives and History in the State Department of Education. The Secretary shall also retain and deliver to the Bureau of Archives and History a copy of any other material or proposal presented to or prepared by the Convention, or any committee thereof, where such a copy is available.

QUORUM AND MAJORITY

Rule 11. The presence of at least 41 delegates shall be necessary to constitute a quorum of the Convention but a lesser number may meet and adjourn the Convention from day to day when necessary.

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.

STANDING COMMITTEES

Rule 13. The Standing Committees of the Convention shall be 9 in number. They shall be appointed by the President unless the Convention shall otherwise order.

The person first named shall be the Chairman, and the person next named shall be the Vice-Chairman, of the Committee.

Rule 14. The Standing Committees of the Convention shall be as follows:

GENERAL STANDING COMMITTEES

Committee on Rights, Privileges, Amendments and Miscellaneous Provisions, consisting of 11 members.

Committee on the Legislative, consisting of 11 members.

Committee on the Executive, Militia and Civil Officers, consisting of 11 members.

Committee on the Judiciary, consisting of 11 members.

Committee on Taxation and Finance, consisting of 11 members.

Committee on Arrangement and Form, consisting of 7 members.

Committee on Submission and Address to the People, consisting of 7 members.

ADMINISTRATIVE STANDING COMMITTEES

Committee on Rules, Organization and Business Affairs, consisting of 7 members.

Committee on Credentials, Printing and Authentication of Documents, consisting of 7 members.

Rule 15. The following General Standing Committees shall consider and report upon the following, that is to say:

Committee on Rights, Privileges, Amendments and Miscellaneous Provisions—The subject matter of the Preamble, Article I, Rights and Privileges, except paragraphs 19 and 20, Article II, Right of Suffrage, Article III, Distribution of the Powers of Government, Article VIII, General Provisions, and Article IX, Amendments, of the present New Jersey Constitution, and all proposals embracing subject matter which does not fall within the proper consideration of any other General Standing Committee, including all provisions of the Proposed Schedule relating thereto.

Committee on the Legislative—The subject matter of Article IV, Legislative, except Section VI, paragraphs 2, 3 and 4 and Section VII, paragraphs 6, 10 and 12, of the present New Jersey Constitution, including all provisions of the Proposed Schedule relating thereto.

Committee on the Executive, Militia and Civil Officers—The subject matter of Article V, Executive, Article VII, Appointing Power and Tenure of Office, excepting Section II, paragraph 1, paragraph (2), paragraph 3 so far as it relates to the clerk of the Supreme Court and the clerk of the Court of Chancery, paragraph 4 and paragraph 7, of the present New Jersey Constitution, including all provisions of the Proposed Schedule relating thereto.

Committee on the Judiciary—The subject matter of Article VI, Judiciary, and of Article IV, Legislative, Section VII, paragraph 10, and of Article VII, Appointing Power and Tenure of Office, Section II, paragraph 1, paragraph (2), paragraph 3 so far as it relates to the clerk of the Supreme Court and the clerk of the Court of Chancery, paragraph 4 and paragraph 7, of the present New Jersey Constitution, including all provisions of the Proposed Schedule relating thereto.

Committee on Taxation and Finance—The subject matter of Article I, Rights and Privileges, paragraphs 19 and 20, Article IV, Legislative, Section VI, paragraphs 2, 3 and 4 and Section VII, paragraphs 6 and 12, of the present New Jersey Constitution, including all provisions of the Proposed Schedule relating thereto.

Rule 16. The Committee on Arrangement and Form shall examine and correct the proposals which are referred to it for the purpose of avoiding inaccuracies, repetitions and inconsistencies and shall arrange the same in the proper order in the proposed new Constitution or the part or parts thereof to be submitted and shall report thereon to the Convention, but the Committee shall have no authority to change the sense or purpose of any proposal referred to it and if any 5 delegates shall object to any report of said Committee on the ground that said report has changed the sense or purpose of any such proposal, the proposal shall be referred to a Special Committee on Arrangement and Form

consisting of 10 delegates included in which shall be not less than 3 of the 5 delegates objecting to said report.

Rule 17. The Committee on Submission and Address to the People shall consider and make recommendations to the Convention as to the matters and things provided by these rules to be referred to it and as to such other matters and things as may be referred to it by order of the Convention.

Rule 18. The Committee on Rules, Organization and Business Affairs shall, subject to the directions of the Convention:

(a) Consider and report upon such changes in the rules of the Convention and changes in its organization as shall be referred to it by the Convention from time to time;

(b) Be in charge of the business affairs of the Convention, the checking and auditing of its expenditures, the supervision and control of the Convention Hall and other quarters available to the Convention, the supervision and control of the employees of the Convention, the contracting for and the purchase of such furniture, equipment, supplies and services as the Convention may require and the provision for the proper distribution of the same, and shall make rules and regulations in connection therewith;

(c) Examine and certify to the President and Secretary the correctness of all bills rendered to the Convention;

(d) Perform such other duties as the Convention may, from time to time, direct, and report to the Convention, from time to time, as it may deem desirable or as the Convention may require, as to the performance of its duties.

Rule 19. The Committee on Credentials, Printing and Authentication of Documents shall supervise the preparation for printing and the printing of all proposals, Committee proposals, reports and other documents, with their amendments, ordered to be printed by the Convention, and shall ascertain that they are accurately and correctly printed. The Committee shall, subject to the approval of the Committee on Rules, Organization and Business Affairs of the Convention, contract for all printing for the Convention and supervise the carrying out of any contract so made and certify to the Committee on Rules, Organization and Business Affairs the correctness of all bills rendered for printing.

Rule 20. All resolutions for the printing of an extra number of documents shall be referred, as of course, to the Committee on Credentials, Printing and Authentication of Documents, for its report thereon before final action by the Convention.

Rule 21. All resolutions authorizing or contemplating the expenditure of money shall be referred to the Committee on Rules, Organization and Business Affairs, for its report thereon before final action by the Convention.

Rule 22. No Committee shall sit during the sessions of the Convention without special leave.

Rule 23. The report of a minority of any Committee shall be received and printed and on motion of any delegate, the Convention, by an affirmative vote of at least 41 delegates, may substitute such minority report and any proposal submitted therewith for the majority report and for any proposal submitted therewith. In the event any Committee is evenly divided on any matter pending before it, the Chairman shall refer such matter back to the Convention without recommendations.

Rule 24. Public hearings before each of the General Standing Committees addressed to the subject matter, lying within its consideration in accordance with these rules or referred to it, shall be held as and when ordered by the Convention, by general or special order, and according to uniform rules to be made by the Committee on Rules, Organization and Business Affairs governing the notice to be given to the public of such hearings, and the method of conducting the same.

COMMITTEE OF THE WHOLE

Rule 25. The Convention may upon motion resolve itself into a Committee of the Whole for consideration of proposals for the revision, alteration or reformation of the subject matter of the present Constitution. In forming the Committee of the Whole, the President of the Convention shall appoint a chairman to preside.

Rule 26. Before a proposal shall be considered by the Committee of the Whole, any delegate (the chairman of the General Standing Committee in charge of the proposal having prior right) shall be privileged to move a limitation upon the time of debate and consideration by the Committee, and the Convention may fix in advance of consideration, a time for the Committee to rise and report.

Rule 27. Upon a proposal being submitted to the Committee of the Whole, the same shall be read by the Secretary and then read and debated as may be determined by the Committee. All amendments made to reports, resolutions and other matters submitted to the Committee of the Whole shall be noted and reported. After the report by the Committee of the Whole the proposal shall be subject to be debated and amended on the floor of the Convention.

Rule 28. The rules of the Convention shall be observed in the Committee of the Whole so far as they are applicable. Where there are no provisions, the proceedings shall be controlled by Cushing's Manual of Parliamentary Practice.

Rule 29. Forty-one delegates shall be a quorum for the Committee of the Whole to do business; and if the Committee finds itself without a quorum, the Chairman shall cause the roll of the Convention to be called and thereupon the Committee shall rise, the President resume the chair and the Chairman report to the Convention the cause of the rising of the Committee.

Rule 30. A motion for the rising of the Committee of the Whole shall always be in order unless a member of the Committee is speaking or a vote is being taken, and shall be decided without debate.

ORDER OF BUSINESS, MOTIONS, DECORUM AND DEBATE

Rule 31. At meetings of the Convention the order of business shall be as follows (except at times set apart for the consideration of special orders):

1. Calling Convention to order.
2. Prayer.
3. Reading of Journal.
4. Roll Call.
5. Presentation of petitions, memorials and remonstrances.
6. Reports of standing committees.
7. Reports of select committees.
8. Introduction and first reading of proposals.
9. Reference of proposals.
10. Motions and resolutions.
11. Unfinished business.
12. Special orders of the day.
13. General orders of the day.

Rule 32. Consideration of the general orders of the day shall be in the following order:

1. Consideration by Committee of the Whole.
2. Reports of the Committee of the Whole.
3. Committee Reports and Proposals reported from Committees.
4. Second reading and action on reports of the Committee on Arrangement and Form, as to arrangement and phraseology only.
5. Third reading and agreement.

If the matter is not considered in its order, it shall lose its precedence for the day, but shall appear on the calendar on the following day in its regular order. Any matter may be made a special order of business for any particular day or time by a majority vote of the delegates present.

Rule 33. Any subject matter having been made the special order for a particular day, and not having been reached on that day, shall be upon the order of "Unfinished Business" on the next succeeding Convention day.

Rule 34. Upon calls of the Convention, the names of the delegates shall be called alphabetically.

In case of the absence of delegates, the delegates present shall take such measures as they shall deem necessary to secure the presence of absentees.

Any delegate requesting to be excused from voting may make, when his name is called, a brief statement of the reasons for making such request, not exceeding three minutes in time, and the Convention, without debate, shall decide if it will grant such request; or any delegate may explain his vote, for not exceeding three minutes; but nothing in this rule shall abridge the right of any delegate to record his vote on any question previous to the announcement of the result.

Rule 35. After a question has been stated by the President, and the calling of the roll has begun by the Secretary, the President shall not recognize a delegate for any purpose whatever until the call shall have been completed.

Rule 36. The vote upon any question shall be taken by the yeas and nays and entered upon the journal of the Convention, on motion made and seconded before the question is put and upon the request of at least 5 delegates.

Rule 37. The rules of Parliamentary Practice comprised in Cushing's Manual of Parliamentary Practice shall govern in all cases in which they are not inconsistent with the standing rules and orders of the Convention.

Rule 38. Any rule of the Convention may be suspended or repealed, altered or amended by a vote of at least 41 delegates and any amendment offered shall lie on the table one day before being voted upon.

Rule 39. When a motion is made it shall be stated by the President, or being in writing, it shall be handed to the Secretary and read aloud by him before being debated.

Rule 40. Every motion shall be reduced to writing if the President or any delegate shall request it and shall be entered upon the Journal, together with the name of the delegate making it, unless withdrawn or ruled out of order by the President before discussion.

Rule 41. After a motion has been stated by the President, or read by the Secretary and seconded by a delegate, it shall be deemed to be in the possession of the Convention, but may be withdrawn at any time before decision or amendment.

Rule 42. When a question is under consideration by the Convention only the following motions shall be received; which motions shall have precedence in the order stated, viz.:

Motions to, or for:

1. Adjourn.
2. Recess.
3. Call of the Convention.
4. Lay on the table.
5. Previous question.

} Not amendable or debatable except as hereinafter provided.

6. Postpone indefinitely. Not amendable, but debatable.
7. Postpone to a certain time. Debatable and amendable.
8. Go into Committee of the Whole. Debatable and amendable.
9. Commit (or recommit) to Committee of the Whole. Debatable and amendable.
10. Commit (or recommit) to a standing committee. Debatable and amendable.
11. Commit (or recommit) to a select committee. Debatable and amendable.
12. Close debate at a specified time. Not debatable, but amendable.
13. Amend. Debatable and amendable.

(Numbers 7 to 12, both inclusive, preclude debate on Main Question.)

The motion to adjourn, to take a recess, and to adjourn for a longer period

than one day, shall always be in order, and the last motion shall be amendable and debatable.

Calls for information, for reading a paper, for division of a divisible question, for division of the house, for the yeas and nays, and a motion for reconsideration shall always be in order, but shall not be amendable or debatable.

An appeal from the decision of the chair may be taken at any stage of the proceedings.

Rule 43. The previous question shall be put in this form, "Shall the main question be now put?" It shall be admitted when demanded by a majority of the delegates present, a quorum being present, and its effects shall be, if decided affirmatively, to put an end to all debate and bring the Convention to a direct vote upon pending amendments, if any, to the main question, and then upon the main question, but if decided in the negative, to leave the main question and amendments, if any, under debate for the remainder of the sitting, unless sooner disposed of by taking the question, or in some other manner. All incidental questions of order arising after a motion is made for the previous question, and pending such motion, shall be decided, whether on appeal or otherwise, without debate.

Rule 44. A motion to reconsider any vote must be made before the end of the 2nd convention day after the day on which the vote proposed to be reconsidered was taken, and by a delegate who voted in the majority and the same majority shall be required to adopt a motion to reconsider as was required to take the action to be reconsidered. When a motion for reconsideration is decided, that decision shall not be reconsidered, and no question shall be twice reconsidered; nor shall any vote be reconsidered upon either of the following motions:

To adjourn.
To lay on the table.
To take from the table; or
For the Previous Question.

Rule 45. Any delegate may call for the division of a question which is in its nature divisible. A motion to strike out and insert shall be deemed indivisible; but a motion to strike out being lost, shall neither preclude amendment nor a motion to strike out and insert.

Rule 46. No delegate shall speak more than twice on 1 question, or longer than 15 minutes the first, or longer than 5 minutes the second time, or more than once until other delegates who have not spoken shall speak if they so desire, without first obtaining leave of the Convention; and the mover of the proposition shall have the right to close the debate, provided that the person in charge of a proposal on third reading and final agreement shall have the right, if he desires, to close the debate and he may announce such desire at any time before the taking of the vote on the question.

Rule 47. No delegate rising to debate, to give a notice, make a motion, or present a paper of any kind, shall proceed until he shall have addressed the President and been recognized by him as entitled to the floor.

Rule 48. While the President is putting a question or a count is being had no delegate shall speak or leave his place; and while a member is speaking no delegate shall entertain any private discourse or pass between him and the chair.

Rule 49. When a motion to adjourn, or for recess, shall be carried, no delegate or officer shall leave his place until the adjournment or recess shall be declared by the President.

Rule 50. Any delegate may at any time rise and speak to a question of personal privilege. No delegate speaking to a question of personal privilege shall be subject to any rule of the Convention limiting the time a delegate may speak.

PROPOSALS, SUBMISSION AND ADDRESS TO THE PEOPLE

Rule 51. No proposal for revision, alteration or reformation of the present Constitution which does not comply with the Convention's instructions as voted

by the people shall be introduced in, reported by any Committee to, or agreed upon by, the Convention.

Rule 52. Each proposal shall receive 3 separate readings in the Convention previous to being agreed upon, but no proposal shall be read twice on the same day or be considered on third reading until after at least 48 hours notice, of the day upon which it is to be so considered, has been given by mail to each delegate or by announcement made in open session of the Convention.

All proposals may be read by their titles but no proposal shall be read the third time by its title unless copies thereof have been distributed and are on the delegates' desks before such reading. No amendment shall be received to any proposal on its third reading unless by unanimous consent of the delegates present.

All proposals shall, after the first reading, be printed for the use of the members. Printed copies of proposals shall be used on their second and third readings.

Rule 53. The regular order to be taken by proposals, introduced in the Convention and Committee Proposals reported to the Convention shall be as follows:

(a) Introduction, first reading, and printing of 300 copies of each proposal.
(b) Reference to a General Standing Committee by the President.
(c) Report by Committee of a Report and Committee Proposal, and printing of 500 copies thereof.

Four Convention days after the filing of said Report, the Report shall be placed on the general orders.

(d) Second Reading: Consideration by the Convention and action on amendments offered by delegates to the Convention.

If consideration in the Committee of the Whole is moved and adopted, then such Committee, after consideration, shall make its Report to the Convention, which Report shall be disposed of before amendments are offered by delegates to the Convention.

(e) Reference to the Committee on Arrangement and Form for report within 3 Convention days.
(f) Report of the Committee on Arrangement and Form, and printing of 500 copies.
(g) Action on Report of Committee on Arrangement and Form; consideration and action on amendments as to arrangement and phraseology only, offered by delegates to the Convention; action on the Report as amended and printing of 500 copies.
(h) Third reading and agreement, without amendment.
(i) Reference to Committee on Submission and Address to the People as to manner of submission to the people.
(j) Report of Committee on Submission and Address to the People as to manner of submission.
(k) Action on Report of Committee on Submission and Address to the People as to manner of submission only.
(l) Reference to the Committee on Arrangement and Form for arrangement of Sections and Article or Articles and for form.
(m) Report of Committee on Arrangement and Form as to arrangement of Sections and Article or Articles and printing of 500 copies.
(n) Agreement upon manner of submission without amendment and printing of 500 copies.

Rule 54. A proposal revising, altering or reforming the present Constitution or any part thereof in any manner shall be introduced by one or more delegates or by a Committee of the Convention or reported to the Convention by a General Standing Committee as a Committee Proposal.

Rule 55. Each proposal shall be in quadruplicate, shall be typewritten with 1 original copy and 3 carbon copies thereof, or printed, shall be endorsed on the back with the caption and the signature of all delegates or of the Chairman of the General Standing Committee introducing or reporting it.

Rule 56. The caption of each proposal shall be

"Constitutional Convention of New Jersey of 1947
Proposal
Introduced by.....
(Name of delegate or Chairman
of Committee)"

Rule 57. Each proposal shall contain a short title stating concisely the general nature of its subject matter and it shall be indicated there in the Article, Section and paragraph of the present Constitution intended to be revised, altered or reformed thereby. If any proposal is intended to revise, alter or reform the present Constitution by the addition of any Article, Section or paragraph, the title shall state the place in the present Constitution at which the new Article, Section or paragraph logically belongs.

Rule 58. Each proposal shall be in the form of a resolution as follows:
"RESOLVED, that the following be agreed upon as part of the proposed new State Constitution."

Rule 59. Each proposal introduced shall be presented in quadruplicate to the Secretary for introduction. The Secretary shall number all proposals as they are presented and make a list of them. At each Session of the Convention the Secretary shall read the number and title of each proposal so presented to him for introduction after the last session of the Convention, which shall be taken as the first reading of the proposal and as the ordering thereof to a second reading, and the President shall thereupon refer it to a General Standing Committee.

Rule 60. It shall be the duty of the President to consider each proposal for revision, alteration or reformation of the subject matter of the present New Jersey Constitution, introduced in the Convention or submitted to the Convention and to refer it to the General Standing Committee whose duty it is under these rules to consider proposals dealing with the subject matter therein dealt with, and where a proposal embraces subject matter which falls within the proper consideration of several committees, the President, where practicable, shall divide the proposals and refer them to the appropriate committees; but if they are not subject to such division, the President shall have authority to refer them to an appropriate committee with instruction to consult with other committees on related matter.

Any proposal which does not comply with the provisions of these rules relating to its form shall be referred to the appropriate Committee as a petition.

Rule 61. The original of each proposal introduced shall be delivered by the Secretary to the printer for printing, 1 copy shall be retained by the Secretary until the original is returned to him, 1 copy shall be made available to the Press and 1 copy shall be delivered to the Chairman of the General Standing Committee to which the proposal has been referred. The original of each proposal introduced, after being printed, shall be returned to the Secretary and be retained in his files and the copy retained by him shall be delivered to the Bureau of Archives and History, in the State Department of Education.

Rule 62. After July 7, 1947, no proposal shall be introduced, except on the report or recommendation of a General Standing or Select Committee, or by unanimous consent.

Rule 63. At such dates as may be convenient after July 7, 1947, and not later than July 31, 1947, each General Standing Committee shall submit to the Convention a report or reports in writing of the result of its deliberations in connection with the subject matters within its consideration under these rules and the proposals referred to it.

Rule 64. Each Committee Report shall be accompanied by a Committee proposal containing a complete Article or other appropriate subdivision or group of Articles or subdivisions of the proposed new Constitution recommended for consideration and agreement upon by the Convention and the Report shall state as to each Proposal referred to the Committee and relating to the subject matter of the Report and Committee Proposal, whether it (1) has been adopted in whole in the Committee Proposal, or (2) has been adopted in part in the Committee

Proposal, or (3) has been disapproved, or (4) has been disposed of in such manner as may be indicated.

Rule 65. Each General Standing Committee may originate and report without specific reference, any Committee proposal the subject matter of which properly falls within the consideration of such Committee under these rules.

Rule 66. The report by any General Standing Committee of a Committee Proposal shall be taken as the first reading of such Committee Proposal and it shall be ordered to a second reading without reference. No proposal other than a Committee Proposal shall have a second reading except by a vote of at least 41 delegates to the Convention.

Rule 67. Each amendment offered to a proposal before being read, shall be presented to the Secretary, in quadruplicate, either typewritten, with 1 original and 3 carbon copies thereof, or printed, and shall be entered in the Journal. The Secretary shall forward the original to the printer for printing, shall retain 1 copy until the original is returned to him, 1 copy shall be made available to the Press and 1 copy shall be delivered to the Chairman of the General Standing Committee in charge of the proposal intended to be amended. The original of each amendment, after being printed, shall be returned to the Secretary and shall be retained in his files and the copy, retained by him, shall be delivered to the Bureau of Archives and History in the State Department of Education.

Rule 68. Any proposal which has passed its second reading together with all amendments thereto, shall be referred to the Committee on Arrangement and Form for consideration as provided by these rules and when reported by said Committee shall be subject to consideration and amendment as to arrangement and phraseology only and if any such amendment be adopted, shall be again referred to the Committee on Arrangement and Form for similar consideration and report thereof, and if said Committee's report shall be adopted, it shall be ordered to be printed and to third reading.

Rule 69. Proposals which have passed two readings together with all amendments thereto shall be prepared by the Secretary in proper form for printing for third reading and when the Secretary receives from the printer any proposal ordered to a third reading and the same shall be found correct, he shall affix an official stamp to each page of the copy to be used as the official copy.

Rule 70. On the question of the agreement upon any proposal on third reading, the vote shall be taken by yeas and nays and entered on the Journal, and no proposal shall be declared adopted unless at least 41 delegates to the Convention shall have voted in favor of the adoption of the same.

Rule 71. All proposals agreed upon by the Convention shall be referred to the Committee on Submission and Address to the People and such Committee shall consider and report to the Convention recommending the method and manner of submitting them to the people in accordance with law and particularly as to whether such proposals and all provisions of the present Constitution, if any, which have not been revised, altered or reformed by the Convention shall be submitted by framing a Constitution to be submitted as a whole to the people for adoption or rejection, or whether the proposals revising, altering or reforming the present Constitution shall be submitted by framing 1 or more parts of a Constitution, each to be so submitted to the people that they may adopt or reject in any part, designating and describing in its report the part or parts of a Constitution so to be submitted, and whether they or any one of them shall be submitted by framing 1 or more parts, designating and describing in its report the part or 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.

Rule 72. The manner of submission to the People of the Convention's Proposal shall be agreed upon by resolution of the Convention by the affirmative vote of at least 41 delegates but after a Constitution or part or parts of a Constitution have been framed and before final agreement thereon, the Convention shall refer to the Committee on Arrangement and Form, the Constitution or part or parts of a Constitution so framed, for submission for arrangement in proper order and form and report thereon, and upon the coming in of said

Report, the Convention shall by the affirmative vote of at least 41 delegates agree upon the final form of the Constitution or part or parts of a Constitution so to be submitted and the manner of submission thereof.

Rule 73. When the Convention by the affirmative vote of not less than 41 delegates shall have agreed upon its proposals and shall have agreed upon and framed the final form of the Constitution or part or parts of a Constitution and the manner of submission to the people according to law, an original and 2 true copies thereof shall be prepared and signed by the President and Secretary of the Convention and delivered to the Governor and a printed copy of the proposed Constitution or the part or parts thereof shall be delivered by the Secretary to each member of the Legislature.

Rule 74. When the Convention shall have agreed upon its proposals and the manner of their submission it shall refer to the Committee on Submission and Address to the People, and such Committee shall consider and report to the Convention, in what manner the question or questions, to be placed upon the ballot submitting to the people the proposed Constitution or the part or parts thereof agreed upon, shall be framed and whether it is deemed appropriate that an interpretative statement shall be placed thereon or should be dispensed with and in what form such interpretative statement should be framed.

Rule 75. 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 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 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 to the Convention for its action thereon.

Rule 76. The Convention may act upon the matters so referred to said Committee by Resolution adopted by the affirmative vote of at least 41 delegates but it shall proceed to arrange for submission of the Constitution or part or parts thereof to the people or make any direction in connection therewith only after certification by the Secretary of State to it that the proposed document and part or parts thereof comply with the instructions as voted by the people.

Rule 77. In framing, adopting and agreeing upon:

(1) a Constitution to be submitted as a whole, to the people for adoption or rejection, or in framing one or more parts of a Constitution, each to be submitted to the people in accordance with law; and

(2) the Question or Questions, to be placed upon the ballot, submitting to the people for adoption or rejection the proposed Constitution or the part or parts agreed upon; and

(3) any Interpretative Statement to be placed upon said ballot; and

(4) an Address to the People; and

(5) any Determinations as to 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 as to the 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 it shall determine and any direction that its provisions or any of them for notice and publication and distribution shall be in lieu of any other provisions of law relating to public questions and any requirement and determination of the method of submission of the question or questions, which it may frame, by the use of voting machines or with paper ballots or with the use of voting machines and paper ballots;

the vote shall be taken by the yeas and nays and entered upon the Journal.

PROPOSALS INTRODUCED BY DELEGATES FOR CHANGES IN THE CONSTITUTION OF NEW JERSEY

PROPOSAL No. 1 Introduced June 24, 1947

By Mr. Frank G. Schlosser
Delegate, Hudson County

Referred to Committee on Judiciary

A Proposal to add to the Bill of Rights, Article 1 of the Present Constitution, a new paragraph abolishing prosecution for common law crimes.

Resolved, that the following be agreed upon as part of the proposed new State Constitution:

"———. Prosecution for common law crimes is abolished and no person shall be held to answer for any criminal offense unless, before commission of the fact, such crime shall have been created and defined by statute."

STATEMENT

In common fairness no person ought to be subjected to criminal prosecution and imprisonment in the State Prison unless informed in advance of doing the act that certain conduct on his or her part will amount to a crime. This is not the state of the law in New Jersey today; here a horde of crimes evolved in England in the early centuries are punishable by imprisonment of as long as three (3) years in State Prison and/or a fine of as much as $1,000, many of which crimes are not even named or defined in our statutes.

The citizen cannot possibly know of the existence of many common law crimes without searching out and reading the ancient books of England and New Jersey and is often prosecuted and sent to prison for crimes never named in our statutes, or, if named, not defined. See R. S. 2:103-1.

Among the unnamed, undefined crimes are: barratry, bribery, buying and selling office, common law conspiracy (although the same act done by *one* person may not be criminal), common scold (confined to the female sex), contempt of court, eavesdropping, elections offenses, extortion, forcible entry and detainer, libel, maintaining a disorderly house, malfeasance, obstruction of justice, sedition and possibly forestalling, engrossing and regrating.

Among the crimes named but undefined are: assaults, batteries, false imprisonments, affrays, riots, routs, unlawful assemblies, nuisances, cheats, deceits.

When New Jersey broke away from the English crown in 1776 it may have been necessary to provide generally for crimes. However, after 171 years it is high time all crimes were created and defined by our Legislature and those found unsuitable to our conditions abolished. Thereafter, the citizen can, by reading the Crimes Act, know what conduct will subject him or her to criminal

prosecution and punishment. Now, anything the judges deem to be wrong, although never made criminal by the Legislature, can be prosecuted as a crime and the citizen sent to prison for as long as three (3) years and/or sentenced to pay a fine of as much as $1,000. See *State* vs. *Quinlan,* 86 N. J. L. 120, 125, indicating that any act the judges deem injurious to the public is to be punished as a criminal offense.

No pending prosecution will be affected by the change, as the Schedule will undoubtedly continue them.

PROPOSAL No. 2 Introduced June 24, 1947

By Mr. Frank G. Schlosser
Delegate, Hudson County

Referred to Committee on Judiciary

A Proposal to implement the Search and Seizure clause of the Bill of Rights in the present Constitution, Article 1, Paragraph 6, by adding thereto a provision forbidding use as evidence of papers and things obtained by unconstitutional search and seizure.

Resolved, that the following be agreed upon as part of the proposed new State Constitution:

Add to the present Article 1, Paragraph 6, the following sentence:

"Nothing obtained in violation hereof shall be received into evidence."

STATEMENT

The protection from unlawful search and seizure intended by the framers of the 1844 Constitution does not exist: Papers and things obtained by unlawful search and seizure are admitted into evidence notwithstanding violation of the Constitution. *State* vs. *MacQueen,* 69 N. J. L. 522, 528; *State* vs. *Lyons,* 99 N. J. L. 301, 303; *State* vs. *Merra,* 103 N. J. L. 361, 366. In the Federal courts the rule is otherwise.

Adoption of the Proposal will supply in the State tribunals the same protection afforded to citizens in the Supreme Court and other courts of the United States under the Search and Seizure clause of the Federal Constitution, and will prevent Article 1, Paragraph 6, of the 1844 Constitution from remaining the dead letter it has become in the tribunals of New Jersey.

PROPOSAL No. 3 Introduced June 24, 1947

By Mr. Frank G. Schlosser
Delegate, Hudson County

Referred to Committee on Judiciary

A Proposal to revise Article 1, Paragraph 9, of the Bill of Rights in the present Constitution, by striking out the words "presentment or" and thus requiring grand juries to proceed only by indictment.

Resolved, that the following be agreed upon as part of the proposed new State Constitution:

Strike out in the third line of Article 1, Paragraph 9, the two words "presentment or" so that the wording of the altered first part of the paragraph will read:

"No person shall be held to answer for a criminal offense, unless on the indictment of a grand jury," * * *

STATEMENT

In the ancient criminal law of England the grand jury could proceed in either of two ways: (1) by written bill of indictment proffered by the complainant; and (2) by presentment which differed from indictment in being taken in the first instance by the grand jury of some offense within their own knowledge, in which case an officer of the court would prepare a written indictment. 1 Chitty's Criminal Law * 161 - * 163. In either event the accused person would be brought to trial only on an indictment.

In New Jersey the practice is and long has been for the public prosecutor to prepare all indictments for the grand jury. There is thus no need of a presentment in the constitutional sense, every case being brought by indictment in our State.

With us the presentment has degenerated into a license for libelling persons in disfavor with a majority of the grand jury. These victims have committed no crime, else they would be indicted, but behind the shield of judicial immunity some grand juries have libelled persons they could not indict and when called to account have pointed to the 1844 Constitution authorizing a "presentment." Deletion of the two words "presentment or" from the Constitution cannot affect criminal prosecutions in any manner, but will help to discourage unfair and libelous attacks.

PROPOSAL No. 4 Introduced July 1, 1947

By Mr. Percy Camp
Delegate, Ocean County

Referred to Committee on Taxation and Finance

A Proposal to reform paragraph 12, Section VII, Article IV, of the present Constitution to provide additionally that certain lands shall escheat to respective municipalities in which same are situate.

Resolved, that the following be agreed upon as part of the proposed new State Constitution:

"12. Property shall be assessed for taxes under general laws, and by uniform rules, according to its true value. Any parcel of vacant, unoccupied and unimproved real property, having an assessed value of less than one hundred dollars ($100.00), upon which lawfully assessed taxes are unpaid for a period of five years, shall escheat to and become the sole property in fee simple of the municipality in which such real property is situate."

PROPOSAL No. 5 Introduced July 1, 1947

By Mr. Percy Camp
Delegate, Ocean County

Referred to Committee on Taxation and Finance

A Proposal to revise Section VII, Article IV, of the present Constitution by adding another paragraph (No. 13) thereto to prevent diversion of any money or fund raised or accumulated by State of New Jersey for public highways.

Resolved, that the following be agreed upon as part of the proposed new State Constitution:

"13. The Legislature shall not pass any law to direct, authorize or permit any money or fund raised or accumulated by State of New Jersey for public highways to be diverted to any other purpose."

PROPOSAL No. 6 Introduced July 1, 1947

By Mr. Percy Camp
Delegate, Ocean County

Referred to Committee on Rights, Privileges, Amendments and Miscellaneous Provisions

A Proposal to revise Article I of the present Constitution by adding another paragraph (No. 22) thereto to restrict persons seeking to overthrow, by force, the present form of government.

Resolved, that the following be agreed upon as part of the proposed new State Constitution:

"22. No person who shall sponsor or espouse any doctrine to overthrow, by force, the present form of government in this Country or State shall:

(a) hold any public office, trust or position,

(b) be awarded any public contract, work, or assistance whatsoever, or

(c) be entrusted with any public record, document, or property of any nature,

of this State or any of its political subdivisions."

PROPOSAL No. 7 Introduced July 1, 1947

By Mrs. Pauline H. Peterson
Delegate, Salem County

Referred to Committee on Rights, Privileges, Amendments and Miscellaneous Provisions

A Proposal that provision be made for the use of the Initiative and Referendum.

Resolved, that the following be agreed upon as part of the proposed new State Constitution:

1. Provision shall be made for the use of the Initiative and Referendum and such provision shall harmonize as nearly as possible with that outlined in Article IV, Sections 400 to 408, inclusive, of the most recent revision of the Model State Constitution of the National Municipal League.

STATEMENT

This is a plan which has worked successfully in other States, by which the people can, if they so desire, express their will.

PROPOSAL No. 8 Introduced July 1, 1947

By MR. RONALD D. GLASS
Delegate, Passaic County

Referred to Committee on Rights, Privileges, Amendments and Miscellaneous Provisions

A PROPOSAL that the Bill of Rights (Article I of the present State Constitution) make it clear that there shall be no discrimination under the law against any citizen because of race, color, or religion.

Resolved, that the following be agreed upon as part of the proposed new State Constitution:

1. There shall be no discrimination under the law against any citizen because of race, color, or religion.

STATEMENT

The Bill of Rights should guarantee the privileges of democracy to all citizens and should prohibit discrimination on the basis of race, creed, or color.

PROPOSAL No. 9 Introduced July 1, 1947

By MR. FRANCIS A. STANGER, JR.
Delegate, Cumberland County

Referred to Committee on Rights, Privileges, Amendments and Miscellaneous Provisions

A PROPOSAL altering Section IV, Article I, of the 1844 Constitution to provide against any racial or religious test as a qualification to public office or public trust and against a denial of civil right on account of race or religious principles.

Resolved, that the following be agreed upon as part of the proposed new State Constitution:

There shall be no establishment of one religious sect, in prefer-

ence to another; no religious or racial test shall be required as a qualification for any office or public trust; and no person shall be denied the enjoyment of any civil right, merely on account of his race or religious principles.

PROPOSAL No. 10 Introduced July 1, 1947

By Mr. John Drewen
Delegate, Hudson County

Referred to Committee on Legislature

Resolved, that the following be agreed upon as part of the proposed new State Constitution:

1. The General Assembly shall be composed of members elected by the legal voters of Assembly Districts established within the respective counties. The members of the General Assembly shall be apportioned among the counties as nearly as may be according to the number of their inhabitants. One member, resident therein, shall be elected in each Assembly District, which shall contain as nearly as may be its due proportion of the total number of inhabitants of the county. Each county having presently apportioned to it not more than one member shall constitute a single Assembly District and be known as the Assembly District in and for such county. The establishment of Assembly Districts shall in no way affect or alter the present boundary of any county and shall in no wise increase or diminish with respect to any county the number of members of the General Assembly elected therein. The present apportionment of members among the counties, as well as the population basis of the Assembly Districts which shall be established within the respective counties pursuant hereto, shall continue until the next census of the United States shall have been taken, and an apportionment of members of the General Assembly and a redetermination of the population basis of the Assembly Districts shall be made by the Legislature at its first session after the next and every subsequent enumeration or census, and when made shall remain unaltered until another enumeration shall have been taken; *provided,* that each county shall at all times be entitled to one member; and the whole number of members shall never exceed sixty.

STATEMENT

The foregoing proposal is for the election of members of the General Assembly by Assembly Districts to be established within the respective counties, and is intended to revise Article IV, Section III, of the present Constitution. It forbids changing the boundary of any county, as well as the number of members from each county as presently apportioned.

PROPOSAL No. 11 Introduced July 1, 1947

By Mr. Ronald D. Glass
Delegate, Passaic County

Referred to Committee on Rights, Privileges, Amendments and Miscellaneous Provisions

A Proposal that benefits payable by virtue of membership in any State pension or retirement system shall constitute a contractual relationship and shall not be diminished or impaired.

Resolved, that the following be agreed upon as part of the proposed new State Constitution:

1. Benefits payable by virtue of membership in any State pension or retirement system shall constitute a contractual relationship and shall not be diminished or impaired.

STATEMENT

The State has always recognized its moral obligation to pay the benefits promised by its State pension funds. Constitutional status merely eliminates uncertainty from the situation. The freedom of the State government, on the other hand, to manage its financial problems as need arises would be in no way affected by this proposal. The State pension funds should be continued on a sound actuarial basis to make lifetime service to the State attractive to able persons, including teachers.

This recommendation appeared in the Report of the Commission on Revision of the New Jersey Constitution of 1942 and is found in the present New York State Constitution.

PROPOSAL No. 12 Introduced July 1, 1947

By Mr. Robert Carey
Delegate, Hudson County

Referred to Committee on Executive, Militia and Civil Officers

A Proposal for the increase of the term of Governor from three to four years, without the right of succession until four years after the expiration of the term; and is intended to revise Article V, paragraph 3, of the present Constitution.

Resolved, that the following be agreed upon as part of the proposed new State Constitution:

3. 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 of Governor again until the second Tuesday of January in the fourth year after the expiration of the term.

STATEMENT

The foregoing proposal is for the increase of the term of Governor from three to four years, without the right of succession until four years after the expiration of the term; and is intended to revise Article V, paragraph 3, of the present Constitution.

PROPOSAL No. 13 Introduced July 1, 1947

By MRS. PAULINE H. PETERSON
Delegate, Salem County

Referred to Committee on Rights, Privileges, Amendments and Miscellaneous Provisions

A PROPOSAL that rights or privileges granted public employees under tenure or civil service be deemed contractual, not to be diminished or impaired.

Resolved, that the following be agreed upon as part of the proposed new State Constitution:

1. Rights or privileges granted public employees under tenure or civil service shall be deemed contractual, not to be diminished or impaired.

STATEMENT

As a result of its experience since 1909 with tenure laws in the public schools, New Jersey has found that the children and citizens of the State benefit from this policy. Likewise the civil service policy of the State has improved the quality of persons accepting public positions.

This recommendation would give assurance that the benefits granted under the tenure and civil service laws cannot be taken away, and that able men and women can build their lives upon a permanent career of public service. It would strengthen the State's personnel practices for public employment, and would offer substantial nonfinancial rewards to capable public employees.

PROPOSAL No. 14 Introduced July 7, 1947

By MR. CLYDE W. STRUBLE
Delegate, Cape May County

Referred to Committee on Taxation and Finance

A 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.

PROPOSAL No. 15 Introduced July 7, 1947

By MR. CLYDE W. STRUBLE
Delegate, Cape May County

Referred to Committee on Taxation and Finance

A PROPOSAL that Article IV, Section VII, Paragraph 12, of the present State Constitution be amended.

Resolved, that the following be agreed upon as 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 should 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 protec-

tion 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.

PROPOSAL No. 16 Introduced July 7, 1947

By Mr. Oliver Randolph
Delegate, Essex County

Referred to Committee on Rights, Privileges, Amendments and Miscellaneous Provisions

Equal protection of the laws; discrimination in civil rights prohibited. Article I, Paragraph 19 (New)

Resolved, that the following be agreed upon as part of the proposed new State Constitution:

No person shall be denied the equal protection of the laws of this State or any subdivision thereof. No person shall, because of race, color, creed or religion, be subjected to any discrimination in his civil rights by any other person or by any firm, corporation or institution, or by the State or any agency or subdivision of the State.

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

STATEMENT

The purpose of this proposed amendment is to extend the protection of the Bill of Rights.

PROPOSAL No. 17 Introduced July 7, 1947

By Mr. Winston Paul
Delegate, Essex County

Referred to Committee on Rights, Privileges, Amendments and Miscellaneous Provisions

Resolved, that the following be agreed upon as part of the proposed new State Constitution:

Without limiting the inherent right of the people at all times to revise their Constitution in a manner of their own choosing, but in order to provide a convenient method for the exercise of that right, the Legislature may submit to the people at any time the question "Shall there be a Convention to propose a revision of or

amendments to the Constitution?" and if the Legislature does not submit the question at any time during a period of twenty years, the State officer whose duty it is to certify Statewide public questions for submission to the people is hereby directed to certify the question, to be voted on at the first general election held more than twenty years after the last such vote by the people.

The Convention, if authorized by a majority of the qualified electors voting on the question, shall be composed in the House of Assembly, elected, unless otherwise provided by law, at the next general election in accordance with the provision of law applicable to the election of members of the House of Assembly. The Legislature may provide that the election of delegates be held simultaneously with the vote on the question of revision.

Unless otherwise provided by law, any qualified voter of the State shall be eligible to membership in the Convention and the Convention may provide for vacancies due to death, resignation or other cause.

The delegates shall convene at noon of the second Tuesday following their election in the seat of government unless the Governor shall by proclamation designate some other place of meeting. The Convention shall determine its own organization and rules of procedure.

Any proposed Constitution or constitutional amendment approved by a majority of all the delegates shall be published and submitted to a vote of the electors of the State at such time and in such manner as may be provided by the Convention. All proposals approved by a majority of the qualified electors voting thereon shall become effective thirty days after the election, unless otherwise provided by the Convention.

The provisions of this section shall be self-executing, but the Legislature shall appropriate money and may enact legislation to facilitate its operation.

STATEMENT

The purpose of this proposed amendment is to prescribe a twenty-year periodic referendum on revision.

PROPOSAL No. 18 Introduced July 7, 1947

By Mr. Winston Paul
Delegate, Essex County

Referred to Committee on Rights, Privileges, Amendments and Miscellaneous Provisions

Resolved, that the following be agreed upon as part of the proposed new State Constitution:

1. Any specific amendment to the Constitution may be proposed in the Senate or General Assembly. Prior to a vote in the House in which such amendment is first introduced, the proposed amendment shall be printed and on the desks of the members at least twenty calendar days, and a public hearing shall be held. If the amendment then is adopted by a majority of the members of each House, in accordance with the procedure for the adoption of bills, the proposed amendment shall be presented to the Governor. If the Governor approves the amendment or if he fails to take any action on same within fifteen days, the amendment shall be submitted to the people. If the Governor disapproves, the amendment shall not be submitted to the people unless the Legislature shall repass it by a three-fifths vote of all the members of each of the Houses.

2. Such amendment shall be submitted to the people at the general election next succeeding the passage of such amendment not less than sixty days after its enactment and in such manner as the Legislature shall prescribe.

3. If at the election the people shall approve such amendment by a majority of the legally qualified voters of this State voting thereon, such amendment so approved shall become part of the Constitution on the thirtieth day after such general election unless otherwise provided in the amendment thus approved.

4. If more than one amendment be submitted, they shall be submitted in such manner and form that the people may vote for or against each amendment separately and distinctly.

STATEMENT

The purposes of these proposed amendments are to prescribe the procedure followed by the Senate, General Assembly, Governor, and people regarding the proposal of amendments.

PROPOSAL No. 19 Introduced July 7, 1947

By Mr. Wesley A. Taylor
Delegate, Essex County

Referred to Committee on Rights, Privileges, Amendments and Miscellaneous Provisions

Resolved, that the following be agreed upon as part of the proposed new State Constitution:

Employees shall have the right, free from interference or coercion, to form, join, organize or maintain labor organizations of their own choice, for their mutual aid and protection, to bargain collectively with their employers.

STATEMENT

The purpose of this proposed amendment is to assure and protect the rights of labor to organize and bargain collectively.

PROPOSAL No. 20 Introduced July 7, 1947

By Mr. Arthur W. Lewis
Delegate, Burlington County

Referred to Committee on Judiciary

Resolved, that the following be agreed upon as part of the proposed new State Constitution:

SECTION I

The Judicial power of the State of New Jersey shall be vested in one Supreme Court and in a Superior Court with a Law and Chancery Division thereof, in County Courts and in such Inferior Courts as the Legislature may from time to time ordain and establish, which Inferior Courts the Legislature may alter or abolish as the public need and good shall require.

SECTION II

The Supreme Court shall consist of a Chief Justice and six Associate Justices appointed by the Governor by and with the advice and consent of the Senate, and who shall hold their respective offices during good behavior. The Supreme Court shall exercise appellate jurisdiction and shall have jurisdiction over the admission to the practice of law and discipline of persons admitted to practice law in this State and the promulgation of rules relating to pleading, practice, and transfer of causes before any of the courts of this State.

SECTION III

The Superior Court shall consist of a President Justice of the Law Division, a Chancellor of the Chancery Division, and such number of Justices assignable to Law or Chancery as the Legislature may determine to be the need for the proper administration of the court's work. These Justices shall be appointed by the Governor by and with the advice and consent of the Senate for a term of five years, and if reappointed, shall thereafter hold office during good behavior. The Superior Court shall have original general jurisdiction throughout the State and shall exercise such jurisdiction in Law, Chancery, and Appeal as the Legislature shall from time to time determine.

SECTION IV

There shall be at least one Judge of a County Court in each County and such additional County Judge or Judges of any County as may be authorized by law, and who shall be appointed by the Governor by and with the advice and consent of the Senate for a term of five years, and if reappointed, shall thereafter hold office during good behavior. The County Court shall exercise such original, appellate and other jurisdiction as the Legislature by law shall from time to time determine.

SECTION V

The Judges and Justices of any Constitutional Court shall, prior to their appointment, have been an attorney-at-law of this State in good standing for at least ten (10) years and shall receive for their services such compensation as may be fixed by law not to be diminished during their term of office, and they shall hold no other office under the government of any State or of the United States, and shall not engage in the practice of law during their term of office. They may be removed from office for disability continuing for more than one year or for refusal to perform the duties of their office. Any such Judge or Justice shall be liable to impeachment during his continuance in office and for two years thereafter. The General Assembly shall be the sole power of impeachment, and all impeachments shall be tried by the Senate. Any Judge or Justice impeached shall be suspended from exercising his office until his acquittal. Judgment in case 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 by the person convicted, but he, nevertheless, shall be liable to indictment, trial and punishment according to law. Judges of Inferior Courts may be removed from office without impeachment and such manner as may be provided by law. No Judge or Justice of a Constitutional Court shall continue in office after he has attained the age of seventy years; however, subject to law, he may be assigned by the Chief Justice of the Supreme Court to temporary service in the Supreme, Superior, or a County Court, as need may occur. The Judges of the Inferior Courts shall be attorneys-at-law.

SECTION VI

The Legislature shall pass such laws as may be necessary to carry into effect the provisions of this Constitution and the adoption thereof shall not cause the abatement of any suit or proceedings pending before any of the Courts of this State at the time of its adoption.

PROPOSAL No. 21 Introduced July 7, 1947

By Mr. Francis A. Stanger, Jr.
Delegate, Cumberland County

Referred to Committee on Judiciary

Resolved, that the following be agreed upon as part of the proposed new State Constitution:

Amend Paragraph 7 of Section II of Article VII of the Constitution of the State of New Jersey so that same shall read as follows:

7. Justices of the Peace shall be elected by ballot by the people of the respective wards in cities that vote in wards and in the respective townships in such manner and under such regulations as may be hereafter provided by law.

They shall be commissioned for the county and shall possess such qualifications, and exercise such powers and duties, and serve for such terms as shall be provided by law; *provided, however,* that no commission shall issue, except upon the recommendation of a Judge of the Common Pleas Court of the county in which such person was elected for such office.

The office of any Justice of the Peace shall become vacant upon his ceasing to reside in the township or ward in which he was elected, and his commission may be revoked in the way and manner provided by law.

STATEMENT

The purpose of this proposed amendment is to prescribe the method of election, the powers, jurisdiction, and duties of the Justices of the Peace.

PROPOSAL No. 22 Introduced July 7, 1947

By Mr. Francis A. Stanger, Jr.
Delegate, Cumberland County

Referred to Committee on Judiciary

A Proposal to amend Paragraph 1 of Section VII of Article VI of the Constitution of the State of New Jersey.

Resolved, that the following be agreed upon as part of the proposed new State Constitution:

Amend Paragraph 1 of Section VII of Article VI of the Constitution of the State of New Jersey, so that the same shall read as follows:

1. There may be elected under this Constitution one, and not more than three, Justices of the Peace in each of the townships of the several counties of this State, and in each of the wards, in cities that may vote in wards. When a township or ward contains

two thousand inhabitants or less, it may have one Justice; when it contains more than two thousand inhabitants, and not more than four thousand, it may have two Justices, but when it contains more than four thousand inhabitants, it may have three Justices.

STATEMENT

The purpose of this proposed amendment is to prescribe the number of Justices of the Peace to be elected in the townships, wards, and cities of the State.

PROPOSAL No. 23 Introduced July 7, 1947

By Mr. Francis A. Stanger, Jr.
Delegate, Cumberland County

Referred to Committee on Legislature

Resolved, that the following be agreed upon as part of the proposed new State Constitution:

A clinic for the study and classification of persons charged with crimes and delinquencies may be established by the governing board in any county, which clinic shall study the causes of crime and delinquency and make recommendations for the prevention of same and the rehabilitation of persons charged with such crimes and delinquencies.

STATEMENT

The purpose of this proposed amendment is to prescribe the estabishment of clinics for the studies of crime and delinquencies.

PROPOSAL No. 24 Introduced July 7, 1947

By Mr. Arthur W. Lewis
Delegate, Burlington County

Referred to Committee on Taxation and Finance

A Proposal in lieu and place of Article IV, Section VII, Paragraph 6, of our present Constitution.

Resolved, that the following be agreed upon as part of the proposed new State Constitution:

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.

Notwithstanding any limitation in this Constitution as to dedicated funds, the Legislature may impose property, excise or other taxes and dedicate the revenue therefrom to a special fund, for the purpose of providing subventions and State aid to the free public schools; the fund for the support of free schools, and all money, stock, and other property, which may hereafter be appropriated or dedicated 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 free public 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.

PROPOSAL No. 25 Introduced July 7, 1947

By Mr. Spencer Miller, Jr.
Delegate, Essex County

Referred to Legislative Committee

The Right to Nominate Candidates. (A new paragraph to be included in Article IV, Section VII.)

Resolved, that the following be agreed upon as part of the proposed new State Constitution:

The right of any legally qualified group of petitioners or of the voting members of any legally recognized political party to nominate any qualified person for an elective public office shall not be denied or abridged because he is not a member of the party or on account of his nomination by some other party or group.

PROPOSAL No. 26 Introduced July 7, 1947

By Mr. Spencer Miller, Jr.
Delegate, Essex County

Referred to Committee on Rights, Privileges, Amendments and Miscellaneous Provisions

Right of Suffrage. (A revision of Article II.)

Resolved, that the following be agreed upon as part of the proposed new State Constitution:

Every duly registered citizen of the age of twenty-one years or more, who shall have been a resident of this State one year shall

have equal voting rights in all elections by the people in the election district of which he is a resident, provided, that no idiot or insane person shall enjoy the right of an elector and that persons may be deprived by law of the right of suffrage because of conviction of crime.

No person shall, for the purpose of suffrage, be deemed to have become a resident of, nor to have abandoned prior residence in, this State by reason of his presence therein or absence therefrom during active service in any branch of the military or naval forces of this State or the United States.

No elector in active service in any branch of the military or naval forces of this State or of the United States shall be deprived of his vote by reason of his absence from his election district.

The manner in which and the time and place at which ballots may be cast by electors absent during active service in any branch of the military or naval forces of this State or of the United States, and the manner of the return and canvass of such absentee votes, shall, at all times, be provided by law.

PROPOSAL No. 27 Introduced July 7, 1947

By Mr. Spencer Miller, Jr.
Delegate, Essex County

Referred to Committee on Rights, Privileges, Amendments and Miscellaneous Provisions

The Constitution to Be Self-Executing; Each Department to Take Appropriate Action to Facilitate Its Operation. (A new paragraph to be included in Article VIII.)

Resolved, that the following be agreed upon as part of the proposed new State Constitution:

The provisions of this Constitution shall be self-executing, to the fullest extent that their respective natures permit. The Legislature, the Governor and the judicial department shall each have power to take any action consistent with its nature in furtherance of the purposes of this Constitution and to facilitate its operation. Whenever legislation may be needed to carry out a mandate of the Constitution, the Governor shall call it to the attention of the Legislature, and he may issue an executive order to carry out the mandate. Every such executive order shall be transmitted to each House of the Legislature while it is in session and shall become effective as law sixty days after its transmittal unless it shall have been modified or replaced by act of the Legislature.

PROPOSAL No. 28 Introduced July 7, 1947

By Mr. Spencer Miller, Jr.
Delegate, Essex County

Referred to Committee on Rights, Privileges, Amendments and Miscellaneous Provisions

Right of Collective Bargaining. (A new paragraph to be included in Article I.)

Resolved, that the following be agreed upon as part of the proposed new State Constitution:

Employees shall have the right to organize and to bargain collectively through representatives of their own choosing.

PROPOSAL No. 29 Introduced July 7, 1949

By Mr. Oliver Randolph
Delegate, Essex County

Referred to Committee on Rights, Privileges, Amendments and Miscellaneous Provisions

Proposed amendment to the Constitution of 1844 as amended, Article I, Paragraph 5.

Resolved, that the following be agreed upon as part of the proposed new State Constitution:

5. That no law be passed impairing the freedom of the press or of speech by any mode of communication; that every person shall be free to say, write, publish or otherwise communicate by any method or in any form whether written, printed, graphic or visual whatever he will, on any subject, being responsible for all abuse of that liberty. In all prosecutions of indictments for libel, the truth thereof may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

STATEMENT

The purpose of this proposed amendment is to extend the protection of the Bill of Rights to media of communication and expression developed since the adoption of the Constitution of 1844, such as radio, moving pictures and television.

PROPOSAL No. 30 Introduced July 7, 1947

By Mr. Spencer Miller, Jr.
Delegate, Essex County

Referred to Legislative Committee

Organization and Powers of Counties, Cities and Other Civil Divisions. (New sections or paragraphs to be included either in a new section of Article IV or a new Article on Local Government.)

Resolved, that the following be agreed upon as part of the proposed new State Constitution:

Organization

Provision shall be made by general law for the incorporation and powers of counties, cities and other civil divisions; and for procedures, which may be optional, for the alteration of boundaries, the consolidation, the co-operation, the interchange of powers and the dissolution of such corporations.

Provision shall also be made by general law for optional plans of organization and government for counties, cities and other civil divisions, but no such law shall become operative in any place until approved by a majority of the qualified voters thereof voting thereon.

Home Rule

Any county, city or other civil division may frame and by a majority of the qualified voters voting thereon adopt a charter to determine the form, organization, powers and manner of selecting the officers of its own government subject only to such definite standards or specific limitations or requirements as may be imposed by the Constitution or by laws of State-wide concern and uniform application.

Upon resolution adopted by vote of a majority of the governing body or upon submission of a petition signed by seven per centum of the qualified voters of any county, city or other civil division, the question, "Shall a commission be authorized to frame a charter for.....?", shall, by act of the officer responsible for certifying public questions, be submitted to the people at the next general or other established election to occur not less than sixty days thereafter. The resolution of the governing body or the petition shall designate a procedure established by law which is to be followed, or may set forth another procedure. A petition setting forth a special procedure may include the names of the persons to be members of the commission so that a vote to authorize the commission is also a vote to elect the persons named. One or more procedures for the selection of a charter commission and the framing, publication and submission of a charter or of charter amendments shall be provided by law.

The affirmative vote of a majority of the qualified voters voting on the question of charter revision shall give the resolution or petition the status of a self-executing local law.

Specific or general amendments to a charter may be made in any manner provided by this Constitution or by law for the framing and adoption of such charter, or by any other method provided by law or by the charter.

The provisions of this Constitution and all laws concerning local government powers shall be liberally construed in favor of the right of the people to a maximum of home rule compatible with the general welfare of the whole State.

PROPOSAL No. 31 Introduced July 7, 1947

By Mr. Spencer Miller, Jr.
Delegate, Essex County

Referred to Legislative Committee

Bills and Joint Resolutions Must Be Printed in Final Form Three Days Before Passage. (A new paragraph to follow Article IV, Section IV, Paragraph 6.)

Resolved, that the following be agreed upon as part of the proposed new State Constitution:

No bill or joint resolution shall be considered on third reading in either House until it shall have been printed and upon the desks of the members of the House, in its final form, at least three calendar legislative days; unless the Governor shall have certified that an emergency exists requiring its immediate passage and the House shall have ordered its immediate consideration on third reading by a two-thirds vote of all the members.

PROPOSAL No. 32 Introduced July 7, 1947

By Mr. Spencer Miller, Jr.
Delegate, Essex County

Referred to Legislative Committee

Legislative Committees and Committee Reports. (A new paragraph to follow Article IV, Section IV, Paragraph 3.)

Resolved, that the following be agreed upon as part of the proposed new State Constitution:

Each House of the Legislature shall establish such committees as may be necessary for the efficient conduct of its business. Each

committee shall keep, and publish within one week after each meeting, a record of its proceedings. One-fifth of the members of the House shall have the power to relieve a committee of further consideration of a bill or resolution.

PROPOSAL No. 33 Introduced July 7, 1947

By Mr. Spencer Miller, Jr.
Delegate, Essex County

Referred to Legislative Committee

Certain Mandatory Laws Affecting Local Government Prohibited. (A new paragraph to be included in Article IV, Section VII.)

Resolved, that the following be agreed upon as part of the proposed new State Constitution:

The Legislature shall not hereafter enact any law prescribing or determining specific numbers, emoluments, or tenure or pension rights of particular classes of officers or employees of any county, municipality or other civil division of the State, whose salaries, pensions, and other expenses arising from their employment are paid from funds no substantial or commensurate part of which is furnished by the State; *provided,* that this shall not prohibit prescription by State law of nonpecuniary obligations or standards of service or performance, or prohibit the application of any general act for optional plans of organization for local governments or for establishing a comprehensive civil service or pension system affecting all employees of a local government.

PROPOSAL No. 34 Introduced July 7, 1947

By Mr. Spencer Miller, Jr.
Delegate, Essex County

Referred to Legislative Committee

Regulation of Lobbying and Prohibition of Certain Acts by Members of the Legislature. (A new paragraph to be included in Article IV, Section IV.)

Resolved, that the following be agreed upon as part of the proposed new State Constitution:

Lobbying in the legislative chambers of either House shall be prohibited. The Legislature shall pass laws to enforce this provision and for the regulation of lobbying and the registration of lobbyists. No member of either House of the Legislature shall accept any pay, fee, gratuity, or promise of reward or be of counsel

or act as advocate in behalf of any person, group, corporation, or interest engaged in lobbying in this State, registered as a lobby or lobbyist, or liable to register. Any member of either House violating this provision shall forfeit his seat. If he is not expelled by the House, his seat shall be declared vacant by order of the general court after a finding in an appropriate proceeding, which may be instituted on the complaint of any citizen and shall afford the member an opportunity to be heard and present evidence in his own defense.

PROPOSAL No. 35 Introduced July 7, 1947

By MR. SPENCER MILLER, JR.
Delegate, Essex County

Referred to Committee on Executive, Militia and Civil Officers

Succession to Governorship, Acting Governor and Filling a Vacancy in the Office of Governor. (New paragraphs to replace Article V, Paragraph 12 [first sentence], Paragraph 13 and Paragraph 14.)

Resolved, that the following be agreed upon as part of the proposed new State Constitution:

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 sixty 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 sixty 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.

PROPOSAL No. 36 Introduced July 7, 1947

By Mrs. Gene W. Miller
Delegate, Union County

Referred to Committee on Taxation and Finance

A Proposal to be added to Section 7, Article 4, Paragraph 6, to insure the obligation of the State or any of its subdivisions for free public library service to the people of the State.

Resolved, that the following be agreed upon as part of the proposed new State Constitution:

It is hereby declared to be the policy of the State, as a part of its provision for public education, 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.

PROPOSAL No. 37 Introduced July 7, 1947

By Mrs. Jane E. Barus
Delegate, Essex County

Referred to Committee on Rights, Privileges, Amendments and Miscellaneous Provisions

A Proposal to be included in the Article on Amendment. Amendment by petition.

Resolved, that the following be agreed upon as part of the proposed new State Constitution:

The people themselves, by petition, may propose amendments to this Constitution. Petitions shall bear the names of twelve persons and be signed by at least one hundred thousand qualified electors, one thousand of whom shall be from each of a majority of the counties. Each petition shall propose only one amendment and shall contain the full text of the measure.

No amendment may be so submitted to the people until, with attested petitions signed by at least ten thousand qualified electors, it shall have been on file for at least twelve months with the State officer whose duty it is to certify State-wide public questions. Upon receiving such petitions, the officer shall verify them, publish the proposed amendment and transmit certified copies to the Governor and the presiding officer of each House of the Legislature, and arrange for at least one public hearing. If the additional signatures necessary for submission to the people have been obtained and filed with the State officer who has the petitions, that officer shall upon written request of at least three-fourths of the sponsors presented not less than twelve nor more than twenty months after the original petitions were filed, submit the proposed amendment to the people, with an appropriate ballot title, at the next general election held more than ninety days after the request is filed, unless the Legislature in the meantime shall have submitted the amendment to the people in the form called for by the petition.

Any amendment approved by a majority of the qualified electors voting thereon shall become effective thirty days after the election unless otherwise provided in the amendment.

If more than one amendment be submitted, they shall be submitted in such manner and form that the people may vote for or against each amendment separately and distinctly.

The provisions of this section shall be self-executing, but the Legislature shall appropriate money and may enact legislation to facilitate their operation.

PROPOSAL No. 38 Introduced July 7, 1947

By MRS. JANE E. BARUS
Delegate, Essex County

Referred to Committee on Executive, Militia and Civil Officers

A PROPOSAL to be included in the Article on the Executive Branch. Power of the Governor to enforce compliance with the law.

Resolved, that the following be agreed upon as part of the proposed new State Constitution:

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 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.

PROPOSAL No. 39 Introduced July 7, 1947

By MRS. JANE E. BARUS
Delegate, Essex County

Referred to Legislative Committee

A PROPOSAL to be included in the Article on the Legislative Branch. Limited Referendum.

Resolved, that the following be agreed upon as part of the proposed new State Constitution:

Any bill passed by one House of the Legislature may, by order of the Governor issued not less than thirty days nor more than ninety days after passage, be submitted to a referendum. Any such order may be withdrawn by the Governor or by resolution of the House of origin of the bill, and shall be cancelled by enactment of the bill at anytime more than sixty days before the scheduled vote by the people. If the bill be enacted less than sixty days before the vote, the referendum shall have no effect.

Any bill vetoed by the Governor which upon reconsideration fails to receive a two-thirds vote of all the members of each House may be ordered to a referendum by resolution approved by a majority of all the members of each House.

Any bill thus submitted to referendum shall be voted on at the next general election occurring at least sixty days after issuance of the order or resolution and shall take effect as law if approved by a majority of the qualified voters voting thereon.

PROPOSAL No. 40 Introduced July 7, 1947

By MRS. JANE E. BARUS
Delegate, Essex County

Referred to Legislative Committee

A PROPOSAL to be included in the Article on Public Officers. Investigatory Powers.

Resolved, that the following be agreed upon as part of the proposed new State Constitution:

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 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 such office, position 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.

PROPOSAL No. 41 Introduced July 7, 1947

By MR. JOHN J. RAFFERTY
Delegate, Middlesex County

Referred to Legislative Committee

A PROPOSAL to reform Paragraph 11, Section VII, Article IV, of the present Constitution to provide additionally for the aid, care and support of certain persons.

Resolved, that the following be agreed upon as part of the proposed new State Constitution:

11. The Legislature shall not pass private, local or special laws in any of the following enumerated cases, that is to say:

Laying out, opening, altering and working roads or highways.

Vacating any road, town plot, street, alley or public grounds.

Regulating the internal affairs of towns and counties; appointing local officers or commissions to regulate municipal affairs.

Selecting, drawing, summoning or impaneling grand or petit jurors.

Creating, increasing or decreasing the percentage or allowance of public officers during the term for which said officers were elected or appointed.

Changing the law of descent.

Granting to any corporation, association or individual any exclusive privilege, immunity or franchise whatever.

Granting to any corporation, association or individual the right to lay down railroad tracks.

Providing for changes of venue in civil or criminal cases.

Providing for the management and support of free public schools.

The Legislature shall pass general laws providing for the cases enumerated in this paragraph, and for all other cases which, in its judgment, may be provided for by general laws. The Legislature shall pass no special act conferring corporate powers, but they shall pass general laws under which corporations may be organized and corporate powers of every nature obtained, subject, nevertheless, to repeal or alteration at the will of the Legislature.

Nothing in this Constitution shall prevent the Legislature from providing as it may deem proper by general laws:

For the aid, care and support of the needy;

For social security and against the hazards of unemployment, sickness and old age;

For the education and support of persons who are blind, deaf, dumb, physically handicapped or delinquent;

For health and welfare services for children and the needy;

For the aid, care and support of neglected and dependent children and of the needy, sick or aged, through agencies and institutions, other than State or public agencies and institutions, but authorized by a State agency, by payments made therefor on a per capita basis.

PROPOSAL No. 42 Introduced July 7, 1947

By MR. JOHN J. RAFFERTY
Delegate, Middlesex County

Referred to Committee on Taxation and Finance

A PROPOSAL to reform Paragraph 6, Section VII, Article IV, of the present Constitution to provide additionally for the transportation of children to and from any school or institution of learning.

Resolved, that the following be agreed upon as part of the proposed new State Constitution:

6. 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. 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 Legislature may provide for the transportation of children to and from any school or institution of learning.

COMMITTEE ON RIGHTS, PRIVILEGES, AMENDMENTS AND MISCELLANEOUS PROVISIONS

REPORT AND PROPOSAL

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
NEW BRUNSWICK, N. J.

July 31, 1947

To the Delegates Assembled:

The Committee on Rights, Privileges, Amendments and Miscellaneous Provisions presents for your consideration the final draft of its recommendations on the work assigned to it under the rules of the Convention.

We were given the Preamble and five major Articles for study and report. The Articles were:

ARTICLE I—Rights and Privileges
ARTICLE II—Right of Suffrage.
ARTICLE III—Distribution of the Powers of Government.
ARTICLE VIII—General Provisions.
ARTICLE IX—Amendments.

We were also assigned such parts of the schedule as pertain thereto, or as might come under a miscellaneous classification.

PREAMBLE

We are recommending the Preamble as it is now found in our present Constitution.

ARTICLE I

We have made some changes and additions under Article I, Rights and Privileges. They include the following points:

Section 1. The word "men" is changed to "persons."

Section 2. No change from the present Constitution.

Section 3. No change from the present Constitution.

Section 4. The word "racial" has been added to the phrase referring to no religious test as a qualification for any office or trust. After the words "public trust," the remainder of the thought is transferred to a new section.

New Section 5. This section is an all-inclusive statement of prin-

ciple on the enjoyment of civil rights and on the question of no discrimination in civil rights, and is self-explanatory.

New Section 6. No change from the present Constitution.

New Section 7. No change from the present Constitution.

New Section 8. The reference to a jury of six "men" is changed to a jury of six "persons," and the new thought is added that the Legislature may authorize trial of the issue of mental incompetency without a trial by jury.

New Section 9. No change from the present Constitution.

New Section 10. The words "in cases cognizable by Justices of the Peace" have been replaced by "in cases not now prosecuted by indictment."

New Section 11. No change from the present Constitution.

New Section 12. No change from the present Constitution.

New Section 13. No change from the present Constitution.

New Section 14. No change from the present Constitution.

New Section 15. No change from the present Constitution.

New Section 16. No change from the present Constitution.

New Section 17. The words of Section 16 of the present Constitution "but land may be taken for public highways as heretofore, until the Legislature shall direct compensation to be made," have been deleted and a transfer has been made from Article IV, Section 7, Paragraph 8, of the present Constitution, to the remainder of this section which reads: "individuals or private corporations shall not be authorized to take private property for public use, without just compensation first made to the owners."

New Section 18. No change from the present Constitution.

New Section 19. This includes all of Section 18 of the present Constitution. There has been added a sentence relative to privately employed labor and publicly employed labor and their rights.

New Section 20. No change from the present Constitution.

ARTICLE II

We have made some changes and additions under Article II, Elections and Suffrage (changed from Right of Suffrage). They include the following points:

The first two sections are new material and are self-explanatory.

Section 3. The word "male" has been stricken out before the word "citizen." We have also added the phrase, "and upon all questions which may be submitted to a vote of the people."

Section 4. A new thought has been added giving the Legislature the right to provide for absentee voting by members of the armed forces in time of peace.

Section 5. No change from the present Constitution.

Section 6. The word "pauper" has been eliminated.

Section 7. Under this section, Section 2 of Article II of the present Constitution has been rewritten and material formerly included elsewhere in Section 1 transferred to it.

Article III

We have made the following changes under Article III, Distribution of Powers of Government:

Section 1. The word "departments" has been dropped from the present Constitution and the word "branches" has been substituted together with other appropriate language.

Article VIII

We have made some changes under Article VIII, General Provisions.

Section 1 of the present Constitution has been deleted.

Section 1 in our recommendation is the same as Section 2 of the present Constitution.

Section 2. This is a portion of Section 3 of the present Constitution.

Section 3. This is the remainder of Section 3 of the present Constitution. It was the majority opinion of the Committee that the words "countersigned by the Secretary of State" should be included because they felt that the Secretary of State should be named in the final Convention draft as a Constitutional officer.

Section 4. This is entirely new material, which is self-explanatory.

Section 5. This section is self-explanatory.

Article IX

We have made some changes and additions under Article IX, Amendments. They include the following points:

Section 1. In this section, amendments may be proposed in the Senate or General Assembly, and provision is made for public hearings to be held on any amendment or amendments. The remainder of this section is self-explanatory and is a completely new method of passing amendments in the Legislature as compared to the 1844 Constitution.

Section 2. This incorporates the same thought with reference to the subject as in the 1844 Constitution.

Section 3. This calls for publication in every county of the proposed amendment or amendments not less than three months prior to its submission to the people, compared to four months as at present.

Section 4. This provides that the proposed amendment or amendments shall be passed on at the next general election after proper publication.

Section 5. This provides that each amendment shall be submitted separately and distinctly.

Section 6. This provides a method of determining when new amendments to the Constitution will become effective.

Section 7. This provides that a defeated amendment, or any similar one, cannot come up again until the third general election thereafter, as compared to five years in the present Constitution.

ARTICLE X

The Committee has included two sections in its report under Article X, Schedule, acting under the direction of the Convention that our Committee should prepare such parts of the Schedule as apply not only to the Preamble and the five Articles assigned to our Committee, but also any pertaining to general or miscellaneous provisions.

Relative to the proposals referred to our Committee, they were acted upon as follows:

Proposal No. 1. Disapproved.

Proposal No. 2. Disapproved.

Proposal No. 3. Disapproved.

Proposal No. 6. The Committee recommends that this proposal be referred to the Legislature, through the Governor, for appropriate action.

Proposal No. 7. Disapproved.

Proposal No. 8. Approved in part.

Proposal No. 9. Approved.

Proposal No. 11. Disapproved.

Proposal No. 13. Disapproved.

Proposal No. 16. Approved in part.

Proposal No. 17. Disapproved.

Proposal No. 18. Approved in part.

Proposal No. 19. Approved in part.

Proposal No. 26. Approved in part.

Proposal No. 27. Disapproved.

Proposal No. 28. Approved in part.

Proposal No. 29. Approved in part.

Proposal No. 37. Disapproved.

The final draft of the recommendations by the Committee on Rights, Privileges, Amendments and Miscellaneous Provisions is not to be taken as necessarily representing the unanimous opinion of all the members of the Committee on all points. Individual mem-

bers may from time to time express to the whole Convention opinions on various matters different from this report.

Respectfully submitted,

COMMITTEE ON RIGHTS, PRIVILEGES, AMENDMENTS AND MISCELLANEOUS PROVISIONS.

(Signed) JOHN F. SCHENK,
Chairman;
(Signed) ROBERT CAREY,
Vice-Chairman;
(Signed) LAWRENCE N. PARK,
Secretary;
(Signed) JOSEPH A. DELANEY,
(Signed) LELAND F. FERRY,
(Signed) RONALD D. GLASS,
(Signed) MARIE H. KATZENBACH,
(Signed) JOHN H. PURSEL,
(Signed) OLIVER RANDOLPH,
(Signed) FRANCIS A. STANGER, JR.,
(Signed) WESLEY A. TAYLOR.

CONSTITUTIONAL CONVENTION
OF THE
STATE OF NEW JERSEY
New Brunswick, N. J.

July 31, 1947.

To the Delegates Assembled:

Although I join in the general report of the Committee on Rights, Privileges, Amendments and Miscellaneous Provisions because it is a proper report of our Committee actions, I am not in accord with the findings of the Committee on two important matters. In relation to these two matters, I hereby submit a minority report. I am filing this personally, but I have been advised by several of the members of the Committee, whose views coincide with mine, that they are in full accord with my conclusions.

The two matters are:

1. The Committee recommends a new method of amending the Constitution.

The theory behind this action is that the people demand an easier way of amending our Charter of Government. I note no evidence of any such demand. The system of amendment provided in our present Constitution has been in operation over 100 years and has always been found "easy enough" for any amendment purposes. The last three amendments to our Constitution became

a part of it with plenty of ease and without much difficulty.

Several of our Committee voted at our meetings for the maintenance of the amendment method in our present Constitution with one variation; namely, that the voting upon any proposed amendment should take place at a general election instead of at a special election. I now urge and recommend the adoption of this method.

The plan recommended by the Committee makes amending the Constitution as easy as passing an ordinary amendment to the Disorderly Persons Act. If the Committee's proposed amending clause is adopted, there will be little left to safeguard the Constitution as an enduring thing. Further, if the Committee's recommendation is adopted, amendments will possibly be put through without the public knowing that hardly anyone has even been thinking of an amendment. The United States Constitution cannot be amended in such fashion.

2. The second proposition to which I object is our Committee's recommendation that the application of some of the labor organizations to place some specific labor clauses in the Constitution should be adopted. I, and the associates whom I have already referred to, are absolutely opposed to this. We feel that such clauses should have no place whatsoever in the State Constitution. You find no such provisions in the United States Constitution and, as far as I can determine by examination, you can find them in only one State Constitution in our entire land. There is no demand for this except a class demand, and class legislation certainly has no place in a properly drawn Constitution, nor does any legislative matter. The Constitution can soon be destroyed if it is made into a legislative grab-bag. The second sentence of Section 19 of the Committee's proposed Rights and Privileges article should not be adopted.

I, therefore, recommend the rejection of the two matters discussed herein which the Committee has recommended be placed in the new Constitution, and the inclusion of the amending process suggested herein.

Respectfully,

ROBERT CAREY,

Vice-Chairman, Committee on Rights, Privileges, Amendments and Miscellaneous Provisions.

PREAMBLE. We, the people of the State of New Jersey, grateful to Almighty God for the civil and religious liberty which He hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavors to secure and transmit the same unimpaired to succeeding generations, do ordain and establish this Constitution.

ARTICLE ———

RIGHTS AND PRIVILEGES

1. All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.

2. All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right at all times to alter or reform the same, whenever the public good may require it.

3. No person shall be deprived of the inestimable privilege of worshipping Almighty God in a manner agreeable to the dictates of his own conscience; nor under any pretence whatever be compelled to attend any place of worship contrary to his faith and judgment; nor shall any person be obliged to pay tithes, taxes, or other rates for building or repairing any church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right, or has deliberately and voluntarily engaged to perform.

4. There shall be no establishment of one religious sect in preference to another; no religious or racial test shall be required as a qualification for any office or public trust.

5. No person shall be denied the enjoyment of any civil right, nor be discriminated against in any civil right on account of religious principles, race, color, ancestry or national origin.

6. Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press. In all prosecutions or indictments for libel, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and fact.

7. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue but upon probable

cause, supported by oath or affirmation, and particularly describing the place to be searched and the papers and things to be seized.

8. The right of trial by jury shall remain inviolate; but the Legislature may authorize the trial of civil suits, when the matter in dispute does not exceed fifty dollars, by a jury of six persons; and the Legislature may authorize the trial of the issue of mental incompetency without a trial by jury.

9. In all criminal prosecutions the accused shall have the right to a speedy and public trial by an impartial jury; to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel in his defense.

10. No person shall be held to answer for a criminal offense, unless on the presentment or indictment of a grand jury, except in cases of impeachment or in cases not now prosecuted by indictment, or arising in the army or navy, or in the militia, when in actual service in time of war or public danger.

11. No person shall, after acquittal, be tried for the same offense. All persons shall, before conviction, be bailable by sufficient surities, except for capital offenses, when the proof is evident or presumption great.

12. The privilege of the writ of habeas corpus shall not be suspended, unless in case of rebellion or invasion the public safety may require it.

13. The military shall be in strict subordination to the civil power.

14. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war except in a manner prescribed by law.

15. Treason against the State shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

16. Excessive bail shall not be required, excessive fines shall not be imposed, and cruel and unusual punishments shall not be inflicted.

17. Private property shall not be taken for public use, without just compensation; individuals or private corporations shall not be authorized to take private property for public use, without just compensation first made to the owners.

18. No person shall be imprisoned for debt in any action, or on any judgment founded upon contract, unless in cases of fraud; nor any person be imprisoned for a militia fine in time of peace.

19. The people have the right freely to assemble together, to consult for the common good, to make known their opinions to their representatives, and to petition for redress of grievances. The right of privately employed labor to organize and bargain collectively, and the right of publicly employed labor to organize and present to and make known to the State, or any of its political subdivisions, their grievances and requests through representatives of their own choosing, shall not be impaired.

20. This enumeration of rights and privileges shall not be construed to impair or deny others retained by the people.

ARTICLE ———

Elections and Suffrage

1. General elections shall be held annually on the first Tuesday after the first Monday in November; but the time of holding such elections may be altered by law. The Governor and members of the Legislature and such local officers as may be provided by law shall be chosen at general elections.

2. All questions, which are to be submitted to a vote of the people of the entire State, shall be submitted at general elections.

3. Every citizen of the United States, of the age of twenty-one years, who shall have been a resident of this State one year, and of the county in which he claims his vote five months, next before the election, shall be entitled to vote for all officers that now are or hereafter may be elective by the people, and upon all questions which may be submitted to a vote of the people.

4. In time of war no elector in the actual military service of the State, or of the United States, in the armed forces thereof, shall be deprived of his vote by reason of absence from his election district; the Legislature may provide for absentee voting by members of the armed forces in time of peace. The Legislature shall have power to provide the manner in which and the time and place at which such absent electors may vote, and for the return and canvass of their votes in the election district in which they respectively reside.

5. No person in the military, naval or marine service of the United States shall be considered a resident in this State, by being stationed in any garrison, barrack, or military or naval place or station within this State.

6. No idiot or insane person shall enjoy the right of an elector.

7. The Legislature may pass laws to deprive persons of the right of suffrage who shall be convicted of such crimes as may be designated by the Legislature; any person convicted of any such crime, and who may be pardoned or otherwise restored by law to the right of suffrage shall enjoy the right of an elector.

ARTICLE ——

Distribution of the Powers of Government

1. The powers of the government shall be divided among three distinct branches, the legislative, executive, and judicial. No person or persons belonging to or constituting one of these branches shall exercise any of the powers properly belonging to either of the others, except as expressly provided in this Constitution.

ARTICLE ——

General Provisions

1. The seal of the State shall be kept by the Governor, or person administering the government, and used by him officially, and shall be called the great seal of the State of New Jersey.

2. All grants and commissions shall be in the name and by the authority of the State of New Jersey, sealed with the great seal, signed by the Governor or person administering the government, and countersigned by the Secretary of State, and shall run thus: "The State of New Jersey, to ....., Greeting."

3. All writs shall be in the name of the State; and all indictments shall conclude in the following manner, viz.: "against the peace of this State, the government and dignity of the same."

4. Wherever in this Constitution the term "man," "men," "person," "persons," "people" or "peoples" is used, the same shall be deemed and taken to include both sexes.

5. This Constitution shall take effect and go into operation on the day of in the year of our Lord one thousand nine hundred and

ARTICLE ——

Amendments

1. Any specific amendment or amendments to the Constitution may be proposed in the Senate or General Assembly. Prior to a vote in the house in which such amendment or amendments are first introduced, the same shall be printed and on the desks of the members thereof at least twenty calendar days, and thereafter a public hearing shall be held thereon. If the proposed amendment or amendments shall be agreed to by a three-fifths vote of all the members of each of the two houses, then the same shall be presented to the Governor. If the Governor approves the proposed amendment or amendments or if he fails to take any action thereon within fifteen days, the same shall be submitted to the people. If the Governor vetoes the proposed amendment or amendments, the same shall not be submitted to the people unless the Legislature shall repass the proposed amendment or amendments by a two-thirds vote of all the members of each of the two houses.

2. Such proposed amendment or amendments shall be entered on the journals of each of the two houses with the yeas and nays taken thereon.

3. The Legislature shall cause to be published such proposed amendment or amendments once in at least one newspaper of each county, if any be published therein, not less than three months prior to submission to the people.

4. Such proposed amendment or amendments shall then be submitted to the people at the next general election in the form provided by the Legislature.

5. If more than one amendment be submitted, they shall be submitted in such manner and form that the people may vote for or against each amendment separately and distinctly.

6. If at the election the people shall approve such proposed amendment or amendments, or any of them, by a majority of the legally qualified voters of this State voting thereon, such amendment or amendments, or any of them, so approved shall become part of the Constitution on the thirtieth day after such general election unless otherwise provided in the amendment or amendments, or any of them, thus approved.

7. If at the election the people shall not approve any proposed amendment, said proposed amendment or one to effect the same or substantially the same change in the Constitution shall not be submitted to the people before the third general election thereafter.

ARTICLE ———

SCHEDULE

1. This Constitution shall supersede the Constitution of 1844 as amended, and the Legislature shall enact all laws necessary to make this Constitution fully effective.

2. The adoption of this Constitution or the taking effect thereof or of any Articles thereof shall not of itself affect the tenure, term or compensation of any person holding any State civil office or State position or employment at the time when the same is adopted or takes effect, except as provided in this Constitution.

COMMITTEE PROPOSAL No. 1-1

Introduced .....

By JOHN T. SCHENK

Chairman, Committee on Rights, Privileges, Amendments and Miscellaneous Provisions

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PREAMBLE. We, the people of the State of New Jersey, grateful to Almighty God for the civil and religious liberty which He hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavors to secure and transmit the same unimpaired to succeeding generations, do ordain and establish this Constitution.

ARTICLE ——

RIGHTS AND PRIVILEGES

1. All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.

2. All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right at all times to alter or reform the same, whenever the public good may require it.

3. No person shall be deprived of the inestimable privilege of worshiping Almighty God in a manner agreeable to the dictates of his own conscience; nor under any pretence whatever be compelled to attend any place of worship contrary to his faith and judgment; nor shall any person be obliged to pay tithes, taxes, or other rates for building or repairing any church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right, or has deliberately and voluntarily engaged to perform.

4. There shall be no establishment of one religious sect in preference to another; no religious or racial test shall be required as a qualification for any office or public trust.

5. No person shall be denied the enjoyment of any civil right, nor be discriminated against in any civil right on account of religious principles, race, color, ancestry or national origin.

6. Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press. In all prosecutions or indictments for libel, the truth may be given in evidence to the jury; and if it shall appear to the

jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

7. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the papers and things to be seized.

8. The right of trial by jury shall remain inviolate; but the Legislature may authorize the trial of civil suits, when the matter in dispute does not exceed fifty dollars, by a jury of six persons, and the Legislature may authorize the trial of the issue of mental incompetency without a trial by jury.

9. In all criminal prosecutions the accused shall have the right to a speedy and public trial by an impartial jury; to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel in his defense.

10. No person shall be held to answer for a criminal offense, unless on the presentment or indictment of a grand jury, except in cases of impeachment or in cases not now prosecuted by indictment, or arising in the army or navy, or in the militia, when in actual service in time of war or public danger.

11. No person shall, after acquittal, be tried for the same offense. All persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses, when the proof is evident or presumption great.

12. The privilege of the writ of habeas corpus shall not be suspended, unless in case of rebellion or invasion the public safety may require it.

13. The military shall be in strict subordination to the civil power.

14. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war except in a manner prescribed by law.

15. Treason against the State shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the some overt act, or on confession in open court.

16. Excessive bail shall not be required, excessive fines shall not be imposed, and cruel and unusual punishments shall not be inflicted.

17. Private property shall not be taken for public use, without

just compensation; individuals or private corporations shall not be authorized to take private property for public use, without just compensation first made to the owners.

18. No person shall be imprisoned for debt in any action, or on any judgment founded upon contract, unless in cases of fraud; nor shall any person be imprisoned for a militia fine in time of peace.

19. The people have the right freely to assemble together, to consult for the common good, to make known their opinions to their representatives, and to petition for redress of grievances. The right of privately employed labor to organize and bargain collectively, and the right of publicly employed labor to organize and present to and make known to the State, or any of its political subdivisions, their grievances and requests through representatives of their own choosing, shall not be impaired.

20. This enumeration of rights and privileges shall not be construed to impair or deny others retained by the people.

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3. Every citizen of the United States, of the age of twenty-one years, who shall have been a resident of this State one year, and of the county in which he claims his vote five months, next before the election, shall be entitled to vote for all officers that now are or hereafter may be elective by the people, and upon all questions which may be submitted to a vote of the people.

4. In time of war no elector in the actual military service of the State, or of the United States, in the armed forces thereof, shall be deprived of his vote by reason of absence from his election district; the Legislature may provide for absentee voting by members of the armed forces in time of peace. The Legislature shall have power to provide the manner in which and the time and place at which such absent electors may vote, and for the return and canvass of their votes in the election district in which they respectively reside.

5. No person in the military, naval or marine service of the United States shall be considered a resident in this State, by being stationed in any garrison, barrack, or military or naval place or station within this State.

6. No idiot or insane person shall enjoy the right of an elector.

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ARTICLE ———

Distribution of the Powers of Government

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2. All grants and commissions shall be in the name and by the authority of the State of New Jersey, sealed with the great seal, signed by the Governor or person administering the government, and countersigned by the Secretary of State, and shall run thus: "The State of New Jersey, to....., Greeting."

3. All writs shall be in the name of the State; and all indictments shall conclude in the following manner, viz.: "against the peace of this State, the government and dignity of the same."

4. Wherever in this Constitution the term "man," "men," "person," "persons" "people," or "peoples" is used, the same shall be deemed and taken to include both sexes.

5. This Constitution shall take effect and go into operation on the day of in the year of our Lord one thousand nine hundred and

ARTICLE ———

Amendments

1. Any specific amendment or amendments to the Constitution may be proposed in the Senate or General Assembly. Prior to a vote in the house in which such amendment or amendments are first introduced, the same shall be printed and on the desks of the members thereof at least twenty calendar days, and thereafter a public hearing shall be held thereon. If the proposed amendment or amendments shall be agreed to by a three-fifths vote of all the members of each of the two houses, then the same shall be presented to the Governor. If the Governor approves the proposed amend-

ment or amendments or if he fails to take any action thereon within fifteen days, the same shall be submitted to the people. If the Governor vetoes the proposed amendment or amendments, the same shall not be submitted to the people unless the Legislature shall repass the proposed amendment or amendments by a two-thirds vote of all the members of each of the two houses.

2. Such proposed amendment or amendments shall be entered on the journals of each of the two houses with the yeas and nays taken thereon.

3. The Legislature shall cause to be published such proposed amendment or amendments once in at least one newspaper of each county, if any be published therein, not less than three months prior to submission to the people.

4. Such proposed amendment or amendments shall then be submitted to the people at the next general election in the form provided by the Legislature.

5. If more than one amendment be submitted, they shall be submitted in such manner and form that the people may vote for or against each amendment separately and distinctly.

6. If at the election the people shall approve such proposed amendment or amendments, or any of them, by a majority of the legally qualified voters of this State voting thereon, such amendment or amendments, or any of them, so approved shall become part of the Constitution on the thirtieth day after such general election unless otherwise provided in the amendment or amendments, or any of them, thus approved.

7. If at the election the people shall not approve any proposed amendment, said proposed amendment or one to effect the same or substantially the same change in the Constitution shall not be submitted to the people before the third general election thereafter.

ARTICLE ——

SCHEDULE

1. This Constitution shall supersede the Constitution of 1844 as amended, and the Legislature shall enact all laws necessary to make this Constitution fully effective.

2. The adoption of this Constitution or the taking effect thereof or of any Articles thereof shall not of itself affect the tenure, term or compensation of any person holding any State civil office or State position or employment at the time when the same is adopted or takes effect, except as provided in this Constitution.

AMENDMENTS TO COMMITTEE PROPOSAL No. 1-1

AMENDMENT No. 1 to COMMITTEE PROPOSAL No. 1-1

Introduced by William J. Orchard

On page 4 at end of paragraph 19 (line 7), add the following so that the same shall become the last sentence of paragraph 19 of the Article on Rights and Privileges:

"Publicly employed labor and privately employed labor in public utilities are prohibited from engaging in strikes or work stoppages."

AMENDMENT No. 2 to COMMITTEE PROPOSAL No. 1-1

Introduced by Wayne D. McMurray and John L. Montgomery

Be it resolved, that paragraph 3 of Article . ., "Elections and Suffrage," be, and the same hereby is, amended to read:

"3. Every citizen of the United States, of the age of eighteen years, who shall have been a resident of this State one year, and of the county in which he claims his vote five months, next before the election, shall be entitled to vote for all officers that now are or hereafter may be elective by the people, and upon all questions which may be submitted to a vote of the people."

AMENDMENT No. 3 to COMMITTEE PROPOSAL No. 1-1

Introduced by Robert Carey

I wish to amend section 19 of the Proposal, under title of "Rights and Privileges," submitted by the Committee on Rights, to read as follows:

"19. The people have the right freely to assemble together to consult for the common good, to make known their opinions to their representatives, and to petition for redress of grievances."

The adoption of the above amendment will reject the inclusion in this Article of the provisions relating to the right of labor to bargain collectively, etc. The part of the Article to be retained is a verbatim copy of the Article on this subject in our Federal and State Constitutions for over a century. It belongs in the Bill of Rights. The labor clause is entirely new and has no rightful place in the Constitution, and serves no useful constitutional purpose.

AMENDMENT No. 4 to COMMITTEE PROPOSAL No. 1-1

Introduced by Robert Carey

Amendment to Article . ., entitled "Amendments," as set forth on page 16 of the Report and Proposal of the Committee on Rights, Privileges, Amendments, etc.

The Article sets up a new method of amending the Constitution. It replaces the Amendment Article in the 1844 Constitution by cutting down amendment time to less than one year, etc. I propose the adoption of the present system of amendment, with one slight change, namely, the voting on the amendment to be held at general elections instead of special elections.

The amendment to read as follows (as amended):

"Any specific amendment or amendments to the Constitution may be proposed in the Senate or General Assembly, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays taken thereon, and referred to the Legislature then next to be chosen, and shall be published for three months previous to making such choice, in at least one newspaper of each county, if any be published therein; and if in the Legislature, next chosen as aforesaid, such proposed amendment or amendments, or any of them, shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the Legislature to submit such proposed amendment or amendments, or such of them as may have been agreed to as aforesaid by the two Legislatures, to the people, in such manner and at a general election, at least four months after the adjournment of the Legislature, as the Legislature shall prescribe and provide, and if the people at such general election shall approve and ratify such amendment or amendments, or any of them, by a majority of the electors qualified to vote for members of the Legislature voting thereon, such amendment or amendments so approved and ratified shall become part of the Constitution; provided that if more than one amendment be submitted that it be submitted in such manner and form that the people may vote for or against each amendment separately and distinctly; but no amendment or amendments covering the same subject matter shall be submitted to the people by the Legislature oftener than once in three years."

AMENDMENT No. 5 to COMMITTEE PROPOSAL No. 1-1

Introduced by Wesley A. Taylor

A proposal to amend Committee Proposal No. 1-1 by substituting the following in place of the last sentence in paragraph 19 of the Article on Rights and Privileges, to wit lines 3-7 on page 4 of the Proposal:

"Employees of private employers shall have the right to organize and to bargain collectively, through representatives of their own choice, with their employers, concerning wages, hours and other

conditions of employment; employees of the State or any of its political subdivisions or other public agencies shall have the right to organize and, subject to law, the right to bargain collectively through representatives of their own choice, with their employers, concerning wages, hours and other conditions of employment."

AMENDMENT to AMENDMENT No. 5 to COMMITTEE PROPOSAL No. 1-1

Introduced by Milton C. Lightner

A proposal to amend Amendment No. 5 by substituting for paragraph 19 of the Article on Rights and Privileges the following:

"Employees shall have the right to organize and to bargain collectively through representatives of their own choice concerning wages, hours and other conditions of employment. In the case of employees of the State or any of its political subdivisions or other public agencies the right to bargain shall apply to wages, hours and other conditions of employment not fixed by law and in respect to which such public employers may, under law, negotiate with such employees."

AMENDMENT No. 6 to COMMITTEE PROPOSAL No. 1-1

Introduced by Robert Carey

Amendment on modification of paragraph 19, Article... under the title of "Bill of Rights," as recommended and proposed by the Rights and Privileges Committee.

A motion is hereby made to amend paragraph 19 above referred to by striking out all of said paragraph commencing with the words "The right of privately employed labor....," leaving paragraph 19 concluded with the word "grievances."

The effectiveness of this is to strike out all references to labor's right to organize and bargain collectively. This is all matter that belongs to the realm of legislation.

AMENDMENT No. 7 to COMMITTEE PROPOSAL No. 1-1

Introduced by Arthur W. Lewis

Amend Committee Proposal No. 1-1, page 2, paragraph 8, line 5, by inserting a semicolon after the word "jury" and adding the following:

"the Legislature may provide, however, by law, that a verdict may be rendered by not less than five-sixths of jury in any civil case."

AMENDMENT No. 8 to COMMITTEE PROPOSAL No. 1-1

Introduced by Lawrence N. Park and Christian J. Jorgensen [1]

In paragraph 1, page 6, of "Amendments," Article . . . of Proposal No. 1-1, line 7, after the word "be" at the end of the line, add the words "submitted to the people."

In same paragraph, same page, strike out lines 8, 9, 10, 11, 12, 13, and 15.

AMENDMENT No. 9 to COMMITTEE PROPOSAL No. 1-1

Introduced by Spencer Miller, Jr.

Amend on page 4, paragraph 19 of Article . . ., "Rights and Privileges," line 7, by inserting at the end of the paragraph the following new sentence:

> "Nothing contained in this paragraph shall be construed to apply to, affect or in any manner impair the operation of, any law heretofore or hereafter adopted which imposes any method of procedure for the determination of disputes between any public utility and the employees therein."

AMENDMENT No. 10 to COMMITTEE PROPOSAL No. 1-1

Introduced by Spencer Miller, Jr.

"1. Any specific amendment to the Constitution may be proposed in the Senate or the General Assembly. Prior to a vote in the house in which such amendment or amendments are introduced, the same shall be printed and on the desks of the members of both houses of the Legislature at least twenty calendar days, and thereafter a public hearing shall be held thereon. If the proposed amendment or amendments shall be agreed to by a majority of all the members of the house in which proposed, then the presiding officer of said house is authorized to call, and shall call a joint session of both houses of the Legislature to consider such amendment or amendments. If the proposed amendment or amendments shall be agreed to by a three-fifths vote of all the members of the joint session, then the same shall be submitted to the people."

(Other sections as published.)

AMENDMENT No. 11 to COMMITTEE PROPOSAL No. 1-1

Introduced by Frank G. Schlosser

Resolved, that the following amendment to paragraph 7, "Rights and Privileges," Article . . ., be agreed upon:

[1] Although the name of Marie H. Katzenbach did not appear on the mimeographed amendment distributed to the delegates, she subsequently announced that she co-sponsored the amendment.

Amend page 2, paragraph 7, line 5, by adding thereto the sentence following:

"Nothing obtained in violation hereof shall be received into evidence."

AMENDMENT No. 12 to COMMITTEE PROPOSAL No. 1-1

Introduced by Frank G. Schlosser

Resolved, that the following amendment to the Bill of Rights, Article . . ., be agreed upon:

Amend page 4, after line 7 of paragraph 19, by adding thereto a new paragraph reading:

"Prosecution for common law crimes is abolished and no person shall be held to answer for any criminal offense unless, before commission of the fact, such crime shall have been created and defined by statute."

AMENDMENT No. 13 to COMMITTEE PROPOSAL No. 1-1

Introduced by Frank G. Schlosser

Resolved, that the following amendment to paragraph 10, "Rights and Privileges," Article . . ., be agreed upon:

Amend page 3, paragraph 10, line 2, by striking out the words: "presentment or."

AMENDMENT No. 14 to COMMITTEE PROPOSAL No. 1-1

Introduced by William J. Orchard

On page 4, line 7 of paragraph 19, under the Article on "Rights and Privileges," strike out the words "shall not be impaired" and substitute therefor the words "are recognized."

AMENDMENT No. 15 to COMMITTEE PROPOSAL No. 1-1

Introduced by Milton C. Lightner

Amend Article . . ., "Elections and Suffrage," paragraph 4, lines 3 and 4, by changing the semicolon after the word "district" to a period, and by striking out the words "The Legislature may provide for absentee voting by members of the armed forces in time of peace" and inserting in lieu thereof the words:

"The Legislature may, by general law, provide a manner in which, and the time and place at which, qualified voters who may, on the occurrence of any general election, be unavoidably absent from the state or county of their residence because they are inmates of a soldiers' and sailors' home or of a United States veterans' bureau hospital, or because their duties, occupation or business require them to be elsewhere within the United States. may vote."

AMENDMENT No. 16 to COMMITTEE PROPOSAL No. 1-1

Introduced by Milton C. Lightner

Amend Article . . ., "Rights and Privileges," paragraph 19, lines 3 through 7, by striking out the words "The right of privately employed labor to organize and bargain collectively, and the right of publicly employed labor to organize and present to and make known to the State, or any of its political subdivisions, their grievances and requests through representatives of their own choosing, shall not be impaired," and inserting in lieu thereof the words:

"Employees shall have the right to organize and to bargain collectively through representatives of their own choosing."

AMENDMENT No. 17 to COMMITTEE PROPOSAL No. 1-1

Introduced by Robert Carey

Amendment to Article . . ., entitled "Amendments," as set forth on page 16 of the Report and Proposal of the Committee on Rights, Privileges, Amendments, etc.

The Article sets up a new method of amending the Constitution. It replaces the Amendment Article in the 1844 Constitution by cutting down amendment time to less than one year, etc. I propose the adoption of the present system of amendment, with one slight change, namely the voting on the amendment to be held at general elections instead of special elections.

The amendment to read as follows (as amended):

"Any specific amendment or amendments to the Constitution may be proposed in the Senate or General Assembly, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays taken thereon, and referred to the Legislature then next to be chosen, and shall be published for three months previous to making such choice, in at least one newspaper of each county, if

any be published therein; and if in the Legislature, next chosen as aforesaid, such proposed amendment or amendments, or any of them, shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the Legislature to submit such proposed amendment or amendments, or such of them as may have been agreed to as aforesaid by the two Legislatures, to the people, in such manner and at a general election, at least four months after the adjournment of the Legislature, as the Legislature shall prescribe and provide, and if the people at such general election shall approve and ratify such amendment or amendments, or any of them, by a majority of the electors qualified to vote for members of the Legislature voting thereon, such amendment or amendments so approved and ratified shall become part of the Constitution; provided that if more than one amendment be submitted, that it be submitted in such manner and form that the people may vote for or against each amendment separately and distinctly; but no amendment or amendments covering the same subject matter shall be submitted to the people by the Legislature oftener than once in three years."

AMENDMENT No. 18 to COMMITTEE PROPOSAL No. 1-1

Introduced by David Van Alstyne, Jr.

"Revision

Without limiting the inherent right of the people at all times to revise their Constitution in a manner of their own choosing, but in order to provide a convenient method for the exercise of that right, the Legislature shall submit to the people at least once every 25 years the question as to whether or not there shall be a Convention to prepare and submit a revision to the Constitution; provided, that before or when submitting the question to the people, the Legislature may by law limit the Convention so as to prevent changes in the basis of representation in the Senate and General Assembly or in the geographical boundaries of counties.

If at the expiration of the twenty-fifth year after the last revision of the Constitution the country shall be at war or there shall be a crisis or emergency the Legislature may defer the submission of such referendum for a further period of three years if in its judgment the public welfare so requires. It shall be the duty of the Legislature to exact legislation to facilitate the holding of such Convention, if authorized by a vote of the people.

No Constitution adopted by such Convention shall have validity until submitted to and approved by a majority of the electors of the State voting at the next general election thereafter."

AMENDMENT TO AMENDMENT No. 18 to COMMITTEE PROPOSAL No. 1-1

Introduced by John F. Schenk

In paragraph 1, line 8 strike the words "before or." [1]

In paragraph 1, line 10, strike the word "may" and insert in lieu thereof the word "shall."

In paragraph 1, line 13, at the end of the word "counties," strike the period and insert a comma and add the words "unless otherwise provided in the law submitting the question to the people."

In paragraph 2, line 5, strike the word "three" and insert in lieu thereof the words "of not more than five."

In paragraph 2, line 7, strike the word "exact" and substitute in lieu thereof the word "enact."

In paragraph 3, line 1, strike the word "adopted" and insert in lieu thereof the word "proposed."

AMENDED AMENDMENT No. 18 to COMMITTEE PROPOSAL No. 1-1

Introduced by David Van Alstyne, Jr.

"Revision

Without limiting the inherent right of the people at all times to revise their Constitution in a manner of their own choosing, but in order to provide a convenient method for the exercise of that right, the Legislature shall submit to the people at least once every 25 years the question as to whether or not there shall be a Convention to prepare and submit a revision to the Constitution; provided, that when submitting the question to the people, the Legislature shall by law limit the Convention so as to prevent changes in the basis of representation in the Senate and General Assembly or in the geographical boundaries of counties, unless otherwise provided in the law submitting the question to the people.

If at the expiration of the twenty-fifth year after the last revision of the Constitution the country shall be at war or there shall be a crisis or emergency the Legislature may defer the submission of such referendum for a further period of not more than five years if in its judgment the public welfare so requires. It shall be the duty of the Legislature to enact legislation to facilitate the holding of such Convention, if authorized by a vote of the people.

No Constitution proposed by such Convention shall have validity until submitted to and approved by a majority of the electors of the State voting at the next general election thereafter."

[1] The line references were to the mimeographed amendment distributed to the delegates. Although these line references do not accord with the printed text immediately preceding, the changes sought are clear and are included in the Amended Amendment which follows.

AMENDMENT No. 19 to COMMITTEE PROPOSAL No. 1-1

Introduced by Oliver Randolph

Resolved, that the following amendment to the above Proposal for a new Constitution be agreed upon:

Amend Article . . ., paragraph 5, on page 2, as follows:

Strike out paragraph 5 of Article . . ., on page 2 and insert the following:

"No person shall be denied the equal protection of the laws of this State or any political subdivision or agency thereof, nor shall any person be deprived of life, liberty, or property without due process of law. Neither the State nor any political subdivision or agency thereof, nor any person, group, association, corporation, or institution shall subject any person, because of race, color, religion, or national origin to discrimination in the enjoyment of any civil rights; and any writing, agreement, or practice in violation thereof shall be void and unenforceable. Such civil rights shall include, in addition to the rights and privileges enumerated in this Article, the right to be free from discrimination, because of race, color, religion, or national origin in obtaining employment or education by other than religious corporations or associations, in obtaining public accommodations, in acquiring or enjoying any property, and in engaging in any business, trade, or profession, or otherwise pursuing a livelihood; and such other civil rights as may be recognized by statute or common law."

AMENDMENT No. 20 to COMMITTEE PROPOSAL No. 1-1

Introduced by Oliver Randolph and George H. Walton

Resolved, that the following shall become paragraph 5, Article . . . , page 2 of Committee Proposal No. 1-1:

"No person shall be denied the enjoyment of any civil or military right nor be discriminated against in any civil right or segregated in the militia or public schools, on account of religious principles, race, color, ancestry or national origin."

AMENDMENT No. 21 to COMMITTEE PROPOSAL No. 1-1

Introduced by John F. Schenk

Amend paragraph 19, "Rights and Privileges," as follows:

After the word "impaired" place a semicolon and add the following:

"The exercise and use of the labor rights herein set forth are and shall be subject to, and may be regulated by, the law."

AMENDMENT No. 22 to COMMITTEE PROPOSAL No. 1-1

Introduced by George H. Walton

Amend page 6, lines 5 to 15 of paragraph 1 of the Article on "Amendments," by striking out the last three sentences of paragraph 1 and inserting in lieu thereof the following:

"If the proposed amendment or amendments or any of them shall be agreed to by three-fifths of all the members of each of the two houses, the same shall be submitted to the people. If the same or any of them shall be agreed to by less than three-fifths but nevertheless by a majority of all the members of each of the two houses, such proposed amendment or amendments shall be referred to the Legislature in the next legislative year; and if in that year the same or any of them shall be agreed to by a majority of all the members of each of the two houses, then the amendment or amendments so agreed to shall be submitted to the people."

The purpose of the above is to permit constitutional amendments to be proposed in either one of two ways:

(1) by a three-fifths vote of all the members of both houses of the Legislature; or

(2) by a majority vote of all the members of both houses in two successive legislative years.

AMENDMENT No. 23 to COMMITTEE PROPOSAL No. 1-1

Introduced by Alfred C. Clapp

Amend the Schedule of Committee Proposal No. 1-1, page 7, by adding a paragraph 3 reading as follows:

"3. All law, statutory and otherwise, all rules and regulations of administrative bodies and all rules of courts in force and effect at the time this Constitution or any Articles thereof take effect shall remain in full force and effect until they expire or are superseded, altered or repealed. All writs, actions, causes of action, prosecutions, contracts, claims and rights of individuals and of bodies corporate, and of the State, and all charters and franchises shall continue unabated and unaffected notwithstanding the taking effect of any of the Articles of this Constitution, and all indictments which have been found, for any crime or offense committed, before the taking effect of the Constitution or any Article thereof may be proceeded upon notwithstanding the taking effect thereof. The Supreme Court shall make such general and special rules and orders as may be necessary for the transfer of all suits, proceedings and indictments to the appropriate court. Indictments may be found and proceeded upon,

after the Judicial Article of this Constitution takes effect, for crimes or offenses committed before said Article shall take effect, in the court succeeding to the jurisdiction of the court in which they could have been found and proceeded upon if such Article had not taken effect."

AMENDMENT No. 24 to COMMITTEE PROPOSAL No. 1-1

Introduced by Arthur W. Lewis

Amend Committee Proposal No. 1-1, page 2, paragraph 8, line 3; after the semicolon following the word "persons" add the following:

"the legislature may provide, however, by law, that a verdict may be rendered by not less than three-fourths of the jury in any civil case."

AMENDMENT No. 25 to COMMITTEE PROPOSAL No. 1-1

Introduced by John F. Schenk

Amend paragraph 19, page 4, line 3, by striking out the second sentence as submitted and substituting therefor the following:

"Privately employed persons shall have the right to organize and bargain collectively. Publicly employed persons shall have the right to organize, present to and make known to the State, or any of its political subdivisions or agencies, their grievances and proposals through representatives of their own choosing."

AMENDMENT No. 26 to COMMITTEE PROPOSAL No. 1-1

Introduced by John F. Schenk

Amend page 4, paragraph 1, by striking out on lines 3 and 4 the words "and such local officers as may be provided by law."

Insert new sentence on line 4 reading:

"Local elective officers shall be chosen at general elections, or at such other times as the Legislature by law shall provide."

[OFFICIAL COPY REPRINT]

PROPOSAL No. 1-1

ADOPTED AUGUST 26, 1947

PREAMBLE. We, the people of the State of New Jersey, grateful to Almighty God for the civil and religious liberty which He hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavors to secure and transmit the same unimpaired to succeeding generations, do ordain and establish this Constitution.

ARTICLE ——

RIGHTS AND PRIVILEGES

1. All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness.

2. All political power is inherent in the people. Government is instituted for the protection, security and benefit of the people, and they have the right at all times to alter or reform the same, whenever the public good may require it.

3. No person shall be deprived of the inestimable privilege of worshiping Almighty God in a manner agreeable to the dictates of his own conscience; nor under any pretence whatever be compelled to attend any place of worship contrary to his faith and judgment; nor shall any person be obliged to pay tithes, taxes, or other rates for building or repairing any church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right, or has deliberately and voluntarily engaged to perform.

4. There shall be no establishment of one religious sect in preference to another; no religious or racial test shall be required as a qualification for any office or public trust.

5. No person shall be denied the enjoyment of any civil or military right, nor be discriminated against in the exercise of any civil or military right, nor be segregated in the militia or public schools, because of religious principles, race, color, ancestry or national origin.

6. Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech

or of the press. In all prosecutions or indictments for libel, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

7. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the papers and things to be seized.

8. No person shall be held to answer for a criminal offense, unless on the presentment or indictment of a grand jury, except in cases of impeachment, or in cases now prosecuted without indictment, or arising in the army or navy or in the militia, when in actual service in time of war or public danger.

9. The right of trial by jury shall remain inviolate; but the Legislature may authorize the trial of civil causes, when the matter in dispute does not exceed fifty dollars, by a jury of six persons. The Legislature in any civil cause may provide that a verdict may be rendered by not less than five-sixths of the jury. The Legislature may authorize the trial of the issue of mental incompetency without a jury.

10. In all criminal prosecutions the accused shall have the right to a speedy and public trial by an impartial jury; to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel in his defense.

11. No person shall, after acquittal, be tried for the same offense. All persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses, when the proof is evident or presumption great.

12. Excessive bail shall not be required, excessive fines shall not be imposed, and cruel and unusual punishments shall not be inflicted.

13. No person shall be imprisoned for debt in any action, or on any judgment founded upon contract, unless in cases of fraud; nor shall any person be imprisoned for a militia fine in time of peace.

14. The privilege of the writ of habeas corpus shall not be suspended, unless in case of rebellion or invasion the public safety may require it.

15. The military shall be in strict subordination to the civil power.

16. No soldier shall, in time of peace, be quartered in any house

without the consent of the owner; nor in time of war, except in a manner prescribed by law.

17. Treason against the State shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

18. The people have the right freely to assemble together, to consult for the common good, to make known their opinions to their representatives, and to petition for redress of grievances.

19. Persons in private employment shall have the right to organize and bargain collectively. Persons in public employment shall have the right to organize, present to and make known to the State, or any of its political subdivisions or agencies, their grievances and proposals through representatives of their own choosing.

20. Private property shall not be taken for public use without just compensation. Individuals or private corporations shall not be authorized to take private property for public use without just compensation first made to the owners.

21. This enumeration of rights and privileges shall not be construed to impair or deny others retained by the people.

ARTICLE ——

Elections and Suffrage

1. General elections shall be held annually on the first Tuesday after the first Monday in November; but the time of holding such elections may be altered by law. The Governor and members of the Legislature shall be chosen at general elections. Local elective officers shall be chosen at general elections or at such other times as shall be provided by law.

2. All questions submitted to the people of the entire State shall be voted upon at general elections.

3. Every citizen of the United States, of the age of twenty-one years, who shall have been a resident of this State one year, and of the county in which he claims his vote five months, next before the election, shall be entitled to vote for all officers that now are or hereafter may be elective by the people, and upon all questions which may be submitted to a vote of the people.

4. In time of war no elector in the military service of the State or in the armed forces of the United States shall be deprived of his vote by reason of absence from his election district. The Legislature may provide for absentee voting by members of the armed forces of the United States in time of peace. The Legislature may provide the manner in which and the time and place at which such absent electors may vote, and for the return and canvass of

their votes in the election district in which they respectively reside.

5. No person in the military, naval or marine service of the United States shall be considered a resident of this State, by being stationed in any garrison, barrack, or military or naval place or station within this State.

6. No idiot or insane person shall enjoy the right of suffrage.

7. The Legislature may pass laws to deprive persons of the right of suffrage who shall be convicted of such crimes as it may designate. Any person so deprived, when pardoned or otherwise restored by law to the right of suffrage, shall again enjoy that right.

ARTICLE ———

Distribution of the Powers of Government

1. The powers of the government shall be divided among three distinct branches, the legislative, executive, and judicial. No person or persons belonging to or constituting one branch shall exercise any of the powers properly belonging to either of the others, except as expressly provided in this Constitution.

ARTICLE ———

General Provisions

1. The seal of the State shall be kept by the Governor, or person administering the government, and used by him officially, and shall be called the great seal of the State of New Jersey.

2. All grants and commissions shall be in the name and by the authority of the State of New Jersey, sealed with the great seal, signed by the Governor, or person administering the government, and countersigned by the Secretary of State, and shall run thus: "The State of New Jersey, to....., Greetings."

3. All writs shall be in the name of the State; and all indictments shall conclude in the following manner, viz.: "against the peace of this State, the government and dignity of the same."

4. Wherever in this Constitution the term "person," "persons," "people" and any personal pronoun is used, the same shall be taken to include both sexes.

5. This Constitution shall take effect and go into operation on the first day of January in the year of our Lord one thousand nine hundred and forty-eight.

ARTICLE ———

Amendments

1. Any specific amendment or amendments to this Constitution may be proposed in the Senate or General Assembly. At least twenty calendar days prior to a vote thereon in the house in which such amendment or amendments are first introduced, the same shall be

printed and placed on the desks of the members of each house. Thereafter and prior to such vote a public hearing shall be held thereon. If the proposed amendment or amendments or any of them shall be agreed to by three-fifths of all the members of each of the respective houses, the same shall be submitted to the people. If the same or any of them shall be agreed to by less than three-fifths but nevertheless by a majority of all the members of each of the respective houses, such proposed amendment or amendments shall be referred to the Legislature in the next legislative year; and if in that year the same or any of them shall be agreed to by a majority of all the members of each of the respective houses, then the amendment or amendments so agreed to shall be submitted to the people.

2. The proposed amendment or amendments shall be entered on the journal of each house with the yeas and nays of the members voting thereon.

3. The Legislature shall cause the proposed amendment or amendments to be published at least once in one or more newspapers of each county, if any be published therein, not less than three months prior to submission to the people.

4. Such proposed amendment or amendments shall then be submitted to the people at the next general election in the manner and form provided by the Legislature.

5. If more than one amendment be submitted, they shall be submitted in such manner and form that the people may vote for or against each amendment separately and distinctly.

6. If at the election such proposed amendment or amendments or any of them shall be approved by a majority of the legally qualified voters of the State voting thereon, the same shall become part of the Constitution on the thirtieth day after such general election unless otherwise provided in the amendment or amendments, or any of them, thus approved.

7. If at the election the people shall not approve any proposed amendment, said proposed amendment or one to effect the same or substantially the same change in the Constitution shall not be submitted to the people before the third general election thereafter.

ARTICLE ———

SCHEDULE

1. This Constitution shall supersede the Constitution of 1844 as amended.

2. The Legislature shall enact all laws necessary to make this Constitution fully effective.

3. All law, statutory and otherwise, all rules and regulations of administrative bodies and all rules of courts in force at the time

this Constitution or any Article thereof takes effect shall remain in full force until they expire or are superseded, altered or repealed by this Constitution or otherwise.

4. Except as otherwise provided by this Constitution, all writs, actions, causes of action, prosecutions, contracts, claims and rights of individuals and of bodies corporate, and of the State, and all charters and franchises shall continue unaffected notwithstanding the taking effect of any Article of the Constitution.

5. All indictments which have been found before the taking effect of this Constitution or any Article thereof may be proceeded upon. After the Judicial Article of the Constitution takes effect, indictments for crimes or offenses committed prior thereto may be found and proceeded upon in the court succeeding to the jurisdiction of that in which the same would have been cognizable had such Article not taken effect.

REPORT
of the
COMMITTEE ON ARRANGEMENT AND FORM
of
PROPOSAL No. 1-1
on
RIGHTS, PRIVILEGES, AMENDMENTS AND MISCELLANEOUS PROVISIONS
(as amended on second reading)
to the
CONSTITUTIONAL CONVENTION OF NEW JERSEY

Proposal No. 1-1 was referred to your Committee on August 22, 1947, and, pursuant to the Rules of the Convention, is reported back in the form hereunto annexed.

COMMITTEE ON ARRANGEMENT AND FORM
WAYNE D. MCMURRAY, *Chairman*
CHARLES P. HUTCHINSON, *Vice-Chairman*
ALFRED C. CLAPP, *Secretary*
FRANKLIN H. BERRY
JOHN DREWEN
ALBERT H. HOLLAND
FRANK G. SCHLOSSER

Dated: August 26, 1947.

COMMITTEE PROPOSAL NO. 1-1
(as amended on second reading)
CONSTITUTIONAL CONVENTION OF NEW JERSEY

Introduced by JOHN F. SCHENK
Chairman, Committee on Rights, Privileges, Amendments and Miscellaneous Provisions

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PREAMBLE. We, the people of the State of New Jersey, grateful to Almighty God for the civil and religious liberty which He hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavors to secure and transmit the same unimpaired to succeeding generations, do ordain and establish this Constitution.

ARTICLE ———

Rights and Privileges

1. All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.

2. All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right at all times to alter or reform the same, whenever the public good may require it.

3. No person shall be deprived of the inestimable privilege of worshiping Almighty God in a manner agreeable to the dictates of his own conscience; nor under any pretense whatever be compelled to attend any place of worship contrary to his faith and judgment; nor shall any person be obliged to pay tithes, taxes, or other rates for building or repairing any church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right, or has deliberately and voluntarily engaged to perform.

4. There shall be no establishment of one religious sect in preference to another; no religious or racial test shall be required as a qualification for any office or public trust.

5. No person shall be denied the enjoyment of any civil or military right, nor be discriminated against in the exercise of any civil or military right, nor be segregated in the militia or public schools, because of religious principles, race, color, ancestry or national origin.

6. Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press. In all prosecutions or indictments for libel, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

7. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the papers and things to be seized.

8. No person shall be held to answer for a criminal offense, unless on the presentment or indictment of a grand jury, except in cases of impeachment, or in cases now prosecuted without indict-

ment, or arising in the army or navy or in the militia, when in actual service in time of war or public danger.

9. The right of trial by jury shall remain inviolate; but the Legislature may authorize the trial of civil causes, when the matter in dispute does not exceed fifty dollars, by a jury of six persons. The Legislature in any civil cause may provide that a verdict may be rendered by not less than five-sixths of the jury. The Legislature may authorize the trial of the issue of mental incompetency without a jury.

10. In all criminal prosecutions the accused shall have the right to a speedy and public trial by an impartial jury; to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel in his defense.

11. No person shall, after acquittal, be tried for the same offense. All persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses, when the proof is evident or presumption great.

12. Excessive bail shall not be required, excessive fines shall not be imposed, and cruel and unusual punishments shall not be inflicted.

13. No person shall be imprisoned for debt in any action, or on any judgment founded upon contract, unless in cases of fraud; nor shall any person be imprisoned for a militia fine in time of peace.

14. The privilege of the writ of habeas corpus shall not be suspended, unless in case of rebellion or invasion the public safety may require it.

15. The military shall be in strict subordination to the civil power.

16. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, except in a manner prescribed by law.

17. Treason against the State shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

18. The people have the right freely to assemble together, to consult for the common good, to make known their opinions to their representatives, and to petition for redress of grievances.

19. Persons in private employment shall have the right to organize and bargain collectively. Persons in public employment shall have the right to organize, present to and make known to the State, or any of its political subdivisions or agencies, their grievances and proposals through representatives of their own choosing.

20. Private property shall not be taken for public use without just compensation. Individuals or private corporations shall not be authorized to take private property for public use without just compensation first made to the owners.

21. This enumeration of rights and privileges shall not be construed to impair or deny others retained by the people.

ARTICLE ———

Elections and Suffrage

1. General elections shall be held annually on the first Tuesday after the first Monday in November; but the time of holding such elections may be altered by law. The Governor and members of the Legislature shall be chosen at general elections. Local elective officers shall be chosen at general elections or at such other times as shall be provided by law.

2. All questions submitted to the people of the entire State shall be voted upon at general elections.

3. Every citizen of the United States, of the age of twenty-one years, who shall have been a resident of this State one year, and of the county in which he claims his vote five months, next before the election, shall be entitled to vote for all officers that now are or hereafter may be elective by the people, and upon all questions which may be submitted to a vote of the people.

4. In time of war no elector in the military service of the State or in the armed forces of the United States shall be deprived of his vote by reason of absence from his election district. The Legislature may provide for absentee voting by members of the armed forces of the United States in time of peace. The Legislature may provide the manner in which and the time and place at which such absent electors may vote, and for the return and canvass of their votes in the election district in which they respectively reside.

5. No person in the military, naval or marine service of the United States shall be considered a resident of this State, by being stationed in any garrison, barrack, or military or naval place or station within this State.

6. No idiot or insane person shall enjoy the right of suffrage.

7. The Legislature may pass laws to deprive persons of the right of suffrage who shall be convicted of such crimes as it may designate. Any person so deprived, when pardoned or otherwise restored by law to the right of suffrage, shall again enjoy that right.

ARTICLE ———

Distribution of the Powers of Government

1. The powers of the government shall be divided among three distinct branches, the legislative, executive, and judicial. No person

or persons belonging to or constituting one branch shall exercise any of the powers properly belonging to either of the others, except as expressly provided in this Constitution.

ARTICLE ——

General Provisions

1. The seal of the State shall be kept by the Governor, or person administering the government, and used by him officially, and shall be called the Great Seal of the State of New Jersey.

2. All grants and commissions shall be in the name and by the authority of the State of New Jersey, sealed with the Great Seal, signed by the Governor, or person administering the government, and countersigned by the Secretary of State, and shall run thus: "The State of New Jersey, to .....Greetings."

3. All writs shall be in the name of the State; and all indictments shall conclude in the following manner, viz.: "against the peace of this State, the government and dignity of the same."

4. Wherever in this Constitution the term "person," "persons," "people" and any personal pronoun is used, the same shall be taken to include both sexes.

5. This Constitution shall take effect and go into operation on the first day of January in the year of our Lord one thousand nine hundred and forty-eight.

ARTICLE ——

Amendments

1. Any specific amendment or amendments to this Constitution may be proposed in the Senate or General Assembly. At least twenty calendar days prior to a vote thereon in the house in which such amendment or amendments are first introduced, the same shall be printed and placed on the desks of the members of each house. Thereafter and prior to such vote a public hearing shall be held thereon. If the proposed amendment or amendments or any of them shall be agreed to by three-fifths of all the members of each of the respective houses, the same shall be submitted to the people. If the same or any of them shall be agreed to by less than three-fifths but nevertheless by a majority of all the members of each of the respective houses, such proposed amendment or amendments shall be referred to the Legislature in the next legislative year; and if in that year the same or any of them shall be agreed to by a majority of all the members of each of the respective houses, then the amendment or amendments so agreed to shall be submitted to the people.

2. The proposed amendment or amendments shall be entered on the journal of each house with the yeas and nays of the members voting thereon.

3. The Legislature shall cause the proposed amendment or amendments to be published at least once in one or more newspapers of each county, if any be published therein, not less than three months prior to submission to the people.

4. Such proposed amendment or amendments shall then be submitted to the people at the next general election in the manner and form provided by the Legislature.

5. If more than one amendment be submitted, they shall be submitted in such manner and form that the people may vote for or against each amendment separately and distinctly.

6. If at the election such proposed amendment or amendments or any of them shall be approved by a majority of the legally qualified voters of the State voting thereon, the same shall become part of the Constitution on the thirtieth day after such general election unless otherwise provided in the amendment or amendments, or any of them, thus approved.

7. If at the election the people shall not approve any proposed amendment, said proposed amendment or one to effect the same or substantially the same change in the Constitution shall not be submitted to the people before the third general election thereafter.

ARTICLE ———

SCHEDULE

1. This Constitution shall supersede the Constitution of 1844 as amended.

2. The Legislature shall enact all laws necessary to make this Constitution fully effective.

3. All law, statutory and otherwise, all rules and regulations of administrative bodies and all rules of courts in force at the time this Constitution or any Article thereof takes effect shall remain in full force until they expire or are superseded, altered or repealed by this Constitution or otherwise.

4. Except as otherwise provided by this Constitution, all writs, actions, causes of action, prosecutions, contracts, claims and rights of individuals and of bodies corporate, and of the State, and all charters and franchises shall continue unaffected notwithstanding the taking effect of any Article of the Constitution.

5. All indictments which have been found before the taking effect of this Constitution or any Article thereof may be proceeded upon. After the Judicial Article of the Constitution takes effect, indictments for crimes or offenses committed prior thereto may be found and proceeded upon in the court succeeding to the jurisdiction of that in which the same would have been cognizable had such Article not taken effect.

COMMITTEE ON THE LEGISLATIVE

TENTATIVE DRAFT OF LEGISLATIVE ARTICLE

(NOTE: This tentative draft is subject to change by the Committee and by the Convention. The suggestions of the public are invited.)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
AT
RUTGERS UNIVERSITY
THE STATE UNIVERSITY OF NEW JERSEY

July 21, 1947.

To the People of the State of New Jersey:

The Committee on the Legislative of the Constitutional Convention presents the following *tentative draft* of a proposed Legislative Article for the Proposed New Constitution.

The provisions of this Article are not to be taken as necessarily representing the unanimous opinion of the members of the Committee, although they have been tentatively adopted by a majority of the Committee.

The proposed Article is being presented at this time solely for the purpose of inviting public discussion.

A public hearing on the proposed Article will be held on the main floor of the Gymnasium, Rutgers University, the State University of New Jersey, New Brunswick, New Jersey, at

10:00 A. M.

Monday, July 28, 1947

All citizens are cordially invited to attend the hearing to make known their views with respect to the provisions of this Draft.

Citizens who are unable to be personally present are invited to submit their suggestions, in writing, to the Committee on or before the date of the hearing.

Communications may be addressed to The Committee on the Legislative, Constitutional Convention, Rutgers University, The State University of New Jersey, New Brunswick, New Jersey.

THE COMMITTEE ON THE LEGISLATIVE,

EDWARD J. O'MARA, *Chairman;*	(Hudson)
ARTHUR W. LEWIS, *Vice-Chairman;*	(Burlington)
LEON LEONARD, *Secretary;*	(Atlantic)
PERCY CAMP,	(Ocean)
DOMINIC A. CAVICCHIA,	(Essex)
MRS. MYRA C. HACKER,	(Bergen)
CHRISTIAN J. JORGENSEN,	(Middlesex)
WESLEY L. LANCE,	(Hunterdon)
JOHN L. MORRISSEY,	(Camden)
HAYDN PROCTOR,	(Monmouth)
MRS. OLIVE C. SANFORD,	(Essex)

ARTICLE ——— LEGISLATIVE

SECTION I

1. The legislative power shall be vested in a Senate and General Assembly.

2. No person shall be a member of the Senate who shall not have attained the age of thirty years, and have been a citizen and resident of the State for four years, and of the county for which he shall be chosen one year, next before his election; and no person shall be a member of the General Assembly who shall not have attained the age of twenty-one years, and have been a citizen and resident of the State for two years, and of the county for which he shall be chosen one year, next before his election; but no person shall be eligible as a member of either house of the Legislature, who shall not be entitled to the right of suffrage.

3. Members of the Senate and General Assembly shall be elected at general elections. The two houses shall meet separately on the second Tuesday in January of each year, at which time of meeting the legislative year shall commence. They shall organize annually and shall hold annual sessions. Vacancies shall be filled by election for the unexpired terms only, as may be provided by law.

4. Special sessions of the Legislature shall be called by the Governor upon petition of a majority of all of 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.

SECTION II

1. The Senate shall be composed of one Senator from each county in the State, elected by the legal voters of the counties, respectively, for a term beginning at noon on the second Tuesday in January

next following his election and ending at noon on the second Tuesday in January four years thereafter.

2. The members of the Senate shall be elected in two classes so that, as nearly as may be, one-half of the total number shall be elected biennially.

SECTION III

1. The General Assembly shall be composed of members elected biennially by the legal voters of the counties, respectively, for terms beginning at noon on the second Tuesday in January next following their election and ending at noon on the second Tuesday in January two years thereafter. The members of the General Assembly shall be apportioned among the several counties as nearly as may be according to the number of their inhabitants but each county shall at all times be entitled to one member and the whole number of members shall never exceed sixty. The present apportionment shall continue until the next census of the United States shall have been taken and an apportionment of the members of the General Assembly shall be made by the Legislature at the first session after the next and every subsequent census, and when made shall remain unaltered until another census of the United States shall have been taken.

SECTION IV

1. Each house shall direct writs of election for supplying vacancies occasioned by death, resignation, or otherwise; but if vacancies occur during the recess of the Legislature, the writs may be issued by the Governor, under such regulations as may be prescribed by law.

2. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of all its members shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

3. Each house shall choose its own officers, determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, may expel a member.

4. Each house shall keep a journal of its proceedings, and from time to time publish the same; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

5. Neither house, during the session of the Legislature, shall, without the consent of the other, adjourn for more than three days, or to any other place than that in which the two houses shall be sitting.

6. All bills and joint resolutions shall be read three times in each

house, before the final passage thereof. No bill or joint resolution shall be read a third time in either house until one full calendar day shall have intervened between the day upon which it shall have been read the second time and the day upon which it shall be read the third time unless the house shall resolve that such bill or joint resolution is an emergency measure by the agreement of three-fourths of all of its members thereto by the yeas and nays of the members, which shall be entered on the journal, in which case such bill or joint resolution may thereupon be read a third time and be voted upon. No bill or joint resolution shall pass, unless there shall be a majority of all of the members of each body personally present and agreeing thereto, and the yeas and nays of the members voting on such final passage shall be entered on the journal.

7. Members of the Senate and General Assembly shall receive annually, during the time for which they shall have been elected and while they shall hold their office, such compensation as shall, from time to time, be fixed by law and no other allowance or emolument, directly or indirectly, for any purpose whatever. The President of the Senate and the Speaker of the General Assembly shall, by virtue of their office, receive an additional compensation, equal to one-third of their allowance as members.

The compensation of members of the Legislature shall be fixed at the first session of the Legislature held after this Article of this Constitution takes effect and may be increased or decreased, from time to time thereafter, by law, but no increase or decrease shall be effective during the legislative year in which the law making provision therefor is passed.

8. Members of the Senate and General Assembly shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the sitting of their respective houses, and in going to and returning from the same: And for any statement, speech or debate, in either house or at any legislative committee meeting, they shall not be questioned in any other place.

Section V

1. No member of the Senate or General Assembly shall, during the term for which he was or shall have been elected, be nominated, elected or appointed to any State civil office or position, of profit, which shall have been created by law, or the emoluments whereof shall have been increased by law, during such term. The provisions of this paragraph shall not prohibit the nomination or election of any person as Governor or as a member of the Senate or General Assembly, or the nomination, election or appointment of any member of the Senate or General Assembly, first constituted under this Constitution, to any State civil office or position created by this

Constitution or created during his first term of service as such member under this Constitution.

2. The Legislature may appoint, and members thereof may be appointed, and may serve as, members of any commission, committee or other body whose main purpose is to aid or assist the Legislature in performing its functions.

3. If any member of the Legislature shall become a member of Congress or shall accept any Federal or State office or position, of profit, his seat shall thereupon become vacant.

4. No member of Congress, no person holding any Federal or State office or position, of profit, and no judge of any court shall be entitled to a seat in the Legislature.

5. Neither the Legislature nor either house thereof shall elect or appoint any executive, administrative or judicial officer except the State Auditor.

SECTION VI

1. All bills for raising revenue shall originate in the House of Assembly; but the Senate may propose or concur with amendments, as on other bills.

2. The Legislature may enact general laws under which municipalities, other than counties, may adopt zoning ordinances limiting and restricting to specified districts and regulating therein, buildings and structures, according to their construction, and the nature and extent of their use, and the nature and extent of the uses of land, and the exercise of such authority shall be deemed to be within the police power of the State. Such laws shall be subject to repeal or alteration by the Legislature.

3. Any agency or political subdivision of the State or any agency of a political subdivision thereof, which is empowered to take or otherwise acquire private property for any public highway, parkway, airport, place, improvement, or use, may be authorized by law to take or otherwise acquire a fee simple or any lesser interest, and may be authorized by law to take or otherwise acquire a fee simple in, easements upon, or the benefit of restrictions upon, abutting property to preserve and protect the public highway, parkway, airport, place, improvement, or use; but such taking shall be with just compensation.

SECTION VII

1. No divorce shall be granted by the Legislature.

ALTERNATIVE A.

2. It shall be lawful to hold, carry on, and operate in this State race meetings whereat the trotting, running or steeplechase racing of horses only may be conducted between the hours of sunrise and sunset on week days only and in duly legalized race tracks, at which

the pari-mutuel system of betting shall be permitted. No lottery, roulette, or game of chance of any form shall be authorized by the Legislature in this State, and no ticket in any lottery shall be bought or sold within this State, or offered for sale; nor shall pool-selling, bookmaking, or gambling of any kind be authorized or allowed within this State, except pari-mutuel betting on the results of the racing of horses only, from which the State shall derive a reasonable revenue for the support of government; nor shall any gambling device, practice, or game of chance, or pari-mutuel betting thereon now prohibited by law, except as herein stated and otherwise provided, be legalized, or the remedy, penalty, or punishment now provided therefor be in any way diminished.

ALTERNATIVE B.

2. It shall be lawful to hold, carry on, and operate in this State race meetings whereat the trotting, running or steeplechase racing of horses only may be conducted between the hours of sunrise and sunset on week days only and in duly legalized race tracks, at which the pari-mutuel system of betting shall be permitted. *The Legislature may authorize and regulate the conduct of games of chance by bona fide charitable, religious, fraternal or veterans associations or organizations. Except as hereinabove provided,* no lottery, roulette, or game of chance of any form shall be authorized by the Legislature in this State, and no ticket in any lottery shall be bought or sold within this State, or offered for sale; nor shall pool-selling, bookmaking, or gambling of any kind be authorized or allowed within this State, except pari-mutuel betting on the results of the racing of horses only, from which the State shall derive a reasonable revenue for the support of government, *and games of chance conducted by bona fide charitable, religious, fraternal or veterans associations or organizations;* nor shall any gambling device, practice, or game of chance, or pari-mutuel betting thereon now prohibited by law, except as herein stated and otherwise provided, be legalized, or the remedy, penalty or punishment now provided therefor be in any way diminished.

3. The Legislature shall not pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or depriving a party of any remedy for enforcing a contract which existed when the contract was made.

4. To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title. This paragraph, however, shall not be given effect to invalidate any law adopting or enacting a compilation, consolidation, revision, or rearrangement of all or parts of the statutory law.

5. No law shall be revived or amended by reference to its title only, but the act revived, or the section or sections amended, shall be inserted at length. No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of the act or which shall enact that any existing law, or any part thereof, shall be applicable, except by inserting it in such act.

6. The laws of this State shall begin in the following style: "Be it enacted by the Senate and General Assembly of the State of New Jersey."

7. Individuals or private corporations shall not be authorized to take private property for public use, without just compensation first made to the owners.

8. No private, special or local law shall be passed, unless public notice of the intention to apply therefor, and of the general object thereof, shall have been previously given.

Such public notice shall be given at such time and in such mode and shall be so evidenced and the evidence thereof shall be so preserved as may be provided by law.

9. No general law shall embrace any provision of a private, special or local character. The Legislature shall not pass any private, special or local laws:

(1) Authorizing the sale of any lands belonging in whole or in part to a minor or minors or other persons who may at the time be under any legal disability to act for themselves.

(2) Changing the law of descent.

(3) Providing for change of venue in civil or criminal cases.

(4) Selecting, drawing, summoning or empaneling grand or petit jurors.

(5) Creating, increasing or decreasing the emoluments, term or tenure rights of any public officers or employees.

(6) Relating to taxation or exemption therefrom.

(7) Providing for the management and control of free public schools.

(8) Granting to any corporation, association or individual any exclusive privilege, immunity or franchise whatever.

(9) Granting to any corporation, association or individual the right to lay down railroad tracks.

(10) Laying out, opening, altering, constructing, maintaining and repairing roads or highways.

(11) Vacating any road, town plot, street or alley or public grounds.

(12) Appointing local officers or commissions to regulate municipal affairs.

(13) Regulating the internal affairs of municipalities formed

for local government and counties, except as otherwise in this Constitution provided.

The Legislature shall pass general laws providing for the cases enumerated in this paragraph, and for all other cases which, in its judgment, may be provided for by general laws. The Legislature shall pass no special act conferring corporate powers, but shall pass general laws under which corporations may be organized and corporate powers of every nature obtained, subject, nevertheless, to repeal or alteration at the will of the Legislature.

10. The Legislature may pass, by the agreement thereto of two-thirds of all of the members of each house, private, special or local laws regulating the internal affairs of any municipal corporation formed for local government or of any county upon petition to the Legislature by the governing body of such municipal corporation, or the agency in control of the affairs of such county, specifying the general nature of the law so to be passed, but such law shall become operative in such municipality or in such county, only, upon the adoption thereof by such governing body, or by such agency, by ordinance duly enacted in such manner as shall be provided by law.

11. No law shall be passed which shall make mandatory the appropriation or expenditure of any moneys by any county or by any municipal corporation formed for local government unless such law shall be applicable to all counties or to all such municipal corporations or unless the moneys so to be appropriated or expended shall be provided by the State, or the county or municipal corporation shall be reimbursed by the State for the appropriation or expenditure thereof.

Section VIII

1. Members of the Legislature shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm, as the case may be,) that I will support the Constitution of the United States and the Constitution of the State of New Jersey, and that I will faithfully discharge the duties of Senator (or member of the General Assembly, as the case may be) according to the best of my ability." And members-elect of the Senate or General Assembly are hereby empowered to administer to each other the said oath or affirmation.

2. Every officer of the Legislature shall, before he enters upon his duties, take and subscribe the following oath or affirmation: "I do solemnly promise and swear (or affirm) that I will faithfully, impartially and justly perform all the duties of the office of..... ....., to the best of my ability and understanding; that I will carefully preserve all records, papers, writings, or property entrusted to me for safe-keeping by virtue of my office, and make such disposition of the same as may be required by law."

COMMITTEE ON THE LEGISLATIVE

REPORT

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
AT
RUTGERS UNIVERSITY
THE STATE UNIVERSITY OF NEW JERSEY

July 31, 1947.

To The Constitutional Convention:

The Committee on the Legislative herewith submits its report of the result of its deliberations in connection with the subject matters within its consideration under the rules of the Convention and the proposals referred to it. The Commitee has held numerous meetings and has conducted three public hearings which all interested persons were invited to attend and express their views on the proper provisions of the Legislative Article. Prior to the last public hearing held by the Committee, a tentative draft of a proposed article was published and given the widest possible publicity. The public hearings were well attended and the Committee is grateful to the members of the public who, by their interest, helped it materially in its deliberations.

While each paragraph of the proposals does not reflect the unanimous opinion of all the members of the Committee, it does embody the opinion of the majority of the Committee thereon. For the convenience of the members of the Convention, the report will deal first with matters that differ in substance from the provisions of the existing Constitution.

TERMS AND SALARIES OF MEMBERS

The Committee proposes that the term of Senators be increased to four years and the terms of members of the General Assembly be increased to two years, and that the election of members of the Legislature be held in years when no national or congressional election is being held. It also proposes that the Senate be divided into two classes, so that as nearly as may be one-half of the members shall be elected every two years. This proposal represents a change from the provisions of the existing Constitution, under which Sena-

tors are elected for terms of three years, one-third of the Senate being elected every year, and members of the General Assembly are elected annually. This reflects the opinion of practically all organizations and members of the public who have made known their views on this subject to the Committee.

The Committee also proposes that the salaries of members of the Legislature shall be fixed by law rather than by constitutional provision, with the proviso that no change in the salary shall be effective until the legislative year following the next general election for members of the General Assembly. This, likewise, represents a departure from the existing Constitution, which fixes the salary of members of the Legislature at five hundred dollars per year. It is the opinion of the Committee that the question of proper compensation for members of the Legislature should be subject to more flexible treatment than a constitutional provision would permit. The salary provision in the existing Constitution was adopted in 1875. Manifestly, five hundred dollars represented far greater compensation in 1875 than it does in 1947. The result has been that in recent years members of the Legislature have been receiving grossly inadequate compensation for their services. It is to prevent the recurrence of such a situation that the Committee feels that the compensation should be fixed by law rather than by the Constitution. However, in line with Governor Driscoll's suggestion that the Convention should be free to make recommendations to the Legislature in regard to matters that in its judgment should not be included in the Constitution, it is the opinion of the Committee that the Convention should recommend to the Legislature that the salaries of Senators be fixed at three thousand dollars per year and of members of the General Assembly at two thousand five hundred dollars per year.

Special Sessions of the Legislature

Under the existing Constitution, special sessions of the Legislature may be called only by the Governor. The Committee proposes that, in addition to continuing this power in the Governor, special sessions of the Legislature shall also be called by the Governor upon petition of a majority of all of the members of the Senate and of all of the members of the General Assembly. It is considered that the present provision allowing only the Governor to call a special session is an unwarranted restriction on the legislative power.

Legislative Procedure

One of the most important proposals of the Committee is that there be a constitutional provision requiring the intervention of one

full calendar day between the second reading and third reading of all bills and joint resolutions. Such a constitutional provision will effectively cure the evil of rushing bills from second to third reading without giving the members of the Legislature an opportunity to study their contents. In recent sessions of the Legislature upwards of one thousand bills have been introduced. It is manifestly impossible for the legislators sufficiently to familiarize themselves with the provisions of all of these bills. In recent years, the practice has been all too common of rushing bills from second reading to third reading within a very short time, sometimes within a matter of minutes. This is particularly true on the closing day of the legislative session, when numerous bills are suddenly reported from committee, given a second reading, forthwith given a third reading and transmitted under suspension of the rules to the other house, where it receives three readings on the same day. This practice has contributed substantially to the custom of keeping the Legislature in session all night long on the day of its final adjournment, and has resulted in the passage of many bills without giving the members of the Legislature ample opportunity to consider or even to read their contents.

The results of this proposal would be that if a bill received its second reading on Monday, it could not be considered on third reading until Wednesday. It would also make it necessary that the two houses arrange their calendars in such a way that on the last day of the session each house would be limited to a consideration of bills and joint resolutions which had been approved previously by the other house. It is the confident expectation of the Committee that this provision will not only bring about more orderly sessions of the Legislature but will also improve the character of legislation by affording an adequate opportunity to the members to become acquainted with bills which they know will be moved to third reading.

It is recognized that the inclusion of this provision might make it difficult, or even impossible, for the Legislature to deal with real emergencies which might require immediate action. To guard against such a contingency, it is proposed that a resolution may be passed that a particular bill or joint resolution is an emergency measure by agreement of three-fourths of the members, the yeas and nays on the question of the existence of the emergency to be entered on the journal. In the event of the declaration of such an emergency, a bill or joint resolution may receive a third reading without the necessity of waiting the intervening day. In the judgment of the Committee, this is a necessary provision, and it is anticipated that a resolution declaring an emergency will be but infrequently adopted.

Disqualification of Members of Legislature for Election or Appointment to Certain Offices

The present Constitution provides that no member of the Legislature shall, during the time for which he was elected, be nominated or appointed by the Governor or by the Legislature in joint meeting to any civil office under the authority of this State which shall have been created or the emoluments whereof shall have been increased during such time. It is proposed that this provision be broadened so as to prohibit nomination, election or appointment to any State civil office or position of profit which shall have been created by law or the emoluments whereof shall have been increased by law during the term for which the member of the Legislature was elected. This would prevent not only appointment by the Governor and election by joint session but by any State agency, board or commission. It is the opinion of the Committee, however, that the Constitution should not prevent the nomination or election of any person as Governor or as a member of the Senate or General Assembly merely because of an increase in the emoluments of those offices, the theory being that such elections are by vote of the people, who should have the right to pass upon the candidacy of any person seeking election to such office.

It is also proposed that members of the Senate or General Assembly first constituted under the proposed new Constitution should not be prohibited from nomination, election or appointment to any office or position created by the new Constitution or created during the first term of service under the Constitution. This exemption is proposed because the purpose of the provision is to prohibit members of the Legislature from being appointed or elected to offices or positions of profit which either have been created by the Legislature or the emoluments of which have been increased by the Legislature. It is the opinion of the Committee that offices created by or pursuant to the new Constitution, if created immediately or shortly after the adoption thereof, should be open to members of the Legislature.

Limitation on Right of Legislature to Elect Executive, Administrative and Judicial Officers

There is no provision in the existing Constitution which prohibits the Legislature from providing for the election in joint session of executive, administrative and judicial officers. This has resulted in the Legislature exercising essentially executive functions by providing that certain offices be filled by election by joint session of the Legislature. It is proposed that a provision be included in the proposed Constitution that neither the Legislature nor either house thereof shall elect or appoint any executive, administrative or ju-

dicial officer, except the State Auditor. An exception is made in the case of the State Auditor because, being charged with post-auditing of all State accounts, he is essentially an agent of the Legislature and, therefore, should be elected by the Legislature.

Zoning and Condemnation

It is proposed that the power of municipalities to adopt zoning ordinances under the general laws be extended so as to permit regulation according to the nature and extent of the use of land. The present zoning provision is limited to permitting municipalities to regulate and limit buildings and structures. It is considered that the existing provision is seriously deficient in this respect.

It has been suggested to the Committee that the right to enact zoning ordinances should be extended to counties. The Committee, however, is unwilling to recommend such an extension because it fears that it would eventually lead to a conflict between counties and municipalities with relation to the exercise of zoning powers.

It is also proposed that there be included in the Constitution a clause authorizing any agency or political sub-division of the State, or any agency of a political sub-division thereof, which is empowered to acquire private property for any public highway, parkway, airport, place, improvement or use to acquire a fee simple or any lesser interest in abutting property to preserve the public highway, parkway, airport, place, improvement or use, provided that such taking shall be with just compensation.

The Gambling Clause

Undoubtedly the most controversial problem with which the Committee was called upon to deal was that relating to the gambling clause. Five possible courses of action were presented to the Committee for consideration. They were:

(a) The elimination of any reference to gambling in the Constitution;
(b) The insertion of a clause prohibiting all gambling;
(c) The retention of the present constitutional provision, which prohibits the Legislature from legalizing all gambling except pari-mutuel betting at duly licensed race tracks;
(d) The liberalization of the present gambling clause to permit, in addition to pari-mutuel betting, the conduct of games of chance by charitable, religious, fraternal or veterans organizations;
(e) The liberalization of the present gambling clause to permit limited but specified games of chance, to be defined, regulated and subject to local referendum without reference to charitable, religious, fraternal or veterans organizations.

Many members of the Committee felt that logically gambling should not be mentioned in the Constitution, and that it was a problem for the Legislature. The majority of the Committee felt, however, that in view of the long history of constitutional restriction of the right of the Legislature to deal with gambling, the elimination of any such constitutional provision would create an unfortunate impression that all kinds of commercial gambling might some day be legalized by the Legislature, and thus there might be created a body of sentiment which would go far toward defeating any Constitution which might be adopted by the Convention.

The majority of the Committee is opposed to a provision prohibiting the Legislature from legalizing all forms of gambling. Such a provision would be a return to the constitutional restriction as it existed prior to the adoption of the horse racing amendment in 1939. In arriving at this conclusion, the Committee took into consideration the fact that the revenues derived by the State from race tracks are pledged to the retirement of State bonds issued to finance the veterans housing project, and the fact that the amendment authorizing pari-mutuel betting was adopted by popular vote only eight years ago.

While not much sentiment was expressed before the Committee for the elimination of race tracks, considerable opposition to any liberalization of the present gambling clause was expressed. Many expressed the view that, while they did not approve of horse racing, they would be satisfied if the present provision remain unchanged. On the other hand, a considerable group took the position that it was illogical and unfair for the State to permit gambling at race tracks, where an unlimited amount of money could be wagered, and at the same time to prohibit a person from playing such games as bingo or buying a ticket in a raffle, and that, therefore, the gambling clause should be liberalized so as to permit games of chance when conducted by charitable, religious, fraternal or veterans organizations. Some who took the latter position went to the extent of insisting that such a liberalizing clause should be self-executing, which would mean that the conduct of so-called charitable gambling would be unregulated by the Legislature.

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.

Some members of the Committee were opposed to submitting alternative clauses and were of the opinion that the gambling clause in the present Constitution should be incorporated unchanged in the new Legislative Article; and that, if the two alternatives appearing in the Committee's proposal are to be submitted, a third alternative prohibiting all forms of gambling should also be submitted.

Passage of Private, Special or Local Laws under Certain Circumstances

The existing Constitution prohibits the passage of private, special or local laws regulating the internal affairs of towns and counties. It is proposed that this provision be changed so as to permit the Legislature, by two-thirds vote of all of the members of each house, to pass private, special or local laws regulating the internal affairs of any municipal corporation formed for local government or of any county, upon petition to the Legislature by the governing body of such municipal corporation or county, provided that the municipality or county concerned shall adopt such law either by ordinance of its governing body or by referendum after it has been enacted by the Legislature. The purpose of this change is to allow the Legislature to deal with situations which can only be remedied by private, special or local laws, as for instance, the changing of a provision in a charter of a specified municipality. The provision proposed by the Committee amply safeguards municipalities against discriminatory action, since the legislative process can only be initiated on petition of the municipality, and the law, when passed, must be adopted by the municipality by ordinance or referendum. Under this provision, a municipality could adopt a new charter, if it so desired, with the concurrence of the Legislature, of course.

Home Rule

The Committee proposes the insertion of a clause in the Constitution declaring that the provisions of the Constitution and of law concerning counties and municipal corporations formed for local government shall be liberally construed in their favor, and that the powers of counties and municipal corporations shall include not merely those expressly or incidently conferred, specifically enumer-

ated, indispensable, essential, or merely implied, but also all powers reasonably convenient for the execution of such powers which are not inconsistent with or prohibited by the Constitution or by law. It is considered that this would be a salutary provision and would grant to counties and municipalities far greater latitude than they now enjoy in the performance of their local functions.

Mandatory Appropriations

The tentative draft of the Legislative Article contained a paragraph known as Section VII, Paragraph 11, which provided that no law should be passed which should make mandatory the appropriation or expenditure of any moneys by any county or by any municipal corporation formed for local government, unless such law should be applicable to all counties or to all such municipal corporations, or unless the moneys so to be appropriated or expended should be provided by the State, or the county or municipal corporation should be reimbursed by the State for the appropriation or expenditures thereof. By a divided vote, the Committee decided to delete this paragraph from its proposal.

Provisions of Existing Constitution Retained Without Substantial Change

The Committee proposes that the following provisions of the existing Constitution be retained without substantial change:

1. The provisions relating to the qualifications of members of the Legislature.
2. Annual sessions of the Legislature, without limit as to duration.
3. The present basis of representation of counties in both houses of the Legislature.
4. The provisions for filling vacancies occasioned by death, resignation or otherwise.
5. The provision that each house shall be the judge of the elections and qualifications of its own members.
6. The provision that each house shall choose its own officers.
7. The provision that each house may punish its members for disorderly behavior and, on two-thirds vote, may expel a member.
8. The provisions requiring each house to keep a journal of its proceedings, upon which the yeas and nays of the members on any question shall, at the desire of one-fifth of those present, be entered on the journal.
9. The provision prohibiting either house from adjourning for more than three days without the consent of the other.
10. The provision protecting members from arrest during their

attendance at the session, and protecting members against suits because of any statement, speech or debate (which privilege, however, has been broadened to apply to statements and during legislative committee meetings).

11. The provision that the seat of a member shall be vacated if he shall become a member of Congress or shall accept any federal or State office or position of profit.
12. The provision prohibiting a member of Congress, or person holding a federal or State office or position of profit, or judge of any court, from taking a seat in the Legislature.
13. The provision that bills for raising revenue shall originate in the House of Assembly.
14. The provision that the Legislature may not pass any bill of attainer, ex post facto law or law impairing the obligation of a contract.
15. The provision requiring that every law shall embrace but one object, which shall be expressed in its title.
16. The provision requiring that any act revised, or section or sections of acts amended, shall be inserted at length.
17. The provision designating the style in which laws shall begin.
18. The provision that individuals or private corporations shall not be authorized to take private property for public use without just compensation first made to the owner.
19. The provision requiring notice of intention to apply for the passage of private, special or local laws.
20. The provision restricting the Legislature as to the types of private, special or local laws which may be passed (with the exception heretofore noted).
21. The provisions relating to the form of oaths of members and officers of the Legislature.

RECOMMENDATIONS TO THE LEGISLATURE

Lobbying

It was suggested to the Committee that a provision prohibiting lobbying in the legislative chambers be inserted in the Constitution. The Committee rejected this proposal for two reasons:

First: Because it did not consider the subject matter to be of such a nature as to be the proper subject of a constitutional provision; and

Second: Because of the difficulty of adequately defining lobbying within the proper limitation of a constitutional provision.

The Committee, however, agrees that lobbying should be curtailed and regulated and has voted to request the Convention to recommend to the Legislature that suitable restrictive laws concerning lobbying be enacted.

Continuous Revision of Statutory Law

It was also recommended to the Committee that a provision requiring periodic revision of the statutory law be inserted in the Constitution. The majority of the Committee is of the opinion that, while no such provision should be inserted in the Constitution, the Legislature should be advised by the Convention that it considers periodic revision of the statutory law important and that, in its opinion, the Legislature should make provision therefor.

Disposition of Proposals Referred to the Committee

The following proposals were referred by the Convention to this Committee:

Proposals No. 10, 23, 25, 31, 32, 33, 34, 39, 40 and 41.

All received careful consideration and although none was adopted in whole or in part, as submitted, the principles of some were incorporated in the Committee's proposal.

Schedule

The Schedule annexed to Proposal No. I of the Committee on the Legislative rearranges the terms of members of the Legislature so as to bring about biennial elections in years in which no presidential or congressional election will be held, and to further provide for the election of members of the General Assembly every other year and, as nearly as may be, of one-half of the Senate every two years. The method adopted in the Schedule is to provide that the terms of members of the General Assembly who are elected at the 1947 election shall be extended for one year, if the new Constitution is adopted. This will bring about the next election for members of the General Assembly in 1949.

As to the Senate, the Schedule provides that the terms of members of the Senate elected in 1947 shall be for four years; that of the Senators to be elected in the year 1948 (six in number) three would be elected for a term of one year and three for a term of three years; that the Senators to be elected in 1949 would be elected for a term of four years. The result would be that, in 1951 and every four years thereafter, eleven members of the Senate would be elected, and in 1953 and every four years thereafter, ten members of the Senate would be elected. This would accomplish the purpose of the clause in the Legislative Article requiring that, as nearly as may be, one-half of the Senate should be elected every two years. The result briefly would be as follows:

		Next Election	Number	
1947	8 Senators four-year terms	1951	8:	11
1948	6 Senators—three years....3	1951	3:	
	one year.....3	1949–53	3:	10 in
1949	7 Senators four-year terms	1953	7:	1953

The Committee desires to call to the attention of the Convention that there was a difference of opinion as to whether the Senators to be elected in 1948 should be elected for terms of one year and three years or for terms of three years and five years. The principles upon which the Committee resolved the difficulty were that all Senators shall be entitled to serve the complete term for which they were elected; that all Senators to be elected in 1947 shall be elected for a full four-year term; that the term of no Senator already elected shall be increased or diminished by reason of the adoption of this Constitution; and that no Senator shall be elected during the transition period for a term greater than that provided in the Constitution.

Respectfully submitted:

EDWARD J. O'MARA, *Chairman;*
ARTHUR W. LEWIS, *Vice-Chairman;*
LEON LEONARD, *Secretary;*
MYRA C. HACKER,
JOHN L. MORRISSEY,
OLIVE C. SANFORD,
DOMINIC A. CAVICCHIA,
WESLEY L. LANCE,
CHRISTIAN J. JORGENSEN,
HAYDN PROCTOR,
PERCY CAMP.

COMMITTEE PROPOSAL No. 2-1

Introduced . . . . . .

By EDWARD J. O'MARA

Chairman, Committee on the Legislative

A PROPOSAL for the Legislative Article of the proposed new Constitution in substitution for Article IV (except Section VI, Paragraphs 2, 3, and 4 and except Section VII, Paragraphs 6, 10 and 12) of the present Constitution, to which shall be added Alternative " A" or Alternative "B" of Committee on the Legislative Proposal No. 2, whichever shall be adopted by the people, as Section VII, Paragraph 2, of the Legislative Article.

Resolved, That the following be agreed upon as part of the proposed new State Constitution:

ARTICLE————LEGISLATIVE

SECTION I

1. The legislative power shall be vested in a Senate and General Assembly.

2. No person shall be a member of the Senate who shall not have attained the age of thirty years, and have been a citizen and resident of the State for four years, and of the county for which he shall be chosen one year, next before his election; and no person shall be a member of the General Assembly who shall not have attained the age of twenty-one years, and have been a citizen and resident of the State for two years, and of the county for which he shall be chosen one year, next before his election; but no person shall be eligible as a member of either house of the Legislature who shall not be entitled to the right of suffrage.

3. Members of the Senate and General Assembly shall be elected at general elections. The two houses shall meet separately on the second Tuesday in January of each year, at which time of meeting the legislative year shall commence. They shall organize annually and shall hold annual sessions. Vacancies shall be filled by election for the unexpired terms only, as may be provided by law.

4. Special sessions of the Legislature shall be called by the Governor upon petition of a majority of all of the members of each house and may be called by the Governor at such other times as in his opinion the public interest may require.

SECTION II

1. The Senate shall be composed of one Senator from each county in the State, elected by the legal voters of the counties, respectively, for a term beginning at noon on the second Tuesday in January next following his election and ending at noon on the second Tuesday in January four years thereafter.

2. The members of the Senate shall be elected in two classes so that, as nearly as may be, one-half of the total number shall be elected biennially.

SECTION III

1. The General Assembly shall be composed of members elected biennially by the legal voters of the counties, respectively, for terms beginning at noon on the second Tuesday in January next following their election and ending at noon on the second Tuesday in January two years thereafter. The members of the General Assembly shall be apportioned among the several counties as nearly as may be according to the number of their inhabitants but each county shall at all times be entitled to one member and the whole number of members shall never exceed sixty. The present apportionment shall continue until the next census of the United States shall have been taken and an apportionment of the members of the General Assembly shall be made by the Legislature at the first session after the next and every subsequent census, and when made shall remain unaltered until another census of the United States shall have been taken.

SECTION IV

1. Each house shall direct writs of election for supplying vacancies occasioned by death, resignation, or otherwise; but if vacancies occur during the recess of the Legislature, the writs may be issued by the Governor, under such regulations as may be prescribed by law.

2. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of all its members shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

3. Each house shall choose its own officers, determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, may expel a member.

4. Each house shall keep a journal of its proceedings, and from time to time publish the same; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

5. Neither house, during the session of the Legislature, shall, without the consent of the other, adjourn for more than three days, or to any other place than that in which the two houses shall be sitting.

6. All bills and joint resolutions shall be read three times in each house, before the final passage thereof. No bill or joint resolution shall be read a third time in either house until one full calendar day shall have intervened between the day upon which it shall have been read the second time and the day upon which it shall be read the third time unless the house shall resolve that such bill or joint resolution is an emergency measure by the agreement of three-fourths of all of its members thereto by the yeas and nays of the members, which shall be entered on the journal, in which case such bill or joint resolution may thereupon be read a third time and be voted upon. No bill or joint resolution shall pass, unless there shall be a majority of all of the members of each body personally present and agreeing thereto, and the yeas and nays of the members voting on such final passage shall be entered on the journal.

7. Members of the Senate and General Assembly shall receive annually, during the time for which they shall have been elected and while they shall hold their office, such compensation as shall, from time to time, be fixed by law and no other allowance or emolument, directly or indirectly, for any purpose whatever. The President of the Senate and the Speaker of the General Assembly shall, by virtue of their office, receive an additional compensation, equal to one-third of their allowance as members.

The compensation of members of the Legislature shall be fixed at the first session of the Legislature held after this article of this Constitution takes effect and may be increased or decreased, from time to time thereafter, by law, but no increase or decrease shall be effective until the legislative year following the next general election for members of the General Assembly.

8. Members of the Senate and General Assembly shall, in all cases except treason and high misdemeanor, be privileged from arrest during their attendance at the sitting of their respective houses, and in going to and returning from the same; and for any statement, speech or debate, in either house or at any legislative committee meeting, they shall not be questioned in any other place.

Section V

1. No member of the Senate or General Assembly shall, during the term for which he was or shall have been elected, be nominated, elected or appointed to any State civil office or position, of profit, which shall have been created by law, or the emoluments whereof shall have been increased by law, during such term. The provisions

of this paragraph shall not prohibit the nomination or election of any person as Governor or as a member of the Senate or General Assembly, or the nomination, election or appointment of any member of the Senate or General Assembly, first constituted under this Constitution, to any State civil office or position created by this Constitution or created during his first term of service as such member under this Constitution.

2. The Legislature may appoint, and members thereof may be appointed, and may serve as, members of any commission, committee or other body whose main purpose is to aid or assist the Legislature in performing its functions.

3. If any member of the Legislature shall become a member of Congress or shall accept any Federal or State office or position, of profit, his seat shall thereupon become vacant.

4. No member of Congress, no person holding any Federal or State office or position, of profit, and no judge of any court shall be entitled to a seat in the Legislature.

5. Neither the Legislature nor either house thereof shall elect or appoint any executive, administrative or judicial officer except the State Auditor.

Section VI

1. All bills for raising revenue shall originate in the House of Assembly; but the Senate may propose or concur with amendments, as on other bills.

2. The Legislature may enact general laws under which municipalities, other than counties, may adopt zoning ordinances limiting and restricting to specified districts and regulating therein, buildings and structures, according to their construction, and the nature and extent of their use, and the nature and extent of the uses of land, and the exercise of such authority shall be deemed to be within the police power of the State. Such laws shall be subject to repeal or alteration by the Legislature.

3. Any agency or political subdivision of the State or any agency of a political subdivision thereof, which is empowered to take or otherwise acquire private property for any public highway, parkway, airport, place, improvement, or use, may be authorized by law to take or otherwise acquire a fee simple absolute or any lesser interest, and may be authorized by law to take or otherwise acquire a fee simple absolute in, easements upon, or the benefit of restrictions upon, abutting property to preserve and protect the public highway, parkway, airport, place, improvement, or use; but such taking shall be with just compensation.

Section VII

1. No divorce shall be granted by the Legislature.

2. (Here to be inserted either Alternate A or Alternate B as contained in Committee on Legislative Proposal No. 2, whichever is adopted by the people.)

3. The Legislature shall not pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or depriving a party of any remedy for enforcing a contract which existed when the contract was made.

4. To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title. This paragraph, however, shall not be given effect to invalidate any law adopting or enacting a compilation, consolidation, revision, or rearrangement of all or parts of the statutory law.

5. No law shall be revived or amended by reference to its title only, but the act revived, or the section or sections amended, shall be inserted at length. No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of the act or which shall enact that any existing law, or any part thereof, shall be applicable, except by inserting it in such act.

6. The laws of this State shall begin in the following style: "Be it enacted by the Senate and General Assembly of the State of New Jersey."

7. Individuals or private corporations shall not be authorized to take private property for public use, without just compensation first made to the owners.

8. No private, special or local law shall be passed unless public notice of the intention to apply therefor, and of the general object thereof, shall have been previously given.

Such public notice shall be given at such time and in such mode and shall be so evidenced and the evidence thereof shall be so preserved as may be provided by law.

9. No general law shall embrace any provision of a private, special or local character. The Legislature shall not pass any private, special or local laws:

(1) Authorizing the sale of any lands belonging in whole or in part to a minor or minors or other persons who may at the time be under any legal disability to act for themselves.

(2) Changing the law of descent.

(3) Providing for change of venue in civil or criminal cases.

(4) Selecting, drawing, summoning or empaneling grand or petit jurors.

(5) Creating, increasing or decreasing the emoluments, term or tenure rights of any public officers or employees.

(6) Relating to taxation or exemption therefrom.

(7) Providing for the management and control of free public schools.

(8) Granting to any corporation, association or individual any exclusive privilege, immunity or franchise whatever.

(9) Granting to any corporation, association or individual the right to lay down railroad tracks.

(10) Laying out, opening, altering, constructing, maintaining and repairing roads or highways.

(11) Vacating any road, town plot, street or alley or public grounds.

(12) Appointing local officers or commissions to regulate municipal affairs.

(13) Regulating the internal affairs of municipalities formed for local government and counties, except as otherwise in this Constitution provided.

The Legislature shall pass general laws providing for the cases enumerated in this paragraph, and for all other cases which, in its judgment, may be provided for by general laws. The Legislature shall pass no special act conferring corporate powers, but shall pass general laws under which corporations may be organized and corporate powers of every nature obtained, subject, nevertheless, to repeal or alteration at the will of the Legislature.

10. The Legislature may pass, by the agreement thereto of two-thirds of all of the members of each house, private, special or local laws regulating the internal affairs of any municipal corporation formed for local government, or of any county, upon petition to the Legislature by the governing body of such municipal corporation or such county, authorized in such manner as may be prescribed by general law, and specifying the general nature of the law so to be be passed, but such law shall become operative in the municipality, or in the county, only, upon the adoption thereof by the municipality or county, by ordinance of the governing body, or by the vote of the legal voters, of the municipality or county. The Legislature shall prescribe in such law or by general law the method of adoption of such law, and the manner in which the ordinance may be enacted or the vote of the legal voters had, as the case may be, for the adoption of such law.

11. The provisions of this Constitution and of any law concerning counties and municipal corporations formed for local government shall be liberally construed in their favor; the powers of any county or of any such municipal corporation shall include not merely those expressly or incidently conferred, specifically enumerated, indispensable, essential, or merely implied, but also those powers reasonably convenient for the execution of such powers and

not inconsistent with or prohibited by this Constitution or by law.

SECTION VIII

1. Members of the Legislature shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm, as the case may be,) that I will support the Constitution of the United States and the Constitution of the State of New Jersey, and that I will faithfully discharge the duties of Senator (or member of the General Assembly, as the case may be) according to the best of my ability." And members-elect of the Senate or General Assembly are hereby empowered to administer to each other the said oath or affirmation.

2. Every officer of the Legislature shall, before he enters upon his duties, take and subscribe the following oath or affirmation: "I do solemnly promise and swear (or affirm) that I will faithfully, impartially and justly perform all the duties of the office of .....,, to the best of my ability and understanding; that I will carefully preserve all records, papers, writings, or property entrusted to me for safe-keeping by virtue of my office, and make such disposition of the same as may be required by law."

SCHEDULE

1. The first Legislature under this Constitution shall meet on the second Tuesday in January, in the year one thousand nine hundred and forty-eight.

2. Each member of the General Assembly, elected at the election in the year one thousand nine hundred and forty-seven, shall hold office for a term beginning at noon on the second Tuesday in January in the year one thousand nine hundred and forty-eight and ending at noon on the second Tuesday in January in the year one thousand nine hundred and fifty. Each member of the General Assembly elected thereafter shall hold office for the term provided by this Constitution.

3. Each member of the Senate elected in the years one thousand nine hundred and forty-five and one thousand nine hundred and forty-six shall hold office for the term for which he was elected. Each member of the Senate elected at the election in the year one thousand nine hundred and forty-seven shall hold office for a term of four years beginning at noon of the second Tuesday in January, following. The seats in the Senate which would have been filled in the years hereinafter designated had this Constitution not been adopted shall be filled by election as follows: of those seats which would have been filled by election in the year one thousand nine hundred and forty-eight, three seats, as chosen by the Senate in the

year one thousand nine hundred and forty-eight, shall be filled by election in that year for terms of three years, and three, as so chosen, shall be filled by election in that year for terms of one year, and those seats which would have been filled by election in the year one thousand nine hundred and forty-nine shall be filled by election in that year for terms of four years, so that ten seats in the Senate shall be filled by election in the year one thousand nine hundred and forty-nine and in every four years thereafter for terms of four years, and the members of the Senate so elected and their successors shall constitute one class to be elected as prescribed in paragraph 2 of Section II of Article —— of this Constitution and eleven seats shall be filled by election in the year one thousand nine hundred and fifty-one and in every four years thereafter for terms of four years, and the members of the Senate so elected and their successors shall constitute the other class to be elected as prescribed in said paragraph of this Constitution.

COMMITTEE PROPOSAL No. 2-2

Introduced . . . . . .

By EDWARD J. O'MARA

Chairman, Committee on the Legislative

A PROPOSAL for submission to the people of Alternative provisions to be adopted as Section VII, paragraph 2, of the Legislative Article of the New State Constitution.

Resolved, that the following Alternative Paragraphs be agreed upon for submission to the people in such manner that the one receiving the greater number of votes be adopted as Section VII, paragraph 2, of the Legislative Article of the New State Constitution:

ALTERNATE "A"

2. It shall be lawful to hold, carry on, and operate in this State race meetings whereat the trotting, running or steeplechase racing of horses only may be conducted between the hours of sunrise and sunset on week days only and in duly legalized race tracks, at which the pari-mutuel system of betting shall be permitted. No lottery, roulette, or game of chance of any form shall be authorized by the Legislature in this State, and no ticket in any lottery shall be bought or sold within this State, or offered for sale; nor shall pool-selling, bookmaking, or gambling of any kind be authorized or allowed within this State, except pari-mutuel betting on the results of the racing of horses only, from which the State shall derive a reasonable revenue for the support of government; nor shall any gambling device, practice, or game of chance, or pari-mutuel betting thereon now prohibited by law, except as herein stated and otherwise provided, be legalized, or the remedy, penalty, or punishment now provided therefor be in any way diminished.

ALTERNATE "B"

2. It shall be lawful to hold, carry on, and operate in this State race meetings whereat the trotting, running or steeplechase racing of horses only may be conducted between the hours of sunrise and sunset on week days only and in duly legalized race tracks, at which the pari-mutuel system of betting shall be permitted. The Legislature may authorize and regulate by law the conduct of specified games of chance by bona fide charitable, religious, fraternal and veterans' associations or organizations and volunteer fire companies, in such

manner that the proceeds enure entirely to the benefit of such associations, organizations and companies, but no such law shall be operative to authorize the conduct of any games of chance, within the territorial limits of any municipal corporation formed for local government, unless adopted by the vote of the legal voters of such municipal corporation, as provided in such law, which adoption may be revoked in a similar manner, for which also provision shall be made in such law, after which such law shall not be operative within the territorial limits of such municipal corporation unless so adopted again. Except as in this paragraph of this Constitution otherwise provided, no lottery, roulette, or game of chance of any form shall be authorized by the Legislature in this State, and no ticket in any lottery shall be bought or sold within this State, or offered for sale; nor shall pool-selling, bookmaking, or gambling of any kind be authorized or allowed within this State, except pari-mutuel betting on the results of the racing of horses only, from which the State shall derive a reasonable revenue for the support of government, and games of chance authorized, regulated and conducted as in this paragraph provided; nor shall any gambling device, practice, or game of chance, or pari-mutuel betting thereon now prohibited by law, except as herein stated and otherwise provided, be legalized, or the remedy, penalty or punishment now provided therefor be in any way diminished.

AMENDMENTS TO COMMITTEE PROPOSALS NOS. 2-1 AND 2-2 [1]

AMENDMENT No. 1 to COMMITTEE PROPOSAL No. 2-1 and its SUPPLEMENTAL PROPOSAL No. 2-2

Introduced by Amos F. Dixon

Resolved, that the following amendments to the above proposals for a new State Constitution be agreed upon:

Amend the preamble to Committee Proposal No. 2-1 on page 1 by substituting a period for the comma after the word "Constitution" ending on the 4th line and strike out the remainder of the paragraph which reads, "to which shall be added Alternative 'A' or Alternative 'B' of Committee on the Legislative Proposal No. 2, whichever shall be adopted by the people, as Section VII, Paragraph 2, of the Legislative Article."

Amend Committee Proposal No. 2-1 on page 6, Section VII, paragraph 2 by striking it out entirely.

Amend supplementary Proposal No. 2-2 by striking it out entirely.

AMENDMENT No. 2 to COMMITTEE PROPOSAL No. 2-1

Introduced by Wesley L. Lance

Resolved, that the following amendment to paragraph 1 of Section VI be agreed upon:

Amend on page 5, paragraph 1, lines 1 and 2, by striking the whole of paragraph 1.

AMENDMENT No. 3 to COMMITTEE PROPOSAL No. 2-2

Introduced by Robert Carey

Amendment to Committee Proposal No. 2-2, proposed to be adopted as Section 7, paragraph 2, of the Legislative Article of the new State Constitution entitled Alternate B.

Strike out all of said article and substitute therefor as an amendment in its place the following:

"The subject matter of gambling in this State is entirely a legislative matter, and is herewith fixed as such. The Legislature is therefore empowered, on such terms and under such conditions and regulations as the Legislature may fix and determine from time to time, to permit gambling of any kind or sort thereof. In the absence of any express grant of authority to conduct or operate any kind of gambling, such gambling shall be deemed pro-

[1] Page and line references in these amendments are to the printed Proposals distributed to the delegates. However, they are sufficiently specific to be clear.

hibited under such penalties as are now provided by law or which may hereafter be provided by law."

AMENDMENT No. 4 to COMMITTEE PROPOSAL No. 2-2

Introduced by Robert Carey

Amendment to the recommendations proposed by the Committee on the Legislative covering the subject matter of gambling covered by Committee Proposal No. 2-2, being a proposal to be adopted as Section 7, paragraph 2 of the Legislative Article of the new Constitution.

This amendment is made as a complete substitute for the paragraphs relating to gambling recommended by the committee. The paragraphs referred to are annulled in toto, and the following is proposed as a full and complete amendment of and substitute for the subject matter:

"GAMBLING

Gambling is not a constitutional subject. It is not entitled to a place in the Constitution, even should there be a prohibition of all gambling. It is a matter belonging entirely to the domain of legislation.

The State by constitutional amendment, however, in 1939 made betting at duly licensed race tracks under specific conditions legal; and provided that all other gambling in the State is unlawful and prohibited. Race tracks have been established in this State under and by virtue of that amendment, and as the result of legislative sanction and action, and are now in operation. The State receives large revenues therefrom. The continued operation of these tracks heretofore authorized shall be permitted for a reasonable time, and for the purpose of satisfying a possible moral obligation of the State to the investors, shall be permitted for a period of five (5) years from the date of the adoption of this Constitution; subject, however, to control by the Legislature as at the present time.

In all other respects the whole matter of prohibition, regulation, or operation of any and all kinds of gambling, and gambling rights and privileges shall be and is hereby made subject to such legislation and legislative control as may be enacted and provided from time to time. No constitutional rights or privileges are hereby granted except as specifically stated and set forth."

AMENDMENT No. 5 to COMMITTEE PROPOSAL No. 2-1

Introduced by Oliver Randolph

Resolved, that the following amendment to the above proposal for a new State Constitution be agreed upon:

Amend Section VII, paragraph 9 as follows:

After the period in line 15 on page 7 insert the following words:

"Discrimination on account of race, color, creed or national origin in the management and control of free public schools is prohibited."

AMENDMENT No. 6 to COMMITTEE PROPOSAL No. 2-1

Introduced by Spencer Miller, Jr.

Resolved, the following amendment to Section V, Article Legislative be agreed upon:

Add to Section V a new paragraph to be entitled paragraph 6 to read as follows:

"The Legislature shall enact laws and adopt rules prohibiting the practice of lobbying, on the floor of either house of the Legislature, and further regulating the practice of lobbying."

AMENDMENT No. 7 to COMMITTEE PROPOSAL No. 2-1

Introduced by Spencer Miller, Jr.

Resolved, the following amendment to Section VI, paragraph 2, Article Legislative be agreed upon:

Delete phrase in second line, "other than", and substitute therefore the phrase "and counties".

AMENDMENT No. 8 to COMMITTEE PROPOSAL No. 2-1

Introduced by Spencer Miller, Jr.

Resolved, the following amendment to Section VI, Article Legislative be agreed upon:

Add new paragraph to Section VI to be entitled paragraph 4 as follows:

"The natural beauty, historic association, sightliness and physical good order of the State and its parts contribute to the general welfare and shall be conserved and developed as part of the patrimony of the people, and to that end private property shall be subject to reasonable regulations and control."

SUBSTITUTE FOR
AMENDMENT No. 8 to COMMITTEE PROPOSAL No. 2-1

Introduced by Spencer Miller, Jr.

Resolved, the following amendment to Section VI, Article Legislative be agreed upon:

Add new paragraph to Section VI to be entitled paragraph 4 as follows:

"Private property shall be subject to reasonable regulation and control in order to conserve the natural beauty, historic association, sightliness and physical good order of the State."

AMENDMENT No. 9 to COMMITTEE PROPOSAL No. 2-1

Introduced by Arthur W. Lewis

Amend Committee Proposal No. 2-1, page 6, Section VII, paragraph 2, by striking out all of lines 1 and 2 and inserting in lieu thereof the following:

"No gambling of any kind shall be authorized by the Legislature unless the specific kind and nature thereof shall have been or shall hereafter be submitted to and authorized by a majority of the votes cast by the people at a general or special election."

AMENDMENT No. 10 to COMMITTEE PROPOSAL No. 2-2

Introduced by Arthur W. Lewis

Strike out Committee Proposal No. 2-2 in its entirety.

AMENDMENT No. 11 to COMMITTEE PROPOSAL No. 2-1

Introduced by Dominic A. Cavicchia

Strike out paragraph 11 of Section VII (page 8).

AMENDMENT No. 12 to COMMITTEE PROPOSAL No. 2-1

Introduced by John J. Rafferty

Resolved, that the following shall become new paragraph 9(14), Section VII, Article —— Legislative, in Committee Proposal 2-1, presented by the Committee on the Legislative, and shall become part of the proposed new State Constitution:

"9(14) Nothing in this Constitution shall prevent the Legislature from providing as it may deem proper by general laws for the secular education and support of persons who are blind, deaf, dumb, physically handicapped or delinquent, or for the aid, care and support of neglected and dependent children and of the needy, sick or aged, through agencies and institutions, religious or secular, authorized and approved by the Department of Institutions and Agencies, or its successor department, or other designated department having the power of inspection thereof, by pay-

ments made therefor on a per capita basis. No such payments shall be made for any such person so provided for who is not received and retained in any such institution or agency pursuant to reasonable rules established by the Department of Institutions and Agencies, or its successor department, or other designated department having the power of inspection thereof."

AMENDMENT No. 13 to COMMITTEE PROPOSAL No. 2-1

Introduced by Jane Barus

Resolved, that a new paragraph 4 be added at the end of Section 6 of the Article on the Legislative branch (p. 6), as follows:

"The acquisition of real property for development or redevelopment in any area in accordance with a plan duly adopted in a manner prescribed by the Legislature, whether the uses to which such area is to be devoted be public or private uses or both, is hereby declared to be a public use. The Legislature shall make laws governing acquisition, use and disposal of such property by an agency of the State or a political subdivision thereof. The Legislature may authorize the organization of corporations or Authorities to undertake such development or redevelopment or any part thereof and may authorize municipalities to exempt their improvements from taxation, in whole or in part, for a limited period of time, under conditions as to special public regulations to be specified by law or by contract between any such corporation or Authority and the municipality, provided that during the period of such tax exemption the profits of the corporation and the dividends paid by it shall be limited by law."

AMENDMENT No. 14 to COMMITTEE PROPOSAL No. 2-1

Introduced by Christian J. Jorgensen

Resolved, that the following shall become new paragraph 12, Section VII of the Article on the Legislative in Proposal No. 2-1 presented by the Committee on the Legislative and shall become part of the proposed new State Constitution:

"No law shall be passed which shall make mandatory the appropriation or expenditure of any moneys by any county or by any municipal corporation formed for local government unless such law shall be applicable to all counties or to all such municipal corporations or unless the moneys so to be appropriated or expended shall be provided by the State, or the county or municipal corporation shall be reimbursed by the State for the appropriation or expenditure thereof."

AMENDMENT No. 15 to COMMITTEE PROPOSAL No. 2-1 and its SUPPLEMENTAL PROPOSAL No. 2-2

Introduced by Arthur W. Lewis

Resolved, that the following amendments to the above proposals for a new State Constitution be agreed upon:

Amend the preamble to Committee Proposal No. 2-1 on page 1 by substituting a period for the comma after the word "Constitution" ending on the 4th line and strike out the remainder of the paragraph which reads, "to which shall be added Alternative 'A' or Alternative 'B' of Committee on the Legislative Proposal No. 2, whichever shall be adopted by the people, as Section VII, paragraph 2, of the Legislative Article."

Amend Committee Proposal No. 2-1, page 6, Section VII, paragraph 2, by striking out all of lines 1 and 2 and inserting in lieu thereof the following:

"No gambling of any kind shall be authorized by the Legislature unless the specific kind and control thereof has been heretofore submitted to, and authorized by a majority of the votes cast by, the people at a special election or shall hereafter be submitted to, and authorized by a majority of the votes cast by, the people at a general election."

Amend supplementary Proposal No. 2-2 by striking it out entirely.

AMENDMENT No. 16 to COMMITTEE PROPOSAL No. 2-1

Introduced by Henry W. Peterson

Section VII, paragraph 11 (page 8), line 3, delete semi-colon after the word "favor".

Delete the language following the word "favor" in line 3, the language in lines 4, 5, 6 and 7 so that paragraph 11 will read as follows:

"11. The provisions of this Constitution and of any law concerning counties and municipal corporations formed for local government shall be liberally construed in their favor."

AMENDMENT TO AMENDMENT No. 16 to COMMITTEE PROPOSAL No. 2-1

Introduced by Henry W. Peterson

Amend Section VII, paragraph 11, page 8, by striking out all of

the language on lines 4, 5, 6 and 7 after the word "not" on line 4; and insert in lieu thereof the following:

"only those granted in express terms but also those of necessary or fair implication, or incident to the powers expressly conferred, or essential thereto, and not inconsistent with or prohibited by this Constitution or by law."

AMENDMENT No. 17 to COMMITTEE PROPOSAL No. 2-1

Introduced by David Van Alstyne, Jr.

Resolved, that the following amendments to the above Proposal for a new State Constitution be agreed upon:

Amend on page 10, Schedule, paragraph 3, line 12, by striking the word "three" in front of the word "years" and inserting in lieu thereof the word "five."

Amend on page 10, Schedule, paragraph 3, line 13, by striking the words "one year" and inserting in lieu thereof the words "three years."

[OFFICIAL COPY REPRINT]

PROPOSAL No. 2-1

ADOPTED AUGUST 20, 1947

A PROPOSAL for the Legislative Article of the proposed new Constitution in substitution for Article IV (except Section VI, Paragraphs 2, 3, and 4 and except Section VII, Paragraphs 6, 10 and 12) of the present Constitution.

Resolved, That the following be agreed upon as part of the proposed new State Constitution:

ARTICLE———
LEGISLATIVE

SECTION I

1. The legislative power shall be vested in a Senate and General Assembly.

2. No person shall be a member of the Senate who shall not have attained the age of thirty years, and have been a citizen and resident of the State for four years, and of the county for which he shall be elected one year, next before his election. No person shall be a member of the General Assembly who shall not have attained the age of twenty-one years, and have been a citizen and resident of the State for two years, and of the county for which he shall be elected one year, next before his election; but no person shall be eligible for membership in the Legislature who shall not be entitled to the right of suffrage.

3. The Senate and General Assembly shall meet and organize separately on the second Tuesday in January of each year, whereupon the legislative year shall commence.

4. Special sessions of the Legislature shall be called by the Governor upon petition of a majority of all the members of each house and may be called by the Governor whenever in his opinion the public interest shall require.

SECTION II

1. The Senate shall be composed of one Senator from each county, elected by the legally qualified voters of the county, for a term beginning at noon of the second Tuesday in January next following his election and ending at noon of the second Tuesday in January four years thereafter.

2. The members of the Senate shall be elected in two classes so

that, as nearly as may be, one-half of all the members shall be elected biennially.

SECTION III

1. The General Assembly shall be composed of members elected biennially by the legally qualified voters of the counties, respectively, for terms beginning at noon of the second Tuesday in January next following their election and ending at noon of the second Tuesday in January two years thereafter. The members of the General Assembly shall be apportioned among the several counties as nearly as may be according to the number of their inhabitants, but each county shall at all times be entitled to one member and the whole number of members shall never exceed sixty. The present apportionment shall continue until the next census of the United States shall have been taken. Apportionment of the members of the General Assembly shall be made by the Legislature at the first session after the next and every subsequent census, and each apportionment when made shall remain unaltered until the following census shall have been taken.

SECTION IV

1. Any vacancy in the Legislature occasioned by death, resignation or otherwise shall be filled by election for the unexpired term only, as may be provided by law. Each house shall direct a writ of election to fill any vacancy in its membership; but if the vacancy shall occur during a recess of the Legislature, the writ may be issued by the Governor, as may be provided by law.

2. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of all its members shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

3. Each house shall choose its own officers, determine the rules of its proceedings, and punish its members for disorderly behavior. It may expel a member with the concurrence of two-thirds of all its members.

4. Each house shall keep a journal of its proceedings, and from time to time publish the same. The yeas and nays of the members of either house on any question shall, on demand of one-fifth of those present, be entered on the journal.

5. Neither house, during the session of the Legislature, shall, without the consent of the other, adjourn for more than three days, or to any other place than that in which the two houses shall be sitting.

6. All bills and joint resolutions shall be read three times in each house before final passage. No bill or joint resolution shall be read

a third time in either house until after the intervention of one full calendar day following the day of the second reading; but if either house shall resolve by vote of three-fourths of all its members, signified by yeas and nays entered on the journal, that a bill or joint resolution is an emergency measure, it may proceed forthwith from second to third reading. No bill or joint resolution shall pass unless there shall be a majority of all the members of each body personally present and agreeing thereto, and the yeas and nays of the members voting on such final passage shall be entered on the journal.

7. Members of the Senate and General Assembly shall receive annually, during the term for which they shall have been elected and while they shall hold their office, such compensation as shall, from time to time, be fixed by law and no other allowance or emolument, directly or indirectly, for any purpose whatever. The President of the Senate and the Speaker of the General Assembly, each by virtue of his office, shall receive an additional allowance equal to one-third of his compensation as a member.

8. The compensation of members of the Senate and General Assembly shall be fixed at the first session of the Legislature held after this Constitution takes effect, and may be increased or decreased by law from time to time thereafter, but no increase or decrease shall be effective until the legislative year following the next general election for members of the General Assembly.

9. Members of the Senate and General Assembly shall, in all cases except treason and high misdemeanor, be privileged from arrest during their attendance at the sitting of their respective houses, and in going to and returning from the same; and for any statement, speech or debate, in either house or at any meeting of a legislative committee, they shall not be questioned in any other place.

Section V

1. No member of the Senate or General Assembly, during the term for which he shall have been elected, shall be nominated, elected or appointed to any State civil office or position, of profit, which shall have been created by law, or the emoluments whereof shall have been increased by law, during such term. The provisions of this paragraph shall not prohibit the election of any person as Governor or as a member of the Senate or General Assembly.

2. The Legislature may appoint any commission, committee or other body whose main purpose is to aid or assist it in performing its functions. Members of the Legislature may be appointed to serve on any such body.

3. If any member of the Legislature shall become a member of Congress or shall accept any Federal or State office or position, of profit, his seat shall thereupon become vacant.

4. No member of Congress, no person holding any Federal or

State office or position, of profit, and no judge of any court shall be entitled to a seat in the Legislature.

5. Neither the Legislature nor either house thereof shall elect or appoint any executive, administrative or judicial officer except the State Auditor.

SECTION VI

1. All bills for raising revenue shall originate in the General Assembly; but the Senate may propose or concur with amendments, as on other bills.

2. The Legislature may enact general laws under which municipalities, other than counties, may adopt zoning ordinances limiting and restricting to specified districts and regulating therein, buildings and structures, according to their construction, and the nature and extent of their use, and the nature and extent of the uses of land, and the exercise of such authority shall be deemed to be within the police power of the State. Such laws shall be subject to repeal or alteration by the Legislature.

3. Any agency or political subdivision of the State or any agency of a political subdivision thereof, which may be empowered to take or otherwise acquire private property for any public highway, parkway, airport, place, improvement, or use, may be authorized by law to take or otherwise acquire a fee simple absolute or any lesser interest, and may be authorized by law to take or otherwise acquire a fee simple absolute in, easements upon, or the benefit of restrictions upon, abutting property to preserve and protect the public highway, parkway, airport, place, improvement, or use; but such taking shall be with just compensation.

SECTION VII

1. No divorce shall be granted by the Legislature.

2. No gambling of any kind shall be authorized by the Legislature unless the specific kind, restrictions and control thereof have been heretofore submitted to, and authorized by a majority of the votes cast by, the people at a special election or shall hereafter be submitted to, and authorized by a majority of the votes cast thereon by, the legally qualified voters of the State voting at a general election.

3. The Legislature shall not pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or depriving a party of any remedy for enforcing a contract which existed when the contract was made.

4. To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title. This paragraph shall not invalidate any

law adopting or enacting a compilation, consolidation, revision, or rearrangement of all or parts of the statutory law.

5. No law shall be revived or amended by reference to its title only, but the act revived, or the section or sections amended, shall be inserted at length. No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of the act or which shall enact that any existing law, or any part thereof, shall be applicable, except by inserting it in such act.

6. The laws of this State shall begin in the following style: "Be it enacted by the Senate and General Assembly of the State of New Jersey."

7. No general law shall embrace any provision of a private, special or local character.

8. No private, special or local law shall be passed unless public notice of the intention to apply therefor, and of the general object thereof, shall have been previously given.

Such notice shall be given at such time and in such manner and shall be so evidenced and the evidence thereof shall be so preserved as may be provided by law.

9. The Legislature shall not pass any private, special or local laws:

(1) Authorizing the sale of any lands belonging in whole or in part to a minor or minors or other persons who may at the time be under any legal disability to act for themselves.

(2) Changing the law of descent.

(3) Providing for change of venue in civil or criminal cases.

(4) Selecting, drawing, summoning or empaneling grand or petit jurors.

(5) Creating, increasing or decreasing the emoluments, term or tenure rights of any public officers or employees.

(6) Relating to taxation or exemption therefrom.

(7) Providing for the management and control of free public schools.

(8) Granting to any corporation, association or individual any exclusive privilege, immunity or franchise whatever.

(9) Granting to any corporation, association or individual the right to lay down railroad tracks.

(10) Laying out, opening, altering, constructing, maintaining and repairing roads or highways.

(11) Vacating any road, town plot, streets, alley or public grounds.

(12) Appointing local officers or commissions to regulate municipal affairs.

(13) Regulating the internal affairs of municipalities formed for local government and counties, except as otherwise in this Constitution provided.

The Legislature shall pass general laws providing for the cases enumerated in this paragraph, and for all other cases which, in its judgment, may be provided for by general laws. The Legislature shall pass no special act conferring corporate powers, but shall pass general laws under which corporations may be organized and corporate powers of every nature obtained, subject, nevertheless, to repeal or alteration at the will of the Legislature.

10. Upon petition by the governing body of any municipal corporation formed for local government, or of any county, and by vote of two-thirds of all the members of each house, the Legislature may pass private, special or local laws regulating the internal affairs of the municipality or county. The petition shall be authorized in a manner to be prescribed by general law and shall specify the general nature of the law sought to be passed. Such law shall become operative only if it is adopted by ordinance of the governing body of the municipality or county or by vote of the legally qualified voters thereof. The Legislature shall prescribe in such law or by general law the method of adopting such law, and the manner in which the ordinance of adoption may be enacted or the vote taken, as the case may be.

11. The provisions of this Constitution and of any law concerning municipal corporations formed for local government, and counties, shall be liberally construed in their favor. The powers of counties and such municipal corporations shall include not only those granted in express terms but also those of necessary or fair implication, or incident to the powers expressly conferred, or essential thereto, and not inconsistent with or prohibited by this Constitution or by law.

SECTION VIII

1. Members of the Legislature shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm, as the case may be,) that I will support the Constitution of the United States and the Constitution of the State of New Jersey, and that I will faithfully discharge the duties of Senator (or member of the General Assembly, as the case may be) according to the best of my ability." Members-elect of the Senate or General Assembly are empowered to administer said oath or affirmation to each other.

2. Every officer of the Legislature shall, before he enters upon his duties, take and subscribe the following oath or affirmation: "I do solemnly promise and swear (or affirm) that I will faithfully, impartially and justly perform all the duties of the office of .....,
to the best of my ability and understanding; that I will carefully preserve all records, papers, writings, or property entrusted to me for safe-keeping by virtue of my office, and make such disposition of the same as may be required by law."

SCHEDULE

1. The first Legislature under this Constitution shall meet on the second Tuesday in January, in the year one thousand nine hundred and forty-eight.

2. Each member of the General Assembly, elected at the election in the year one thousand nine hundred and forty-seven, shall hold office for a term beginning at noon of the second Tuesday in January in the year one thousand nine hundred and forty-eight and ending at noon of the second Tuesday in January in the year one thousand nine hundred and fifty. Each member of the General Assembly elected thereafter shall hold office for the term provided by this Constitution.

3. Each member of the Senate elected in the years one thousand nine hundred and forty-five and one thousand nine hundred and forty-six shall hold office for the term for which he was elected. Each member of the Senate elected at the election in the year one thousand nine hundred and forty-seven shall hold office for a term of four years beginning at noon of the second Tuesday in January, following. The seats in the Senate which would have been filled in the years hereinafter designated had this Constitution not been adopted shall be filled by election as follows: of those seats which would have been filled by election in the year one thousand nine hundred and forty-eight, three seats, as chosen by the Senate in the year one thousand nine hundred and forty-eight, shall be filled by election in that year for terms of five years, and three, as so chosen, shall be filled by election in that year for terms of three years, and those seats which would have been filled by election in the year one thousand nine hundred and forty-nine shall be filled by election in that year for terms of four years, so that ten seats in the Senate shall be filled by election in the year one thousand nine hundred and forty-nine and in every four years thereafter for terms of four years, and the members of the Senate so elected and their successors shall constitute one class to be elected as prescribed in paragraph 2 of Section II of Article ——— of this Constitution, and eleven seats shall be filled by election in the year one thousand nine hundred and fifty-one and in every four years thereafter for terms of four years, and the members of the Senate so elected and their successors shall constitute the other class to be elected as prescribed in said paragraph of this Constitution.

4. The provisions of Paragraph 1 of Section V of Article ——— of this Constitution shall not prohibit the nomination, election or appointment of any member of the Senate or General Assembly first organized under this Constitution, to any State civil office or position created by this Constitution or created during his first term of service as such member under this Constitution.

REPORT

of the

COMMITTEE ON ARRANGEMENT AND FORM

of

PROPOSAL No. 2-1

on the

LEGISLATIVE ARTICLE

(as amended on second reading)

to the

CONSTITUTIONAL CONVENTION OF NEW JERSEY

Proposal No. 2-1 was referred to your Committee on August 15, 1947, and, pursuant to the Rules of the Convention, is reported back in the form hereunto annexed.

COMMITTEE ON ARRANGEMENT AND FORM
WAYNE D. MCMURRAY, *Chairman*
CHARLES P. HUTCHINSON, *Vice-Chairman*
ALFRED C. CLAPP, *Secretary*
FRANKLIN H. BERRY
JOHN DREWEN
ALBERT H. HOLLAND
FRANK G. SCHLOSSER

Dated: August 20, 1947.

COMMITTEE PROPOSAL No. 2-1

(as amended on second reading)

CONSTITUTIONAL CONVENTION OF NEW JERSEY

Introduced by EDWARD J. O'MARA
Chairman, Committee on the Legislative

A PROPOSAL for the Legislative Article of the proposed new Constitution in substitution for Article IV (except Section VI, paragraphs 2, 3, and 4 and except Section VII, paragraphs 6, 10 and 12) of the present Constitution.

Resolved, That the following be agreed upon as part of the proposed new State Constitution:

ARTICLE ——— LEGISLATIVE

SECTION I

1. The legislative power shall be vested in a Senate and General Assembly.

2. No person shall be a member of the Senate who shall not have attained the age of thirty years, and have been a citizen and resident of the State for four years, and of the county for which he shall be elected one year, next before his election. No person shall be a member of the General Assembly who shall not have attained the age of twenty-one years, and have been a citizen and resident of the State for two years, and of the county for which he shall be elected one year, next before his election. No person shall be eligible for membership in the Legislature who shall not be entitled to the right of suffrage.

3. The Senate and General Assembly shall meet and organize separately on the second Tuesday in January of each year, whereupon the legislative year shall commence.

4. Special sessions of the Legislature shall be called by the Governor upon petition of a majority of all the members of each house and may be called by the Governor whenever in his opinion the public interest shall require.

SECTION II

1. The Senate shall be composed of one Senator from each county, elected by the legally qualified voters of the county, for a term beginning at noon of the second Tuesday in January next following his election and ending at noon of the second Tuesday in January four years thereafter.

2. The members of the Senate shall be elected in two classes so that, as nearly as may be, one-half of all the members shall be elected biennially.

SECTION III

1. The General Assembly shall be composed of members elected biennially by the legally qualified voters of the counties, respectively, for terms beginning at noon of the second Tuesday in January next following their election and ending at noon of the second Tuesday in January two years thereafter. The members of the General Assembly shall be apportioned among the several counties as nearly as may be according to the number of their inhabitants, but each county shall at all times be entitled to one member and the whole number of members shall never exceed sixty. The present apportionment shall continue until the next census of the United States shall have been taken. Apportionment of the members of the General Assembly shall be made by the Legislature at

the first session after the next and every subsequent census, and each apportionment when made shall remain unaltered until the following census shall have been taken.

SECTION IV

1. Any vacancy in the Legislature occasioned by death, resignation or otherwise shall be filled by election for the unexpired term only, as may be provided by law. Each house shall direct a writ of election to fill any vacancy in its membership; but if the vacancy shall occur during a recess of the Legislature, the writ may be issued by the Governor, as may be provided by law.

2. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of all its members shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

3. Each house shall choose its own officers, determine the rules of its proceedings, and punish its members for disorderly behavior. It may expel a member with the concurrence of two-thirds of all its members.

4. Each house shall keep a journal of its proceedings, and from time to time publish the same. The yeas and nays of the members of either house on any question shall, on demand of one-fifth of those present, be entered on the journal.

5. Neither house, during the session of the Legislature, shall, without the consent of the other, adjourn for more than three days, or to any other place than that in which the two houses shall be sitting.

6. All bills and joint resolutions shall be read three times in each house before final passage. No bill or joint resolution shall be read a third time in either house until after the intervention of one full calendar day following the day of the second reading; but if either house shall resolve by vote of three-fourths of all its members, signified by yeas and nays entered on the journal, that a bill or joint resolution is an emergency measure, it may proceed forthwith from second to third reading. No bill or joint resolution shall pass, unless there shall be a majority of all the members of each body personally present and agreeing thereto, and the yeas and nays of the members voting on such final passage shall be entered on the journal.

7. Members of the Senate and General Assembly shall receive annually, during the term for which they shall have been elected and while they shall hold their office, such compensation as shall, from time to time, be fixed by law and no other allowance or emol-

ument, directly or indirectly, for any purpose whatever. The President of the Senate and the Speaker of the General Assembly, each by virtue of his office, shall receive an additional allowance, equal to one-third of his compensation as a member.

8. The compensation of members of the Senate and General Assembly shall be fixed at the first session of the Legislature held after this Constitution takes effect, and may be increased or decreased by law from time to time thereafter, but no increase or decrease shall be effective until the legislative year following the next general election for members of the General Assembly.

9. Members of the Senate and General Assembly shall, in all cases except treason and high misdemeanor, be privileged from arrest during their attendance at the sitting of their respective houses, and in going to and returning from the same; and for any statement, speech or debate, in either house or at any meeting of a legislative committee, they shall not be questioned in any other place.

Section V

1. No member of the Senate or General Assembly, during the term for which he shall have been elected, shall be nominated, elected or appointed to any State civil office or position, of profit, which shall have been created by law, or the emoluments whereof shall have been increased by law, during such term. The provisions of this paragraph shall not prohibit the election of any person as Governor or as a member of the Senate or General Assembly.

2. The Legislature may appoint any commission, committee or other body whose main purpose is to aid or assist it in performing its functions. Members of the Legislature may be appointed to serve on any such body.

3. If any member of the Legislature shall become a member of Congress or shall accept any Federal or State office or position, of profit, his seat shall thereupon become vacant.

4. No member of Congress, no person holding any Federal or State office or position, of profit, and no judge of any court shall be entitled to a seat in the Legislature.

5. Neither the Legislature nor either house thereof shall elect or appoint any executive, administrative or judicial officer except the State Auditor.

Section VI

1. All bills for raising revenue shall originate in the General Assembly; but the Senate may propose or concur with amendments, as on other bills.

2. The Legislature may enact general laws under which municipalities, other than counties, may adopt zoning ordinances limiting

and restricting to specified districts and regulating therein, buildings and structures, according to their construction, and the nature and extent of their use, and the nature and extent of the uses of land, and the exercise of such authority shall be deemed to be within the police power of the State. Such laws shall be subject to repeal or alteration by the Legislature.

3. Any agency or political subdivision of the State or any agency of a political subdivision thereof, which may be empowered to take or otherwise acquire private property for any public highway, parkway, airport, place, improvement, or use, may be authorized by law to take or otherwise acquire a fee simple absolute or any lesser interest, and may be authorized by law to take or otherwise acquire a fee simple absolute in, easements upon, or the benefit of restrictions upon, abutting property to preserve and protect the public highway, parkway, airport, place, improvement, or use; but such taking shall be with just compensation.

Section VII

1. No divorce shall be granted by the Legislature.

2. No gambling of any kind shall be authorized by the Legislature unless the specific kind, restrictions and control thereof have been heretofore submitted to, and authorized by a majority of the votes cast by, the people at a special election or shall hereafter be submitted to, and authorized by a majority of the votes cast thereon by, the legally qualified voters of the State voting at a general election.

3. The Legislature shall not pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or depriving a party of any remedy for enforcing a contract which existed when the contract was made.

4. To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title. This paragraph shall not invalidate any law adopting or enacting a compilation, consolidation, revision, or rearrangement of all or parts of the statutory law.

5. No law shall be revived or amended by reference to its title only, but the act revived, or the section or sections amended, shall be inserted at length. No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of the act or which shall enact that any existing law, or any part thereof, shall be applicable, except by inserting it in such act.

6. The laws of this State shall begin in the following style: "Be it enacted by the Senate and General Assembly of the State of New Jersey."

7. No general law shall embrace any provision of a private, special or local character.

8. No private, special or local law shall be passed unless public notice of the intention to apply therefor, and of the general object thereof, shall have been previously given. Such notice shall be given at such time and in such manner and shall be so evidenced and the evidence thereof shall be so preserved as may be provided by law.

9. The Legislature shall not pass any private, special or local laws:

(1) Authorizing the sale of any lands belonging in whole or in part to a minor or minors or other persons who may at the time be under any legal disability to act for themselves.

(2) Changing the law of descent.

(3) Providing for change of venue in civil or criminal cases.

(4) Selecting, drawing, summoning or empaneling grand or petit jurors.

(5) Creating, increasing or decreasing the emoluments, term or tenure rights of any public officers or employees.

(6) Relating to taxation or exemption therefrom.

(7) Providing for the management and control of free public schools.

(8) Granting to any corporation, association or individual any exclusive privilege, immunity or franchise whatever.

(9) Granting to any corporation, association or individual the right to lay down railroad tracks.

(10) Laying out, opening, altering, constructing, maintaining and repairing roads or highways.

(11) Vacating any road, town plot, street, alley or public grounds.

(12) Appointing local officers or commissions to regulate municipal affairs.

(13) Regulating the internal affairs of municipalities formed for local government and counties, except as otherwise in this Constitution provided.

The Legislature shall pass general laws providing for the cases enumerated in this paragraph, and for all other cases which, in its judgment, may be provided for by general laws. The Legislature shall pass no special act conferring corporate powers, but shall pass general laws under which corporations may be organized and corporate powers of every nature obtained, subject, nevertheless, to repeal or alteration at the will of the Legislature.

10. Upon petition by the governing body of any municipal corporation formed for local government, or of any county, and by vote of two-thirds of all the members of each house, the Legislature

may pass private, special or local laws regulating the internal affairs of the municipality or county. The petition shall be authorized in a manner to be prescribed by general law and shall specify the general nature of the law sought to be passed. Such law shall become operative only if it is adopted by ordinance of the governing body of the municipality or county or by vote of the legally qualified voters thereof. The Legislature shall prescribe in such law or by general law the method of adopting such law, and the manner in which the ordinance of adoption may be enacted or the vote taken, as the case may be.

11. The provisions of this Constitution and of any law concerning municipal corporations formed for local government, and counties, shall be liberally construed in their favor. The powers of counties and such municipal corporations shall include not only those expressly or incidentally conferred, specifically enumerated, indispensable, essential, or implied, but also those reasonably convenient for the execution of such powers and not inconsistent with or prohibited by law or this Constitution.

SECTION VIII

1. Members of the Legislature shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm, as the case may be,) that I will support the Constitution of the United States and the Constitution of the State of New Jersey, and that I will faithfully discharge the duties of Senator (or member of the General Assembly, as the case may be) according to the best of my ability." Members-elect of the Senate or General Assembly are empowered to administer said oath or affirmation to each other.

2. Every officer of the Legislature shall, before he enters upon his duties, take and subscribe the following oath or affirmation: "I do solemnly promise and swear (or affirm) that I will faithfully, impartially and justly perform all the duties of the office of .....,
to the best of my ability and understanding; that I will carefully preserve all records, papers, writings, or property entrusted to me for safe-keeping by virtue of my office, and make such disposition of the same as may be required by law."

SCHEDULE

1. The first Legislature under this Constitution shall meet on the second Tuesday in January, in the year one thousand nine hundred and forty-eight.

2. Each member of the General Assembly, elected at the election in the year one thousand nine hundred and forty-seven, shall hold office for a term beginning at noon of the second Tuesday in Janu-

ary in the year one thousand nine hundred and forty-eight and ending at noon of the second Tuesday in January in the year one thousand nine hundred and fifty. Each member of the General Assembly elected thereafter shall hold office for the term provided by this Constitution.

3. Each member of the Senate elected in the years one thousand nine hundred and forty-five and one thousand nine hundred and forty-six shall hold office for the term for which he was elected. Each member of the Senate elected at the election in the year one thousand nine hundred and forty-seven shall hold office for a term of four years beginning at noon of the second Tuesday in January, following. The seats in the Senate which would have been filled in the years hereinafter designated had this Constitution not been adopted shall be filled by election as follows: of those seats which would have been filled by election in the year one thousand nine hundred and forty-eight, three seats, as chosen by the Senate in the year one thousand nine hundred and forty-eight, shall be filled by election in that year for terms of five years, and three, as so chosen, shall be filled by election in that year for terms of three years, and those seats which would have been filled by election in the year one thousand nine hundred and forty-nine shall be filled by election in that year for terms of four years, so that ten seats in the Senate shall be filled by election in the year one thousand nine hundred and forty-nine and in every four years thereafter for terms of four years, and the members of the Senate so elected and their successors shall constitute one class to be elected as prescribed in paragraph 2 of Section II of Article ——— of this Constitution and eleven seats shall be filled by election in the year one thousand nine hundred and fifty-one and in every four years thereafter for terms of four years, and the members of the Senate so elected and their successors shall constitute the other class to be elected as prescribed in said paragraph of this Constitution.

4. The provisions of Paragraph 1 of Section V of Article ——— of this Constitution, shall not prohibit the nomination, election or appointment of any member of the Senate or General Assembly first organized under this Constitution, to any State civil office or position created by this Constitution or created during his first term of service as such member under this Constitution.

COMMITTEE ON EXECUTIVE, MILITIA AND CIVIL OFFICERS

TENTATIVE DRAFT PROPOSALS

Relating to

THE GOVERNOR, MILITIA, STATE ADMINISTRATIVE ORGANIZATION, PUBLIC OFFICERS AND EMPLOYEES

(NOTE: This tentative draft is subject to change by the Committee and ultimately by the Convention. Public review, criticism and suggestions are invited.)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
AT
RUTGERS UNIVERSITY
THE STATE UNIVERSITY OF NEW JERSEY

July 15, 1947.

To the People of the State of New Jersey:

The Committee on Executive, Militia and Civil Officers, a general standing committee duly appointed pursuant to the rules adopted by the Constitutional Convention of 1947, presents this *tentative draft* of proposals for consideration as its report to the Convention as a whole.

These proposals represent the first step, in so far as this Committee is concerned, in the drafting of a "revised, altered and amended" State Constitution for New Jersey, pursuant to the mandate of the people expressed at the Special Constitutional Convention Referendum held on June 3rd last. The proposals in their present form constitute the area of agreement of the members of this Committee, as a committee, and are not to be taken as necessarily representing in their entirety the personal views of any individual committee member.

The Committee wishes to emphasize that the proposals are purely tentative, and are subject to modification by the Committee, as well as by the Convention as a whole, in response to such expressions of public opinion as the Committee can obtain. These proposals are being published and circulated for the purpose of obtaining the widest possible public information, discussion and criticism of the proposals in advance of their adoption in final draft.

The tentative draft indicates by source references the particular clause, if any, of the present Constitution of 1844, which deals with

comparable subject-matter to that contained in the tentative draft. Those interested in following the source notes may obtain a copy of the 1844 Constitution from the Secretary of State, Trenton, New Jersey, or may consult copies of that Constitution in public libraries and municipal and county offices.

A public hearing on this tentative draft will be held at the Convention Hall, Rutgers University, The State University of New Jersey, in New Brunswick, at—

11:00 A. M.

Tuesday, July 29, 1947

and will be continued as long as necessary to give everyone an opportunity to be heard. Written statements submitted to the Committee by mail are also invited. The Committee urges the broadest possible public study and expression of views with respect to the tentative draft, so that the final draft may as fully and truly as possible represent the sentiment of the people of this State.

COMMITTEE ON EXECUTIVE, MILITIA AND CIVIL OFFICERS

DAVID VAN ALSTYNE, JR., *Chairman,*	(Bergen)
MILTON A. FELLER, *Vice-Chairman,*	(Union)
CHARLES K. BARTON,	(Passaic)
MRS. JANE E. BARUS,	(Essex)
FRANK H. EGGERS,	(Hudson)
FRANK S. FARLEY,	(Atlantic)
LEWIS G. HANSEN,	(Hudson)
SPENCER MILLER, JR.,	(Essex)
J. SPENCER SMITH,	(Bergen)
GEORGE H. WALTON,	(Camden)
DAVID YOUNG, III.	(Morris)

CONSTITUTIONAL CONVENTION OF 1947

COMMITTEE ON EXECUTIVE, MILITIA AND CIVIL OFFICERS

Tentative Draft, July 14, 1947

ARTICLE———EXECUTIVE

SECTION I

1. The executive power shall be vested in a Governor.
[Source: Art. V, Par. 1 (no change).]

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.

[Source: Art. V, Par. 4 (no change).]

3. 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.

[Source: Art. V, Par. 8, amended as follows: (1) "shall exercise the office of Governor" is changed to read "may qualify for the office of Governor." The original is, technically, no bar to taking office. (2) The word "position" is inserted in the alternative to "office."]

4. The Governor shall be elected by the legally qualified voters of this State. The person receiving the greatest number of votes shall be the Governor; but if two or more shall be equal and greatest in votes, one of them shall be elected Governor by the vote of the 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.

[Source: Art. V, Par. 2. A new phrase is added to make certain that the tie would be broken by the newly elected Legislature. The last sentence of the old paragraph, requiring the Governor to be elected at the same time as "members of the legislature," is omitted since this would prevent the filling of vacancies at the earliest opportunity if biennial election of Assemblymen were adopted. The matter will be handled elsewhere in the new Constitution.]

5. 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. 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.

[Source: Art. V, Par. 3 (in part). Three-year term increased to four years; people may reelect a Governor to succeed himself (now barred), but not more than two successive full terms are permitted.]

6. 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, then upon such officers and in such order of

succession as may be provided by law; until another Governor shall be elected and qualified.

[Source: Art. V, Par. 12 (in part) and 14.]

7. 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, 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.

[Source: Art. V, Par. 13 (in part).]

8. 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 continuously unable to perform the duties of his office by reason of mental or physical disability, 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 a finding and determination upon evidence by that court of such failure to qualify, absence or inability.

[Source: New.]

9. 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.

[Source: Art. V, Par. 12 (in part). Note: If biennial elections of the Legislature are adopted, it will be necessary to define "general election." Recommend to Committee on Legislature: Whenever the President of the Senate or Speaker of the General Assembly shall act as Governor they shall neither preside, vote, or take part in the deliberations of their respective houses?]

10. 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.

[Source: Art. V, Par. 5.]

11. The Governor shall take care that the laws be faithfully executed, and shall 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. He shall grant commissions to all officers elected or appointed pursuant to this constitution. 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.

[Source: Art. V, Pars. 6, 8, 9.]

12. 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 either confirming or rejecting the nomination so made. 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.

[Source: Art. V, Pars. 3 and 12. Limitation on ad interim appointments in part new. Filling of vacancies in office of county clerk or surrogate omitted so as to leave manner of filling these vacancies to be determined by law; and without affecting decision on status of these county officers as constitutional officers.]

13. 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, which shall enter the objections at large on its journal and proceed to reconsider it. If, upon reconsideration *on or after the third day following the return of the bill, two-thirds* of all the members of the house of origin shall agree to pass the bill, it shall be sent, together with the objections of the Governor, 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 temporary adjournment on said day. If, on said tenth day, the house of origin is in temporary 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 temporary 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.

[Source: Art. V, Par. 7; numerous changes, principally 2/3 vote to override a veto, 10 days (Sundays excepted) for Governor to consider during session, 45 days (Sundays excepted) after adjournment sine die. Bills must be returned on day Legislature reconvenes if tenth day falls during recess under adjournment to a day certain.]

14. If any bill presented to the Governor shall contain one or more items of appropriation of money, he may object in whole or in part to any such item or 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 or part thereof 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 thereof 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.

[Source: Art. V, Par. 7, conformed to 2/3 vote to override veto, and permitting Governor to object to amount of appropriation items as well as to veto entire items.]

SECTION II

1. The Governor may grant pardons and reprieves in all cases other than impeachment and treason, and may suspend and remit fines and forfeitures. A board, commission, or other body may be established and constituted by law to aid and advise the Governor with respect to the exercise of executive clemency.

2. A system for the granting of parole shall be provided by law.

[Source: Art. V, Pars. 9 and 10, changed substantially.]

SECTION III

1. Provision for organizing, inducting and arming a militia shall be made by law.

2. The Governor shall appoint all general and flag officers of the militia, with the advice and consent of the Senate. All other com-

missioned officers of the militia shall be appointed and commissioned by the Governor according to law.

3. 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, and define its functions, powers and duties, to aid him in the administration of military and naval affairs.

[Source: Art. VII, Sec. I, completely revised.]

SECTION IV

1. All executive and administrative offices, departments, and instrumentalities of the State Government, and their respective functions, powers and duties, shall be allocated by law among and within not more than twenty principal departments. Temporary commissions for special purposes, may, however, be established by law and such commissions need not be allocated within a principal department.

[Source: New.]

2. Each principal department 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. 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.

[Source: New.]

3. 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 Senate, and may be removed in such manner as may be provided by law. Such a board, commission or other body may appoint a commissioner, director, administrator or other principal executive officer when authorized by law, but the appointment shall be subject to the approval of the Governor. Any principal executive officer so appointed shall be removable by the Governor for cause, upon notice and an opportunity to be heard.

[Source: New.]

4. The Governor may from time to time appoint such State officers as he may select, to serve at his pleasure as members of his Cabinet, with whom he may consult relative to the affairs of the State.

[Source: New.]

5. 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 As-

sembly in joint meeting, or a judicial officer. He may require any such State 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 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 or employee for cause.

[Source: New.]

ARTICLE———
PUBLIC OFFICERS AND EMPLOYEES

SECTION 1

1. Every 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. 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.

3. 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 or appropriated to him by law.

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. 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.

2. County clerks, surrogates, sheriffs, and coroners shall be elected by the people of their respective counties at general elections. The

term of office of county clerks and surrogates shall be five years and of sheriffs and coroners shall be 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 Governor and all other State officers shall be liable to impeachment for misdemeanor committed 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 ———

SCHEDULE

1. A Governor shall be elected for a full term at the general election to be held in the year one thousand nine hundred and forty nine and each fourth year thereafter.

2. 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 or, in the case of the militia, by the executive order of the Governor.

3. 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 principal departments as required by Article IV, Section IV of this constitution.

COMMITTEE ON EXECUTIVE, MILITIA AND CIVIL OFFICERS

REPORT AND PROPOSALS

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
AT
RUTGERS UNIVERSITY
THE STATE UNIVERSITY OF NEW JERSEY

REPORT OF THE COMMITTEE ON EXECUTIVE, MILITIA AND CIVIL OFFICERS

July 31, 1947.

To the President and Delegates of the Constitutional Convention:

The Committee on Executive, Militia and Civil Officers reports herewith a proposed Article on the Executive, and a proposed Article on Public Officers, which together cover the several matters, including the Militia, referred to this Committee under the rules of the Convention.

The Committee proceeded to carry out the duties assigned to it by first organizing on June 18, 1947, the date of its initial session.

The Committee adopted the procedure of holding extensive public hearings on several subjects assigned to it, of preparing a tentative draft of its proposals following these public hearings, and of providing a period of two weeks for public study and criticism of the tentative draft, followed by a public hearing on Tuesday, July 29, 1947. As a result of the hearing, your Committee has made a number of changes in the tentative draft as first published.

Your Committee has heard, either through public hearing or through the submission of written statements, every segment of public opinion in this State. The Committee has received a large and representative number of letters from individual citizens and former public officials and from public officers, both past and present, whose opinions have been carefully weighed, and in many cases, incorporated in the draft. We have also had the benefit of hearing outstanding experts on special subjects, such as the Militia, the Executive Department, civil service, the parts of the legislative process relating to the Executive, administrative organizations of the State government, and others expert in the general field of the

State and local government. The Committee has had the benefit of an expression of views from the present Governor and all living former Governors, except one, who was prevented by illness in his family from participating.

Your Committee believes that it has received a thorough expression and that it has thoroughly considered the views of representative civic groups, veterans' organizations, labor, management, public employees, the public at large, and every interested segment of our society.

Your Committee is pleased to report that at public hearing conducted on July 29, 1947, the principal recommendations contained in its tentative draft were, without exception, approved and commended by those appearing. A few of the provisions of the draft met with some criticism, which your Committee believes it has satisfactorily recognized by modifications contained in the draft submitted herewith.

It was the conviction of the Committee that the public reaction could most effectively be tested by having the exact provisions of the Executive Article set forth in definite language for public study. The Committee accordingly arranged two weeks before the public hearing on July 29, 1947, to secure distribution of its tentative draft proposals throughout the State among all interested groups, the press and the public at large.

In brief, the Committee submits the attached draft not only as its own unanimous recommendation, but also as a draft which the Committee is convinced represents as fully and truly as possible the sentiment of the people of this State.

Analysis of the Committee Proposal

The problem of revising the Executive Article has been approached by the committee from the point of view of establishing a balance among the three great divisions of our government, the Legislative, the Executive and the Judiciary. The committee has sought, in its recommendations to bring the powers of the Governor into line with the popular impression of the powers of that office and to provide for a centralization of authority and power in the office of the Governor under reasonable checks and balances, so that the chief executive may be truly responsible to the people for the conduct of the executive branch of the government. While all three branches of the government should be improved and the responsibility more clearly defined, the greatest need has been to raise the relative position of the Executive, which under our present Constitution has been the weakest of the three branches, a result which stemmed from the Colonial fears and suspicions of "tyrannical executives" which permeated the State Constitutional Convention of a century ago.

The Committee has subscribed to the principle that a Constitution should state only basic fundamentals, and that many desirable matters, for which there is a strong temptation to make a constitutional provision, should be left open for legislative treatment as future conditions may require.

Beginning with these immediately acceptable premises, your Committee unanimously agrees that the subject matter committed to it should be "revised, altered and amended" as follows:

(1) The Governor's term of office shall be increased from the present term of three years to four years, and a Governor shall be permitted to seek re-election for one successive term after which he shall be ineligible for the office until four years have elapsed.

(2) The Governor's traditional duty "to take care that the laws be faithfully executed" should be implemented with positive authority to bring an appropriate action or proceeding to this end.

(3) The failure of the present Constitution (as of other State Constitutions) to provide for the eventuality of the permanent inability of a Governor to perform the duties of his office should be corrected by inclusion of a provision for determination that a vacancy exists. The proposal provides for a presentment by a concurrent resolution, adopted by a two-thirds vote of the members of each house, to the court of last resort of this State, and a determination by the court of the fact of the disability.

(4) There should be no change in the substance of the present provisions for succession to the office of the Governor in the event of a vacancy in that office, except to authorize the Legislature to provide for additional lines of succession in the event of the death, resignation or removal of both the President of the Senate and the Speaker of the House.

(5) The present veto power of the Governor, which may be over-ridden by a bare majority, shall be strengthened to require a two-thirds vote in each house to over-ride.

(6) The veto power which now extends to appropriation items should be modified so as to permit the Governor to reduce an item of appropriation, as well as to veto it in its entirety.

(7) The time allowed the Governor for the consideration of bills presented by the Legislature shall be extended from the present nominal five days to ten days while Legislature is in session and to forty-five days after the Legislature adjourns sine die.

(8) The pocket veto should be abolished, and the Legislature shall meet in special session on the 45th day after adjournment, for the sole purpose of reconsideration, or amendment, or re-enactment of bills vetoed by the Governor.

The foregoing points cover the most important of the Committee's proposals which appear in Section I of the proposed

Executive Article. The only provision of that Section which has provoked any difference of opinion in the public reaction to the Committee's proposal is that having to do with the number of terms a Governor may serve successively. Strong reasons have been advanced both for the unlimited eligibility of a Governor to succeed himself, as well as for retention of the present prohibition against a Governor succeeding himself even once.

This Committee has carefully weighed and considered the various arguments and has concluded that the only thoroughly responsible structure of government, responsible to the people, is one which provides an opportunity for the people of the State to express their approval or disapproval of a Governor at the end of his term. Logically, this would, of course, lead to a position favoring the unlimited eligibility of a Governor to succeed himself, and there was, in fact, substantial opinion within the Committee in favor of this position. In recognition of the doubts and fears expressed by those opposing the right of a Governor to succeed himself at all, the Committee unanimously agreed upon a provision of moderation and sound balance, namely, that a Governor should be permitted to go before the people on his record once, and having been elected twice to the office should thereafter be ineligible until four years have elapsed.

In this connection, it is important to note that the recommendations of the Committee on the Legislative call for an annual session, for increased terms for the members of the Legislature, for the right of self-call in special session and, of course, for continuation of the historical legislative control of the purse.

Moreover, the proposals recommended by the Committee on Judiciary would give life tenure to the judges of the highest courts immediately upon their appointment, and life tenure to the judges of the General Court upon re-appointment after initial term of seven years. These proposals of the Committee on the Legislative and the Committee on the Judiciary should set at rest the fears expressed by some that a Governor who is permitted to succeed himself would in eight years appoint all the principal judges of the State, as well as all of the administrative and executive officers who rightfully should be appointed by him.

Turning to the administrative and executive responsibility and authority of the Governor, as provided particularly in Sections II, III and IV, of this committee's proposed Executive Article, the Committee is unanimously agreed in recommending the following provisions:

(9) The Governor's present power of executive clemency should be retained, except that it should be vested in the Gover-

nor alone, aided by a properly qualified board, commission or other body which the Legislature may provide.

(10) The function of parole, which in modern acceptance is not at all a matter of executive clemency, but rather an administrative device for placing a prisoner under a different type of custody, should be handled through proper administrative agencies. Accordingly, the Constitution should provide merely that paroles may be granted under a system which shall be provided by law, recognizing in our Constitution for the first time the modern institution of parole.

(11) All the military and naval forces of the State, traditionally known as the Militia, shall be provided for by law. Such provision shall be required to conform to United States Army standards with respect to the organization, induction, training, arming, discipline and regulation of the Militia. This will assure that the appointment of officers according to merit and the existing tenure of officers, subject to provisions for court martial and efficiency boards, which are provided by Federal law will also be fully effective in this State.

(12) The number of principal departments in the Executive branch shall be limited to not more than 20, and the Legislature shall be required to allocate the existing 80 odd departments, boards, bureaus and other agencies among and within the 20 or less principal departments.

(13) Each principal department shall be headed by a single executive unless otherwise provided by law. This would permit existing boards of control of the Department of Institutions and Agencies and the Board of Agriculture of the Department of Agriculture, and similarly organized departments, to continue as at present, as the heads of those respective departments.

(14) The Governor shall appoint, with the advice and consent of the Senate, the heads of all principal departments, whether they be a single executive or a board or commission. Where a board or commission heading a department is authorized by law to appoint a principal executive officer such appointment shall require the approval of the Governor.

(15) The various constitutional officers whose position and term are established by the present Constitution shall be omitted as constitutional officers, to the extent that they fall within the Executive branch of the government and may be department heads, their appointment and tenure shall conform to those of other department heads. This includes the Attorney-General, the Secretary of State, the State Comptroller, the State Treasurer and the Keeper of the State Prison.

(16) The Governor's power of removal of his subordinates shall be strengthened by requiring single executive heads of principal departments to serve at the pleasure of the Governor during his term of office, by providing that principal executive officers appointed by a board or commission which heads a principal department shall be removable by the Governor upon notice and opportunity to be heard. The Governor shall also have positive authority to investigate the conductive office of any State officer or employee, to require written statements of information under oath, and to remove for cause any State officer or employee after notice, service of charges, and an opportunity to be heard at a public hearing.

(17) Administrative rules and regulations shall be required to be filed and published according to law, so that those citizens who are subject to them may have a reasonable opportunity to be informed of their contents.

(18) The merit system shall be mandatory in the civil service of the State and shall, as at present, be available for adoption by referendum in the various political subdivisions of the State.

Your Committee has followed the principle that the Governor should be strong in his branch of the government, but that he should be precluded from infringing upon the other branches. For example, this committee's proposal, and the proposals of the Committee on the Legislative, with which this committee is in agreement, provide for the legislative right of self-call, for limiting the Governor's power of ad interim appointment, for abolishing the pocket veto, for automatic special session of the Legislature to reconsider vetoed bills after adjournment by the Legislature sine die.

Similarly, the important power of reorganization of State departments and the allocation of existing departments among and within not more than 20 principal departments, is by this Committee's proposal vested in the Legislature. In its nature, a reorganization may well require amendment or revision of the law governing the various agencies concerned. This authority is, accordingly, left with the Legislature rather than transferred to the Governor for exercise by executive order.

Your Committee recognizes that the administrative powers of the Governor's branch should provide for a clear line of command. It also recognizes that the assignment of power to the Governor alone to reorganize the departments would be inconsistent with an effective separation of the powers of government among the three branches.

For many years the people of this State have demanded that the chief executive be vested with sufficient authority so that he can properly conduct the affairs of State and, therefore, rightfully be held responsible for the proper functioning of the executive branch

of the government. In presenting its proposal, your Committee feels that it has answered the demands of the people.

In view of the foregoing conclusions, your Committee reports, with respect to the proposals referred to it, as follows:

PROPOSAL No. 12—Adopted in Committee Proposal as to four-year term, disapproved as to remainder.
PROPOSAL No. 35—Disapproved.
PROPOSAL No. 38—Adopted in Committee Proposal.

Respectfully submitted,

DAVID VAN ALSTYNE, JR., *Chairman,*
MILTON A. FELLER, *Vice-Chairman,*
(Mrs.) JANE E. BARUS, *Secretary,*
CHARLES K. BARTON,
FRANK H. EGGERS,
FRANK S. FARLEY,
LEWIS G. HANSEN,
SPENCER MILLER, JR.,
J. SPENCER SMITH,
GEORGE H. WALTON,
DAVID YOUNG, III.
WILLIAM MILLER, *Technical Adviser.*

PROPOSAL 3-1

Introduced by DAVID VAN ALSTYNE, JR.
Chairman, Committee on Executive, Militia and Civil Officers

A PROPOSAL relating to the Governor, militia, State administrative organization, public officers and employees, adding new articles on the Executive and on Public Officers in lieu of Articles V and VII of the Constitution of 1844.

Resolved, that the following be agreed upon as part of the proposed new State Constitution:

ARTICLE IV

EXECUTIVE

SECTION 1

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 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.

4. The Governor shall be elected by the legally qualified voters of this State. The person receiving the greatest number of votes shall be the Governor; but if two or more shall be equal and greatest in votes, one of them shall be elected Governor by the vote of the 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. The term of office of the Governor shall be four years, beginning at noon on the third Tuesday of January next following his election, and ending at noon on the third Tuesday of January four years thereafter. No person who has been elected for two successive terms (including unexpired 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.

6. 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, then upon such officers and in such order of succession as may be provided by law; until a new Governor shall be elected and qualified.

7. 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, removal, absence, inability or impeachment, then upon

the Speaker of the General Assembly, for the time being; and in the event of his death, resignation, removal, absence, inability or impeachment, 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.

8. Whenever a Governor-elect shall have 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, or person administering the office, shall have remained continuously absent from the State or continuously unable to perform the duties of his office by reason of mental or physical disability, 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 a finding and determination upon evidence by that court of such failure to qualify, absence or inability.

9. 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 have occurred 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.

10. 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.

11. The Governor shall take care that the laws be faithfully executed. To this end he shall have power, by appropriate action or proceeding brought in the name of the State or any of its political subdivisions, to enforce compliance with any constitutional or legislative mandate or to restrain violation of any constitutional or legislative power or duty by any officer, department or agency of the State or any of its political subdivisions.

12. The Governor shall 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. He shall grant commissions to all officers elected or appointed pursuant to this Constitution. 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.

13. 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 either confirming or rejecting the nomination so made. 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.

14. Every bill which shall have passed both houses 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 shall have originated, which shall enter the objections at large on its journal and proceed to reconsider it. If, upon reconsideration on or after the third day following the return of the bill, two-thirds of all the members of the house of origin shall agree to pass the bill, it shall be sent, together with the objections of the Governor, to the other house, by which it shall be reconsidered and if approved 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 in 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 unless the house of origin is in adjournment on said day. If, on said tenth day, the house of origin is in temporary 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 temporary 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 become a law if the Governor shall sign it within forty-five days, Sundays excepted, after such adjournment, but if he shall not sign it within that time, it shall become a law on the forty-fifth day, Sundays excepted, after such adjournment unless he shall

return it with his objections, on or before noon of that day, to the house in which it shall have originated, at a special session of the Legislature which shall meet on that day, without any petition or call, for the sole purpose of acting pursuant to this paragraph upon bills returned by the Governor. At such special session a bill may be reconsidered beginning on the first day in the manner provided in this paragraph for the reconsideration of bills and if approved by two-thirds of all the members of each house of the Legislature upon reconsideration it shall become a law. The Governor may, in returning a bill with his objections for reconsideration at any general or special session of the Legislature, recommend in his objections thereto that any amendment or amendments specified therein be made in the bill and the bill shall thereupon be before the Legislature and subject to amendment and re-enactment and may be amended and re-enacted instead of being reconsidered, and if amended and re-enacted it shall again be presented to the Governor and it shall become a law only if he shall sign it within ten days after presentation to him; and no bill shall be returned by the Governor a second time. A special session shall not be convened pursuant to this paragraph whenever the forty-fifth day, Sundays excepted, after adjournment of a regular or special session shall fall on or after the last day of the legislative year in which such adjournment shall have been taken.

15. If any bill presented to the Governor shall contain one or more items of appropriation of money, he may object in whole or in part to any such item or 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 or part thereof 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 thereof objected to shall be separately reconsidered. If, upon reconsideration on or after the third day following such 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 paragraphs 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.

SECTION II

1. The Governor may grant pardons and reprieves in all cases other than impeachment and treason, and may suspend and remit fines and forfeitures. A board, commission, or other body may be

established and constituted by law to aid and advise the Governor with respect to the exercise of executive clemency.

2. A system for the granting of parole shall be provided by law.

SECTION III

1. Provision for organizing, inducting, training, arming, disciplining and regulating a militia shall be made by law, which shall conform to federal standards established for the armed forces of the United States of America.

2. The Governor shall appoint all general and flag officers of the militia, with the advice and consent of the Senate. All other commissioned officers of the militia shall be appointed and commissioned by the Governor according to law.

SECTION IV

1. All executive and administrative offices, departments, and instrumentalities of the State Government, and their respective functions, powers and duties, shall be allocated by law among and within not more than twenty principal departments, in such manner as to group the same according to major purposes so far as practicable. Temporary commissions for special purposes may, however, be established by law and such commissions need not be allocated within a principal department.

2. Each principal department shall be under the supervision of the Governor. The head of each principal department shall be a single executive unless otherwise provided by law. Such single executive shall be nominated and appointed by the Governor, with the advice and consent of the Senate, to serve during his term of office and until their respective successors are appointed and qualified.

3. 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 Senate, and may be removed in such manner as may be provided by law. Such a board, commission or other body may appoint a commissioner, director, administrator or other principal executive officer when authorized by law, but the appointment shall be subject to the approval of the Governor. Any principal executive officer so appointed shall be removable by the Governor, upon notice and an opportunity to be heard.

4. 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. He may require any

such State 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 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 or employee for cause.

5. No rule or regulation made by any State department, officer, agency or authority, except such as relates to the organization or internal management of the State Government or a part thereof, shall take effect until it is filed with the Secretary of State or in such other manner as may be provided by law. The Legislature shall provide for the prompt publication of such rules and regulations.

ARTICLE ———

Public Officers and Employees

Section I

1. Every 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. 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.

3. 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 or appropriated to him by law.

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.

6. The State Auditor shall be appointed by the Senate and General Assembly in joint meeting for a term of five years and until

his successors shall be appointed and qualified. It shall be his duty to conduct post-audits of all transactions and accounts kept by or for all departments, offices and agencies of the State government, to report to the Legislature or to any committee thereof as shall be required by law, and to perform such other similar or related duties as shall, from time to time, be required of him by law.

SECTION II

1. 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 until their respective successors shall be appointed and qualified.

2. County clerks, surrogates and sheriffs shall be elected by the people of their respective counties at general elections. The term of office of county clerks and surrogates shall be five years and of sheriffs shall be three years. Whenever a vacancy occurs in the office of county clerk, surrogate or sheriff in any county, it shall be filled in such manner as may be provided by law.

SECTION III

1. The Governor and all other State officers shall be liable to impeachment for misdemeanor committed 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 ——

SCHEDULE

1. A Governor shall be elected for a full term at the general election to be held in the year one thousand nine hundred and forty-nine and each fourth year thereafter.

2. 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 adop-

tion or taking effect, except as may be provided in this Constitution. Upon the adoption of this Constitution, all officers of the militia shall retain their commissions subject to the provisions of Article IV, Section III.

3. 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 principal departments as required by Article IV, Section IV of this Constitution. 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 for consideration to complete such allocation; and no other matters shall be considered at such session.

COMMITTEE PROPOSAL No. 3-1

Introduced .....

By DAVID VAN ALSTYNE, JR.

Chairman, Committee on Executive, Militia and Civil Officers

A PROPOSAL relating to the Governor, militia, State administrative organization, public officers and employees, adding new articles on the Executive and on Public Officers in lieu of Articles V and VII of the Constitution of 1844.

Resolved, That the following be agreed upon as part of the proposed new State Constitution:

ARTICLE IV

EXECUTIVE

SECTION 1

1. The executive power shall be vested in a Governor.

2. The Governor shall not be 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 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.

4. The Governor shall be elected by the legally qualified voters of this State. The person receiving the greatest number of votes shall be the Governor; but if two or more shall be equal and greatest in votes, one of them shall be elected Governor by the vote of the 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. The term of office of the Governor shall be four years, begin-

ning at noon on the third Tuesday of January next following his election, and ending at noon on the third Tuesday of January four years thereafter. No person who has been elected for two successive terms (including unexpired 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.

6. 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, then upon such officers and in such order of succession as may be provided by law; until a new Governor shall be elected and qualified.

7. 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, removal, absence, inability or impeachment, then upon the Speaker of the General Assembly, for the time being; and in the event of his death, resignation, removal, absence, inability or impeachment, 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.

8. Whenever a Governor-elect shall have 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, or person administering the office, shall have remained continuously absent from the State or continuously unable to perform the duties of his office by reason of mental or physical disability, 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 finding and determination upon evidence by that court of such failure to qualify, absence or inability.

9. 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 elec-

tion succeeding the occurrence of the vacancy unless the vacancy shall have occurred 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.

10. 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.

11. The Governor shall take care that the laws be faithfully executed. To this end he shall have power, by appropriate action or proceeding brought in the name of the State or any of its political subdivisions, to enforce compliance with any constitutional or legislative mandate or to restrain violation of any constitutional or legislative power or duty by any officer, department or agency of the State or any of its political subdivisions.

'12. The Governor shall 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. He shall grant commissions to all officers elected or appointed pursuant to this Constitution. 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.

13. 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 either confirming or rejecting the nomination so made. 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.

14. Every bill which shall have passed both houses 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 shall have originated, which shall enter the objections at large on its journal and proceed to reconsider it. If, upon reconsideration on or after the third day following the return of the bill, two-thirds of all the members of the house of origin shall agree to pass the bill, it shall be sent, together with the objections of the Governor, to the other house, by which it shall be reconsidered and if approved 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 unless the house of origin is in adjournment on said day. If, on said tenth day, the house of origin is in temporary 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 temporary 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 become a law if the Governor shall sign it within forty-five days, Sundays excepted, after such adjournment, but if he shall not sign it within that time it shall become a law on the forty-fifth day, Sundays excepted, after such adjournment unless he shall return it with his objections, on or before noon of that day, to the house in which it shall have originated, at a special session of the Legislature which shall meet on that day, without any petition or call, for the sole purpose of acting pursuant to this paragraph upon bills returned by the Governor. At such special session a bill may be reconsidered beginning on the first day in the manner provided in this paragraph for the reconsideration of bills and if approved by two-thirds of all the members of each house of the Legislature upon reconsideration it shall become a law. The Governor may, in returning a bill with his objections for reconsideration at any general or special session of the Legislature, recommend in his objections thereto that any amendment or amendments specified therein be made in the bill and the bill shall thereupon be before the Legislature and subject to amendment and re-enactment and may be amended and re-enacted instead of being reconsidered, and if amended and re-enacted it shall again be presented to the Governor and it shall become a law only if he shall sign it within ten days after presentation to him; and no bill shall be returned by the Governor a second time. A special session shall not be convened pursuant to this paragraph whenever the forty-fifth day, Sundays excepted, after adjournment of a regular or special session shall fall on or after the

last day of the legislative year in which such adjournment shall have been taken.

15. If any bill presented to the Governor shall contain one or more items of appropriation of money, he may object in whole or in part to any such item or 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 or part thereof 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 thereof objected to shall be separately reconsidered. If, upon reconsideration on or after the third day following such 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 paragraphs 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.

SECTION II

1. The Governor may grant pardons and reprieves in all cases other than impeachment and treason, and may suspend and remit fines and forfeitures. A board, commission, or other body may be established and constituted by law to aid and advise the Governor with respect to the exercise of executive clemency.

2. A system for the granting of parole shall be provided by law.

SECTION III

1. Provision for organizing, inducting, training, arming, disciplining and regulating a militia shall be made by law, which shall conform to federal standards established for the armed forces of the United States of America.

2. The Governor shall appoint all general and flag officers of the militia, with the advice and consent of the Senate. All other commissioned officers of the militia shall be appointed and commissioned by the Governor according to law.

SECTION IV

1. All executive and administrative offices, departments, and instrumentalities of the State Government, and their respective functions, powers and duties, shall be allocated by law among and within not more than twenty principal departments, in such manner as to group the same according to major purposes so far as practicable. Temporary commissions for special purposes may, however, be estab-

lished by law and such commissions need not be allocated within a principal department.

2. Each principal department shall be under the supervision of the Governor. The head of each principal department shall be a single executive unless otherwise provided by law. Such single executive shall be nominated and appointed by the Governor, with the advice and consent of the Senate, to serve during his term of office and until their respective succssors are appointed and qualified.

3. 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 Senate, and may be removed in such manner as may be provided by law. Such a board, commission or other body may appoint a commissioner, director, administrator or other principal executive officer when authorized by law, but the appointment shall be subject to the approval of the Governor. Any principal executive officer so appointed shall be removable by the Governor, upon notice and an opportunity to be heard.

4. 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. He may require any such State 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 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 or employee for cause.

5. No rule or regulation made by any State department, officer, agency or authority, except such as relates to the organization or internal management of the State Government or a part thereof, shall take effect until it is filed with the Secretary of State or in such other manner as may be provided by law. The Legislature shall provide for the prompt publication of such rules and regulations.

ARTICLE ———

Public Officers and Employees

Section I

1. Every 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. 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.

3. 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 or appropriated to him by law.

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.

6. The State Auditor shall be appointed by the Senate and General Assembly in joint meeting for a term of five years and until his successor shall be appointed and qualified. It shall be his duty to conduct post-audits of all transactions and accounts kept by or for all departments, offices and agencies of the State government, to report to the Legislature or to any committee thereof as shall be required by law, and to perform such other similar or related duties as shall, from time to time, be required of him by law.

Section II

1. 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 until their respective successors shall be appointed and qualified.

2. County clerks, surrogates and sheriffs shall be elected by the people of their respective counties at general elections. The term of office of county clerks and surrogates shall be five years and of sheriffs shall be three years. Whenever a vacancy occurs in the office of county clerk, surrogate or sheriff in any county, it shall be filled in such manner as may be provided by law.

Section III

1. The Governor and all other State officers shall be liable to

impeachment for misdemeanor committed 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 ———

SCHEDULE

1. A Governor shall be elected for a full term at the general election to be held in the year one thousand nine hundred and forty-nine and each fourth year thereafter.

2. 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. Upon the adoption of this Constitution, all officers of the militia shall retain their commissions subject to the provisions of Article IV, Section III.

3. 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 principal departments as required by Article IV, Section IV, of this Constitution. 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 for consideration to complete such allocation; and no other matters shall be considered at such session.

AMENDMENTS TO COMMITTEE PROPOSAL No. 3-1 [1]

AMENDMENT No. 1 to COMMITTEE PROPOSAL No. 3-1

Introduced by Wesley L. Lance

Resolved, the following amendment to paragraph 5 of Section 1 of Article IV be agreed upon:

Amend on page 2, paragraph 5, lines 3 to 7, inclusive, by striking out the words: "No person who has been elected for two successive terms (including unexpired terms) as Governor, shall 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," and by inserting in lieu thereof the following:

"No person who has been elected for a full term as Governor shall again be eligible for that office until the third Tuesday in January of the fourth year following the expiration of such term in office."

AMENDMENT No. 2 to COMMITTEE PROPOSAL No. 3-1

Introduced by Wesley L. Lance

Resolved, that the following amendment to paragraph 14 of Section I of Article IV be agreed upon:

Amend on page 4, paragraph 14, line 6, by striking the word "two-thirds" and insert in lieu thereof the word "three-fifths."

Amend in paragraph 14 on page 4, line 8, and on page 5, line 1, by striking the word "two-thirds" and insert in lieu thereof the word "three-fifths."

Amend on page 5, paragraph 14, lines 29 and 30, by striking the word "two-thirds" and insert in lieu thereof the word "three-fifths."

AMENDMENT No. 3 to COMMITTEE PROPOSAL No. 3-1

Introduced by Lawrence N. Park

Amend Article headed, "Public Officers and Employees," Section III, paragraph 2, by the addition of a new sentence to follow "the Senate."

Resolved, that the following be agreed upon as part of the proposed new State Constitution:

[1] Page and line references in these amendments are to the printed Proposal distributed to the delegates. However, they are sufficiently specific to be clear.

"When the Governor is tried, the Chief Justice of the Supreme Court shall preside and the President of the Senate shall not participate in the trial."

AMENDMENT No. 4 to COMMITTEE PROPOSAL No. 3-1

Introduced by Walter G. Winne

Amend Article IV, Section IV, paragraph 4, to read as follows:

"The Governor may cause an investigation to be made of the conduct in office of any officer or employee who receives his compensation from the State of New Jersey except a member of the Legislature or an officer elected by the Senate and General Assembly in joint meeting, or a judicial officer. He may require such 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 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 or employee for cause."

AMENDMENT No. 5 to COMMITTEE PROPOSAL No. 3-1

Introduced by Ronald D. Glass

Resolved, that the following shall become new paragraph 7, Section I of the Article on "Public Officers and Employees" in Proposal No. 3-1 presented by the Committee on Executive, Militia and Civil Officers, and shall become part of the proposed new State Constitution:

"The Secretary of State and the Attorney General shall be nominated by the Governor with the advice and consent of the Senate to serve during the Governor's term of office."

AMENDMENT No. 6 to COMMITTEE PROPOSAL No. 3-1

Introduced by David Van Alstyne, Jr.

Amend page 7, Section IV, paragraph 2, line 5, by inserting after the words "to serve" the words "at the pleasure of the Governor."

Amend same page and paragraph, line 3, by changing the word "executive" to "executives."

AMENDMENT No. 7 to COMMITTEE PROPOSAL No. 3-1

Introduced by H. Rivington Pyne

Resolved, that the following amendment to paragraph 14 of Section I of Article IV, be agreed upon:

Amend page 4, paragraph 14, line 6, by striking out the word "two-thirds" and inserting in lieu thereof the words "a majority."

Amend in paragraph 14, on page 4, line 8, and on page 5, line 1, by striking out the words "two-thirds" and inserting in lieu thereof the words "a majority."

Amend on page 5, paragraph 14, lines 29 and 30, by striking out the words "two-thirds" and inserting in lieu thereof the words "a majority."

AMENDMENT No. 8 to COMMITTEE PROPOSAL No. 3-1

Introduced by Charles K. Barton

Strike out the first sentence of paragraph 2 of the Schedule to the Executive Article and insert in lieu thereof the following:

"Unless otherwise specifically provided for in this Constitution, all constitutional officers in office at the time of the adoption of this Constitution shall continue to exercise the authority of their respective offices during the term for which they have been appointed and until their successors have been appointed and qualified."

AMENDMENT No. 9 to COMMITTEE PROPOSAL No. 3-1

Introduced by Francis A. Stanger, Jr.

Amend paragraph 2 of Section II of the Proposal No. 3-1 by adding a new sentence after the word "years" so that the said paragraph will read as follows:

"No person shall be elected to immediately succeed himself in the office of sheriff."

AMENDMENT No. 10 to COMMITTEE PROPOSAL No. 3-1

Introduced by Jane E. Barus

Amend page 3, Section I, paragraph 11, line 6, by inserting at the end thereof, a semicolon followed by the words:

"provided that this power shall not be construed to authorize any action or proceeding against the Legislature."

AMENDMENT No. 11 to COMMITTEE PROPOSAL No. 3-1

Introduced by David Van Alstyne, Jr.

Amend page 7, Section IV, paragraph 1, line 2, by inserting after the word "Government," the words:

"including the Secretary of State and the Attorney General."

Amend same page and section, paragraph 2, line 6, by inserting after the word "qualified" the words:

", except as herein otherwise provided with respect to the Secretary of State and the Attorney General."

AMENDMENT No. 12 to COMMITTEE PROPOSAL No. 3-1

Introduced by Frank H. Sommer

On page 3, paragraph 11, strike out all of lines 2, 3, 4, 5 and 6.

AMENDMENT No. 13 to COMMITTEE PROPOSAL No. 3-1

Introduced by Frank H. Sommer

On page 7, paragraph 3 (paragraph 3 of Section IV), strike out the last sentence of said paragraph which begins on line 7 and ends on line 9 and reads as follows:

"Any principal executive officer so appointed shall be removable by the Governor, upon notice and an opportunity to be heard."

AMENDMENT No. 14 to COMMITTEE PROPOSAL No. 3-1

Introduced by Thomas J. Brogan

Amend page 8, Section IV, paragraph 4, line 9, by adding at the end thereof, a new sentence to read as follows:

"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."

AMENDMENT No. 15 to COMMITTEE PROPOSAL No. 3-1

Introduced by Oliver Randolph

Resolved, that the following amendment to the above Proposal for a new Constitution be agreed upon:

Amend Section III, paragraph 1, as follows:

After the period in line 3 on page 6, insert the following:

"Discrimination on account of race, color, religion or national origin is prohibited."

AMENDMENT No. 16 to COMMITTEE PROPOSAL No. 3-1

Introduced by A. J. Cafiero

On page 9, amend the second sentence of paragraph 2, Section II of Proposal No. 3-1 to read:

"The term of office of county clerks, surrogates and sheriffs shall be five years."

AMENDMENT No. 17 to COMMITTEE PROPOSAL No. 3-1

Introduced by Frank H. Eggers

On page 3, paragraph 11, line 2, after the word "proceeding" insert the words "in the courts."

Same page and paragraph, line 3, strike out the words "or any of its political sub-divisions."

Same page and paragraph, line 6, strike out the words "or any of its political sub-divisions."

[OFFICIAL COPY REPRINT]

PROPOSAL No. 3-1

ADOPTED AUGUST 18, 1947

A PROPOSAL relating to the Governor, militia, State administrative organization, public officers and employees, adding new articles on the Executive and on Public Officers in lieu of Articles V and VII of the Constitution of 1844.

Resolved, That the following be agreed upon as part of the proposed new State Constitution:

ARTICLE ———

EXECUTIVE

SECTION 1

1. The executive power shall be vested in a Governor.

2. The Governor shall not be 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 office or position, of profit, under this State or the United States shall be Governor. If the Governor or person administering the office of Governor shall accept any other office or position, of profit, under this State or the United States, the office of Governor shall thereby be vacated. No Governor shall be elected 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 receiving the greatest number of votes shall be the Governor; but if two or more shall be equal and greatest in votes, one of them shall be elected Governor by the vote of a majority of all 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. 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 of the third Tuesday in January four years thereafter. No person who has been elected Governor for two successive terms, including an unexpired term, 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.

6. 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, then upon such officers and in such order of succession as may be provided by law; or until a new Governor shall be elected and qualify.

7. In the event of the failure of the Governor-elect to qualify, or of the absence from the State of a Governor in office, or his inability to discharge the duties of his office, or his impeachment, 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, removal, absence, inability or impeachment, then upon the Speaker of the General Assembly, for the time being; and in the event of his death, resignation, removal, absence, inability or impeachment, 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 return to the State, or shall no longer be unable to perform the duties of the office, or shall be acquitted, as the case may be, or until a new Governor shall be elected and qualify.

8. Whenever a Governor-elect shall have 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, or person administering the office, shall have remained continuously absent from the State, or shall have been continuously unable to discharge the duties of his office by reason of mental or physical disability, the office shall be deemed vacant. Such vacancy shall be determined by the court of last resort upon presentment to it of a concurrent resolution of the ground of the vacancy, adopted by a vote of two-thirds of all the members of each house of the Legislature, and upon notice, hearing before the court and proof of the existence of the vacancy.

9. In the event of a vacancy in the office of Governor, a Governor shall be elected to fill the unexpired term at the general election next 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 shall assume his office immediately upon his election.

10. The Governor shall receive for his services a salary, which shall be neither increased nor diminished during the period for which he shall have been elected.

11. The Governor shall take care that the laws be faithfully executed. To this end he shall have power, by appropriate action or proceeding in the courts brought in the name of the State, to enforce compliance with any constitutional or legislative mandate, or to restrain violation of any constitutional or legislative power or duty, by any officer, department or agency of the State; but this power shall not be construed to authorize any action or proceeding against the Legislature.

12. The Governor shall communicate to the Legislature, by message at the opening of each regular session and at such other times as he may deem necessary, the condition of the State, and shall in like manner recommend such measures as he may deem desirable. He may convene the Legislature or the Senate alone whenever in his opinion the public interest shall require. He shall be the Commander-in-Chief of all the military and naval forces of the State. He shall grant commissions to all officers elected or appointed pursuant to this Constitution. 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.

13. The Governor may fill any vacancy occurring in any office during a recess of the Legislature, appointment to which may be made by the Governor with the advice and consent of the Senate, or by the Legislature in joint meeting. An ad interim appointment so made shall expire at the end of the next regular session of the Senate, unless a successor shall be sooner appointed and qualified; and after the end of the session no ad interim appointment to the same office shall be made unless the Governor shall have submitted to the Senate a nomination to the office during the session and the Senate shall have adjourned without confirming or rejecting it. 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.

14. (A) Every bill which shall have passed both houses 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 shall have originated, which shall enter the objections at large on its journal and proceed to reconsider it. If, upon reconsideration on or after the third day following the return of the bill, two-thirds of all

the members of the house of origin shall agree to pass the bill, it shall be sent, together with the objections of the Governor, to the other house, by which it shall be reconsidered, and if approved 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 a 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 unless the house of origin shall on that day be in adjournment. If on the tenth day the house of origin shall be in temporary 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 shall reconvene, unless the Governor shall on that day return the bill to that house.

(B) If, on the tenth day, the Legislature is in adjournment sine die the bill shall become a law if the Governor shall sign it within forty-five days, Sundays excepted, after such adjournment. On the said forty-fifth day the bill shall become a law, notwithstanding the failure of the Governor to sign it within the period last stated, unless at or before noon of that day he shall return it with his objections to the house of origin at a special session of the Legislature which shall convene on that day, without petition or call, for the sole purpose of acting pursuant to this paragraph upon bills returned by the Governor. At such special session a bill may be reconsidered beginning on the first day, in the manner provided in this paragraph for the reconsideration of bills, and if approved upon reconsideration by two-thirds of all the members of each house it shall become a law. The Governor may, in returning a bill with his objections, for reconsideration at any general or special session of the Legislature, recommend that an amendment or amendments specified by him be made in the bill, and in such case the Legislature may amend or re-enact the bill. If a bill be so amended and re-enacted it shall be again presented to the Governor, but shall become a law only if he shall sign it within ten days after presentation; and no bill shall be returned by the Governor a second time. A special session of the Legislature shall not be convened pursuant to this paragraph whenever the forty-fifth day, Sundays excepted, after adjournment of a regular or special session shall fall on or after the last day of the legislative year in which such adjournment shall have been taken.

15. If any bill presented to the Governor shall contain one or more items of appropriation of money, he may object in whole or in part to any such item or items while approving 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 or part thereof 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 thereof 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.

SECTION II

1. The Governor may grant pardons and reprieves in all cases other than impeachment and treason, and may suspend and remit fines and forfeitures. A commission or other body may be established by law to aid and advise the Governor in the exercise of executive clemency.

2. A system for the granting of parole shall be provided by law.

SECTION III

1. Provision for organizing, inducting, training, arming, disciplining and regulating a militia shall be made by law, which shall conform to applicable standards established for the armed forces of the United States.

2. The Governor shall nominate and appoint all general and flag officers of the militia, with the advice and consent of the Senate. All other commissioned officers of the militia shall be appointed and commissioned by the Governor according to law.

SECTION IV

1. All executive and administrative offices, departments, and instrumentalities of the State Government, including the offices of Secretary of State and Attorney-General, and their respective functions, powers and duties, shall be allocated by law among and within not more than twenty principal departments, in such manner as to group the same according to major purposes so far as practicable. Temporary commissions for special purposes may, however, be established by law and such commissions need not be allocated within a principal department.

2. Each principal department shall be under the supervision of the Governor. The head of each principal department shall be a single executive unless otherwise provided by law. Such single

executives shall be nominated and appointed by the Governor, with the advice and consent of the Senate, to serve at the pleasure of the Governor during his term of office and until the appointment and qualification of their successors, except as herein otherwise provided with respect to the Secretary of State and Attorney-General.

3. The Secretary of State and the Attorney-General shall be nominated and appointed by the Governor with the advice and consent of the Senate to serve during the term of office of the Governor.

4. Whenever a board, commission or other body shall be the head of a principal department, the members thereof shall be nominated and appointed by the Governor with the advice and consent of the Senate, and may be removed in the manner provided by law. Such a board, commission or other body may appoint a principal executive officer when authorized by law, but the appointment shall be subject to the approval of the Governor. Any principal executive officer so appointed shall be removable by the Governor, upon notice and an opportunity to be heard.

5. The Governor may cause an investigation to be made of the conduct in office of any officer or employee who receives his compensation from the State of New Jersey, except a member of the Legislature or an officer elected by the Senate and General Assembly in joint meeting, or a judicial officer. He may require such officer or employee to submit to him a written statement or statements, under oath, of such information as the Governor may require relating to the conduct of their respective offices or employments. After notice, the service of charges and an opportunity to be heard at public hearing the Governor may remove any such officer or employee for cause. 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.

6. No rule or regulation made by any State department, officer, agency or authority, except such as relates to the organization or internal management of the State Government or a part thereof, shall take effect until it is filed with the Secretary of State or in such other manner as may be provided by law. The Legislature shall provide for the prompt publication of such rules and regulations.

ARTICLE ———

Public Officers and Employees

Section I

1. Every 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. 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.

3. 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 for the office or position, shall immediately upon receipt be paid into the treasury of the State, unless the compensation or fees shall be allowed or appropriated to him by law.

4. Any person before or after entering upon the duties of 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 as herein otherwise provided, 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.

6. The State Auditor shall be appointed by the Senate and General Assembly in joint meeting for a term of five years and until his successor shall be appointed and qualified. It shall be his duty to conduct post-audits of all transactions and accounts kept by or for all departments, offices and agencies of the State government, to report to the Legislature or to any committee thereof as shall be required by law, and to perform such other similar or related duties as shall, from time to time, be required of him by law.

SECTION II

1. 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 serve until the appointment and qualification of their respective successors.

2. County clerks, surrogates and sheriffs shall be elected by the people of their respective counties at general elections. The term of office of county clerks and surrogates shall be five years, and of sheriffs three years. Whenever a vacancy shall occur in any such office it shall be filled in the manner to be provided by law.

Section III

1. The Governor and all other State officers, while in office and for two years thereafter, shall be liable to impeachment for misdemeanor committed during their respective continuance in office.

2. The General Assembly shall have the sole power of impeachment by vote of a majority of all the members. All 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 the evidence." No person shall be convicted without the concurrence of two-thirds of all the members of the Senate. When the Governor is tried, the Chief Justice of the court of last resort shall preside and the President of the Senate shall not participate in the trial.

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 ———

Schedule

1. A Governor shall be elected for a full term at the general election to be held in the year one thousand nine hundred and forty-nine and each fourth year thereafter.

2. The taking effect of this Constitution or any provision thereof shall not of itself affect the tenure, term, status or compensation of any person then holding any public office, position or employment in this State, except as provided in this Constitution. Unless otherwise specifically provided in this Constitution, all constitutional officers in office at the time of its adoption shall continue to exercise the authority of their respective offices during the term for which they shall have been elected or appointed and until the qualification of their successors respectively. Upon the taking effect of this Constitution all officers of the militia shall retain their commissions subject to the provisions of Article IV, Section III.

3. The Legislature, in compliance with the provisions of this Constitution, shall prior to July first, one thousand nine hundred and forty-nine, and from time to time thereafter may, allocate by law the executive and administrative offices, departments and instrumentalities of the State Government among and within the principal departments. 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 for consideration to complete such allocation; and no other matters shall be considered at such session.

REPORT
of the
COMMITTEE ON ARRANGEMENT AND FORM
of
PROPOSAL No. 3-1
on the
EXECUTIVE, MILITIA AND CIVIL OFFICERS
(as amended on second reading)
to the
CONSTITUTIONAL CONVENTION OF NEW JERSEY

Proposal No. 3-1 was referred to your Committee on August 13, 1947 and, pursuant to the Rules of the Convention, is reported back in the form hereunto annexed.

COMMITTEE ON ARRANGEMENT AND FORM
WAYNE D. MCMURRAY, *Chairman*
CHARLES P. HUTCHINSON, *Vice-Chairman*
ALFRED C. CLAPP, *Secretary*
FRANKLIN H. BERRY
JOHN DREWEN
ALBERT H. HOLLAND
FRANK G. SCHLOSSER

Dated: August 18, 1947.

COMMITTEE PROPOSAL No. 3-1
(as amended on second reading)

CONSTITUTIONAL CONVENTION OF NEW JERSEY

Introduced by DAVID VAN ALSTYNE, JR.
Chairman, Committee on Executive, Militia and Civil Officers

A PROPOSAL relating to the Governor, militia, State administrative organization, public officers and employees, adding new articles on the Executive and on Public Officers in lieu of Articles V and VII of the Constitution of 1844.

Resolved, That the following be agreed upon as part of the proposed new State Constitution:

ARTICLE ———

EXECUTIVE

SECTION I

1. The executive power shall be vested in a Governor.

2. The Governor shall not be 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 office or position, of profit, under this State or the United States shall be Governor. If the Governor or person administering the office of Governor shall accept any other office or position, of profit, under this State or the United States, the office of Governor shall thereby be vacated. No Governor shall be elected 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 receiving the greatest number of votes shall be the Governor; but if two or more shall be equal and greatest in votes, one of them shall be elected Governor by the vote of a majority of all 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. 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 of the third Tuesday in January four years thereafter. No person who has been elected Governor for two successive terms, including an unexpired term, 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.

6. In the event of a vacancy in the office of Governor resulting from 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, then upon such officers and in such order of succession as may be provided by law, until the election and qualification of another Governor.

7. In the event of the failure of the Governor-elect to qualify, or of the absence from the State of a Governor in office, or his

inability to discharge the duties of his office, or his impeachment, 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, removal, absence, inability or impeachment, then upon the Speaker of the General Assembly, for the time being; and in the event of his death, resignation, removal, absence, inability or impeachment, 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 return to the State, or shall no longer be unable to perform the duties of the office, or shall be acquitted, as the case may be, or until a new Governor shall be elected and qualify.

8. Whenever a Governor-elect shall have 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, or person administering the office, shall have remained continuously absent from the State, or shall have continued to be unable to discharge the duties of his office by reason of mental or physical disability, the office shall be deemed vacant. Such vacancy shall be determined by the court of last resort upon presentment to it of a concurrent resolution of the ground of the vacancy, adopted by a vote of two-thirds of all the members of each house of the Legislature, and upon notice, hearing before the Court and proof of the existence of the vacancy.

9. In the event of a vacancy in the office of Governor, a Governor shall be elected to fill the unexpired term at the general election next 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 shall assume his office immediately upon his election.

10. The Governor shall receive for his services a salary, which shall be neither increased nor diminished during the period for which he shall have been elected.

11. The Governor shall take care that the laws be faithfully executed. To this end he shall have power, by appropriate action or proceeding in the courts brought in the name of the State, to enforce compliance with any constitutional or legislative mandate, or to restrain violation of any constitutional or legislative power or duty, by any officer, department or agency of the State; but this power shall not be construed to authorize any action or proceeding against the Legislature.

12. The Governor shall communicate to the Legislature, by message at the opening of each regular session and at such other

times as he may deem necessary, the condition of the State, and shall in like manner recommend such measures as he may deem desirable. He may convene the Legislature or the Senate alone whenever in his opinion the public interest shall require. He shall be the Commander-in-Chief of all the military and naval forces of the State. He shall grant commissions to all officers elected or appointed pursuant to this Constitution. 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.

13. The Governor may fill any vacancy occurring in any office during a recess of the Legislature, appointment to which may be made by the Governor with the advice and consent of the Senate, or by the Legislature in joint meeting. An ad interim appointment so made shall expire at the end of the next regular session of the Senate, unless a successor shall be sooner appointed and qualified; and after the end of the session no ad interim appointment to the office shall be made unless the Governor shall have submitted to the Senate a nomination to the office during the session and the Senate shall have adjourned without confirming or rejecting it.

14. Every bill which shall have passed both houses 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 shall have originated, which shall enter the objections at large on its journal and proceed to reconsider it. If upon reconsideration, on or after the third day following the return of the bill, two-thirds of all the members of the house of origin shall agree to pass the bill, it shall be sent, together with the objections of the Governor, to the other house, by which it shall be reconsidered and if approved 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 a 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, unless the house of origin shall on that day be in adjournment. If on the tenth day the house of origin shall be in temporary 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 shall reconvene, unless the Governor shall on that day return the bill to that house.

If, on the tenth day, the Legislature is in adjournment sine die the bill shall become a law if the Governor shall sign it within forty-five days, Sundays excepted, after such adjournment. On the said forty-fifth day the bill shall become a law, notwithstanding the

failure of the Governor to sign it within the period last stated, unless at or before noon of that day he shall return it with his objections to the house of origin at a special session of the Legislature which shall convene on that day, without petition or call, for the sole purpose of acting pursuant to this paragraph upon bills returned by the Governor. At such special session a bill may be reconsidered beginning on the first day, in the manner provided in this paragraph for the reconsideration of bills, and if approved upon reconsideration by two-thirds of all the members of each house it shall become a law. The Governor may, in returning a bill with his objections, for reconsideration at any general or special session of the Legislature, recommend that an amendment or amendments specified by him be made in the bill, and in such case the Legislature may amend and re-enact the bill. If a bill be so amended and re-enacted it shall be again presented to the Governor, but shall become a law only if he shall sign it within ten days after presentation; and no bill shall be returned by the Governor a second time. A special session of the Legislature shall not be convened pursuant to this paragraph whenever the forty-fifth day, Sundays excepted, after adjournment of a regular or special session shall fall on or after the last day of the legislative year in which such adjournment shall have been taken.

15. If any bill presented to the Governor shall contain one or more items of appropriation of money, he may object in whole or in part to any such item or items while approving 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 or part thereof 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 thereof 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.

Section II

1. The Governor may grant pardons and reprieves in all cases other than impeachment and treason, and may suspend and remit fines and forfeitures. A commission or other body may be estab-

lished by law to aid and advise the Governor in the exercise of executive clemency.

2. A system for the granting of parole shall be provided by law.

SECTION III

1. Provisions for organizing, inducting, training, arming, disciplining and regulating a militia shall be made by law, which shall conform to applicable standards established for the armed forces of the United States. Discrimination on account of race, color, religion or national origin in organizing, inducting, training, arming, disciplining and regulating the militia is prohibited.

2. The Governor shall nominate and appoint all general and flag officers of the militia, with the advice and consent of the Senate. All other commissioned officers of the militia shall be appointed and commissioned by the Governor according to law.

SECTION IV

1. All executive and administrative offices, departments, and instrumentalities of the State government, including the offices of Secretary of State and Attorney General, and their respective functions, powers and duties, shall be allocated by law among and within not more than twenty principal departments, in such manner as to group the same according to major purposes so far as practicable. Temporary commissions for special purposes may, however, be established by law and such commissions need not be allocated within a principal department.

2. Each principal department shall be under the supervision of the Governor. The head of each principal department shall be a single executive unless otherwise provided by law. Such single executives shall be nominated and appointed by the Governor, with the advice and consent of the Senate, to serve at the pleasure of the Governor during his term of office and until the appointment and qualification of their successors, except as herein otherwise provided with respect to the Secretary of State and Attorney General.

3. The Secretary of State and the Attorney General shall be nominated and appointed by the Governor with the advice and consent of the Senate to serve during the term of office of the Governor.

4. Whenever a board, commission or other body shall be the head of a principal department, the members thereof shall be nominated and appointed by the Governor with the advice and consent of the Senate, and may be removed in the manner provided by law. Such a board, commission or other body may appoint a principal executive officer when authorized by law, but the appointment shall

be subject to the approval of the Governor. Any principal executive officer so appointed shall be removable by the Governor, upon notice and an opportunity to be heard.

5. The Governor may cause an investigation to be made of the conduct in office of any officer or employee who receives his compensation from the State of New Jersey, except a member of the Legislature or an officer elected by the Senate and General Assembly in joint meeting, or a judicial officer. He may require such officer or employee to submit to him a written statement or statements, under oath, of such information as the Governor may require relating to the conduct of their respective offices or employments. After notice, the service of charges and an opportunity to be heard at public hearing the Governor may remove any such officer or employee for cause. 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.

6. No rule or regulation made by any State department, officer, agency or authority, except such as relates to the organization or internal management of the State Government or a part thereof, shall take effect until it is filed with the Secretary of State or in such other manner as may be provided by law. The Legislature shall provide for the prompt publication of such rules and regulations.

ARTICLE ———

Public Officers and Employees

Section I

1. Every 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. 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.

3. 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 for the office or position, shall immediately upon receipt be paid into the treasury of the State, unless the compensation or fees shall be allowed or appropriated to him by law.

4. Any person before or after entering upon the duties of 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 as herein otherwise provided, 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.

6. The State Auditor shall be appointed by the Senate and General Assembly in joint meeting for a term of five years and until his successor shall be appointed and qualified. It shall be his duty to conduct post-audits of all transactions and accounts kept by or for all departments, offices and agencies of the State government, to report to the Legislature or to any committee thereof as shall be required by law, and to perform such other similar or related duties as shall, from time to time, be required of him by law.

SECTION II

1. 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 serve until the appointment and qualification of their respective successors.

2. County clerks, surrogates and sheriffs shall be elected by the people of their respective counties at general elections. The term of office of county clerks and surrogates shall be five years, and of sheriffs three years. Whenever a vacancy shall occur in any such office it shall be filled in the manner to be provided by law.

SECTION III

1. The Governor and all other State officers, while in office and for two years thereafter, shall be liable to impeachment for misdemeanor committed during their respective continuance in office.

2. The General Assembly shall have the sole power of impeachment by vote of a majority of all the members. All 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 the evidence." No person shall be convicted without the concurrence of two-thirds of all the members of the Senate. When the Governor is tried, the Chief Justice of the court of last resort shall preside and the President of the Senate shall not participate in the trial.

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 ———

SCHEDULE

1. A Governor shall be elected for a full term at the general election to be held in the year one thousand nine hundred and forty-nine and each fourth year thereafter.

2. The taking effect of this Constitution or any provision thereof shall not of itself affect the tenure, term, status or compensation of any person then holding any public office, position or employment in this State, except as provided in this Constitution. Unless otherwise specifically provided in this Constitution, all constitutional officers in office at the time of its adoption shall continue to exercise the authority of their respective offices during the term for which they shall have been elected or appointed and until the qualification of their successors respectively. Upon the taking effect of this Constitution all officers of the militia shall retain their commissions subject to the provisions of Article IV, Section III.

3. The Legislature, in compliance with the provisions of this Constitution, shall prior to July first, one thousand nine hundred and forty-nine, and from time to time thereafter may, allocate by law the executive and administrative offices, departments and instrumentalities of the State Government among and within the principal departments. 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 for consideration to complete such allocation; and no other matters shall be considered at such session.

COMMITTEE ON THE JUDICIARY

TENTATIVE DRAFT OF JUDICIAL ARTICLE

(NOTE: This tentative draft is subject to change by the Committee and by the Convention. The suggestions of the public are invited.)

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
AT
RUTGERS UNIVERSITY
THE STATE UNIVERSITY OF NEW JERSEY

July 24, 1947.

To the People of the State of New Jersey:

The Committee on the Judiciary of the Constitutional Convention presents this tentative draft of the Judicial Article, including the Schedule thereto, and cordially invites your comments.

A public hearing on the Article will be held at Convention Hall, Rutgers Gymnasium, Rutgers University, New Brunswick, on Wednesday, July 30, 1947, at 10 A.M., for the purpose of receiving written and oral expressions of your views. Communications prior to the public hearing may be addressed to the Secretary, Judiciary Committee, Convention Hall, Rutgers University, New Brunswick, New Jersey.

The proposed Article represents, in general, the tentative views of the Committee. It is not necessarily to be inferred that each provision embodies the opinions of all members.

Respectfully,

COMMITTEE ON THE JUDICIARY,
FRANK H. SOMMER, *Chairman,*
NATHAN L. JACOBS, *Vice-Chairman,*
MRS. GENE W. MILLER, *Secretary,*
THOMAS J. BROGAN,
AMOS F. DIXON,
LESTER A. DRENK,
EDWARD A. MCGRATH,
WAYNE D. MCMURRAY,
HENRY W. PETERSON,
GEORGE F. SMITH,
WALTER G. WINNE.

ARTICLE ——— JUDICIAL

SECTION I

1. The judicial power shall be vested in a Supreme Court, a General Court and inferior courts of limited jurisdiction. The inferior courts and their jurisdiction may from time to time be established, altered or abolished by law.

SECTION II

1. The Supreme Court shall consist of a Chief Justice and six Associate Justices. Five members of the court shall constitute a quorum. When necessary to make the quorum, the Chief Justice shall assign the Judge or Judges of the General Court, senior in service, as provided by rules of the Supreme Court, to serve temporarily in the Supreme Court.

2. The Supreme Court shall exercise appellate jurisdiction in the last resort in all causes provided in this Constitution.

3. The Supreme Court shall, subject to law, make rules governing the administration and the practice and procedure in all the courts in the State. The Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted.

SECTION III

1. The General Court shall consist of such number of Judges as may be authorized by law, but not less than twenty-four, each of whom shall exercise the powers of the court subject to rules of the Supreme Court.

2. The General Court shall have original general jurisdiction throughout the State in all causes, excluding, unless otherwise provided by law, probate and criminal causes.

3. The General Court shall be divided into an Appellate Division, a Law Division and an Equity Division. Each division shall have such Parts, consist of such number of Judges, and hear such causes, as may be provided by rules of the Supreme Court.

4. Subject to rules of the Supreme Court, the Law Division and the Equity Division shall each exercise the powers and functions of the other division when the ends of justice so require; and legal and equitable relief shall be granted in any cause so that all matters in controversy between the parties may be completely determined.

SECTION IV

1. Appeals may be taken directly to the Supreme Court:

(a) In causes determined by the Appellate Division of the General Court involving a question arising under the Constitution of the United States or this State;

(b) In the event of a dissent in the Appellate Division of the General Court;

(c) In capital causes;

(d) On certification by the Supreme Court to any court; and

(e) In such causes as may be provided by law.

2. Appeals may be taken to the Appellate Division of the General Court from the Law and Equity Divisions of the General Court and in such other causes as may be provided by law.

3. The Supreme Court and the Appellate Division of the General Court may exercise such original jurisdiction as may be incident to the complete determination of any cause on review.

4. Prerogative writs are superseded and, in lieu thereof, review shall be afforded by the General Court as of right, except in criminal causes, in the manner provided by rules of the Supreme Court.

SECTION V

1. The Governor shall nominate and appoint, by and with the advice and consent of the Senate, the Chief Justice and Associate Justices of the Supreme Court, the Judges of the General Court, and, unless otherwise provided by law, the judges of the inferior courts. No nomination to such an office shall be sent to the Senate for confirmation until after seven days' public notice by the Governor.

2. The Justices of the Supreme Court and the Judges of the General Court shall each prior to his appointment have been admitted to practice before the highest court of this State for at least ten years.

3. The Justices of the Supreme Court shall hold their offices during good behavior. The Judges of the General Court shall hold their offices for initial terms of seven years and upon reappointment shall hold their offices during good behavior. Such Justices and Judges shall be retired upon attaining the age of seventy years. Provisions for the pensioning of the Justices of the Supreme Court and the Judges of the General Court shall be made by law.

4. The Justices of the Supreme Court and the Judges of the General Court shall be subject to impeachment, and any judicial officer impeached shall suspend the exercise of his office until acquitted. The Judges of the General Court shall also be subject to removal from office by the Supreme Court for such causes and in such manner as shall be provided by law.

5. Whenever the Supreme Court shall certify to the Governor that it appears that any Justice of the Supreme Court or Judge of the General Court is so incapacitated as substantially to prevent him from performing his judicial duties, the Governor shall appoint a commission of three persons to inquire into the circumstances; and,

on their recommendation, the Governor may retire the Justice or Judge from office.

6. The Justices of the Supreme Court and the Judges of the General Court shall receive for their services such salaries as may be provided by law, which shall not be diminished during the term of their appointment. They shall not, while in office, engage in the practice of law or other gainful pursuit.

7. The Justices of the Supreme Court and the Judges of the General Court shall hold no other office or position of profit under the authority of this State or the United States. Any such Justice or Judge who shall become a candidate for an elective public office shall thereby forfeit his judicial office.

Section VI

1. The Chief Justice of the Supreme Court shall, subject to its rules, be the administrative head of the Supreme Court, the General Court and the inferior courts. He shall appoint an Administrative Director to serve at his pleasure.

2. The Chief Justice of the Supreme Court shall assign Judges of the General Court to the Divisions and Parts of the General Court, and may from time to time transfer Judges from one assignment to another, as need appears. Assignments to the Appellate Division shall be for terms fixed by rules of the Supreme Court.

3. There shall be a Presiding Judge of the Appellate Division of the General Court, a Presiding Judge of the Law Division and a Presiding Judge of the Equity Division, designated in the manner provided for by rules of the Supreme Court.

4. The Clerk of the Supreme Court and the Clerk of the General Court shall be appointed by the Supreme Court for such terms and at such compensation as shall be provided by law.

SCHEDULE

ARTICLE —— SECTION ——

1. Immediately after the adoption of this Constitution the Governor shall nominate and appoint, by and with the advice and consent of the Senate, a Chief Justice and six Associate Justices of the new Supreme Court from among the persons then being the Chancellor, the Chief Justice and Associate Justices of the old Supreme Court, the Vice-Chancellors and Circuit Court Judges. The remaining judicial officers enumerated and such special Judges of the Court of Errors and Appeals as have been admitted to practice before the highest court of this State for at least ten years, and are in office on the adoption of the Constitution, shall constitute the Judges of the General Court. The Judges of the General Court so designated shall hold office each for the period of his term which

remains unexpired at the time the Constitution is adopted; and if reappointed he shall hold office during good behavior. No Justice of the new Supreme Court or Judge of the General Court shall, however, hold his office after attaining the age of seventy years.

2. The Court of Errors and Appeals, the present Supreme Court, the Court of Chancery and the Circuit Courts shall be abolished when the Judicial Article of this Constitution takes effect; and all their jurisdiction, functions, powers and duties shall be transferred to and divided between the new Supreme Court and the General Court according as jurisdiction is vested in each of them under this Constitution.

3. The Prerogative Court shall be abolished when the Judicial Article of this Constitution takes effect. All its appellate jurisdiction, functions and powers shall be transferred to the General Court; and, until otherwise provided by law, its original jurisdiction shall be vested in the County Courts.

4. Until otherwise provided by law, all courts now existing in this State, other than those abolished in paragraphs 2 and 3 hereof, shall continue as if this Constitution had not been adopted, save that the jurisdiction of the Courts of Common Pleas over civil actions at law shall be abolished when the Judicial Article of this Constitution takes effect; and save, further, that the Orphans' Court, Court of Common Pleas, Court of Oyer and Terminer, Court of Quarter Sessions, Court of Special Sessions and Court of General Sessions of each county shall thereafter be designated the County Court of that county. Until otherwise provided by law, the judicial officers and clerks of all courts now existing, other than those abolished in paragraphs 2 and 3 hereof, and the employees of said officers, clerks and courts shall continue in the exercise of their duties, as if this Constitution had not been adopted.

5. The Supreme Court shall make rules governing the administration and practice and procedure of the County Courts; and the Chief Justice of the Supreme Court shall, subject to its rules, be the administrative head of these courts with power to assign any Judge thereof of any county to sit temporarily in the General Court or to sit temporarily without the county in a County Court, when his duties within the county shall not require his presence there. The jurisdiction of these courts may be transferred by law to the General Court.

6. The Advisory Masters appointed to hear matrimonial proceedings shall continue to do so, as Advisory Masters to the Equity Division of the General Court, unless otherwise provided by law.

7. When the Judicial Article of this Constitution takes effect:

(a) all causes pending in the Court of Errors and Appeals shall be transferred to the new Supreme Court;

(b) all causes pending on appeal in the present Supreme Court and in the Prerogative Court and all causes involving the prerogative writs shall be transferred to the Appellate Division of the General Court;

(c) all causes pending in all other courts which are abolished and all civil actions at law pending in the Courts of Common Pleas shall be transferred to the General Court;

(d) all original causes pending in the Prerogative Court shall be transferred to the County Courts.

Causes shall be deemed to be pending for the purposes of this and the next paragraph, notwithstanding that an adjudication has been entered therein, until the time limited for review has expired.

8. The files of all causes pending in the Court of Errors and Appeals shall be delivered to the Clerk of the new Supreme Court; and the files of all causes pending in the present Supreme Court, the Court of Chancery and on appeal in the Prerogative Court shall be delivered to the Clerk of the General Court. The files of all other causes pending in the Prerogative Court shall be delivered to the County Court as provided by rules of the Supreme Court. All other files, books, papers, records, and documents and all property of the Court of Errors and Appeals, the present Supreme Court, the Prerogative Court, the Chancellor and the Court of Chancery, or in their custody, shall be disposed of as shall be provided by law.

9. Upon the taking effect of the Judicial Article of this Constitution, all the functions, powers and duties conferred by statute or rule upon the Chancellor, the Ordinary, and the Justices and Judges of the courts abolished by this Constitution, to the extent that such functions, powers and duties are not inconsistent with this Constitution, shall be transferred to and may be exercised by Judges of the General Court until otherwise provided by law or rules of the new Supreme Court; excepting that such statutory powers not related to the administration of justice as are then vested in any such judicial officers shall, after the Judicial Article of this Constitution takes effect and until otherwise provided by law, be transferred to and shall be exercised by the Chief Justice of the new Supreme Court.

10. Upon the taking effect of the Judicial Article of this Constitution, the Clerk of the Supreme Court shall become the Clerk of the new Supreme Court and shall serve as such Clerk until the expiration of the term for which he was appointed as Clerk of the Supreme Court, and all employees of the Supreme Court as previously constituted, of the Clerk thereof and of the Chief Justice and the Justices thereof, and of the Court of Errors and Appeals shall be transferred to appropriate similar positions with similar compensation and civil service status under the Clerk of the new Supreme

Court or the new Supreme Court, or the Clerk of the General Court or the General Court which shall be provided by law.

11. Upon the taking effect of the Judicial Article of this Constitution, the Clerk in Chancery shall become the Clerk of the General Court and shall serve as such Clerk until the expiration of the term for which he was appointed as Clerk in Chancery, and all employees of the Clerk in Chancery, the Court of Chancery, the Chancellor and the several Vice-Chancellors shall be transferred to appropriate similar positions with similar compensation and civil service status under the Clerk of the General Court or the General Court which shall be provided by law.

12. Appropriations made by law for judicial expenditures during the fiscal year 1948-1949 may be transferred to similar objects and purposes required by the Judicial Article.

13. The Judicial Article of this Constitution shall take effect on January 1, 1949, except that the Governor, by and with the advice and consent of the Senate, shall have the power to fill vacancies arising prior thereto in the Supreme Court and the General Court and the Courts abolished by this Constitution; and except further that any provision of the Judicial Article which may require any act to be done prior thereto or in preparation therefor shall take effect immediately upon the adoption of this Constitution.

COMMITTEE ON THE JUDICIARY

REPORT AND PROPOSAL

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
AT
RUTGERS UNIVERSITY
THE STATE UNIVERSITY OF NEW JERSEY

July 31, 1947.

To the Delegates of the Convention:

The Committee on the Judiciary reports that it has concluded its hearings and deliberations and is submitting the annexed proposed Judicial Article including the schedule thereto with its recommendation for adoption by the Convention.

The Committee has fully considered the individual proposals referred to it and portions thereof have been adopted in the proposed Judicial Article. A supplemental report will be submitted embodying, among other matters, detailed statements of the proceedings before the Committee and the results of its deliberations.

Respectfully,

COMMITTEE ON THE JUDICIARY,
FRANK H. SOMMER, *Chairman,*
NATHAN L. JACOBS, *Vice-Chairman,*
MRS. GENE W. MILLER, *Secretary,*
THOMAS J. BROGAN,
AMOS F. DIXON,
LESTER A. DRENK,
EDWARD A. McGRATH,
WAYNE D. McMURRAY,
HENRY W. PETERSON,
GEORGE F. SMITH,
WALTER G. WINNE.

PROPOSAL No. 4-1

ARTICLE ---- JUDICIAL

SECTION I

1. The judicial power shall be vested in a Supreme Court, a General Court and inferior courts of limited jurisdiction. The

inferior courts and their jurisdiction may from time to time be established, altered or abolished by law.

SECTION II

1. The Supreme Court shall consist of a Chief Justice and six Associate Justices. Five members of the court shall constitute a quorum. When necessary, the Chief Justice shall assign the Judge or Judges of the General Court, senior in service, as provided by rules of the Supreme Court, to serve temporarily in the Supreme Court.

2. The Supreme Court shall exercise appellate jurisdiction in the last resort in all causes provided in this Constitution.

3. The Supreme Court shall make rules governing the administration and, subject to law, the practice and procedure in all the courts in the State. The Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted.

SECTION III

1. The General Court shall consist of such number of Judges as may be authorized by law, but not less than twenty-four, each of whom shall exercise the powers of the court subject to rules of the Supreme Court.

2. The General Court shall have original general jurisdiction throughout the State in all causes, excluding, unless otherwise provided by law, probate and criminal causes.

3. The General Court shall be divided into an Appellate Division, a Law Division, and an Equity Division. Each division shall have such Parts, consist of such number of Judges, and hear such causes, as may be provided by rules of the Supreme Court.

4. Subject to rules of the Supreme Court, the Law Division and the Equity Division shall each exercise the powers and functions of the other division when the ends of justice so require; and legal and equitable relief shall be granted in any cause so that all matters in controversy between the parties may be completely determined.

SECTION IV

1. Appeals may be taken to the Supreme Court:
   (a) In causes determined by the Appellate Division of the General Court involving a question arising under the Constitution of the United States or this State;
   (b) In the event of a dissent in the Appellate Division of the General Court;
   (c) In capital causes;
   (d) On certification by the Supreme Court to any court; and
   (e) In such causes as may be provided by law.

2. Appeals may be taken to the Appellate Division of the General Court from the Law and Equity Divisions of the General Court and in such other causes as may be provided by law.

3. The Supreme Court and the Appellate Division of the General Court may exercise such original jurisdiction as may be necessary to the complete determination of any cause on review.

4. Prerogative writs are superseded and, in lieu thereof, review, hearing and relief shall be afforded in the General Court, on terms and in the manner provided by rules of the Supreme Court, as of right, except in criminal causes where such review shall be discretionary.

SECTION V

1. The Governor shall nominate and appoint, by and with the advice and consent of the Senate, the Chief Justice and Associate Justices of the Supreme Court, the Judges of the General Court, and the judges of the inferior courts with jurisdiction extending to more than one municipality. No nomination to such an office shall be sent to the Senate for confirmation until after seven days' public notice by the Governor.

2. The Justices of the Supreme Court and the Judges of the General Court shall each prior to his appointment have been admitted to practice in this State for at least ten years.

3. The Justices of the Supreme Court shall hold their offices during good behavior. The Judges of the General Court shall hold their offices for initial terms of seven years and upon reappointment shall hold their offices during good behavior. Such Justices and Judges shall be retired upon attaining the age of seventy years. Provisions for the pensioning of the Justices of the Supreme Court and the Judges of the General Court shall be made by law.

4. The Justices of the Supreme Court and the Judges of the General Court shall be subject to impeachment, and any judicial officer impeached shall suspend the exercise of his office until acquitted. The Judges of the General Court shall also be subject to removal from office by the Supreme Court for such causes and in such manner as shall be provided by law.

5. Whenever the Supreme Court shall certify to the Governor that it appears that any Justice of the Supreme Court or Judge of the General Court is so incapacitated as substantially to prevent him from performing his judicial duties, the Governor shall appoint a commission of three persons to inquire into the circumstances; and, on their recommendation, the Governor may retire the Justice or Judge from office.

6. The Justices of the Supreme Court and the Judges of the General Court shall receive for their services such salaries as may be provided by law, which shall not be diminished during the term

of their appointment. They shall not, while in office, engage in the practice of law or other gainful pursuit.

7. The Justices of the Supreme Court and the Judges of the General Court shall hold no other office or position of profit under the authority of this State or the United States. Any such Justice or Judge who shall become a candidate for an elective public office shall thereby forfeit his judicial office.

Section VI

1. The Chief Justice of the Supreme Court shall be the administrative head of the Supreme Court, the General Court and the inferior courts. He shall appoint an Administrative Director to serve at his pleasure.

2. The Chief Justice of the Supreme Court shall assign Judges of the General Court to the Divisions and Parts of the General Court, and may from time to time transfer Judges from one assignment to another, as need appears. Assignments to the Appellate Division shall be for terms fixed by rules of the Supreme Court.

3. The Clerk of the Supreme Court and the Clerk of the General Court shall be appointed by the Supreme Court for such terms and at such compensation as shall be provided by law.

SCHEDULE

Article———

Section ———

1. Subsequent to the adoption of this Constitution the Governor shall nominate and appoint, by and with the advice and consent of the Senate, a Chief Justice and six Associate Justices of the new Supreme Court from among the persons then being the Chancellor, the Chief Justice and Associate Justices of the old Supreme Court, the Vice-Chancellors and Circuit Court Judges. The remaining judicial officers enumerated and such Judges of the Court of Errors and Appeals as have been admitted to practice in this State for at least ten years, and are in office on the adoption of the Constitution, shall constitute the Judges of the General Court. The Justices of the new Supreme Court and the Judges of the General Court so designated shall hold office each for the period of his term which remains unexpired at the time the Constitution is adopted; and if reappointed he shall hold office during good behavior. No Justice of the new Supreme Court or Judge of the General Court shall hold his office after attaining the age of seventy years, except, however, that such Justice or Judge may complete the period of his term which remains unexpired at the time the Constitution is adopted.

2. The Court of Errors and Appeals, the present Supreme Court,

the Court of Chancery and the Circuit Courts shall be abolished when the Judicial Article of this Constitution takes effect; and all their jurisdiction, functions, powers and duties shall be transferred to and divided between the new Supreme Court and the General Court according as jurisdiction is vested in each of them under this Constitution.

3. The Prerogative Court shall be abolished when the Judicial Article of this Constitution takes effect. All its appellate jurisdiction, functions, powers and duties shall be transferred to the General Court; and, until otherwise provided by law, its original jurisdiction shall be vested in the County Courts.

4. Until otherwise provided by law, all courts now existing in this State, other than those abolished in paragraphs 2 and 3 hereof, shall continue as if this Constitution had not been adopted, save that, until otherwise provided by law, the jurisdiction of the Courts of Common Pleas over civil actions at law shall be abolished when the Judicial Article of this Constitution takes effect; and save, further, that the Orphans' Court, Court of Common Pleas, Court of Oyer and Terminer, Court of Quarter Session and Court of Special Sessions of each county shall thereafter be designated the County Court of that county. Until otherwise provided by law, the judicial officers, surrogates and clerks of all courts now existing, other than those abolished in paragraphs 2 and 3 hereof, and the employees of said officers, clerks, surrogates and courts shall continue in the exercise of their duties, as if this Constitution had not been adopted.

5. The Supreme Court shall make rules governing the administration and practice and procedure of the County Courts; and the Chief Justice of the Supreme Court shall be the administrative head of these courts with power to assign any Judge thereof of any county to sit temporarily in the General Court or to sit temporarily without the county in a County Court. The jurisdiction of these courts may be transferred by law to the General Court.

6. The Advisory Masters appointed to hear matrimonial proceedings and in office on the adoption of the Constitution shall, each for the period of his term which remains unexpired at the time the Constitution is adopted, continue so to do as Advisory Masters to the Equity Division of the General Court, unless otherwise provided by law.

7. When the Judicial Article of this Constitution takes effect:

(a) all causes and proceedings of whatever character pending in the Court of Errors and Appeals shall be transferred to the new Supreme Court;

(b) all causes and proceedings of whatever character pending on appeal or writ of error in the present Supreme Court and in the Prerogative Court and all pending causes in-

volving the prerogative writs shall be transferred to the Appellate Division of the General Court;

(c) all causes and proceedings of whatever character pending in the Supreme Court other than those stated shall be transferred to the General Court;

(d) all causes and proceedings of whatever character pending in the Prerogative Court other than those stated shall be transferred to the County Courts;

(e) all causes and proceedings of whatever character pending in all other courts which are abolished and, until otherwise provided by law, all civil actions at law pending in the Courts of Common Pleas, shall be transferred to the General Court.

Causes shall be deemed to be pending for the purposes of this and the next paragraph, notwithstanding that an adjudication has been entered therein, until the time limited for review has expired.

8. The files of all causes pending in the Court of Errors and Appeals shall be delivered to the Clerk of the new Supreme Court; and the files of all causes pending in the present Supreme Court, the Court of Chancery and on appeal in the Prerogative Court shall be delivered to the Clerk of the General Court. The files of all other causes pending in the Prerogative Court shall be delivered to the County Court as provided by rules of the Supreme Court. All other files, books, papers, records and documents and all property of the Court of Errors and Appeals, the present Supreme Court, the Prerogative Court, the Chancellor and the Court of Chancery, or in their custody, shall be disposed of as shall be provided by law.

9. Upon the taking effect of the Judicial Article of this Constitution, all the functions, powers and duties conferred by statute or rules upon the Chancellor, the Ordinary, and the Justices and Judges of the courts abolished by this Constitution, to the extent that such functions, powers and duties are not inconsistent with this Constitution, shall be transferred to and may be exercised by Judges of the General Court until otherwise provided by law or rules of the new Supreme Court; excepting that such statutory powers not related to the administration of justice as are then vested in any such judicial officers shall, after the Judicial Article of the Constitution takes effect and until otherwise provided by law, be transferred to and shall be exercised by the Chief Justice of the new Supreme Court.

10. Upon the taking effect of the Judicial Article of this Constitution, the Clerk of the Supreme Court shall become the Clerk of the new Supreme Court and shall serve as such Clerk until the expiration of the term for which he was appointed as Clerk of the

Supreme Court, and all employees of the Supreme Court as previously constituted, of the Clerk thereof and of the Chief Justice and the Justices thereof, of the Circuit Courts and the Judges thereof and of the Court of Errors and Appeals shall be transferred to appropriate similar positions with similar compensation and civil service status under the Clerk of the new Supreme Court or the new Supreme Court, or the Clerk of the General Court or the General Court which shall be provided by law.

11. Upon the taking effect of the Judicial Article of this Constitution, the Clerk in Chancery shall become the Clerk of the General Court and shall serve as such Clerk until the expiration of the term for which he was appointed as Clerk in Chancery, and all employees of the Clerk in Chancery, the Court of Chancery, the Chancellor and the several Vice-Chancellors shall be transferred to appropriate similar positions with similar compensation and civil service status under the Clerk of the General Court or the General Court which shall be provided by law.

12. Appropriations made by law for judicial expenditures during the fiscal year 1948-1949 may be transferred to similar objects and purposes required by the Judicial Article.

13. The Judicial Article of this Constitution shall take effect on January 1, 1949, except that the Governor, by and with the advice and consent of the Senate, shall have the power to fill vacancies arising prior thereto in the Supreme Court, the General Court, the inferior courts with jurisdiction extending to more than one municipality and the courts abolished by this Constitution; and except further that any provision of the Judicial Article which may require any act to be done prior thereto or in preparation therefor shall take effect immediately upon the adoption of this Constitution.

COMMITTEE ON THE JUDICIARY
REPORT

August 26, 1947.

To the Delegates of the Convention:

The Committee on the Judiciary has heretofore submitted its proposed Judicial Article, including the Schedule thereto, and with certain amendments it has been adopted by the Convention. The Committee submits herewith a report which embodies: (a) a statement of the fundamental characteristics of a modern judicial system, (b) an outline of the proposed court structure, (c) a statement of the principles underlying the proposed Judicial Article, (d) an Appendix which contains annotations of the Article, and (e) an Appendix which contains recommendations for legislation and rules of court.

I

The Fundamental Characteristics of a Modern Judicial System

The testimony presented to the Committee was in large measure in agreement as to the essential characteristics of a modern judicial system. Three fundamental requirements were particularly stressed:

First: *Unification of courts.* By this means, the judicial system is simplified and the condition for economical and efficient administration established. It is the sole known technique for abolishing jurisdictional controversies which delay justice and waste the time and money of litigants and courts.

Second: *Flexibility of the court system.* By assignment of judges according to ability, experience and need, and apportionment of judicial business among courts, divisions and parts according to the volume and type of cases, judicial resources can be fully utilized and litigation promptly decided.

Third: *Control over administration, practice and procedure by rules of court.* Exclusive authority over administration, and primary responsibility for establishing rules of practice and procedure, secures business-like management of the courts as a whole and promotes simplified and more economical judicial procedures.

These were the basic principles which guided the Committee in framing the Judicial Article submitted to the Convention. Two other considerations, specially pertinent to the text and scope of constitutional provisions governing the judiciary, were also observed by the Committee:

First: Constitutions should deal with fundamentals, not details. The organic law should establish the framework of government, leaving the body and content to be supplied by legislation.

Second: The function of a Judicial Article in a Constitution is to create a system of courts, not to write or change the law which those courts will administer or enforce. The Committee was as concerned with avoiding revision of the substantive law, however urgent and necessary, as it was careful to preserve intact the right to trial by jury and the scope and extent of the judicial power.

II

Outline of the Court Structure

The Judicial Article and Schedule proposed by the Judiciary Committee have four salient features:

A. The highest appellate court is the Supreme Court, comprised of seven Justices who serve on that court exclusively and who hold office during good behavior upon reappointment after an initial term of seven years.

B. The existing courts of law and equity are replaced by a single, statewide court, called the Superior Court, having a Law Division, a Chancery Division and an Appellate Division, staffed by Judges who acquire life tenure if reappointed after an initial term of seven years.

C. County courts are unified and retained, with their present criminal, probate and civil jurisdiction.

D. Administration, practice and procedure in all courts is to be governed by rules of the Supreme Court, subject to legislation in the case of practice and procedure.

Other noteworthy features of the proposed Judicial Article are:

E. The Legislature retains the power to create additional inferior courts of limited jurisdiction.

F. Each Judge of the Superior Court and the County Courts is to exercise all the powers of the court, and each Court and Division which hears a case is to grant both legal and equitable relief, so that all matters in controversy between the parties are fully decided.

G. The Chief Justice of the Supreme Court is to assign Judges of the Superior Court to the various Divisions and Parts of that court, and to make reassignments as need appears, except that assignments to the Appellate Division are to be made for terms established by rules of the Supreme Court.

H. Justices and Judges of all except municipal courts are to be appointed by the Governor and their names sent to the Senate for confirmation after seven days' public notice.

I. Except for incumbent judges, who will serve out their terms, Justices and Judges of the Supreme and Superior Courts must retire at 70, the Legislature to prescribe pensions. All judicial officers are liable to impeachment, and Superior Court and County

Court Judges may be removed by the Supreme Court, as may be provided by law. Any Justice of the Supreme Court, or Judge of the Superior or County Courts, who has, according to certification by the Supreme Court, become incapacitated, may be retired by the Governor upon recommendation of a committee of inquiry, comprised of three members appointed by the Governor.

J. Appeals in capital cases and in other cases designated by the Legislature may be taken directly to the Supreme Court. Otherwise, appeals go to the Appellate Division of the Superior Court, from which a further appeal may be taken to the Supreme Court only where a constitutional question is involved or where there is a dissent in the Appellate Division. The Supreme Court is also given the power to certify a case in the Superior Court, and cases in all other courts where provided by its rules, for a direct or a further appeal to the Supreme Court.

K. Both the Supreme Court and the Appellate Division of the Superior Court may exercise such original jurisdiction as may be incident to a complete determination of the case on appeal.

L. In lieu of the prerogative writs, which now issue as a matter of discretion, relief is to be afforded by the Superior Court as of right, on terms and according to rules of the Supreme Court, except in criminal cases where such review remains discretionary.

M. The Chief Justice of the Supreme Court is to be the administrative head of all the courts, assisted by an Administrative Director appointed by him.

N. Clerks of the Supreme and Superior Courts are to be appointed by the Supreme Court, their term of office and compensation to be specified by the Legislature.

III

Principles Underlying the Proposed Judicial Article

The introduction to this Report summarizes the basic principles and considerations of general application which guided the Committee in formulating the proposed Judicial Article. Their special application to New Jersey's present judicial organization is the subject of this section of the Report.

The outstanding defects of the existing court structure, according to nearly all the witnesses, might be grouped in three categories.

The first, as to which opinion was unanimous, is the intolerable evil of jurisdictional controversies engendered by rival courts of law and equity dealing with the same subject matter. Even where the function of each tribunal is clearly understood and not in dispute, the dual court structure necessarily entails fractional and multiple litigation of the same controversy. The way to a solution is pointed by the almost unanimous example of the British Empire, the Federal

Courts and the judicial systems of most American states, which had long since discontinued independent Courts of Chancery. Practically every one of the witnesses urged changes to correct the evil of divided jurisdiction in separate courts and incessant litigation of the same case. The only differences concerned the nature and extent of the cure.

A second and hardly less disturbing defect in our existing organization of courts is the multiple functions of appellate court judges and reiterated appeals of the same case. The aggregate of each judge's assignments makes it impossible to concentrate judicial energies upon a single important task and denies adequate opportunity for thoughtful consideration of appeals. Numerous appeals to the same judges, sitting in different courts, endlessly protract justice, multiply expense and present the undesirable example of judges taking turns from day to day in reviewing each others' decisions. There was absolute agreement that both conditions should be eradicated by limiting the number of appeals and by assigning judges to membership in only one appellate court at a time. Whatever differences there were among the witnesses concerned only the details of the improvements to be made.

The third shortcoming of the existing judicial organization, and perhaps the most costly, is the total lack of business-like organization, coordination and supervision of the courts as a whole. A corollary feature of this condition is the practice of resigning responsibility for the formulation of practice and procedure to intermittent revision by the Legislature. Most witnesses agreed that there should be a centralized administration of all the courts, which should practice efficiency and economy according to business standards, and that the courts should resume and exercise primary responsibility over their own procedure. Such differences as developed among the witnesses were limited to the chain of command through which this supervision and control should be exercised, and reflected individual preferences as to the organization of the trial courts.

There was general approval of the methods selected by the Committee to improve the appellate structure and to inaugurate centralized administration over the business operation and procedure of the courts. A Supreme Court was proposed as the highest court of appeal, headed by a Chief Justice assisted by six associate, full-time Justices. This court was given the power to make rules for administration, practice and procedure in all courts, subject to the overriding power of the Legislature with respect to practice and procedure. The Chief Justice was made the responsible administrative head of all the courts, assisted by an Administrative Director of his own appointment. There was some difference of opinion as to

whether the jurisdiction of this court should be selective and limited to important cases, including constitutional questions and capital offenses, or whether it should take appeals comprehensively, as does the present Court of Errors and Appeals. It was feared by some that a restricted jurisdiction might leave the Justices idle, while others believed that a plenary calendar of appeals might overburden them. Since approximation of future judicial business is at best a prophecy, the Committee decided to err on the side of caution. By making the new Supreme Court's appellate jurisdiction selective, that court is assured of an adequate opportunity to hear, consider and decide every case which comes before it.

The decision to amalgamate the Court of Chancery with the law courts is another salient feature of the new judicial structure. Those who opposed this course feared that the advantages of specialization by Judges would be lost and that the present high quality of equity decisions might be impaired. In this difference of prediction, the far greater weight of the testimony supported unification of the courts.

Professor Sunderland has a vividly written article on "The English Struggle for Procedural Reform" in 39 Harvard Law Review 725 (1926). He tells of the half-century of conflict which raged between the bench and the bar on the one hand and the forces of public opinion on the other, until, in 1873, the English High Court of Chancery was merged, with other courts, into the present High Court of Judicature. What makes that story timely is the amazing similarity between the arguments now made in New Jersey and those voiced a century ago in England to oppose a more efficient organization of courts. The English experience with a unified court structure during the past 74 years has completely refuted the prophets of doom. However, the parallel between conditions in England a century ago and the evils which continue to afflict New Jersey justice makes the example of English court reform highly pertinent. Lord Chancellor Loreburn, on a visit to this country more than 30 years ago, described the picture in England before and after the merger of courts:

> "Courts of law were supposed to know nothing of and ignored equitable doctrines, and on the other hand the court of chancery was unable to grant relief in cases within the competence of the common-law courts. And, once again, the court of chancery granted relief of a nature unknown to the common law and refused to grant relief appropriate to actions at law. The result of this was that the litigant really entitled to relief too often failed to obtain it because he instituted proceedings by an inappropriate form of action or in the wrong court, and that a litigant too often could not obtain full relief without instituting proceedings both at common law and in the court of chancery. A

person entitled to land might fail to recover it at law because his interest was equitable, or in equity because his interest was legal, or might be unable to recover it at law without first obtaining discovery of his opponents' documents, which he could only do by suit in equity. And, again, a sufferer from nuisance might have to go to law for damages and to equity for an injunction. All this involved uncertainty, useless expense, and great delay. From time to time various mitigations of this really intolerable evil were introduced by statute, but they were partial and left the grievance in the main unredressed. At last by the Judicature Act of 1873 a complete remedy was provided by the simple enactment that all the judges of the High Court should have jurisdiction both in law and equity. If an action is commenced at law which is really appropriate to be tried in a court accustomed to administer equity, it can be transferred and proceed is if it had been commenced in equity and vice versa. And in any case, if any point emerges, the judge has full jurisdiction to apply either principles as the justice of the case requires. No one has ever doubted the wisdom of this change, and its practical benefit is simply that a litigant can no longer be tossed about from one of the king's courts to another, at great cost, and with needless delay, upon grounds which have no justification of utility or public policy. It used to be just as if a surgeon, when called in to a patient, were forbidden to give any medicine or afford any relief except it were surgical." (26 Harvard Law Review 99 (1912).)

The modern counterpart of the former English experience with a divided court structure can be found in almost any volume of the *New Jersey Equity Reports.* For example, volume 137, chosen at random, contains 119 opinions, of which 36 deal with one or another phase of the division of jurisdiction between independent courts.

Particularly apt examples of this internecine conflict are afforded by two very recent cases. In *Urback* vs. *Metropolitan Life Insurance Company,* a widow sued in a law court to collect an insurance policy upon her huband's life. The insurance company went into the Court of Chancery to have the policy cancelled for fraud. The widow moved to dismiss that case and took an appeal from the denial of her motion. The Court of Errors and Appeals affirmed, holding that the case should be heard in Chancery (127 N. J. Eq. 253 (1940)). The Court of Chancery then decided that it would defer hearing the case until the parties had had their day in the law courts. The first trial resulted in a verdict for the widow, which the Court of Errors and Appeals reversed because the judge had mistakenly allowed the jury to decide whether certain inaccurate an-

swers, given by the husband when he applied for the insurance, were material (127 N. J. Law 585 (1942)). At the second trial, the judge directed the jury to bring in a verdict for the insurance company on the ground that the husband had lied to it, and on appeal the Court of Errors and Appeals reversed again (130 N. J. Law 210 (1943)). The company now moved the case for trial in the Court of Chancery on the issue of fraud, which was the central question in the law cases. This time the Vice-Chancellor decided in favor of the widow and, on appeal, the Court of Errors and Appeals affirmed that decree (138 N. J. Eq. 108 (1946)). From start to finish it took eight years and an equal number of trials and appeals for the widow to make her way through two sets of trial courts and one appellate court before she could collect $2,500 from the insurance company.

In *Weber* vs. *L. G. Trucking Corp.,* 140 N. J. Eq. 96 (May 15, 1947), the issue was the existence of an easement over certain lands which the defendant was about to improve. The complainants asked for an injunction and the Vice-Chancellor, with the consent of the parties, proceeded to try the question of title which was necessarily involved and which would otherwise have been referred to a law court. The trial being completed, the decision was for the defendant on the ground that the complainants had failed to prove their case. The complainants appealed and the Court of Errors and Appeals reversed on the ground that the line between the respective jurisdictions of the law court and the Court of Chancery could not be crossed, even where the parties consented to a complete disposition of the case by a single court. The court ordered the case retried and referred the title question to the law court.

Neither logic nor ordinary business experience would recommend the creation of two rival court systems to deal with the same cases. In point of fact, an independent Court of Chancery had its origin in the vicissitudes of English feudal history 800 years ago. It has since disappeared everywhere except in four American states and in the Dominion of New South Wales. Once discontinued by a jurisdiction as an independent court, it has never been revived.

The argument that a unified court entails forfeiture of the advantages of specialization is not confirmed by the experience of states which have merged their courts. The assertion confuses specialist judges with a specialized court. There is a fortuitous but not a necessary connection between the two. Dean Roscoe Pound, formerly of Harvard Law School, who is perhaps the nation's outstanding authority on the organization of judicial systems, laid particular stress upon this error. He said that:

> "A modern organization calls not for specialized courts but specialist judges, dealing with their special subjects when the work of the courts is such as to permit, but available for other

work when the exigencies of the work of the courts require it. The idea must be, specialist judges in a unified court, sitting habitually in a special division, dealing with a special type of case, but whenever the center of gravity shifts, liable to be assigned for a time somewhere else."

Later in the same talk, Dean Pound outlined the advantages of a unified court structure, centrally administered:

"It is easy to make branches of a single court cooperate towards the end of justice. It is not so easy to make independent courts work together smoothly, speedily and effectively. Cooperation enforced by appeals and prerogative writs is a different thing from the harmonious operation of a unified system under a responsible head."

It is just such a system that the new Judicial Article creates. The Superior Court which it establishes will have a Law Division and Chancery Division, exercising original general jurisdiction in all causes throughout the State. Undoubtedly, Judges will be assigned to each branch by the Chief Justice of the Supreme Court according to experience and qualifications. Reassignment of judges who perform meritorious service in a particular division is unlikely, except in cases of special need. However, each controversy will be decided fully in all its aspects by the Judge before whom it comes, and no case will be shuttled between courts for piecemeal decision. The County Courts, of which there will be one in each county, will function on the same principle. Any civil case properly brought in those courts will be fully disposed of by allowing both legal and equitable remedies as the circumstances may require.

No one believes that the quality of a judge's skill depends upon the official title of his office. The present specialist judges of our independent law and equity courts will be just as expert when they function in the Law and Chancery Divisions of the Superior Court.

Another distinction between the present Court of Chancery and a Chancery Division of the unified court is the Chancellor's current power to appoint Vice-Chancellors, without the necessity of Senate confirmation, and his authority to administer the court. Neither logic nor experience would verify any claim that a Chancellor's appointments are necesarily superior to those of the Governor, confirmed by the Senate, or that a Chancellor's business administration of a single court is preferable to the coordinated supervision of all judges and courts by the Chief Justice of the highest appellate court.

Specialization apart, those who have favored a separate Court of Chancery refer to the superior body of equity law developed in New Jersey and attribute it to the existence, for more than a century, of an independent court dealing with that subject. How-

ever, it is a fact, too plain for argument, that the entire body of the law is ultimately settled, not by trial courts, but by the court of last resort. In New Jersey that has been the Court of Errors and Appeals in which only the law judges decide Chancery appeals. The fact that the body of their decisions has achieved outstanding distinction is a happy augury for even greater accomplishments to be expected from the smaller and more select body of full-time Justices who would comprise the new Supreme Court.

It is also objected that in a merged court fewer cases are tried by juries. The English and federal statistics are cited in support of this claim. Nowhere in the new Judicial Article is the right to trial by jury impaired or impugned, either expressly or by implication. The practice of the English courts, where trial by jury in civil cases is not constitutionally guaranteed, is wholly irrelevant. Judge Learned Hand, senior member of the United States Circuit Court of Appeals for the Second Circuit, and said to be America's most distinguished living jurist, acknowledged in his testimony before the Committee that litigants and lawyers do not claim a jury trial in Federal Courts as often as the Constitution permits. However, Judge Hand made it absolutely clear that the diminished use of juries in the unified Federal Court structure is due, not to an impairment of the constitutional right, but to the volition or neglect of litigants and counsel. The New Jersey District Courts now allow jury trials only when specially demanded, with the result that most cases are tried by the judge alone. All lawyers are familiar with the system and there is no record of any complaint.

It is true that a jury, in a case where law and equity issues are mingled, will decide only some of the questions in controversy, leaving the balance to the Judge. It is also a fact that juries are now very rarely empanelled in the Court of Chancery. However, this is not because the practice is unknown in that court. During the recent wave of strikes, Vice-Chancellors summoned juries to try persons charged with disobeying court orders. The skill with which these cases were conducted indicates that specialist equity judges will experience no more difficulty in presiding over jury trials than law judges now find in deciding cases where a jury has been waived.

A final objection to merger of the courts was the prediction that much effort and litigation would be required to settle the interpretation of a new Judicial Article and to fix the powers and functions of the new courts and judges. Replying to a question on this subject, Judge Learned Hand said:

> "Well, of course, that is prophesy. . . . I think it only fair to say that if you do consolidate, you will find it will take some time to get used to it. If you will pardon my saying so (I didn't mean

to take sides in this matter), I should say that was one of the penalties of your delay."

The price for unification of courts may well be a period of litigation over those questions of interpretation and power which cannot be settled by rules of the new Supreme Court. The cost, however, would be far less than the price now paid for separate rival courts, which after 800 years of history are still forced to devote a third of the total number of published opinions to the decision of jurisdictional questions.

Another important feature of the new Judicial Article and Schedule concerns the county courts. The need for a system of local, inferior courts is indisputable. There was general agreement that the existing county courts should be retained, and this has been done in Section IV. Flexibility is a prime prerequisite of an efficient court structure. In harmony with this principle, the Legislature is given the power to expand or to alter the powers, functions and jurisdiction of the County Courts and their Judges, whenever the public good requires such action.

At present, a number of County Court Judges devote only part time to their work. In view of the dignity and importance which attaches to the judicial office, it is to be hoped that all Judges will, before long, be full-time officials, enjoying an adequate rate of compensation. There will be some counties in which the existing volume of civil, criminal and probate litigation will not fully occupy a Judge's time. In these counties the difficulty might be remedied by merging other local courts with the County Courts. In any case, the arrangement of courts and jurisdiction, if left to the future, need not follow a single pattern but can be closely adjusted to local conditions.

The new Judicial Article has a number of other important features. While all except municipal court judges are to be selected by the Governor, the names will be announced to the public at least seven days before the Senate receives the nominations for confirmation. The interval should provide an opportunity, not always afforded in the past, for an expression of public opinion.

All judges presently appointed to the Supreme Court and Superior Court will obtain tenure after one reappointment. By making judges secure in their positions, the possibility of distractions concerned with reappointment would be removed. On the other hand, judges of constitutional courts will be compelled to retire when they reach 70, and the Legislature is directed to enact pension laws.

Another change made by the new Judicial Article corrects the difficulties created by the prerogative writs. These writs are now allowed by the present Supreme Court in its discretion. As a result,

there is no clearly established right to appeal from the decisions of administrative agencies, which are generally reviewed by *certiorari*. There are similar difficulties in asserting claims for which *mandamus* and *quo warranto* are appropriate. In addition, and because of uncertainty as to the proper scope of each writ, cases sometimes reach the Court of Errors and Appeals before it is discovered that the case was correctly decided by means of the wrong writ, and must be retried.

The new provision abolishes the prerogative writs by name and makes the relief, which they now afford as a matter of discretion, available to litigants as a matter of right, except in criminal causes where the review remains discretionary. Since the writs, as distinct procedures, will disappear from the practice, litigants will no longer be penalized for a mistaken choice of the remedy.

APPENDIX "A"

Annotation of Judicial Article

Sec. I, Par. 1.

This provision is similar to Article VI, Sec. 1 of the 1844 Constitution and distributes all present and future judicial powers to the courts created by the Constitution and by subsequent legislation. Precedents as to scope of the judicial, legislative and executive powers are not disturbed.

The Legislature may establish courts of any type inferior to the Supreme Court, Superior Court and the County Courts, limited, however, in jurisdiction as to territorial scope, pecuniary amount involved, subject matter, original or appellate jurisdiction, or otherwise.

Sec. II, Par. 1.

The provision for supplementing the membership of the Supreme Court is operative whenever a Justice is unavailable at the time a case is argued or submitted. Provisions of this general character are found in several state constitutions, notably that of New York, to which it was added in 1915 upon recommendation of the Court of Appeals.

A presiding Justice, while serving temporarily in place of the Chief Justice, will have all the latter's powers and functions under any provision of the Constitution.

Sec. II, Par. 3.

Responsibility for administration, practice and procedure in all the courts of the State is vested in the Supreme Court, but the Legislature may revise or repeal the rules of practice and procedure, or initiate new provisions on the subject. Judges of the

Superior Court, the County Courts and the inferior courts may be consulted in formulating administrative policy and the details of practice and procedure peculiarly applicable to those courts, but final authority in promulgating rules for all the courts will rest with the Supreme Court.

The control by the present Supreme Court over the admission and discipline of members of the bar is transferred to the new Supreme Court.

Sec. III, Par. 1.

Each Judge of the Superior Court will be a Judge of the court as a whole and will be empowered to exercise all of the authority of the court in each case, subject to the rules of the Supreme Court.

Sec. III, Par. 2.

All original jurisdiction comprehended within the "judicial power" (Sec. I, Par. 1) is given to the Superior Court. While this grant of jurisdiction is permanent, it is not exclusive. Within their own sphere the County Courts will have concurrent jurisdiction.

The phrase "original general jurisdiction" may be contrasted with "original jurisdiction in law and equity," as in the New York Constitution of 1846. Particularization, by reference to law and equity jurisdiction, is suggestive of jurisdictional constrictions not in harmony with the judicial organization created by this Article, and was accordingly omitted.

Sec. III, Par. 3.

Like the Judges of the Superior Court, the Law and Chancery Divisions into which the court is divided will each have and exercise the powers of the court as a whole.

The provisions for Divisions and Parts are intended as functional devices for the more convenient dispatch of judicial business and not as a permanent segregation of jurisdiction. Cases will be assigned for hearing to the various Divisions and Parts as the rules of the Supreme Court may provide. The avoidance of a constitutional apportionment of equity cases to the Chancery Division, and of law cases to the Law Division, completely eliminates the possibility of jurisdictional rivalries such as frequently waste time, expense and effort today.

While the general jurisdiction of the Appellate Division of the Superior Court is fixed by Sec. V, nevertheless, Par. 3 of Sec. III will enable the Supreme Court to segregate appeals suitable for decision by a less numerous bench from those more appropriately heard by a larger body of judges. Certain types of appeals from inferior tribunals might, in the interests of economy of judicial manpower, be assigned to the less numerous part of the Appellate

Division, with the further possibility that such cases might be heard on the file in the court below, without printing of the record.

Sec. III, Par. 4.

No litigation in the Superior Court will be subject to the wastefulness and delay of dismemberment because of jurisdictional complications. Equitable pleadings and counterclaims will be entertained in law cases and legal issues will be decided in equity cases, where necessary to determine all matters in controversy. This will not, however, preclude rules for the separate trial of issues not conveniently triable together.

Sec. IV, Par. 1.

Each county will have a County Court whose jurisdiction, unless enlarged or diminished by legislation, will correspond to that now exercised by the present County Courts enumerated in this paragraph.

Sec. IV, Par. 2.

Each County Court will have one, and may have more Judges, as provided by the Legislature. Appointments will be made, as at present, by the Governor, the reference to the subject in this paragraph being subordinate to the more specific provisions of Sec. VI, Par. I, regulating the nomination, appointment and confirmation of all Justices and Judges of the constitutional courts.

Sec. IV, Par. 3.

Each Judge of a County Court will have all the powers of the Court, although the exercise of that power, like the corresponding direction of Sec. III, Par. 1 in the case of Superior Court Judges, will be subject to rules of the Supreme Court.

Sec. IV, Par. 4.

The jurisdiction, powers and functions of the County Courts and their Judges are not permanently fixed in the Constitution, and may be altered by law as the public good may require.

Sec. IV, Par. 5.

Subject to law, cases properly brought in the County Courts will be completely determined by allowing equitable defenses and counterclaims.

Sec. V, Pars. 1 and 2.

Appeals will be taken directly to the Supreme Court in capital causes, on certification by the Supreme Court to the Superior Court and, subject to its rules, to any other court, and in such other causes as may be provided by law. All other decisions of the trial Divisions

of the Superior Court and the County Courts would be appealed to the Appellate Division. The government of appeals from inferior courts is left to legislation except that review, formerly available by *certiorari,* is committed to the Superior Court under Sec. V, Par. 4. A further appeal to the Supreme Court could be taken only in cases determined by the Appellate Division involving constitutional questions or in the event of a dissenting vote in the Appellate Division, unless the Legislature, under Subpar. (e), permitted a second appeal in other categories of cases. For example, appeals to the Supreme Court might be authorized in cases in which the Appellate Division reversed or modified another court's ruling, as is expressly provided in the New York Constitution.

Sec. V, Par. 3.

Any case may be completely determined on appeal without resubmission to the trial court, so long as there is no impairment of the right to trial by jury.

Jurisdiction conferred by this paragraph may also be exercised by taking testimony material to the existence of jurisdiction, in a case where the existing record is ambiguous or insufficient, or necessary to support or oppose motions to dismiss appeals.

Sec. V, Par. 4.

While prerogative writs are eliminated from the practice, the remedies presently available through any of them are preserved. It will no longer be necessary to obtain advance permission from the court to institute a proceeding for prerogative writ relief, except for review of an indictment in advance of the trial. Thus the proceedings and decisions of administrative agencies, now reviewable on a writ of *certiorari* allowed in the discretion of the court, will be appealable as of right. However, actions brought without substantial merit might be dismissed on motion, as in other types of cases.

Wherever the award of relief, as distinguished from permission to commence the proceedings, is discretionary as a matter of substantive law, that discretion is not disturbed.

Where prerogative writs serve as a means of review or appeal, apt procedure may be established by rules of court. Proceedings which are in the nature of litigation between private parties might be tried in the fashion prescribed by the rules of court for civil actions generally.

Sec. VI, Par. 1.

The Justices and Judges of all courts will be appointed by the Governor, with the advice and consent of the Senate, except in the case of those inferior courts whose jurisdiction is limited to a single municipality. Public notice of all nominations will be given for at

least seven days before the names are sent to the Senate for confirmation.

Sec. VI, Par. 3.

Justices of the Supreme Court and Judges of the Superior Court will have tenure, during good behavior, upon reappointment after serving an initial term of seven years. These Justices and Judges are obliged to retire at 70. Provision for pensioning them is to be made by the Legislature, would be effective upon their retirement for age or disability, and might extend to voluntary resignation after completion of a term of years and the attainment of a specified age.

Sec. VI, Par. 4.

Judges of the Superior Court and the County Courts, while subject to impeachment, may also be removed for such causes as the Legislature may provide, upon trial by the Supreme Court.

Sec. VI, Par. 6.

Justices of the Supreme Court and Judges of the Superior Court are required to devote full time to their judicial duties and are prohibited from practicing law or engaging in any gainful pursuit.

Sec. VII, Par. 1.

The Chief Justice of the Supreme Court is constituted the business chief of the entire system of courts. He will be assisted by an Administrative Director whom the Chief Justice will select to serve at his pleasure. The compensation of the Administrative Director, and provision for his staff, is to be made by law. The Administrative Director's office and functions might be patterned after that of the Office of Administrator of the United States Courts.

Sec. VII, Par. 2.

Assignment of Superior Court Judges to the various Divisions and Parts of that court will be made by the Chief Justice according to qualifications and experience. Undoubtedly Judges who perform meritorious service in a particular branch of judicial work will be continued in their respective assignments. However, the Chief Justice will retain the power to make reassignments, as need appears. Judges assigned to the Appellate Division will be given stated terms to be fixed by rules of the Supreme Court.

Sec. VII, Par. 3.

The Supreme Court will appoint its own Clerk and that of the Superior Court, for terms and at such compensation as the Legislature prescribes. The rules of the Supreme Court will regulate and coordinate the work of all clerical offices with the functions and procedures of the courts which they serve.

SCHEDULE

The Schedule is intended to provide for the transition between the present and the new judicial branches of government. It will govern incumbent judges until the expiration of their terms, assigns the clerical personnel of existing state courts, transfers the files of pending litigation and makes such other specific provisions as are necessary until the new Judicial Article is completely in effect.

APPENDIX "B"

1. *Recommendations for Legislation and Rules of Court.*

Implementation of the Judicial Article and of the Schedule will require legislation and rules of court.

It would appear expedient that a Commission be created by the members appointed to the new Supreme Court, to formulate and recommend the adoption of specific legislation and rules of court during the interval between ratification of the Constitution and the effective date of the Judicial Article. The Commission might function much in the fashion of the Advisory Committee of the United States Supreme Court which proposed the Federal Rules of Procedure in 1938. In respect to legislation, the Commission would collaborate with the New Jersey Law Revision Commission.

Rules will be required to fix the manner of establishing the seniority of Superior Court Judges for purposes of temporary assignment to the Supreme Court, and for the designation of a temporary Presiding Justice of the Supreme Court; to constitute the Parts of the several Divisions of the Superior Court; to classify litigation for allocation to the Law and Chancery Divisions and to establish a procedure for the assignment of specific cases instituted in the Superior Court to the Law and Chancery Divisions of that court.

It will also be appropriate to provide rules to regulate the operations of the Appellate Division; to provide when appeals may be taken from interlocutory orders; and in general to fix the practice and procedure governing appeals.

2. *Creation and Organization of Lower Courts.*

The jurisdiction heretofore exercised by the Court of Common Pleas, Orphans' Court, Court of Oyer and Terminer, Court of Quarter Sessions and Court of Special Sessions in each county is transferred to a County Court for that county. Other lower courts are continued by the Schedule until the Legislature takes contrary action. While the Constitution establishes the method for appointment of all but municipal court judges, it is, in general, left to the Legislature to establish the qualifications, terms and tenure of office of the lower courts.

The Committee believes that appointment to the County Courts and to other local courts should be restricted, by law, to residents of the area served by the respective court. As a fundamental principle, the judges of all courts should be required to devote full time to the performance of judicial duties. Where the function is now only part-time, the work of several courts might be merged so that the judges can be fully occupied. Moreover, legislation may well be studied having the object of unifying lower courts so that the benefit of centralized administration and uniform rules of practice could be made available more readily to this important part of the judicial organization.

3. *Pension Legislation.*

Sec. VI, Pars. 3 and 5, refer to laws pensioning Justices of the Supreme Court and Judges of the Superior Court. The Committee believes that the pensions for Justices and Judges who are retired for age after acquiring tenure should correspond to their salaries upon retirement. Pensions should also be provided for Justices and Judges retired because of disability under the provisions of Sec. VI, Par. 5, subject to the condition of a reasonable, minimum period of prior service.

4. *Rules for Improving the Efficiency and Economy of Judicial Operations.*

A basic principle of all modern judicial systems is that justice should be administered with maximum efficiency in time and effort and at minimum cost to litigants and the public. Toward that end, rules should be adopted requiring the Administrative Director (Sec. VI, Par. 1), under the Chief Justice, to assemble complete and detailed statistics periodically, reflecting the amount of judicial business handled by the several Courts, Divisions and Parts, including the inferior courts; the time required for the completion of causes in the trial courts and for the disposition of appeals; the expenses of operation of the several courts; and the ratio between court charges paid by litigants in particular Courts, and Divisions and Parts of Courts, and the public cost of maintenance thereof. Courts, Divisions, Parts and individual Judges should be required by rule to render periodic accounts of the amount of business transacted by them, and of the number and character and period of pendency of matters undetermined before them. Provision should be made for the filing and publication, at regular intervals, of reports embodying this data so that the Supreme Court and the Legislature may be kept constantly apprised of developments warranting new rules or legislation.

The Administrative Director's establishment should be patterned after the office of the Administrator of the United States Courts,

and the Legislature should provide for the necessary staff and their compensation.

5. *Matrimonial Jurisdiction of the Superior Court.*

While the Committee opposed the creation of a distinct court for matrimonial causes, it agrees with the point of view that the present system for administering that jurisdiction is a great improvement over the former practice by which uncontested cases were distributed among a large number of part-time Masters, Special Masters and Advisory Masters in Chancery. The Committee believes that further improvement in the conduct of that branch of the Superior Court's work should be made the subject of recurrent study by the Supreme Court and the Legislature.

Although the foregoing is the report of the Judiciary Committee, it is not necessarily to be inferred that the comments therein express the views of all members.

Respectfully submitted,

COMMITTEE ON THE JUDICIARY,

FRANK H. SOMMER, *Chairman;*
NATHAN L. JACOBS, *Vice-Chairman;*
MRS. GENE W. MILLER, *Secretary;*
THOMAS J. BROGAN,
AMOS F. DIXON,
LESTER A. DRENK,
EDWARD A. MCGRATH,
WAYNE D. MCMURRAY,
HENRY W. PETERSON,
GEORGE F. SMITH,
WALTER G. WINNE.

COMMITTEE PROPOSAL No. 4-1

Introduced .....

By FRANK H. SOMMER

Chairman, Committee on the Judiciary

ARTICLE —— JUDICIAL

SECTION I

1. The judicial power shall be vested in a Supreme Court, a General Court and inferior courts of limited jurisdiction. The inferior courts and their jurisdiction may from time to time be established, altered or abolished by law.

SECTION II

1. The Supreme Court shall consist of a Chief Justice and six Associate Justices. Five members of the court shall constitute a quorum. When necessary, the Chief Justice shall assign the Judge or Judges of the General Court, senior in service, as provided by rules of the Supreme Court, to serve temporarily in the Supreme Court.

2. The Supreme Court shall exercise appellate jurisdiction in the last resort in all causes provided in this Constitution.

3. The Supreme Court shall make rules governing the administration and, subject to law, the practice and procedure in all the courts in the State. The Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted.

SECTION III

1. The General Court shall consist of such number of Judges as may be authorized by law, but not less than twenty-four, each of whom shall exercise the powers of the court subject to rules of the Supreme Court.

2. The General Court shall have original general jurisdiction throughout the State in all causes, excluding, unless otherwise provided by law, probate and criminal causes.

3. The General Court shall be divided into an Appellate Division, a Law Division, and an Equity Division. Each division shall have such Parts, consist of such number of Judges, and hear such causes, as may be provided by rules of the Supreme Court.

4. Subject to rules of the Supreme Court, the Law Division and the Equity Division shall each exercise the powers and functions of the other division when the ends of justice so require; and legal

and equitable relief shall be granted in any cause so that all matters in controversy between the parties may be completely determined.

SECTION IV

1. Appeals may be taken to the Supreme Court:

(a) In causes determined by the Appellate Division of the General Court involving a question arising under the Constitution of the United States or this State;

(b) In the event of a dissent in the Appellate Division of the General Court;

(c) In capital causes;

(d) On certification by the Supreme Court to any court; and

(e) In such causes as may be provided by law.

2. Appeals may be taken to the Appellate Division of the General Court from the Law and Equity Divisions of the General Court and in such other causes as may be provided by law.

3. The Supreme Court and the Appellate Division of the General Court may exercise such original jurisdiction as may be necessary to the complete determination of any cause on review.

4. Prerogative writs are superseded and, in lieu thereof, review, hearing and relief shall be afforded in the General Court, on terms and in the manner provided by rules of the Supreme Court, as of right, except in criminal causes where such review shall be discretionary.

SECTION V

1. The Governor shall nominate and appoint, by and with the advice and consent of the Senate, the Chief Justice and Associate Justices of the Supreme Court, the Judges of the General Court, and the judges of the inferior courts with jurisdiction extending to more than one municipality. No nomination to such an office shall be sent to the Senate for confirmation until after seven days' public notice by the Governor.

2. The Justices of the Supreme Court and the Judges of the General Court shall each prior to his appointment have been admitted to practice in this State for at least ten years.

3. The Justices of the Supreme Court shall hold their offices during good behavior. The Judges of the General Court shall hold their offices for initial terms of seven years and upon reappointment shall hold their offices during good behavior. Such Justices and Judges shall be retired upon attaining the age of seventy years. Provisions for the pensioning of the Justices of the Supreme Court and the Judges of the General Court shall be made by law.

4. The Justices of the Supreme Court and the Judges of the General Court shall be subject to impeachment, and any judicial officer impeached shall suspend the exercise of his office until ac-

quitted. The Judges of the General Court shall also be subject to removal from office by the Supreme Court for such causes and in such manner as shall be provided by law.

5. Whenever the Supreme Court shall certify to the Governor that it appears that any Justice of the Supreme Court or Judge of the General Court is so incapacitated as substantially to prevent him from performing his judicial duties, the Governor shall appoint a commission of three persons to inquire into the circumstances; and, on their recommendation, the Governor may retire the Justice or Judge from office.

6. The Justices of the Supreme Court and the Judges of the General Court shall receive for their services such salaries as may be provided by law, which shall not be diminished during the term of their appointment. They shall not, while in office, engage in the practice of law or other gainful pursuit.

7. The Justices of the Supreme Court and the Judges of the General Court shall hold no other office or position of profit under the authority of this State or the United States. Any such Justice or Judge who shall become a candidate for an elective public office shall thereby forfeit his judicial office.

Section VI

1. The Chief Justice of the Supreme Court shall be the administrative head of the Supreme Court, the General Court and the inferior courts. He shall appoint an Administrative Director to serve at his pleasure.

2. The Chief Justice of the Supreme Court shall assign Judges of the General Court to the Divisions and Parts of the General Court, and may from time to time transfer Judges from one assignment to another, as need appears. Assignments to the Appellate Division shall be for terms fixed by rules of the Supreme Court.

3. The Clerk of the Supreme Court and the Clerk of the General Court shall be appointed by the Supreme Court for such terms and at such compensation as shall be provided by law.

SCHEDULE

Article———

Section———

1. Subsequent to the adoption of this Constitution the Governor shall nominate and appoint, by and with the advice and consent of the Senate, a Chief Justice and six Associate Justices of the new Supreme Court from among the persons then being the Chancellor, the Chief Justice and Associate Justices of the old Supreme Court, the Vice-Chancellors and Circuit Court Judges. The remaining

judicial officers enumerated and such Judges of the Court of Errors and Appeals as have been admitted to practice in this State for at least ten years, and are in office on the adoption of the Constitution, shall constitute the Judges of the General Court. The Justices of the new Supreme Court and the Judges of the General Court so designated shall hold office each for the period of his term which remains unexpired at the time the Constitution is adopted; and if reappointed he shall hold office during good behavior. No Justice of the new Supreme Court or Judge of the General Court shall hold his office after attaining the age of seventy years, except, however, that such Justice or Judge may complete the period of his term which remains unexpired at the time the Constitution is adopted.

2. The Court of Errors and Appeals, the present Supreme Court, the Court of Chancery and the Circuit Courts shall be abolished when the Judicial Article of this Constitution takes effect; and all their jurisdiction, functions, powers and duties shall be transferred to and divided between the new Supreme Court and the General Court according as jurisdiction is vested in each of them under this Constitution.

3. The Prerogative Court shall be abolished when the Judicial Article of this Constitution takes effect. All its appellate jurisdiction, functions, powers and duties shall be transferred to the General Court; and, until otherwise provided by law, its original jurisdiction shall be vested in the County Courts.

4. Until otherwise provided by law, all courts now existing in this State, other than those abolished in paragraphs 2 and 3 hereof, shall continue as if this Constitution had not been adopted, save that, until otherwise provided by law, the jurisdiction of the Courts of Common Pleas over civil actions at law shall be abolished when the Judicial Article of this Constitution takes effect; and save, further, that the Orphans' Court, Court of Common Pleas, Court of Oyer and Terminer, Court of Quarter Sessions and Court of Special Sessions of each county shall thereafter be designated the County Court of that county. Until otherwise provided by law, the judicial officers, surrogates and clerks of all courts now existing, other than those abolished in paragraphs 2 and 3 hereof, and the employees of said officers, clerks, surrogates and courts shall continue in the exercise of their duties, as if this Constitution had not been adopted.

5. The Supreme Court shall make rules governing the administration and practice and procedure of the County Courts; and the Chief Justice of the Supreme Court shall be the administrative head of these courts with power to assign any Judge thereof of any county to sit temporarily in the General Court or to sit temporarily without the county in a County Court. The jurisdiction of these

courts may be transferred by law to the General Court.

6. The Advisory Masters appointed to hear matrimonial proceedings and in office on the adoption of the Constitution shall, each for the period of his term which remains unexpired at the time the Constitution is adopted, continue so to do as Advisory Masters to the Equity Division of the General Court, unless otherwise provided by law.

7. When the Judicial Article of this Constitution takes effect:

(a) all causes and proceedings of whatever character pending in the Court of Errors and Appeals shall be transferred to the new Supreme Court;

(b) all causes and proceedings of whatever character pending on appeal or writ of error in the present Supreme Court and in the Prerogative Court and all pending causes involving the prerogative writs shall be transferred to the Appellate Division of the General Court;

(c) all causes and proceedings of whatever character pending in the Supreme Court other than those stated shall be transferred to the General Court;

(d) all causes and proceedings of whatever character pending in the Prerogative Court other than those stated shall be transferred to the County Courts;

(e) all causes and proceedings of whatever character pending in all other courts which are abolished and, until otherwise provided by law, all civil actions at law pending in the Courts of Common Pleas shall be transferred to the General Court.

Causes shall be deemed to be pending for the purposes of this and the next paragraph, notwithstanding that an adjudication has been entered therein, until the time limited for review has expired.

8. The files of all causes pending in the Court of Errors and Appeals shall be delivered to the Clerk of the new Supreme Court; and the files of all causes pending in the present Supreme Court, the Court of Chancery and on appeal in the Prerogative Court shall be delivered to the Clerk of the General Court. The files of all other causes pending in the Prerogative Court shall be delivered to the County Court as provided by rules of the Supreme Court. All other files, books, papers, records and documents and all property of the Court of Errors and Appeals, the present Supreme Court, the Prerogative Court, the Chancellor and the Court of Chancery, or in their custody, shall be disposed of as shall be provided by law.

9. Upon the taking effect of the Judicial Article of this Constitution, all the functions, powers and duties conferred by statute or rules upon the Chancellor, the Ordinary, and the Justices and Judges of the courts abolished by this Constitution, to the extent that such functions, powers and duties are not inconsistent with

this Constitution, shall be transferred to and may be exercised by Judges of the General Court until otherwise provided by law or rules of the new Supreme Court; excepting that such statutory powers not related to the administration of justice as are then vested in any such judicial officers shall, after the Judicial Article of the Constitution takes effect and until otherwise provided by law, be transferred to and shall be exercised by the Chief Justice of the new Supreme Court.

10. Upon the taking effect of the Judicial Article of this Constitution, the Clerk of the Supreme Court shall become the Clerk of the new Supreme Court and shall serve as such Clerk until the expiration of the term for which he was appointed as Clerk of the Supreme Court, and all employees of the Supreme Court as previously constituted, of the Clerk thereof and of the Chief Justice and the Justices thereof, of the Circuit Courts and the Judges thereof and of the Court of Errors and Appeals shall be transferred to appropriate similar positions with similar compensation and civil service status under the Clerk of the new Supreme Court or the new Supreme Court, or the Clerk of the General Court or the General Court which shall be provided by law.

11. Upon the taking effect of the Judicial Article of this Constitution, the Clerk in Chancery shall become the Clerk of the General Court and shall serve as such Clerk until the expiration of the term for which he was appointed as Clerk in Chancery, and all employees of the Clerk in Chancery, the Court of Chancery, the Chancellor and the several Vice-Chancellors shall be transferred to appropriate similar positions wih similar compensation and civil service status under the Clerk of the General Court or the General Court which shall be provided by law.

12. Appropriations made by law for judicial expenditures during the fiscal year 1948-1949 may be transferred to similar objects and purposes required by the Judicial Article.

13. The Judicial Article of this Constitution shall take effect on January 1, 1949, except that the Governor, by and with the advice and consent of the Senate, shall have the power to fill vacancies arising prior thereto in the Supreme Court, the General Court, the inferior courts with jurisdiction extending to more than one municipality and the courts abolished by this Constitution; and except further that any provision of the Judicial Article which may require any act to be done prior thereto or in preparation therefor shall take effect immediately upon the adoption of this Constitution.

AMENDMENTS TO COMMITTEE PROPOSAL No. 4-1 [1]

AMENDMENT No. 1 to COMMITTEE PROPOSAL No. 4-1

Introduced by Thomas J. Brogan

Resolved, that Committee Proposal No. 4-1 be amended by striking Sections I, II, III, IV, V, VI and the Schedule annexed thereto, and substituting the following:

"SECTION I

1. The judicial power shall be vested in a Court of Appeals; a Supreme Court; a Circuit Court; the County Courts; and such inferior courts as may be hereafter ordained and established by law, which inferior courts the legislature may alter or abolish as the public good shall require.

SECTION II

1. The Court of Appeals shall be vested with and exercise appellate jurisdiction in the last resort in all causes, as provided in this constitution.

2. It shall have exclusive appellate jurisdiction in all capital cases.

3. Judgments or decrees of the Supreme Court shall be appealable as of right to the Court of Appeals in causes

(a) involving a question arising under the Constitution of the United States or of this State,

(b) where there is a dissent in the Supreme Court,

(c) where an appeal is allowed by either the Supreme Court or the Court of Appeals,

(d) where a direct appeal from a final judgment or decree of a court of original jurisdiction, other than an inferior court, shall be provided by law.

4. The Court of Appeals may provide by rule that two or more of its members shall hear and determine applications for relief pending appeal, in appropriate cases.

5. The Court of Appeals shall consist of a Chief Justice and six Associate Justices, and such temporary Associate Justices as may be designated, as hereinafter provided.

6. Every case in the Court of Appeals shall be heard by a Court of seven Judges. The Chief Justice or in the event of his inability to act, the Court shall designate a Circuit Court Judge or Judges senior in service, to serve temporarily in the Court of Appeals when necessary.

[1] Page and line references in these amendments are to the printed Proposals distributed to the delegates. However, they are sufficiently specific to be clear.

SECTION III

1. The Supreme Court shall be vested with and exercise such appellate jurisdiction as is provided in this constitution.

Final judgments or decrees of the Circuit Court and the County Courts shall be appealable as of right to the Supreme Court. Interlocutory orders, judgments or decrees of said courts shall be appealable to the Supreme Court when so provided by law.

2. The Supreme Court shall consist of a Presiding Judge and eight Associate Judges, and such temporary Judges as may be designated, as hereinafter provided. The number of Associate Judges may be increased by the legislature as the public good shall require.

3. The Supreme Court may sit in parts and each part shall consist of not less than three Judges, two of whom shall constitute a quorum. The presiding Judge, or in the event of his inability to act, the Court may designate a Circuit Court Judge to serve temporarily as an Associate Judge of the Supreme Court when necessary.

4. The Supreme Court may provide by rule that any one member of the Court may hear and determine applications for relief pending appeal in appropriate cases.

5. On any appeal the Supreme Court shall consider and determine questions of legal error. It may also by rule provide for review of any judgment where it is alleged that the verdict is against the weight of evidence or the damages excessive or inadequate.

6. The Presiding Judge shall from time to time assign the Associate Judges to the parts of the Supreme Court. The Presiding Judge shall be the administrative head of the Supreme Court, Circuit Court and the County Courts.

SECTION IV

1. The Circuit Court shall have and exercise original jurisdiction both at law and in equity throughout the State, and shall also exercise the original jurisdiction heretofore exercised by the Prerogative Court. It shall have no criminal jurisdiction except in the case of criminal contempt.

2. Prerogative writs are superceded and in lieu thereof review, hearing and relief shall be afforded in the Circuit Court, on terms and in the manner provided by rules of the Court, as of right. Review of criminal indictments, however, notwithstanding anything contained herein, shall be allowed or refused in the discretion of the Court.

3. The Circuit Court shall consist of such number of judges as may be authorized by law but not less than twenty-four, each of

whom shall exercise the powers of the court subject to the rules of the Court of Appeals.

4. The Circuit Court shall be divided into a Law Division and a Chancery Division. Judges appointed to the Circuit Court shall be appointed either to the Law or the Chancery Division where they shall serve for the duration of their term.

5. The Law Division shall exercise the original jurisdiction heretofore exercised by the Supreme Court except criminal jurisdiction, and the Chancery Division shall exercise the jurisdiction heretofore exercised by the Chancellor and the Court of Chancery.

6. Subject to rules of the Court of Appeals the Law Division and the Chancery Division shall each exercise the powers and functions of the other Division when the ends of justice so require; and legal and equitable relief shall be granted in any cause so that all matters in controversy between the parties may be completely determined.

SECTION V

1. The Court of Appeals shall make and promulgate rules regulating the exercise of the respective jurisdictions of the Law and Chancery Divisions of the Circuit Court, including rules regulating the hearing of all such causes expeditiously, the entry of appropriate judgments or decrees therein, and the transfer of causes from or to one or the other of the particular Divisions.

SECTION VI

1. There shall be a County Court in each County, which shall have all the jurisdiction heretofore exercised by the Court of Common Pleas, Orphans' Court, Court of Oyer and Terminer, Court of Quarter Sessions, Court of General Sessions, and Court of Special Sessions and such other jurisdiction consistent with this constitution as may be conferred by law.

2. There shall be a Judge of each County Court and such additional Judges as shall be provided by law.

3. Each Judge of the County Court may exercise the jurisdiction of the County Court.

4. The jurisdiction, powers, and functions of the County Courts and of the Judges of the County Courts may be altered or transferred by the legislature as the public good may require.

5. The Surrogates, unless otherwise provided by law, shall be Clerks of the County Courts in respect to probate matters, and such Surrogates shall have original probate jurisdiction as heretofore.

SECTION VII

1. The members of any court, established or authorized by this constitution, shall be so appointed that the members of any one

political party shall not constitute a majority of more than one in the entire membership in each such court or its divisions.

2. The Chief Justice and Associate Justices of the Court of Appeals, shall be nominated by the Governor and appointed by him, with the advice and consent of the Senate. They shall be appointed to hold office during good behavior, without limited terms, except as to age as provided in this constitution.

3. The Judges of the Supreme Court, the Judges of the Circuit Court, the Advisory Masters who hear and determine matrimonial causes, and the Judges of the County Courts shall be nominated by the Governor and appointed by him, with the advice and consent of the Senate.

The Judges of the Supreme Court and of the Circuit Court shall be nominated and appointed and shall hold their offices for an initial term of seven years and upon reappointment shall hold their offices during good behavior, without limited terms, except as to age as provided in this constitution.

The Judges of the County Courts shall hold their offices for five years.

4. The Judges of the inferior courts shall be appointed in such manner and for such terms as shall be provided by law.

5. The Justices and Judges of the courts established by this consituation shall at stated intervals, receive for their services such salaries as shall be provided by law which shall not be diminished during the term of their appointments. They shall hold no other office or position of profit under the government of this State or of the United States, or under any instrumentality or sub-division of either of them, nor while in office engage in the practice of law or other gainful occupation, except that the Judges of the County Courts and of inferior courts may engage in the practice of law or other gainful occupation unless prohibited by law. Any Justice or Judge of any court established by this Article who shall become a candidate for an elective public office shall thereby forfeit his judicial office.

6. Such Justices or Judges shall be eligible for retirement at the age of seventy years, but shall be retired at the age of seventy-five years. Upon the retirement of any such Justice or Judge he shall receive a pension equal in amount to the salary which he is receiving at that time. Such Justice or Judge shall be required, if able so to do, to perform such judicial duties and services as may be required of him by designation or order of the Court of Appeals; provided however that no Justice or Judge shall be eligible for pension unless he shall have served in a court or courts established by this constitution for an aggregate period of ten years, unless the legislature shall otherwise provide.

In computing such period, judicial services performed in the Supreme Court, the Court of Chancery, the Circuit Courts and the Courts of Common Pleas, prior to the adoption of this constitution shall be included.

7. The Justices of the Court of Appeals, the Judges of the Supreme Court, the Circuit Court and the County Courts shall be subject to impeachment, and any judicial officer impeached shall suspend the exercise of his office until acquitted. The Judges of the Supreme Court, the Circuit Court and the County Courts shall also be subject to removal from office by the Court of Appeals for such causes and in such manner as shall be provided by law.

8. Whenever the Court of Appeals shall certify to the Governor that it appears that any Justice of the Court of Appeals or Judge of the Supreme Court or of the Circuit Court or of the County Courts is so incapacitated as to prevent him substantially from performing his judicial duties, the Governor shall appoint a commission of three persons to inquire into the facts and circumstances; on their recommendation, the Governor may retire such Justice or Judge from office.

9. The Court of Appeals shall make rules governing the administration of the Supreme Court, the Circuit Court, and the County Courts.

The Court of Appeals shall have jurisdiction to regulate the admission of persons to the practice of law and power to discipline such persons when so admitted.

Clerks of the Courts established herein shall be provided for by law.

SCHEDULE

1. Before the effective date of the Judicial Article of this constitution, the Governor shall nominate and appoint with the advice and consent of the Senate, either the then Chancellor or Chief Justice of the Supreme Court to the office of Chief Justice of the Court of Appeals under this constitution. Upon the effective date of this Article the then Chancellor or Chief Justice of the Supreme Court, as the case may be, not so appointed and confirmed, and each Justice of the Supreme Court, then in office, shall be constituted an Associate Justice of the Court of Appeals, and each shall continue as such Associate Justice of the Court of Appeals during good behavior without limited terms, and except as to age as provided in this constitution. The Court of Appeals shall for the time being consist of the Chief Justice so appointed and confirmed, and all such Associate Justices, but no vacancy in that Court shall be filled until membership of that Court is reduced below seven, except that in the event of the death, resignation or retirement of the Chief Justice while

the membership of the Court remains seven or more the Governor may appoint a Chief Justice from the Court's membership.

2. Before the effective date of this article the Governor shall nominate and appoint, with the advice and consent of the Senate, the Presiding Judge of the Supreme Court and the eight Associate Judges thereof. Such Judges shall be appointed from among the then Vice Chancellors but not more than four in number, the then Judges of the Circuit Courts and the then Special Judges of the Court of Errors and Appeals who have been Counsellors at Law of this State of at least ten years standing. Each of such Special Judges of the Court of Errors and Appeals not so appointed as a Judge of the Supreme Court shall be and become a Judge of the Circuit Court in either the Law or Chancery Division as the Governor may elect, to hold his office for the unexpired term held by him as such Special Judge of the Court of Errors and Appeals.

3. Upon the effective date of this Article, each Vice Chancellor, unless he is appointed and confirmed as an Associate Judge of the Supreme Court, shall continue as a Judge of the Chancery Division of the Circuit Court for a period equal to his then unexpired term.

Upon the effective date of this Article, each Judge of the Circuit Court, then in office, unless he is appointed and confirmed as an Associate Judge of the Supreme Court, shall be constituted a Judge of the Circuit Court under this constitution and shall continue as such Judge for a period equal to his then unexpired term.

4. Upon the effective date of this article, each Judge of the Court of Common Pleas, then in office, shall be constituted a Judge of the County Court under this constitution, of the County wherein he is a Common Pleas Judge, and shall continue as such Judge for a period equal to his unexpired term.

5. The Advisory Masters appointed to hear matrimonial proceedings and in office on the effective date of this Article shall each for the period of his own term which remains unexpired at the time continue so to act as Advisory Masters in the Chancery Division of the Circuit Court, unless otherwise provided by law.

6. COURT CLERKS. Unless otherwise provided by law, upon the effective date of this Article the then Secretary of State shall become Clerk of the Court of Appeals and shall serve as such until the expiration of his term as Secretary of State; the Clerk of the former Supreme Court shall continue as Clerk of the Supreme Court until the expiration of his term, and the Clerk in Chancery shall become the Clerk of the Circuit Court until the expiration of the term for which he was appointed.

7. All rules of any court, consistent with this constitution, in force at the effective date of this Article shall remain in full force and effect until they expire or are superseded, altered or abrogated.

All writs, actions and prosecutions shall continue unabated and unaffected, and all indictments which have been found for any crime or offense committed before the taking effect of this article may be proceeded upon, notwithstanding.

Indictments may be found and proceeded upon after this constitution takes effect for crimes and offenses committed before such taking effect of this constitution, in the courts succeeding to the jurisdiction of the courts in which they could have been found and proceeded upon, as if this constitution had not taken effect.

All suits, proceedings and indictments, pending when this Article takes effect, shall be deemed to be transferred to the Court having appropriate jurisdiction, and shall be proceeded upon therein. The legislature shall enact such laws as may be required to implement and give effect to this provision.

8. The jurisdiction, functions, powers and duties heretofore exercised by the courts superseded by this constitution shall, consistently with this constitution, be transferred to and divided between the courts established and authorized by this constitution.

9. All inferior courts not superseded by this constitution shall continue in existence with their present jurisdiction and powers. The legislature may alter, transfer or abolish such jurisdiction and powers and may abolish any and all such inferior courts.

10. The common law and statute laws now in force and not repugnant to this constitution shall remain in force subject to alteration or repeal by the legislature.

11. The files, books, papers, records and documents of the courts superseded by this constitution shall be preserved, transferred, or disposed of as shall be provided by law. The legislature may provide for the filing of specified probate records in a State registry office.

12. The legislature shall pass all laws necessary to implement and carry into effect the several provisions of this Article.

13. Appropriations made by law for judicial expenditures during the fiscal year 1948-1949 may be transferred to similar objects and purposes required by this Article. Any restrictions by law upon supplemental appropriations shall not apply to any appropriations which may be required to finance the new judicial system prior to the fiscal year of 1949-1950.

14. Upon the taking effect of this Article, all the then employees of the Court of Errors and Appeals, the Supreme Court, the Court of Chancery, the Prerogative Court, the Circuit Courts, and the Courts of Common Pleas, and of the Chancellor, Vice Chancellors, Chief Justice, Justices and Judges of all said courts and all the then employees of the Clerk of the Supreme Court, Clerk in Chancery, the Register of the Prerogative Court, the County Clerks and Sur-

rogates, shall be transferred to appropriate similar positions with the same compensation, like civil service status, and like pension rights in the courts and clerks' offices, or with the judicial officers in accordance with the division of judicial powers and duties provided for in this constitution, provided however that no person or persons enumerated herein shall hereby acquire any additional status or benefit.

15. The Judicial Article of this constitution shall take effect on the first day of January, one thousand nine hundred and forty-nine, except that any act required to be done prior to said effective date may be done or performed after the adoption of this constitution."

AMENDMENT No. 2 to COMMITTEE PROPOSAL No. 4-1

Introduced by John J. Rafferty

Proposal No. 4-1, Article —— Judicial, Section III, paragraph 3 is amended to read as follows:

"3. The General Court shall be divided into an Appellate Division, A Law Division, and an Equity Division. A Matrimonial Court having original jurisdiction in Matrimonial causes and the incidentals thereof shall be included within the Equity Division. Each Division shall have such Parts, consist of such number of Judges, and hear such causes, as may be provided by rules of the Supreme Court."

AMENDMENT No. 3 to COMMITTEE PROPOSAL No. 4-1

Introduced by Francis A. Stanger, Jr.

Amend paragraph 4 of the Schedule on page 5 by striking out the words on lines 3, 4, 5 and 6 thereof, "save that, until otherwise provided by law, the jurisdiction of the Courts of Common Pleas over civil actions at law shall be abolished when the Judicial Article of this Constitution takes effect"; and also by striking out the word "and" and the word "further" on line 6, so that the paragraph shall read as follows:

"Until otherwise provided by law, all courts now existing in this State, other than those abolished in paragraphs 2 and 3 hereof, shall continue as if this Constitution had not been adopted, save that the Orphans' Court, Court of Common Pleas, Court of Oyer and Terminer, Court of Quarter Session and Court of Special Sessions of each county shall thereafter be designated the County Court of that County. Until otherwise provided by law, the judicial officers, surrogates and clerks of all courts now existing, other than those abolished in paragraphs 2 and 3 hereof, and

the employees of said officers, clerks, surrogates and courts shall continue in the exercise of their duties, as if this Constitution had not been adopted."

AMENDMENT No. 4 to COMMITTEE PROPOSAL No. 4-1

Introduced by Francis A. Stanger, Jr.

Amend the Schedule to Proposal No. 4-1 beginning on page 6 by adding a new paragraph to read as follows:

"6A. All Special Masters in Chancery, Masters in Chancery, Supreme Court Commissioners and Supreme Court Examiners shall, until otherwise provided by rules of the Supreme Court, continue respectively as Special Masters, Masters, Commissioners and Examiners of the General Court, with appropriate similar functions and powers, as if this Constitution had not been adopted."

AMENDMENT No. 5 to COMMITTEE PROPOSAL No. 4-1

Introduced by Ralph J. Smalley

Resolved, that the following amendments to paragraphs 4 and 7 of the Schedule be agreed upon:

Amend page 10, paragraph 4, lines 4, 5 and 6, after the word "adopted" by striking out the following, "save that, until otherwise provided by law, the jurisdiction of the Courts of Common Pleas over civil actions at law shall be abolished."

Amend paragraph 4 on page 10, line 6, by striking out the small "w" in the word "when" and inserting in lieu thereof a capital "W".

Amend paragraph 4 on page 10, lines 7 and 8, by striking out the words "and save, further, that".

Amend paragraph 7 on page 11, section (e), lines 3, 4 and 5, by striking out the following "all civil actions at law pending in the Court of Common Pleas,".

The purpose of this amendment is to strike from the Committee Proposal that portion which takes away from the County Courts its civil jurisdiction.

SUBSTITUTE for AMENDMENT No. 5 to COMMITTEE PROPOSAL No. 4-1

Introduced by Ralph J. Smalley

Resolved, that the following amendments to paragraphs 4 and 7 of the Schedule be agreed upon:

Amend page 5, paragraph 4, lines 3, 4 and 5, after the word "adopted" by striking out the following, "save that, until otherwise

provided by law, the jurisdiction of the Courts of Common Pleas over civil actions at law shall be abolished."

Amend paragraph 4 on page 5, line 5, by striking out the small "w" in the word "when" and inserting in lieu thereof a capital "W".

Amend paragraph 4 on page 5, line 6, by striking out the words "and save, further, that".

Amend paragraph 7 on page 6, section (e), line 17, by striking out the following "all civil actions at law pending in the Court of Common Pleas,".

The purpose of this amendment is to strike from the Committee Proposal that portion which takes away from the County Courts its civil jurisdiction.

AMENDMENT No. 6 to COMMITTEE PROPOSAL No. 4-1

Introduced by Robert Carey

Paragraph 3, Section V, (page 7) of the Report of the Committee on the Judiciary shall be amended in this respect, wherever the words "70 years" appear in said paragraph, said words shall be stricken out and in place thereof shall be inserted the words "75 years."

AMENDMENT No. 7 to COMMITTEE PROPOSAL No. 4-1

Introduced by Sigurd A. Emerson

Amend page 3, Section V, paragraph 1, line 4, by inserting after the word "municipality" the following:

"Judges of the General Court shall be appointed to the respective division thereof and shall not be transferred to any other division except as herein otherwise provided."

Amend page 4, Section VI, paragraph 2, lines 1 to 5, by striking out said lines and inserting in lieu thereof the following:

"2. The Chief Justice of the Supreme Court may assign Judges of the General Court to the Appellate Division from time to time as need appears for such time as may be fixed by the rules of the Supreme Court, and may reassign such Judges to the Division of the General Court to which they were appointed."

AMENDMENT No. 8 to COMMITTEE PROPOSAL No. 4-1

Introduced by Frank H. Sommer

Amend page 5, paragraph 4, lines 3 to 9, after the word "adopted," by striking out the following:

", save that, until otherwise provided by law, the jurisdiction of

the Courts of Common Pleas over civil actions at law shall be abolished when the Judicial Article of this Constitution takes effect; and save, further, that the Orphans' Court, Court of Common Pleas, Court of Oyer and Terminer, Court of Quarter Sessions and Court of Special Sessions of each county shall thereafter be designated the County Court of that county."

And in lieu thereof, insert the following:

"From and after the taking effect of the Judicial Article of this Constitution and until otherwise provided by law, the Court of Common Pleas, Court of Oyer and Terminer, Court of Quarter Sessions, Court of Special Sessions and Orphans' Court of each county shall be designated the County Court of that county."

Amend page 6, paragraph 7, sub-paragraph (e), lines 16 and 17, by striking out the following:

"and, until otherwise provided by law, all civil actions at law pending in the Court of Common Pleas."

STATEMENT

The purpose of this amendment is to strike from the Committee Proposal that portion which takes away from the county courts their jurisdiction over civil actions at law.

AMENDMENT No. 9 to COMMITTEE PROPOSAL No. 4-1

Introduced by Frank H. Sommer

1. Strike out the words "General Court" wherever they appear and in lieu thereof insert the words "Superior Court." Strike out the words "Equity Division" wherever they appear and in lieu thereof insert the words "Chancery Division."

2. Amend Section II, paragraph 1 by adding at the end thereof the following:

"In case the Chief Justice is absent or unable to serve, a presiding Justice designated in accordance with rules of the Supreme Court shall serve temporarily in his stead."

3. Amend Section III, paragraph 2 so that same reads as follows:

"2. The Superior Court shall have original general jurisdiction throughout the State in all causes."

4. Eliminate the semicolon in the third line of Section III, paragraph 4 and insert a comma in lieu thereof.

5. Amend Section IV, paragraph 1 (d) so that it reads as follows:

"On certification by the Supreme Court to the Appellate Division of the Superior Court and, where provided by rules of the Supreme Court, to the inferior courts, and".

6. Amend Section V, paragraph 5 at the end by striking out the period and adding the words:

", on pension as provided by law."

7. Amend paragraph 3 of the Schedule so that same reads as follows:

"3. The Prerogative Court shall be abolished when the Judicial Article of this Constitution takes effect, and all its jurisdiction, functions, powers and duties shall be transferred to the Superior Court."

8. Amend paragraph 7 (d) of the Schedule by eliminating the words "County Courts" and inserting in lieu thereof the words "Chancery Division of the Superior Court."

9. Amend paragraph 8 of the Schedule by omitting the words "on appeal" in line 4 thereof, and, further, by omitting the following sentence in lines 5 to 7 thereof:

"The files of all other causes pending in the Prerogative Court shall be delivered to the County Court as provided by rules of the Supreme Court."

10. Amend paragraph 13 of the Schedule so that same reads as follows:

"13. The Judicial Article of this Constitution shall take effect on January 1, 1949, except that the Governor, by and with the advice and consent of the Senate, shall have the power to fill vacancies arising prior thereto in the new Supreme Court and the Superior Court; and except, further, that any provision of the Judicial Article which may require any act to be done prior thereto or in preparation therefor shall take effect immediately upon the adoption of this Constitution."

AMENDMENT No. 10 to COMMITTEE PROPOSAL No. 4-1

Introduced by Christian J. Jorgensen

Resolved, that Committee Proposal No. 4-1, Section V, paragraph 1 be amended by adding the following sentence:

"All judges of courts with less than state wide jurisdiction shall be resident of and reside within the territorial jurisdiction of such courts."

AMENDMENT No. 11 to COMMITTEE PROPOSAL No. 4-1

Introduced by Christian J. Jorgensen

Resolved, that Committee Proposal No. 4-1, Section III, paragraph 4 be amended by adding the following sentence:

"In all matters in which there is conflict or variance between equity and law, equity shall prevail."

AMENDMENT No. 12 to COMMITTEE PROPOSAL No. 4-1

Introduced by Christian J. Jorgensen

Resolved, that Committee Proposal No. 4-1, Section I, paragraph 1 be amended by adding the following sentence:

"The members of any court, established or authorized by this constitution, shall be so appointed that the members of any one political party shall not constitute a majority of more than one in the entire membership in each such court or its divisions."

AMENDMENT No. 13 to COMMITTEE PROPOSAL No. 4-1

Introduced by John Milton

Resolved, that Committee Proposal No. 4-1 be amended by striking lines 1 to 8, inclusive, and the first eight words of line 9, of paragraph 1 of the Schedule thereto and substituting the following:

"1. Before the effective date of the Judicial Article of this Constitution, the Governor shall nominate and appoint, by and with the consent of the Senate, the Chancellor and the Chief Justice and the Associate Justices of the Supreme Court in office on the adoption of this Constitution, as members of the new Supreme Court, and from among them shall nominate and appoint, by and with the consent of the Senate, the Chief Justice of the new Supreme Court. No vacancy in the new Supreme Court shall be filled until membership of the Court is reduced below seven, except that in the event of the death, resignation or retirement of the Chief Justice while the membership of the Court remains seven or more, the Governor may appoint a Chief Justice from the Court's membership. The Vice-Chancellors, Circuit Court Judges and such Judges of the Court of Errors and Appeals as have been admitted to practice in this State for at least ten years, and are in office on the adoption of this Constitution, shall constitute the Judges of the General Court."

AMENDMENT No. 14 to COMMITTEE PROPOSAL No. 4-1

Introduced by John Milton

Resolved, that Committee Proposal No. 4-1 be amended by adding to paragraph 1 of Section V the following:

"The members of any court established or authorized by this

Constitution shall be so appointed that the members of any one political party shall not constitute a majority of more than one in the entire membership in each such court."

AMENDMENT No. 15 to COMMITTEE PROPOSAL No. 4-1

Introduced by Sigurd A. Emerson

Amend Committee Proposal No. 4-1, Schedule, Section VII by adding at the end of line 21 on page 6, the following:

"and in causes where an order or decree has been entered reserving to the parties the right to apply for further relief."

AMENDMENT No. 16 to COMMITTEE PROPOSAL No. 4-1

Introduced by John Drewen

Resolved, that Committee Proposal No. 4-1 be amended as follows:

Change Section I, paragraph 1 so that the same shall read as follows:

"The Judicial Power shall be vested in a Supreme Court, a General Court, County Courts and Inferior Courts of limited jurisdiction. The Inferior Courts and their jurisdiction may from time to time be established, altered or abolished by law."

That Section V, paragraph 2 be amended by inserting after the word "Court," in line 2, the words "and the Judges of the respective County Courts." And by adding to Section I additional paragraphs which shall read as follows:

"2. There shall be a County Court in each county, which shall have all the jurisdiction heretofore exercised by the Court of Common Pleas, Orphans' Court, Court of Oyer and Terminer, Court of Quarter Sessions, Court of Special Sessions and such other jurisdiction consistent with this Constitution as may be conferred by law.

3. There shall be a judge of each County Court and such additional Judges as shall be provided by law.

4. Each Judge of the County Court may exercise the jurisdiction of the County Court.

5. The jurisdiction, powers and functions of the County Courts and of the Judges of the County Courts may be altered or transferred by Legislature as the public good may require."

AMENDMENT No. 17 to COMMITTEE PROPOSAL No. 4-1

Introduced by John J. Rafferty

Resolved, that Committee Proposal No. 4-1 be amended as follows:

Amend paragraph 1 of the Schedule thereto, line 7, by inserting after the word "Appeals" the following language: "and Advisory Masters of the Court of Chancery," so that line 7 will read "Court of Errors and Appeals and Advisory Masters of the Court of Chancery as have been admitted to practice within this State."

Strike out paragraph 6 of this Schedule.

AMENDMENT No. 18 to COMMITTEE PROPOSAL No. 4-1

Introduced by George Naame

In Section V, page 3, paragraph 3, on lines 1 and 2, strike out after the word "Court," the following: "shall hold their offices during good behavior," and add the word "and."

AMENDMENT No. 19 to COMMITTEE PROPOSAL No. 4-1

Introduced by Milton A. Feller

Paragraph 13 at the end of line 1 and the beginning of line 2, eliminate the words "January 1, 1949" and substitute instead, "July 1, 1948."

AMENDMENT No. 20 to COMMITTEE PROPOSAL No. 4-1

Introduced by John Drewen

Resolved, that Committee Proposal No. 4-1 be amended so that there be added to paragraph 4 of the Schedule thereto the following sentence:

"The County Courts may in any civil case within their jurisdiction, and subject to law, grant legal and equitable relief so that all matters in controversy between the parties may be completely determined."

AMENDMENT TO COMMITTEE PROPOSAL No. 4-1
(as reported by the Committee on Arrangement and Form)

Introduced by Wayne D. McMurray

I. Substitute in place of paragraph 4, page 8, the following paragraph:

"Until otherwise provided by law, all courts now existing in

this State, other than those abolished in paragraph 3 hereof, shall continue as if this Constitution had not been adopted, provided, however, that when the Judicial Article of this Constitution takes effect the jurisdiction, functions and powers of the Court of Common Pleas, Orphans' Court, Court of Oyer and Terminer, Court of Quarter Sessions and Court of Special Sessions of each County, the judicial officers, clerks and employees thereof, and the causes pending therein and their files, shall be transferred to the County Court of the county. All statutory provisions relating to the county courts aforementioned of each county and to the Judge or Judges thereof shall apply to the new County Court of the County and the Judge or Judges thereof, unless otherwise provided by law. Until otherwise provided by law and except as aforestated, the judicial officers, surrogates and clerks of all courts now existing, other than those abolished in paragraph 3 hereof, and the employees of said officers, clerks, surrogates and courts, shall continue in the exercise of their duty as if this Constitution had not been adopted."

II. Substitute the following for lines 25 to 30 of paragraph 8 on pages 9 and 10:

"For the purpose of this paragraph, paragraph 4 and paragraph 9, a cause shall be deemed to be pending notwithstanding that an adjudication has been entered therein, provided the time limited for review has not expired or the adjudication reserves to any party the right to apply for further relief."

[OFFICIAL COPY REPRINT]

PROPOSAL No. 4-1
(as amended on second reading)

Adopted August 21, 1947

ARTICLE —— JUDICIAL

SECTION I

1. The judicial power shall be vested in a Supreme Court, a Superior Court, County Courts and inferior courts of limited jurisdiction. The inferior courts and their jurisdiction may from time to time be established, altered or abolished by law.

SECTION II

1. The Supreme Court shall consist of a Chief Justice and six Associate Justices. Five members of the court shall constitute a quorum. When necessary, the Chief Justice shall assign the Judge or Judges of the Superior Court, senior in service, as provided by rules of the Supreme Court, to serve temporarily in the Supreme Court. In case the Chief Justice is absent or unable to serve, a presiding Justice designated in accordance with rules of the Supreme Court shall serve temporarily in his stead.

2. The Supreme Court shall exercise appellate jurisdiction in the last resort in all causes provided in this Constitution.

3. The Supreme Court shall make rules governing the administration and, subject to law, the practice and procedure in all courts in the State. The Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted.

SECTION III

1. The Superior Court shall consist of such number of Judges as may be authorized by law, but not less than twenty-four, each of whom shall exercise the powers of the court subject to rules of the Supreme Court.

2. The Superior Court shall have original general jurisdiction throughout the State in all causes.

3. The Superior Court shall be divided into an Appellate Division, a Law Division, and a Chancery Division. Each division shall have such parts, consist of such number of Judges, and hear such

causes, as may be provided by rules of the Supreme Court.

4. Subject to rules of the Supreme Court, the Law Division and the Chancery Division shall each exercise the powers and functions of the other division when the ends of justice so require, and legal and equitable relief shall be granted in any cause so that all matters in controversy between the parties may be completely determined.

SECTION IV

1. There shall be a County Court in each county, which shall have all the jurisdiction heretofore exercised by the Court of Common Pleas, Orphans' Court, Court of Oyer and Terminer, Court of Quarter Sessions, Court of Special Sessions and such other jurisdiction consistent with this Constitution as may be conferred by law.

2. There shall be a Judge of each County Court and such additional Judges as shall be provided by law, and they shall be appointed as heretofore.

3. Each Judge of the County Court may exercise the jurisdiction of the County Court.

4. The jurisdiction, powers and functions of the County Courts and of the Judges of the County Courts may be altered by law as the public good may require.

5. The County Courts, in civil causes including probate causes, within their jurisdiction, and subject to law, may grant legal and equitable relief so that all matters in controversy between the parties may be completely determined.

SECTION V

1. Appeals may be taken to the Supreme Court:

(a) In causes determined by the Appellate Division of the Superior Court involving a question arising under the Constitution of the United States or this State;

(b) In causes where there is a dissent in the Appellate Division of the Superior Court;

(c) In capital causes;

(d) On certification by the Supreme Court to the Superior Court and, where provided by rules of the Supreme Court, to the County Courts and the inferior courts; and

(e) In such causes as may be provided by law.

2. Appeals may be taken to the Appellate Division of the Superior Court from the Law and Chancery Divisions of the Superior Court, the County Courts and in such other causes as may be provided by law.

3. The Supreme Court and the Appellate Division of the Superior Court may exercise such original jurisdiction as may be

necessary to the complete determination of any cause on review.

4. Prerogative writs are superseded and, in lieu thereof, review, hearing and relief shall be afforded in the Superior Court, on terms and in the manner provided by rules of the Supreme Court, as of right, except in criminal causes where such review shall be discretionary.

SECTION VI

1. The Governor shall nominate and appoint, by and with the advice and consent of the Senate, the Chief Justice and Associate Justices of the Supreme Court, the Judges of the Superior Court, the Judges of the County Courts and the judges of the inferior courts with jurisdiction extending to more than one municipality. No nomination to such an office shall be sent to the Senate for confirmation until after seven days' public notice by the Governor.

2. The Justices of the Supreme Court, the Judges of the Superior Court and the Judges of the County Courts shall each prior to his appointment have been admitted to the practice of the law in this State for at least ten years.

3. The Justices of the Supreme Court and the Judges of the Superior Court shall hold their offices for initial terms of seven years and upon reappointment shall hold their offices during good behavior. Such Justices and Judges shall be retired upon attaining the age of seventy years. Provisions for the pensioning of the Justices of the Supreme Court and the Judges of the Superior Court shall be made by law.

4. The Justices of the Supreme Court, the Judges of the Superior Court and the Judges of the County Courts shall be subject to impeachment, and any judicial officer impeached shall not exercise his office until acquitted. The Judges of the Superior Court and the Judges of the County Courts shall also be subject to removal from office by the Supreme Court for such causes and in such manner as shall be provided by law.

5. Whenever the Supreme Court shall certify to the Governor that it appears that any Justice of the Supreme Court, Judge of the Superior Court or Judge of the County Court is so incapacitated as substantially to prevent him from performing his judicial duties, the Governor shall appoint a commission of three persons to inquire into the circumstances; and, on their recommendation, the Governor may retire the Justice or Judge from office, on pension as may be provided by law.

6. The Justices of the Supreme Court and the Judges of the Superior Court shall receive for their services such salaries as may be provided by law, which shall not be diminished during the term of their appointment. They shall not, while in office, engage in the practice of law or other gainful pursuit.

7. The Justices of the Supreme Court, the Judges of the Superior Court and the Judges of the County Courts shall hold no other office or position of profit under the authority of this State or the United States. Any such Justice or Judge who shall become a candidate for an elective public office shall thereby forfeit his judicial office.

SECTION VII

1. The Chief Justice of the Supreme Court shall be the administrative head of all the courts in the State. He shall appoint an Administrative Director to serve at his pleasure.

2. The Chief Justice of the Supreme Court shall assign Judges of the Superior Court to the Divisions and Parts of the Superior Court, and may from time to time transfer Judges from one assignment to another, as need appears. Assignments to the Appellate Division shall be for terms fixed by rules of the Supreme Court.

3. The Clerk of the Supreme Court and the Clerk of the Superior Court shall be appointed by the Supreme Court for such terms and at such compensation as shall be provided by law.

SCHEDULE

ARTICLE ———

SECTION ———

1. Subsequent to the adoption of this Constitution the Governor shall nominate and appoint, by and with the advice and consent of the Senate, a Chief Justice and six Associate Justices of the new Supreme Court from among the persons then being the Chancellor, the Chief Justice and Associate Justices of the old Supreme Court, the Vice-Chancellors and Circuit Court Judges. The remaining judicial officers enumerated and such Judges of the Court of Errors and Appeals as have been admitted to the practice of law in this State for at least ten years, and are in office on the adoption of the Constitution, shall constitute the Judges of the Superior Court. The Justices of the new Supreme Court and the Judges of the Superior Court so designated shall hold office each for the period of his term which remains unexpired at the time the Constitution is adopted; and if reappointed he shall hold office during good behavior. No Justice of the new Supreme Court or Judge of the Superior Court shall hold his office after attaining the age of seventy years, except, however, that such Justice or Judge may complete the period of his term which remains unexpired at the time the Constitution is adopted.

2. The Judges of the Courts of Common Pleas shall constitute the Judges of the County Courts, each for the period of his term which remains unexpired at the time the Judicial Article of this Constitution takes effect.

3. The Court of Errors and Appeals, the present Supreme Court, the Court of Chancery, the Prerogative Court and the Circuit Courts shall be abolished when the Judicial Article of this Constitution takes effect; and all their jurisdiction, functions, powers and duties shall be transferred to and divided between the new Supreme Court and the Superior Court according as jurisdiction is vested in each of them under this Constitution.

4. Until otherwise provided by law, all courts now existing in this State, other than those abolished in paragraph 3 hereof, shall continue as if this Constitution had not been adopted; *provided, however,* that when the Judicial Article of this Constitution takes effect the jurisdiction, functions and powers of the Court of Common Pleas, Orphans' Court, Court of Oyer and Terminer, Court of Quarter Sessions and Court of Special Sessions of each County, the judicial officers, clerks and employees thereof, and the causes pending therein and their files, shall be transferred to the County Court of the county. All statutory provisions relating to the county courts aforementioned of each county and to the Judge or Judges thereof shall apply to the new County Court of the County and the Judge or Judges thereof, unless otherwise provided by law. Until otherwise provided by law and except as aforestated, the judicial officers, surrogates and clerks of all courts now existing, other than those abolished in paragraph 3 hereof, and the employees of said officers, clerks, surrogates and courts, shall continue in the exercise of their duty as if this Constitution had not been adopted.

5. The Supreme Court shall make rules governing the administration and practice and procedure of the County Courts, and the Chief Justice of the Supreme Court shall be the administrative head of these courts with power to assign any Judge thereof of any county to sit temporarily in the Superior Court or to sit temporarily without the county in a County Court.

6. The Advisory Masters appointed to hear matrimonial proceedings and in office on the adoption of this Constitution shall, each for the period of his term which remains unexpired at the time the Constitution is adopted, continue so to do as Advisory Masters to the Chancery Division of the Superior Court, unless otherwise provided by law.

7. All Special Masters in Chancery, Masters in Chancery, Supreme Court Commissioners and Supreme Court Examiners shall, until otherwise provided by rules of the Supreme Court, continue respectively as Special Masters, Masters, Commissioners and Examiners of the Superior Court, with appropriate similar functions and powers as if this Constitution had not been adopted.

8. When the Judicial Article of this Constitution takes effect:

(a) all causes and proceedings of whatever character pending in the Court of Errors and Appeals shall be transferred to the new Supreme Court;

(b) all causes and proceedings of whatever character pending on appeal or writ of error in the present Supreme Court and in the Prerogative Court and all pending causes involving the prerogative writs shall be transferred to the Appellate Division of the Superior Court;

(c) all causes and proceedings of whatever character pending in the Supreme Court other than those stated shall be transferred to the Superior Court;

(d) all causes and proceedings of whatever character pending in the Prerogative Court other than those stated shall be transferred to the Chancery Division of the Superior Court;

(e) all causes and proceedings of whatever character pending in all other courts which are abolished shall be transferred to the Superior Court.

For the purposes of this paragraph, paragraph 4 and paragraph 9, a cause shall be deemed to be pending notwithstanding that an adjudication has been entered therein, provided the time limited for review has not expired or the adjudication reserves to any party the right to apply for further relief.

9. The files of all causes pending in the Court of Errors and Appeals shall be delivered to the Clerk of the new Supreme Court; and the files of all causes pending in the present Supreme Court, the Court of Chancery and the Prerogative Court shall be delivered to the Clerk of the Superior Court. All other files, books, papers, records and documents and all property of the Court of Errors and Appeals, the present Supreme Court, the Prerogative Court, the Chancellor and the Court of Chancery, or in their custody, shall be disposed of as shall be provided by law.

10. Upon the taking effect of the Judicial Article of this Constitution, all the functions, powers and duties conferred by statute, rules or otherwise upon the Chancellor, the Ordinary, and the Justices and Judges of the courts abolished by this Constitution, to the extent that such functions, powers and duties are not inconsistent with this Constitution, shall be transferred to and may be exercised by Judges of the Superior Court until otherwise provided by law or rules of the new Supreme Court; excepting that such statutory powers not related to the administration of justice as are then vested in any such judicial officers shall, after the Judicial Article of the Constitution takes effect and until otherwise provided by law, be transferred to and exercised by the Chief Justice of the new Supreme Court.

11. Upon the taking effect of the Judicial Article of this Con-

stitution, the Clerk of the Supreme Court shall become the Clerk of the new Supreme Court and shall serve as such Clerk until the expiration of the term for which he was appointed as Clerk of the Supreme Court, and all employees of the Supreme Court as previously constituted, of the Clerk thereof and of the Chief Justice and the Justices thereof, of the Circuit Courts and the Judges thereof and of the Court of Errors and Appeals shall be transferred to appropriate similar positions with similar compensation and civil service status under the Clerk of the new Supreme Court or the new Supreme Court, or the Clerk of the Superior Court or the Superior Court, which shall be provided by law.

12. Upon the taking effect of the Judicial Article of this Constitution, the Clerk in Chancery shall become the Clerk of the Superior Court and shall serve as such Clerk until the expiration of the term for which he was appointed as Clerk in Chancery, and all employees of the Clerk in Chancery, the Court of Chancery, the Chancellor and the several Vice-Chancellors shall be transferred to appropriate similar positions with similar compensation and civil service status under the Clerk of the Superior Court or the Superior Court, which shall be provided by law.

13. Appropriations made by law for judicial expenditures during the fiscal year 1948-1949 may be transferred to similar objects and purposes required by the Judicial Article.

14. The Judicial Article of this Constitution shall take effect on September 15, 1948, except that the Governor, by and with the advice and consent of the Senate, shall have the power to fill vacancies arising prior thereto in the new Supreme Court and the Superior Court; and except further that any provision of this Constitution which may require any act to be done prior thereto or in preparation therefor shall take effect immediately upon the adoption of this Constitution.

REPORT
of the
COMMITTEE ON ARRANGEMENT AND FORM
of
PROPOSAL No. 4-1
on the
JUDICIARY ARTICLE
(as amended on second reading)
to the
CONSTITUTIONAL CONVENTION OF NEW JERSEY

Proposal No. 4-1 was referred to your Committee on August 19, 1947, and, pursuant to the Rules of the Convention, is reported back in the form hereunto annexed.

COMMITTEE ON ARRANGEMENTS AND FORM
WAYNE D. MCMURRAY, *Chairman*
CHARLES P. HUTCHINSON, *Vice-Chairman*
ALFRED C. CLAPP, *Secretary*
FRANKLIN H. BERRY
JOHN DREWEN
ALBERT H. HOLLAND
FRANK G. SCHLOSSER

Dated: August 21, 1947.

PROPOSAL No. 4-1
(as amended on second reading)
Introduced by Frank H. Sommer
Chairman, Committee on the Judiciary

ARTICLE —— JUDICIAL

SECTION I

1. The judicial power shall be vested in a Supreme Court, a Superior Court, County Courts and inferior courts of limited jurisdiction. The inferior courts and their jurisdiction may from time to time be established, altered or abolished by law.

SECTION II

1. The Supreme Court shall consist of a Chief Justice and six Associate Justices. Five members of the court shall constitute a quorum. When necessary, the Chief Justice shall assign the Judge

or Judges of the Superior Court, senior in service, as provided by rules of the Supreme Court, to serve temporarily in the Supreme Court. In case the Chief Justice is absent or unable to serve, a presiding Justice designated in accordance with rules of the Supreme Court shall serve temporarily in his stead.

2. The Supreme Court shall exercise appellate jurisdiction in the last resort in all causes provided in this Constitution.

3. The Supreme Court shall make rules governing the administration and, subject to law, the practice and procedure in all courts in the State. The Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted.

SECTION III

1. The Superior Court shall consist of such number of Judges as may be authorized by law, but not less than twenty-four, each of whom shall exercise the powers of the court subject to rules of the Supreme Court.

2. The Superior Court shall have original general jurisdiction throughout the State in all causes.

3. The Superior Court shall be divided into an Appellate Division, a Law Division, and a Chancery Division. Each division shall have such Parts, consist of such number of Judges, and hear such causes, as may be provided by rules of the Supreme Court.

4. Subject to rules of the Supreme Court, the Law Division and the Chancery Division shall each exercise the powers and functions of the other division when the ends of justice so require, and legal and equitable relief shall be granted in any cause so that all matters in controversy between the parties may be completely determined.

SECTION IV

1. There shall be a County Court in each county, which shall have all the jurisdiction heretofore exercised by the Court of Common Pleas, Orphans' Court, Court of Oyer and Terminer, Court of Quarter Sessions, Court of Special Sessions and such other jurisdiction consistent with this Constitution as may be conferred by law.

2. There shall be a Judge of each County Court and such additional Judges as shall be provided by law, and they shall be appointed as heretofore.

3. Each Judge of the County Court may exercise the jurisdiction of the County Court.

4. The jurisdiction, powers and functions of the County Courts and of the Judges of the County Courts may be altered by law as the public good may require.

5. The County Courts, in civil causes including probate causes, within their jurisdiction, and subject to law, may grant legal and

equitable relief so that all matters in controversy between the parties may be completely determined.

SECTION V

1. Appeals may be taken to the Supreme Court:

(a) In causes determined by the Appellate Division of the Superior Court involving a question arising under the Constitution of the United States or this State;

(b) In causes where there is a dissent in the Appellate Division of the Superior Court;

(c) In capital causes;

(d) On certification by the Supreme Court to the Superior Court and, where provided by rules of the Supreme Court, to the County Courts and the inferior courts; and

(e) In such causes as may be provided by law.

2. Appeals may be taken to the Appellate Division of the Superior Court from the Law and Chancery Divisions of the Superior Court, the County Courts and in such other causes as may be provided by law.

3. The Supreme Court and the Appellate Division of the Superior Court may exercise such original jurisdiction as may be necessary to the complete determination of any cause on review.

4. Prerogative writs are superseded and, in lieu thereof, review, hearing and relief shall be afforded in the Superior Court, on terms and in the manner provided by rules of the Supreme Court, as of right, except in criminal causes where such review shall be discretionary.

SECTION VI

1. The Governor shall nominate and appoint, by and with the advice and consent of the Senate, the Chief Justice and Associate Justices of the Supreme Court, the Judges of the Superior Court, the Judges of the County Courts and the judges of the inferior courts with jurisdiction extending to more than one municipality. No nomination to such an office shall be sent to the Senate for confirmation until after seven days' public notice by the Governor.

2. The Justices of the Supreme Court, the Judges of the Superior Court and the Judges of the County Courts shall each prior to his appointment have been admitted to the practice of the law in this State for at least ten years.

3. The Justices of the Supreme Court and the Judges of the Superior Court shall hold their offices for initial terms of seven years and upon reappointment shall hold their offices during good behavior. Such Justices and Judges shall be retired upon attaining the age of seventy years. Provisions for the pensioning of the Jus-

tices of the Supreme Court and the Judges of the Superior Court shall be made by law.

4. The Justices of the Supreme Court, the Judges of the Superior Court and the Judges of the County Courts shall be subject to impeachment, and any judicial officer impeached shall not exercise his office until acquitted. The Judges of the Superior Court and the Judges of the County Courts shall also be subject to removal from office by the Supreme Court for such causes and in such manner as shall be provided by law.

5. Whenever the Supreme Court shall certify to the Governor that it appears that any Justice of the Supreme Court, Judge of the Superior Court or Judge of the County Court is so incapacitated as substantially to prevent him from performing his judicial duties, the Governor shall appoint a commission of three persons to inquire into the circumstances; and, on their recommendation, the Governor may retire the Justice or Judge from office, on pension as may be provided by law.

6. The Justices of the Supreme Court and the Judges of the Superior Court shall receive for their services such salaries as may be provided by law, which shall not be diminished during the term of their appointment. They shall not, while in office, engage in the practice of law or other gainful pursuit.

7. The Justices of the Supreme Court, the Judges of the Superior Court and the Judges of the County Courts shall hold no other office or position of profit under the authority of this State or the United States. Any such Justice or Judge who shall become a candidate for an elective public office shall thereby forfeit his judicial office.

Section VII

1. The Chief Justice of the Supreme Court shall be the administrative head of all the courts in the State. He shall appoint an Administrative Director to serve at his pleasure.

2. The Chief Justice of the Supreme Court shall assign Judges of the Superior Court to the Divisions and Parts of the Superior Court, and may from time to time transfer Judges from one assignment to another, as need appears. Assignments to the Appellate Division shall be for terms fixed by rules of the Supreme Court.

3. The Clerk of the Supreme Court and the Clerk of the Superior Court shall be appointed by the Supreme Court for such terms and at such compensation as shall be provided by law.

SCHEDULE

Article ——

Section ——

1. Subsequent to the adoption of this Constitution the Governor

shall nominate and appoint, by and with the advice and consent of the Senate, a Chief Justice and six Associate Justices of the new Supreme Court from among the persons then being the Chancellor, the Chief Justice and Associate Justices of the old Supreme Court, the Vice-Chancellors and Circuit Court Judges. The remaining judicial officers enumerated and such Judges of the Court of Errors and Appeals as have been admitted to the practice of law in this State for at least ten years, and are in office on the adoption of the Constitution, shall constitute the Judges of the Superior Court. The Justices of the new Supreme Court and the Judges of the Superior Court so designated shall hold office each for the period of his term which remains unexpired at the time the Constitution is adopted; and if reappointed he shall hold office during good behavior. No Justice of the new Supreme Court or Judge of the Superior Court shall hold his office after attaining the age of seventy years, except, however, that such Justice or Judge may complete the period of his term which remains unexpired at the time the Constitution is adopted.

2. The Judges of the Courts of Common Pleas shall constitute the Judges of the County Courts, each for the period of his term which remains unexpired at the time the Judicial Article of this Constitution takes effect.

3. The Court of Errors and Appeals, the present Supreme Court, the Court of Chancery, the Prerogative Court and the Circuit Courts shall be abolished when the Judicial Article of this Constitution takes effect; and all their jurisdiction, functions, powers and duties shall be transferred to and divided between the new Supreme Court and the Superior Court according as jurisdiction is vested in each of them under this Constitution.

4. Until otherwise provided by law and except as provided in this Constitution, now existing in this State, other than those abolished in paragraph 3 hereof, shall continue as if this Constitution had not been adopted. Until otherwise provided by law, the judicial officers, surrogates and clerks of all courts now existing, other than those abolished in paragraph 3 hereof, and the employees of said officers, clerks, surrogates and courts shall continue in the exercise of their duties, as if this Constitution had not been adopted.

5. The Supreme Court shall make rules governing the administration and practice and procedure of the County Courts; and the Chief Justice of the Supreme Court shall be the administrative head of these courts with power to assign any Judge thereof of any county to sit temporarily in the Superior Court or to sit temporarily without the county in a County Court.

6. The Advisory Masters appointed to hear matrimonial proceedings and in office on the adoption of this Constitution shall,

each for the period of his term which remains unexpired at the time the Constitution is adopted, continue so to do as Advisory Masters to the Chancery Division of the Superior Court, unless otherwise provided by law.

7. All Special Masters in Chancery, Masters in Chancery, Supreme Court Commissioners and Supreme Court Examiners shall, until otherwise provided by rules of the Supreme Court, continue respectively as Special Masters, Masters, Commissioners and Examiners of the Superior Court, with appropriate similar functions and powers as if this Constitution had not been adopted.

8. When the Judicial Article of this Constitution takes effect:

(a) all causes and proceedings of whatever character pending in the Court of Errors and Appeals shall be transferred to the the new Supreme Court;

(b) all causes and proceedings of whatever character pending on appeal or writ of error in the present Supreme Court and in the Prerogative Court and all pending causes involving the prerogative writs shall be transferred to the Appellate Division of the Superior Court;

(c) all causes and proceedings of whatever character pending in the Supreme Court other than those stated shall be transferred to the Superior Court;

(d) all causes and proceedings of whatever character pending in the Prerogative Court other than those stated shall be transferred to the Chancery Division of the Superior Court;

(e) all causes and proceedings of whatever character pending in all other courts which are abolished shall be transferred to the Superior Court.

For the purposes of this and the next paragraph causes shall be deemed to be pending, notwithstanding that an adjudication has been entered therein, until the time limited for review has expired, and where an order or decree has been entered reserving to the parties the right to apply for further relief.

9. The files of all causes pending in the Court of Errors and Appeals shall be delivered to the Clerk of the new Supreme Court; and the files of all causes pending in the present Supreme Court, the Court of Chancery and the Prerogative Court shall be delivered to the Clerk of the Superior Court. All other files, books, papers, records and documents and all property of the Court of Errors and Appeals, the present Supreme Court, the Prerogative Court, the Chancellor and the Court of Chancery, or in their custody, shall be disposed of as shall be provided by law.

10. Upon the taking effect of the Judicial Article of this Constitution, all the functions, powers and duties conferred by statute, rules or otherwise upon the Chancellor, the Ordinary, and the

Justices and Judges of the courts abolished by this Constitution, to the extent that such functions, powers and duties are not inconsistent with this Constitution, shall be transferred to and may be exercised by Judges of the Superior Court until otherwise provided by law or rules of the new Supreme Court; excepting that such statutory powers not related to the administration of justice as are then vested in any such judicial officers shall, after the Judicial Article of the Constitution takes effect and until otherwise provided by law, be transferred to and exercised by the Chief Justice of the new Supreme Court.

11. Upon the taking effect of the Judicial Article of this Constitution, the Clerk of the Supreme Court shall become the Clerk of the new Supreme Court and shall serve as such Clerk until the expiration of the term for which he was appointed as Clerk of the Supreme Court, and all employees of the Supreme Court as previously constituted, of the Clerk thereof and of the Chief Justice and the Justices thereof, of the Circuit Courts and the Judges thereof and of the Court of Errors and Appeals shall be transferred to appropriate similar positions with similar compensation and civil service status under the Clerk of the new Supreme Court or the new Supreme Court, or the Clerk of the Superior Court or the Superior Court, which shall be provided by law.

12. Upon the taking effect of the Judicial Article of this Constitution, the Clerk in Chancery shall become the Clerk of the Superior Court and shall serve as such Clerk until the expiration of the term for which he was appointed as Clerk in Chancery, and all employees of the Clerk in Chancery, the Court of Chancery, the Chancellor and the several Vice-Chancellors shall be transferred to appropriate similar positions with similar compensation and civil service status under the Clerk of the Superior Court or the Superior Court, which shall be provided by law.

13. Appropriations made by law for judicial expenditures during the fiscal year 1948-1949 may be transferred to similar objects and purposes required by the Judicial Article.

14. The Judicial Article of this Constitution shall take effect on July 1, 1948, except that the Governor, by and with the advice and consent of the Senate, shall have the power to fill vacancies arising prior thereto in the new Supreme Court and the Superior Court; and except further that any provision of this Constitution which may require any act to be done prior thereto or in preparation therefor shall take effect immediately upon the adoption of this Constitution.

COMMITTEE ON TAXATION AND FINANCE

COMMITTEE PROPOSAL

STATE OF NEW JERSEY
CONSTITUTIONAL CONVENTION OF 1947
AT
RUTGERS UNIVERSITY
THE STATE UNIVERSITY OF NEW JERSEY

July 30, 1947.

To the President and Delegates of the Constitutional Convention:

Your Committee on Taxation and Finance respectfully reports that it had under Rule No. 15 assigned to it the following subject matter of the present Constitution of the State of New Jersey:

Article I, Rights and Privileges, paragraphs 19 and 20.

Article IV, Legislative, Sections VI, paragraphs 2, 3 and 4 and Section VII, paragraphs 6 and 12.

Your Committee recommends that these various paragraphs be deleted from the present Constitution and in the proposed Constitution be included in a new Article to read as follows:

ARTICLE ——— FINANCE

SECTION I

1. Property shall be assessed for taxes under general laws, and by uniform rules, according to its true value. Exemption 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. 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 $500.00; and any such person as hereinbefore 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.

2. The credit of the State shall not be directly or indirectly loaned in any case.

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 Auditor.

4. 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 $100,000.00, 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 interest of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability within thirty-five years from the time of the contracting thereof, and shall be irrepealable until such debt or liability, and the interest thereon, are fully paid and discharged. And 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; and all money to be raised by the authority of such law shall be applied only to the specific object stated therein; and to the payment of the debt thereby created. This section shall not be construed to refer to any money that has been, or may be, deposited with this State by the Government of the United States.

5. 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.

6. 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.

SECTION II

1. (a) 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.

(b) 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.

(c) The Legislature may, within reasonable limitations as to distance to be prescribed, provide for the transportation of children within the ages of 5 to 18 years inclusive to and from any school.

Your Committee further reports that it has considered proposals 4, 5, 14, 15, 24, 36 and 42 and that these proposals are contained in our recommendations either in whole, in part, or in substance, and where not so contained were disapproved.

The proposals in their present form constitute the area of agreement of the members of this Committee, as a committee, and are not to be taken as necessarily representing in their entirety the personal views of any individual committee member.

THE COMMITTEE ON TAXATION AND FINANCE,
WILLIAM T. READ, *Chairman,*
JOHN J. RAFFERTY, *Secretary.*

COMMITTEE PROPOSAL No. 5-1

Introduced .....

By WILLIAM T. READ

Chairman, Committee on Taxation and Finance

ARTICLE —— FINANCE

SECTION I

1. Property shall be assessed for taxes under general laws, and by uniform rules, according to its true value. Exemption 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. 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 $500.00; and any such person as hereinbefore 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.

2. The credit of the State shall not be directly or indirectly loaned in any case.

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 Auditor.

4. 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 $100,000.00, 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 interest of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability within thirty-five years from the time of the contracting thereof, and shall be irrepealable until such debt or liability, and the interest thereon, are fully paid and discharged. And 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; and all money to be raised by the authority of such law shall be applied only to the specific object stated therein; and to the payment of the debt thereby created. This section shall not be construed to refer to any money that has been, or may be, deposited with this State by the Government of the United States.

5. 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.

6. 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.

SECTION II

1. (a) 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.

(b) 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.

(c) The Legislature may, within reasonable limitations as to distance to be prescribed, provide for the transportation of children within the ages of 5 to 18 years inclusive to and from any school.

AMENDMENTS TO COMMITTEE PROPOSAL No. 5-1[1]

AMENDMENT No. 1 to COMMITTEE PROPOSAL No. 5-1

Introduced by Allan R. Cullimore

To amend Article . . ., "Finance," Section I, as follows:

In line 2, paragraph 1, Section I, strike out the words "according to its true value" and insert, in place of comma following the word "rules," a period.

AMENDMENT No. 2 to COMMITTEE PROPOSAL No. 5-1

Introduced by David Van Alstyne, Jr.

Resolved, that paragraph 4 of Section I of Article . . ., "Finance," contained in the Committee Proposal of the General Standing Committee of the Convention on Taxation and Finance, be amended to read as follows:

"4. 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 [$100,000.00,] an amount equal to one per centum of the total amount of money appropriated, for the support of the State government and all other purposes, by the general appropriation law covering the State fiscal year current with that in which the law authorizing the creation of such new debt or debts, liability or liabilities, is enacted, 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 interest of such debt or liability as if falls due, and also to pay and discharge the principal of such debt or liability within thirty-five years from the time of the contracting thereof, and shall be irrepealable until such debt or liability, and the interest thereon, are fully paid and discharged [. And]; and 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; and all money to be raised by the authority of such law shall be applied only to the specific object

[1] Page and line references in these amendments are to the printed Proposal distributed to the delegates. However, they are, generally, sufficiently specific to be clear.

stated therein [;], and to the payment of the debt thereby created. This section shall not be construed to refer to any money that has been, or may be, deposited with this State by the Government of the United States."

AMENDMENT No. 3 to COMMITTEE PROPOSAL No. 5-1

Introduced by George H. Walton

Resolved, that paragraph 3 of Section I of Article . . ., "Finance," contained in the Committee Proposal of the General Standing Committee of the Convention on Taxation and Finance, be amended to read as follows:

"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 Auditor] Governor."

AMENDMENT No. 4 to COMMITTEE PROPOSAL No. 5-1

Introduced by Marion Constantine

Resolved, that Committee Proposal No. 5-1 be amended by striking out on page 3, Section II, all of lines 14, 15 and 16.[1]

AMENDMENT No. 5 to COMMITTEE PROPOSAL No. 5-1

Introduced by Frank H. Eggers

Resolved, that paragraph 1, Section I of Article . . ., "Finance," of Committee Proposal No. 5-1, be and the same is hereby amended as follows:

Strike out lines 1 and 2 of paragraph 1, Section I, of said Committee Proposal, through the word "value" and substitute therefor the following:

"Property shall be assessed for taxes under general laws and by

[1] The reference is to Section II, paragraph 1 (c).

uniform rules, according to its true value. Real property now defined by law as Class II railroad and canal property shall be assessed for taxes as hereinabove provided and shall be taxed at the local tax rate of each municipality wherein such property is located, and the proceeds thereof shall be paid to each such municipality."

AMENDMENT No. 6 to COMMITTEE PROPOSAL No. 5-1

Introduced by John Milton

Strike out all of Section I and substitute the following:

"*Resolved,* that the following alternative paragraphs be agreed upon for submission to the people in such manner that the one receiving the greater number of votes be adopted as Section I, paragraph 1, Article . . ., 'Finance,' of the new State Constitution:

ALTERNATE 'A'

1. Property shall be assessed for taxes under general laws, and by uniform rules, according to its true value. Exemption 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. 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 $500.00; and any such person as hereinbefore described who has been declared or shall be declared by the United States Veterans' Administration or its successors 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.

ALTERNATE 'B'

1. Property shall be assessed for taxes under general laws and by uniform rules, according to its true value. Real property now defined by law as Class II railroad and canal property shall be

assessed for taxes as hereinabove provided and shall be taxed at the local tax rate of each municipality wherein such property is located, and the proceeds thereof shall be paid to each such municipality. Exemption 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 exclusivly 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. 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 $500.00; and any such person as hereinbefore 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."

AMENDMENT No. 7 to COMMITTEE PROPOSAL No. 5-1

Introduced by Arthur W. Lewis

Amend Committee Proposal No. 5-1, page 1, paragraph 1, Section I, by striking out the first sentence beginning with the word "Property" and ending with the word "value," and substituting in lieu thereof the following:

"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."

AMENDMENT No. 8 to COMMITTEE PROPOSAL No. 5-1

Introduced by Jane Barus

A proposal to amend paragraph 1 (c) of Section II of the Article on "Finance":

"The Legislature may, within reasonable limitations as to dis-

tance to be prescribed, provide for the transportation of children within the ages of 5 to 18 years inclusive to and from any school not operated for profit."

AMENDMENT No. 9 to COMMITTEE PROPOSAL No. 5-1

Introduced by Robert Carey

Amendment to Section I of Article entitled "Finance":

Section I is to be amended by adding the following after the words "true value":

"Value shall be determined and fixed by rules and regulations adopted by the Legislature, and such rules and regulations shall be applied equitably by all tax assessing authorities in the State so as to provide equal, similar, and fair taxation throughout the State."

AMENDMENT No. 10 to COMMITTEE PROPOSAL No. 5-1

Introduced by Milton Feller

Amend page 1, Section I, paragraph 1, lines 1 and 2, by striking out the first sentence of the paragraph and writing in lieu thereof the following:

"Taxes shall be assessed under general laws and by uniform rules. All real property taxable for local purposes shall be assessed and taxed at uniform rates within each taxing district."

AMENDMENT No. 11 to COMMITTEE PROPOSAL No. 5-1

Introduced by Allan R. Cullimore

To amend Article . . , "Finance," Section I, as follows:

In lines 1 and 2, paragraph 1, Section I, delete the words "and by uniform laws, according to its true value," and substitute for comma after the word "laws" in line 1, paragraph 1, a period.

AMENDMENT No. 12 to COMMITTEE PROPOSAL No. 5-1

Introduced by Milton C. Lightner

Amend Article . . , "Finance," Section I, paragraph 1, line 2, by changing the comma after the word "rules" to a period, and striking out the words "according to its true value" and inserting in lieu thereof the words:

"Classifications and standards of value for the assessment of property for taxes may be established by general laws. No assessment shall exceed the true value of the property assessed."

AMENDMENT No. 13 to COMMITTEE PROPOSAL No. 5-1

Introduced by Winston Paul

On page 1, Section I, line 9, eliminate the words "altered or."

AMENDMENT No. 14 to COMMITTEE PROPOSAL No. 5-1

Introduced by Jane Barus

Amend page 3, Section I, by adding a new paragraph 7 to read as follows:

"7. The clearance, replanning, development or redevelopment of blighted areas shall be a public purpose and public use, for which private property may be taken or acquired. Municipal, public or private corporations may be authorized by law to undertake such clearance, replanning, development or redevelopment, and improvements made for these purposes and uses, or for any of them, may be exempted from taxation, in whole or in part, for a limited period of time during which the profits of and dividends payable by any private corporation enjoying such tax exemption shall be limited by law. The conditions of use, ownership, management and control of such improvements shall be regulated by law."

AMENDMENT No. 15 to COMMITTEE PROPOSAL No. 5-1

Introduced by Robert Carey and Frank H. Sommer

Page 1, under Section I, strike out the sentence beginning on line 3 with the word "Exemption" and ending on line 9 with the word "Legislature."

AMENDMENT No. 16 to COMMITTEE PROPOSAL No. 5-1

Introduced by William T. Read

Amend page 1, Section I, paragraph 1, lines 1 and 2, by striking out the first sentence of the paragraph and inserting in lieu thereof the following:

"Property shall be assessed for taxation under general laws and

by uniform rules. All real property assessed and taxed locally or by the State for allotment and payment to taxing districts shall be assessed according to the same standard of value and taxed at the general tax rate of the taxing district in which the property is situated, for the use of such taxing district."

AMENDMENT No. 17 to COMMITTEE PROPOSAL No. 5-1

Introduced by William T. Read

Amend page 2, Section I, paragraph 4, line 7, by inserting after the word "law" the words:

"regardless of any limitation relating to taxation contained in this Constitution."[1]

AMENDMENT No. 18 to COMMITTEE PROPOSAL No. 5-1

Introduced by William T. Read

Amend Article . . ., "Finance," Section I, paragraph 1, by striking out the third sentence commencing with the word "Exemptions" on line 3, and striking out all of the fourth sentence, and substituting in lieu thereof the following:

"Until otherwise provided by law all exemptions from taxation validly granted and now in existence shall be continued. Exemptions from taxation may be altered or repealed, except those exempting real and personal property used exclusively for religious, educational or charitable purposes, as defined by law, and owned by any corporation or association organized and conducted exclusively for one or more of such purposes and not operating for profit. A person who is a citizen and resident of this State and has been or shall have been in active service in any branch of the armed forces of the United States in time of war 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 $500.00; and any such person as hereinbefore described who has been declared or shall be declared by the United States Veterans' Administration or its successors 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."

[1] See page 1238, paragraph 4, line 7.

[OFFICIAL COPY REPRINT]

PROPOSAL No. 5-1

Adopted August 28, 1947

ARTICLE ——

FINANCE

SECTION 1

1. Property shall be assessed for taxation under general laws and by uniform rules. All real property assessed and taxed locally or by the State for allotment and payment to taxing districts shall be assessed according to the same standard of value; and such real property shall be taxed at the general tax rate of the taxing district in which the property is situated, for the use of such taxing district.

2. Exemption from taxation may be granted only by general laws. Until otherwise provided by law all exemptions from taxation validly granted and now in existence shall be continued. Exemptions from taxation may be altered or repealed, except those exempting real and personal property used exclusively for religious, educational, charitable or cemetery purposes, as defined by law, and owned by any corporation or association organized and conducted exclusively for one or more of such purposes and not operating for profit.

3. Any citizen and resident of this State now or hereafter honorably discharged or released under honorable circumstances from active service in time of war in any branch of the armed forces of the United States shall be exempt from taxation on real and personal property to an aggregate assessed valuation not exceeding five hundred dollars. Any person hereinabove described who has been or shall be declared by the United States Veterans Administration, or its successor, to have a service-connected disability shall be entitled to such further exemption from taxation as from time to time may be provided by law. The widow of any citizen and resident of this State who has met or shall meet his death on active duty in time of war in any such service shall be entitled, during her widowhood, to the exemption in this paragraph provided for honorably discharged veterans and to such further exemption as from time to time may be provided by law.

4. The credit of the State shall not be directly or indirectly loaned in any case.

5. No money shall be drawn from the State treasury but for appropriations made by law. All moneys for the support of the State

government and for all other State purposes, as far as can be ascertained or reasonably foreseen, shall be provided for in one general appropriation law covering one and the same fiscal year; except that when a change in the 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 Governor.

6. 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 per centum of the total amount appropriated by the general appropriation law for the State fiscal year in which the law authorizing such new debts or liabilities is enacted, unless the same shall be authorized by a law for some single object or work distinctly specified therein. Regardless of any limitation relating to taxation in this Constitution, such law shall provide the ways and means, exclusive of loans, to pay the interest of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability within thirty-five years from the time it is contracted. The law shall not be repealed until such debt or liability and the interest thereon are fully paid or discharged. No such law shall take effect until it shall have been submitted to the people at a general election and approved by a majority of all the votes cast thereon. All money to be raised by the authority of such law shall be applied only to the specific object stated therein, and to the payment of the debt thereby created. This paragraph shall not be construed to refer to any money that has been or may be deposited with this State by the Government of the United States. Nothing in this paragraph contained shall apply to the creation of any debts or liabilities for purposes of war, or to repel invasion, or to suppress insurrection, or to meet an emergency caused by disaster or act of God.

7. 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.

8. No donation of land or appropriation of money shall be made by the State or any county or municipal corporation to or for the use of any society, association or corporation whatever.

9. The clearance, replanning, development or redevelopment of blighted areas shall be a public purpose and public use, for which

private property may be taken or acquired. Municipal, public or private corporations may be authorized by law to undertake such clearance, replanning, development or redevelopment; and improvements made for these purposes and uses, or for any of them, may be exempted from taxation, in whole or in part, for a limited period of time during which the profits of and dividends payable by any private corporation enjoying such tax exemption shall be limited by law. The conditions of use, ownership, management and control of such improvements shall be regulated by law.

SECTION II

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 public 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 free public 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.

3. The Legislature may, within reasonable limitations as to distance to be prescribed, provide for the transportation of children within the ages of five to eighteen years, inclusive, to and from any school.

REPORT
of the
COMMITTEE ON ARRANGEMENT AND FORM
of
PROPOSAL No. 5-1
on
TAXATION AND FINANCE
as amended on second reading
to the
CONSTITUTIONAL CONVENTION OF NEW JERSEY

Proposal No. 5-1 was referred to your Committee on August 26, 1947, and, pursuant to the Rules of the Convention, is reported back in the form hereunto annexed.

COMMITTEE ON ARRANGEMENT AND FORM
WAYNE D. MCMURRAY, *Chairman*
CHARLES P. HUTCHINSON, *Vice-Chairman*
ALFRED C. CLAPP, *Secretary*
FRANKLIN H. BERRY
JOHN DREWEN
ALBERT H. HOLLAND
FRANK G. SCHLOSSER

Dated: August 28, 1947.

COMMITTEE PROPOSAL No. 5-1
(as amended on second reading)

Introduced by WILLIAM T. READ
Chairman, Committee on Taxation and Finance

ARTICLE ——— FINANCE

SECTION I

1. Property shall be assessed for taxation under general laws and by uniform rules. All real property assessed and taxed locally or by the State for allotment and payment to taxing districts shall be assessed according to the same standard of value; and such real property shall be taxed at the general tax rate of the taxing district in which the property is situated, for the use of such taxing district.

2. Exemption from taxation may be granted only by general laws. Until otherwise provided by law all exemptions from taxation validly granted and now in existence shall be continued. Exemptions from taxation may be altered or repealed, except those ex-

empting real and personal property used exclusively for religious, educational, charitable or cemetery purposes, as defined by law, and owned by any corporation or association organized and conducted exclusively for one or more of such purposes and not operating for profit.

3. Any citizen and resident of this State now or hereafter honorably discharged or released under honorable circumstances from active service in time of war in any branch of the armed forces of the United States, shall be exempt from taxation on real and personal property to an aggregate assessed valuation not exceeding five hundred dollars. Any person hereinabove described who has been or shall be declared by the United States Veterans Administration, or its successor, to have a service-connected disability, shall be entitled to such further exemption from taxation as from time to time may be provided by law. The widow of any citizen and resident of this State who has met or shall meet his death on active duty in time of war in any such service shall be entitled, during her widowhood, to the exemption in this paragraph provided for honorably discharged veterans and to such further exemption as from time to time may be provided by law.

4. The credit of the State shall not be directly or indirectly loaned in any case.

5. No money shall be drawn from the State treasury but for appropriations made by law. All moneys for the support of the State government and for all other State purposes as far as can be ascertained or reasonably foreseen, shall be provided for in one general appropriation law covering one and the same fiscal year; except that when a change in the 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 Governor.

6. 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 per centum of the total amount appropriated by the general appropriation law for the State fiscal year in which the law authorizing such new debts or liabilities is enacted, unless the same shall be authorized by a law for some single object or work distinctly specified therein. Regardless of any limitation relating to taxation in this Constitution, such law shall provide the ways and means, exclusive of loans, to pay the interest of such debt or

liability as it falls due, and also to pay and discharge the principal of such debt or liability within thirty-five years from the time it is contracted. The law shall not be repealed until such debt or liability and the interest thereon are fully paid and discharged. No such law shall take effect until it shall have been submitted to the people at a general election and approved by a majority of all the votes cast thereon. All money to be raised by the authority of such law shall be applied only to the specific object stated therein, and to the payment of the debt thereby created. This paragraph shall not be construed to refer to any money that has been or may be deposited with this State by the Government of the United States. Nothing in this paragraph contained shall apply to the creation of any debts or liabilities for purposes of war, or to repel invasion, or to suppress insurrection or to meet an emergency caused by disaster or act of God.

7. 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.

8. No donation of land or appropriation of money shall be made by the State or any county or municipal corporation to or for the use of any society, association or corporation whatever.

9. The clearance, replanning, development or redevelopment of blighted areas shall be a public purpose and public use, for which private property may be taken or acquired. Municipal, public or private corporations may be authorized by law to undertake such clearance, replanning, development or redevelopment; and improvements made for these purposes and uses, or for any of them, may be exempted from taxation, in whole or in part, for a limited period of time during which the profits of and dividends payable by any private corporation enjoying such tax exemption shall be limited by law. The conditions of use, ownership, management and control of such improvements shall be regulated by law.

SECTION II

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 public 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 free public 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.

3. The Legislature may, within reasonable limitations as to distance to be prescribed, provide for the transportation of children within the ages of five to eighteen years inclusive to and from any school.

COMMITTEE ON ARRANGEMENT AND FORM

FINAL REPORT

(This Report was distributed to the delegates on September 4, 1947, and reported to the Convention by the Committee on Arrangement and Form on September 8, 1947, for discussion and amendment. It was then amended to its final form.)

CONSTITUTION OF NEW JERSEY
1947

A CONSTITUTION agreed upon by the delegates of the people of New Jersey, in Convention, begun at Rutgers University, the State University of New Jersey, New Brunswick, on the twelfth day of June, and continued to the tenth day of September, in the year of our Lord one thousand nine hundred and forty-seven.

We, the people of the State of New Jersey, grateful to Almighty God for the civil and religious liberty which He hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavors to secure and transmit the same unimpaired to succeeding generations, do ordain and establish this Constitution.

ARTICLE I

RIGHTS AND PRIVILEGES

1. All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.

2. All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right at all times to alter or reform the same, whenever the public good may require it.

3. No person shall be deprived of the inestimable privilege of worshiping Almighty God in a manner agreeable to the dictates of his own conscience; nor under any pretense whatever be compelled to attend any place of worship contrary to his faith and judgment; nor shall any person be obliged to pay tithes, taxes, or other rates

for building or repairing any church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right, or has deliberately and voluntarily engaged to perform.

4. There shall be no establishment of one religious sect in preference to another; no religious or racial test shall be required as a qualification for any office or public trust.

5. No person shall be denied the enjoyment of any civil or military right, nor be discriminated against in the exercise of any civil or military right, nor be segregated in the militia or in the public schools, because of religious principles, race, color, ancestry or national origin.

6. Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press. In all prosecutions or indictments for libel, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

7. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the papers and things to be seized.

8. No person shall be held to answer for a criminal offense, unless on the presentment or indictment of a grand jury, except in cases of impeachment, or in cases now prosecuted without indictment, or arising in the army or navy or in the militia, when in actual service in time of war or public danger.

9. The right of trial by jury shall remain inviolate; but the Legislature may authorize the trial of civil causes by a jury of six persons when the matter in dispute does not exceed fifty dollars. The Legislature may provide that in any civil cause a verdict may be rendered by not less than five-sixths of the jury. The Legislature may authorize the trial of the issue of mental incompetency without a jury.

10. In all criminal prosecutions the accused shall have the right to a speedy and public trial by an impartial jury; to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel in his defense.

11. No person shall, after acquittal, be tried for the same offense. All persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses when the proof is evident or presumption great.

12. Excessive bail shall not be required, excessive fines shall not be imposed, and cruel and unusual punishments shall not be inflicted.

13. No person shall be imprisoned for debt in any action, or on any judgment founded upon contract, unless in cases of fraud; nor shall any person be imprisoned for a militia fine in time of peace.

14. The privilege of the writ of habeas corpus shall not be suspended, unless in case of rebellion or invasion the public safety may require it.

15. The military shall be in strict subordination to the civil power.

16. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, except in a manner prescribed by law.

17. Treason against the State shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

18. The people have the right freely to assemble together, to consult for the common good, to make known their opinions to their representatives, and to petition for redress of grievances.

19. Persons in private employment shall have the right to organize and bargain collectively. Persons in public employment shall have the right to organize, present to and make known to the State, or any of its political subdivisions or agencies, their grievances and proposals through representatives of their own choosing.

20. Private property shall not be taken for public use without just compensation. Individuals or private corporations shall not be authorized to take private property for public use without just compensation first made to the owners.

21. This enumeration of rights and privileges shall not be construed to impair or deny others retained by the people.

Article II

ELECTIONS AND SUFFRAGE

1. General elections shall be held annually on the first Tuesday after the first Monday in November; but the time of holding such elections may be altered by law. The Governor and members of

the Legislature shall be chosen at general elections. Local elective officers shall be chosen at general elections or at such other times as shall be provided by law.

2. All questions submitted to the people of the entire State shall be voted upon at general elections.

3. Every citizen of the United States, of the age of twenty-one years, who shall have been a resident of this State one year, and of the county in which he claims his vote five months, next before the election, shall be entitled to vote for all officers that now are or hereafter may be elective by the people, and upon all questions which may be submitted to a vote of the people.

4. In time of war no elector in the military service of the State or in the armed forces of the United States shall be deprived of his vote by reason of absence from his election district. The Legislature may provide for absentee voting by members of the armed forces of the United States in time of peace. The Legislature may provide the manner in which and the time and place at which such absent electors may vote, and for the return and canvass of their votes in the election district in which they respectively reside.

5. No person in the military, naval or marine service of the United States shall be considered a resident of this State, by being stationed in any garrison, barrack, or military or naval place or station within this State.

6. No idiot or insane person shall enjoy the right of suffrage.

7. The Legislature may pass laws to deprive persons of the right of suffrage who shall be convicted of such crimes as it may designate. Any person so deprived, when pardoned or otherwise restored by law to the right of suffrage, shall again enjoy that right.

ARTICLE III

DISTRIBUTION OF THE POWERS OF GOVERNMENT

1. The powers of the government shall be divided among three distinct branches, the legislative, executive, and judicial. No person or persons belonging to or constituting one branch shall exercise any of the powers properly belonging to either of the others, except as expressly provided in this Constitution.

ARTICLE IV

LEGISLATIVE

SECTION I

1. The legislative power shall be vested in a Senate and General Assembly.

2. No person shall be a member of the Senate who shall not have attained the age of thirty years, and have been a citizen and resident of the State for four years, and of the county for which he shall be elected one year, next before his election. No person shall be a member of the General Assembly who shall not have attained the age of twenty-one years, and have been a citizen and resident of the State for two years, and of the county for which he shall be elected one year, next before his election. No person shall be eligible for membership in the Legislature who shall not be entitled to the right of suffrage.

3. The Senate and General Assembly shall meet and organize separately on the second Tuesday in January of each year, on which day the legislative year shall commence.

4. Special sessions of the Legislature shall be called by the Governor upon petition of a majority of all the members of each house and may be called by the Governor whenever in his opinion the public interest shall require.

Section II

1. The Senate shall be composed of one Senator from each county, elected by the legally qualified voters of the county, for a term beginning at noon of the second Tuesday in January next following his election and ending at noon of the second Tuesday in January four years thereafter.

2. The members of the Senate shall be elected in two classes so that, as nearly as may be, one-half of all the members shall be elected biennially.

Section III

1. The General Assembly shall be composed of members elected biennially by the legally qualified voters of the counties, respectively, for terms beginning at noon of the second Tuesday in January next following their election and ending at noon of the second Tuesday in January two years thereafter. The members of the General Assembly shall be apportioned among the several counties as nearly as may be according to the number of their inhabitants, but each county shall at all times be entitled to one member and the whole number of members shall never exceed sixty. The present apportionment shall continue until the next census of the United States shall have been taken. Apportionment of the members of the General Assembly shall be made by the Legislature at the first session after the next and every subsequent census, and each apportionment when made shall remain unaltered until the following census shall have been taken.

SECTION IV

1. Any vacancy in the Legislature occasioned by death, resignation or otherwise shall be filled by election for the unexpired term only, as may be provided by law. Each house shall direct a writ of election to fill any vacancy in its membership; but if the vacancy shall occur during a recess of the Legislature, the writ may be issued by the Governor, as may be provided by law.

2. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of all its members shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

3. Each house shall choose its own officers, determine the rules of its proceedings, and punish its members for disorderly behavior. It may expel a member with the concurrence of two-thirds of all its members.

4. Each house shall keep a journal of its proceedings, and from time to time publish the same. The yeas and nays of the members of either house on any question shall, on demand of one-fifth of those present, be entered on the journal.

5. Neither house, during the session of the Legislature, shall, without the consent of the other, adjourn for more than three days, or to any other place than that in which the two houses shall be sitting.

6. All bills and joint resolutions shall be read three times in each house before final passage. No bill or joint resolution shall be read a third time in either house until after the intervention of one full calendar day following the day of the second reading; but if either house shall resolve by vote of three-fourths of all its members, signified by yeas and nays entered on the journal, that a bill or joint resolution is an emergency measure, it may proceed forthwith from second to third reading. No bill or joint resolution shall pass, unless there shall be a majority of all the members of each body personally present and agreeing thereto, and the yeas and nays of the members voting on such final passage shall be entered on the journal.

7. Members of the Senate and General Assembly shall receive annually, during the term for which they shall have been elected and while they shall hold their office, such compensation as shall, from time to time, be fixed by law and no other allowance or emolument, directly or indirectly, for any purpose whatever. The President of the Senate and the Speaker of the General Assembly, each by virtue of his office, shall receive an additional allowance, equal to one-third of his compensation as a member.

8. The compensation of members of the Senate and General Assembly shall be fixed at the first session of the Legislature held after this Constitution takes effect, and may be increased or decreased by law from time to time thereafter, but no increase or decrease shall be effective until the legislative year following the next general election for members of the General Assembly.

9. Members of the Senate and General Assembly shall, in all cases except treason and high misdemeanor, be privileged from arrest during their attendance at the sitting of their respective houses, and in going to and returning from the same; and for any statement, speech or debate in either house or at any meeting of a legislative committee, they shall not be questioned in any other place.

SECTION V

1. No member of the Senate or General Assembly, during the term for which he shall have been elected, shall be nominated, elected or appointed to any State civil office or position, of profit, which shall have been created by law, or the emoluments whereof shall have been increased by law, during such term. The provisions of this paragraph shall not prohibit the election of any person as Governor or as a member of the Senate or General Assembly.

2. The Legislature may appoint any commission, committee or other body whose main purpose is to aid or assist it in performing its functions. Members of the Legislature may be appointed to serve on any such body.

3. If any member of the Legislature shall become a member of Congress or shall accept any Federal or State office or position, of profit, his seat shall thereupon become vacant.

4. No member of Congress, no person holding any Federal or State office or position, of profit, and no judge of any court shall be entitled to a seat in the Legislature.

5. Neither the Legislature nor either house thereof shall elect or appoint any executive, administrative or judicial officer except the State Auditor.

SECTION VI

1. All bills for raising revenue shall originate in the General Assembly; but the Senate may propose or concur with amendments, as on other bills.

2. The Legislature may enact general laws under which municipalities, other than counties, may adopt zoning ordinances limiting and restricting to specified districts and regulating therein, buildings and structures, according to their construction, and the nature and extent of their use, and the nature and extent of the

uses of land, and the exercise of such authority shall be deemed to be within the police power of the State. Such laws shall be subject to repeal or alteration by the Legislature.

3. Any agency or political subdivision of the State or any agency of a political subdivision thereof, which may be empowered to take or otherwise acquire private property for any public highway, parkway, airport, place, improvement, or use, may be authorized by law to take or otherwise acquire a fee simple absolute or any lesser interest, and may be authorized by law to take or otherwise acquire a fee simple absolute in, easements upon, or the benefit of restrictions upon, abutting property to preserve and protect the public highway, parkway, airport, place, improvement, or use; but such taking shall be with just compensation.

SECTION VII

1. No divorce shall be granted by the Legislature.

2. No gambling of any kind shall be authorized by the Legislature unless the specific kind, restrictions and control thereof have been heretofore submitted to, and authorized by a majority of the votes cast by, the people at a special election or shall hereafter be submitted to, and authorized by a majority of the votes cast thereon by, the legally qualified voters of the State voting at a general election.

3. The Legislature shall not pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or depriving a party of any remedy for enforcing a contract which existed when the contract was made.

4. To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title. This paragraph shall not invalidate any law adopting or enacting a compilation, consolidation, revision, or rearrangement of all or parts of the statutory law.

5. No law shall be revived or amended by reference to its title only, but the act revived, or the section or sections amended, shall be inserted at length. No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of the act or which shall enact that any existing law, or any part thereof, shall be applicable, except by inserting it in such act.

6. The laws of this State shall begin in the following style: "Be it enacted by the Senate and General Assembly of the State of New Jersey".

7. No general law shall embrace any provision of a private, special or local character.

8. No private, special or local law shall be passed unless public notice of the intention to apply therefor, and of the general object thereof, shall have been previously given. Such notice shall be given at such time and in such manner and shall be so evidenced and the evidence thereof shall be so preserved as may be provided by law.

9. The Legislature shall not pass any private, special or local laws:

(1) Authorizing the sale of any lands belonging in whole or in part to a minor or minors or other persons who may at the time be under any legal disability to act for themselves.

(2) Changing the law of descent.

(3) Providing for change of venue in civil or criminal causes.

(4) Selecting, drawing, summoning or empaneling grand or petit jurors.

(5) Creating, increasing or decreasing the emoluments, term or tenure rights of any public officers or employees.

(6) Relating to taxation or exemption therefrom.

(7) Providing for the management and control of free public schools.

(8) Granting to any corporation, association or individual any exclusive privilege, immunity or franchise whatever.

(9) Granting to any corporation, association or individual the right to lay down railroad tracks.

(10) Laying out, opening, altering, constructing, maintaining and repairing roads or highways.

(11) Vacating any road, town plot, street, alley or public grounds.

(12) Appointing local officers or commissions to regulate municipal affairs.

(13) Regulating the internal affairs of municipalities formed for local government and counties, except as otherwise in this Constitution provided.

The Legislature shall pass general laws providing for the cases enumerated in this paragraph, and for all other cases which, in its judgment, may be provided for by general laws. The Legislature shall pass no special act conferring corporate powers, but shall pass general laws under which corporations may be organized and corporate powers of every nature obtained, subject, nevertheless, to repeal or alteration at the will of the Legislature.

10. Upon petition by the governing body of any municipal corporation formed for local government, or of any county, and by

vote of two-thirds of all the members of each house, the Legislature may pass private, special or local laws regulating the internal affairs of the municipality or county. The petition shall be authorized in a manner to be prescribed by general law and shall specify the general nature of the law sought to be passed. Such law shall become operative only if it is adopted by ordinance of the governing body of the municipality or county or by vote of the legally qualified voters thereof. The Legislature shall prescribe in such law or by general law the method of adopting such law, and the manner in which the ordinance of adoption may be enacted or the vote taken, as the case may be.

11. The provisions of this Constitution and of any law concerning municipal corporations formed for local government, or concerning counties, shall be liberally construed in their favor. The powers of counties and such municipal corporations shall include not only those granted in express terms but also those of necessary or fair implication, or incident to the powers expressly conferred, or essential thereto, and not inconsistent with or prohibited by this Constitution or by law.

Section VIII

1. Members of the Legislature shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of New Jersey, and that I will faithfully discharge the duties of Senator (or member of the General Assembly) according to the best of my ability". Members-elect of the Senate or General Assembly are empowered to administer said oath or affirmation to each other.

2. Every officer of the Legislature shall, before he enters upon his duties, take and subscribe the following oath or affirmation: "I do solemnly promise and swear (or affirm) that I will faithfully, impartially and justly perform all the duties of the office of ....., to the best of my ability and understanding; that I will carefully preserve all records, papers, writings, or property entrusted to me for safe-keeping by virtue of my office, and make such disposition of the same as may be required by law".

Article V

EXECUTIVE

Section I

1. The executive power shall be vested in a Governor.

2. The Governor shall not be 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 office or position, of profit, under this State or the United States shall be Governor. If the Governor or person administering the office of Governor shall accept any other office or position, of profit, under this State or the United States, his office of Governor shall thereby be vacated. No Governor shall be elected 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 receiving the greatest number of votes shall be the Governor; but if two or more shall be equal and greatest in votes, one of them shall be elected Governor by the vote of a majority of all 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. The term of office of the Governor shall be four years, beginning at noon of the third Tuesday in January next following his election, and ending at noon of the third Tuesday in January four years thereafter. No person who has been elected Governor for two successive terms, including an unexpired term, 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.

6. 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, then upon such officers and in such order of succession as may be provided by law; until a new Governor shall be elected and qualify.

7. In the event of the failure of the Governor-elect to qualify, or of the absence from the State of a Governor in office, or his inability to discharge the duties of his office, or his impeachment, 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, removal, absence, inability or impeachment, then upon the Speaker of the General Assembly, for the time being; and in the event of his death, resignation, removal,

absence, inability or impeachment, 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 return to the State, or shall no longer be unable to discharge the duties of the office, or shall be acquitted, as the case may be, or until a new Governor shall be elected and qualify.

8. Whenever a Governor-elect shall have 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, or person administering the office, shall have remained continuously absent from the State, or shall have been continuously unable to discharge the duties of his office by reason of mental or physical disability, the office shall be deemed vacant. Such vacancy shall be determined by the Supreme Court upon presentment to it of a concurrent resolution declaring the ground of the vacancy, adopted by a vote of two-thirds of all the members of each house of the Legislature, and upon notice, hearing before the Court and proof of the existence of the vacancy.

9. In the event of a vacancy in the office of Governor, a Governor shall be elected to fill the unexpired term at the general election next 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 Govrnor is to be elected for a full term. A Governor elected for an unexpired term shall assume his office immediately upon his election.

10. The Governor shall receive for his services a salary, which shall be neither increased nor diminished during the period for which he shall have been elected.

11. The Governor shall take care that the laws be faithfully executed. To this end he shall have power, by appropriate action or proceeding in the courts brought in the name of the State, to enforce compliance with any constitutional or legislative mandate, or to restrain violation of any constitutional or legislative power or duty, by any officer, department or agency of the State; but this power shall not be construed to authorize any action or proceeding against the Legislature.

12. The Governor shall communicate to the Legislature, by message at the opening of each regular session and at such other times as he may deem necessary, the condition of the State, and shall in like manner recommend such measures as he may deem desirable. He may convene the Legislature, or the Senate alone, whenever in his opinion the public interest shall require. He shall

be the Commander-in-Chief of all the military and naval forces of the State. He shall grant commissions to all officers elected or appointed pursuant to this Constitution. 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.

13. The Governor may fill any vacancy occurring in any office during a recess of the Legislature, appointment to which may be made by the Governor with the advice and consent of the Senate, or by the Legislature in joint meeting. An ad interim appointment so made shall expire at the end of the next regular session of the Senate, unless a successor shall be sooner appointed and qualify; and after the end of the session no ad interim appointment to the same office shall be made unless the Governor shall have submitted to the Senate a nomination to the office during the session and the Senate shall have adjourned without confirming or rejecting it. No person nominated for any office shall be eligible for an ad interim appointment to such office if the nomination shall have failed of confirmation by the Senate.

14. (a) Every bill which shall have passed both houses 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 shall have originated, which shall enter the objections at large on its journal and proceed to reconsider it. If upon reconsideration, on or after the third day following the return of the bill, two-thirds of all the members of the house of origin shall agree to pass the bill, it shall be sent, together with the objections of the Governor, to the other house, by which it shall be reconsidered and if approved 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 a 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, unless the house of origin shall on that day be in adjournment. If on the tenth day the house of origin shall be in temporary 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 shall reconvene, unless the Governor shall on that day return the bill to that house.

(b) If on the tenth day the Legislature is in adjournment sine die, the bill shall become a law if the Governor shall sign it within forty-five days, Sundays excepted, after such adjournment. On the said forty-fifth day the bill shall become a law, notwithstanding the

failure of the Governor to sign it within the period last stated, unless at or before noon of that day he shall return it with his objections to the house of origin at a special session of the Legislature which shall convene on that day, without petition or call, for the sole purpose of acting pursuant to this paragraph upon bills returned by the Governor. At such special session a bill may be reconsidered beginning on the first day, in the manner provided in this paragraph for the reconsideration of bills, and if approved upon reconsideration by two-thirds of all the members of each house, it shall become a law. The Governor, in returning with his objections a bill for reconsideration at any general or special session of the Legislature, may recommend that an amendment or amendments specified by him be made in the bill, and in such case the Legislature may amend and re-enact the bill. If a bill be so amended and re-enacted, it shall be presented again to the Governor, but shall become a law only if he shall sign it within ten days after presentation; and no bill shall be returned by the Governor a second time. A special session of the Legislature shall not be convened pursuant to this paragraph whenever the forty-fifth day, Sundays excepted, after adjournment of a regular or special session shall fall on or after the last day of the legislative year in which such adjournment shall have been taken.

15. If any bill presented to the Governor shall contain one or more items of appropriation of money, he may object in whole or in part to any such item or items while approving 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 or part thereof to which he objects, and each item or part 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 thereof 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.

SECTION II

1. The Governor may grant pardons and reprieves in all cases other than impeachment and treason, and may suspend and remit fines and forfeitures. A commission or other body may be established

by law to aid and advise the Governor in the exercise of executive clemency.

2. A system for the granting of parole shall be provided by law.

SECTION III

1. Provision for organizing, inducting, training, arming, disciplining and regulating a militia shall be made by law, which shall conform to applicable standards established for the armed forces of the United States.

2. The Governor shall nominate and appoint all general and flag officers of the militia, with the advice and consent of the Senate. All other commissioned officers of the militia shall be appointed and commissioned by the Governor according to law.

SECTION IV

1. All executive and administrative officers, departments and instrumentalities of the State government, including the offices of Secretary of State and Attorney General, and their respective functions, powers and duties, shall be allocated by law among and within not more than twenty principal departments, in such manner as to group the same according to major purposes so far as practicable. Temporary commissions for special purposes may, however, be established by law and such commissions need not be allocated within a principal department.

2. Each principal department shall be under the supervision of the Governor. The head of each principal department shall be a single executive unless otherwise provided by law. Such single executives shall be nominated and appointed by the Governor, with the advice and consent of the Senate, to serve at the pleasure of the Governor during his term of office and until the appointment and qualification of their successors, except as herein otherwise provided with respect to the Secretary of State and the Attorney General.

3. The Secretary of State and the Attorney General shall be nominated and appointed by the Governor with the advice and consent of the Senate to serve during the term of office of the Governor.

4. Whenever a board, commission or other body shall be the head of a principal department, the members thereof shall be nominated and appointed by the Governor with the advice and consent of the Senate, and may be removed in the manner provided by law. Such a board, commission or other body may appoint a principal executive officer when authorized by law, but the appointment shall be subject to the approval of the Governor. Any principal executive officer so

appointed shall be removable by the Governor, upon notice and an opportunity to be heard.

5. The Governor may cause an investigation to be made of the conduct in office of any officer or employee who receives his compensation from the State of New Jersey, except a member, officer or employee of the Legislature or an officer elected by the Senate and General Assembly in joint meeting, or a judicial officer. He may require such officers or employees to submit to him a written statement or statements, under oath, of such information as the Governor may require relating to the conduct of their respective offices or employments. After notice, the service of charges and an opportunity to be heard at public hearing the Governor may remove any such officer or employee for cause. 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.

6. No rule or regulation made by any department, officer, agency or authority of this State, except such as relates to the organization or internal management of the State government or a part thereof, shall take effect until it is filed either with the Secretary of State or in such other manner as may be provided by law. The Legislature shall provide for the prompt publication of such rules and regulations.

ARTICLE VI

JUDICIAL

SECTION I

1. The judicial power shall be vested in a Supreme Court, a Superior Court, County Courts and inferior courts of limited jurisdiction. The inferior courts and their jurisdiction may from time to time be established, altered or abolished by law.

SECTION II

1. The Supreme Court shall consist of a Chief Justice and six Associate Justices. Five members of the court shall constitute a quorum. When necessary, the Chief Justice shall assign the Judge or Judges of the Superior Court, senior in service, as provided by rules of the Supreme Court, to serve temporarily in the Supreme Court. In case the Chief Justice is absent or unable to serve, a presiding Justice designated in accordance with rules of the Supreme Court shall serve temporarily in his stead.

2. The Supreme Court shall exercise appellate jurisdiction in the last resort in all causes provided in this Constitution.

3. The Supreme Court shall make rules governing the adminis-

tration and, subject to law, the practice and procedure in all courts in the State. The Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted.

SECTION III

1. The Superior Court shall consist of such number of Judges as may be authorized by law, but not less than twenty-four, each of whom shall exercise the powers of the court subject to rules of the Supreme Court.

2. The Superior Court shall have original general jurisdiction throughout the State in all causes.

3. The Superior Court shall be divided into an Appellate Division, a Law Division, and a Chancery Division. Each division shall have such Parts, consist of such number of Judges, and hear such causes, as may be provided by rules of the Supreme Court.

4. Subject to rules of the Supreme Court, the Law Division and the Chancery Division shall each exercise the powers and functions of the other division when the ends of justice so require, and legal and equitable relief shall be granted in any cause so that all matters in controversy between the parties may be completely determined.

SECTION IV

1. There shall be a County Court in each county, which shall have all the jurisdiction heretofore exercised by the Court of Common Pleas, Orphans' Court, Court of Oyer and Terminer, Court of Quarter Sessions, Court of Special Sessions and such other jurisdiction consistent with this Constitution as may be conferred by law.

2. There shall be a Judge of each County Court and such additional Judges as shall be provided by law, and they shall be appointed in the same manner as heretofore provided for Judges of the Court of Common Pleas.

3. Each Judge of the County Court may exercise the jurisdiction of the County Court.

4. The jurisdiction, powers and functions of the County Courts and of the Judges of the County Courts may be altered by law as the public good may require.

5. The County Courts, in civil causes including probate causes, within their jurisdiction, and subject to law, may grant legal and equitable relief so that all matters in controversy between the parties may be completely determined.

SECTION V

1. Appeals may be taken to the Supreme Court:

(a) In causes determined by the Appellate Division of the Superior Court involving a question arising under the Constitution of the United States or this State;

(b) In causes where there is a dissent in the Appellate Division of the Superior Court;

(c) In capital causes;

(d) On certification by the Supreme Court to the Superior Court and, where provided by rules of the Supreme Court, to the County Courts and the inferior courts; and

(e) In such causes as may be provided by law.

2. Appeals may be taken to the Appellate Division of the Superior Court from the Law and Chancery Divisions of the Superior Court, the County Courts and in such other causes as may be provided by law.

3. The Supreme Court and the Appellate Division of the Superior Court may exercise such original jurisdiction as may be necessary to the complete determination of any cause on review.

4. Prerogative writs are superseded and, in lieu thereof, review, hearing and relief shall be afforded in the Superior Court, on terms and in the manner provided by rules of the Supreme Court, as of right, except in criminal causes where such review shall be discretionary.

SECTION VI

1. The Governor shall nominate and appoint, with the advice and consent of the Senate, the Chief Justice and Associate Justices of the Supreme Court, the Judges of the Superior Court, the Judges of the County Courts and the judges of the inferior courts with jurisdiction extending to more than one municipality. No nomination to such an office shall be sent to the Senate for confirmation until after seven days' public notice by the Governor.

2. The Justices of the Supreme Court, the Judges of the Superior Court and the Judges of the County Courts shall each prior to his appointment have been admitted to the practice of the law in this State for at least ten years.

3. The Justices of the Supreme Court and the Judges of the Superior Court shall hold their offices for initial terms of seven years and upon reappointment shall hold their offices during good behavior. Such Justices and Judges shall be retired upon attaining the age of seventy years. Provisions for the pensioning of the Justices of the Supreme Court and the Judges of the Superior Court shall be made by law.

4. The Justices of the Supreme Court, the Judges of the Superior

Court and the Judges of the County Courts shall be subject to impeachment, and any judicial officer impeached shall not exercise his office until acquitted. The Judges of the Superior Court and the Judges of the County Courts shall also be subject to removal from office by the Supreme Court for such causes and in such manner as shall be provided by law.

5. Whenever the Supreme Court shall certify to the Governor that it appears that any Justice of the Supreme Court, Judge of the Superior Court or Judge of the County Court is so incapacitated as substantially to prevent him from performing his judicial duties, the Governor shall appoint a commission of three persons to inquire into the circumstances; and, on their recommendation, the Governor may retire the Justice or Judge from office, on pension as may be provided by law.

6. The Justices of the Supreme Court and the Judges of the Superior Court shall receive for their services such salaries as may be provided by law, which shall not be diminished during the term of their appointment. They shall not, while in office, engage in the practice of law or other gainful pursuit.

7. The Justices of the Supreme Court, the Judges of the Superior Court and the Judges of the County Courts shall hold no other office or position, of profit, under this State or the United States. Any such Justice or Judge who shall become a candidate for an elective public office shall thereby forfeit his judicial office.

Section VII

1. The Chief Justice of the Supreme Court shall be the administrative head of all the courts in the State. He shall appoint an Administrative Director to serve at his pleasure.

2. The Chief Justice of the Supreme Court shall assign Judges of the Superior Court to the Divisions and Parts of the Superior Court, and may from time to time transfer Judges from one assignment to another, as need appears. Assignments to the Appellate Division shall be for terms fixed by rules of the Supreme Court.

3. The Clerk of the Supreme Court and the Clerk of the Superior Court shall be appointed by the Supreme Court for such terms and at such compensation as shall be provided by law.

Article VII

PUBLIC OFFICERS AND EMPLOYEES

Section I

1. Every State officer, before entering upon the duties of his office, shall take and subscribe an oath or affirmation to support the Con-

stitution 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. 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.

3. 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 for the office or position, shall immediately upon receipt be paid into the treasury of the State, unless the compensation or fees shall be allowed or appropriated to him by law.

4. Any person before or after entering upon the duties of 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 as herein otherwise provided, 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.

6. The State Auditor shall be appointed by the Senate and General Assembly in joint meeting for a term of five years and until his successor shall be appointed and qualified. It shall be his duty to conduct post-audits of all transactions and accounts kept by or for all departments, offices and agencies of the State government, to report to the Legislature or to any committee thereof as shall be required by law, and to perform such other similar or related duties as shall, from time to time, be required of him by law.

Section II

1. 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 serve until the appointment and qualification of their respective successors.

2. County clerks, surrogates and sheriffs shall be elected by the people of their respective counties at general elections. The term of office of county clerks and surrogates shall be five years, and of sheriffs three years. Whenever a vacancy shall occur in any such office it shall be filled in the manner to be provided by law.

SECTION III

1. The Governor and all other State officers, while in office and for two years thereafter, shall be liable to impeachment for misdemeanor committed during their respective continuance in office.

2. The General Assembly shall have the sole power of impeachment by vote of a majority of all the members. All 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 the evidence." No person shall be convicted without the concurrence of two-thirds of all the members of the Senate. When the Governor is tried, the Chief Justice of the Supreme Court shall preside and the President of the Senate shall not participate in the trial.

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 VIII

TAXATION AND FINANCE

SECTION I

1. Property shall be assessed for taxation under general laws and by uniform rules. All real property assessed and taxed locally or by the State for allotment and payment to taxing districts shall be assessed according to the same standard of value; and such real property shall be taxed at the general tax rate of the taxing district in which the property is situated, for the use of such taxing district.

2. Exemption from taxation may be granted only by general laws. Until otherwise provided by law all exemptions from taxation validly granted and now in existence shall be continued. Exemptions from taxation may be altered or repealed, except those exempting real and personal property used exclusively for religious, educational, charitable or cemetery purposes, as defined by law, and owned by any corporation or association organized and conducted exclusively for one or more of such purposes and not operating for profit.

3. Any citizen and resident of this State now or hereafter honorably discharged or released under honorable circumstances from active service in time of war in any branch of the armed forces of the United States, shall be exempt from taxation on real and personal property to an aggregate assessed valuation not exceeding five hundred dollars. Any person hereinabove described who has been

or shall be declared by the United States Veterans Administration, or its successor, to have a service-connected disability, shall be entitled to such further exemption from taxation as from time to time may be provided by law. The widow of any citizen and resident of this State who has met or shall meet his death on active duty in time of war in any such service shall be entitled, during her widowhood, to the exemption in this paragraph provided for honorably discharged veterans and to such further exemptions as from time to time may be provided by law.

SECTION II

1. The credit of the State shall not be directly or indirectly loaned in any case.

2. No money shall be drawn from the State treasury but for appropriations made by law. All moneys for the support of the state government and for all other State purposes as far as can be ascertained or reasonably foreseen, shall be provided for in one general appropriation law covering one and the same fiscal year; except that when a change in the 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 Governor.

3. The Legislature shall not, in any manner, create in any fiscal year a debt or debts, liability or liabilities of the State, which together with any previous debts or liabilities shall exceed at any time one per centum of the total amount appropriated by the general appropriation law for that fiscal year, unless the same shall be authorized by a law for some single object or work distinctly specified therein. Regardless of any limitation relating to taxation in this Constitution, such law shall provide the ways and means, exclusive of loans, to pay the interest of such debt or liability as it falls due, and also to pay and discharge the principal thereof within thirty-five years from the time it is contracted; and the law shall not be repealed until such debt or liability and the interest thereon are fully paid and discharged. No such law shall take effect until it shall have been submitted to the people at a general election and approved by a majority of the legally qualified voters of the State voting thereon. All money to be raised by the authority of such law shall be applied only to the specific object stated therein, and to the payment of the debt thereby created. This paragraph shall not be

construed to refer to any money that has been or may be deposited with this State by the government of the United States. Nor shall anything in this paragraph contained apply to the creation of any debts or liabilities for purposes of war, or to repel invasion, or to suppress insurrection or to meet an emergency caused by disaster or act of God.

SECTION III

1. The clearance, replanning, development or redevelopment of blighted areas shall be a public purpose and public use, for which private property may be taken or acquired. Municipal, public or private corporations may be authorized by law to undertake such clearance, replanning, development or redevelopment; and improvements made for these purposes and uses, or for any of them, may be exempted from taxation, in whole or in part, for a limited period of time during which the profits of and dividends payable by any private corporation enjoying such tax exemption shall be limited by law. The conditions of use, ownership, management and control of such improvements shall be regulated by law.

2. 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.

3. No donation of land or appropriation of money shall be made by the State or any county or municipal corporation to or for the use of any society, association or corporation whatever.

SECTION IV

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 public 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 free public 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.

3. The Legislature may, within reasonable limitations as to distance to be prescribed, provide for the transportation of children within the ages of five to eighteen years inclusive to and from any school.

ARTICLE IX

AMENDMENTS

1. Any specific amendment or amendments to this Constitution may be proposed in the Senate or General Assembly. At least twenty calendar days prior to the first vote thereon in the house in which such amendment or amendments are first introduced, the same shall be printed and placed on the desks of the members of each house. Thereafter and prior to such vote a public hearing shall be held thereon. If the proposed amendment or amendments or any of them shall be agreed to by three-fifths of all the members of each of the respective houses, the same shall be submitted to the people. If the same or any of them shall be agreed to by less than three-fifths but nevertheless by a majority of all the members of each of the respective houses, such proposed amendment or amendments shall be referred to the Legislature in the next legislative year; and if in that year the same or any of them shall be agreed to by a majority of all the members of each of the respective houses, then such amendment or amendments shall be submitted to the people.

2. The proposed amendment or amendments shall be entered on the journal of each house with the yeas and nays of the members voting thereon.

3. The Legislature shall cause the proposed amendment or amendments to be published at least once in one or more newspapers of each county, if any be published therein, not less than three months prior to submission to the people.

4. The proposed amendment or amendments shall then be submitted to the people at the next general election in the manner and form provided by the Legislature.

5. If more than one amendment be submitted, they shall be submitted in such manner and form that the people may vote for or against each amendment separately and distinctly.

6. If the proposed amendment or amendments or any of them shall be approved by a majority of the legally qualified voters of the State voting thereon, the same shall become part of the Constitution on the thirtieth day after the election, unless otherwise provided in the amendment or amendments.

7. If at the election a proposed amendment shall not be approved

neither such proposed amendment nor one to effect the same or substantially the same change in the Constitution shall be submitted to the people before the third general election thereafter.

ARTICLE X

GENERAL PROVISIONS

1. The seal of the State shall be kept by the Governor, or person administering the office of Governor, and used by him officially, and shall be called the Great Seal of the State of New Jersey.

2. All grants and commissions shall be in the name and by the authority of the State of New Jersey, sealed with the Great Seal, signed by the Governor, or person administering the office of Governor, and countersigned by the Secretary of State, and shall run thus: "The State of New Jersey, to..... Greeting".

3. All writs shall be in the name of the State. All indictments shall conclude: "against the peace of this State, the government and dignity of the same".

4. Wherever in this Constitution the term "person," "persons," "people" or any personal pronoun is used, the same shall be taken to include both sexes.

5. Except as herein otherwise provided, this Constitution shall take effect on the first day of January in the year of our Lord one thousand nine hundred and forty-eight.

ARTICLE XI

SCHEDULE

SECTION I

1. This Constitution shall supersede the Constitution of one thousand eight hundred and forty-four as amended.

2. The Legislature shall enact all laws necessary to make this Constitution fully effective.

3. All law, statutory and otherwise, all rules and regulations of administrative bodies and all rules of courts in force at the time this Constitution or any Article thereof takes effect shall remain in full force until they expire or are superseded, altered or repealed by this Constitution or otherwise.

4. Except as otherwise provided by this Constitution, all writs, actions, causes of action, prosecutions, contracts, claims and rights of individuals and of bodies corporate, and of the State, and all charters and franchises shall continue unaffected notwithstanding the taking effect of any Article of this Constitution.

5. All indictments found before the taking effect of this Constitution or any Article may be proceeded upon. After the taking effect thereof, indictments for crime and complaints for offenses committed prior thereto may be found, made and proceeded upon in the courts having jurisdiction thereof.

SECTION II

1. The first Legislature under this Constitution shall meet on the second Tuesday in January, in the year one thousand nine hundred and forty-eight.

2. Each member of the General Assembly, elected at the election in the year one thousand nine hundred and forty-seven, shall hold office for a term beginning at noon of the second Tuesday in January in the year one thousand nine hundred and forty-eight and ending at noon of the second Tuesday in January in the year one thousand nine hundred and fifty. Each member of the General Assembly elected thereafter shall hold office for the term provided by this Constitution.

3. Each member of the Senate elected in the years one thousand nine hundred and forty-five and one thousand nine hundred and forty-six shall hold office for the term for which he was elected. Each member of the Senate elected in the year one thousand nine hundred and forty-seven shall hold office for a term of four years beginning at noon of the second Tuesday in January following his election. The seats in the Senate which would have been filled in the years hereinafter designated had this Constitution not been adopted shall be filled by election as follows: of those seats which would have been filled by election in the year one thousand nine hundred and forty-eight, three seats, as chosen by the Senate in the year one thousand nine hundred and forty-eight, shall be filled by election in that year for terms of five years, and three, as so chosen, shall be filled by election in that year for terms of three years, and those seats which would have been filled by election in the year one thousand nine hundred and forty-nine shall be filled by election in that year for terms of four years, so that ten seats in the Senate shall be filled by election in the year one thousand nine hundred and forty-nine and every fourth year thereafter for terms of four years, and the members of the Senate so elected and their successors shall constitute one class to be elected as prescribed in paragraph 2 of Section II of Article IV of this Constitution, and eleven seats shall be filled by election in the year one thousand nine hundred and fifty-one and every fourth year thereafter for terms of four years, and the members of the Senate so elected and their successors shall constitute the other class to be elected as prescribed in said paragraph of this Constitution.

4. The provisions of Paragraph 1 of Section V of Article IV of this Constitution shall not prohibit the nomination, election or appointment of any member of the Senate or General Assembly first organized under this Constitution, to any State civil office or position created by this Constitution or created during his first term as such member.

SECTION III

1. A Governor shall be elected for a full term at the general election to be held in the year one thousand nine hundred and forty-nine and every fourth year thereafter.

2. The taking effect of this Constitution or any provision thereof shall not of itself affect the tenure, term, status or compensation of any person then holding any public office, position or employment in this State, except as provided in this Constitution. Unless otherwise specifically provided in this Constitution, all constitutional officers in office at the time of its adoption shall continue to exercise the authority of their respective offices during the term for which they shall have been elected or appointed and until the qualification of their successors respectively. Upon the taking effect of this Constitution all officers of the militia shall retain their commissions subject to the provisions of Article V, Section III.

3. The Legislature, in compliance with the provisions of this Constitution, shall prior to the first day of July, one thousand nine hundred and forty-nine, and may from time to time thereafter, allocate by law the executive and administrative offices, departments and instrumentalities of the State government among and within the principal departments. 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 for consideration to complete such allocation; and no other matters shall be considered at such session.

SECTION IV

1. Subsequent to the adoption of this Constitution the Governor shall nominate and appoint, with the advice and consent of the Senate, a Chief Justice and six Associate Justices of the new Supreme Court from among the persons then being the Chancellor, the Chief Justice and Associate Justices of the old Supreme Court, the Vice Chancellors and Circuit Court Judges. The remaining judicial officers enumerated and such Judges of the Court of Errors and Appeals as have been admitted to the practice of law in this State for at least ten years, and are in office on the adoption of the Constitution, shall constitute the Judges of the Superior Court. The Justices of the new Supreme Court and the Judges of the Superior

Court so designated shall hold office each for the period of his term which remains unexpired at the time the Constitution is adopted; and if reappointed he shall hold office during good behavior. No Justice of the new Supreme Court or Judge of the Superior Court shall hold his office after attaining the age of seventy years, except, however, that such Justice or Judge may complete the period of his term which remains unexpired at the time the Constitution is adopted.

2. The Judges of the Courts of Common Pleas shall constitute the Judges of the County Courts, each for the period of his term which remains unexpired at the time the Judicial Article of this Constitution takes effect.

3. The Court of Errors and Appeals, the present Supreme Court, the Court of Chancery, the Prerogative Court and the Circuit Courts shall be abolished when the Judicial Article of this Constitution takes effect; and all their jurisdiction, functions, powers and duties shall be transferred to and divided between the new Supreme Court and the Superior Court according as jurisdiction is vested in each of them under this Constitution.

4. Except as otherwise provided in this Constitution and until otherwise provided by law, all courts now existing in this State, other than those abolished in paragraph 3 hereof, shall continue as if this Constitution had not been adopted, provided, however, that when the Judicial Article of this Constitution takes effect, the jurisdiction, powers and functions of the Court of Common Pleas, Orphans' Court, Court of Oyer and Terminer, Court of Quarter Sessions and Court of Special Sessions of each county, the judicial officers, clerks and employees thereof, and the causes pending therein and their files, shall be transferred to the County Court of the county. All statutory provisions relating to the county courts aforementioned of each county and to the Judge or Judges thereof shall apply to the new County Court of the county and the Judge or Judges thereof, unless otherwise provided by law. Until otherwise provided by law and except as aforestated, the judicial officers, surrogates and clerks of all courts now existing, other than those abolished in paragraph 3 hereof, and the employees of said officers, clerks, surrogates and courts shall continue in the exercise of their duties, as if this Constitution had not been adopted.

5. The Supreme Court shall make rules governing the administration and practice and procedure of the County Courts; and the Chief Justice of the Supreme Court shall be the administrative head of these courts with power to assign any Judge thereof of any county to sit temporarily in the Superior Court or to sit temporarily without the county in a County Court.

6. The Advisory Masters appointed to hear matrimonial proceedings and in office on the adoption of this Constitution shall, each for the period of his term which remains unexpired at the time the Constitution is adopted, continue so to do as Advisory Masters to the Chancery Division of the Superior Court, unless otherwise provided by law.

7. All Special Masters in Chancery, Masters in Chancery, Supreme Court Commissioners and Supreme Court Examiners shall, until otherwise provided by rules of the Supreme Court, continue respectively as Special Masters, Masters, Commissioners and Examiners of the Superior Court, with appropriate similar functions and powers as if this Constitution had not been adopted.

8. When the Judicial Article of this Constitution takes effect:

(a) All causes and proceedings of whatever character pending in the Court of Errors and Appeals shall be transferred to the new Supreme Court;

(b) All causes and proceedings of whatever character pending on appeal or writ of error in the present Supreme Court and in the Prerogative Court and all pending causes involving the prerogative writs shall be transferred to the Appellate Division of the Superior Court;

(c) All causes and proceedings of whatever character pending in the Supreme Court other than those stated shall be transferred to the Superior Court;

(d) All causes and proceedings of whatever character pending in the Prerogative Court other than those stated shall be transferred to the Chancery Division of the Superior Court;

(e) All causes and proceedings of whatever character pending in all other courts which are abolished shall be transferred to the Superior Court.

For the purposes of this paragraph, paragraph 4 and paragraph 9, a cause shall be deemed to be pending notwithstanding that an adjudication has been entered therein, provided the time limited for review has not expired or the adjudication reserves to any party the right to apply for further relief.

9. The files of all causes pending in the Court of Errors and Appeals shall be delivered to the Clerk of the new Supreme Court; and the files of all causes pending in the present Supreme Court, the Court of Chancery and the Prerogative Court shall be delivered to the Clerk of the Superior Court. All other files, books, papers, records and documents and all property of the Court of Errors and Appeals, the present Supreme Court, the Prerogative Court, the

Chancellor and the Court of Chancery, or in their custody, shall be disposed of as shall be provided by law.

10. Upon the taking effect of the Judicial Article of this Constitution, all the functions, powers and duties conferred by statute, rules or otherwise upon the Chancellor, the Ordinary, and the Justices and Judges of the courts abolished by this Constitution, to the extent that such functions, powers and duties are not inconsistent with this Constitution, shall be transferred to and may be exercised by Judges of the Superior Court until otherwise provided by law or rules of the new Supreme Court; excepting that such statutory powers not related to the administration of justice as are then vested in any such judicial officers shall, after the Judicial Article of this Constitution takes effect and until otherwise provided by law, be transferred to and exercised by the Chief Justice of the new Supreme Court.

11. Upon the taking effect of the Judicial Article of this Constitution, the Clerk of the Supreme Court shall become the Clerk of the new Supreme Court and shall serve as such Clerk until the expiration of the term for which he was appointed as Clerk of the Supreme Court, and all employees of the Supreme Court as previously constituted, of the Clerk thereof and of the Chief Justice and the Justices thereof, of the Circuit Courts and the Judges thereof and of the Court of Errors and Appeals shall be transferred to appropriate similar positions with similar compensation and civil service status under the Clerk of the new Supreme Court or the new Supreme Court, or the Clerk of the Superior Court or the Superior Court, which shall be provided by law.

12. Upon the taking effect of the Judicial Article of this Constitution, the Clerk in Chancery shall become the Clerk of the Superior Court and shall serve as such Clerk until the expiration of the term for which he was appointed as Clerk in Chancery, and all employees of the Clerk in Chancery, the Court of Chancery, the Chancellor and the several Vice Chancellors shall be transferred to appropriate similar positions with similar compensation and civil service status under the Clerk of the Superior Court or the Superior Court, which shall be provided by law.

13. Appropriations made by law for judicial expenditures during the fiscal year one thousand nine hundred and forty-eight—one thousand nine hundred and forty-nine may be transferred to similar objects and purposes required by the Judicial Article.

14. The Judicial Article of this Constitution shall take effect on the fifteenth day of September, one thousand nine hundred and forty-eight, except that the Governor, with the advice and consent

of the Senate, shall have the power to fill vacancies arising prior thereto in the new Supreme Court and the Superior Court; and except further that any provision of this Constitution which may require any act to be done prior thereto or in preparation therefor shall take effect immediately upon the adoption of this Constitution.

Done in Convention, at Rutgers University, the State University of New Jersey, New Brunswick, on the tenth day of September, in the year of our Lord one thousand nine hundred and forty-seven, and of the independence of the United States of America the one hundred and seventy-second.

. . . . . .

President of the Convention.

. . . . . .

Secretary of the Convention.

FINAL DRAFT OF THE CONSTITUTION

submitted to

THE PEOPLE OF NEW JERSEY

by the

CONSTITUTIONAL CONVENTION OF NEW JERSEY

for their adoption or rejection at the

GENERAL ELECTION ON NOVEMBER 4, 1947

CONSTITUTION OF NEW JERSEY
1947

A CONSTITUTION agreed upon by the delegates of the people of New Jersey, in Convention, begun at Rutgers University, the State University of New Jersey, in New Brunswick, on the twelfth day of June, and continued to the tenth day of September, in the year of our Lord one thousand nine hundred and forty-seven.

We, the people of the State of New Jersey, grateful to Almighty God for the civil and religious liberty which He hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavors to secure and transmit the same unimpaired to succeeding generations, do ordain and establish this Constitution.

ARTICLE I

RIGHTS AND PRIVILEGES

1. All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.

2. All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right at all times to alter or reform the same, whenever the public good may require it.

3. No person shall be deprived of the inestimable privilege of worshipping Almighty God in a manner agreeable to the dictates of

his own conscience; nor under any pretense whatever be compelled to attend any place of worship contrary to his faith and judgment; nor shall any person be obliged to pay tithes, taxes, or other rates for building or repairing any church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right, or has deliberately and voluntarily engaged to perform.

4. There shall be no establishment of one religious sect in preference to another; no religious or racial test shall be required as a qualification for any office or public trust.

5. No person shall be denied the enjoyment of any civil or military right, nor be discriminated against in the exercise of any civil or military right, nor be segregated in the militia or in the public schools, because of religious principles, race, color, ancestry or national origin.

6. Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press. In all prosecutions or indictments for libel, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

7. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the papers and things to be seized.

8. No person shall be held to answer for a criminal offense, unless on the presentment or indictment of a grand jury, except in cases of impeachment, or in cases now prosecuted without indictment, or arising in the army or navy or in the militia, when in actual service in time of war or public danger.

9. The right of trial by jury shall remain inviolate; but the Legislature may authorize the trial of civil causes by a jury of six persons when the matter in dispute does not exceed fifty dollars. The Legislature may provide that in any civil cause a verdict may be rendered by not less than five-sixths of the jury. The Legislature may authorize the trial of the issue of mental incompetency without a jury.

10. In all criminal prosecutions the accused shall have the right to a speedy and public trial by an impartial jury; to be informed of

the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel in his defense.

11. No person shall, after acquittal, be tried for the same offense. All persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses when the proof is evident or presumption great.

12. Excessive bail shall not be required, excessive fines shall not be imposed, and cruel and unusual punishments shall not be inflicted.

13. No person shall be imprisoned for debt in any action, or on any judgment founded upon contract, unless in cases of fraud; nor shall any person be imprisoned for a militia fine in time of peace.

14. The privilege of the writ of habeas corpus shall not be suspended, unless in case of rebellion or invasion the public safety may require it.

15. The military shall be in strict subordination to the civil power.

16. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, except in a manner prescribed by law.

17. Treason against the State shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

18. The people have the right freely to assemble together, to consult for the common good, to make known their opinions to their representatives, and to petition for redress of grievances.

19. Persons in private employment shall have the right to organize and bargain collectively. Persons in public employment shall have the right to organize, present to and make known to the State, or any of its political subdivisions or agencies, their grievances and proposals through representatives of their own choosing.

20. Private property shall not be taken for public use without just compensation. Individuals or private corporations shall not be authorized to take private property for public use without just compensation first made to the owners.

21. This enumeration of rights and privileges shall not be construed to impair or deny others retained by the people.

ARTICLE II

ELECTIONS AND SUFFRAGE

1. General elections shall be held annually on the first Tuesday after the first Monday in November; but the time of holding such elections may be altered by law. The Governor and members of the Legislature shall be chosen at general elections. Local elective officers shall be chosen at general elections or at such other times as shall be provided by law.

2. All questions submitted to the people of the entire State shall be voted upon at general elections.

3. Every citizen of the United States, of the age of twenty-one years, who shall have been a resident of this State one year, and of the county in which he claims his vote five months, next before the election, shall be entitled to vote for all officers that now are or hereafter may be elective by the people, and upon all questions which may be submitted to a vote of the people.

4. In time of war no elector in the military service of the State or in the armed forces of the United States shall be deprived of his vote by reason of absence from his election district. The Legislature may provide for absentee voting by members of the armed forces of the United States in time of peace. The Legislature may provide the manner in which and the time and place at which such absent electors may vote, and for the return and canvass of their votes in the election district in which they respectively reside.

5. No person in the military, naval or marine service of the United States shall be considered a resident of this State, by being stationed in any garrison, barrack, or military or naval place or station within this State.

6. No idiot or insane person shall enjoy the right of suffrage.

7. The Legislature may pass laws to deprive persons of the right of suffrage who shall be convicted of such crimes as it may designate. Any person so deprived, when pardoned or otherwise restored by law to the right of suffrage, shall again enjoy that right.

ARTICLE III

DISTRIBUTION OF THE POWERS OF GOVERNMENT

1. The powers of the government shall be divided among three distinct branches, the legislative, executive, and judicial. No person or persons belonging to or constituting one branch shall exercise any of the powers properly belonging to either of the others, except as expressly provided in this Constitution.

ARTICLE IV

LEGISLATIVE

SECTION I

1. The legislative power shall be vested in a Senate and General Assembly.

2. No person shall be a member of the Senate who shall not have attained the age of thirty years, and have been a citizen and resident of the State for four years, and of the county for which he shall be elected one year, next before his election. No person shall be a member of the General Assembly who shall not have attained the age of twenty-one years, and have been a citizen and resident of the State for two years, and of the county for which he shall be elected one year, next before his election. No person shall be eligible for membership in the Legislature unless he be entitled to the right of suffrage.

3. The Senate and General Assembly shall meet and organize separately at noon on the second Tuesday in January of each year, at which time the legislative year shall commence.

4. Special sessions of the Legislature shall be called by the Governor upon petition of a majority of all the members of each house and may be called by the Governor whenever in his opinion the public interest shall require.

SECTION II

1. The Senate shall be composed of one Senator from each county, elected by the legally qualified voters of the county, for a term beginning at noon of the second Tuesday in January next following his election and ending at noon of the second Tuesday in January four years thereafter.

2. The members of the Senate shall be elected in two classes so that, as nearly as may be, one-half of all the members shall be elected biennially.

SECTION III

1. The General Assembly shall be composed of members elected biennially by the legally qualified voters of the counties, respectively, for terms beginning at noon of the second Tuesday in January next following their election and ending at noon of the second Tuesday in January two years thereafter. The members of the General Assembly shall be apportioned among the several counties as nearly as may be according to the number of their inhabitants, but each county shall at all times be entitled to one member and the whole

number of members shall never exceed sixty. The present apportionment shall continue until the next census of the United States shall have been taken. Apportionment of the members of the General Assembly shall be made by the Legislature at the first session after the next and every subsequent census, and each apportionment when made shall remain unaltered until the following census shall have been taken.

SECTION IV

1. Any vacancy in the Legislature occasioned by death, resignation or otherwise shall be filled by election for the unexpired term only, as may be provided by law. Each house shall direct a writ of election to fill any vacancy in its membership; but if the vacancy shall occur during a recess of the Legislature, the writ may be issued by the Governor, as may be provided by law.

2. Each house shall be the judge of elections, returns and qualifications of its own members, and a majority of all its members shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

3. Each house shall choose its own officers, determine the rules of its proceedings, and punish its members for disorderly behavior. It may expel a member with the concurrence of two-thirds of all its members.

4. Each house shall keep a journal of its proceedings, and from time to time publish the same. The yeas and nays of the members of either house on any question shall, on demand of one-fifth of those present, be entered on the journal.

5. Neither house, during the session of the Legislature, shall, without the consent of the other, adjourn for more than three days, or to any other place than that in which the two houses shall be sitting.

6. All bills and joint resolutions shall be read three times in each house before final passage. No bill or joint resolution shall be read a third time in either house until after the intervention of one full calendar day following the day of the second reading; but if either house shall resolve by vote of three-fourths of all its members, signified by yeas and nays entered on the journal, that a bill or joint resolution is an emergency measure, it may proceed forthwith from second to third reading. No bill or joint resolution shall pass, unless there shall be a majority of all the members of each body personally present and agreeing thereto, and the yeas and nays of the members voting on such final passage shall be entered on the journal.

7. Members of the Senate and General Assembly shall receive annually, during the term for which they shall have been elected and while they shall hold their office, such compensation as shall, from time to time, be fixed by law and no other allowance or emolument, directly or indirectly, for any purpose whatever. The President of the Senate and the Speaker of the General Assembly, each by virtue of his office, shall receive an additional allowance, equal to one-third of his compensation as a member.

8. The compensation of members of the Senate and General Assembly shall be fixed at the first session of the Legislature held after this Constitution takes effect, and may be increased or decreased by law from time to time thereafter, but no increase or decrease shall be effective until the legislative year following the next general election for members of the General Assembly.

9. Members of the Senate and General Assembly shall, in all cases except treason and high misdemeanor, be privileged from arrest during their attendance at the sitting of their respective houses, and in going to and returning from the same; and for any statement, speech or debate in either house or at any meeting of a legislative committee, they shall not be questioned in any other place.

Section V

1. No member of the Senate or General Assembly, during the term for which he shall have been elected, shall be nominated, elected or appointed to any State civil office or position, of profit, which shall have been created by law, or the emoluments whereof shall have been increased by law, during such term. The provisions of this paragraph shall not prohibit the election of any person as Governor or as a member of the Senate or General Assembly.

2. The Legislature may appoint any commission, committee or other body whose main purpose is to aid or assist it in performing its functions. Members of the Legislature may be appointed to serve on any such body.

3. If any member of the Legislature shall become a member of Congress or shall accept any Federal or State office or position, of profit, his seat shall thereupon become vacant.

4. No member of Congress, no person holding any Federal or State office or position, of profit, and no judge of any court shall be entitled to a seat in the Legislature.

5. Neither the Legislature nor either house thereof shall elect or appoint any executive, administrative or judicial officer except the State Auditor.

Section VI

1. All bills for raising revenue shall originate in the General Assembly; but the Senate may propose or concur with amendments, as on other bills.

2. The Legislature may enact general laws under which municipalities, other than counties, may adopt zoning ordinances limiting and restricting to specified districts and regulating therein, buildings and structures, according to their construction, and the nature and extent of their use, and the nature and extent of the uses of land, and the exercise of such authority shall be deemed to be within the police power of the State. Such laws shall be subject to repeal or alteration by the Legislature.

3. Any agency or political subdivision of the State or any agency of a political subdivision thereof, which may be empowered to take or otherwise acquire private property for any public highway, parkway, airport, place, improvement, or use, may be authorized by law to take or otherwise acquire a fee simple absolute or any lesser interest, and may be authorized by law to take or otherwise acquire a fee simple absolute in, easements upon, or the benefit of restrictions upon, abutting property to preserve and protect the public highway, parkway, airport, place, improvement, or use; but such taking shall be with just compensation.

Section VII

1. No divorce shall be granted by the Legislature.

2. No gambling of any kind shall be authorized by the Legislature unless the specific kind, restrictions and control thereof have been heretofore submitted to, and authorized by a majority of the votes cast by, the people at a special election or shall hereafter be submitted to, and authorized by a majority of the votes cast thereon by, the legally qualified voters of the State voting at a general election.

3. The Legislature shall not pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or depriving a party of any remedy for enforcing a contract which existed when the contract was made.

4. To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title. This paragraph shall not invalidate any law adopting or enacting a compilation, consolidation, revision, or rearrangement of all or parts of the statutory law.

5. No law shall be revived or amended by reference to its title only, but the act revived, or the section or sections amended, shall be inserted at length. No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of the act or which shall enact that any existing law, or any part thereof, shall be applicable, except by inserting it in such act.

6. The laws of this State shall begin in the following style: "Be it enacted by the Senate and General Assembly of the State of New Jersey".

7. No general law shall embrace any provision of a private, special or local character.

8. No private, special or local law shall be passed unless public notice of the intention to apply therefor, and of the general object thereof, shall have been previously given. Such notice shall be given at such time and in such manner and shall be so evidenced and the evidence thereof shall be so preserved as may be provided by law.

9. The Legislature shall not pass any private, special or local laws:

(1) Authorizing the sale of any lands belonging in whole or in part to a minor or minors or other persons who may at the time be under any legal disability to act for themselves.

(2) Changing the law of descent.

(3) Providing for change of venue in civil or criminal causes.

(4) Selecting, drawing, summoning or empaneling grand or petit jurors.

(5) Creating, increasing or decreasing the emoluments, term or tenure rights of any public officers or employees.

(6) Relating to taxation or exemption therefrom.

(7) Providing for the management and control of free public schools.

(8) Granting to any corporation, association or individual any exclusive privilege, immunity or franchise whatever.

(9) Granting to any corporation, association or individual the right to lay down railroad tracks.

(10) Laying out, opening, altering, constructing, maintaining and repairing roads or highways.

(11) Vacating any road, town plot, street, alley or public grounds.

(12) Appointing local officers or commissions to regulate municipal affairs.

(13) Regulating the internal affairs of municipalities formed for local government and counties, except as otherwise in this Constitution provided.

The Legislature shall pass general laws providing for the cases enumerated in this paragraph, and for all other cases which, in its judgment, may be provided for by general laws. The Legislature shall pass no special act conferring corporate powers, but shall pass general laws under which corporations may be organized and corporate powers of every nature obtained, subject, nevertheless, to repeal or alteration at the will of the Legislature.

10. Upon petition by the governing body of any municipal corporation formed for local government, or of any county, and by vote of two-thirds of all the members of each house, the Legislature may pass private, special or local laws regulating the internal affairs of the municipality or county. The petition shall be authorized in a manner to be prescribed by general law and shall specify the general nature of the law sought to be passed. Such law shall become operative only if it is adopted by ordinance of the governing body of the municipality or county or by vote of the legally qualified voters thereof. The Legislature shall prescribe in such law or by general law the method of adopting such law, and the manner in which the ordinance of adoption may be enacted or the vote taken, as the case may be.

11. The provisions of this Constitution and of any law concerning municipal corporations formed for local government, or concerning counties, shall be liberally construed in their favor. The powers of counties and such municipal corporations shall include not only those granted in express terms but also those of necessary or fair implication, or incident to the powers expressly conferred, or essential thereto, and not inconsistent with or prohibited by this Constitution or by law.

SECTION VIII

1. Members of the Legislature shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of New Jersey, and that I will faithfully discharge the duties of Senator (or member of the General Assembly) according to the best of my ability". Members-elect of the Senate or General Assembly are empowered to administer said oath or affirmation to each other.

2. Every officer of the Legislature shall, before he enters upon his

duties, take and subscribe the following oath or affirmation: "I do solemnly promise and swear (or affirm) that I will faithfully, impartially and justly perform all the duties of the office of ....., to the best of my ability and understanding; that I will carefully preserve all records, papers, writings, or property entrusted to me for safe-keeping by virtue of my office, and make such disposition of the same as may be required by law".

ARTICLE V

EXECUTIVE

SECTION 1

1. The executive power shall be vested in a Governor.

2. The Governor shall not be 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 office or position, of profit, under this State or the United States shall be Governor. If the Governor or person administering the office of Governor shall accept any other office or position, of profit, under this State or the United States, his office of Governor shall thereby be vacated. No Governor shall be elected 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 receiving the greatest number of votes shall be the Governor; but if two or more shall be equal and greatest in votes, one of them shall be elected Governor by the vote of a majority of all 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. The term of office of the Governor shall be four years, beginning at noon of the third Tuesday in January next following his election, and ending at noon of the third Tuesday in January four years thereafter. No person who has been elected Governor for two successive terms, including an unexpired term, 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.

6. 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, then upon such officers and in such order of succession as may be provided by law; until a new Governor shall be elected and qualify.

7. In the event of the failure of the Governor-elect to qualify, or of the absence from the State of a Governor in office, or his inability to discharge the duties of his office, or his impeachment, the functions, powers, duties and emoluments to the office shall devolve upon the President of the Senate, for the time being; and in the event of his death, resignation, removal, absence, inability or impeachment, then upon the Speaker of the General Assembly, for the time being; and in the event of his death, resignation, removal, absence, inability or impeachment, 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 return to the State, or shall no longer be unable to discharge the duties of the office, or shall be acquitted, as the case may be, or until a new Governor shall be elected and qualify.

8. Whenever a Governor-elect shall have 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, or person administering the office, shall have remained continuously absent from the State, or shall have been continuously unable to discharge the duties of his office by reason of mental or physical disability, the office shall be deemed vacant. Such vacancy shall be determined by the Supreme Court upon presentment to it of a concurrent resolution declaring the ground of the vacancy, adopted by a vote of two-thirds of all the members of each house of the Legislature, and upon notice, hearing before the Court and proof of the existence of the vacancy.

9. In the event of a vacancy in the office of Governor, a Governor shall be elected to fill the unexpired term at the general election next 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 shall assume his office immediately upon his election.

10. The Governor shall receive for his services a salary, which shall be neither increased nor diminished during the period for which he shall have been elected.

11. The Governor shall take care that the laws be faithfully executed. To this end he shall have power, by appropriate action or proceeding in the courts brought in the name of the State, to enforce compliance with any constitutional or legislative mandate, or to restrain violation of any constitutional or legislative power or duty, by any officer, department or agency of the State; but this power shall not be construed to authorize any action or proceeding against the Legislature.

12. The Governor shall communicate to the Legislature, by message at the opening of each regular session and at such other times as he may deem necessary, the condition of the State, and shall in like manner recommend such measures as he may deem desirable. He may convene the Legislature, or the Senate alone, whenever in his opinion the public interest shall require. He shall be the Commander-in-Chief of all the military and naval forces of the State. He shall grant commissions to all officers elected or appointed pursuant to this Constitution. 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.

13. The Governor may fill any vacancy occurring in any office during a recess of the Legislature, appointment to which may be made by the Governor with the advice and consent of the Senate, or by the Legislature in joint meeting. An ad interim appointment so made shall expire at the end of the next regular session of the Senate, unless a successor shall be sooner appointed and qualify; and after the end of the session no ad interim appointment to the same office shall be made unless the Governor shall have submitted to the Senate a nomination to the office during the session and the Senate shall have adjourned without confirming or rejecting it. No person nominated for any office shall be eligible for an ad interim appointment to such office if the nomination shall have failed of confirmation by the Senate.

14. (a) Every bill which shall have passed both houses 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 shall have originated, which shall enter the objections at large on its journal and proceed to reconsider it. If upon reconsideration, on or after the third day following the return of the bill, two-thirds of all the members of the house of origin shall agree to pass the bill, it shall be sent, together with the objections of the Governor, to the other house, by which it shall be reconsidered and if approved 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 a 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, unless the house of origin shall on that day be in adjournment. If on the tenth day the house of origin shall be in temporary 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 shall reconvene, unless the Governor shall on that day return the bill to that house.

(b) If on the tenth day the Legislature is in adjournment sine die, the bill shall become a law if the Governor shall sign it within forty-five days, Sundays excepted, after such adjournment. On the said forty-fifth day the bill shall become a law, notwithstanding the failure of the Governor to sign it within the period last stated, unless at or before noon of that day he shall return it with his objections to the house of origin at a special session of the Legislature which shall convene on that day, without petition or call, for the sole purpose of acting pursuant to this paragraph upon bills returned by the Governor. At such special session a bill may be reconsidered beginning on the first day, in the manner provided in this paragraph for the reconsideration of bills, and if approved upon reconsideration by two-thirds of all the members of each house, it shall become a law. The Governor, in returning with his objections a bill for reconsideration at any general or special session of the Legislature, may recommend that an amendment or amendments specified by him be made in the bill, and in such case the Legislature may amend and re-enact the bill. If a bill be so amended and re-enacted, it shall be presented again to the Governor, but shall become a law only if he shall sign it within ten days after presentation; and no bill shall be returned by the Governor a second time. A special session of the Legislature shall not be convened pursuant to this paragraph whenever the forty-fifth day, Sundays excepted, after adjournment sine die of a regular or special session shall fall on or after the last day of the legislative year in which such adjournment shall have been taken; in which event any bill not signed by the Governor within such forty-five-day period shall not become a law.

15. If any bill presented to the Governor shall contain one or more items of appropriation of money, he may object in whole or in part to any such item or items while approving 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 or part thereof to which he objects, and each item or part 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 thereof 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.

Section II

1. The Governor may grant pardons and reprieves in all cases other than impeachment and treason, and may suspend and remit fines and forfeitures. A commission or other body may be established by law to aid and advise the Governor in the exercise of executive clemency.

2. A system for the granting of parole shall be provided by law.

Section III

1. Provision for organizing, inducting, training, arming, disciplining and regulating a militia shall be made by law, which shall conform to applicable standards established for the armed forces of the United States.

2. The Governor shall nominate and appoint all general and flag officers of the militia, with the advice and consent of the Senate. All other commissioned officers of the militia shall be appointed and commissioned by the Governor according to law.

Section IV

1. All executive and administrative offices, departments, and instrumentalities of the State government, including the offices of Secretary of State and Attorney General, and their respective functions, powers and duties, shall be allocated by law among and within not more than twenty principal departments, in such manner as to group the same according to major purposes so far as practicable. Temporary commissions for special purposes may, however, be established by law and such commissions need not be allocated within a principal department.

2. Each principal department shall be under the supervision of the Governor. The head of each principal department shall be a single executive unless otherwise provided by law. Such single executives shall be nominated and appointed by the Governor, with

the advice and consent of the Senate, to serve at the pleasure of the Governor during his term of office and until the appointment and qualification of their successors, except as herein otherwise provided with respect to the Secretary of State and the Attorney General.

3. The Secretary of State and the Attorney General shall be nominated and appointed by the Governor with the advice and consent of the Senate to serve during the term of office of the Governor.

4. Whenever a board, commission or other body shall be the head of a principal department, the members thereof shall be nominated and appointed by the Governor with the advice and consent of the Senate, and may be removed in the manner provided by law. Such a board, commission or other body may appoint a principal executive officer when authorized by law, but the appointment shall be subject to the approval of the Governor. Any principal executive officer so appointed shall be removable by the Governor, upon notice and an opportunity to be heard.

5. The Governor may cause an investigation to be made of the conduct in office of any officer or employee who receives his compensation from the State of New Jersey, except a member, officer or employee of the Legislature or an officer elected by the Senate and General Assembly in joint meeting, or a judicial officer. He may require such officers or employees to submit to him a written statement or statements, under oath, of such information as he may call for relating to the conduct of their respective offices or employments. After notice, the service of charges and an opportunity to be heard at public hearing the Governor may remove any such officer or employee for cause. 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.

6. No rule or regulation made by any department, officer, agency or authority of this State, execept such as relates to the organization or internal management of the State government or a part thereof, shall take effect until it is filed either with the Secretary of State or in such other manner as may be provided by law. The Legislature shall provide for the prompt publication of such rules and regulations.

Article VI

JUDICIAL

Section I

1. The judicial power shall be vested in a Supreme Court, a Superior Court, County Courts and inferior courts of limited jurisdiction. The inferior courts and their jurisdiction may from time to time be established, altered or abolished by law.

SECTION II

1. The Supreme Court shall consist of a Chief Justice and six Associate Justices. Five members of the court shall constitute a quorum. When necessary, the Chief Justice shall assign the Judge or Judges of the Superior Court, senior in service, as provided by rules of the Supreme Court, to serve temporarily in the Supreme Court. In case the Chief Justice is absent or unable to serve, a presiding Justice designated in accordance with rules of the Supreme Court shall serve temporarily in his stead.

2. The Supreme Court shall exercise appellate jurisdiction in the last resort in all causes provided in this Constitution.

3. The Supreme Court shall make rules governing the administration of all courts in the State and, subject to the law, the practice and procedure in all such courts. The Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted.

SECTION III

1. The Superior Court shall consist of such number of Judges as may be authorized by law, but not less than twenty-four, each of whom shall exercise the powers of the court subject to rules of the Supreme Court.

2. The Superior Court shall have original general jurisdiction throughout the State in all causes.

3. The Superior Court shall be divided into an Appellate Division, a Law Division, and a Chancery Division. Each division shall have such Parts, consist of such number of Judges, and hear such causes, as may be provided by rules of the Supreme Court.

4. Subject to rules of the Supreme Court, the Law Division and the Chancery Division shall each exercise the powers and functions of the other division when the ends of justice so require, and legal and equitable relief shall be granted in any cause so that all matters in controversy between the parties may be completely determined.

SECTION IV

1. There shall be a County Court in each county, which shall have all the jurisdiction heretofore exercised by the Court of Common Pleas, Orphans' Court, Court of Oyer and Terminer, Court of Quarter Sessions, Court of Special Sessions and such other jurisdiction consistent with this Constitution as may be conferred by law.

2. There shall be a Judge of each County Court and such additional Judges as shall be provided by law, and they shall be ap-

pointed in the same manner as heretofore provided for Judges of the Court of Common Pleas.

3. Each Judge of the County Court may exercise the jurisdiction of the County Court.

4. The jurisdiction, powers and functions of the County Courts and of the Judges of the County Courts may be altered by law as the public good may require.

5. The County Courts, in civil causes including probate causes, within their jurisdiction, and subject to law, may grant legal and equitable relief so that all matters in controversy between the parties may be completely determined.

SECTION V

1. Appeals may be taken to the Supreme Court:

(a) In causes determined by the Appellate Division of the Superior Court involving a question arising under the Constitution of the United States or this State;

(b) In causes where there is a dissent in the Appellate Division of the Superior Court;

(c) In capital causes;

(d) On certification by the Supreme Court to the Superior Court and, where provided by rules of the Supreme Court, to the County Courts and the inferior courts; and

(e) In such causes as may be provided by law.

2. Appeals may be taken to the Appellate Division of the Superior Court from the Law and Chancery Divisions of the Superior Court, the County Courts and in such other causes as may be provided by law.

3. The Supreme Court and the Appellate Division of the Superior Court may exercise such original jurisdiction as may be necessary to the complete determination of any cause on review.

4. Prerogative writs are superseded and, in lieu thereof, review, hearing and relief shall be afforded in the Superior Court, on terms and in the manner provided by rules of the Supreme Court, as of right, except in criminal causes where such review shall be discretionary.

SECTION VI

1. The Governor shall nominate and appoint, with the advice and consent of the Senate, the Chief Justice and Associate Justices of the Supreme Court, the Judges of the Superior Court, the Judges of the County Courts and the judges of the inferior courts with jurisdiction extending to more than one municipality. No nomin-

ation to such an office shall be sent to the Senate for confirmation until after seven days' public notice by the Governor.

2. The Justices of the Supreme Court, the Judges of the Superior Court and the Judges of the County Courts shall each prior to his appointment have been admitted to the practice of the law in this State for at least ten years.

3. The Justices of the Supreme Court and the Judges of the Superior Court shall hold their offices for initial terms of seven years and upon reappointment shall hold their offices during good behavior. Such Justices and Judges shall be retired upon attaining the age of seventy years. Provisions for the pensioning of the Justices of the Supreme Court and the Judges of the Superior Court shall be made by law.

4. The Justices of the Supreme Court, the Judges of the Superior Court and the Judges of the County Courts shall be subject to impeachment, and any judicial officer impeached shall not exercise his office until acquitted. The Judges of the Superior Court and the Judges of the County Courts shall also be subject to removal from office by the Supreme Court for such causes and in such manner as shall be provided by law.

5. Whenever the Supreme Court shall certify to the Governor that it appears that any Justice of the Supreme Court, Judge of the Superior Court or Judge of the County Court is so incapacitated as substantially to prevent him from performing his judicial duties, the Governor shall appoint a commission of three persons to inquire into the circumstances; and, on their recommendation, the Governor may retire the Justice or Judge from office, on pension as may be provided by law.

6. The Justices of the Supreme Court and the Judges of the Superior Court shall receive for their services such salaries as may be provided by law, which shall not be diminished during the term of their appointment. They shall not, while in office, engage in the practice of law or other gainful pursuit.

7. The Justices of the Supreme Court, the Judges of the Superior Court and the Judges of the County Courts shall hold no other office or position, of profit, under this State or the United States. Any such Justice or Judge who shall become a candidate for an elective public office shall thereby forfeit his judicial office.

SECTION VII

1. The Chief Justice of the Supreme Court shall be the administrative head of all the courts in the State. He shall appoint an Administrative Director to serve at his pleasure.

2. The Chief Justice of the Supreme Court shall assign Judges of the Superior Court to the Divisions and Parts of the Superior Court, and may from time to time transfer Judges from one assignment to another, as need appears. Assignments to the Appellate Division shall be for terms fixed by rules of the Supreme Court.

3. The Clerk of the Supreme Court and the Clerk of the Superior Court shall be appointed by the Supreme Court for such terms and at such compensation as shall be provided by law.

ARTICLE VII

PUBLIC OFFICERS AND EMPLOYEES

SECTION 1

1. Every State officer, before entering upon the duties of his office, shall 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. 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.

3. 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 for the office or position, shall immediately upon receipt be paid into the treasury of the State, unless the compensation or fees shall be allowed or appropriated to him by law.

4. Any person before or after entering upon the duties of 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 as herein otherwise provided, 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.

6. The State Auditor shall be appointed by the Senate and General Assembly in joint meeting for a term of five years and until his successor shall be appointed and qualified. It shall be his duty to conduct post-audits of all transactions and accounts kept by or for

all departments, offices and agencies of the State government, to report to the Legislature or to any committee thereof as shall be required by law, and to perform such other similar or related duties as shall, from time to time, be required of him by law.

Section II

1. 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 serve until the appointment and qualification of their respective successors.

2. County clerks, surrogates and sheriffs shall be elected by the people of their respective counties at general elections. The term of office of county clerks and surrogates shall be five years, and of sheriffs three years. Whenever a vacancy shall occur in any such office it shall be filled in the manner to be provided by law.

Section III

1. The Governor and all other State officers, while in office and for two years thereafter, shall be liable to impeachment for misdemeanor committed during their respective continuance in office.

2. The General Assembly shall have the sole power of impeachment by vote of a majority of all the members. All 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 the evidence". No person shall be convicted without the concurrence of two-thirds of all the members of the Senate. When the Governor is tried, the Chief Justice of the Supreme Court shall preside and the President of the Senate shall not participate in the trial.

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 VIII

TAXATION AND FINANCE

Section I

1. Property shall be assessed for taxation under general laws and by uniform rules. All real property assessed and taxed locally or by the State for allotment and payment to taxing districts shall be assessed according to the same standard of value; and such real prop-

erty shall be taxed at the general tax rate of the taxing district in which the property is situated, for the use of such taxing district.

2. Exemption from taxation may be granted only by general laws. Until otherwise provided by law all exemptions from taxation validly granted and now in existence shall be continued. Exemptions from taxation may be altered or repealed, except those exempting real and personal property used exclusively for religious, educational, charitable or cemetery purposes as defined by law, and owned by any corporation or association organized and conducted exclusively for one or more of such purposes and not operating for profit.

3. Any citizen and resident of this State now or hereafter honorably discharged or released under honorable circumstances from active service in time of war in any branch of the armed forces of the United States, shall be exempt from taxation on real and personal property to an aggregate assessed valuation not exceeding five hundred dollars, which exemption shall not be altered or repealed. Any person hereinabove described who has been or shall be declared by the United States Veterans Administration, or its successor, to have a service-connected disability, shall be entitled to such further exemption from taxation as from time to time may be provided by law. The widow of any citizen and resident of this State who has met or shall meet his death on active duty in time of war in any such service shall be entitled, during her widowhood, to the exemption in this paragraph provided for honorably discharged veterans and to such further exemption as from time to time may be provided by law.

SECTION II

1. The credit of the State shall not be directly or indirectly loaned in any case.

2. No money shall be drawn from the State treasury but for appropriations made by law. All moneys for the support of the State government and for all other State purposes as far as can be ascertained or reasonably foreseen, shall be provided for in one general appropriation law covering one and the same fiscal year; except that when a change in the 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 Governor.

3. The Legislature shall not, in any manner, create in any fiscal year a debt or debts, liability or liabilities of the State, which together with any previous debts or liabilities shall exceed at any time one per centum of the total amount appropriated by the general appropriation law for that fiscal year, unless the same shall be authorized by a law for some single object or work distinctly specified therein. Regardless of any limitation relating to taxation in this Constitution, such law shall provide the ways and means, exclusive of loans, to pay the interest of such debt or liability as it falls due, and also to pay and discharge the principal thereof within thirty-five years from the time it is contracted; and the law shall not be repealed until such debt or liability and the interest thereon are fully paid and discharged. No such law shall take effect until it shall have been submitted to the people at a general election and approved by a majority of the legally qualified voters of the State voting thereon. All money to be raised by the authority of such law shall be applied only to the specific object stated therein, and to the payment of the debt thereby created. This paragraph shall not be construed to refer to any money that has been or may be deposited with this State by the government of the United States. Nor shall anything in this paragraph contained apply to the creation of any debts or liabilities for purposes of war, or to repel invasion, or to suppress insurrection or to meet an emergency caused by disaster or act of God.

SECTION III

1. The clearance, replanning, development or redevelopment of blighted areas shall be a public purpose and public use, for which private property may be taken or acquired. Municipal, public or private corporations may be authorized by law to undertake such clearance, replanning, development or redevelopment; and improvements made for these purposes and uses, or for any of them, may be exempted from taxation, in whole or in part, for a limited period of time during which the profits of and dividends payable by any private corporation enjoying such tax exemption shall be limited by law. The conditions of use, ownership, management and control of such improvements shall be regulated by law.

2. 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.

3. No donation of land or appropriation of money shall be made by the State or any county or municipal corporation to or for the use of any society, association or corporation whatever.

SECTION IV

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 public 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 free public 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.

3. The Legislature may, within reasonable limitations as to distance to be prescribed, provide for the transportation of children within the ages of five to eighteen years inclusive to and from any school.

ARTICLE IX

AMENDMENTS

1. Any specific amendment or amendments to this Constitution may be proposed in the Senate or General Assembly. At least twenty calendar days prior to the first vote thereon in the house in which such amendment or amendments are first introduced, the same shall be printed and placed on the desks of the members of each house. Thereafter and prior to such vote a public hearing shall be held thereon. If the proposed amendment or amendments or any of them shall be agreed to by three-fifths of all the members of each of the respective houses, the same shall be submitted to the people. If the same or any of them shall be agreed to by less than three-fifths but nevertheless by a majority of all the members of each of the respective houses, such proposed amendment or amendments shall be referred to the Legislature in the next legislative year; and if in that year the same or any of them shall be agreed to by a majority of all the members of each of the respective houses, then such amendment or amendments shall be submitted to the people.

2. The proposed amendment or amendments shall be entered on the journal of each house with the yeas and nays of the members voting thereon.

3. The Legislature shall cause the proposed amendment or amend-

ments to be published at least once in one or more newspapers of each county, if any be published therein, not less than three months prior to submission to the people.

4. The proposed amendment or amendments shall then be submitted to the people at the next general election in the manner and form provided by the Legislature.

5. If more than one amendment be submitted, they shall be submitted in such manner and form that the people may vote for or against each amendment separately and distinctly.

6. If the proposed amendment or amendments or any of them shall be approved by a majority of the legally qualified voters of the State voting thereon, the same shall become part of the Constitution on the thirtieth day after the election, unless otherwise provided in the amendment or amendments.

7. If at the election a proposed amendment shall not be approved neither such proposed amendment nor one to effect the same or substantially the same change in the Constitution shall be submitted to the people before the third general election thereafter.

ARTICLE X

GENERAL PROVISIONS

1. The seal of the State shall be kept by the Governor, or person administering the office of Governor, and used by him officially, and shall be called the Great Seal of the State of New Jersey.

2. All grants and commissions shall be in the name and by the authority of the State of New Jersey, sealed with the Great Seal, signed by the Governor, or person administering the office of Governor, and countersigned by the Secretary of State, and shall run thus: "The State of New Jersey, to....., Greeting".

3. All writs shall be in the name of the State. All indictments shall conclude: "against the peace of this State, the government and dignity of the same".

4. Whenever in this Constitution the term "person", "persons", "people" or any personal pronoun is used, the same shall be taken to include both sexes.

5. Except as herein otherwise provided, this Constitution shall take effect on the first day of January in the year of our Lord one thousand nine hundred and forty-eight.

ARTICLE XI

SCHEDULE

SECTION I

1. This Constitution shall supersede the Constitution of one thousand eight hundred and forty-four as amended.

2. The Legislature shall enact all laws necessary to make this Constitution fully effective.

3. All law, statutory and otherwise, all rules and regulations of administrative bodies and all rules of courts in force at the time this Constitution or any Article thereof takes effect shall remain in full force until they expire or are superseded, altered or repealed by this Constitution or otherwise.

4. Except as otherwise provided by this Constitution, all writs, actions, judgments, decrees, causes of action, prosecutions, contracts, claims and rights of individuals and of bodies corporate, and of the State, and all charters and franchises shall continue unaffected notwithstanding the taking effect of any Article of this Constitution.

5. All indictments found before the taking effect of this Constitution or any Article may be proceeded upon. After the taking effect thereof, indictments for crime and complaints for offenses committed prior thereto may be found, made and proceeded upon in the courts having jurisdiction thereof.

SECTION II

1. The first Legislature under this Constitution shall meet on the second Tuesday in January, in the year one thousand nine hundred and forty-eight.

2. Each member of the General Assembly, elected at the election in the year one thousand nine hundred and forty-seven, shall hold office for a term beginning at noon of the second Tuesday in January in the year one thousand nine hundred and forty-eight and ending at noon of the second Tuesday in January in the year one thousand nine hundred and fifty. Each member of the General Assembly elected thereafter shall hold office for the term provided by this Constitution.

3. Each member of the Senate elected in the years one thousand nine hundred and forty-five and one thousand nine hundred and forty-six shall hold office for the term for which he was elected. Each member of the Senate elected in the year one thousand nine hundred and forty-seven shall hold office for a term of four years beginning at noon of the second Tuesday in January following his elec-

tion. The seats in the Senate which would have been filled in the years hereinafter designated had this Constitution not been adopted shall be filled by election as follows: of those seats which would have been filled by election in the year one thousand nine hundred and forty-eight, three seats, as chosen by the Senate in the year one thousand nine hundred and forty-eight, shall be filled by election in that year for terms of five years, and three, as so chosen, shall be filled by election in that year for terms of three years, and those seats which would have been filled by election in the year one thousand nine hundred and forty-nine shall be filled by election in that year for terms of four years, so that eleven seats in the Senate shall be filled by election in the year one thousand nine hundred and fifty-one and every fourth year thereafter for terms of four years, and the members of the Senate so elected and their successors shall constitute one class to be elected as prescribed in paragraph 2 of Section II of Article IV of this Constitution, and ten seats shall be filled by election in the year one thousand nine hundred and fifty-three and every fourth year thereafter for terms of four years, and the members of the Senate so elected and their successors shall constitute the other class to be elected as prescribed in said paragraph of this Constitution.

4. The provisions of Paragraph 1 of Section V of Article IV of this Constitution shall not prohibit the nomination, election or appointment of any member of the Senate or General Assembly first organized under this Constitution, to any State civil office or position created by this Constitution or created during the first term as such member.

SECTION III

1. A Governor shall be elected for a full term at the general election to be held in the year one thousand nine hundred and forty-nine and every fourth year thereafter.

2. The taking effect of this Constitution or any provision thereof shall not of itself affect the tenure, term, status or compensation of any person then holding any public office, position or employment in this State, except as provided in this Constitution. Unless otherwise specifically provided in this Constitution, all constitutional officers in office at the time of its adoption shall continue to exercise the authority of their respective offices during the term for which they shall have been elected or appointed and until the qualification of their successors respectively. Upon the taking effect of this Constitution all officers of the militia shall retain their commissions subject to the provisions of Article V, Section III.

3. The Legislature, in compliance with the provisions of this Constitution, shall prior to the first day of July, one thousand nine hun-

dred and forty-nine, and may from time to time thereafter, allocate by law the executive and administrative offices, departments and instrumentalities of the State government among and within the principal departments. 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 for consideration to complete such allocation; and no other matters shall be considered at such session.

Section IV

1. Subsequent to the adoption of this Constitution the Governor shall nominate and appoint, with the advice and consent of the Senate, a Chief Justice and six Associate Justices of the new Supreme Court from among the persons then being the Chancellor, the Chief Justice and Associate Justices of the old Supreme Court, the Vice Chancellors and Circuit Court Judges. The remaining judicial officers enumerated and such Judges of the Court of Errors and Appeals as have been admitted to the practice of law in this State for at least ten years, and are in office on the adoption of the Constitution, shall constitute the Judges of the Superior Court. The Justices of the new Supreme Court and the Judges of the Superior Court so designated shall hold office each for the period of his term which remains unexpired at the time the Constitution is adopted; and if reappointed he shall hold office during good behavior. No Justice of the new Supreme Court or Judge of the Superior Court shall hold his office after attaining the age of seventy years, except, however, that such Justice or Judge may complete the period of his term which remains unexpired at the time the Constitution is adopted.

2. The Judges of the Courts of Common Pleas shall constitute the Judges of the County Courts, each for the period of his term which remains unexpired at the time the Judicial Article of this Constitution takes effect.

3. The Court of Errors and Appeals, the present Supreme Court, the Court of Chancery, the Prerogative Court and the Circuit Courts shall be abolished when the Judicial Article of this Constitution takes effect; and all their jurisdiction, functions, powers and duties shall be transferred to and divided between the new Supreme Court and the Superior Court according as jurisdiction is vested in each of them under this Constitution.

4. Except as otherwise provided in this Constitution and until otherwise provided by law, all courts now existing in this State, other than those abolished in paragraph 3 hereof, shall continue as if this Constitution had not been adopted, provided, however, that when the Judicial Article of this Constitution takes effect, the juris-

diction, powers and functions of the Court of Common Pleas, Orphans' Court, Court of Oyer and Terminer, Court of Quarter Sessions and Court of Special Sessions of each county, the judicial officers, clerks and employees thereof, and the causes pending therein and their files, shall be transferred to the County Court of the county. All statutory provisions relating to the county courts aforementioned of each county and to the Judge or Judges thereof shall apply to the new County Court of the county and the Judge or Judges thereof, unless otherwise provided by law. Until otherwise provided by law and except as aforestated, the judicial officers, surrogates and clerks of all courts now existing, other than those abolished in paragraph 3 hereof, and the employees of said officers, clerks, surrogates and courts shall continue in the exercise of their duties, as if this Constitution had not been adopted.

5. The Supreme Court shall make rules governing the administration and practice and procedure of the County Courts; and the Chief Justice of the Supreme Court shall be the administrative head of these courts with power to assign any Judge thereof of any county to sit temporarily in the Superior Court or to sit temporarily without the county in a County Court.

6. The Advisory Masters appointed to hear matrimonial proceedings and in office on the adoption of this Constitution shall, each for the period of his term which remains unexpired at the time the Constitution is adopted, continue so to do as Advisory Masters to the Chancery Division of the Superior Court, unless otherwise provided by law.

7. All Special Masters in Chancery, Masters in Chancery, Supreme Court Commissioners and Supreme Court Examiners shall, until otherwise provided by rules of the Supreme Court, continue respectively as Special Masters, Masters, Commissioners and Examiners of the Superior Court, with appropriate similar functions and powers as if this Constitution had not been adopted.

8. When the Judicial Article of this Constitution takes effect:

(a) All causes and proceedings of whatever character pending in the Court of Errors and Appeals shall be transferred to the new Supreme Court;

(b) All causes and proceedings of whatever character pending on appeal or writ of error in the present Supreme Court and in the Prerogative Court and all pending causes involving the prerogative writs shall be transferred to the Appellate Division of the Superior Court;

(c) All causes and proceedings of whatever character pending in the Supreme Court other than those stated shall be transferred to the Superior Court;

(d) All causes and proceedings of whatever character pending in the Prerogative Court other than those stated shall be transferred to the Chancery Division of the Superior Court;

(e) All causes and proceedings of whatever character pending in all other courts which are abolished shall be transferred to the Superior Court.

For the purposes of this paragraph, paragraph 4 and paragraph 9, a cause shall be deemed to be pending notwithstanding that an adjudication has been entered therein, provided the time limited for review has not expired or the adjudication reserves to any party the right to apply for further relief.

9. The files of all causes pending in the Court of Errors and Appeals shall be delivered to the Clerk of the new Supreme Court; and the files of all causes pending in the present Supreme Court, the Court of Chancery and the Prerogative Court shall be delivered to the Clerk of the Superior Court. All other files, books, papers, records and documents and all property of the Court of Errors and Appeals, the present Supreme Court, the Prerogative Court, the Chancellor and the Court of Chancery, or in their custody, shall be disposed of as shall be provided by law.

10. Upon the taking effect of the Judicial Article of this Constitution, all the functions, powers and duties conferred by statute, rules or otherwise upon the Chancellor, the Ordinary, and the Justices and Judges of the courts abolished by this Constitution, to the extent that such functions, powers and duties are not inconsistent with this Constitution, shall be transferred to and may be exercised by Judges of the Superior Court until otherwise provided by law or rules of the new Supreme Court; excepting that such statutory powers not related to the administration of justice as are then vested in any such judicial officers shall, after the Judicial Article of this Constitution takes effect and until otherwise provided by law, be transferred to and exercised by the Chief Justice of the new Supreme Court.

11. Upon the taking effect of the Judicial Article of this Constitution, the Clerk of the Supreme Court shall become the Clerk of the new Supreme Court and shall serve as such Clerk until the expiration of the term for which he was appointed as Clerk of the Supreme Court, and all employees of the Supreme Court as previously constituted, of the Clerk thereof and of the Chief Justice and the Justices thereof, of the Circuit Courts and the Judges thereof and of the Court of Errors and Appeals shall be transferred to appropriate similar positions with similar compensation and civil service status under the Clerk of the new Supreme Court or the new

Supreme Court, or the Clerk of the Superior Court or the Superior Court, which shall be provided by law.

12. Upon the taking effect of the Judicial Article of this Constitution the Clerk in Chancery shall become the Clerk of the Superior Court and shall serve as such Clerk until the expiration of the term for which he was appointed as Clerk in Chancery, and all employees of the Clerk in Chancery, the Court of Chancery, the Chancellor and the several Vice Chancellors shall be transferred to appropriate similar positions with similar compensation and civil service status under the Clerk of the Superior Court or the Superior Court, which shall be provided by law.

13. Appropriations made by law for judicial expenditures during the fiscal year one thousand nine hundred and forty-eight—one thousand nine hundred and forty-nine may be transferred to similar objects and purposes required by the Judicial Article.

14. The Judicial Article of this Constitution shall take effect on the fifteenth day of September, one thousand nine hundred and forty-eight, except that the Governor, with the advice and consent of the Senate, shall have the power to fill vacancies arising prior thereto in the new Supreme Court and the Superior Court; and except further that any provision of this Constitution which may require any act to be done prior thereto or in preparation therefor shall take effect immediately upon the adoption of this Constitution.

Done in Convention, at Rutgers University, the State University of New Jersey, New Brunswick, on the tenth day of September, in the year of our Lord one thousand nine hundred and forty-seven, and of the independence of the United States of America the one hundred and seventy-second.

SUMMARY AND ADDRESS

to the

PEOPLE OF NEW JERSEY

by the

CONSTITUTIONAL CONVENTION OF 1947

WHAT THE PROPOSED NEW STATE CONSTITUTION MEANS TO YOU

A report to the people of New Jersey by their elected delegates to the Constitutional Convention

New Brunswick, N. J., 1947

THIS SUMMARY AND EXPLANATION WAS ADOPTED BY THE CONSTITUTIONAL CONVENTION TO PRESENT THE BASIC FACTS ABOUT THE PROPOSED NEW STATE CONSTITUTION.

If you wish a copy of the complete Constitution, you may get it by applying to the Secretary of State at Trenton, or your County or Municipal Clerk.

OBJECTIVES OF THE PROPOSED NEW CONSTITUTION

It has been the purpose of your delegates to draw up a new State Constitution that will make possible more efficient, more economical, and more democratic state government. To accomplish those objectives, the proposed new Constitution provides:

1. A More Liberal "Bill of Rights."
2. Better Defined Legislative Power.
3. A Stronger, More Responsible Executive.
4. A Simple, Unified System of Courts.
5. A Sounder Basis for Taxation and Finance.
6. A Simplified, Less Expensive Method of Amendment.

NOTE: All laws now on the statute books will continue fully effective upon adoption of the revised Constitution except where they are in conflict with its provisions.

1. A More Liberal "Bill of Rights"

NOTE: All rights and privileges guaranteed the people under old Constitution are retained. Following are some of the more important additions and extensions of those rights.

No Person May Be Limited in His Privileges Because of Race, Color, Sex, Religion, National Origin

Under the proposed Constitution, New Jersey will be the first state to give equal constitutional rights to women. The provision forbidding paupers to vote is abolished. Segregation by race or color in the schools and militia is forbidden, and discrimination against any person is barred.

Labor's Right to Organize and Bargain Collectively is Guaranteed to Those in Private Employment

Those in public employment are given the right to organize and present their grievances and proposals through representatives of their own choosing.

The Legislature May Provide for "Absentee Voting" by Members of the Armed Forces in Peacetime

This is an extension of the right guaranteed the Armed Forces in time of war.

The Right of Trial by Jury Remains Inviolate

In civil cases the Legislature may provide for a verdict by not less than 5/6 of the jury. This will speed litigation in civil cases, and reduce costs, by avoiding "hung juries" of 11 to 1 and 10 to 2 occasionally found. In civil cases involving less than $50, the Legislature may provide for trial by juries of six people.

2. A Better Defined Legislative Power

The Term of Assemblymen is Increased from One to Two Years and of Senators from Two to Four Years

The number of Assemblymen and Senators remains unchanged. Terms are lengthened so that legislators may spend less time campaigning, and devote more time to the interests of the state. Salaries for both Assemblymen and Senators will be determined by the Legislature instead of being constitutionally limited to $500. However, any increases in legislators' salaries cannot become effective until the year following the next election for the General Assembly. Elections of Senators and Assemblymen will be held in "off years" so that their election will not be confused with national issues. Approximately half of the Senators will be elected every two years.

The Legislature May Not Elect Any Administrative, Judicial, or Executive Officer Except the State Auditor

This places executive authority where it belongs, in the hands of the Governor, who will fill such offices with the advice and consent of the Senate. Because control of public funds is a legislative function, the Legislature will elect the State Auditor.

One Full Calendar Day Must Intervene Between the Second and Third Reading of a Bill or Joint Resolution

This will prevent the passing of bills with no time for consideration. Under the old Constitution, it was possible to rush a bill out of committee and pass it immediately, before the public, and sometimes the legislators, had a chance to read it. In case of an emergency, the Legislature can waive this one-day rule by a three-fourths vote.

Gambling and Games of Chance May Be Authorized by the Legislature if Approved by a Majority of the People at a General Election

Under the old Constitution, gambling is limited to pari-mutuel betting on horse racing at the tracks. Now "Bingo" and other games of chance may also be legalized. The Legislature must first pass a bill specifying exactly the kind, restrictions and control to be exercised, and this must then be approved by a vote of the people.

Home Rule for Municipalities and Counties is Encouraged

Under the new Constitution, local governments will be able to ask the Legislature for special laws fitted to the special needs of their communities. At present, the Legislature cannot pass any special law regulating the internal affairs of local governments no matter how much the people of the locality may want it. Local governments will enjoy not only the express powers granted to them by the Legislature, as heretofore, but also those which may be needed for the exercise of those powers.

3. A Stronger, More Responsible, Executive

NOTE: The Governor is the only state official elected by *all* the people of the state. Under the new Constitution he is given more power to carry out their will.

The Governor's Term is Increased from Three to Four Years, and He May Succeed Himself Once

The present constitutional limitation of a governor's term to three years, coupled with the prohibition against his succeeding himself, has prevented the public from reelecting a satisfactory chief executive. The convention felt that the voters should be freed from this restriction and should be able to reelect a competent and satisfactory governor.

The Governor Will Be Elected in Odd-Numbered Years

The election of the Governor will be completely separated from national elections, and from the election of Members of Congress. Thus what is strictly a state matter will not be confused with national issues.

Executive Departments are Limited to Twenty

These departments, replacing some eighty departments, agencies and commissions functioning at present, will be organized by the Legislature. Duplication and inefficiency will be lessened, and

the number of executive heads will be small enough for the Governor to work with them effectively.

The Governor is Given Effective Supervision Over All Executive Department Heads (Except the State Auditor)

No longer will the Governor have to work with department heads who have been appointed by his predecessor and who may be out of sympathy with his policies. Upon assuming office, each governor will appoint, with the advice and consent of the Senate, single department heads to serve at his pleasure. Where a department is headed by a board, the members of the board will also be appointed by the Governor, with the advice and consent of the Senate, to serve for the term fixed by the Legislature. Such a board may appoint an executive officer, subject to the Governor's approval and removable by him after notice and hearing.

The Veto Power of the Governor is Strengthened and Made More Flexible

Formerly the Legislature could override the Governor's veto with a simple majority—the same vote required to pass the bill in the first place. Now a two-thirds majority is required, as in the Federal Constitution. In vetoing bills for technical or other defects, the Governor is permitted to propose amendments, and the Legislature may adopt such amendments by a simple majority vote. In appropriation bills, if the Governor considers the budget for any department too high, he can now reduce, as well as eliminate, any item by veto.

The "Pocket Veto" is Abolished

Under the old Constitution, after the Legislature adjourned, all bills not signed by the Governor automatically died. Now the Legislature will meet in special session forty-five days after adjournment to consider any vetoed bills. Those bills that have not been vetoed, and returned to the Legislature, become law. Thus, while the Governor's veto power is strengthened, it is also balanced by giving the Legislature an opportunity to reconsider *all* vetoed bills.

The Governor is Given More Time to Consider Bills

Instead of five days, the Governor now has ten days while the Legislature is in session, or temporary adjournment—and 45 days following adjournment.

The Militia Will Be Modernized

The organization will conform to standards established for the Armed Forces of the United States.

The Parole System is Given Constitutional Recognition

A system for granting paroles will be provided by law. The power to grant pardons, now held by the Court of Pardons, is given to the Governor. A commission or other body may be established by law to advise the Governor in the exercise of executive clemency.

The Civil Service Will Have Constitutional Status

Appointments and promotions will be according to merit. Preference may be established for veterans.

More Adequate Provision is Made for Filling a Vacancy in the Office of Governor

The present succession of the President of the Senate and the Speaker of the Assembly is retained, and the Legislature is given the power to establish additional lines of succession. If a governor or governor-elect becomes permanently unable to perform the duties of his office, the Supreme Court may, upon presentment by the Legislature, declare the office vacant. These provisions insure New Jersey against ever suffering from the confusions that recently troubled Georgia and Illinois.

4. A Simple, Unified System of Courts

A New Supreme Court is Established

The new high court, with a Chief Justice and six Associate Justices, replaces the old 16-member Court of Errors and Appeals.

Courts of Law and Equity Are Replaced by a New Superior Court

This court will have Law, Chancery, and Appellate Divisions. The Law and Chancery Divisions can each exercise the powers of the other when necessary. This allows both the equity and law features of a case to be decided in ths same court instead of being shifted from court to court as is now so often the case. Thus the time and expense of litigation should be considerably reduced.

A Single Court in Each County Replaces Five Separate Courts

The Courts of Common Pleas, Oyer and Terminer, Special Sessions, Quarter Sessions, and the Orphans' Court, are replaced by one County Court. The Legislature may alter the jurisdiction, powers, and functions of these courts as the public good may require, but it cannot abolish these courts—the courts closest to

the people. In civil cases these courts may grant legal and equitable relief.

Existing Courts Below the County Courts Continue Without Constitutional Status

Inferior courts may from time to time be established, altered or abolished by law.

Life Tenure is Made Possible for Justices of the Supreme Court and Judges of the Superior Court

These Justices and Judges are appointed for an initial term of seven years, and may be then reappointed to serve during good behavior. They *must* retire at the age of seventy, and may be retired sooner in cases of permanent disability.

The Chief Justice is Given Full Administrative Powers Over All Courts of the State

Under the old Constitution, *no one has administrative powers over New Jersey's Court System.* Giving the Chief Justice such powers will increase the efficiency of our system, expedite justice, and minimize court delays.

The Appeal System is Simplified

Repeated appeals, which prolong litigation, are eliminated.

5. A Sounder Basis for Taxation and Finance

The Old "True Value" Standard for Assessment is Dropped

This provision of the old Constitution has been strongly criticized because of the variability in its interpretation by the local assessors. The clause requiring assessment "under general laws and by uniform rules" has been retained because it assures equality of treatment of taxpayers and permits legislative flexibility.

Under the new tax clause it will be necessary to revise the present law which taxes second-class railroad property at a special rate lower than the general local property rates. "All real property assessed and taxed locally or by the State for allotment and payment to taxing districts shall be assessed according to the same standard of value; and such real property shall be taxed at the general tax rate of the taxing district in which the property is situated, for the use of such taxing district."

The control of taxation by the Legislature is continued.

Existing Tax Exemptions Are Given Constitutional Recognition

The present statutory exemptions of property used for religious, educational, charitable and cemetery purposes are guaranteed by the new Constitution. A property tax exemption of $500 for veterans also becomes part of the Constitution.

School Transportation May Be Authorized by the Legislature

Under the new Constitution, the Legislature may authorize transportation for children to and from any school.

Slum Clearance Projects Can Receive Tax Relief

Under the new Constitution the Legislature may grant, for a limited period of time, special tax exemptions to private enterprise for slum clearance projects. During the period of tax exemption, profits are limited by law.

A New Limitation is Placed on the Debt of the State

Under the old Constitution, the State could not incur any debt which, together with all outstanding debts, would exceed $100,000, unless the debt was approved by a vote of the people. Now the $100,000 limit is raised to 1% of the total current State budget. This permits the temporary cash needs of the State government to be financed under a limit in keeping with the increase in State expenditures since 1844.

6. A Simplified, Less Expensive Method of Amendment

After an amendment has been passed by a three-fifths vote of the Legislature at one session, or by a simple majority at two sessions, it may be submitted to the voters at a *general* election. Under the old Constitution, an amendment had to be passed by a majority vote at two consecutive sessions and then submitted at a special election. (A *special* election costs about $750,000.)

If approved by the voters, the new Constitution will become effective January 1, 1948. Senators and Assemblymen elected in 1947 will then serve the new lengthened terms. The Judicial Articles of the new Constitution will become effective September 15, 1948.

STATEMENT OF THE DETERMINATION

of the

BOARD OF STATE CANVASSERS

Relative to the Election Held on November 4, 1947

on the Question of

THE ADOPTION OR REJECTION OF THE STATE CONSTITUTION

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* * * * *

WE DO HEREBY CERTIFY, that the foregoing is a true, full and correct statement of the election above-mentioned, as the same is exhibited by the statements produced and laid before the Board of State Canvassers, according to law, and that the same exhibits the whole number of the names of the voters on the signature copy registers and register of voters, the poll books of the counties, respectively, and of the ballots rejected, the whole number of the names of the voters on the register of voters and signature copy books, the poll books of the several counties, the number of votes given for and against the public question voted upon in the State of New Jersey as they appear by the statements so produced and laid before the said Board.

IN WITNESS WHEREOF, I have hereunto set my hand, this second day of December, 1947.

LEON LEONARD,
Chairman of the Board of State Canvassers.

Attest:
LLOYD B. MARSH,
Clerk.

A STATEMENT OF THE DETERMINATION OF THE BOARD OF STATE CANVASSERS relative to an election held in the STATE OF NEW JERSEY, on the 4th day of November, 1947, for the adoption or rejection of the public question: Shall the new State Constitution prepared and agreed upon by the Constitutional Convention be adopted?

The said Board do determine that, at the said Election the public question voted upon in the State of New Jersey, which reads as follows:

Shall the new State Constitution prepared and agreed upon by the Constitutional Convention be adopted?

Was ADOPTED.

I DO CERTIFY that the foregoing is a true, full and correct STATEMENT of the DETERMINATION OF THE BOARD OF STATE CANVASSERS therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand, this second day of December, 1947.

LEON LEONARD,
Chairman of the Board of State Canvassers.

Attest:
LLOYD B. MARSH,
Clerk.

THE GOVERNOR'S COMMITTEE
ON PREPARATORY RESEARCH

FOR THE

NEW JERSEY CONSTITUTIONAL CONVENTION

MONOGRAPHS

INTRODUCTION

Soon after the passage of Chapter 8 of the Laws of 1947 providing for the referendum of June 3, 1947, to determine whether a Constitutional Convention should be held, Governor Alfred E. Driscoll authorized the creation of a Committee on Preparatory Research to develop material that might be of help to the delegates should the public question be approved by the voters. The experience of Massachusetts in 1917, of Illinois in 1920, New York in 1938, and Missouri in 1945 demonstrated the importance of providing special studies and other information in aid of the Convention's work.

The Chairman of the Committee was appointed early in March. Less than three months were available, but in that brief time it was possible, thanks to the unremitting labors of some thirty individuals, each expert in his respective field, to prepare and publish the 35 monographs which follow, assist in the preparation of a tentative draft of Rules for the Convention, and set up a library of well over two thousand reference volumes which eventually were conveniently placed in a room directly off the floor of the Convention.

The monographs were the result of two conferences held at Rutgers University, the State University of New Jersey. The first was called in March and was attended by some three dozen carefully selected persons who discussed and agreed upon a tentative outline of topics and accepted individual assignments. The second, held in April, was for the purpose of discussing common problems, determining methods of developing certain monographs, and making a few additional assignments. The guiding principle in preparing the several monographs was to make the presentation absolutely impartial and the subject matter as complete as possible. The Committee Chairman worked up a complete bibliography for the writers and made available to them a carefully selected list of reference books, pamphlets and processed materials relating to the Constitutions and governmental problems of New Jersey and the other states.

The Chairman was in continuous touch with the various writers during March, April and May, and as each monograph was completed, edited it and arranged for its offset reproduction. The complete set of monographs was in the hands of the delegates immediately after the results of the June 3 referendum were announced. The tentative draft of Rules for the Constitutional Convention, as well as the Convention library and archives, were ready when the Convention met at Rutgers on June 12, 1947.

SIDNEY GOLDMANN,

Chairman, Governor's Committee on Preparatory Research for the Constitutional Convention of 1947.

WHAT SHOULD A CONSTITUTION CONTAIN?

by

W. BROOKE GRAVES

Chief, State Law Section,

Legislative Reference Service, Library of Congress

Chairman, Committee on State Government, National Municipal League

A constitution is a body of *fundamental* law. It is established for the purpose of providing a set of governmental machinery, on the one hand, and of protecting the citizen from an unfair or improper use of governmental authority, on the other. When we say that the provisions of a constitution are fundamental, we imply that they are relatively more permanent, more stable, and less subject to the need for frequent change, than are the provisions of statutory law. Statutory law, on the other hand, is regarded as being more or less transitory in character, as being more concerned with current policies and practices, and less with those "eternal verities" of government which have been handed down, generation after generation, from the past. A constitution is supposed to represent an attempt at stating the accumulated wisdom of the ages, on the subject of government, while statutes are a contemporary effort to deal with problems of a current nature.

While this distinction is time-honored and firmly imbedded in the thought of this country on the subject of government, we have often failed to keep it clearly in mind. The result has been the incorporation in numerous state constitutions of provisions that are definitely statutory in character. This has been due in part to a distrust of the legislature, and in part to a somewhat naive idea on the part of various interest and pressure groups that if they could only get into the constitution a statement of some principle or idea dear to them, it would be safely and securely fixed. Thus, the commissioner of highways in a mid-western state in 1921, appealed to the people to write into their fundamental law, in the form of amendment, a detailed description of the various routes in the highways system of the state. It is thus possible to change these routes, no matter how much the changes may be needed, only by amending the constitution. It is doubtful whether this was a good thing for the roads, and it is certain that it was a bad thing for the constitution—the length of which is increased by several pages of fine print. While this is an extreme case, the underlying philosophy is typical of that in many others.

Other things being equal, the shorter the constitution is, the better it is. The Federal Constitution has endured as long as it has,

and it has continued to be a satisfactory instrument of government, because it was well drafted. Quite in contrast to the constitutions of many of our states, its provisions were confined to matters that were, and are, essential; emphasis upon this point recurs frequently in the paragraphs which follow. There are in all of American state constitutions—old and new alike—certain essential features which must be included if the constitution is to meet in a satisfactory manner the needs which led to its adoption. These fundamentals may be grouped, for purposes of discussion, under four headings: the bill of rights, the framework of government, its powers, and provisions for piecemeal amendment.

Bill of Rights

In all democratic countries, important personal and civil rights of citizens are recognized. The sphere thus established may not be invaded or violated by the public authority. In England, where the constitution is in the main unwritten, these rights have become a part of the "law of the land"; in the United States, on the other hand, where written constitutions are everywhere in use, the protection of these rights is guaranteed by a written statement known as a bill of rights. This practice has been general in the states since the Virginia bill of rights was adopted in 1776. While there is a good deal of similarity in the provisions of the statements found in the various state constitutions, the particular expression of these ideas found in the constitution of any given state is likely to be vigorously defended by its citizens. It has the strength which comes from long usage; the clarity which comes from its having been judicially interpreted, and the veneration and respect which people give to institutions tried and proved.

The provisions of a bill of rights may be variously classified. From one point of view, they protect the rights of persons on the one hand, and the rights of property on the other. The rights of persons include those of a civil character, and those that relate to persons accused of crime. The civil rights include the right to freedom of speech and of assembly, freedom of the press, and freedom of conscience, the inviolability of the home from searches and seizures without warrant and the quartering of troops in time of peace. The rights of persons accused of crime include guarantees of freedom from false arrest, guarantees of indictment by grand jury and trial by jury, freedom of the necessity of giving testimony which might be self-incriminating in character, and guarantee of a fair trial, under due process of law. It includes, for those under indictment, freedom from the enforcement of *ex post facto* laws; and for those who have been convicted, freedom from cruel and unusual punishments. These lists might be extended, but the items mentioned are

sufficient to indicate the character of the provisions in question. The right to the enjoyment of the privileges associated with the ownership and control of property are protected by provisions governing the taking of private property for public use under eminent domain, freedom from the enforcement of confiscatory taxes, from arbitrary and discriminatory legislation—these latter under due process and equal protection clauses of state constitutions which antedate by many years the similar provisions of the Fourteenth Amendment, inserted in the Federal Constitution in 1868. Both, of course, are applicable.

In nearly every state some of the provisions of the existing bills of rights have long since passed the stage at which they have any relation to present-day conditions. While practical minded people might wish to eliminate these provisions, more conservatively minded persons, particularly members of the bar, are likely to resist any effort to eliminate or modify these provisions. Since they do no great harm, perhaps the energy expended in the effort to remove them might better be applied to more vital matters. Even though the wording may be stilted and archaic, lawyers will often contend for its preservation, since the meaning of the existing provision has been adjudicated and established. This does not mean, however, that new material may not be added to the bill of rights. Even though the older provisions are permitted to remain unchanged, provision should be made for the protection of the newer rights, more recently acquired, and most likely to be called into question. Bills of rights have grown through the years in exactly this way; men have sought to preserve the rights that they have already won, and to secure guarantees in their fundamental law of those rights which, at the time, seem vital, but which have not, heretofore, been so generally recognized or so commonly observed.

The Framework of the Government

In our American constitutions, we have uniformly professed the idea of the separation of powers, as a result of which we have three separate and distinct branches of government—the executive, legislative and judicial—each of which has its peculiar function to perform, and no one of which is supposed to invade the prerogative of either of the other two. While this principle of organization is not always applied consistently and does not conform to that existing in other democratic countries, or for that matter to that used in the conduct of private business in this country, it is so well established by long usage that any effort to abandon it would likely meet with overwhelming opposition.

Whatever the form of organization agreed upon, the basis for its establishment must be provided for in the constitution. There must

be provision for the executive, his qualifications, the manner of his election, his term, etc. The legislature must be established, in one house, or in two, as has heretofore been the practice. The election, qualifications and term of legislators must be provided for, and there must be provision for a system of courts. If the constitution is to endure and remain satisfactory over a long period of time, these provisions should be brief. If they are brief, they will be flexible and elastic, susceptible of adaptation to the changing needs of the people in a rapidly changing society; if they are too long and cluttered up with great masses of detail, they will be inflexible and inelastic, and will cause it to be difficult, if not impossible, to make desired changes.

To be specific, it is a mistake to put into the constitution the amount of the governor's salary. The purchasing power of the dollar has changed considerably over the years; a salary that was once ample may, under different conditions, be wholly inadequate, quite out of keeping with the importance of the position and the calibre of individual desired to fill it. The constitution should provide for adequate compensation, and should prohibit changes in the amount of compensation during the incumbent's term of office, but the amount should be left to legislative determination. Once the exact amount is specified in the constitution, it becomes difficult to change, and can be changed only by amending the constitution. If the amending process is a difficult one, the increasing of the salary becomes an even more formidable undertaking.

Again, many of the state constitutions go into great detail regarding the organization of the courts, providing the number and names of all judicial tribunals from the magistrates to the supreme court. This. too, is a great mistake. As the population grows or population density shifts from one part of the state to another, as new types of business or industry develop, the character and the quantity of judicial business changes. The judicial set-up that is suitable in one situation may be quite ill adapted to another. The legislature ought to be free to make such changes as the exigencies of the situation require, in order to secure the prompt and efficient handling of the judicial business. If such a suggestion seems to anyone to be a shocking departure from established practice, let it be remembered that the judicial clause of the Federal Constitution is very simple and direct:

> "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish."

The Powers of Government

The constitution must either enumerate the powers which may be exercised by the various branches of the government, or else

establish some rule upon the basis of which these powers may be determined. The possible scope of state power is indicated in a general way by the provisions of the Tenth Amendment to the Federal Constitution, which says that all powers not delegated by it to the Federal Government, nor denied by it to the states, are reserved to the states respectively or to the people. Within the limits of this framework, it is not only within the province of the state constitution, but it is its special function to establish, in language as clear as possible—language that has a general rather than a too specific application—the limits of the authority to be exercised by the executive, legislative and judicial branches of the government. And if the separation of powers system is to work satisfactorily, each department must be assured powers adequate to its peculiar responsibilities.

Students of government are practically unanimous in recommending broad grants of power, with a minimum of provisions of a limiting or restrictive character. In the early days of the Republic there was a widespread distrust of the executive power; while this was natural at that time, it has now largely disappeared. The governor is, in fact, commonly regarded as a popular leader, but we have rarely changed our law to conform to our changed attitude toward the executive. The governor is a responsible elected official; if we expect him to control his administration and secure definite results, we must not withhold from him the powers that are essential to the discharge of his responsibility. To do so is not only unfair to the man we have entrusted with the direction of the state government, but it imposes a handicap upon his success that is well nigh insuperable.

Similarly, with the legislature, we have imposed every kind of restrictive provision, so that our lawmaking bodies find themselves frequently lacking the power to deal effectively with pressing situations that confront them. Most of these restrictions originated in the reconstruction period following the Civil War, and have no conceivable relation to present-day legislatures or legislators. While every legislature has its quota of incompetents, there are regularly considerable numbers of men of ability and integrity who give of their time and effort without reservation in their anxiety to do a good job. With the techni-services that are now available for their assistance, in the form of legislative councils, reference bureaus and bill drafting facilities, they should be freed from hampering restrictions and given the opportunity to perform the task for which they were elected.

Provision for Amendment

The provisions for amendment and revision are among the most

important to be found in any constitution. No group of men in a convention, no matter how wise or how devoted to the public interest, can foresee the problems which changed conditions may bring about in the future. They should not seek to impose their will and their judgment, based upon existing conditions, upon generations yet to come—generations which may find themselves living under conditions that are wholly different. These generations will of right demand the same privilege of changing their fundamental law that their forefathers exercised, and in all probability they will be quite as competent to handle the problems confronting them.

It has—as has already been noted—been well established in the United States that a distinction should be made between fundamental or constitutional law on the one hand, and ordinary statutory law on the other. We have consistently regarded our constitutions as a kind of "higher law," and have consequently sought to make it more difficult to modify them than to change a statute. This attitude, which has much justification, should not be permitted to extend to the extreme position that constitutions are sacred, and that they ought not to be changed at all. In a dynamic society they must be changed from time to time, and they will be changed. The Federal Constitution has been amended 21 times, and literally hundreds of amendments to it have been proposed. The temper of the American people is such that they prefer to make needed changes by orderly processes, but if no procedure were offered by which they could be made by orderly means, they might be obliged to resort to the methods used by the founders of the Republic.

The provisions for amendment and revision should be as liberal as is consistent with the American doctrine of constitutional supremacy. The provision for a popular referendum every 15 or 20 years on the question of a convention for general revision, as in Missouri and New York, is a good one and should be included; but the provision for "piecemeal amendment" should also be liberal enough to permit the people to adopt from time to time such changes in their fundamental law as they may desire, without too many difficulties and obstructions. This is not the place to present the specifications of such a procedure; it is the purpose merely to present clearly the tests by which any procedure which might be contemplated, should be measured.

General Comment

We have tried to define a constitution and to indicate the nature of that distinction, so deeply imbedded in American law, between a constitution and a statute; we have noted the different types of material, the inclusion of which is essential to the drawing up of a complete constitution. It now remains simply to observe that a con-

stitution, like the government that operates under it, is a very human thing. There is no such thing as an ideal constitution, or a perfect constitution. A given constitution is good or bad, according to whether it encourages or impedes the body politic in its efforts to make those adjustments to changing social, economic and political conditions, which are indicated by the application of reason and intelligence to the problems of modern society. A constitution should, as Mr. Justice Cardozo said on one occasion, attempt to state principles of government for an expanding future.

THE BILL OF RIGHTS

by

C. WILLARD HECKEL
Assistant Professor of Law
Law School, Rutgers University, The State University of New Jersey

1. GENERAL INTRODUCTION

Constitutional law has been absorbed in three great dramatic struggles in the course of its development in the United States. The first is rooted in the doctrine of separation of powers, which distributes governmental power between three departments—legislative, executive and judicial. By devising a system of "checks and balances" the potential tyranny of a dictatorship or an oligarchy was minimized. The second struggle stems from the establishment of the federal system with 48 co-equal states functioning in a Union, and in which great powers have been delegated to a centralized national government. A bitter civil war was not sufficient to solve all the aspects of the problem of dual sovereignty; the clash between "states' rights" and "federal supremacy" is still with us.

However, it is the third struggle which is pertinent in a consideration of a bill of rights. That is the ageless contest between man and his sovereign, whether that sovereign be monarch or democratic state. Does the individual have any rights which organized society must respect? As this society becomes more complex, the issue becomes more taut. In the current wave of totalitarianism and the glorification of the state, once widely accepted maxims relative to the status of the individual have been discarded as obsolescent. The natural, inherent rights of man which, at the close of the 18th Century, were part of the political philosophy of the leaders in western civilization, are being challenged today. There is confusion as to whether the state exists for man or man for the state. In drafting a bill of rights this confusion must be dissipated.

A bill of rights is a limitation upon the capacity of the sovereign. In a constitution the people confer upon an institution called government the power to rule, but in a bill of rights the ruler is curbed and it is made clear that the people are the master, and the sovereign the servant.

New Jersey's first Constitution did not have a bill of rights, although the rights of trial by jury and freedom of religious worship were included.[1] This deficiency can be attributed to the fact that the document was drafted in the heat of war and was adopted on

[1] New Jersey Constitution of 1776, Arts. XVIII and XXII.

July 2, 1776, before the Declaration of Independence.[2] There was an urgent need for a skeleton government to replace the ties with Great Britain which were being severed. It is believed, further, that the framers considered the rights of man to be so rooted in the principles of the common law that to state them would be surplusage, particularly at a time when "the fury of a cruel and relentless enemy" was at their gates.[3] It should be recalled that 11 years later, when the United States Constitution was born, no bill of rights was included in the basic document. However, ratification of the Constitution hinged upon an understanding that such a bill of rights would be forthcoming. Congress acted in September, 1789, and the first ten amendments went into effect on December 15, 1791. They are considered the equivalent of a formal bill of rights in limiting the powers of the federal sovereign.

In the Constitutional Convention of 1844 which forged our present Constitution, there was grave doubt about the necessity for a bill of rights.[4] The Committee on a Bill of Rights and Privileges brought in a report which was substantially like Article I in the existing document. Mr. William B. Ewing, a delegate, moved to dispense with the entire report and referred to the bill of rights as "abstract propositions which are improper here, and will only serve to confuse the minds of the members." He went on to add that he had no objections to offer to the principles declared but he saw "no necessity for a bill of rights at all." [5]

Chief Justice Hornblower of the New Jersey Supreme Court, and one of the outstanding delegates, was of the same mind. "We have now arrived at a period when we should discard the lesson which we have learned from our ancestors who were compelled to ask crowned heads for a bill of rights. What do we want them for? . . . Why shall we tell ourselves what our rights are, or protect ourselves against ourselves?" [6] It was not the argument of the learned jurist which prevailed, but that of James C. Zabriskie, a delegate with foresight and an understanding of human nature. He argued that: "Although the people may know their rights, to maintain them unimpaired, it is necessary to have them frequently before the mind. . . . By adopting the declaration of rights we will circumscribe the action of the legislature within its legitimate and proper sphere, as well as proclaim those great and fundamental truths which lie at the foundation of civil liberty." [7]

The work of this convention 103 years ago produced a bill of rights which has stood the test of time and which compares favor-

[2] See Charles R. Erdman, Jr., The New Jersey Constitution of 1776 (1929).
[3] See the Preamble of the New Jersey Constitution of 1776.
[4] See Proceedings of the New Jersey Constitutional Convention of 1844, comp. and ed. by N. J. Writers' Project, Works Project Administration, 1942, pp. 139-148, 152-172, 409-429, 589-592.
[5] *Ibid*, p. 139.
[6] *Ibid*, p. 169.
[7] *Ibid*, p. 170.

ably with similar provisions in the fundamental laws of our sister states and in the United States Constitution. The revised Constitution submitted to the people of the State by the Legislature in 1944 contained no change in the product of the 1844 Convention.

Each paragraph of the article[8] will be taken up *seriatim* and its source, judicial interpretations, and any suggested amendments to it will be treated. Upon the completion of this analysis suggested additions to the present bill of rights will be discussed.

2. Natural and Unalienable Rights

Article I, Paragraph I

"All men are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness."

Source

This paragraph is almost in exactly the same phraseology as reported by the Committee on a Bill of Rights and Privileges of the 1844 Convention.[9] It is interesting to note that the Convention substituted the words "by nature" for the words "born equally." The latter expression was deemed unnecessary and inconsistent with another portion of the Constitution where "all white male citizens" were given the right of suffrage. There was no intent on the part of the framers in 1844 to accord to a slave the rights of a freeman.

Thirty-three other states give similar recognition to the natural rights of persons, although expressed somewhat differently.[10] The "Model State Constitution" prepared by the Committee on State Government of the National Municipal League adds a sentence stressing the correlative duties of men. "These rights carry with them certain corresponding duties to the state." [11]

Judicial Interpretation

This provision refers to the absolute, inherent rights of the citizen, referred to as natural or human rights. They preceded government and are inherent in the very nature of man himself. They are not

[8] N. J. Constitution, Art. I, Rights and Privileges.

[9] Proceedings, *op. cit.*, p. 51.

[10] Missouri Constitution of 1945, Art. 1, sec. 2: "That all constitutional government is intended to promote the general welfare of the people, that all persons have a natural right to life, liberty, the pursuit of happiness and the enjoyment of the gains of their own industry, that all persons are created equal and are entitled to equal rights and opportunity under the law, that to give security to these things is the principal office of government, and that when government does not confer this security, it fails in its chief design."

Illinois Constitution, Art. II, par. 1: "All men are by nature free and independent, and have certain inherent and inalienable rights—among these are life, liberty, and the pursuit of happiness. To secure these rights and the protection of property, governments are instituted among men, deriving their just powers from the consent of the governed."

California Constitution, Art. I, sec. 1, is almost identical with the New Jersey provision.

[11] Partial Revision of 1946, sec. 101.

given but were rather declared by the Constitution, and are inalienable.[12] The State Government, however, possesses the police power which enables it to act on behalf of the public health, morals, comfort, order, safety and welfare. When the State or its subdivisions are acting in this proper sphere, the individual's life, liberty, or property may be impaired for the public good without violating this provision.[13] When no resultant public benefit flows, the restriction upon the individual falls.[14] The Fourteenth Amendment of the United States Constitution prohibits any state from depriving any person of life, liberty or property without due process of law, and in its effect upon the relation of the individual to the state, closely parallels Art. I, par. 1 in the New Jersey Constitution.[15]

Among the rights included herein are the right to earn a livelihood,[16] the right to make contracts for the purchase and sale of property and personal services;[17] the right freely to engage in a lawful business or occupation,[17] and the right of privacy.[18] This latter right does not prevent fingerprinting and photographing in advance of conviction,[19] but does prevent the premature dissemination of the records before conviction.

Suggested Amendments

The inclusion of the words "and women" after the words "all men" in Art. 1, par. 1, has been advocated in order clearly to emphasize the equality between the sexes.[20] An extension of the enumerated rights, to include the right of every person to have security from want and privation resulting from unemployment, was suggested in the proceedings before the New Jersey Joint Legislative Committee considering a revised Constitution in 1942.[21] The insertion of the word "equal" before the word "natural," as advocated in the 1844 Convention, is still an issue.

3. Political Powers

Article I, Paragraph 2

> "All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right at all times to alter or reform the same, whenever the public good may require it."

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[12] *Mitnick* v *Furniture Workers Union, Local No. 66, C. I. O.*, 124 N.J. Eq. 504.
[13] *Mansfield and Swett, Inc.* v *West Orange*, 120 N.J.L. 145; *State Board of Milk Control* v *Newark Milk Co.*, 118 N.J. Eq. 504.
[14] *State* v *Packard-Bamberger & Co.*, 123 N.J.L. 180.
[15] *State Board of Milk Control* v *Newark Milk Co., supra.*
[16] *Carrol* v *Local No. 269*, 133 N.J. Eq. 144.
[17] *Brennan* v *United Hatters of North America*, 73 N.J.L. 729.
[18] *McGovern* v *Van Riper*, 137 N.J. Eq. 24.
[19] *McGovern* v *Van Riper*, 137 N.J. Eq. 548.
[20] Record of Proceedings before the Joint Committee . . . to Ascertain the Sentiment of the People . . . as to Change, 1942, pp. 38-9, and brief, 46-89.
[21] *Ibid*, pp. 189; and see also 18, 21, 25.

Source

As drafted by the Committee on a Bill of Rights and Privileges in the 1844 Convention, this paragraph included the words: "and to abolish one form of government, and establish another" before the word "whenever." The phraseology was attacked as too broad, and it was pointed out that there was no right to substitute an autocracy or monarchy for a republic, because the United States Constitution charges the Federal Government with guaranteeing to every state a republican form of government.[22] With the criticized language deleted the paragraph was adopted upon the insistence of Delegate Moses Jaques, who believed the people were strongly in favor of it. "For my own part, I would not consider it safe to go home after voting to strike out this proposition. The people would pelt me with rotten eggs or brick bats, or anything they could lay their hands on." [23] He was defeated in an effort to include the thought that: "on entering into society, men give up none of their rights; they only adopt new modes, by which they are better secured." The Convention felt that the words were too abstract and not true.[24]

The preamble of the New Jersey Constitution of 1776 enunciated the principle that "all the constitutional authority ever possessed by the kings of Great Britain . . . was, by compact, delivered from the people, and held of them for the common interest of the whole society. . . ." New Jersey thus early recognized that the state exists for man, not man for the state. Only three states fail to include a provision similar to Art. I, sec. 2 in their fundamental law.[25]

Judicial Interpretation

One year after the adoption of the Constitution, the New Jersey Supreme Court described this paragraph as containing mere opinion without anything in the nature or form of enactment.[26] It was held to be a corollary of the first paragraph and was intended only as a preamble to the other sections, all of which are in the form of command or prohibition. However, it was this provision that sustained the validity of the act of the Legislature which referred to a state-wide referendum the question of whether or not a legislative enactment should become operative and effective.[27] The very ques-

[22] Proceedings, *op. cit.*, p. 140. The reference is to U. S. Constitution, Art IV, sec. 4.
[23] *Ibid,* p. 141.
[24] *Ibid,* pp. 409-11.
[25] For comparable language see Missouri Constitution of 1945, Art. I, sec. 1: "That all political power is vested in and derived from the people, that all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole."
Maryland Constitution, Art. 1: "That all Government of right originates from the People, is founded in compact only, and instituted solely for the good of the whole; and they have, at all times, the inalienable right to alter, reform or abolish their form of Government in such manner as they may deem expedient."
[26] *State* v *Post,* 20 N.J.L. 368, 375.
[27] *Hudspeth* v. *Swayze,* 85 N.J.L. 592.

tion of whether the State Constitution should be revised is one whose decision is, under this paragraph, inherent in the people.[28]

Suggested Amendments

Those who advocate introducing the initiative, referendum and recall into the Constitution suggested that Art. I, par. 2 be amended so as to specifically contain such provisions.[29]

4. Rights of Conscience; Religious Freedom

Article I, Paragraph 3

> "No person shall be deprived of the inestimable privilege of worshipping Almighty God in a manner agreeable to the dictates of his own conscience; nor under any pretense 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."

Source

This paragraph closely follows the wording of Article XVIII of the 1776 Constitution. The 1844 Convention found no necessity for changing the earlier language. An amendment was rejected which would have added the qualification "but liberty of conscience is not to be construed to excuse acts of licentiousness, or justified acts inconsistent with the peace and liberty of the State."[30]

All the states except Oklahoma contain safeguards equivalent to those of paragraph 3, but in many cases the provisions are shorter and less detailed. The present New Jersey Constitution devotes two separate paragraphs—pars. 3 and 4—to religious freedom, while many other constitutions combine the material into one.[31]

Judicial Interpretation

A state constitution is not the only bulwark protecting the individual's religious freedom from state encroachment. The Fourteenth Amendment of the United States Constitution has been held to apply, and it is a deprivation of liberty without due process of law for a state to interfere with the religious life of persons within its jurisdiction. Thus, a statute (*P. L. 1932, c. 145*) requiring pupils

[28] See dissenting opinion of Mr. Justice Colie in *City Affairs Committee* v *Board of Commissioners*, 134 N.J.L. 191.

[29] *Cf.*, Report of Proceedings before the Joint Committee . . . , 1942, *op. cit.*, pp. 169-70, 172-3 and 311, where these proposals were advanced in discussing other Articles of the Constitution.

[30] Proceedings, *op. cit.*, pp. 141-42. This qualification does appear in the Constitutions of Missouri, California, New York and Illinois.

[31] The "Model State Constitution" of the National Municipal League is very terse: "No law shall be passed respecting the establishment of religion, or prohibiting the free exercise thereof." (Sec. 110.)

in public schools to salute the flag of the United States and repeat an oath of allegiance every school day was sustained under this paragraph in the New Jersey Constitution on the ground that the salute and pledge were not religious rites.[32] The same statute would be invalid today as in violation of the United States Constitution.[33] The United States Supreme Court adopts the view that the inhibition of the First Amendment that Congress shall not prohibit the free exercise of religion, secures the individual against adverse state action by virtue of the Fourteenth Amendment.

Under Art. 1, par. 3 an individual has the right to go from house to house to solicit donations and subscriptions for religious causes, to distribute religious circulars and to preach his religious beliefs without obtaining a permit.[34] The court has refused to compel a husband in a matrimonial dispute to make overtures to induce his absent wife to return to him by acceding to her demands that they be married by the Catholic Church, where the husband was a member of another church. The constitutional inhibitions forbidding legislation based upon religious qualifications extend to decrees of a judicial tribunal.[35]

Recently a statute authorizing school district boards of education to make rules and contracts for the transportation of children to and from schools, including other than public schools, and a resolution of a township board of education providing for transportation of school children to parochial schools as well as public schools, were sustained as valid under this and the succeeding paragraph of the New Jersey Constitution.[36]

Suggested Amendments

It has been suggested that the word "right" be substituted for the word "privilege" in the first clause of the paragraph.[37] It was also suggested before the 1942 Joint Legislative Committee that the clause "and no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief" be added to par. 3.[38]

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[32] *Hering v State Board of Education,* 117 N.J.L. 455, affirmed 118 N.J.L. 566, appeal dismissed, 302 U.S. 624.

[33] *West Virginia State Board of Education* v *Barnette,* 319 U.S. 624, reversing *Minersville School District* v *Gobitis,* 310 U.S. 586. In *Morgan* v *Civil Service Commission,* 131 N.J.L. 410, the New Jersey Supreme Court noted that this paragraph has the same quality and meaning as the Fourteenth Amendment of the U. S. Constitution.

[34] *Tucker* v *Randall,* 18 N.J. Mis. R. 675. This apparently reverses *Semansky* v *Common Pleas Court of Essex County,* 13 N.J. Mis. R. 589. The U. S. Supreme Court has repeatedly applied the 14th Amendment to this problem. See *Murdock* v *Commonwealth of Pennsylvania,* 319 U.S. 105.

[35] *Knibb* v *Knibb,* 94 N.J. Eq. 747, 121 Atl. 715 (E. & A.).

[36] *Everson* v *Bd. of Education of Ewing Township,* 133 N.J.L. 350. The statute and resolution are also valid under the 14th Amendment of the U. S. Constitution. See *Everson* v *Board of Education of Ewing Township,* 67 S. Ct. 504.

[37] The Missouri Constitution of 1945 declares: "that all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no human authority can control or interfere with the rights of conscience . . . that no person can be compelled to erect, support or attend any place or system of worship, or to maintain or support any priest, minister, preacher, or teacher of any sect, church, creed or denomination of religion; but if any person shall voluntarily make a contract for any such object, he shall be held to the performance of the same." Art. I, secs. 5, 6.

[38] Record of Proceedings, *op. cit.,* p. 24.

5. No Religious Establishment or Test

Article I, Paragraph 4

"There shall be no establishment of one religious sect, in preference to another; no religious test shall be required as a qualification for any office or public trust; and no person shall be denied the enjoyment of any civil right, merely on account of his religious principles."

Source

This paragraph was adopted without serious debate in the Convention of 1844 and with only minor changes from the committee report.[39] The original Constitution of 1776 placed Protestants in a favored position. Article XIX stated:

> "That there shall be no establishment of any one religious sect in this province in preference to another; and that no protestant inhabitant of this colony shall be denied the enjoyment of any civil right, merely on account of his religious principles; but that all persons, professing a belief in the faith of any protestant sect, who shall demean themselves peaceably under the government as hereby established, shall be capable of being elected into any office of profit or trust, or being a member of either branch of legislature, and shall fully and freely enjoy every privilege and immunity enjoyed by others their fellow-subjects."

Judicial Interpretation

In addition to the cases considered under the previous paragraph, the court has held that the civil right of a person to testify in his own behalf is one that cannot be taken from him because of his belief or disbelief on religious topics. He has a right to testify under an initial solemnity, such as an affirmation binding him to tell the truth.[40]

Suggested Amendments

The present Constitution forbids a religious test as a qualification for any office of public trust. It has been suggested that the prohibition be extended to religious tests for public or private employment. This would be similar to an anti-discrimination provision which will be treated later.

6. Liberty of Speech or of the Press

Article I, Paragraph 5

"Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty

[39] The committee report contained no reference to religious test. Proceedings, *op. cit.*, p. 52.

[40] *State* v *Levine*, 109 N.J.L. 503. This does not apply to witnesses generally, but only to parties to litigation. Some states have specifically relieved all witnesses from a religious test. Missouri Constitution, Art. I, sec. 5: "No person shall, on account of his religious persuasion or belief, be disqualified from testifying or serving as a juror." California Constitution, Art. I, sec. 4: "No person shall be rendered incompetent to be a witness or juror on account of his opinions on matters of religious belief." See also New York Constitution, Art. I, sec. 3.

of speech or of the press. In all prosecutions or indictments for libel the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact."

Source

This paragraph was taken from the 1821 Constitution of New York,[41] without change, by the Convention of 1844 in New Jersey.[42] Every state has similar guarantees, although some of them contain no reference to libel. Congress is prohibited from abridging the freedom of speech, or of the press.[43]

Judicial Interpretation

The rights of free speech and free press are cherished by the American people and have always been jealously guarded. These rights are always put to the test when the utterances or writings are extremely unpopular, but the courts have emphasized that the merest minority may be heard. The New Jersey Court of Chancery went to the heart of the matter in a case involving a pro-Nazi organization: [44]

> "Our law does not prohibit the public expression of unpopular views. It is lawful to advocate, for instance, the establishment of a dictatorship in America, or a soviet form of government or an hereditary monarchy, or the abolition of religious freedom, or other changes in our political, economic or social system, no matter how unwise or how shocking. If lawless elements in the community instead of ignoring such propaganda, or meeting it by sound argument, resort to riot, it is the duty of police to protect the lawful assemblage and repress those who unlawfully attack it."

A statute making it a misdemeanor to make any statements inciting, promoting, or advocating hatred, abuse, violence, or hostility against any group of persons by reason of race, color, religion, or manner of worship was held invalid as a curb on freedom of speech.[45]

The rights of free speech and press, like others, are limited by police power of the state when called into action on behalf of the public safety, morals, health, or welfare.[46] There must be "a clear

[41] Now Art. I, par. 8 of the New York Constitution. See California Constitution, Art. I, sec. 9.

[42] The debate on a motion to strike out the clause giving the jury the right to determine law and fact was of a high order. See Proceedings, *op. cit.*, pp. 142-48.

[43] U. S. Constitution, First Amendment.

[44] *American League of Friends of New Germany* v *Eastmead,* 116 N.J. Eq. 487.

[45] *State* v *Klapprott,* 127 N.J.L. 395.

[46] *State* v *Black,* 54 N.J.L. 446: "While a man has a right to express his opinions, the exercise of this right, like all other general rights, is the subject of reasonable police regulations. A man cannot rise in church during service and deliver a political harangue, or shout his convictions about public measures at midnight, in the streets of a city, without liability of being arrested as a disorderly person." See also *State* v *Boyd,* 86 N.J.L. 75, where it was said: ". . . free speech does not mean unbridled license of speech, and that language tending to the violation of the rights of personal security and private property and toward breaches of the public peace is an abuse of the right of free speech, for which by the very constitutional language invoked, the utterer is responsible." Also see *State* v *O'Donnell,* 200 Atl. Rep. 739, holding the Disorderly Persons Act, R.S. 2:202-7, constitutional.

and present danger" to the public interest, however, before the individual's rights are sacrificed. That is the standard invoked by the United States Supreme Court when applying the Fourteenth Amendment to state action.[47] Just as in the case of freedom of religious worship, the rights of free speech and press are protected against state abuses by the due process clause of this amendment.[48]

Peaceful picketing in a labor dispute is an exercise of the right of free speech on the part of laborers, who are thereby advising or notifying others of their point of view.[49] This right to picket is not dependent on an immediate employer-employee dispute and it is not essential that the employer's own employees be in controversy with him.[50] When picketing is accomplished by violence, threats, intimidation, or coercion, the State may restrict the laborers' activities.[51]

The distribution of non-commercial circulars on the public streets and in other public places without obtaining a license or permit so to do, is protected by virtue of the Federal Constitution.[52] Public speaking in parks and other public places without first obtaining a permit from a municipal official, as required by ordinance, was not protected under the New Jersey Constitution,[53] but would be under the Fourteenth Amendment of the United States Constitution.[54] New Jersey courts have recently held that sound amplification of public speaking is not part of the constitutional guarantee.[55]

The provisions of Art. 1, par. 5 with respect to libel met firm opposition in the Convention of 1844. Historically, under the common law, the jury decided questions of fact and the court questions of law. Chief Justice Hornblower opposed the provision that the jury have the right in libel trials to decide both the law and the fact. He considered it a departure from common law precedent and argued it would prevent the court from granting a new trial when a defendant was wrongfully convicted by a jury and also would permit the jury to pass on the admissibility of evidence. There was a spirited debate, the provision finally being adopted because of a feeling that courts had abused their powers in this type of action.[56] A complete exposition on the operation under this paragraph is given by the New Jersey Supreme Court: [57]

> "It was not intended to affect the duty of the court to decide all questions of law relating to the admission of testimony and such other mat-

[47] *Gitlow* v *New York*, 268 U. S. 652. See dissent of Mr. Justice Holmes which is now the view of the court. *Pennekamp* v *Florida*, 66 S. Ct. 1029. See also *State* v *Tachin*, 92 N.J.L. 269.
[48] *Thomas* v *Collins*, 323 U. S. 516.
[49] *Westinghouse Electric Corp.* v *United E. R. & M. Workers*, 139 N.J. Eq. 97.
[50] *Kingston Trap Rock Co.* v *International Union*, 129 N.J. Eq. 570; *E. L. Kerns Co.* v *Landgraf*, 128 N.J. Eq. 441.
[51] *Isolantite, Inc.* v *United E. R. & M. Workers*, 130 N.J. Eq. 506.
[52] *Lovell* v *Griffin*, 303 U.S. 444.
[53] *Thomas* v *Casey*, 121 N.J.L. 185.
[54] *Hague* v *Committee for Industrial Organization*, 307 U.S. 496.
[55] *Kovacs* v *Cooper*, 135 N.J.L. 64.
[56] Proceedings, *op. cit.*, pp. 142-48.
[57] *Drake* v *State*, 53 N.J.L. 23.

> ters as are preliminary to the final submission of the case to the jury; nor to affect its duty to instruct the jury with regard to their legitimate province in the decision of the cause, and with regard to those general principles of the criminal law and of the law of libel which are of a technical nature, and with which the jury can scarcely become acquainted, save through the instructions of the court."

The court can express its opinions to the jury touching the character of the particular publication charged as libelous and the motives and ends presented for its justification:

> "But since, upon these topics an intelligent layman may be as competent to judge as an intelligent lawyer, and because the liberty of the press had been thought to be endangered by the peremptory control over them assumed by the courts, the purpose of the provision was to declare and secure the right of the jury to decide for themselves, with proper regard to the views of the court, whether the meaning and tendency of the publications were such as to bring it within the legal definition of a libel, whether it was privileged under the rules of the common law, and whether it was true, and published with motives which to them appeared good and for ends which to them appeared justifiable."

Suggested Amendments

The Missouri Constitution was amended in 1945 so that the provision analogous to Art. I, par. 5 would apply to slander as well as libel actions, but only in the case of libel does the jury determine the law and facts.[58] In Missouri as well as in Illinois both civil as well as criminal trials for libel come within the constitutional provisions.[59]

7. Searches and Seizures

Article I, Paragraph 6

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the papers and things to be seized."

Source

This paragraph is practically the same as the Fourth Amendment to the United States Constitution. All of the states except New York and North Carolina have similar provisions in their fundamental law. The Convention of 1844 adopted the paragraph as drafted by its committee without any debate.

Judicial Interpretation

The excesses of the colonial period, when British army officers acting under writs of assistance invaded the private homes of the people in order to ransack every area, gave birth to constitutional

[58] Art. I, par. 8.
[59] Illinois Constitution, Art. II, par. 4.

guarantees of this type. The New Jersey courts have differed from the federal courts in determining the admissibility of evidence obtained in violation of this paragraph. Property obtained through an unjustifiable search and seizure is admissible in evidence in this State,[60] but not under the federal rule.[61] Of course, a search with the consent of the accused is not unlawful.[62]

The state courts have defined a search warrant as an order in writing signed by a magistrate, directed to a peace officer, commanding him to search for personal property and bring it before the magistrate.[63] The term "probable cause" in paragraph 6 means reasonable grounds for suspicion, supported by circumstances sufficiently strong in themselves to warrant an ordinarily cautious man in believing that the accused is guilty of the offense with which he is charged.[64] The prosecutor need not necessarily have personal knowledge of the transaction of which he complains; he may rightfully act upon information communicated to him in the ordinary routine of business, where he honestly believes such information to be true and the information is of such a character and is communicated in such a manner that under similar circumstances it would be acted upon by a man of ordinary prudence.

The guarantee by the State against unreasonable searches and seizures is not considered within the scope of the due process clause of the Fourteenth Amendment to the Federal Constitution.[65]

Suggested Amendments

The federal rule as to the non-admissibility of evidence illegally obtained is defended as implementing the constitutional guarantee and attacked as impairing the efficiency of criminal prosecution. If New Jersey is to adopt the federal rule, a provision such as the following is suggested: "No evidence obtained by any officer in violation of this provision shall be admitted in evidence against the accused on the trial of any criminal case."

There is doubt whether this paragraph applies to the tapping of telephones.[66] A suggested addition to deal with this has been urged. It would read: "The right of the people to be secure against unreasonable interception of telephone and telegraphic communications shall not be violated, and ex parte orders or warrants shall issue only upon oath or affirmation that there is reasonable ground to believe that evidence of crime may be thus obtained and identifying the particular means of communication and particularly de-

[60] *State* v *Merra*, 103 N.J.L. 361.
[61] *Weeks* v *United States*, 232 U.S. 383.
[62] *State* v *Giberson*, 99 N.J.L. 85.
[63] *State* v *Best*, 8 N.J. Misc. R. 271.
[64] *Lane* v *Pennsylvania Railroad Co.*, 78 N.J.L. 672.
[65] *Adams* v *New York*, 192 U.S. 585.
[66] In *Olmstead* v *United States*, 277 U.S. 438, the U. S. Supreme Court refused to extend the scope of the Fourth Amendment's protection to include the secret tapping of telephone wires for the purpose of procuring evidence.

scribing the person or persons whose communications are to be intercepted and the purpose thereof."

The Federal Constitution and that of most states differ from New Jersey's in the last clause of paragraph 6. They read: "and the persons and things to be seized," rather than "and the papers and things to be seized."

8. Trial by Jury

Article I, Paragraph 7

"The right of trial by Jury shall remain inviolate; but the legislature may authorize the trial of civil suits, when the matter in dispute does not exceed fifty dollars, by a jury of six men."

Source

The right of trial by jury is one of the great tenets of the common law and was firmly recognized in the New Jersey Constitution of 1776.[67] The Committee on a Bill of Rights and Privileges in the 1844 Convention reported this paragraph without the qualification following the semicolon in paragraph 7, which was added on the floor of the Convention. The paragraph received brief debate.

Judicial Interpretation

The courts have held that both the 1776 and 1844 Constitutions do not enlarge, but merely secure, the right of trial by jury.[68]

The provision of paragraph 7 is not intended to give the right of trial by jury in cases where it did not previously exist, but merely to preserve it inviolate in cases where it existed at the time of the adoption of the Constitution. Thus, penalties for the violation of a statute which provides for summary proceedings before a magistrate can be disposed of by the magistrate without a jury. The right of trial by jury is invoked according to the nature of the prohibited act, and does not rest alone on the mode in which it is to be tried; the substance and not the form must control in determining the right.[69] In short, the determining factor is whether or not the right existed in such a case at the time the Constitution was adopted.

A party may waive his right to a trial by jury.[70] It should be added that no provision in the Federal Constitution guarantees to a person a jury trial in a state court.[71]

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[67] Art. XXII: ". . . and that the inestimable right of trial by jury shall remain confirmed, as a part of the law of this colony, without repeal, forever." See Seventh Amendment of the U. S. Const.: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved. . . ."

[68] *Carter Bros.* v *Camden District Court*, 49 N.J.L. 600; *Stizza* v *Essex County Juvenile and Domestic Relations Court*, 132 N.J.L. 406.

[69] *State Bd. of Medical Examiners* v *Buettel*, 102 N.J.L. 74.

[70] *Raphael* v *Lane*, 56 N.J.L. 108.

[71] *Ellenbecker* v *Plymouth County*, 134 U.S. 35; *Walker* v *Sauvinet*, 92 U.S. 92; *Maxwell* v *Dow*, 176 U.S. 603.

Suggested Amendments

The Commission on Revision of the New Jersey Constitution, in its report in 1942, recommended that the word "men" in paragraph 7 be changed to the word "persons," inasmuch as juries consist of both sexes.

9. Rights of Persons Accused of Crime

Article I, Paragraph 8

"In all criminal prosecutions the accused shall have the right to a speedy and public trial by an impartial jury; to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel in his defence."

Source

The Constitution of 1776 was less comprehensive on this subject. It provided merely "That all criminals shall be admitted to the same privileges of witnesses and counsel, as their prosecutors are or shall be entitled to." [72] The present paragraph is substantially identical with the Sixth Amendment to the United States Constitution.

Judicial Interpretation

The jury required by this provision is one of 12 persons, as at common law, but the qualifications of the jurors can be set by the Legislature where no discrimination is practised.[73] The trial by jury can be waived.[74] It is not required in petty criminal offenses, where summary trial without a jury before a magistrate was recognized at the time of the adoption of the Constitution.[74a] The Legislature may require a jury trial in a murder case even though the prisoner pleads guilty.[75] Although a public trial is required, a court can exclude a part of the audience from the courtroom where the defendant is not prejudiced nor deprived of the presence of any person who might be of advantage to him.[76]

A defendant is entitled to an arraignment, where a formal opportunity is given to him to be informed of the nature and cause of the accusation against him. This right may be waived by participation of the defendant's counsel in the selection of jurors, presentation of proofs, and summation of the case to the jury.[77] An indictment must be certain in its allegations, so that it can be seen upon

[72] Art. XVI.
[73] *State* v *James*, 96 N.J.L. 132.
[74] *State* v *Stevens*, 84 N.J.L. 561.
[74a] *Katz* v *Eldredge*, 96 N.J.L. 382; reversed on other grounds, 97 N.J.L. 123, 98 N.J.L. 125.
[75] *State* v *Genz*, 57 N.J.L. 459.
[76] *State* v *Genese*, 102 N.J.L. 134.
[77] *State* v *O'Toole*, 115 N.J.L. 205; certiorari denied, 296 U.S. 613; rehearing denied, 296 U.S. 662.

inspection not merely what the nature of the crime is, but what particular crime is intended to be charged.[78] The mere recital of non-descriptive words from a statute will not constitute a reasonably complete statement of the offense.[79]

The accused has the right to be confronted with the witnesses against him, but the trial of a person for a crime, not a capital offense, commenced in his presence, may be continued in his absence.[80] It is not error to re-read a portion of the testimony or a portion of the judge's charge in the temporary absence of the defendant.[80]

The accused must be reasonably diligent in employing counsel and can not indefinitely postpone trial.[81] He has no right to counsel, under Art. I, par. 8, in the preliminary examination or at the time of a voluntary confession.[82] He must invoke his right at the trial or it is waived.[82]

10. Presentment or Indictment of Grand Jury

Article I, Paragraph 9

> "No person shall be held to answer for a criminal offense unless on the presentment or indictment of a grand jury, except in cases of impeachment, or in cases cognizable by justices of the peace, or arising in the army or navy or in the militia, when in actual service in time of war or public danger."

Source

This paragraph embodies another historic right which accompanies the right to trial by jury. It is similar to language in the Fifth Amendment to the Federal Constitution, which applies to criminal prosecutions by the Federal Government. The paragraph was adopted without debate in the 1844 Convention.

Judicial Interpretation

The New Jersey Supreme Court discussed this provision in an early case:

> "The purpose of this clause was to prevent the bringing of any citizen under the reproach of being arraigned for crime before the public, unless, by a previous examination taken in private, the grand inquest had certified that there existed some solid ground for making the charge. . . . The reputation of every man was thus put under the care of a single specified body. . . . The restraining clause. . . . has nothing to do with the result or effect of the trial, its object being to save from the shame of being brought before the bar of a criminal court, except in the authorized method after an antecedent inquisition."[83]

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[78] *State* v *Borg*, 9 N.J. Misc. R. 59.
[79] *State* v *Schmidt*, 57 N.J.L. 625.
[80] *State* v *Nardella*, 108 N.J.L. 148, 154 Atl. 834 (E. & A.).
[81] *State* v *Longo*, 133 N.J.L. 301.
[82] *State* v *Murphy*, 87 N.J.L. 515.
[83] *State* v *Anderson*, 40 N.J.L. 224.

Where an offense was not criminal at common law it is a fit subject for prosecution and punishment in summary proceedings without action by a grand jury.[84] However, if the crime was indictable at common law a person cannot be tried, convicted and punished in a summary proceeding.[85] The effect of making an indictable common law crime punishable and abatable in the Court of Chancery has been held to violate this provision.[86]

The Legislature cannot authorize an amendment in substance which will change an indictment found by a grand jury so as to substitute one crime for another charged therein.[87] A statute is valid which permits an amendment of an indictment when the name of any person injured is misstated, if the court considers the defendant is not prejudiced.[88]

Under this paragraph a person has no right to have a particular set of men constitute a grand jury as long as the jury is impartial.[89] The right set forth in the provision being a personal one, it can be waived by the individual.[90]

Suggested Amendments

The Commission on Revision of the New Jersey Constitution in 1942 urged that this provision be amended to read "a capital or other infamous crime," instead of "a criminal offense." This would decrease the scope of the guarantee, but it has been advocated on the theory that the individual benefits when minor crimes are speedily disposed of by a competent committing magistrate in the local community. The advocated amendment would bring New Jersey into line with the Federal Constitution.[91] The Commission further advocated the removal of the words "or in cases cognizable by justices of the peace," inasmuch as justices of the peace had been abolished as constitutional officers in the revised constitution proposed by it.

11. Double Jeopardy; Bail

Article I, Paragraph 10

> "No person shall, after acquittal, be tried for the same offense. All persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses, when the proof is evident or presumption great."

Source

In the Convention of 1844 the Committee on the Bill of Rights worded the first sentence of this provision differently: "No per-

[84] *State* v *Murzda*, 116 N.J.L. 219.
[85] *Richardson* v *State Bd. of Control of Institutions and Agencies*, 99 N.J.L. 516.
[86] *Hedden* v *Hand*, 90 N.J. Eq. 583.
[87] *State* v *Cohen*, 105 N.J.L. 529; *State* v *Sing Lee*, 94 N.J.L. 266.
[88] *State* v *Tolla*, 72 N.J.L. 515.
[89] *State* v *Egan*, 82 N.J.L. 317, affirmed 84 N.J.L. 701.
[90] *Edwards* v *State*, 45 N.J.L. 419.
[91] U. S. Const., Fifth Amend.; see also New York Const., Art. I, par. 6.

son shall be twice put in danger of punishment for the same offense. . ." [92]

Chief Justice Hornblower pointed out that this might prevent a second trial after a conviction had been set aside as based on error. He also feared that a second trial would be precluded when the jury failed to reach an agreement or there was a mistrial. He persisted in pressing his argument against spirited opposition, with the result that the present phraseology was finally adopted.[93] The Federal Constitution follows the original wording.[94] The constitutions of some states are even more specific than that of New Jersey.[95]

Judicial Interpretation

The courts have adhered to the views of Chief Justice Hornblower and under this provision where a conviction is reversed, a new trial can be had.[96] In like vein, a mistrial does not involve the element of double jeopardy.[97]

Early recognition of double jeopardy as a common law maxim appears in the *New Jersey Law Reports.* The New Jersey courts have indicated that they would have recognized it and acted upon it without the constitutional provision: [98] ". . . it is a general rule that in cases where an acquittal upon the first indictment would bar a second, a conviction on the first would have the same effect." A defendant cannot be convicted of two distinct felonies growing out of the same act where one is a necessary ingredient of the other.[99] However, an election to try a murder indictment growing out of a robbery, before the robbery indictment, is not an acquittal of the robbery charge.[100] A conspiracy to commit a crime is an offense, separate and distinct from the crime that has been planned and consummated.[101] A trial in a court lacking jurisdiction does not preclude a second trial for the same offense.[102]

The State cannot appeal a judgment of acquittal, even though errors were committed at the trial.[103] It may appeal the act of an

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[92] Proceedings, *op. cit.*, p. 53.
[93] *Ibid,* pp. 152-57, 412-14 and see p. 590.
[94] U. S. Constitution, 5th Amend.
[95] Missouri Const., Art. I, par. 19: ". . . nor shall any person be put again in jeopardy of life or liberty for the same offense, after being once acquitted by a jury; but if the jury fail to render a verdict the court may, in its discretion, discharge the jury and commit or bail the prisoner for trial at the same or next term of court; and if judgment be arrested after a verdict of guilty on a defective indictment or information, or if judgment on a verdict of guilty be reversed for error in law, the prisoner may be tried anew on a proper indictment or information, or according to the law."
[96] *State* v *Silver,* 101 N.J.L. 232.
[97] *State* v *Block,* 119 N.J.L. 277, affirmed 121 N.J.L. 73.
[98] *State* v *Cooper,* 13 N.J.L. 361.
[99] See *State* v *Cosgrove,* 103 N.J.L. 412, where an automobile driver who struck two girls crossing the street, causing the death of one, and who was acquitted of manslaughter, was held to be protected against an indictment for atrocious assault and battery on the other, since both crimes were the product of same act."
[100] *State* v *Carlino,* 98 N.J.L. 48, affirmed 99 N.J.L. 292. See *State* v *Mowser,* 92 N.J.L. 474, where a conviction of robbery was held a bar to a prosecution for murder which occurred during the commission of the robbery.
[101] *State* v *Chevencek,* 127 N.J.L. 476.
[102] *State* v *Firth,* 103 N.J.L. 278.
[103] *State* v *Hart,* 90 N.J.L. 261.

intermediate court reversing a judgment of conviction in the court of first instance.[103]

The federal and state sovereigns are separate entities, so that an acquittal or conviction in the criminal tribunal of one creates no barrier to prosecution by the other for a crime arising out of the same act.[104]

12. Habeas Corpus

Article I, Paragraph 11

"The privilege of the writ of habeas corpus shall not be suspended, unless in case of rebellion or invasion the public safety may require it."

Source and Interpretation

This great writ has traditionally been regarded primarily as a guaranty of the right to trial and as a protection against detention without trial. It offers the procedure through which the legality of detention and the process through which detention was secured can be tested. The Federal Constitution has a similar provision.[105] Even an aroused state of public opinion against a person petitioning for the writ has been held as no ground for denying the application.[106]

13. Military Subordinate to Civil Power

Article I, Paragraph 12

"The military shall be in strict subordination to the civil power."

Source

This provision is contained in 38 state constitutions. It was adopted without debate in the 1844 Convention.

14. Quartering of Soldiers

Article I, Paragraph 13

"No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, except in a manner prescribed by law."

Source

This provision appears in the Federal Constitution[107] and in 29 state constitutions.

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[104] *State* v *Cioffe*, 128 N.J. Law 342, affirmed 130 N.J.L. 160. See also *Howe* v *Treasurer of Plainfield*, 37 N.J.L. 145, applying the same principle to state and municipality.
[105] U. S. Const., Art. I, sec. 9, cl. 2.
[106] *Ex Parte Stegman*, 112 N.J. Eq. 72.
[107] U. S. Const., Third Amend.

15. Treason

Article I, Paragraph 14

"Treason against the state shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court."

Source

This provision appears in the Federal Constitution[108] and 31 state constitutions.

16. Excessive Bail or Fines; Cruel and Unusual Punishment

Article I, Paragraph 15

"Excessive bail shall not be required, excessive fines shall not be imposed, and cruel and unusual punishments shall not be inflicted."

Source

This provision adopts the same wording that appears in the Federal Constitution.[109] Every state, with the exception of Georgia and Vermont, has a similar guarantee.

Judicial Interpretation

In applying this paragraph the Court of Chancery pointed out that the only object of bail is to secure the presence of the defendant at his trial.[110] The court condemned excessive bail in a misdemeanor case, imposed by the trial court on the theory that a conspiracy to steal, mutilate and destroy ballot boxes and ballots was an offense in effect "worse than murder."

A fine of $200, coupled with imprisonment for 90 days for the violation of a township licensing ordinance, has been held not excessive[111]

The term "cruel and unusual punishments" refers to the character and not the extent of punishment.[112] The imposition of both a fine and imprisonment does not necessarily constitute a cruel and unusual punishment.[113] All punishments are in some sense cruel. Electrocution as a method of capital punishment does not offend this paragraph.[114]

[108] U. S. Const., Art. III, sec. 3, cl. 1.
[109] U. S. Const., Eighth Amend.
[110] *Ex parte Stegman*, 112 N.J. Eq. 72.
[111] *Independent Warehouses* v *Scheele*, 134 N.J.L. 133.
[112] *State* v *Orlando*, 119 N.J.L. 175.
[113] *State* v *Gedicke*, 43 N.J.L. 86.
[114] *State* v *Tomasi*, 75 N.J.L. 739.

Suggested Amendments

It has been urged that the words "cruel and unusual punishments" be deleted and the words "excessive and unreasonable punishments" be inserted.

17. Private Property for Public Use

Article I, Paragraph 16

> "Private property shall not be taken for public use, without just compensation; but land may be taken for public highways, as heretofore, until the legislature shall direct compensation to be made."

Source

The Committee on a Bill of Rights and Privileges in the 1844 Convention reported this paragraph without the qualification.[115] The qualification had its origin in the practice of the colonial proprietors of including in every grant of land an allowance for highways. Lands taken by the State, therefore, were in fact given to the grantee for public purposes. He paid nothing for them and was a trustee for the use of the public.[116] The "land" referred to in the qualifications was the width of four rods[116] and did not include structures or improvements.[117]

By the narrow vote of 19-21 an amendment to this paragraph which would have required the compensation to precede the taking was defeated in the Convention. It was felt that this would delay public projects if private litigants should prove contentious. Further, in many cases it would be impossible to ascertain the amount of damage until the public work was completed.[118]

Judicial Interpretation

The power of eminent domain is an attribute of sovereignty and does not depend on constitutional provisions, but a right to compensation is an incident to the exercise of that power.[119] When the State is acting under the police power to regulate personal and property rights on behalf of public health, safety, morals or welfare no compensation is necessary[120]

Where the State acquires property for a public purpose compensation is necessary[121] and the State can take only so much of the property, either in area or in interest, as is essential to the public use.[122]

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[115] Proceedings, *op. cit.*, p. 53.
[116] *In re Highway*, 22 N.J.L. 293.
[117] *State* v *Hudson County Bd. of Freeholders*, 55 N.J.L. 88.
[118] Proceedings, *op. cit.*, pp. 157-161 and 414-18.
[119] *Sinnickson* v *Johnson*, 17 N.J.L. 129, decided in 1839. The power and right are "inseparably connected" and are "parts of one and the same principle."
[120] *State* v *Newark Milk Co.*, 118 N.J. Eq. 504.
[121] *Yara Engineering Corp.* v *Newark*, 132 N.J.L. 370.
[122] *Frelinghuysen* v *State Highway Commission*, 108 N.J.L. 403.

The word "property" includes more than title to real estate. It extends to a business.[123] It includes the use of property as well as ownership. To deprive the realtor of a use for his property for which it is best fitted is to deprive him of a part of the value of his property." [124]

Private property cannot be taken for a strictly private use, even upon making compensation:

> "The legislative power is not competent to take the property of A. and transfer it to B., simply for the benefit or convenience of B., because such an act has no public aspect; it concerns and affects, exclusively, the two individuals . . . . But, if the sequestration of the property of A. will, to a material extent, be serviceable to the public at large, whether such sequestration shall take place, must be committed, as a pure matter of discretion, to the legislature, provided such discretion be exercised in good faith, and does not rest, incontrovertibly, upon a false foundation."[125]

The courts have held that public use does not mean "public enjoyment," "public purposes," or "for the public generally." In order that a use may be public, it is not essential that the whole community should be able directly to participate in it but it is essential that the utility should in a substantial measure concern the public.[126]

Just compensation relates to all the proximate effects of the taking of the private property, and this includes the damage done to the residue as well as the value of the part taken.[127]

Suggested Amendments

The Commission on Revision of the New Jersey Constitution in 1942 recommended a change in this paragraph:

> "Private property shall not be taken for public use without just compensation. Possession of land may be taken by any agency, instrumentality or political subdivision of the State, but not by any individual or private corporation, pending and prior to the determination and payment of such compensation."

During the proceedings before the New Jersey Joint Legislative Committee in 1942 it was urged that if the revised paragraph was to be adopted that the second sentence should start, "When authorized by legislation providing for such compensation. . ." [128]

18. Imprisonment for Debt

Article I, Paragraph 17

"No person shall be imprisoned for debt in any action, or on any judgment founded upon contract, unless in cases of fraud;

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[123] *State* v *Chapman*, 70 N.J.L. 339.
[124] *Cooper Lumber Co.* v *Dammers*, 2 N.J. Misc. R. 289.
[125] *Tide-water Company*, v *Coster*, 18 N.J. Eq. 518.
[126] *Albright* v *Sussex County Lake and Park Com.*, 71 N.J.L. 303. The right to fish is not a public use. The power of eminent domain cannot be used in order to afford a means of pastime capable of being enjoyed by only a few persons.
[127] *State* v *Hudson County Bd. of Freeholders*, 55 N.J.L. 88.
[128] Proceedings, *op. cit.*, p. 34.

nor shall any person be imprisoned for a militia fine in time of peace."

Source and Interpretation

The purpose of this paragraph was to abolish the old practice of throwing innocent debtors into prison when, through economic adversity, they were unable to pay their obligations.[129]

It was not intended to aid a wrongdoer. The immunity does not extend to tort actions,[130] to penalties for offenses that involve injury to the public,[131] to allowances for alimony,[132] or to contract actions tainted by fraud. The fraud which destroys the immunity is not confined to fraud in the creation of the debt, but extends to subsequent fraudulent conduct of the debtor, for the purpose of defeating his creditor in the recovery of the debt by due process of law.[133] Malice is not a necessary element of the fraud.[134] The judicial officer ordering the arrest must, however, adjudge that the fraud exists based upon satisfactory proof.[135]

19. Right of Assembly and to Petition

Article I, Paragraph 18

"The people have the right freely to assemble together, to consult for the common good, to make known their opinions to their representatives, and to petition for redress of grievances."

Source and Interpretation

This paragraph is similar to the restriction placed on Congress by the Federal Constitution.[136] As long as an organization confines its purpose to peaceful hostility or opposition and does not advocate or indicate a purpose to overthrow or subvert the existing government by force, but only by constitutional means, the right of the members of such society to assemble together and consult for the common good is protected.[137] Workers can peaceably assemble to act or to organize to act in promotion of their interests in a labor dispute.[138] However, no one is justified in obstructing a public street by collecting thereon a large assemblage of people for the purpose of delivering an address without obtaining a permit to do so.[139]

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[129] For debate on this paragraph, see Proceedings, *op. cit.*, pp. 161-68, 418-21, 423-29. The Committee on a Bill of Rights and Privileges had made no proposal; the paragraph was framed in the debate of the Convention.
[130] *Duro Co.* v *Wishnevsky*, 126 N.J.L. 7.
[131] *Lowrie* v *State Bd. of Registration*, etc., 90 N.J.L. 54.
[132] *Adams* v *Adams*, 80 N.J. Eq. 175.
[133] *Ex Parte Clark*, 20 N.J.L. 648.
[134] *In re Hardon*, 90 N.J. Eq. 719.
[135] *Kulich* v *Kertacy*, 12 N.J. Misc R. 743.
[136] U. S. Const., First Amend.
[137] *State v Gabriel*, 95 N.J.L. 337.
[138] *Westinghouse Electric Corp.* v *United E. R. and M. Workers*, 139 N.J. Eq. 97.
[139] *Harwood* v *Trembley*, 97 N.J.L. 173.

20. Saving Clause

Article I, Paragraph 21

"This enumeration of rights and privileges shall not be construed to impair or deny others retained by the people."

Source

This paragraph was originally numbered 19 in the Constitution of 1844. It was suggested by Chief Justice Hornblower as a necessary provision because of the principle that the expression of rights excludes those not expressed unless otherwise indicated. In 1875 this paragraph was renumbered 21 because of the inclusion of the new paragraphs 19 and 20. The new paragraphs will not be treated here, since they properly belong under another heading.

21. New Provisions

There are many possible additions to the present Bill of Rights suggested by provisions in the federal and other state constitutions, or by persons and organizations in this State. All cannot be included here.

(a) *Right to Bear Arms*

"A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed."

The Federal Constitution and 33 state constitutions have this provision.[140] It is qualified in some, in order that laws may be passed to punish those who carry concealed weapons.

(b) *Protection against Self-Incrimination*

"No person shall be compelled to testify against himself in a criminal cause."

Only ten other states fail to add this safeguard in their constitutions. It is recognized in the Federal Constitution as a limitation upon the Federal Government.[141]

(c) *Equal Protection of the Laws; Anti-Discrimination Clause*

"No person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall, because of race, color, creed or religion, be subjected to any discrimination in his civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state."

[140] U. S. Const., Second Amend. Such a provision was proposed in 1942. Record of Proceedings of the Joint Committee, *op. cit.*, p. 44.
[141] U. S. Const., Fifth Amend.

This provision appears as Art. I, par. 11 in the New York Constitution of 1938. The Fourteenth Amendment of the Federal Constitution prohibits any state from denying to any person within its jurisdiction the equal protection of the laws; this prohibition applies to agents and subdivisions of the state but not to private persons, firms, or corporations. An anti-discrimination amendment was strongly urged by certain persons and groups before the 1942 Joint Legislative Committee.[142]

(d) *Equality of the Sexes*

"No citizen shall be deprived of any rights, privileges or responsibility because of sex or marital status." [143]

(e) *Rights of Labor*

"Labor of human beings is not a commodity nor an article of commerce and shall never be so considered or construed. Employees shall have the right to organize and to bargain collectively through representatives of their own choosing."

This provision appears as Art. I, par. 17 in the New York Constitution of 1938. The Commission on Revision of the New Jersey Constitution in 1942 included the right of labor to organize and bargain collectively in Art. III, sec. VII, par. 2, of its draft Constitution. [144]

(f) *Testing Constitutional Questions*

"Any citizen or taxpayer may restrain the violation of any provision of this constitution by a suit with leave of Superior Court upon notice to the Attorney-General."

The Commission on Revision of the New Jersey Constitution in 1942 recommended this provision. The Commission stated:

> "Any citizen who believes an act of the Legislature authorizing an expenditure of public money violates the constitution cannot now prevent the expenditure, unless he can show that the injury to him is different in kind and degree from what every other citizen suffers. The new provision wipes out this legal impediment and brings the State Government under effective public scrutiny and control." [145]

[142] Record of Proceedings, *op. cit.*, pp. 24, 41, 90-1, 258, 391.
[143] *Ibid*, pp. 38, 42, 46-89 for 1942 proponents.
[144] *Ibid*, pp. 18, 21, 25, 41, 178 for proponents.
[145] Report of the Commission, 1942, p. 15.

SUFFRAGE AND THE CONSTITUTION

by

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Suffrage in General

The right to vote has been variously described as a political right, a privilege, or a civil right which may be given or withheld by the law-making power of the sovereignty. It is not a natural, inherent, or unalienable right, nor is it a necessary incident to citizenship or among the rights of person and property. It exists only when conferred by a constitution or by statute and can become operative only by legislation.

The states have the supreme and exclusive power to regulate the right of suffrage and to determine who may vote, except where they are restricted by provisions of the Federal Constitution. Persons may not be excluded from voting on the basis of their race, color, previous condition of servitude, or sex (15th and 19th Amendments). Inasmuch as any person naturalized in the United States becomes a citizen of the state in which he resides, no state may withhold the right of such individuals to vote except as it may be withheld from other citizens in the state (14th Amendment). Moreover, the representation of any state in Congress may be reduced in proportion to the number of male inhabitants whose right of suffrage is denied on any grounds other than participation in rebellion or other crimes (14th Amendment).

Within these limitations, then, each state may define the qualifications of suffrage in its own constitution or empower its legislature to do so. It follows that the state may enact reasonable, uniform and impartial laws to prevent from voting those persons who lack the necessary qualifications. It is not within the power of the legislature to confer the elective franchise on other classes than those to whom it is given by the constitution. Neither can the legislature prescribe additional qualifications for voters.[1]

Constitutional Provisions Respecting Suffrage

The Constitution that was adopted by the Provincial Congress on July 2, 1776, defined the qualifications of electors in Article IV:

> "That all the inhabitants of this Colony of full age who are worth fifty Pounds, Proclamation money, clear estate in the same, and have re-

[1] On the subject of the suffrage in general see: 29 C.J.S. 1-7; N.J.S.A. Const., Art. II; N.J.S.A. 19:4-1; F. J. Stimson, *The Law of the Federal and State Constitutions of the United States* (Boston, 1908), pp. 218-219.

sided within the County in which they claim a vote for twelve months immediately preceding the election, shall be entitled to vote for Representatives in Council and Assembly; and also for all other public officers that shall be elected by the people of the County at large."

By a process of "legislative interpretation" these provisions were altered in 1807 to exclude women, aliens and persons of color from voting, and to extend the franchise to all taxpayers, regardless of the size of their estate.[2]

The Constitutional Convention that convened on May 14, 1844, appointed a Committee on the Right of Suffrage which on May 17 reported the following draft:

"1st. On the Right of Suffrage

"Every white male citizen of the United States of the age of 21 years, who shall have been an inhabitant of this state one year, and of the county in which he claims his vote five months, next before the election, shall be entitled to vote for all officers that now are, or hereafter may be elected by the people; *provided,* that no person in the military, naval, or marine service of the United States shall be considered as acquiring a residence in this state, by being stationed in any garrison, barrack, or military or naval place or station within this state; and no idiot, or insane person, pauper, or person convicted of the crime of bribery, forgery, perjury, theft, or other offense, for which an infamous punishment is or may be inflicted, shall enjoy the right of an elector."[3]

After having undergone numerous changes, this proposal became Article II of the Constitution that was approved by the voters of the State on August 13, 1844:

"ARTICLE II

Right of Suffrage

1. Every white male citizen of the United States of the age of twenty-one years, who shall have been a *resident* of this state one year, and of the county in which he claims his vote five months, next before the election, shall be entitled to vote for all officers that now are, or hereafter may be elective by the people; *provided,* that no person in the military, naval, or marine service of the United States shall be considered *a resident* in this state, by being stationed in any garrison, barrack, or military or naval place or station within this state; and no pauper, idiot, insane person, *or person convicted of a crime which now excludes him from being a witness unless pardoned or restored by law to the right of suffrage,* shall enjoy the right of an elector.

2. The legislature may pass laws to deprive persons of the right of suffrage who shall be convicted of bribery at elections."[4]

In 1875, Article II was amended in three respects. The word "white" in the first line of paragraph one and the words "at elections" in the last line of paragraph two were eliminated, and the following sentence was added to the first paragraph:

"And provided further, that in time of war no elector in the actual military service of the state, or of the United States, in the army or navy thereof, shall be deprived of his vote by reason of his absence from such

[2] N.J.S.A. Const., Art. II, par. 1, annotation.
[3] *Proceedings of the New Jersey State Constitutional Convention of 1844,* (n.p., 1942), p. 40.
[4] *Constitution,* Art. II, unamended. The italicized portions (except for "provided") indicate the major changes from the original draft of the Committee on the Right of Suffrage.

election district; and the legislature shall have the power to provide the manner in which, and the time and place at which, such absent electors may vote, and for the return and canvass of their votes in the election districts in which they respectively reside." [5]

The effect of the 19th Amendment to the Federal Constitution was to eliminate the word "male" from the first line of paragraph one.

Qualifications for Voting

The qualifications for electors set forth in the Constitution of 1844, as amended, fall into three categories: citizenship, age, and residence.

In the Convention of 1844 a minority favored the insertion of an amendment the effect of which would have been to exclude naturalized citizens from voting for a period of one year. Those who advanced this proposal were concerned to prevent the fraud and corruption attendant upon the naturalization of aliens on the eve of an election. Opponents of the measure argued that there should be no distinction between native-born and naturalized citizens. The matter was considered in the Committee on the Right of Suffrage, but it had received no support. The amendment was defeated without a record vote in the Committee of the Whole and was later negatived by the convention by a vote of 35-14.[6] The courts of New Jersey have ruled that the statute governing real estate cannot be construed to entitle aliens to vote (*N.J.S.A.* 46:3-18) and that an alien has no right to vote at an election held in a school district to alter the district nor to vote for school trustees (*Elkin* v *Deshler,* 25 N.J.L. 177). A naturalized alien may vote as soon as the next day after naturalization, provided he has satisfied the residence requirements (*Chandler* v *Wortman,* 6 N.J.L.J. 301).[7] All states have the requirement that a voter be a citizen of the United States, and some specify that he must have been a citizen for periods ranging from one month to five years.[8] The "Model State Constitution" drafted by the Committee on State Government of the National Municipal League (1946) requires that a voter must have been a citizen for 90 days.[9]

There was apparently no disagreement in the convention of 1844 regarding the age at which a person should be entitled to vote. In recent years, however, there have been proposals that the voting age should be reduced from 21 to 18 years. Proponents of the change have contended that those who are old enough to bear arms in defense of their country are old enough to participate in elections. Too, it has been suggested that students who in high school have received training in the duties of citizenship should not be required

[5] *Constitution,* Art. II, par. 1, amended.
[6] *Proceedings . . . 1844,* pp. 76-87, 433.
[7] *N.J.S.A. Const.,* Art. II, par. 1, annotation 4.
[8] *The Book of the States,* 1945-1946, VI (Chicago, 1945), p. 88.
[9] *Model State Constitution,* Partial Revision (4th ed., New York, 1946), Art. II, sec. 200.

to wait three or four years before assuming the responsibilities for which their education has prepared them.[10] The "Model State Constitution" embodies the lower age qualification. To date Georgia is the only state which has fixed 18 as the minimum voting age.[11]

The residence requirements proposed by the Committee on the Right of Suffrage in 1844 were subject to slight modifications before they received the approval of the Convention. The words "an inhabitant" in the first sentence of the draft were replaced by "a resident," and for the words "as acquiring a residence" in the second sentence were substituted "a residence." Although there was considerable disagreement over the precise meaning of the words "inhabitant" and "resident," apparently it was decided that a person might be a resident without being an inhabitant and that he might have a habitation in the State without being a resident. It was because of this distinction, incidentally, that members of the Legislature were required to be inhabitants rather than residents.[12]

Slight support was given in the Convention to a proposal that "students who had taken up a transient residence for the purpose of education" should be denied the right to vote. The chief advocate of the measure claimed that there was considerable variety of opinion regarding the eligibility of students and that the question should be settled definitely. He admitted that he had in mind the fact that students at New Brunswick could, if they all voted on one side, sometimes control the election in Middlesex County. Moreover, there was ample precedent for his amendment; the Legislature at its preceding session had enacted a law to disenfranchise students. Vigorous objections were made against this proposal, which was described as placing a stigma on students, and it was withdrawn.[13] The New York Constitution specifies that "no person shall be deemed to have gained or lost a residence . . . while a student of any seminary of learning" (Art. II, sec. 3), but the courts there have been almost unanimous in holding that the home domicile of a student remains his voting residence.[14]

The term "residence" has frequently been the subject of judicial interpretation and definition. It has been held that there must be an intent actually to reside in the place where the vote is offered and that such intent must not only be in the mind but must be accompanied by acts showing what the fact really is (28 N.J.L.J. 68).

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[10] Transcript, "Public Hearing on Revised Constitution, 1944," testimony of Mr. Holderman, Mrs. Barus, Dr. Milmed, February 2, 1944.

[11] *Book . . . States,* VI, p. 88.

[12] *Proceedings . . . 1844,* pp. 96, 99-101, 429. Justice Hornblower recalled that the joint-meeting had once refused to elect Secretary of Navy Southard to the Senate because while he was a resident of the state he was actually an inhabitant of Washington, D. C.

[13] *Proceedings . . . 1844,* pp. 92-95. A Democratic legislature in 1878 enacted a law disenfranchising college students. Violent disorders reportedly resulted the following fall at Princeton and New Brunswick, where the students insisted on voting. *Session Laws,* 1878, p. 57; W. E. Sackett, *Modern Battles of Trenton* (Trenton, 1895), p. 157.

[14] *Problems Relating to Home Rule and Local Government,* New York State Convention Committee, XI (New York, 1938), p. 187. Hereafter cited as N. Y. State Conv. Com., XI. The same provision is incorporated in the "Model State Constitution."

Residence to entitle a person to vote means a fixed domicile or permanent home and is not lost by occasional absences (*Brueckmann* v *Frignoca,* 152 Atl. Rep. 780, 9 N.J. Misc. Rep. 128; *Cadwalader* v *Howell,* 18 N.J.L. 138). A person may have more than one "residence" but not more than one "domicile," and his permanent home, which is his domicile, determines his right to vote. (*State* v *Atti,* 127 N.J.L. 39, 21 Atl. Rep. (2d) 603, affirmed 128 N.J.L. 318, 25 Atl. Rep. (2d) 634). A person need not be entitled to vote somewhere (*Snyder* v *Callahan,* 129 Atl. Rep. 410, 3 N.J. Misc. Rep. 269). WPA workers who resided in a federal camp in a borough for one year before a general election were held to be not qualified to vote where there was no showing of a change of residence aside from attendance at the camp (*Schweitzer* v *Buser,* 190 Atl. Rep. 89, 15 N.J. Misc. Rep. 217).[15]

In the hearings before the Joint Legislative Committee in 1942, the suggestion was advanced that inasmuch as the purpose of the residence requirement was only to prevent fraud, the time limit might be reduced. It was pointed out that the effect of the state-residence requirement was to deprive everyone who moved into the State of the privilege of voting for at least a year. A more precise definition of the term "residence" in the Constitution was deemed to be desirable.[16] In the 1944 hearings it was proposed that the county residence requirement should be eliminated from the revised Constitution and that the period should be fixed by law. The problems arising out of judging the qualifications of migratory workers and of those on relief were also discussed.[17]

All states have a state-residence requirement. The term is fixed at one year in 32 states, at six months in 11, and at two years in five. Thirty-six states specify some length of residence in the county; the period varies from 30 days to one year. In 40 states (ten of which have no county-residence requirement) residence of from ten days to one year in an election district is necessary.[18] The "Model State Constitution" requires a residence of one year in the state, 90 days in the county, and 30 days in the election district.

It is within the power of the states to establish any qualifications for voting that do not conflict with the Federal Constitution, and barriers other than those based on citizenship, age and residence have been erected or proposed. In the Convention of 1844 a minority advocated an amendment providing that no person born after the adoption of the Constitution should be allowed to vote on reaching the age of 21 unless he could read the English language,

[15] *N.J.S.A. Const.,* Art. II, par. 1.; *N.J.S.A.* 19:4-1, annotations.
[16] *Record of Proceedings before the Joint Committee of the New Jersey Legislature . . .*1942, (n.p., 1942), pp. 543-544.
[17] Transcript, "Public Hearing . . . 1944," testimony of Mrs. Barus and Mrs. Maddock, February 2, 1944.
[18] *Book . . . States,* VI, p. 88.

except in case of physical disability. This provision was justified on the grounds that intelligence and virtue were essential in a republic. Opponents contended that unless a system of universal education was established, the literacy requirement would operate unjustly against the poor. It was further suggested that the test would place the native-born Jerseyman at a disadvantage with respect to illiterate foreigners or persons from other states. The amendment was defeated by a vote of 40-8.[19] A literacy test was proposed in New York as early as 1846 but was not adopted until 1921. All voters—except those who are physically disabled—must be able to read and write English, and the legislature is empowered to pass suitable laws to enforce this provision (Art. II, sec. 1). Frequent efforts have been made to bring about the repeal of this requirement, but to date it has not been changed.[20] Some 19 states—among them Connecticut, Maine, Massachusetts, New Hampshire, Oregon, Washington and eight southern states—have literacy tests. The "Model State Constitution" contains a literacy requirement patterned after that in the New York State Constitution.

Ten states have some form of property qualification, although in six of these it applies only in the case of votes on bond issues and special assessments and in the other four states electors may qualify under alternative provisions. Seven southern states have poll-tax requirements.[21]

Disqualifications from Voting

In addition to defining the general qualifications which a person must possess in order to be entitled to the franchise, a state may—within the limitations imposed by the Federal Constitution—provide specifically for the exclusion of certain classes of persons from voting. The Constitution of 1844, as amended, bars from voting paupers, idiots, and insane persons as well as those who have been convicted of certain crimes.

No subject connected with the suffrage aroused more controversy in the convention of 1844 than did the disqualification of paupers. The Committee on the Right of Suffrage was unanimous in believing that paupers should be deprived of voting rights. They held that when a man was so bowed down with misfortune as to enter a poorhouse, he voluntarily surrendered his rights. He parted with his liberty, lost control of his children, and labored for others. If paupers were allowed to vote, there was the danger that they might be herded to the polls under the direction of an unscrupulous poormaster. Such discrimination against the poor was condemned by those who felt that pauperism was not necessarily the result of vice

[19] *Proceedings . . . 1844,* pp. 101-104, 434.
[20] For a discussion of New York's experience, see *N. Y. State Conv. Com.,* XI, pp. 156-160.
[21] *Book . . . States,* VI, p. 88.

or crime and that misfortune should not be the occasion for disfranchisement. Many substantial men, it was said, might in their old age be forced to rely on public charity, but they should not lose their political privileges. Some questions were raised regarding the definition of the term "pauper." Justice Hornblower believed it included anyone who received aid from the public funds or charities, whether in the poorhouse or elsewhere. Others apparently thought of a pauper principally as the inmate of a poorhouse. After a heated discussion, the Committee of the Whole voted to delete "paupers" from the draft of Article II. Later, however, the matter was again brought up in the Convention, and by a vote of 36-14 it was decided to include paupers among the list of those disqualified.[22]

There does not seem to have ever been any judicial definition of the term "pauper" in connection with voting in New Jersey. Attorney-General Gaskill once gave the opinion that "paupers" within the meaning of the Constitution included not only inmates of poorhouses or similar institutions but also any persons who were dependent on poor funds.[23]

It is said that technically a pauper is a person who receives aid and assistance from the public under a provision made by law for the support and maintenance of the poor, but the term is often given wider significance and is used to describe persons who are so destitute and helpless as to be dependent for their support upon public charity. In the absence of constitutional or statutory disqualifications, persons incapable of self-support who are in other respects eligible to vote may do so. Persons in public or charitable institutions do not by their mere presence therein lose their right to vote at their former residences, or acquire the right to vote in the district where such institutions are located.[24]

It has been held that an aged man whose only home was in the county almshouse but who for a year or two had been working for and living with various farmers in a township was entitled to vote in the township.[25]

It should be noted that the word "pauper" is not used in *New Jersey Statutes Annotated, Title 44,* which deals with the subject of the poor. Instead, the term "poor person" is employed and is defined as meaning "one who is unable to maintain himself or those dependent upon him." Such poor persons may be variously classified as "public charges," "permanent or indoor poor," or "temporary or outdoor poor," all of which terms are defined in the statutes.[26]

[22] *Proceedings . . . 1844,* pp. 87-90, 429-433.
[23] 36 N.J.L.J. 356 (1912).
[24] 29 C.J.S. 16.
[25] *In re Election in Township of Elk,* 14 N.J.L.J. 263.
[26] For definitions see *N.J.S.A.* 44:1-1.

Several of those who attended the hearings before the Joint Legislative Committee in 1944 advocated the deletion of the word "paupers" from the list of those barred from voting. The term itself was criticized as being ambiguous, and it was said that the disqualification had been of little effect in the past. It was recalled that during the depression the Legislature had given consideration to the disfranchisement of persons on public relief on the ground that such individuals were paupers under the Constitution, and fear was expressed that similar measures might be introduced at a future time. The limitation was also characterized as an undesirable property qualification.[27]

The provisions relating to idiots and insane persons were adopted without discussion in the Convention of 1844 and have seemingly aroused little interest or comment since that time.

Difficulty was experienced by the members of the Convention in 1844 in devising a satisfactory wording of the provision dealing with the exclusion of criminals. The Committee on the Right of Suffrage proposed to disqualify those who had been convicted of offenses for which there was an infamous punishment, but objections were made to this terminology. The chief criticisms were that there was a distinction between infamous crimes and infamous punishments, and that New Jersey did not in fact have any infamous punishments, such as cropping on the pillory. Justice Hornblower suggested the clause "a crime which now excludes him from being a witness, unless pardoned" as a substitute, and Mr. Randolph urged the addition of the words "or restored by law to the right of suffrage." It was in this form that the disqualification was approved for incorporation in the Constitution.[28]

The word "now" in the phrase "which now excludes him from being a witness" refers to the time of the adoption of the Constitution and therefore takes as a standard of reference a statute of 1799—which was still in effect—providing that persons convicted of blasphemy, treason, murder, piracy, arson, rape, sodomy, polygamy, robbery, conspiracy, forgery, larceny of above the value of $6, perjury, or subornation of perjury should be excluded from being witnesses (*Application of Marino,* 42 Atl. Rep. (2d) 469, 23 N. J. Misc. Rep. 159; *In re Court of Pardons,* 97 N. J. Eq. 555, 129 Atl. Rep. 624, 3 N. J. Misc. Rep. 585). The right of suffrage may be withheld from a person who has been convicted of one of the above crimes in a federal court sitting in the State (*Application of Marino*). The words "restored by law" do not mean restored by the Legislature, but by the Court of Pardons. Full pardon for an offense restores the right of suffrage (*In re Court of Pardons*). The

[27] Transcript, "Hearing . . . 1944," testimony of Messrs. Bebout, Holderman, and Milmed; Mrs. Zwemer, Mrs. Barus, and Mrs. Maddock, February 2, 1944.
[28] *Proceedings . . . 1844,* pp. 95-99, 433.

purpose of the clause withholding the right to vote from paupers, idiots, insane persons and certain classes of criminals was to preserve purity of elections, and not to invoke a punishment or a penalty (*Application of Marino*).[29]

In the revised Constitution of 1942, it was proposed to exclude from the rights of an elector any person convicted of "a crime which at common law would have excluded him from being a witness" (Art. VIII, par. 4, proposed revision, 1942). This wording was criticized on the ground that it would be difficult to determine exactly what crimes would fall within this category under the common law.[30] The proposed revision of 1944 gave to the Legislature the power to deprive by law of the right of suffrage any person "because of conviction of crime." A member of the committee that had drafted the provision explained that the group had at first attempted to enumerate the crimes which would deprive a person from being a witness at the common law, but that they had given this up when they were advised by the Department of Law that the test was not practical. The committee then decided on the above wording with the understanding that the Legislature would set forth in a revision of the *Revised Statutes* those crimes for which a person should be disenfranchised.[31] One objection levelled against the disqualification was that there is in New Jersey no dividing line between major and minor crimes and that it would be possible for the Legislature to disenfranchise those convicted of minor traffic violations.[32]

Many states provide for the disqualification of criminals from voting. New York, in a typical clause, gives to the legislature power to enact laws to bar those convicted "of bribery or of any infamous crime" (Art. II, sec. 2). In addition, New York has a stringent and detailed provision excluding those guilty of bribery or of betting in connection with an election (Art. II, sec. 2). A similar disqualification is incorporated in the Pennsylvania constitution. The "Model State Constitution" follows that of New York, both with respect to infamous crimes and bribery at elections (Art. II, sec. 202).[33]

In actual practice it is questionable whether the disqualification of idiots, paupers, insane persons and criminals is generally applied. The registration form used in New Jersey does not require a prospective voter to say whether he comes within one of these categories, nor is it incumbent upon those conducting the registration to make inquiry regarding such matters. Unless a person attempted to register from a poorhouse, a prison, or an institution for the feebleminded, the authorities would not be expected to know whether

[29] *N.J.S.A. Const.* Art. II, par. 1, annotation.
[30] *Proceedings, 1942,* pp. 493-494, 544.
[31] Transcript, "Hearing . . . 1944," testimony of Assemblyman Leonard and Senator Pascoe, February 2, 1944.
[32] *Ibid,* testimony of Mr. Holderman, February 2, 1944.
[33] See *N. Y. St. Conv. Com.,* XI, pp. 171-179; Stimson, *Constitutions,* pp. 227-229.

he should be denied the right to vote. Efforts are made to remove the names of convicted criminals from the registry lists, but the system is far from perfect.[34] In the absence of constitutional disqualifications on paupers, idiots and insane persons, it is doubtful whether in practice their situation would be very different from that which exists at present. Those who were institutionalized could not acquire a residence for voting purposes in the district in which the institution was located, nor could they return to their permanent domiciles to cast their ballots.

Miscellaneous Provisions

The Constitution of 1844, as amended, specifies that personnel in the military services shall not become residents as a result of being stationed at any post within the State. This statement was incorporated with minor changes in the proposed revisions of 1942 (Art. VIII, par. 5) and 1944 (Art. VIII, par. 6). An amendment of 1875 provided for voting by absentee soldiers "in time of war" (Art. II, par. 1). The proposed revisions of 1942 and 1944 provided for such voting by those who were in "actual" or "active" military service. An innovation in the 1942 revision was the authorization given to the Legislature to provide for voting by "other absent electors." [35]

Under the present Constitution, qualified electors are "entitled to vote for all officers that now are, or hereafter may be elective by the people." The proposed revisions of 1942 and 1944 added to this the phrase—taken from the "Model State Constitution"—"and upon all questions which may be submitted to the vote of the people" (Art. VIII, par. 3). Proposals were made in the 1944 hearings to alter the wording of this provision so as to admit the possible adoption of proportional representation in the future. It was suggested also that the words "and bodies" after "officers" be inserted.[36]

Registration of Voters

A proposal was made in the Convention of 1844 to insert at the end of Article II the amendment: "Laws may be made for ascertaining by proper proofs the citizens who shall be entitled to the right of suffrage hereby established." This sentence was taken verbatim from the New York State Constitution of 1821 (Art. II, sec. 3). Some members thought the Legislature already had such power, but others felt that the question was debatable and favored an express constitutional statement on the matter. After a brief discussion, in the course of which registry laws were both condemned and

[34] For the registration form, see *N.J.S.A.* 19:31-3.
[35] For a discussion of absentee voting by those in military service and others see *N. Y. St. Conv. Com.* XI, pp. 166-167, 169-170; *Book . . . States,* VI, pp. 91-96.
[36] Transcript, "Hearing . . . 1944," testimony of Mr. Bebout and Mrs. Barus, February 2, 1944.

QUALIFICATIONS FOR VOTING [1]

State	Minimum Age	U. S. Citizen	Residence in State	Residence in County	Residence in District	Property	Literacy Test	Poll Tax
Alabama[b]	21	★	2 yrs.	1 yr.	3 mo.	★[o]	★[o]	★[d]
Arizona	21	★	1 yr.	30 da.	30 da.	★[o]	★	....
Arkansas	21	★	12 mo.	6 mo.	1 mo.	....	....	★[g]
California	21	★[l]	1 yr.	90 da.	40 da.	....	★	....
Colorado	21	★	1 yr.	90 da.	10 da.[j]	....	....	....
Connecticut	21	★[l]	1 yr.	....	6 mo.	....	★	....
Delaware	21	★	1 yr.	3 mo.	30 da.	....	★	....
Florida	21	★	1 yr.	6 mo.	....	....	....	....
Georgia	18	★	1 yr.	6 mo.[n]	....	★[o]	★[o]	....
Idaho	21	★	6 mo.	30 da.	....	....	....	....
Illinois	21	★	1 yr.	90 da.	30 da.	....	....	....
Indiana	21	★	6 mo.	60 da.[q]	30 da.	....	....	....
Iowa	21	★	6 mo.	60 da.	10 da.	....	....	....
Kansas	21	★	6 mo.	30 da.[q]	30 da.	....	....	....
Kentucky	21	★	1 yr.	6 mo.	60 da.	....	....	....
Louisiana	21	★	2 yrs.	1 yr.	3 mo.[n]	....	★[y]	....
Maine	21	★	6 mo.	3 mo.	3 mo.	....	★	....
Maryland	21	★	1 yr.	6 mo.	6 mo.	....	....	....
Massachusetts	21	★	1 yr.	....	6 mo.	....	★	....
Michigan	21	★	6 mo.	....	20 da.[q]	★[o]	....	....
Minnesota	21	★[x]	6 mo.	....	30 da.	....	....	....
Mississippi	21	★	2 yrs.	....	1 yr.[y]	(o)	★	★[o]
Missouri	21	★	1 yr.	60 da.	60 da.	....	....	....
Montana	21	★	1 yr.	30 da.	....	★[o]	....	....
Nebraska	21	★	6 mo.	40 da.	10 da.	....	....	....
Nevada	21	★	6 mo.	30 da.	10 da.	★[o]	....	....
New Hampshire	21	★	6 mo.	....	6 mo.	....	★	....
New Jersey	21	★	1 yr.	5 mo.	....	....	....	....
New Mexico	21	★	12 mo.	90 da.	30 da.	....	....	....
New York	21	★[l]	1 yr.	4 mo.	30 da.	....	★[oo]	....
North Carolina	21	★	1 yr.	....	4 mo.	....	★	....
North Dakota	21	★	1 yr.	90 da.	30 da.	....	....	....
Ohio	21	★	1 yr.	30 da.	20 da.	....	....	....
Oklahoma	21	★	1 yr.	6 mo.	30 da.	....	★[aa]	....
Oregon	21	★	6 mo.	....	....	....	★	....
Pennsylvania	21	★[ab]	1 yr.[al]	....	2 mo.	....	....	....
Rhode Island	21	★	2 yrs.[b]	....	6 mo.	★[al]	....	....
South Carolina	21	★	2 yrs.[y]	1 yr.	4 mo.	★[al]	★[al]	★[o]
South Dakota	21	★[ab]	1 yr.	90 da.	30 da.	....	....	....
Tennessee	21	★	12 mo.	6 mo.	....	....	....	★[a]
Texas	21	★	1 yr.	6 mo.	6 mo.	★[o]	....	★[a]
Utah	21	★[l]	1 yr.	4 mo.	60 da.	★[o]	....	....
Vermont[at]	21	★	1 yr.	....	3 mo.[q]	....	....	....
Virginia	21	★	1 yr.	6 mo.	30 da.	(at)	★	★[a]
Washington	21	★	1 yr.	90 da.	30 da.	....	★	....
West Virginia	21	★	1 yr.	60 da.	(av)	....	....	....
Wisconsin	21	★	1 yr.	....	10 da.	....	....	....
Wyoming	21	★	1 yr.	60 da.	10 da.	....	★	....

[a] Poll or head taxes are levied in many other states. Those listed here, however, provide that payment of the poll tax is a prerequisite for voting.
[b] Any of the following classifications may register: Those who have honorably served U. S. in War of 1812, War with Mexico, any Indian War, either side of Civil War, or Spanish-American War; their descendants; or "all persons who are of good character and who understand the duties and responsibilities of citizenship under a republican form of government." Other qualifications and disqualifications also apply.
[c] May qualify under property or literacy; property must be tax free.
[d] Must pay all poll taxes owed since 1901. However, by constitutional amendment passed at the general election on November 7, 1944, members of the armed forces are exempt from payment of poll taxes.
[e] For vote on bond issues or special assessments only.
[f] Except for irrigation district elections.
[g] Tax, $1.
[h] Registration is prohibited by Constitution (Art. III, Sec. 2).
[i] Must have been citizen ninety days.
[j] City or town, thirty days.
[k] All elections except school elections.
[l] Must have been citizen five years.
[m] For persons in military service only.
[n] Must owe no past due taxes.
[o] A person may classify under any one of five heads: prop literacy, honorable service in any U. S. war, descent those who thus served, or good character and understan of duties and obligations under republican form of gov ment.
[p] For all state and federal elections.
[q] Township.
[r] Law applies to all except certain minor local elections.
[s] School elections are exempted in periodic areas.
[t] Permitted only in permanent systems.
[u] Municipality, four months.
[v] Good character and understanding of principles of duties under republican form of government are an a native qualification; under some circumstances, may if unable to read but able to understand Constitution w read aloud.
[w] A different form of permanent registration is required townships and cities under five thousand.
[x] Must have been citizen three months.
[y] Ministers of the Gospel may vote after six months' reside
[z] All property taxes must be paid to date.
[aa] Thirty days military service per year exempts.

[1] From *The Book of the States*, 1945-1946 (Chicago, 1945).

QUALIFICATIONS FOR VOTING—Continued

Registration: Type: Permanent: All Areas	Registration: Type: Permanent: Some Areas	Registration: Type: Periodic: All Areas	Registration: Type: Periodic: Some Areas	Registration: Type: Periodic: Frequency	Registration: Coverage: All Elections	Registration: Coverage: Some Elections	Absentee Registration	Absentee Voting	State
★	....	....	....	....	★	....	....	★	Alabama
....	★	....	....	....	★[f]	....	★	★	Arizona
([h])	([h])	([h])	([h])	....	....	....	....	★	Arkansas
★	....	....	....	....	★	....	★	★	California
★	....	....	....	....	....	★[k]	★	★	Colorado
★	....	....	....	....	★	....	....	★	Connecticut
★	....	....	....	....	★	....	....	★	Delaware
★	....	....	....	....	★	....	★[m]	★	Florida
★	....	....	....	....	★	....	....	★	Georgia
★	....	....	....	....	★	....	....	★	Idaho
★	....	....	....	....	....	★[p]	....	★	Illinois
★	....	....	....	....	★[r]	....	....	★	Indiana
....	★	....	★	4 years	....	★[s]	★[t]	★	Iowa
....	★	....	★	4 years	★	....	....	★	Kansas
....	★	....	....	....	★	....	★	....	Kentucky
....	....	★	....	4 years	★	....	....	★	Louisiana
★	....	....	....	....	★	....	....	★	Maine
★	....	....	....	....	★	....	★[m]	([m])	Maryland
★	....	....	....	....	★	....	★[m]	★	Massachusetts
....	★[w]	....	....	....	★	....	★	★	Michigan
....	★	....	....	....	★	....	....	★	Minnesota
★[r]	....	....	....	....	....	([ad])	....	....	Mississippi
....	★	....	★	4 years	★	....	....	★	Missouri
★	....	....	....	....	....	★[k]	★	★	Montana
....	★	....	★	6 years	....	★[s]	....	★	Nebraska
★	....	....	....	....	....	★[k]	....	★	Nevada
★	....	....	....	....	★	....	★	★	New Hampshire
★	★	....	★	Annual	★	....	....	([m])	New Jersey
★	....	....	....	....	★	....	....	([m])	New Mexico
....	....	....	★	Annual	....	★	★	★	New York
★	....	....	....	....	★	....	★[i]	★	North Carolina
....	....	....	★	Each elec.	....	★	....	★	North Dakota
....	★	....	....	....	★	....	★[af]	★	Ohio
★	....	....	....	....	....	★[j]	....	★	Oklahoma
★	....	....	....	....	★	....	★	★	Oregon
★	....	....	....	....	★	....	★[aj]	([ah])	Pennsylvania
....	....	★	....	Biennial	★	....	★[m]	★	Rhode Island
....	....	★	....	Decennial	★	....	★	★	South Carolina
....	....	★	....	Biennial	★	....	★	★	South Dakota
....	....	....	★	Biennial[ao]	★	....	★	★	Tennessee
([aq])	([aq])	([aq])	([aq])	....	....	....	....	★	Texas
★	....	....	....	....	....	★[ar]	★	★	Utah
★	....	....	....	....	....	★	....	★	Vermont
★	....	....	....	....	★	....	....	★	Virginia
★[av]	....	....	....	....	....	★	★[ay]	★	Washington
★	....	....	....	Every gen. elec.	....	★[ax]	....	★	West Virginia
....	★	....	....	....	★	....	★	★	Wisconsin
....	....	....	★	Every gen. elec.	....	★[av]	....	★	Wyoming

Assessed upon citizens twenty-one to sixty years of age.
Persons deaf and dumb, or those who have lost a hand or a foot are exempt.
Registration is permanent unless removed for cause (moving out of election district, failure to pay poll tax, or conviction of an infamous crime).
Registration is for all elections of state and county, but voter must be registered in municipality also to vote in municipal elections.
A person who became entitled to vote by attaining majority, by naturalization, or otherwise after January 1, 1922, must be able, except for physical disability, to read and write English.
Not applicable to civilians; legislation passed in 1941 provides for registration by mail of members of the Army, Navy, or militia.
A lineal descendant of a person entitled to vote January 1, 1866, may vote regardless of his ability to read and write.
Must have been a citizen one month.
A person who has had Pennsylvania citizenship may reestablish it, upon returning to the state, upon six months' residence.
Only personal registration.
Length of residence required may be lessened by ownership of property.
Ownership of property is an alternative to literacy.

[am] Assessed upon citizens twenty-one to sixty years of age.
[an] Must have resided in U. S. five years.
[ao] Every four years in civil districts with less than five thousand population and not located in counties subject to registration by law.
[ap] Assessed upon citizens twenty-one to sixty years of age, except Indians, not taxed, insane, blind, deaf or dumb, those who have lost one hand or foot, or are permanently disabled.
[aq] Constitution (Art. VI, Sec. IV) declares that registration may be established for cities over ten thousand, but no system exists. Poll-tax receipts determine eligibility of voters.
[ar] Registration is required for all elections, but for municipal primaries it is required only in first- and second-class cities.
[as] Must take freeman's oath.
[at] General Assembly may set property qualifications for voting in city, county, or town elections.
[au] Must pay poll taxes due, if any, for three years preceding election.
[av] No special registration is required for elections held under commission form of government.
[aw] Registration may be cancelled for failure to vote for a period of four years prior to April 1 of each odd year.
[ax] All elections except special elections.
[ay] Request for absentee registration must originate and be posted in the county in which applicant's precinct is located.

approved, the amendment was defeated.[37] In the proposed revision of 1942, a provision similar to that quoted above was included in Article VIII, paragraph 7, and it was further specified that registration should be upon personal application in the first case and should remain effective for such period as the Legislature might prescribe.

The courts have held that the right to vote can only become operative through legislation and that any reasonable regulation for securing the secrecy of the ballot is not a deprivation of suffrage rights.[38] The manner of voting is within the discretion of the Legislature, which may pass laws to insure honest elections by preventing those not entitled to vote from voting (*In re Freeholders of Hudson County,* 105 N.J.L. 57). In the pioneer case on the subject (*Capen* v *Foster,* (12 Pick. (29 Mass.) 485) it was decided that the legislature might enact registration laws even though there was no specific constitutional authorization for them.[39] Thus it would seem that the purpose of a constitutional provision on the matter of registration would be to make certain actions by the Legislature mandatory.

New Jersey at present has both personal and permanent registration in all municipalities in the state.[40] The object of this system is, of course, to prevent fraudulent "padding" of registration lists and to eliminate the inconvenience of annual registration. The principal objection raised against personal registration is that it may work some hardship on voters in rural areas. The efficacy of permanent registration is dependent upon the methods employed to "purge" the lists of those who for various reasons cease to be qualified voters.[41]

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[37] *Proceedings . . . 1844,* pp. 87, 91-92.
[38] *N.J.S.A.* 19:4-1, annotation.
[39] *N.J.S.A. Const.,* Art. II, par. 1, annotation.
[40] See *N.J.S.A.* 19:31-1.1.
[41] For full discussion of the pros and cons of various types of registration, see Joseph P. Harris, *Registration of Voters in the United States* (Washington, 1929) and *N. Y. St. Conv. Com.,* XI, pp. 188-237.

THE DESIRABILITY OF CONSTITUTIONAL PROVISION FOR REGISTRATION OF VOTERS

by

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Introduction

Registration is a comparatively modern election device for prequalification of voters. It dates from the turn of the century and has come to be widely adopted. Some form of registration is now employed in every state of the Union, except Arkansas, whose constitution specifically prohibits registration, and Texas, where poll tax receipts are used to qualify voters.

Types of Registration

A great variety of methods are in use for registration of voters. The system now employed in New Jersey, by which voters are registered permanently, throughout the State, for all elections, has been adopted in 27 states. In most of the other states, registration is repeated annually, before each general election. It is accomplished by an official house-to-house canvass, New Jersey's former practice, or by requiring voters to present themselves at registration offices, the method now utilized in New York. There are many varieties between these extremes. For example, in South Carolina voters who were not registered before 1898 must re-register every ten years; in Virginia, registration must be renewed annually, except for those registered in 1902, who are thereby qualified as voters for life; in Rhode Island, the registration lists expire biennially.

Of the states which have adopted permanent registration, only 22, like New Jersey, employ that system for all elections throughout the state. By far the greater number of states have recurrent registration to some extent, if only for local elections in rural areas. Even among states which have the same general method of registering voters, there is wide divergence of practice with respect to such collateral features as administration, transfers upon change of address, methods for purging the lists, authority to initiate complaints and challenges, hearing of complaints, use of registration data for private purposes, and the like.

Insofar as it is possible to generalize, a tendency toward permanent registration for general elections, at least in urban areas, seems apparent. The outstanding example of the opposite tendency is New York, where, after a careful study of comparative merits, annual registration was preferred over permanent registration.

Constitutional Provisions for Registration

New Jersey's present Constitution of 1844, as amended with respect to suffrage in 1875, makes no mention of registration, nor was there any provision on the subject in the prior Constitution of 1776.

The constitutions of 22 states make some reference to registration of voters. The most common provision is a requirement that voters be registered in order to qualify for the franchise. The language varies from a simple direction that voters be registered *(e. g.,* Arizona) to a detailed schedule of the registration system *(e. g.,* Louisiana).

In six states the legislature is merely authorized but not directed to enact the requirement of registration. Two states, Alabama and North Carolina, specify permanent registration in their constitutions, while New York specifically permits but does not compel permanent registration. Only one state, Arkansas, has a total prohibition of registration written into its constitution.

Purposes Served by Constitutional Provisions with Respect to Registration

A

Nearly all constitutions define the right of franchise. It is possible to argue that registration illegally restricts the right to vote, unless expressly sanctioned by the constitution.

In New Jersey, the power of the Legislature to require voters to qualify for the franchise by preliminary registration is not open to doubt, notwithstanding the absence of specific constitutional authorization. That was the decision of the Supreme Court in *In re Freeholders of Hudson County,* 105 N. J. Law 57, where Justice Kalish said:

> ". . . the legislature may, in order to insure honest elections, pass laws to prevent those not entitled to vote from voting. And this is precisely the very object at which the statute in question is aimed."
>
> * * *
>
> "On what sound theory this regulation, to protect the purity of the ballot box can be said to be in contravention of any constitutional right of a lawfully qualified voter has not been revealed to us. It needs no argument to establish that if an unqualified voter casts his ballot, it has the effect to impair the value of the vote of a duly qualified voter. It cannot, therefore, be logically said because the statute seeks to prevent the unqualified voter from voting at an election that such legislative action is an interference with the constitutional right of a voter, duly qualified to vote.
>
> A qualified constitutional voter is entitled that his or her vote shall have the effect which the law intended it should have, and this would not be the case unless the ballot box is strictly guarded against illegal voting."

This view of the law has general acceptance, for, in addition to New Jersey, the legislatures of 24 states have adopted registration of voters without explicit constitutional sanction.

B

A constitutional provision on the subject of registration of voters is a means of fixing the state's policy on the subject and, when aptly drawn, removes certain features of registration from ordinary legislative control.

The clearest instance of an effective declaration, by constitution, of the state's policy on registration, is the total prohibition of registration of voters, found in the Arkansas constitution. However, in every other state which has constitutional provisions on the subject, legislative action in varying degrees has been necessary to create the registration system actually in use. To the extent that statutes were necessary to make registration practical and effective, the legislature retained its conventional, discretionary control over the mechanics of election administration. A case in point is Texas, which employs poll tax receipts to qualify voters, although the constitution authorizes registration.

It is possible, by constitution, to enact permanent restrictions upon the legislature's choice of the type or mechanics of registration. For example, Alabama's constitution specifies permanent registration throughout the state; Missouri's organic law prohibits registration in cities of less than 10,000 inhabitants; and that of Rhode Island compels re-registration of voters biennially. The paucity of states which have written special features of their registration systems into their constitutions suggests that the provision was a response to a special, local condition.

C

A constitutional provision with respect to registration may be the means of effectuating a program for exclusion of otherwise qualified, legal voters.

The most familiar means of accomplishing this result is a constitutional or statutory definition of the right of franchise, which establishes voting qualifications according to literacy, tax payment or property holding. The project may be facilitated by constitutional provisions with respect to registration. Nearly every southern state is included among the 22 whose constitutions deal with the subject. It is possible that the constitutional treatment of registration in those states is related to the South's history of discriminatory treatment of voters according to race.

Conclusions

1. New Jersey has enacted, and periodically revised, comprehensive systems for the registration of voters. It is settled beyond controversy that an enabling provision in the Constitution is not needed for this purpose.

2. The only constitutional provisions for registration which

have been effective without legislative aid are specifications of the type or restrictions of the mechanics to be employed. The history of New Jersey's election law features constant changes to eradicate specific abuses, to effect improvements in administration and to adopt new techniques which have been tested and proven successful in other communities. A constitutional restriction upon the Legislature's freedom of action would impair its opportunity to accommodate the law to changing circumstances, with no apparent compensating advantages.

THE GOVERNOR—QUALIFICATIONS, ELECTION, TERM, VACANCY IN OFFICE, SUCCESSION

by

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QUALIFICATIONS

Most states have three qualifications for governor: minimum age, United States citizenship (sometimes for a number of years), and residence in the state for a stated number of years. In 1935 North Dakota experienced considerable trouble because of the clause requiring five years' residence within the state. The winning candidate for office had lived and voted in another state within the prescribed period. The Supreme Court of the state held that he lacked the proper qualifications. As a consequence, the lieutenant governor succeeded to the office.[1]

The "Model State Constitution," published by the National Municipal League, would make "any qualified voter of the state" eligible to the office of governor.[2]

LENGTH OF TERM

In 25 states the governor serves four years; in 22 states the term is two years. New Jersey alone has the three-year term.[3]

Although the number of states having four-year and two-year terms is about the same, the trend is in the direction of the longer term.[4] The chief advantage cited for the four-year term is that the governor has time to formulate a program and take steps toward its accomplishment, whereas a governor serving a two-year term is handicapped because he must concentrate on politics if he wishes to be reelected, and this to the detriment of his program.

TIME OF ELECTION

Most state elections for governor occur in the even-numbered years. In 10 of the 25 states having the four-year term, the election for governor coincides with the presidential election; 11 use the intermediate even years; Virginia, Mississippi, and Kentucky elect their governors in odd-numbered years, and Louisiana elects in

[1] Roy L. Miller, "The Gubernatorial Controversy in North Dakota," American Political Science Review, June, 1935, pp. 418-432.
[2] Art. V, sec. 501 (Partial Revision of 1946).
[3] Council of State Governments. The Book of the States, 1945-46, p. 560.
[4] Graves, W. B. American State Government (3rd ed., 1946), p. 369.

April of the presidential year. Of the 22 states having the two-year term, all elect the governor in the even-numbered years.[5]

Writers on state government urge the use of the odd years in order to focus a greater amount of attention on state issues. W. Brooke Graves, for example, states:

> "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." [6]

The "Model State Constitution" proposes that the election be held "in each alternate odd numbered year." [7]

Date of Taking Office

There is no uniform practice among the states as to the date of the governor's inauguration.[8] The present provision in the New Jersey Constitution is similar to the 20th Amendment of the Federal Constitution in providing a short delay after the Legislature convenes before the Governor is inaugurated. This gives the Legislature an opportunity to resolve a contested election. The wording of Art. V, par. 3—"The Governor shall hold his office for three years, to commence on the third Tuesday of January next ensuing the election for Governor by the people, and to end on the Monday preceding the third Tuesday of January, three years thereafter"—is less precise than the 1944 draft provision which called for the terms of the Governor and the Legislature to begin and end at noon on the second Tuesday of January. The "Model State Constitution" provides that the terms of the governor and the legislature shall begin on the first day of December.

Vacancy

A. *Who Succeeds*

New Jersey is one of 11 states having no lieutenant governor.[9] Seven states, including New Jersey, name the presiding officer of the senate as the immediate successor to the governor; three name the secretary of state. In Maryland the General Assembly, if in session, elects a governor; if not, the President of the Senate serves until a governor is elected. Second successors are named in 44 states; 20 states name three specific successors. Only five states go beyond this number.[10]

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[5] The Book of the States, p. 560.
[6] American State Government, p. 368.
[7] Art. V, sec. 501.
[8] The Book of the States, p. 560.
[9] Book of the States, p. 559. Georgia's new constitution provides for a lieutenant governor.
[10] The Congressional Digest, March 1946, p. 75.

B. *Frequency of Vacancy*

A recent survey of the frequency with which vacancies occur discloses that in 24 states over a 91-year-period the governor's office became vacant 73 times, or an average of about once in 30 years.[11]

C. *Resignation*

On four occasions since 1844, the resignation of the Governor of New Jersey has resulted in the President of the Senate exercising the powers and duties of the Governor.[12] On two occasions, because of the resignation of the president of the Senate, the powers and duties of the Governor's office devolved upon the Speaker of the House of Assembly.[13] Twice the presidency of the Senate changed hands when the new Legislature organized on the second Tuesday in January.[14] This meant that for a period of one week, until the newly-elected Governor was inaugurated, the new President of the Senate exercised the Governor's powers.

D. *Absence from the State*

The New Jersey Constitution provides that the powers and duties of the office of Governor devolve upon the President of the Senate in the event of the Governor's absence from the State. The "Model State Constitution" has a similar provision. Six states having no lieutenant governor provide for the presiding officer of the senate to assume control; three designate the secretary of state. In Illinois, which has a lieutenant governor, the governor files notice of absence from, and return to, the state.[15]

E. *Impeachment*

The New Jersey Constitution provides that in case of the impeachment of the Governor, the powers and duties of the office devolve upon the President of the Senate. Since impeachment means, technically, the official act of condemnation by the General Assembly, with the actual trial to be held by the Senate, the President of the Senate presumably would take over the office of Governor prior to the beginning of the trial.

F. *Disability*

Occasionally the question arises as to whether there is, in fact, a vacancy in the governor's office. The New Jersey Constitution pro-

[11] *Ibid.*

[12] On January 31, 1898, John W. Griggs resigned to become United States Attorney General; on March 1, 1913, Woodrow Wilson resigned to become President of the United States; on May 16, 1919, Walter E. Edge resigned to become United States Senator; on January 3, 1935, A. Harry Moore resigned to become United States Senator.

[13] 1899 and 1913.

[14] 1920 and 1935.

[15] Clyde F. Snider, "Gubernatorial Disability," The University of Chicago Law Review, April 1941, p. 522.

vides that in case of disability, the powers and duties of the office shall devolve upon the President of the Senate. In common with almost all other states, the New Jersey Constitution provides no means of determining whether the incumbent is capable of performing his official duties. This deficiency provoked a serious controversy in Illinois during the two-year illness of Governor Horner, 1938-40. There were long periods when he was not able to go to the state house, and the charge was made that the duties of the office were performed in his name by a "bedside cabinet." He refused to relinquish the office, however, until two days before his death.[16]

In Mississippi, the secretary of state is empowered to submit the question of disability to the judges of the supreme court who investigate and make a determination.[17] In Alabama, any two of seven officials may ask the supreme court to determine the governor's mental condition. If he is declared to be "unsound of mind," the lieutenant governor performs the duties of the office until the governor is "restored to his mind." [18]

G. *Suggestion of Hendrickson Commission*

The draft constitution proposed in the Report of the Commission on Revision of the New Jersey Constitution, 1942 (the Hendrickson Commission), contained a clause which would eliminate to some degree the confusion arising out of situations similar to those described above. The provision was that the head of the Department of Taxation and Finance exercise the powers of the office in the event of the Governor's absence or temporary inability to discharge his duties. In case of a vacancy, the head of the Department of Taxation and Finance would serve until a new Governor was elected and qualified.[19]

The proposal that a department head succeed to the powers and duties of the Governor has the added advantage of assuring continuity in the policies inaugurated by him.

Disability of Governor-Elect

The disputes in Wisconsin in 1942 and in Georgia in 1946, arising out of the deaths of the governors-elect, indicate the desirability of a clear provision dealing with the inability of the governor-elect to assume office. The present Constitution provides that in the event of the death of the Governor-elect, before he is qualified into office, the powers and duties of the office shall devolve upon the President of the Senate or Speaker of the House of Assembly until a new Governor be elected and qualified.[20] The Constitution is silent con-

[16] Snider, *supra*, pp. 521-529.
[17] Constitution, Art. V, sec. 131.
[18] Constitution, Art. V, sec. 128.
[19] Art. IV, sec. I, par. 6.
[20] Art. V, par. 14.

cerning the failure of the Governor to qualify or his inability for any reason to assume the office.

Succession

Thirty states have no limitation on succession.[21] Thirteen states make the incumbent ineligible to succeed himself. Oregon provides that the governor shall serve no more than eight years in any 12-year period.[22] Tennessee, which has a two-year term, permits no more than three consecutive terms.[23] In Delaware, the governor is ineligible for a third four-year term. One governor of Arizona held office for seven two-year terms, and Maryland's "perpetual governor," Albert C. Ritchie, served four consecutive four-year terms.[24]

Election to Fill Vacancy

The present Constitution provides that in the event of a vacancy in the office of Governor, a new Governor shall be chosen at the next election for members of the Legislature. This practice is followed by four other states of the 11 having no lieutenant governor. In five states the person succeeding to the powers and duties of the governor is permitted to retain those powers until the expiration of the term. In Maryland, the General Assembly fills the vacancy. The present Constitution of New Jersey further provides that if the vacancy occurs within the 30-day period immediately preceding the election for members of the Legislature, the Governor shall be chosen at the second succeeding election.[25] The 1944 draft constitution changed the 30 days to 60. The draft also provided that there should be no election to fill an unexpired term in any year in which a Governor was to be elected for a full term.[26]

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[21] The Book of the States, p. 560.
[22] Constitution, Art. V, sec. 1.
[23] Art. III, sec. 4.
[24] Graves, *supra*, pp. 369-370.
[25] Art. V, par. 12.
[26] Art. IV, sec 1, par. 8.

BIBLIOGRAPHY

Annals of the American Academy of Political and Social Science, Sept., 1935, "The State Constitution of the Future."

BROMAGE, ARTHUR W. State Government and Administration in the United States, 1936.

Commission on Revision of the New Jersey Constitution. Report, 1942.

Congressional Digest, March, 1946.

Council of State Governments. The Book of the States, 1945-46, 1946.

FAUST, MARTIN L. Manual on the Executive Article (Missouri Constitutional Convention of 1943), 1943.

GRAVES, W. BROOKE. American State Government, 3rd ed., 1946.

HOLCOMBE, ARTHUR N. State Government in the United States, 1931.

ISON, WARREN R. "The Office of Lieutenant Governor in the States," American Political Science Review, October, 1938.

MACDONALD, AUSTIN F. American State Government and Administration, 3rd ed.,1945.

MILLER, ROY L. "The Gubernatorial Controversy in North Dakota," American Political Science Review, June, 1935, pp. 418-432.

National Municipal League. Model State Constitution, Partial Revision, 1946.

New Jersey. Constitution Annotated.

New Jersey. Legislative Reference Manual.

New Jersey. Proceedings of the Constitutional Convention of 1844, 1944.

New Jersey. Proceedings before the New Jersey Joint Legislative Committee of 1942, 1942.

New York State Constitutional Convention Committee. Report, vol. VIII, "Problems Relating to Executive Administration and Powers."

SNIDER, CLYDE F. "Gubernatorial Disability," University of Chicago Law Review, April, 1941, pp. 521-529.

STEWART, FRANK M. "Impeachment in Texas," American Political Science Review, August, 1930, pp. 652-659.

Tennessee, Univ. of., Bureau of Public Administration, "The Office of Lieutenant Governor," May, 1946.

THE APPOINTIVE POWER—TENURE, REMOVAL AND CONFIRMATION OF OFFICERS

(Excepting Judicial Officers)

by

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It is the general purpose of this monograph to cover, as concisely as possible, the subject of the appointment, tenure, removal and confirmation of all officers appointed by the Governor or elected by the joint action of both Houses of the Legislature, excepting judicial officers. This latter subject will be included in monographs based upon the Judicial Article.

THE CONSTITUTION OF 1776

The power of appointment as written into the Constitution of 1776, was entrusted exclusively to the legislative branch of the State Government. This action, so contrary to the more modern theory of the separation of powers among the principal branches of government was based in part upon the prevailing suspicion of the executive power, and in part upon the fact that the struggle for colonial rights had been conducted mainly through the Assembly.[1]

Authority for the appointment of officers by the joint meeting of the Legislature may be found in Sections X and XII of the Constitution of 1776. The former provided for the appointment of field and general officers of the militia, and the latter, in addition to judicial officers, for the appointment and tenure of the Attorney-General, Treasurer and Provincial Secretary.

Section XII provided also that the officers listed therein could be reappointed at the expiration of their respective terms, and that "any of the said officers shall be liable to be dismissed when adjudged guilty of a misbehavior by the Council, on an impeachment of the Assembly."

The abuses reputed to have resulted from the concentration of the appointive power in the legislative branch have been described variously as "obnoxious," "repellant," "disgraceful" and "repugnant." Proponents of the power have, on the other hand, pointed to the high standard of appointments to the Chancery and Supreme Courts.

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1 New Jersey Writers' Project (W.P.A.). Proceedings of the New Jersey State Constitutional Convention of 1844, (n. p., 1942), p. XVII, Introduction.

Mr. John Bebout, in his summarization of the claims and counterclaims of the abuses of the appointive power by the Legislature, says:

> "There seems to have been little complaint about the quality of State appointments. During the sixty-eight years between 1776 and 1844, the State had only eight Secretaries of State, ten Attorneys-General, ten Treasurers, and ten Adjutants-General. * * * These offices (State offices in general) were usually held by men as distinguished as those who became Governor, and were vacated in many instances by resignation or promotion of the incumbent, rather than by the expiration of a term. * * * It was the County appointments which offered the great opportunity for 'logrolling' and bargaining. One reason for the multiplication of County judges and justices was that they cost nothing to the Treasury. The functions of the State Government (less than $100,000 a year) did not invite, and its resources did not encourage a similar multiplication of State functionaries; besides, Jerseymen were very insistent on a frugal State Government in those days." [2]

Regardless of the degree of culpability of the Legislature in the abuse of its appointing power, it is certain that general and widespread dissatisfaction was registered and that the power of the Legislature was predestined to be diminished before the delegates to the Convention of 1844 assembled.

The Constitutional Convention of 1844

On June 7, 1844, approximately three weeks after its formation, the Committee on the Appointing Power submitted a report in behalf of the majority of the committee. In presenting the report, the chairman, Mr. Dickerson, made the fact clear that the committee had not agreed in its entirety, and that the minority, while not tendering a report, reserved the right to offer their views when the subject came up for discussion. Provisions contained in the report pertinent to this study may be summarized as follows:

(A) *Militia Officers*

1. Captains, subalterns, non-commissioned officers, field officers, brigadier-generals and brigade inspectors to be elected by the appropriate electors of the militia. In case of refusal or neglect of the appropriate electors to elect, said officers to be appointed by the Governor.
2. Major-Generals to be appointed by the Governor with the advice and consent of the Senate.
3. Adjutant-General, commissary-general, and other officers not provided for by the Constitution to be appointed by the Governor.
4. No commissioned officer to be removed from office except by a court martial, pursuant to law.

(B) *Civil Officers* (Judicial officers omitted)

1. Attorney-General (term 5 years), prosecutors of the

[2] *Ibid.*, pp. LXIII-LIX, Introduction.

pleas (term 5 years), and Secretary of State (term 5 years), to be appointed by the Governor with the advice and consent of the Senate.

2. The Treasurer, Keeper of State Prison (terms 1 year) and United States Senators to be appointed by the Senate and General Assembly in joint meeting.
3. Mayors, recorders, aldermen, clerks, surrogates, sheriffs, coroners, constables, freeholders and justices of the peace to be elected by the people in their respective counties or municipalities.
4. All other officers, not otherwise provided by law, to be appointed by the Governor with the advice and consent of the Senate.[3]

Mr. William Belford Ewing, immediately following the presentation of the report, moved that the report be recommitted with instructions that the committee change the appointment of the judicial officers, the Attorney-General, and others listed, from the Governor and Senate to the joint meeting of the Legislature as provided by the old Constitution (1776).

Mr. Ewing proposed recommitment because "the report recommended a most dangerous innovation." He felt that the provisions for the election of justices, clerks, and surrogates by the people were liberal and, to that extent, he approved. He stated that none of the constitutions of other states had advanced so near the old "democratic republican principles" as the old Constitution of this State in regard to appointments. He termed it "a perfect model of a Constitution for the government of a free people."

Continuing, Mr. Ewing said he felt that appointment by a Governor and Council was a "retrogade" movement, worthy to have emanated from His Majesty the King when he had "dominion" of the province; that appointments should be made in joint meeting by the immediate representatives of the people. "It is no argument that the joint meeting has abused their right of appointment. It is the duty of this convention to limit the number of officers and thus restrict this abuse." Ewing stated that he would concede to the Governor the appointment of some officers within his immediate sphere, but that he would never consent to giving him all appointments.

The motion to recommit was lost by a vote of 11 to 23, and the report was ordered "to lie on the table and to be printed."[4]

On June 12, 1844, the Convention resolved itself into a Committee of the Whole to consider the report of the Committee on the Appointing Power. Mr. Ewing again moved to recommit and said that to give the appointing power to the Governor and Senate

[3] *Ibid.*, pp. 271-274.
[4] *Ibid.*, pp. 274-275.

would look like "star chamber" appointments, for the proceedings will be "as secret as the chambers of a dungeon." [5]

Mr. James C. Zabriskie replied at some length in favor of the report. He stated that even in the face of divided opinion among the members of the committee, it had been agreed to place, with the exceptions noted, the appointive power in the Governor with the advice and consent of the Senate. He held that the argument advanced by Mr. Ewing objecting to this appointing provision as an "aristocratic and dangerous power" and likening the Governor in his exercise of such power to a King and the Senate to a "star chamber" doing its work in secret, was a strange argument "in this day of political enlightenment."

Zabriskie compared the responsibility conferred upon the Governor by the appointive power to that of the individual members of the Legislature voting in joint meeting where "there exists no responsibility whatever." He charged that "no individual member of the Legislature ever considered himself responsible for the acts of a joint meeting * * * that the individual was merged in the mass." He directed attention to the fact that all appointments made by joint meeting were previously determined upon in caucus with closed doors, a "star chamber"; and that the Governor, ineligible after his term, checked by the Senate, was hardly apt to "prostitute himself" for state patronage for purposes of personal advancement.[6]

Mr. Dickerson, chairman of the committee, supported Mr. Ewing's opposition to the concentration of the appointing power in the Governor. He insisted that the old system did repose a responsibility upon the members of the Legislature as their "yeas" and "nays" were called for by names. He contended that apparent abuses were evident in the joint meeting only because 20 years ago the number of appointments had not been limited, and he added that while the Governor might not advance his own personal ends by the use of the appointive power, he could advance the ends of his party.[7]

Mr. Abraham Browning defended the appointive provisions contained in the report on the grounds that the power as formerly conferred upon the joint meeting had been condemned publicly more than any other phase of the old Constitution. He held that such a power was rightfully an executive power as it became the duty of the Executive to see that the laws "are faithfully executed." He continued, "It is the business of the Legislature to create the laws; of the Governor to execute them; and whenever you blend or consolidate their respective duties, you unite distinct branches of government and destroy their purity and independence."

Browning drew a vivid word picture of the caucus where the

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5 *Ibid.*, pp. 348-350.
6 *Ibid.*, pp. 350-352.
7 *Ibid.*, pp. 352-353.

members of the Legislature lock themselves at night in one of the upper rooms of the Capitol Building and "adopt secret rules of action, vote by ballot so that it cannot be known even among themselves, what they individually do, and secrecy is enjoined on all that is openly said or done." He concluded with the observation that the constitutions of most states placed the appointing power with the Executive, and that while complaints may have been heard in some cases, there had been no single instance of a petition by the people to remove the power from the Executive.[8]

A decidedly vigorous defense of the Governor's appointive powers was advanced by Mr. Richard S. Field, a member of the committee which had prepared the report under discussion. He declared himself for "taking away from the joint meeting every vestige of the appointing power," excepting the offices of State Treasurer and Keeper and Inspector of the State Prison. He challenged the delegates to follow the dictates of their own conscience in the matter and then to let the people decide whether or not their judgment had been in error.

Field called the power of appointment an executive power and maintained that if the Governor were deprived of the power he would be an Executive in name only. He called attention to the fact that the Governor could hardly carry all of the laws made by the Legislature into execution; that this must be done through the instrumentality of others; and that he must, therefore, appoint those who are to be the instruments for executing the law. On the other hand, "if you allow the Legislature to appoint officers to carry into effect their own laws * * * you create a despotism." He expounded, in this fashion, the true American policy of the separation of powers and then continued by alluding to the fact that the Convention had elected a president and had conferred upon him, not because of any lack of ability of its delegates, the logical duty of making all necessary appointments.

To strengthen his argument that the Governor was entirely responsible for his appointments and the individual members of the Legislature were not, Field recalled his own service in the Legislature and pointed to several delegates who had been members of the Legislature when that body had "abused its power most grossly." He made it clear that he considered the same abuses would have discredited the Governor in the eyes of the people, but that they had left no mark upon these delegates, including themself, who had been participants in their commission. In addition, he contended that he had been elected a delegate upon the openly avowed pledge that he would exert every energy to remove the appointive power from where it reposed and would place it with the Governor.[9]

[8] *Ibid.*, pp. 353-356.
[9] *Ibid.*, pp. 356-360.

In summary fashion, seven additional delegates rose to express their views on the proper location of the appointive power. Five spoke in favor of the Executive and two in favor of reposing the power with the joint meeting of the Legislature. Mr. Ewing's amendment was again disagreed to by a large majority. Other amendments designed to modify the Governor's power of appointment were moved, but were equally unsuccessful.[10]

On June 13, the Convention again resolved itself into the Committee of the Whole to continue its consideration of the appointive power. Mr. Sickler moved to strike out prosecutors of the pleas from the list of officers appointed by the Governor and Senate and to place them among those officers to be elected by the people.[11] After numerous arguments of a repetitious nature, and counter-proposals ranging from appointment of prosecutors by the Legislature to appointment by the judges of the Court of Oyer and Terminer, the motion to strike out was lost by a vote of 22 to 28.[12]

Mr. Jacques then moved to strike out "Secretary of State" with the view of having that officer elected with the Governor for an equal term. The vote was 21 to 21, with the motion finally decided only by the chair voting in the negative.[13]

Mr. Vroom moved to strike out "Prosecutors of the Pleas" and moved that these officers be appointed by the Attorney-General, or that the Attorney-General have the power to appoint as many deputies as he may see fit or necessary. The amendment was agreed to by a vote of 22 to 16.[14] (This amendment was reconsidered and ultimately lost.)

Mr. Wood offered an amendment to the effect that when the Senate refused to confirm the Governor's nomination, the joint meeting should forthwith make the appointment. The motion was defeated.[15]

A motion to remove the office of surrogate from the electors and to place such appointments within the power of the Governor and Senate was soundly defeated.[16]

On motion, the provision in the report providing for the election of constables and freeholders by the people, was struck out as unnecessary.[17]

A motion to remove justices of the peace from the list of officers elected by the people and to vest the appointment of such officers in the Governor and Senate was lost by a decided vote.[18]

On June 20, 1844, the Convention proceeded to give final consideration to the report of the Committee on the Appointing Power,

10 *Ibid.*, pp. 360-364.
11 *Ibid.*, p. 367.
12 *Ibid.*, p. 377.
13 *Ibid.*, pp. 377-378.
14 *Ibid.*, pp. 378-383.
15 *Ibid.*, p. 383.
16 *Ibid.*, p. 384.
17 *Ibid.*, p. 384.
18 *Ibid.*, pp. 387-389.

with amendments made thereto in the Committee of the Whole. Again the proponents of the joint meeting, by every possible device and motion, tried to force an opening wedge to return some or all of the appointive power to the Legislature. Despite their best efforts, however, Section I of the report pertaining to the appointment of "militia officers" was approved with but minor changes which in no way diminished the Governor's powers.[19]

The proponents of the legislative power, however, fared slightly better in the matter of "Civil Officers," Section II of the report, in that, as a compromise, it was agreed that "Judges of the Courts of Common Pleas shall be appointed by the Senate and General Assembly, in joint meeting." [20] (This provision was amended in 1875.)

Other amendments finally agreed to were of a procedural nature, in most cases involving the deletion of unnecessary provisions such as the matter of the appointment of United States Senators, and did not affect the Governor's power in any respect. One exception should be noted, however. The amendment proposed by Mr. Vroom and approved by the Committee of the Whole relative to prosecutors of the pleas was lost, thereby restoring to the Executive the power to appoint such officers.[21]

The final provisions governing the appointment of officers and their tenure, as approved by the Convention of 1844 and adopted by the people, were incorporated in Article VII, sections I and II of the new Constitution. These provisions may be summarized as follows:

(1) The Senate and General Assembly in joint meeting were given authority to appoint the State Treasurer and Keeper and Inspector of the State Prison.

(2) The Governor was given exclusive power to appoint the Adjutant-General, Quartermaster-General and other militia officers not otherwise provided for by the Constitution.

(3) The Governor, with the advice and consent of the Senate, was given authority to appoint major-generals, the Attorney-General, prosecutors of the pleas, the Secretary of State and "all other officers whose appointments are not otherwise provided by law."

(4) The privilege of electing clerks and surrogates of counties, sheriffs, coroners and justices of the peace was reserved to the people.

Certain other provisions affecting appointment and tenure were incorporated in Article V and may be summarized as follows:

(1) Paragraph 3 specified that the Governor might not make appointments during his last week in office;

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19 *Ibid.*, pp. 481-485.
20 *Ibid.*, pp. 499-502.
21 *Ibid.*, pp. 503-505.

(2) Paragraph 11 specified that the Governor and all other civil officers under the State "shall be liable to impeachment for misdemeanor in office during their continuance in office and for two years thereafter," and

(3) Paragraph 12 provided that when a vacancy occurred during the recess of the Legislature in any office to be filled by the Governor and Senate, or the Legislature in joint meeting, the Governor "shall fill such vacancy, and the Commission shall expire at the end of the next session of the Legislature, unless sooner filled; and that vacancies in the office of Clerk or Surrogate in any county shall be filled by the Governor until a successor is elected."

This last provision was amended in 1897 in such manner as to prohibit the Governor from filling vacancies, ad interim, with persons nominated to office by him but not confirmed by the Senate before that body recessed.

In 1875, several paragraphs of Article VII, sections I and II were amended. Changes of particular significance to this study may be summarized as follows:

Section I, pars. 5 and 9: Adjutant-General and Quartermaster-General were deleted from paragraph 9, as sole appointees of the Governor, and were added to paragraph 5 as officers whose appointments require Senate confirmation. (See Schedule, next heading.)

Section II, pars. 2 and 3: The office of Keeper of State Prison was removed from the appointments of the joint meeting of the Legislature and transferred to the Governor and Senate. The office of the State Comptroller was added to the legislative appointing power, thus making that body directly responsible for functions of a fiscal nature. (See Schedule, next heading.)

The Development of Appointive Offices Since 1844

The implications found in a study of the proceedings of the Convention of 1844 point strongly to the fact that the delegates thereto felt assured they had successfully remedied most of the evils which had existed in the system of selecting public officials previous to 1844. It is obvious that they desired to shift the appointive power from the Legislature to the Governor and Senate, and that they aspired to limit materially the number of appointive offices and officers. The growth of governmental functions during the past hundred years, however, has been startling and the number of appointive offices has grown apace. Schedule I has been prepared to illustrate this phenomenal growth and also to serve as a guide in the identification of appointive offices currently in existence.

While space has of necessity limited the scope of information possible to be included in the Schedule, one is impressed, not only

SCHEDULE I

Schedule of Appointive Officers, Conditions of Appointment and Tenure

(Constitution of 1844, as amended)

No.	Officers Title	1844 Constitution Art. VII, Sec. I	How Appointed	Confirmed By	Tenure	Other Conditions
	Major-Generals	Par. 5 (as amended 9/7/75)	By Governor	Senate	For life	
	Adjutant-Generals	Par. 5 (as amended 9/7/75)	By Governor	Senate	For life	
	Quartermaster-Generals	Par. 5 (as amended 9/7/75)	By Governor	Senate	For life	
	Subalterns	Par. 7	By Governor			Conditional upon failure of militia to elect
	Captains	Par. 7	By Governor			Conditional upon failure of militia to elect
	Field officers	Par. 7	By Governor			Conditional upon failure of militia to elect
	Offices created by statute	Par. 9 (as amended 9/7/75)	By Governor			Provisional upon creation
		Art. VII, Sec. II				
	Supreme Court Justices	Par. 1 (as amended 9/7/75)	By Governor	Senate	7 yrs.	
	Chancellor	Par. 1 (as amended 9/7/75)	By Governor	Senate	7 yrs.	
	Judges, Ct. of Errors & Appeals	Par. 1 (as amended 9/7/75)	By Governor	Senate	6 yrs.	
	Judges, Inferior Ct. of Common Pleas	Par. 1 (as amended 9/7/75)	By Governor	Senate	5 yrs.	
	State Treasurer	Par. 2 (as amended 9/7/75)	Sen. & Assembly		3 yrs.	By joint action of
	State Comptroller	Par. 2 (as amended 9/7/75)	Sen. & Assembly		3 yrs.	By joint action of
	Attorney-General	Par. 3 (as amended 9/7/75)	By Governor	Senate	5 yrs.	
	Prosecutors of the Pleas	Par. 3 (as amended 9/7/75)	By Governor	Senate	5 yrs.	
	Clerk of the Supreme Court	Par. 3 (as amended 9/7/75)	By Governor	Senate	5 yrs.	
	Clerk, Court of Chancery	Par. 3 (as amended 9/7/75)	By Governor	Senate	5 yrs.	
	Secretary of State	Par. 3 (as amended 9/7/75)	By Governor	Senate	5 yrs.	
	Keeper, State Prison	Par. 3 (as amended 9/7/75)	By Governor	Senate	5 yrs.	
	Others provided by statute	Par. 8 (as amended 9/7/75)	By Governor	Senate		Provisional upon creation
		By Statute				
1	Secretary to the Governor	R.S. 52:15-3	By Governor		3 yrs.	
8	Members, State Bd. of Agriculture	P.L. 1944, C. 202	By Governor	Senate	4 yrs.	No salary, appointment by recommendation
1	Commr., Alcoholic Beverage Control	R.S. 33:1-3	Sen. & Assembly		7 yrs.	
1	Commr., Athletic Commission	R.S. 5:2-2	By Governor	Senate	5 yrs.	
3	Commrs., Atl. States Fisheries Commission	P.L. 1941, C. 169	By Governor (1)	Senate	3 yrs.	Ex officio officers (2)
1	State Auditor	R.S. 52:24-1 to 10 & P.L. 1938, C. 159	Sen. & Assembly		5 yrs.	By joint action of
5	Commrs., Aviation Commission	R.S. 6:1-5 to 7, P.L. 1938, C. 48	By Governor	Senate	5 yrs.	No salary
1	Director, Aviation Commission	R.S. 6:1-5 to 7, P.L. 1938, C. 48	By Governor	Senate	5 yrs.	No salary
1	Commr., Banking & Insurance	R.S. 17:1-1 to 11 & R.S. 34:15-90	By Governor	Senate	3 yrs.	
8	Commrs., Banking Advisory Commission	R.S. 17:1A-1 to 7	By Governor	Senate	5 yrs.	No salary
5	Commrs., Civil Service Commission	P.L. 1944, C. 65	By Governor	Senate	5 yrs.	
1	President, Civil Service Commission	P.L. 1944, C. 65	By Governor		3 yrs.	Serves until successor is appointed
1	Commr., Comm. on Urban Colored Population	P.L. 1941, C. 192	By Governor		5 yrs.	No salary, expenses
1	Commr., Comm. on Urban Colored Population	P.L. 1941, C. 192	Pres. of Sen.		4 yrs.	No salary, expenses
1	Commr., Comm. on Urban Colored Population	P.L. 1941, C. 192	Spea'er of House		3 yrs.	No salary, expenses
1	Commr., Conservation Department	P.L. 1945, C. 22	By Governor	Senate	3 yrs.	Or until successor qualified
9	Council, Fish & Game Division	P.L. 1945, C. 22	By Governor	Senate	5 yrs.	No salary

SCHEDULE I (Continued)

Officers			How	Confirmed		
No.	*Title*	Reference	Appointed	By	Tenure	Other Conditions
9	Council, Forestry, Parks, etc., Division	P.L. 1945, C. 22	By Governor	Senate	5 yrs.	No salary
9	Council, Navigation Division	P.L. 1945, C. 22	By Governor	Senate	5 yrs.	No salary
9	Council, Shell Fisheries Division	P.L. 1945, C. 22	By Governor	Senate	5 yrs.	No salary
9	Council, Water Policy & Supply	P.L. 1945, C. 22	By Governor	Senate	5 yrs.	No salary
8	Commrs., Crippled Children's Commission	P.L. 1938, C. 150	By Governor		5 yrs.	Upon recommendation. No salary
2	Commrs., Crippled Children's Commission	P.L. 1938, C. 150	By Governor		1 yr.	1 from each House. No salary
8	Commrs., Delaware River Joint Commission	R.S. 32: Chaps. 3 to 6	Sen. & Assembly		5 yrs.	8 from Pennsylvania. No salary
5	Commrs., Delaware River Joint Toll Bridge Comm.	R.S. 32:9-1	By Governor		3 yrs.	No salary
1	Commr., Economic Development Dept.	P.L. 1944, C. 85 & P.L. 1945, C. 128	By Governor	Senate	4 yrs.	
4	Directors, Economic Development Dept.	P.L. 1944, C. 85 & P.L. 1945, C. 128	By Governor	Senate	5 yrs.	
12	Council, Economic Development Dept.	P.L. 1944, C. 85 & P.L. 1945, C. 128	By Governor	Senate	4 yrs.	No salary
1	Commr., Education Department	R.S. 18:3-1	By Governor	Senate	5 yrs.	
12	Members, State Board of Education	P.L. 1945, C. 211	By Governor	Senate	6 yrs.	No salary
5	Advisory Council, Div. of Library	P.L. 1945, C. 50	By Governor	Senate	5 yrs.	No salary
5	Advisory Council, Div. of Museum	P.L. 1945, C. 50	By Governor	Senate	5 yrs.	No salary
7	Advisory Council, Div. Against Discrimination	P.L. 1945, C. 169	By Governor	Senate	5 yrs.	No salary
8	Trustees, Industrial Education Schools	R.S. 18:15-20	By Governor		4 yrs.	No salary
3	Harbor masters	R.S. 12:9-10	By Governor	Senate	2 to 3 yrs.	No salary
12	Members, State Board of Health	R.S. 26:2, 2-3, 2-4	By Governor	Senate	4 yrs.	No salary
1	Commr., Highway Department	R.S. 27:1-3-15	By Governor	Senate	6 yrs.	
5	Commrs., Comm. on Interstate Cooperation	R.S. 52:9B-4, 9B-6	By Governor		Governor's pleasure	10 members by both Houses. No salary
5	Commrs., Interstate Sanitation Comm.	R.S. 32:19-1	By Governor (2)	Senate	5 yrs.	2 members from State at large. No salary
1	Commr., Labor Department	R.S. 34:1-17	By Governor	Senate	5 yrs.	
5	Members, Migrant Labor Board	P.L. 1945, C. 71	By Governor	Senate	5 yrs.	No salary
7	Members, Mediation Board	P.L. 1941, C. 100 & P.L. 1945, C. 32	By Governor	Senate	3 yrs.	Per diem
5	Members, Law Rev. & Bill Drafting Comm.	P.L. 1944, C. 105	By Governor (3)	Senate	6 yrs.	2 by both Houses. No salary
3	Members, Milk Control Board	P.L. 1941, C. 274	Sen. & Assembly		5 yrs.	Per diem
1	Commr., Motor Vehicle Dept.	P.L. 1944, C. 44	By Governor	Senate	4 yrs.	
5	Commrs., North Jersey Transit System	P.L. 1941, C. 117	By Governor (1)		No term	4 by both Houses. No salary
5	Commrs., North Jersey Water Supply Comm.	R.S. 58:5-1, 5-3, 5-4, 5-5	By Governor	Senate	4 yrs.	Hold-over until successor appointed
5	Commrs., Palisades Interstate Park Comm.	R.S. 32:14-1 to 30	By Governor	Senate	5 yrs.	No salary. 5 members from New York
5	Commrs., Passaic Valley Sewerage Comm.	R.S. 58:14-1 & P.L. 1942, C. 151	By Governor	Senate	5 yrs.	
5	Members, Comm. on State Admin. Reorganization	P.L. 1944, J.R. 1	By Governor (3)			2 by each House
1	Super., State Police Dept.	R.S. 53:1-2, P.L. 1941, C. 193	By Governor	Senate	5 yrs. & 100 days	
5	Trustees, Police & Firemen's Retirement System	P.L. 1944, C. 255	By Governor (2)		3 yrs.	No salary
6	Commrs., Port of New York Authority	R.S. 32:1-3, 1-5, 2-2 to 4	By Governor	Senate	6 yrs.	No salary. 6 appointed from New York
12	Commrs., Post-War Economic Welfare	P.L. 1944, C. 94	By Governor (2)		3 yrs.	Balance, Senate & Assembly. No salary
3	Commrs., Public Utility Comm.	R.S. 48:2-1, 2-5	By Governor	Senate	6 yrs.	Hold-over until successors appointed
4	Members, Racing Commission	P.L. 1940, C. 17	By Governor	Senate	6 yrs.	
5	Members, Rehabilitation Commission	R.S. 34:16	By Governor		5 yrs.	No salary

SCHEDULE I (Continued)

No.	Officers Title	Reference	How Appointed	Confirmed By	Tenure	Other Conditions
7	Members, South Jersey Port Comm.	P.L. 1942, C. 167	Sen. & Assembly		7 yrs.	No salary
2	Members, State Employees' Retirement System	R.S. 43:14-1-56	By Governor		No term	No salary
7	Members, Tax Policy Commission	P.L. 1945, C. 157	By Governor (5)			2 members appointed by both Houses. No salary
1	Commr., Dept. of Taxation & Finance	P.L. 1944, C. 112	By Governor	Senate	3 yrs.	Or until successor appointed
1	Deputy Comm. (Budget & Taxation)	P.L. 1944, C. 112	By Governor	Senate	3 yrs.	Or until successor appointed
1	Director, (Div. of Purchases)	P.L. 1944, C. 112	By Governor	Senate	3 yrs.	Or until successor appointed
1	Director, (Div. of Local Government)	P.L. 1944, C. 112	By Governor	Senate	3 yrs.	Or until successor appointed
7	Members, (Div. of Tax Appeals)	P.L. 1944, C. 112	By Governor	Senate	5 yrs.	No hold-over provision
1	Trustee, Teachers' Pension Fund	R.S. 18:13-24	By Governor		3 yrs.	
5	Members, Bd. of Tenement House Supervision	R.S. 55:9-1 to 2	By Governor	Senate	5 yrs.	No salary
7	Commrs., Unemployment Compensation Comm.	P.L. 1945, C. 203	By Governor	Senate	7 yrs.	Per diem
3	Commrs., Uniform Tax Laws	R.S. 1:8-1	By Governor	Senate	3 yrs.	No salary. Commrs. must be counselors-at-law
9	Members, Bd. of Control, Dept. of Institutions & Agencies	R.S. 30:1-3, 1-4	By Governor	Senate	8 yrs.	No salary, expenses
	Members, Bds. of Managers, State Institutions	R.S. 30:4-1	By Bd. of Con.	Governor	3 yrs.	No salary. Each Bd. 5 to 7 members
5	Members, State Bd. of Architects	R.S. 45:1-2, 1-3, 3-1	By Governor		2 yrs.	From lists supplied by Society. No salary
4	Members, Barber's Licensing Board	R.S. 45:4	By Governor (2)		4 yrs.	2 by State Assoc. Salary $10 per day
6	Members, Beauty Culture Control Board	R.S. 45:4A-2	By Governor		3 yrs.	Salary and expenses
8	Members, State Board of Dentistry	R.S. 45:1-2, 1-3, 6-1	By Governor		4 yrs.	No salary—from lists of Society
5	Members, Embalmers & Funeral Directors Board	R.S. 45:1-2, 7-1, 7-4	By Governor		3 yrs.	$10 per day—from lists of Society
11	Members, State Bd. of Medical Examiners	R.S. 45:9-1	By Governor		3 yrs.	$250 per exam.—from lists of Society
5	Members, State Bd. of Nurses Examiners	R.S. 45:11-1, 11-2	By Governor		3 yrs.	$5 per day—from lists of Society
5	Members, State Bd. of Optometrist Examiners	R.S. 45:12-2	By Governor		3 yrs.	No salary
5	Members, State Bd. of Pharmacy Examiners	R.S. 45:14-1, 14-4	By Governor		5 yrs.	$10 per day—from lists of Society
5	Members, State Bd. of Engineers & Surveyors	R.S. 45:8-29	By Governor	Senate	5 yrs.	No salary—from lists of Society
6	Commrs., of Pilotage	R.S. 12:8-1, 8-3, 8-4	By Governor	Senate	3 yrs.	Fees
3	Members, State Bd. of Public Accountants	R.S. 45:2-1	By Governor		3 yrs.	$5 per day
5	Members, Real Estate Comm.	R.S. 45:15-5	By Governor		3 yrs.	$25 per diem
3	Members, State Bd. of Shorthand Reporting	R.S. 45:15-B	By Governor	Senate	3 yrs.	$25 per diem, not to exceed $300 yearly
5	Members, State Bd. of Veterinary Examination	R.S. 45:1-2, 16-1, 16-2	By Governor		3 yrs.	No salary—from lists of Society
5	Public Trustees, Rutgers College	P.L. 1945, C. 49	By Governor	Senate	5 yrs.	No salary
	County Appointments					
Per Cty. 4	Members, County Bds. of Election	R.S. 19:6-17, 6-18	By Governor		2 yrs.	Nominations by county committee chairmen
Per Cty. 2	Jury commissioners	P.L. 1944, C. 96	By Governor		1 yr.	Salary $500 to $900
Per Cty. 3	Members, County Bds. of Taxation	54:3-2, 3-3, 3-6	By Governor		3 yrs.	Essex & Hudson, 5 members
Per Cty. 1	Prosecutor of the Pleas	R.S. 2:182-1, 182-10	By Governor		5 yrs.	Salaries vary by counties
2	Superintendents of Elections	P.L. 1944, C. 45	By Governor		5 yrs.	Only 1st class counties
	Judicial by Statute					
14	Judges, Circuit Court	R.S. 2:5-4	By Governor	Senate	7 yrs.	
6	Judges, Criminal District Court	R.S. 2:212-6 to 9, P.L. 1940, C. 201	By Governor	Senate	5 yrs.	Salary variable
37	Judges, District Courts	R.S. 2:8-1-14	By Governor	Senate	5 yrs.	Salary variable
4	Judges, Juvenile & Domestic Relations Cts.	R.S. 9:18-5, 18-7	By Governor	Senate	5 yrs.	

Sources: Legislative Manual, State of New Jersey, 1947; Lists of appointments as prepared by Governor's Office, and Laws of New Jersey.

by the multiplicity of offices presently in existence, but even more so by the complete lack of any vestige of uniformity in the provisions governing appointments.

A study of the state statutes creating the vast majority of the offices shown in the Schedule is even more revealing as regards their lack of uniformity. It would be very difficult, if not impossible, to classify these statutes under distinct headings or to group existing offices under such headings. For example, some laws provide for appointments in case of vacancies and others do not. Of the former, a few provide that the interim appointee shall hold office only for the unexpired term, while others leave the matter in doubt.

In a number of cases the law creating a public office requiring appointment will fail completely to clarify the matter of whether or not the incumbent shall "hold over" until his successor is appointed. The common practice is to provide that the "incumbent shall hold office until his successor shall have been appointed and qualified." When this provision is absent, any lack of prompt action in appointment and confirmation leads to confusion and often neglect of important state functions.

A number of additional factors made evident by the Schedule were discussed in the public hearings of 1942 before the Joint Legislative Committee on revision of the New Jersey Constitution, a digest of which is presented under the following heading.

Report of the Commission on Revision of the New Jersey Constitution and the Public Hearings of 1942

On May 18, 1942, the Commission on Revision of the New Jersey Constitution submitted to the Legislature and the Governor a report which contained a proposed new Constitution for New Jersey. This document was specific in its intent to deprive the joint meeting of the Legislature of all appointments except two, and to place the appointive power squarely in the Governor and the Senate. The Commission, in outlining the highlights of the new document, drew attention to this fact by the following comment: "All appointments to office with the exception of the State Treasurer and the State Comptroller are vested in the executive department subject to the power of the Senate with respect to confirmation." [22]

The provisions of the proposed Constitution of 1942 pertinent to the appointment of public officers, their eligibility and tenure, may be summarized as follows:

(1) No member of the Legislature during his or her term and for one year thereafter shall be eligible for appointive office. (Art. III, sec. III, par. 3)

(2) The Senate shall vote in public to confirm all nominations made by the Governor. (Art. III, sec. IV, par. 6)

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22 New Jersey. Record of Proceedings before the Joint Committee of the New Jersey Legislature. . . . (1942), (n.p., 1942), p. 913.

(3) Neither House, nor the Legislature, shall elect or appoint executive, administrative, or judicial officers, except the State Treasurer or Comptroller. (Art. III, sec. VII, par. 1)

(4) The Legislature shall not pass any private, special or local laws creating, increasing or decreasing the emoluments, term, tenure or pension rights of public officers or employees. (Art. III, sec. VII, par. 9-[2])

(5) The Governor shall appoint with the advice and consent of the Senate all officers subject to appointment by this Constitution and all other officers not otherwise provided for by law. (Art. IV, sec. II, par. 1)

(6) The Senate shall confirm or reject the Governor's nominations within 30 days, and upon failure so to act the nominee shall be deemed confirmed at the expiration of that time. The Governor may make no appointment during his last month in office. (Art. IV, sec. II, par. 2)

(7) The Governor may, upon complaint of 20 reputable citizens, investigate the conduct in office of any state officer, except legislators or judicial officers. He may remove any such officer, after due notice and hearing, when in his opinion such investigation discloses misfeasance, or malfeasance in office. (Art. IV, sec. II, par. 6)

(8) Art. IV, sec. III, pars. 1, 2 and 3, provided for nine administrative departments in the State Government, and gave the Governor power to allocate, from time to time, all executive and administrative agencies within them. The power was given the Governor also to reallocate the functions, powers and duties of executive and administrative offices and agencies among the nine departments, with the proviso that the Legislature might by concurrent resolution veto any such executive order within 30 days after its receipt.

(9) The heads of all administrative departments shall comprise a single executive unless otherwise provided by law. Such department heads, members of boards, councils and commissions, except the State Treasurer and Comptroller, shall be appointed by the Governor with the advice and consent of the Senate. (Art. IV, sec. III, par. 4)

(10) The heads of all administrative departments shall serve during the Governor's term, at his pleasure and until their successors have been qualified. (Art. IV, sec. III, par. 5)

(11) The State Comptroller and Treasurer shall be appointed by the Senate and General Assembly in joint meeting for four-year terms respectively. (Art. IV, sec. III, par. 6) (*Note:* Under the Constitution of 1844, the State Auditor is also elected by the Legislature, as provided by statute.)

(12) The Governor, executive and administrative heads shall receive such compensation as may be fixed by law, which compensation may not be increased or decreased during their respective terms. (Art. IV, sec. III, par. 7)

(13) Appointive officers may receive no compensation for their public services, except expenses, in addition to their annual salaries as fixed by law. (Art. IV, sec. III, par. 8)

(14) An Adjutant-General, who shall be chief of staff of the militia, with rank of Major-General, and who shall serve at the Governor's pleasure, shall be appointed by the Governor with the advice and consent of the Senate. (Art. IV, sec. IV, par. 2)

(15) Officers of the militia shall be appointed by the Governor in accordance with standards applied, from time to time, by the War Department of the United States. (Art. IV, sec. IV, par. 3)

(16) County Clerks and surrogates shall be elected for five-year terms by the people of their respective counties. Vacancies may be filled by the Governor until successors are elected. (Art. VI, sec. I, par. 4)

(17) Sheriffs and coroners shall be elected for three-year terms by the people of their respective counties. (Art. VI, sec. I, par. 5)

(18) The Governor and all other civil officers of the State Government shall be liable for impeachment for misdemeanor in office during their continuance in office and for two years thereafter. (Art. VI, sec. II, par. 1) [23]

The public hearings held by the 1942 Joint Legislative Committee to ascertain the sentiment of the people as to change in the Constitution followed a procedure which largely excluded the possibility of debate. Speakers were grouped according to their views. Those who favored the proposed Constitution without change spoke first; those who generally opposed it spoke next, and those who favored certain modifications, spoke last. Most of those who spoke in definite favor of all of the provisions contained in the proposed document generally outlined and explained the provisions under discussion; accordingly, their views are not expressed as fully in the digest which follows as are the views of the opponents.

On July 15, 1942, the Joint Legislative Committee convened to hear expressions of public opinion on the Legislative Article (Article III). Spencer Miller, Jr., representing the New Jersey Committee on Constitutional Revision, spoke in support of the Article. He said that prohibitions had been placed upon the legislative power of appointment as a means of freeing the Legislature

[23] *Ibid.;* for detail see pp. 930-950.

from those hampering influences which prevent effective performance of the legislative function.[24]

Mr. Russell Watson, representing the New Jersey Chamber of Commerce, dwelt at some length upon the ineligibility of legislators for state office during their terms or for one year thereafter. While he did not criticize those legislators who had received appointments, he felt that the limitation would remove the possibility that the official acts of legislators might be influenced by their desire or hope for lucrative appointments.

Commenting upon the denial of all appointments to the Legislature, save those of State Treasurer and Comptroller, he stated that appointments were clearly an executive function, just as the confirmation of such appointments was a Senate function. He called attention to more recent legislative history when the Legislature (by statute) had taken upon itself the power of appointment, and stated that it had been incapable of doing so within a reasonable period of time by reason of the conflicting political interests of its membership.

Mr. Watson also was strongly in favor of the provision demanding that the Senate act upon all nominations within 30 days, and in public.[25]

Of those speaking in opposition to Article III, only two objected to the restrictions placed upon the Legislature in its exercise of the appointive power. These speakers were Mr. R. Robinson Chance, representing the Manufacturers' Association of New Jersey,[26] and Mr. Morris Isserman, representing the State C.I.O. and American Labor League.[27] In each case, the speaker took exception to the provision denying appointive offices to members of the Legislature during their terms and for one year thereafter. Mr. Chance stated that the conditions were too severe, and Mr. Isserman felt that the limitation would deprive the State of the services of experienced and loyal public servants. He felt, also, that the prohibition would lower the calibre of the two Houses, for prospective legislators would be reluctant to accept such limitations upon their futures.

On July 22, 1942, the public hearings were reconvened to consider Article IV, the Executive and Administrative Article. Mr. Miller was again the first speaker in support of the proposed Constitution. Mr. Miller termed the subject of the executive and administrative function as one upon which the men of 1844 were not too well qualified to speak; State Government 100 years ago had very little executive or administrative business to do. He declared that this fact, together with a carry-over of the colonial suspicion of the Executive, had conspired to bring about neglect of

24 *Ibid.*, pp. 114-115.
25 *Ibid.*, pp. 117-125.
26 *Ibid.*, pp. 131-138.
27 *Ibid.*, p. 177.

the executive office in the Constitution of 1844. He stated that the proposed Constitution was designed in numerous ways to correct these weaknesses, one of which was accomplished through the Governor's increased power in the appointment of public officers. These provisions he outlined as follows:

(1) "It gives the Governor the power to appoint and dismiss any other administrative officer found faithless to his trust. This substantially follows the precedent set by the United States Constitution. The Governor cannot be held responsible for administration unless he can enforce responsibility down the line through assistants in whom he has confidence. The proposed Constitution provides for enforceable responsibility without distorting the traditional check of senatorial approval on appointments."

(2) "The time limit on confirmation and the prohibitions against further joint meeting appointments, except for Comptroller and Treasurer, should go a long way toward making both the Governor and the Legislature more responsible servants of the public interest."

(3) The reduction in the number of administrative departments permits the Governor to be responsible for their internal organization. "No chief executive can deal effectively with something like a hundred different agencies." In this fashion, therefore, the proposed Constitution reduces the Governor's appointing power.

Mr. Miller, in concluding, suggested that the Joint Committee give further study to and clarify the problem of classifying functions of State Government and of prescribing a responsible system of administration for their performance. He called attention to the many citizen boards connected with administrative departments (see Schedule I) and he said, "We have here a tradition of citizen participation which should not be discarded." [28]

Mr. Russell Watson, in a general discussion, referred to the appointing power and observed that under the present Constitution the Governor has the broad power of appointment, but that his power is largely nullified by the officers, officials and board members of about 90 agencies who are appointed for terms which extend beyond the term of the Governor. He said, "These ninety boards, these ninety instrumentalities, in fact, exercise the executive power. The Governor doesn't." Mr. Watson compared this to the power conferred upon the Governor by Article IV, section III, of the proposed Constitution and which enabled him to effect a reorganization of State Government, the heads of which would be appointed by him, with Senate confirmation, and whose terms would coincide

28 *Ibid.*, pp. 205-210.

with his. Mr. Watson termed this "the heart" of the Executive Article.

Mr. Watson referred briefly to the protest registered by the agricultural interests to Article IV, section III. (The Department of Agriculture is administered by a board, the members of which are recommended for appointment to the Governor by the agricultural organizations and societies of the State.) He stated that this group was reluctant "to expose a well administered department to the manipulation of a partisan, politically-minded Governor." Watson answered this protest by observing that, "The prevailing view is that this system of centering responsibility and authority in the executive, subject to these checks and balances by which it would be restrained by the Legislature, is sound and, therefore, should be adopted." [29]

In addition to the protest registered by the agricultural interests, briefs and communications were submitted by numerous professional groups protesting any provisions which would change the administration of the several professional examining and licensing boards in the State.[30] (See Schedule I.)

The chief critic of Article IV of the proposed Constitution as it applied to the appointive power was Mr. R. Robinson Chance. Speaking of the Governor's privilege to reallocate the functions, powers and duties of state departments, Mr. Chance had substantially the following to say in regard to appointments:

After an appointee is confirmed, if he did not do as the Governor wanted, the Governor could switch the office to some other department, without the consent of either House of the Legislature; or if he could get either House to agree with him, he could reallocate the functions of the particular appointee. All he would need to do would be to persuade one House to refuse for 30 days to join in a concurrent resolution disapproving the executive order and the order would become law. This would also offer a way to appoint by indirection; the Governor could let the Senate approve for one job and then by reallocation put the appointee in another.

Mr. Chance was skeptical of the propriety of terminating the tenure of administrative officers currently with the term of the Governor. He felt that "it would result in interjecting politics into some departments where efficiency and not political expediency is desirable."

As to the prohibition that the Legislature may only appoint the State Comptroller and Treasurer, Chance said that it was possible to conceive that administrative agencies could be created whose functions could be solely *quasi*-legislative or *quasi*-judicial, or both, with little or no executive function; and that in such cases there

[29] *Ibid.*, pp. 214-219.
[30] *Ibid.*, pp. 266-270.

could be no excuse for the Governor to have any part in such appointments.

He further criticized the absence of any provision in the proposed document forbidding an ad interim appointment by the Governor of an appointee previously rejected by the Senate. He called attention also to Article VII of the present Constitution in which all provisions relative to appointment are grouped in orderly fashion. He compared this to the widely "scattered or scrambled" provisions on this subject contained in the proposed Constitution.

In conclusion, Chance protested the power of the Governor to remove officials from office as provided by the proposed document. He stated that if such judicial powers were to be granted the Governor, it should be for cause only, such as inefficiency, neglect of duty or malfeasance in office and that the affected officer should be granted, as a matter of right, an independent judicial review.[31]

Public Hearings of 1944, the Revised Draft of a Proposed Constitution, and the Constitution Submitted to the People on November 7, 1944

The Joint Legislative Committee of 1944 was constituted under Senate Concurrent Resolution No. 1 to conduct a further series of public hearings on a redraft of the proposed Constitution, which redraft was the result of additional study based upon the hearings of 1942.

As a means of conserving space and to focus attention upon those changes which resulted from the hearings of 1944, only one summary of the provisions of the redraft proposed Constitution of 1944 pertinent to the appointive power, upon which the hearings were based, and the final draft of the revised Constitution as submitted to the people in 1944, will be presented in this monograph. The summary will be based upon the revised draft which became the subject of the hearings; and notations of changes, if changes were made, will be outlined immediately following the summarization of each separate provision.

Summary of Redraft of Proposed Constitution of 1944

(1) No member of the Legislature during his term shall be eligible to hold any appointive civil office created during his term, or office the emoluments of which were increased during his term. No member of the Legislature shall qualify into any state office or position during any regular 90-day session of the Legislature. (Art. III, sec. III, par. 3) As presented to the people the paragraph omitted the words "ninety-day."

(2) Members of the Legislature may be appointed to serve with-

31 *Ibid.*, pp. 231-242.

out compensation as members of any commission, etc., whose main function is to assist the Legislature in performing its functions. (Art. III, sec. IV, par 6)

(3) Neither House of the Legislature shall elect or appoint executive, administrative or judicial officers, except the State Treasurer, Comptroller and Auditor. (Art. III, sec. VI, par. 1) As submitted to the people, there were deleted the words "State Treasurer, etc." and the words "except as expressly provided in this Constitution" were substituted.

(4) The Legislature shall not pass any private, special or local laws creating, increasing or decreasing the emoluments, terms, tenure or pension rights of public officers or employees. (Art. III, sec. VI, par. 9-[2])

(5) The Governor shall appoint, with the advice and consent of the Senate, all officers not otherwise provided for by this Constitution or by law. Such appointees shall hold office for such terms as may be prescribed by law. (Art. IV, sec. I, par. 10) The final draft as presented to the people contained no tenure provision but further stated that "no vacancy in any office to be filled by the Governor and Senate, or by both Houses of the Legislature may be filled by the Governor by a temporary or ad interim appointment at any time, except as provided by law."

(6) The Senate shall either confirm or return the Governor's nominations within 45 days, and upon failure to so act, the nominee shall be deemed confirmed at the expiration of that time. The return of a nomination shall effect the withdrawal thereof from the consideration of the Senate. The Governor may make no appointment during his last week in office. (Art. IV, sec. I, par. 11) The draft submitted to the people cut down the Senate's confirmation period to six weeks.

(7) The Governor may investigate the conduct in office of any officer, except legislators, officers elected by the Legislature, or judicial officers. After notice and public hearing, as provided by law, the Governor may remove any such officer whenever in his opinion the hearing discloses misfeasance or malfeasance in office. (Art. IV, sec. I, par. 14) There was added to the draft submitted to the people the provision that, "Upon application on behalf of the Governor or officer under investigation, a Justice of the Superior Court may issue subpoenas and may compel the attendance of witnesses, the giving of testimony and the production of books and papers. . . ."

(8) There shall be no more than 20 principal departments in the State Government, created by the Governor by executive

order. The Governor shall allocate among them by executive order all the executive and administrative offices in such manner as to group the same according to major purposes. (Art. IV, sec. III, par. 1)

(9) The Governor by executive order may reorganize, merge and divide offices and principal departments from time to time in such manner as to promote efficiency and economy in the operation of State Government. (Art. IV, sec. III, par. 2)

(10) Executive orders as outlined in paragraphs 8 and 9 above can only be made within the limits of available appropriation, and provided that no person shall be deprived of any right or privilege accorded him by civil service law. (Art. IV, sec. III, par. 3)

(11) Every such executive order (paragraphs 8 and 9 above) shall be transmitted to each House of the Legislature during regular or special sessions, and shall become effective on the twenty-eighth day thereafter, unless both Houses approve or disapprove sooner. Regular or special sessions may be extended to allow the full period for such consideration by the Legislature. (Art. IV, sec. III, par. 4) The last sentence was deleted from the draft submitted to the people and the 28-day consideration period was extended to six weeks.

(12) Executive orders outlined in paragraphs 8 and 9 above shall remain unaltered and in full force unless superseded by further executive orders or by act of the Legislature. (Art. IV, sec. III, par. 5)

(13) Principal departments shall be under the control of the Governor, their heads to be single executives unless otherwise provided by law; all such single heads to be appointed by the Governor and confirmed by the Senate, with tenure until a new Governor and until their successors are qualified. (Art. IV, sec. III, par. 6)

(14) Whenever a board, commission or other body shall be the head of a principal department, the members thereof shall be appointed by the Governor and confirmed by the Senate, and if such board, etc., shall have power to appoint an administrator, such appointment shall be made with the approval of the Governor. (Art. IV, sec. III, par. 7)

(15) The Governor may from time to time appoint such state officers as he may select, to serve at his pleasure as members of his cabinet. (Art. IV, sec. III, par. 8)

(16) No such executive order shall divest the State Treasurer, Comptroller, or Auditor of any functions, etc., conferred and imposed upon them by law. (Art. IV, sec. III, par. 9)

(17) No person holding appointive office under the State shall receive compensation for his services to the State other than his annual salary, unless allowed or appropriated by the Legislature. Any money received contrary to this provision shall be paid by him into the state treasury. (Art. VI, sec. I, par. 4) The wording in the same provision was incorporated in slightly different phraseology in paragraph 3 in the draft submitted to the voters.

(18) The State Comptroller, Treasurer, and Auditor shall be appointed by the Senate and General Assembly in joint meeting for terms of four years and until their successors are qualified. (Art. VI, sec. II, par. 1)

(19) Prosecutors of the pleas shall be nominated by the Governor and confirmed by the Senate for terms of five years. (Art. VI, sec. II, par. 2) (*Note:* The proposed Constitution of 1942 contained no provision for the appointment of prosecutors of the pleas. It was assumed that such appointments would be made by the head of the Legal Department.)

(20) County clerks, surrogates (terms five years), sheriffs and coroners (terms three years), shall be elected by the people of their respective counties, vacancies to be filled in such manner as shall be provided by law. (Art. VI, sec. II, par. 3)

(21) The Governor and all other civil officers of the State, except judicial officers, shall be liable to impeachment for misdemeanor in office and for two years thereafter. (Art. VI, sec. IV, par. 1) [32]

The remarks made by Mr. J. H. Thayer Martin, appearing as counsel for the Newark Chamber of Commerce, on the provisions relating to the appointment of public officers contained in the Legislative Article of the proposed revised Constitution, were perhaps the most comprehensive of any made on this subject during the course of the public hearings of 1944. They are briefly summarized below.

In prohibiting the Legislature from appointing any public officers, except the Treasurer, Comptroller and Auditor, Mr. Martin recognized the intention to make the Legislature responsible for all state functions of a fiscal nature, but none other. Mr. Martin did not feel that Art. III, sec. VI, par. 1 accomplished this end. He suggested, therefore, that there be added to this paragraph the provision "and such other State officials designated by law as may have for their principal duty the collection of State revenue." He said, "Without this provision the Legislature may, some day, find it is not the guardian of the purse strings which is intended."

32 For detailed provisions see pamphlet entitled, "Proposed Revised Constitution (1944) Pending Before Joint Legislative Committee" and text of "Revised Constitution for the State," submitted to the people, November 7, 1944.

Mr. Martin claimed that an attempt to limit the time within which the Senate shall confirm or reject appointments is unsound. He said, "If the Senate is unwilling to confirm a specific nomination, the nominee is subjected to an unfair indignity by forcing the Senate publicly to reject his name."

Speaking of the Governor's power to remove officers he said, "The right of removal should be based on actual disclosure or misconduct." Mr. Martin added that it was reasonable to extend the power of investigation to the conduct of local officers as well as State officers.

In commenting upon the consolidation of state departments, Mr. Martin said, "Consolidation where practical is desirable, but most of the contemplated groups cannot fairly be called departments." He added, "A constitutional limitation of the number of such principal groups may in time prove very unsatisfactory." Mr. Martin also termed "unsound" the provision that the head of each principal department might only hold office during the Governor's term. He claimed that it would obviously be impossible to get a career man to take such an appointive position with such uncertain tenure; he acknowledged, however, that the office of the Attorney-General was an exception, that this office should be "coterminous with the Governor's."

Mr. Martin stated that the Governor should have the privilege of an official cabinet, but that he should not be limited to selecting state officers for that cabinet.[33]

Mr. Arthur J. Edwards, speaking in a joint capacity with Mr. John Bebout as citizens, took strong exception to the provisions contained in the proposed revised Constitution relative to the status of the State Comptroller, Treasurer and Auditor. Based upon ample authority, Mr. Edwards proposed that the office of State Auditor be allocated to the Legislative Department of the State Government and the Comptroller and Treasurer to the Executive. He said, " * * * there ought to be a split somewhere, because one outfit makes the expenditures, actually draws the checks and pays the money, and somebody else ought to audit his account, and they ought neither one of them to be under a common overlord." He continued, "The normal functions of Comptroller and Auditor—pre-audit and post-audit respectively, are so very similar, differing only in the element of time before or after * * * that it seems policy to create some real distinction between them." [34]

An issue raised by Mr. J. H. Thayer Martin during his appearance before the subcommittee on the Legislative Article, relative to the time limitation placed upon the Senate in its confirmation of the Governor's nominations, received further clarification in the

33 "Public Hearings on Revised Constitution," 1944. Sub-Committee on the Legislative Article, February 15, 1944, pp. 8-20.
34 *Ibid.*, pp. 27-33.

debates which took place before the subcommittee on the Executive Article of the proposed revised Constitution.

Mr. Martin, as noted, had contended that the limitation of time placed upon the Senate would result in unfair indignity to the nominee by forcing the Senate actually to reject the nominee rather than simply allowing the nomination to lapse without action one way or the other. Mr. John Bebout also raised this same question and it was explained that the provision in Art. IV, sec. I, par. 11, of the revised draft, enabling the Senate to "return" a nomination to the Governor within the period alloted, resulted in the denial of the nomination without embarrassing results.[35]

Unfortunately, limitations imposed by space prevent additional summarization of the proceedings of 1944 as conducted by the subcommittees on the Legislative and Executive Articles of the proposed revised Constitution. In most cases the same individuals, or individuals representing the same organizations, appeared before both the Joint Legislative Committee of 1942 and the committee or subcommittees of 1944. With some exceptions, the issues discussed also were similar and there was a marked degree of similarity in the points of view expressed.

Some debate involved new issues or provisions not previously contained in the constitutional draft of 1942. At times, dissatisfaction was voiced at the absence of some provision which had been incorporated in the earlier draft.

Constitutional Provisions Governing the Appointment of Selected Public Officials in the 48 States

A re-examination of Schedule I, with its multiplicity of public officers, or a review of the many provisions governing their appointment which have been considered for adoption by this State, will indicate the complete futility of attempting to present in this monograph any very comprehensive analysis of similar provisions as they presently exist in the constitutions of the other 47 states.

In the absence of a detailed analysis, however, it may prove helpful to review in a more cursory fashion the methods followed by the other states in their appointment of certain key or principal appointees. For this purpose, a chart has been duplicated and is herewith presented.[36]

Attention is directed to the methods employed by the states in their selection of the three fiscal officers who, by common consent in New Jersey, seem to have been fixed as definite appointees of the Senate and General Assembly in joint meeting.

The office of Comptroller or its equivalent does not exist in 27 states. In 12 states, such officers are selected entirely apart from

35 *Ibid.*, Subcommittee on the Executive Article, February 2, 1944, pp. 14-20
36 Council of State Governments, The Book of the States, 1945-46, pp. 160-163.

SCHEDULE II

Methods of Appointing Certain Principal State Officials

State	Secretary of State	Attorney General	Treasurer	Auditor	Comptroller	Supt. Public Instruction	Director of Budget	Tax Commission	Agriculture	Labor	Health	Welfare	Public Utilities	Securities	Banking	Insurance	Liquor	Highways	Conservation	Appointed by Governor with consent of Senate	Appointed by Governor	Appointed apart from Governor
Alabama	*	*	*	*	*	*	X	G	*	*	*	G	*	*	GS	G	X	G	*	1	4	12
Arizona	*	*	*	*	X	*	G	*	G	GS	G	G	X	*	GS	*	*	GS	G	3	5	9
Arkansas	*	*	*	*	GS	*	GS	G	X	GS	G	G	GS	G	GS	G	GS	GS	GS	8	5	5
California	*	*	*	X	*	*	G	G	G	G	G	G	G	G	G	GS	*	G	G	1	10	7
Colorado	*	*	*	*	X	*	G	G	G	GS	GS	G	G	*	GS	G	*	G	GS	4	7	7
Connecticut	*	*	*	X	*	GS	X	GS	G	G	G	GS	GS	*	*	GS	G	GS	GS	7	4	6
Delaware	GS	*	*	*	X	GS	G	G	GS	G	G	G	X	X	GS	*	G	GS	G	5	7	4
Florida	*	*	*	G	*	*	X	X	*	G	GS	G	*	*	*	*	G	G	G	1	6	10
Georgia	*	*	*	GS	*	*	X	GS	*	G	GS	GS	*	*	GS	*	X	GS	G	1	7	9
Idaho	*	*	*	*	X	*	G	*	G	GS	G	G	G	*	G	G	GS	G	*	2	8	8
Illinois	*	*	*	*	X	*	GS	GS	GS	GS	GS	GS	GS	*	*	GS	G	GS	GS	1	10	7
Indiana	*	*	*	*	X	*	GS	G	*	G	G	G	G	*	G	G	G	G	G	1	11	6
Iowa	*	*	*	*	GS	*	X	GS	*	GS	G	GS	*	*	GS	GS	GS	GS	GS	9	1	8
Kansas	*	*	*	*	X	*	GS	GS	*	GS	GS	GS	GS	GS	G	G	X	G	X	7	3	6
Kentucky	*	*	*	*	X	*	G	G	*	*	GS	G	GS	GS	GS	GS	GS	G	G	6	7	7
Louisiana	*	*	*	*	GS	*	X	GS	*	GS	GS	G	*	*	GS	GS	X	G	GS	7	2	8
Maine	*	*	*	*	X	GS	GS	GS	*	GS	GS	GS	GS	GS	GS	GS	GS	GS	GS	13	0	5
Maryland	GS	*	*	G	*	G	G	GS	GS	GS	GS	G	G	X	G	G	GS	G	G	5	10	3
Massachusetts	*	*	*	*	GS	GS	GS	GS	GS	GS	GS	GS	GS	GS	GS	GS	GS	GS	GS	15	0	4
Michigan	*	*	*	*	X	GS	G	G	GS	GS	GS	GS	GS	GS	GS	GS	GS	*	GS	11	2	5
Minnesota	*	*	*	*	GS	*	GS	GS	G	GS	G	GS	*	*	GS	GS	GS	G	GS	10	3	6
Mississippi	*	*	*	*	X	*	G	G	*	X	GS	G	*	*	G	*	X	GS	G	2	5	9
Missouri	*	*	*	*	X	*	GS	GS	GS	GS	GS	GS	GS	*	GS	GS	GS	GS	GS	12	0	6
Montana	*	*	*	*	X	*	*	G	GS	GS	G	G	*	*	G	*	*	G	G	2	6	10
Nebraska	*	*	*	*	X	*	X	GS	GS	GS	GS	GS	*	GS	GS	GS	G	GS	GS	10	1	6
Nevada	*	*	*	G	*	*	X	G	G	G	G	G	*	X	G	X	X	*	*	0	7	8
New Hampshire	*	GS	*	X	GS	GS	X	*	GS	GS	GS	GS	GS	GS	GS	GS	GS	GS	GS	14	0	3
New Jersey	GS	GS	*	*	*	GS	G	GS	*	GS	GS	GS	GS	GS	GS	GS	*	GS	GS	13	1	5
New Mexico	*	*	*	*	G	*	G	G	X	GS	GS	GS	*	X	GS	*	GS	GS	G	6	4	7

SCHEDULE II (continued)

Methods of Appointing Certain Principal State Officials

State	Secretary of State	Attorney General	Treasurer	Auditor	Comptroller	Supt. Public Instruction	Director of Budget	Tax Commission	Agriculture	Labor	Health	Welfare	Public Utilities	Securities	Banking	Insurance	Liquor	Highways	Conservation	Appointed by Governor with consent of Senate	Appointed by Governor	Appointed apart from Governor
New York	GS	*	GS	X	*	*	G	GS	GS	GS	GS	G	GS	GS	GS	GS	GS	GS	GS	13	2	3
North Carolina	*	*	*	*	X	*	X	G	GS	*	GS	G	*	*	G	*	X	GS	GS	14	3	9
North Dakota	*	*	*	*	X	*	X	G	*	*	G	G	*	*	*	*	G	G	X	0	5	1
Ohio	*	*	*	*	X	GS	GS	GS	GS	GS	GS	G	GS	GS	GS	GS	GS	GS	GS	1	13	4
Oklahoma	*	*	*	*	X	*	G	G	*	*	GS	GS	*	*	GS	*	X	GS	G	4	3	10
Oregon	*	*	*	*	X	*	X	GS	G	*	GS	G	G	X	G	G	G	G	G	2	7	2
Pennsylvania	GS	GS	*	*	X	GS	G	GS	GS	GS	GS	GS	GS	GS	GS	GS	GS	GS	GS	15	1	2
Rhode Island	*	*	*	X	G	GS	G	GS	GS	GS	GS	GS	GS	GS	GS	GS	GS	GS	GS	13	2	3
South Carolina	*	*	*	GS	*	*	X	GS	*	*	*	G	*	*	G	*	GS	GS	G	4	3	11
South Dakota	*	*	*	*	X	*	X	G	G	G	G	G	*	G	G	GS	*	G	G	1	9	7
Tennessee	*	*	*	X	*	G	GS	G	GS	GS	GS	G	*	GS	GS	GS	X	G	GS	8	4	6
Texas	GS	*	*	GS	*	*	X	GS	*	GS	GS	G	*	GS	GS	GS	GS	GS	GS	11	1	6
Utah	*	*	*	*	X	*	GS	GS	GS	GS	GS	G	GS	*	GS	GS	GS	GS	GS	11	1	6
Vermont	*	*	*	*	X	GS	X	GS	GS	GS	GS	GS	GS	GS	GS	GS	GS	GS	GS	13	1	4
Virginia	GS	*	*	*	GS	GS	G	GS	GS	GS	G	G	GS	GS	GS	GS	G	GS	GS	12	4	3
Washington	*	*	*	*	X	*	GS	GS	GS	GS	GS	GS	GS	*	GS	*	G	G	GS	9	2	7
West Virginia	*	*	*	*	X	*	GS	GS	*	GS	GS	GS	GS	*	GS	*	GS	GS	GS	10	0	8
Wisconsin	*	*	*	*	X	*	GS	GS	GS	GS	GS	GS	GS	GS	GS	GS	X	GS	GS	12	0	5
Wyoming	*	GS	*	*	X	*	X	GS	GS	G	GS	GS	G	*	G	*	*	GS	GS	7	3	7

G Appointed by Governor alone.
GS Appointed by Governor with consent of Senate.
* Selected apart from influence of the Governor.
X Office or equivalent does not exist.

the Governor; in seven states, by the Governor and Senate, and in two states, by the Governor alone.

The office of Treasurer is common to each of the 48 states. In 47 states this officer is selected apart from the Governor, and in only one state, New York, is he appointed by the Governor and Senate.

State Auditors are selected apart from the Governor in 36 states; in six states there is no such office or its equivalent; in three states they are appointed solely by the Governor, and in three other states, by the Governor and Senate.

Of greater significance than the procedures employed by the other 47 states in their selection of public appointive officials is the trend in thinking of outstanding authorities on this subject. The fact must be remembered that a vast majority of the states operate under antique and outmoded constitutions, and although there has been a steady development of the governor's power, in most states the multitude and variety of appointive officials and the lack of systematic organization prevents the governor from establishing an effective control over such appointive officers.

The modern trend of thinking may best be understood by a review of the provisions contained in the "Model State Constitution" pertinent to the appointive power.[37] These provisions are duplicated in detail below.

> (1) "The governor shall appoint an administrative manager of state affairs, whose term shall be indefinite at the pleasure of the governor. The governor may delegate any or all of his administrative powers to the administrative manager. The administrative 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." (Art. V, sec. 506, p. 11)
>
> (2) "There shall be such administrative departments, not to exceed twenty in number, as may be established by law, with such powers and duties as may be prescribed by law. Subject to the limitations contained in this constitution, the legislature may from time to time assign by law new powers and functions to departments, offices and agencies, and it may increase, modify, or diminish the powers and functions of such departments, offices, or agencies. All new powers or functions shall be assigned to departments, offices or agencies in such manner as will tend to maintain an orderly arrangement in the administrative pattern of the state government. The legislature may create temporary commissions for special purposes or reduce the number of departments by consolidation or otherwise.
>
> The heads of all administrative departments shall be appointed by and may be removed by the governor. All other officers in the administrative service of the state shall be appointed by the governor or by the heads of administrative departments, as provided by article IX of this constitution and by supporting legislation. No executive order governing the work of the state or the administration of one or more departments, offices and agencies, shall become effective until published as provided by law." (Art. V, sec. 507, pp. 11-12)
>
> (3) "The legislature shall have the power of impeachment by a two-thirds vote of the members elected thereto, and it shall provide by law a

[37] National Municipal League, Model State Constitution, Partial Revision, 1946.

procedure for the trial and removal from office of all officers of this state. No officer shall be convicted on impeachment by a vote of less than two-thirds of the members of the court hearing the charges." (Art. V, sec. 509, p. 12)

(4) "The legislature shall, by a majority vote of all its members, appoint an auditor who shall serve during its pleasure. It shall be the duty of the auditor to conduct post-audits of all transactions and of all accounts kept by or for all departments, offices and agencies of the state government, to certify to the accuracy of all financial statements issued by accounting officers of the state, and to report his findings and criticisms to the governor and to a special committee of the legislature quarterly, and to the legislature at the end of each fiscal year. He shall also make such additional reports to the legislature and the proper legislative committee, and conduct such investigation of the financial affairs of the state, or of any department office or agency thereof, as either of such bodies may require." (Art. VII, sec. 707, p. 16)

BIBLIOGRAPHY

COUNCIL OF STATE GOVERNMENTS. The Book of the States, 1945-46.
GRAVES, W. BROOKE. American State Government, 3rd ed., 1946.
NATIONAL MUNICIPAL LEAGUE. Model State Constitution, Partial Revision, 1946.
New Jersey Legislative Manual, 1947.
NEW JERSEY. Proceedings of the New Jersey State Constitutional Convention of 1844, 1942.
NEW JERSEY. "Public Hearings on Revised Constitution, 1944"—Subcommittees on the Legislative and Executive Articles, February 1, 2, 3, 9 and 15, 1944 (mimeo., State Library).
NEW JERSEY. Record of Proceedings before the Joint Committee of the New Jersey Legislature. . . . , 1942.
NEW YORK. Constitutional Convention Committee, Report, 1938, vol. VIII, "Executive Administration and Powers."

THE GOVERNOR – CONSTITUTIONAL POWER OF INVESTIGATION AND REMOVAL OF OFFICERS

by

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The subject-matter herein, as indicated in the title, is limited to the constitutional power vested in the governor to investigate and to remove state officers. Reference is made to comparable statutory authority but no attempt is made to cover that field.

In addition, there has been included the subject of the governor's constitutional power to obtain reports from state departments and officers since such power may be regarded as incidental to the more inclusive power of investigation.

For convenience in presentation, the subject-matter is subdivided as follows:

1. In General
2. Reports
3. Investigation
4. Removal

Necessarily, there must be considerable overlapping in treatment in view of the common purpose frequently existing in the exercise of such powers; but, in the main, the bulk of the available material is presented under the appropriate heading.

1. In General

Initially, it should be observed that a strong executive in state government is comparatively a recent development. Our colonial history readily furnishes the cause. As noted by a member of the New Jersey Joint Committee:

> "It has been pointed out by students of political science that in America there have been four periods in the development of State Constitutions. * * *
>
> During the first period—between the Revolution and the War of 1812—the people of the Union still had uppermost in their minds the harassing experiences they, as colonists, had suffered at the hands of Royal Governors. Naturally, then, they had come to regard the office of Governor with suspicion. Thus, when drafting their own State Constitutions, they clothed the Executive with the least possible constitutional authority; and they made supreme the Legislature, which they came to regard as the protector of popular rights and as the safest and best agency of government in which to repose the people's power." [1]

During the first half of the 19th Century, the position of the

[1] New Jersey. Record of Proceedings of the Joint Committee of the New Jersey Legislature . . . to ascertain the sentiment of the people . . . as to change, 1942. Minority Report of D. A. Cavicchia, pp. 878-879.

governor was gradually strengthened at the expense of the legislature. In most of the states, the veto power was adopted and executive councils disappeared. But at the same time, the governor's control over the executive department was weakened by making elective both state and local officers while requiring senate approval of his appointments over which he had no power of removal. Thus, his influence in legislation was increased but his administrative authority diminished.[2]

However, this trend in the 19th Century led away from the principle of legislative supremacy.[3] After 1850, the position of the state governor was largely strengthened in part by constitutional change but mainly by statute. While the importance of the governor's position has been still further increased in the 20th Century, his power is still limited by constitutional provisions.[4]

This general development is easily exemplified in New Jersey. The first Constitution of 1776 represents the epoch of popular faith in a representative legislature as a reaction against royal power represented by the executive. By 1844, popular trust in the Legislature had lessened considerably, but the people were not inclined to trust the Governor much more.

> "The constitution of 1844 departs therefore from the principle of legislative responsibility for the general conduct of the government, which was implicit in the constitution of 1776, without making provision for any other system of responsibility." [5]

With the growth of state government attaining in modern times the proportions of a gigantic business enterprise, recognized authorities in the field of government exhibit unanimity in their opinion that the growth of the governor's power has not kept pace with the increase in executive responsibility.[6] A former New Jersey Governor expressed a similar view, presumably on the basis of actual experience, rather emphatically:

> "The fact is that under the 1844 Constitution a Governor's powers are sadly diluted. If the people of New Jersey were offering for sale a beverage with as much dilution as the article they offer to a Governor under the name of executive powers, I am sure the Federal Trade Commission would get after them." [7]

Undoubtedly, it was this generally predominant viewpoint that led the Commission on Revision of the New Jersey Constitution to formulate a new Constitution that, among the three purposes to be accomplished, would:

> "2. Confer power commensurate with the responsibility placed upon public officials;" [8]

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[2] Fairlie, J. A. "The Executive Power in the State Constitution," Annals of American Academy of Political Science, vol. 181, p. 59, 1935.
[3] Bromage, A. W. State Government and Administration in the United States, 1936, p. 165.
[4] Fairlie, *supra*, p. 61.
[5] New Jersey Writers' Project (Works Progress Admn.). Proceedings of New Jersey Constitutional Convention of 1844, Introduction, p. ciii.
[6] Bromage, *supra*, p. 165.
[7] Speech by Governor Edison, "Constitutional Limitations on the Executive in New Jersey," May 14, 1941, p. 5.
[8] New Jersey. Commission on Revision of the New Jersey Constitution, Report, 1942, p. 8.

and, concerning the Governor specifically, the Commission reported:

> "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, * * * 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." [9]

The constitutional powers of a Governor to obtain reports from state departments, to investigate state offices and to remove executive officers are intended to effectuate that object.

2. Reports

By constitutional provision, 34 states now provide that the governor may require information in writing from heads of executive departments upon any subject relating to the duties of their respective offices: [10]

Alabama	Indiana	Nevada
Arizona	Iowa	North Carolina
Arkansas	Kansas	Ohio
California	Kentucky	Oregon
Colorado	Louisiana	Pennsylvania
Connecticut	Maine	South Carolina
Delaware	Michigan	Tennessee
Florida	Minnesota	Utah
Georgia	Mississippi	Virginia
Idaho	Missouri	Washington
Illinois	Montana	West Virginia
	Nebraska	

Eight of these states specify that such information shall be given under oath if the governor so requires:[11]

Alabama	Idaho	Nebraska
Colorado	Missouri	West Virginia
Delaware	Montana	

The Model State Constitution of the National Municipal League merely provides:

> "(The Governor) may at any time require information, in writing or otherwise, from the officers of any administrative department, office or agency upon any subject relating to their respective offices." [12]

Neither the present Constitution of New Jersey nor its predecessor provided for reports to the Governor. However, such a provision was included in the proposed Constitution of 1942:

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[9] *Ibid.*, p. 17.
[10] Louisiana State Univ., Constitution Revision Projet, "The Executive—Comparison of the Executive Functions of the State: The New York Study." Monograph No. 28, 1947.
[11] *Ibid.*
[12] Model State Constitution, sec. 503, p. 11, 1946.

". . . 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." [13]

A similar requirement was included in the draft Constitution of 1944, with the addition of a State Auditor.[14]

It should be noted that these officers were to be elected by the Legislature and, hence, not otherwise subject to executive control. All other officers were removable by the Governor at his pleasure under the proposed Constitution of 1942, or as provided by law under the draft Constitution of 1944. Hence, a constitutional provision requiring them to furnish reports at the request of the Governor would have been superfluous.

3. Investigation[15]

No matter what its character or the problems it faces, a government cannot function successfully unless it has adequate and accurate information. Empowering the governor to obtain reports from officers furnishes one method of obtaining information. But such reports from elective officials are often perfunctory and inadequate.[16] More important, however, is the lack of access to persons other than those required to make reports but who have some kind of association with the administrative activities of the state which the governor may wish to investigate. An independent power of investigation vested in the governor remedies these shortcomings.

Only Idaho, Montana and Utah vest constitutional authority in the governor to

". . . at any time he deems it necessary, appoint a committee to investigate and report to him upon the condition of any executive office or State institution." [17]

Michigan also provides for a similar power of investigation but forbids its exercise during legislative sessions.[18]

Fourteen states make no provisions, by constitution or statute, for any executive inquiry. Approximately 15 states, including New Jersey, provide for an executive inquiry similar to that of the Moreland Act of New York. In New Jersey, the original act of 1931 providing for an executive inquiry was subsequently repealed and, in place thereof, an amended version was enacted in 1941.[19]

Leading authorities have emphasized the desirability of vesting in the governor the power of investigation. If administration is to be effective and responsible, the chief executive must not only have the

[13] Art. IV, sec. III, par. 6; Report of the Commission on Revision of the New Jersey Constitution, 1942, p. 1006.
[14] Draft Constitution of 1944, Art. VI, sec. II, par. 1.
[15] Unless otherwise indicated, the chief source of material under this heading is: J. E. Missall, The Moreland Act, Executive Inquiry in the State of New York, 1946.
[16] Fairlie, *supra*, p. 64.
[17] Idaho Constitution, Art. IV, sec. 8; Montana Constitution, Art. VII, sec. 10; Utah Constitution, Art. VII, sec. 5. Although coupled with the power to obtain reports, the powers are severable.
[18] Michigan Constitution, Art. IX, sec. 7.
[19] R. S. 52:22-21; R. S. 52:15-7.

power to appoint, but the power to investigate and remove for proper cause.[20] Although such constitutional power never existed in New Jersey, both the proposed Constitution of 1942 and the draft Constitution of 1944 included it, although not in identical terms.

The proposed Constitution of 1942 provided:

> "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." [21]

This provision did not escape some criticism at the Joint Committee hearings. With stark realism and unassailable logic, a member of the bar protested:

> ". . . it is ridiculous . . . to stick in any provision about twenty names, twenty reputable citizens . . . there can be no doubt that a Governor could get at least twenty supposedly reputable citizens to sign a complaint . . . we will say ten did know . . . is it presumed that he wouldn't be allowed to make an investigation because there weren't twenty people who could really be truthful bona fide signers of the petition and knowers of the facts which would be necessary to put in a complaint?" [22]

Apparently, the criticism was sufficiently persuasive to result in a deletion of the objectionable limitation from the draft Constitution of 1944 which provided:

> "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." [23]

Commenting on the latter provision, former Governor Edison stated:

> "This would be fair enough as to method. The governor, who is head of the executive department, could remove an official after a public hearing. He could also use judicial processes to produce witnesses and papers, so that a hearing could be complete. The governor could not—as has happened in the past—be defied by recalcitrant witnesses or by officials who might wish to cover up their misdeeds by a refusal to testify.
>
> It is interesting to notice that the legislature, which drafted this proposed constitution, limited the scope of the governor's investigations to officials in the executive division of the state government; and indeed he will not be able to examine all of them, for those elected by the legislature are specifically excepted.
>
> Yet when the legislature drafted a clause (Article VI, section III) to provide for legislative investigations it authorized legislatures to investi-

[20] Graves, W. B. American State Government, 1941, p. 370.
[21] Proposed Constitution of 1942, Art. IV, sec. II, par. 6.
[22] Record of Proceedings, *supra*, Testimony of R. R. Chance, p. 243.
[23] Draft Constitution of 1944, Art. IV, sec. I, par. 14.

gate any public official or employee, state or local, and the performance of any public trust.

The governor of New York, as you probably know, can investigate local officers: and many governors have used this power with salutary effects upon city and county officers. The governor of New Jersey should have the same power, and perhaps by amendment we can some day have it so." [24]

4. Removal

State constitutions vest in the governor supreme executive power with the mandate that he faithfully enforce the laws. Such obligation, however, does not carry with it by implication a corresponding grant of power:

> "The courts have repeatedly ruled that the governor has only those powers vested in him by the constitution. * * * In a number of cases the courts have ruled that a governor has no inherent powers." [25]

In the absence of a commensurate, constitutional grant of power, therefore, the governor is charged fully with the responsibility for the administration of the state government but is left without an adequate means of discharging it.

Authorities agree that vesting in the governor the power of removal of state officers is essential to enable the governor to fulfill his duties effectively as chief executive:[26]

> "In recognition of this fact, the majority of the states have adopted a policy with regard to removal by the governor in harmony with the principle set forth in Myers v. United States, 272 U. S. 52 (1926) as applying to the President. This rule permits the executive to remove for proper cause, without consent of the Senate, officers for whose appointment the consent of the Senate is required, as well as to remove officers over whose appointment he has the sole power. If the principle of administrative responsibility is to be maintained, this is the only rule which could be reasonably followed." [27]

It should be noted that where the removal power is constitutionally vested, problems of judicial construction will arise only rarely, making it unnecessary to adopt a policy and, at the same time, avoiding the usual attacks on a statute on constitutional grounds. Moreover, a constitutional grant of the power of removal renders the governor immune from a hostile legislature which might be disposed to abrogate the power.

Nine states provide by constitution for the removal of a state officer by the governor:[28]

Colorado	Maryland	New Mexico
Delaware	Michigan	Pennsylvania
Illinois	Nebraska	West Virginia

Of these, only Pennsylvania authorizes removal at the pleasure of the appointing power but excludes judges from being thus removed.

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[24] Edison, Charles. "A New Constitution for New Jersey." Addresses, 1941-1944, p. 35.
[25] Bromage, *supra*, p. 181.
[26] Shoup, Earl L. The Government of the American People, 1946, p. 651; A. N. Holcombe, State Government in the United States, p. 297.
[27] Graves, *supra*, p. 371.
[28] New York. New York State Constitutional Convention Committee Report, "Constitutions of the States and United States," vol. III, 1938.

Nebraska limits removal, in the absence of cause, to heads of executive departments. In the remaining states, cause is required ranging from incompetency to conviction of crime.

While Michigan permits removal of elective officers, legislative and judicial officers are expressly excluded. New York permits removal by the governor of certain elective local officers—a rare power.

The Model State Constitution directs the establishment by law of administrative departments and provides:

> "The heads of all administrative departments shall be appointed by and may be removed by the governor." [29]

In New Jersey, constitutional officers are removable only by impeachment. When the Governor possesses the power to remove other state officers, it must be authorized by statute which usually specifies the cause. Hence, the criticism of lack of power in state executives generally is particularly apt in New Jersey.

With the announced intention to give the Governor complete control over his subordinates[30], the Commission on Revision provided in the proposed Constitution:

> "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 qualify," [31]

and, under Art. IV, sec. II, par. 6 (quoted *ante*), authorized the Governor, after investigation, to remove for cause any state officer, other than a legislative, judicial, or officer appointed or elected by the Legislature.

In the draft Constitution of 1944, the foregoing quoted section was drastically revised to provide:

> "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 their successors shall be appointed and qualified, but they may be removed by the Governor as shall be provided by law." [32]

However, the removal power incidental to investigation was retained but with the additional provision regarding subpoenas (quoted *ante*).

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[29] Art. V, sec. 507.
[30] Report of the Commission, *supra*, p. 17.
[31] Art. IV, sec. III, par. 5.
[32] Art. IV, sec. III, par. 6.

BIBLIOGRAPHY

BROMAGE, A. W. State Government and Administration in the United States, 1936, (Chap. VIII, "The State Executive").

BUCK, A. E. Reorganization of State Government in the United States, 1938.

EDISON, CHARLES. "Constitutional Limitations on the Executive in New Jersey," Speech, May 14, 1941.

EDISON, CHARLES. "A New Constitution for New Jersey," Addresses, 1941-1944.

FAIRLIE, J. A. "The Executive Power in the State Constitutions," 181 Annals of the Amer. Acad. of Pol. & Soc. Science 59, 1935.

GRAVES, W. B. American State Government, 3rd ed., 1946, (Chap. IX, "The Governor").

HOLCOMBE, A. N. State Government in the United States, 1936, (Chap. XI, "The State Executive").

Louisiana State Univ., Constitution Revision Projet. Constitutional Problems: "The Executive—Comparison of the Executive Functions of the 48 States; The New York Study," Monograph 28, 1947.

MISSALL, J. E. The Moreland Act, Executive Inquiry in the State of New York, 1946.

Missouri Constitutional Convention of 1943. Manual on the Executive Article, 1943.

MUNRO, WILLIAM B. "An Ideal State Constitution," 181 Annals of the Amer. Acad. of Pol. & Soc. Science 1, 1935.

National Municipal League, Model State Constitution, Partial Revision, 1946.

New Jersey. Proceedings of the New Jersey Constitutional Convention of 1844, 1942.

New Jersey. Record of Proceedings of the Joint Committee of the New Jersey Legislature . . ., 1942.

New Jersey. Report of the Commission on Revision of the New Jersey Constitution, 1942.

New York State Constitutional Convention Committee Report, 1938: Vol. III, Constitutions of the States and United States; Vol. V, New York City Government Functions and Problems; Vol. VIII, Problems Relating to Executive Administration and Powers.

"President's Power of Removal," *Morgan* v. *United States,* 51 Harvard Law Review 1246 (1938).

SHOUP, EARL L. The Government of the American People, 1946.

ZINK, HAROLD. Government and Politics in the United States, 1942.

THE GOVERNOR'S VETO POWER[1]

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The first state constitutions gave the governors little control over legislation. The royal governor and his absolute power was still fresh in popular memory. The veto reminded too many citizens of monarchial oppression. The people's faith was in their elected legislators, and to them they entrusted full powers while leaving the executive the weakest of the three branches of government.[2]

Nine of the first constitutions made no provisions for executive veto, and in South Carolina it was discarded two years after adoption. A limited power was given to a Council of Revision (composed of the governor, chancellor and judges of the Supreme Court) in New York and to the governor in Massachusetts. The Federal Constitution (Art. I, sec. VII, par. 2) provided for a strong executive veto—a vote of two-thirds of each house of Congress was required to override—but this had little immediate influence upon the adoption of the device in the states.

No state adopted the veto in the period from 1793 to 1812. After Louisiana entered the Union with a constitution providing for an executive veto, the movement gradually gained ground; no state except West Virginia has since entered without some form of governor's veto. By the mid-1800's the earlier fear of executive dominance had in part been displaced by an equal distrust of the legislature. Except for Delaware, Maryland, Virginia, Tennessee, North Carolina, South Carolina, Ohio and Rhode Island, all the states had by 1850 given their governors some veto power. Today, North Carolina is the only state without an executive veto; Ohio (1903) and

[1] This monograph, except for the discussion of the New Jersey Constitution, is largely based on, and in some parts adapted from, the recent monograph of Frank W. Prescott, "Constitutional Provisions on the Governor's Veto Power." Univ. of Tenn. Bureau of Public Administration, 1946; the Council of State Governments' "Veto Powers of the Governors," (Governor's Bulletin No. 3), 1935, and The Book of the States, 1945-46; and the material in vol. VIII, "Problems Relating to Executive Administration and Powers," of the New York Constitutional Convention Committee Report, 1938, pp. 11-15, 57-62.

[2] For general history, see Prescott, *op. cit.*, pp. 2-3; Robert Luce, Legislative Problems, 1935, pp. 140-170; and A. W. MacDonald, American State Government and Administration, 3rd ed., 1945, pp. 4, 6, 7, 18, 22, 190, 209-11.

Rhode Island (1909) being the last two to vest that power in their governors.

The item veto of appropriation bills had its origin with the Constitution of the Confederacy, 1861. Georgia, Texas and West Virginia copied the provision. The device spread to Pennsylvania, New York, and to the new states. Today, this provision is found in 39 constitutions, while Washington, Virginia and South Carolina have extended the item veto to permit the governor to eliminate sections of legislation objectionable to him, without being obliged to veto the entire measure.

The New Jersey Constitution

I. *Constitution of 1776*

New Jersey's first Constitution gave the Governor no veto power. Elected annually by the Legislative Council and Assembly, whatever influence he may have possessed over legislation was by virtue of his presiding over the Council and having a casting vote in its proceedings.[3] As in most of the other original states, the framers of the Constitution, recalling their colonial experience, feared the tyranny of a strong executive.[4] By 1790, however, the omnipotence of the Legislature awakened the people to the fact that the Governor's executive power had to all intents and purposes been annihilated. Almost everyone was willing to admit the inefficiency and outmoded character of the 1776 Constitution,[5] and certainly of its executive provisions. The demand for revision was, "if not chronic, at least periodic."[6]

II. *Constitution of 1844*

The Committee on the Executive Department, appointed by the President of the 1844 Constitutional Convention on May 16, presented its report on the very next day. The veto section (VII) read:

> "Every bill which shall have passed both houses shall be presented to the governor; if he approve, he shall sign it, but if he shall not approve, 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 consider it; if after such reconsideration, a majority of the whole number 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 likewise be reconsidered; and it approved by a majority of the whole number of that house, it shall become a law; but 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 be a law, in like manner as if he had signed it unless the legislature, by their adjournment,

[3] N. J. Const. of 1776, Art. XIV.
[4] C. R. Erdman, Jr., The New Jersey Constitution of 1776, 1934, p. 63.
[5] *Ibid.*, p. 117.
[6] J. E. Bebout, Proceedings of the Constitutional Convention of 1844 (1942), Introduction, p. XIX, and pp. XXXVII-LXIV. And see the Introduction generally for an excellent discussion and analysis of the background and proceedings of the 1844 Convention.

prevent its return; in which case it shall be a law, unless sent back within three days after their next meeting." [7]

The debate on this section was one of the longest, most interesting and spirited of the entire Convention.[8] It reflected the cleavages and blocs among the delegates. The governorship was a significant enough subject to bring forth the most partisan discussion. The veto power especially aroused so much spirit that charges of party voting were made and, of course, forcefully denied.

The majority of Democrats in the Convention were inclined to favor a strong Governor and to trust the people; a majority of the Whigs tended to favor the Legislature and its joint meeting and to put their trust in specially qualified public officers. The strong feeling on the veto power was let loose on a motion by Ryerson to require a two-thirds vote to override a veto, instead of the majority vote proposed by the Committee. Most of his support came from fellow Democrats, but Field, a Whig, vigorously supported the strong veto. Condit, another Whig, tried to effect a compromise on a three-fifths vote to override. This was acceptable to Ryerson and the strong-veto men, but enough Democrats joined with a majority of the Whigs to defeat it by a 27 to 27 tie, the Convention chairman voting in the negative. Bebout accurately summarizes the issues in the debate: [9]

> "The debate on the veto power illustrates the confusion which frequently results from attempts to harmonize inherited theories with political prejudices and current objectives. R. S. Kennedy, Whig, looked upon the veto 'as an aristocratic feature which was inserted in the Constitution [of the United States] when our fathers had a feeling of fear to intrust the people with too much power.' Chief Justice Hornblower, another Whig, exclaimed, 'It is anti-republican and anti-democratic.' Zabriskie and Vroom were equally sure that the veto was essentially democratic: 'We desire to protect the people against the reckless action of their representatives.' The veto was a weapon by means of which the governor, 'the sole representative of the whole State,' might prevent laws against 'the interests of the whole' from being passed under the influence of corruption or the combined weight of sectional interests. In response to this argument, Mr. Green complained that the 'idea of protecting the people is a modern idea to make the principle more palatable.' It might be regarded as a modernized version of the outworn argument of John Adams that the veto was needed to curb the appetites of competing aristocratic and democratic elements in the legislature; but the later development of pressure politics gives even more point now than in 1844 to Mr. Vroom's conception of the governor as the representative of the whole against the parts of the State.
>
> The veto, then, was opposed as aristocratic and supported as democratic. It was also both opposed and supported in the name of the separation of powers principle. Field warned, in language reminiscent of Jefferson and The Federalist, against the danger of 'the tyranny of a majority of the legislature . . . which is perpetually invading the other departments—and in whose hand power is constantly accumulated.' The veto was needed, therefore, to protect the position of the executive, the naturally weak

[7] *Ibid.*, pp. 44-46.
[8] *Ibid.*, pp. 175-207.
[9] *Ibid.*, pp. LXXVI-LXXVIII.

member of the governmental trinity. Dr. Schenck on the other hand denounced the veto as working an improper accumulation of legislative and executive power in the hands of one man. It should be noted in evidence of Dr. Schenck's consistency that he later advocated giving the governor the appointing power, as properly belonging to him; but Field's argument has gained force with the years because of the failure of the convention to secure the governor in the possession of the appointing and removal powers constitutionally vested in the president. There can be little doubt that a stronger veto would have helped the governor to carve out a larger sphere for himself as chief administrator and have put him on a more nearly equal footing with the other departments."

Important amendments made to the section proposed by the Committee on the Executive Department, were the requirement that in neither house was the vote to override a veto to be taken on the same day on which the bill was returned, and a reduction from ten days to five in the time given the Governor to return a bill to the house of origin.[10] As finally adopted, the section read:[11]

"7. 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, after such reconsideration, a majority of the whole number 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 likewise be reconsidered, and if approved of by a majority of the whole number of that house, it shall become a law; but, in neither house shall the vote be taken on the same day on which the bill shall be returned to it: 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 five days (Sunday excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he signed it, unless the legislature by their adjournment, prevent its return in which case it shall not be a law."

III. *Amendment of 1875*

The Constitutional Commission of 1873, which had been recommended by Governor Joel Parker in his annual message of that year, made a thorough study of the 1844 Constitution and finally, in 1875, submitted 28 separate amendments to the electorate, all of which were approved by the people. Among them was an amendment to Art. V, par. 7, adding the following item veto provision:

"If any bill presented to the governor contains several items of appropriations 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 the items to which he objects, and the appropriations so objected to shall not take effect. If the legislature be in session he shall transmit to the house in which the bill originated a copy of such statement, and the items objected to shall be separately reconsidered. If, on reconsideration, one or more of such items be approved by a majority of the members elected to each house, the same shall be a part of the law, notwithstanding the objections of the governor. All the provisions of this section 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."

[10] *Ibid.*, pp. 205-6.
[11] *Ibid.*, p. 622; Art. V, par. 7.

IV. *Commission on Revision of 1942*

The Commission on Revision of the New Jersey Constitution, appointed pursuant to *Joint Resolution No. 2, Laws of 1941,* recommended the following executive veto provisions in its draft of a proposed revised Constitution *(Art. IV, sec. II, pars. 3-5):*[12]

> "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."

The Committee thus increased the vote required to override a veto from a simple majority of the membership of each house of the Legislature to two-thirds, but only in the case of item vetoes of appropriation bills. It also extended the time that had to elapse before the house of origin could reconsider a vetoed bill. Moreover, it gave the Governor seven days instead of five to return a bill to the house of origin, and in case the Legislature had adjourned within the seven days, the bill was not to become law unless signed within 20 days of adjournment. In its explanation of the veto provisions the Commission said: [12a]

> "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 con-

[12] Report of the Commission on Revision of the New Jersey Constitution, 1942, p. 43.
[12a] *Ibid.,* p. 21.

> fined 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."

The Revision Commission's veto proposals aroused little debate. Those who appeared at the hearings held by the Joint Legislative Committee in 1942 to ascertain the sentiment of the people as to change in the Constitution, endorsed these proposals, with notably few exceptions. They realized, as have other states and as authorities on state government have for a long time, that the Governor must be given real executive authority and responsibility.[13] Among other things, his veto power had to be strengthened. One speaker before the Joint Legislative Committee put the argument thus:[14]

> "The veto is needed to permit the Governor, as representative of all the people, to prevent legislation by the pressure and logrolling of minority or special interests. The proposed Constitution strengthens the Governor's power to prevent this sort of thing by requiring a two-thirds vote to override a veto of an appropriation item. This is important; but might it not be well to require a two-thirds vote in any case? Logrolling and special favors are not confined to State appropriation acts. Anyone who goes over the list of special tenure and pension acts passed almost every year over the ineffectual protest of the Governor knows this."

Many agreed that the two-thirds vote to override a veto be extended to all legislation, much of which was as important as appropriation bill items, if not far more important, because it affected the health, safety and welfare of the people. The Governor, elected on a statewide basis and the representative of all the people, ought to have an effective veto to strike down hasty and ill-considered bills and to prevent legislation which was the product of pressure groups and special interests.[15]

V. *The Revised Constitution of 1944*

In 1944 the Legislature submitted a revised Constitution to the people containing the following veto provisions *(Art. IV. sec. I, pars. 12 and 13):*

> "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

[13] Luce, *op. cit.*, p. 121; C. R. Erdman, Jr. The New Jersey Constitution—A Barrier to Government Efficiency and Economy, 1934. And see *post*, for provisions in other state constitutions.

[14] Record of Proceedings before the Joint Legislative Committee . . . to Ascertain the Sentiment of the People . . . as to Change . . . , 1942, p. 209.

[15] *Ibid.*, pp. 218, 248, 252, 253, 259, 261, 263 and 311. One speaker argued for a simple majority vote on all vetoes (p. 257), and another opposed the provision requiring the house of origin to wait three days before reconsidering a vetoed measure (pp. 632-33).

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 each 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."

It will be seen that this revision, rejected by the voters, went further than the one recommended by the 1942 Revision Commission. It took a three-fifths vote of the membership of each house to override *any* veto by the Governor—whether of an appropriation item or general legislation. A vetoed bill was not to be reconsidered by the house of origin until three days after the return of the bill. The Governor had ten days in which to act on a bill if the house of origin was not adjourned. If it had adjourned in the course of a session, the Governor was to return the bill when the house again convened, or the bill would become law; and if on the tenth day the Legislature was adjourned *sine die,* the Governor had to sign or return the bill to the house of origin at a special legislative session called by him to meet within 35 days to reconsider the bill. *(Art. III, sec. I, par. 3* called for a regular legislative session limited to 90 days.)

Comparable Provisions in Other State Constitutions [16]

Of the 47 states whose constitutions provide for an executive

[16] See attached table, Schedule A, taken from the Council of State Governments' The Book of the States, 1945-46.

veto,[17] all but Georgia and Mississippi require that all bills passed by the legislature be presented to the governor.[18] Few constitutions say anything about the time a bill must so be presented.[19] After the governor signs, the bill becomes law. Maryland requires him to sign in the presence of the presiding officers or chief clerks of both houses. Three constitutions require him to deposit the signed bills with the secretary of state; elsewhere statute or usage accomplishes the same result. In Minnesota he must notify the house of origin of his signing.

I. *Veto Restrictions During Sessions*[20]

Every state prescribes the time the governor may have to consider a passed bill. Failure to veto and return the bill to the house of origin within the time limit is equivalent to approval if the legislature is in session. The number of days allowed the governor ranges from three to fifteen:

States	*Days*
9	3
22	5
4	6
11	10
1	15

New Jersey is among the 22 granting five days, and California, Illinois, Michigan, New York, Ohio and Pennsylvania among those allowing ten days. Missouri's new constitution extended the time from ten to 15 days. Sundays are excepted from the count in all states but Colorado, Louisiana, Massachusetts, Missouri and Pennsylvania; Connecticut excludes legal holidays. Authorities claim that the longer period allowed results in greater executive authority and a better opportunity to study legislation.[21]

With the exception of Missouri, a bill automatically becomes law if the governor fails to sign within the allowed period while the legislature is in session.

II. *Overriding the Veto*[22]

All the 47 veto states give their legislatures the power to override executive vetoes. Except for Georgia and Kansas, their constitutions all require the governor to return a disapproved bill, with objections, to the house of origin where the message is entered at large on the journal.[23] The vote on repassage is by yeas and nays in every

[17] North Carolina has none and therefore is not considered in the remainder of this paper.

[18] Georgia and Mississippi give the governor a power of "revision" of passed bills. In practice this is about the same as a veto.

[19] Kentucky, Louisiana, Missouri and Kansas do; the bill must be sent "at once," "immediately," on the same day, or within a day or two of passage. Indiana provides that no bill may be presented within two days of final adjournment.

[20] Prescott, *op. cit.*, p. 6; New York Const. Conv. Comm. Report, vol. VIII, *op. cit.*, pp. 11-12.

[21] Luce, *op. cit.*, p. 181; Harvey Walker, Law Making in the United States, 1934, p. 395.

[22] Prescott, *op. cit.*, pp. 6-7; New York Const. Conv. Comm. Report, vol. VIII, *op. cit.*, pp. 13-14.

[23] The Georgia constitution is silent; in Kansas the bill is returned to the lower house.

state but Florida, Georgia and Indiana. Two states provide a "cooling off" period; there the vote to override may not be taken on the day the bill is returned.

There is a wide variation in constitutional requirements as to the vote needed to override a veto:

(a) Majority of members *elected*—7 states, including New Jersey

Majority of members *present*—1 state, Connecticut

(b) Three-fifths of members *elected*—4 states, including Ohio[24]

Three-fifths of members *present*—1 state, Rhode Island

(c) Two-thirds of members *elected*—22 states, including California, Illinois, Michigan, Missouri, New York and Pennsylvania

(d) Two-thirds of members *present*—11 states, including Massachusetts and Wisconsin

Two-thirds of members *present*—including a majority of members elected—1 state, Virginia.

III. *Veto Restrictions After Adjournment*[25]

Constitutional provisions vary among the states concerning the fate of a bill when the legislature adjourns before the time limit for returning the bill expires. Mississippi forbids the approval of a bill while the legislature is not in session, and Georgia, Kansas, New Hampshire and Tennessee follow the rule that the business of enacting law ends with any final adjournment. In 23 states the governor must definitely sign a bill if it is to become law. In at least 40 states it would appear that the governor may either approve or veto measures after adjournment.

Twenty-seven states allow their governors more time to review bills presented just before or after adjournment than in the case of those presented earlier during the session. For example, in Missouri, when the legislature adjourns or is in recess for more than 30 days, the Governor has 45 days to consider bills. Five states—California, Colorado, Delaware, New York and Pennsylvania—allow ten days during sessions, but give the governor 30 days to review bills presented late in the session or after adjournment. Two states allow 20 days after adjournment, and five allow 15 days. Alabama provides that a bill presented to the governor within five days before final adjournment may be approved within ten days after adjournment. New Mexico has the same rule, except that the number of days are respectively three and six. Except for Michigan, where the governor has only ten days during sessions and five after adjournment, the outstanding and important fact is that over a dozen states

[24] In Ohio a bill may not be repassed by a smaller vote than required by constitution on original passage.

[25] Prescott, *op. cit.*, pp. 7-8; New York Const. Conv. Comm. Report, vol. VIII, *op. cit.*, pp. 12-13.

allow their governors 15 days or more to consider bills after adjournment, while only one provides more than ten days during sessions.

IV. *The Pocket Veto*[26]

Inaction on the governor's part results in a bill becoming law in a majority of the states. But 18 states have some form of pocket veto which operates as "a silent death sentence on a bill." A few states allow disapproval under such circumstances, but the governor must file the bill, with his objections, in the office of the secretary of state; and in three of these states he must give notice of his action by public proclamation within a fixed time. In practice these vetoes are just as absolute as those pocketed.

Nine states have the so-called "suspensive veto" which requires either the governor or secretary of state to return bills vetoed after final adjournment to the next session of the legislature. Of these states, three—Maine, Mississippi and South Carolina—provide that the bills will become law unless returned within two (or three) days after the next session convenes, and in Alabama such bills do not become effective unless so returned after a recess.

It has been said that the pocket veto puts a premium on executive inaction and tends to breed irresponsibility. One critic describes it as "an indefensible device. There is no reason why inaction by an executive after the adjournment of the legislature should have any more negative effect than during the time of the session."[27]

Answering the charge that the veto is a purely destructive device, Prescott cites the constitutions of Alabama, Massachusetts and Virginia.[28] In Virginia the governor may veto an offending section of a bill otherwise approved. Further, he may return the bill to the house of origin, and if the two houses agree to the governor's recommended change by a majority of members present, the bill again goes to the governor as though for the first time. Governor Harry Byrd returned 42 bills with recommendations in the years 1926-1928, inclusive, and the legislature concurred in all the suggested amendments. There were only three vetoes in the three sessions. Most of the measures returned were for technical defects or because they duplicated others.

Alabama allows the governor to return a disapproved bill to the house of origin with a proposed amendment that will meet his objections. The house may so amend it and then send the bill with the governor's message to the other house, which may adopt or reject, but may not amend the amendment. If both houses concur, the bill again goes to the governor for action; if the legislature refuses to accept his amendment, the bill may be enacted into law by a majority of the members elected to each house.

[26] Prescott, *op. cit.*, pp. 8-9; New York Const. Conv. Comm. Report, vol. VIII, *op. cit.*, p. 13.
[27] Walker, *op. cit.*, pp. 392-93; *cf.*, Luce, *op. cit.*, p. 182.
[28] *Op. cit.*, pp. 9-10.

V. *Item Veto*[29]

Thirty-nine state constitutions give the governor the power to veto specific items of appropriation. This eliminates excessive, improper, or unconstitutional appropriations without endangering the safety of appropriations essential to the conduct of state business. The alternative would be to veto the entire bill or call an extra session, with its resultant increased expense and the probability of a flood of other bills. A few states permit the governor to reduce appropriation items which appear excessive.[30] The effectiveness of the item veto depends, to some extent, on the degree of itemization found in appropriation bills. Lump sum appropriations or revenues dedicated to certain purposes may render the veto practically worthless. The overwhelming majority of American students of government favor the item veto.[31]

VI. *Use of the Veto Power*

Use of the veto power has varied greatly, both in time and in the several states. Fairlie notes that it was infrequently exercised for many years, its use being limited to emergencies or constitutional situations. It has been more largely used since 1900.[32] A study of 16,500 bills passed by 44 state legislatures in 1923, shows more than 1,100 bills and over 1,000 items in other bills disapproved, and that nine per cent of the vetoes were overridden.[33] Figures for 1937 show 1,351 vetoes of 21,765 bills passed.[34] Prescott remarks upon the extensive use of the veto in New Jersey, New York, Pennsylvania, Illinois and California, and its limited use in Massachusetts, Florida, Iowa, South Carolina, Vermont and Washington. Vetoes in Illinois, New York and California in recent years have been 10, 20 and 30 per cent, respectively, of bills passed.[35]

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[29] New York Const. Conv. Comm. Report, vol. VIII, *op. cit.*, 13; A F. MacDonald, American State Government and Administration, 1945, chap. 10.

[30] California, Massachusetts, New York and Pennsylvania. The practice was held unconstitutional in Michigan.

[31] Luce, *op. cit.*, 186-87; J. M. Mathews, American State Government, rev. ed., 1934; A. E. Buck, Public Budgeting, 1929, p. 415; and H. M. Groves, Financing Government, p. 708. But *cf.*, Luce, *op. cit.*, p. 189 and Holcombe, *op. cit.*, 357-362, who minimize the role of the item veto in any sound scheme of fiscal planning.

[32] J. A. Fairlee, "The Veto Power of the State Governor," 11 Am. Pol. Sci. Rev. 473.

[33] A. H. Holcombe, State Government in the United States, 3rd ed., 1931.

[34] State Government, vol. 11, No. 2, p. 43, revised by F. W. Prescott, *op. cit.*, p. 11.

[35] Prescott, *op. cit.*, p. 11.

LEGISLATIVE PROCEDURE: EXECUTIVE VETO[1]

State	Days after which Bill Becomes Law (before Adjournment) unless Veloed (Sundays excepted)	Fate of Bill — after Adjournment — Days after which Bill Passes unless Veloed (Sundays excepted)	Days after which Bill Dies unless Signed (Sundays excepted)	Item Veto on Appropriation Bills	Votes Required in House and Senate to Pass Bills or Items Over Velo[a]	Constitution Prohibits — Governor from Veloing — Initiated Measures	Referred Measures
Alabama	6	10	..	★	Two-thirds present	(b)	(b)
Arizona	5	10	..	★	Two-thirds elected[y]	★	★
Arkansas	5	20[c]	..	★	Majority elected	★	★
California	10	..	30	★	Two-thirds elected	★	★
Colorado	10[c]	30[c]	..	★	Two-thirds elected	★	★
Connecticut	5[d]	15[c]	..	★	Majority present	(b)	(b)
Delaware	10	..	30[c]	★	Three-fifths elected	(b)	(b)
Florida	5	10[c]	..	★	Two-thirds present	(b)	(b)
Georgia[e]	5	..	(f)	★	Two-thirds elected	(g)	..
Idaho	5	10	..	★	Two-thirds present	..	..
Illinois	10	10	..	★	Two-thirds elected	(b)	(b)
Indiana	3	5[c,h]	..	..	Majority elected	(b)	(b)
Iowa	3	(i)	30	..	Two-thirds elected	..	..
Kansas	3	(i)	(f)	★	Two-thirds elected	(b)	(b)
Kentucky	10	10[c]	..	★	Majority elected	..	..
Louisiana	10[c]	10[c,k]	..	★	Two-thirds elected	(b)	(b)
Maine	5	(i)	..	..	Two-thirds elected	★	..
Maryland	6	..	6[m]	★	Three-fifths elected	(b)	(b)
Massachusetts	5[d]	..	(c)	★	Two-thirds present	★	★
Michigan	10	..	5	★	Two-thirds elected	★	★
Minnesota	3	..	3[c]	★	Two-thirds elected	(b)	(b)
Mississippi	5	(i)(i)	..	★	Two-thirds elected	(b)	(b)
Missouri	(z)	..	..	★	Two-thirds elected	★	★
Montana	5	..	15[c,o]	★	Two-thirds present	★	★
Nebraska	5	5[p]	..	★[r]	Three-fifths elected	★	★
Nevada	5	10	..	..	Two-thirds elected	★	★
New Hampshire	5	..	(f)	..	Two-thirds elected	(b)	(b)
New Jersey	5	..	5[q]	★	Majority elected	(b)	(b)
New Mexico	3	..	6[n]	★	Two-thirds present	(g)	..
New York	10	..	30[c]	★	Two-thirds elected	(g)	..
North Carolina	(s)	(s)	(s)	(s)	.....	(b)	(b)
North Dakota	3	15[c]	..	★	Two-thirds elected	★	★
Ohio	10	10[c]	..	★	Three-fifths elected	..	..
Oklahoma	5	..	15	★	Two-thirds elected	★	★
Oregon	5	20	..	★[t]	Two-thirds present	★	★
Pennsylvania	10[c]	30[c]	..	★	Two-thirds elected	(b)	(b)
Rhode Island	6	10[c]	..	..	Three-fifths present	(b)	(b)
South Carolina	3	(i)	..	★	Two-thirds elected	(b)	(b)
South Dakota	3	10[c]	..	★	Two-thirds present	★	★
Tennessee	5	..	(f)	..	Majority elected	(g)	..
Texas	10	20[c]	..	★	Two-thirds present	(b)	(b)
Utah	5	10	..	★	Two-thirds elected	★	★
Vermont	5	..	(w)	..	Two-thirds present	(b)	(b)
Virginia	5	..	10[c]	★	Two-thirds present[u]	(b)	(b)
Washington	5	10	..	★[v]	Two-thirds elected	★	★
West Virginia	5[g]	5[c]	..	..	Majority elected	(b)	(b)
Wisconsin	6	..	6	★	Two-thirds present	(b)	(b)
Wyoming	3	15[c]	..	★	Two-thirds elected	(b)	(b)

[a] Bill returned to house of origin with objections, except in Georgia, where the governor need not state his objections, and in Kansas, where all bills are returned to the House of Representatives.
[b] No provision for initiative or referendum in state.
[c] Sundays not excepted unless 10th day is Sunday, in the case of Rhode Island.
[d] Sundays and legal holidays excepted.
[e] New constitution, passed by General Assembly, withholds right to veto constitutional amendments.
[f] Unsigned bills do not become laws; no constitutional time limit specified.
[g] No provision for initiative in state.
[h] Bill becomes law if not filed with objections with secretary of state within five days after adjournment.
[i] Governor must act whether for or against bill within 30 days after adjournment.
[j] In practice, the legislature closes consideration of bills three days before adjournment *sine die*.
[k] Governor has 10 days from time bill was presented to him in which to approve or disapprove.
[l] Bill passed in one session becomes law if not returned within two days (Maine and Mississippi three days) after reconvening of legislature.
[m] Within 6 days after presentation to the governor, regardless of how long after adjournment this may be.
[n] Governor must file his objections with secretary of state.
[o] Bill is dead if not signed following adjournment within 5 days of receipt by governor. In practice the General Court is not prorogued until the governor has acted on all bills.
[p] Sundays excepted.
[q] After delivery to governor.
[r] Governor may not veto items in budget submitted by himself after it has passed legislature with ⅔ vote.
[s] No veto; bill becomes law 30 days after adjournment of session unless otherwise expressly directed.
[t] Also may veto items in new bills declaring an emergency.
[u] Including majority elected.
[v] Also may veto items in any bill which contains items or sections.
[w] Unsigned bills do not become laws, see *Hartness* v. *Black*, 95 Vt. 190.
[x] If governor does not return bill in 15 days, a joint resolution is necessary for bill to become law.
[y] Three-fourths in case of an emergency measure.
[z] Budget (appropriation) bill not submitted to governor after passage.

[1] From *The Book of the States*, 1945-1946 (Chicago, 1945)

BIBLIOGRAPHY

BEBOUT, JOHN E. Introduction to Proceedings of the Constitutional Convention of 1844, 1942.

BUCK, A. E. Public Budgeting, 1929.

Council of State Governments. The Book of the States, 1945-1946.

Council of State Governments. "Veto Powers of Governors," Governor's Bulletin No. 3, 1935.

ERDMAN, C. R., JR. The New Jersey Constitution—A Barrier to Government Efficiency and Economy, 1934.

ERDMAN, C. R., JR. The New Jersey Constitution of 1776, 1934.

FAIRLEE, J. A. "The Veto Power of the State Governor," 11 Am. Pol. Sci. Rev. 473.

GRAVES, W. B. American State Government, 3rd ed., 1946.

GROVES, H. M. Financing Government, 1939.

HOLCOMBE, A. N. State Government in the United States, 3rd ed., 1931.

LUCE, ROBERT. Legislative Problems, 1935.

MACDONALD, A. W. American State Government and Administration, 3rd ed., 1945.

MATTHEWS, J. M. American State Government, rev. ed., 1934.

New Jersey. Proceedings of the New Jersey Constitutional Convention of 1844, 1942.

New Jersey. Record of Proceedings before the Joint Legislative Committee . . . to Ascertain the Sentiment of the People . . . as to Change . . . , 1942.

New Jersey. Report of the Commission on Revision of the New Jersey Constitution, 1942.

New Jersey. Revised Constitution for the State, 1944.

New York Constitutional Convention Committee, Report, 1938, vol. VIII, "Problems Relating to Executive Administration and Powers."

PRESCOTT, FRANK W. "Constitutional Provisions on the Governor's Veto," Univ. of Tenn. Bureau of Public Administration, 1946.

WALKER, HARVEY. Law Making in the United States, 1934.

ADMINISTRATIVE AGENCIES, THEIR STATUS AND POWERS

by

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INTRODUCTION

During the hearings before the Joint Legislative Committee in 1942 on the proposed revised Constitution the estimate of the number of state administrative agencies was generally placed at "ninety-odd." This estimate is high if we regard administrative agencies as only those instrumentalities with power to determine by rules, regulations, or decisions the rights and obligations of private individuals. Nevertheless, Fitzgerald's *Legislative Manual for the State of New Jersey* (1947 edition), at pages 498-551, lists some 90 separately constituted departments, bureaus, commissions, boards and administrative officials, including not only such highly integrated and far-reaching agencies as the Department of Taxation and Finance, the Department of Alcoholic Beverage Control and the Board of Public Utility Commissioners, but also the more narrowly confined and lesser known agencies, as the Board of State Canvassers, the State Capitol Building Commission and the Board of Embalmers and Funeral Directors.

Government operation through the "ninety-odd" agencies has been a matter of gradual growth without any set plan or program. The absence of any relationship between the functioning of one agency and that of another has marked this development. To set forth the role of the State Constitution in the development of the law of administrative action is the purpose of this monograph.

I. ESTABLISHMENT OF ADMINISTRATIVE AGENCIES

Our form of government, both federal and state, is based upon the fundamental concept of the separation of powers. Article III of our State Constitution provides:

> "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."

Generally speaking, it is the duty of the legislative department to make laws, of the executive to enforce them, and of the judiciary to apply them to particular sets of facts, and each of the three branches can exercise only its own power.

Article IV, section I of our State Constitution provides:

> "The legislative power shall be vested in a Senate and General Assembly."

It was early declared by our courts that the Legislature may neither abdicate, nor transfer, nor delegate to others its function to make our laws. An exception to this was the practice of committing to municipal organizations of the State local legislative power, based upon the fact that it has always been recognized as a legitimate part of the legislative function to enable the people to exercise local self-government and the police powers incident thereto.

Although the Legislature cannot delegate to others its power to make laws, our courts have sanctioned laws which delegate the power to determine a fact, or a state of things upon which the particular law makes its own action depend. It is the determination as to whether or not those facts exist that comprises the function of law enforcement that may be delegated to an administrative agency. It is only necessary that the statute under which the agency is to operate shall establish a sufficient basic standard, that is, "a definite and certain policy and rule of action for the guidance of the agency created to administer the law." *State Board of Milk Control* v *Newark Milk Co.,* 118 N. J. Eq. 504, 522. In other words, the Legislature by statute must prescribe a policy to be pursued and the general means of its accomplishment. Thus, although rate-making is a legislative province, power has been constitutionally afforded to the Milk Control Board to establish minimum prices and regulate the milk industry throughout the State, under a legislative direction to prevent "unfair, unjust, destructive and demoralizing practices which are likely to result in the undermining of health regulations and standards and the demoralization of agricultural interests in this State engaged in the production of milk." R. S. App. A:8-10.

Typical of a statement of legislative policy in the delegation of administrative power was that contained in a statute directing the Commissioner of Banking and Insurance "to compute the value of policies and bonds according to such recognized standard of valuation as he might deem best for the security of the business and the safety of the persons insured." See *Iowa Life Insurance Co.* v *Eastern Mutual Life Insurance Co.,* 64 N. J. L. 340, 347. The Commissioner of Alcoholic Beverage Control is guided by the legislative pronouncement that the statute shall be "administered in such manner as to promote temperance and eliminate the racketeer and bootlegger." R. S. 33:1-3. Some statutes set forth very carefully detailed standards embodying a definite and certain policy, such as the statute creating planning boards for municipalities (R. S. 40:55-1); whereas other statutes, granting wide powers, including regulatory

powers over rates, set forth very general standards, such as the Public Utilities Act under which the board is guided by little more than the standard of "public convenience and necessity." See *e. g.*, R. S. 48:11-1.

We see, then, that while the Legislature may not delegate its exclusive function to make the law, it may nevertheless prescribe a policy and implement it by delegating to some governmental instrumentality, agency, public official, or group of officials the power to effectuate the legislative policy by making findings of fact, rules, regulations and orders within the standards and policies prescribed. It is pursuant to such authority that the multitude of governmental duties that could not possibly be performed by the Legislature itself, has been delegated to administrative agencies. The agencies so created, whatever they are called, and whatever their composition, merely constitute the governmental mechanism by which a legislative policy is implemented.

Examination of the statutes under which the state agencies function will disclose standards of varying degrees of definiteness. Only on rare occasions has the pattern set forth by the Legislature been found to be insufficient. A State Aviation Act passed in 1931 was found to contain no standard whatever for the regulation of aircraft or the licensing of aircraft and airmen, and hence was held to be violative of the fundamental concept of delegation of power. *State* v *Larson,* 10 N. J. Mis. R. 384. Where a standard is fixed, however, it is necessary only that it be as definitely described as is "reasonably practicable" under the circumstances of the particular field being controlled. See *Veix* v *Seneca B. & L. Assn.,* 126 N. J. L. 314, 323.

It appears, then, that there exists permissible power in the Legislature to delegate legislative authority within the general limitation that it must lay down intelligible principles and standards to serve as a basis for additional administrative legislation in the form of rules and regulations to fill in the details of the statutes. No constitutional provision for administrative legislation, nor for the administrative determination of causes, has been deemed necessary.

The proposed revised Constitution submitted by the Commission on Revision of the New Jersey Constitution in 1942 contained in the article dealing with separation of powers, a new section, the first portion of which read as follows (Art. II, sec. 3):

> "The exercise of any powers or discharge of any responsibilities of a legislative or executive character by administrative agencies shall be limited to the effectuation of declared general standards or principles set forth by law. * * *"

In the proceedings before the Joint Committee of the New Jersey Legislature to ascertain the sentiment of the people concerning the Commission's revised Constitution, this language was characterized as a declaration of existing law established by the decisions of our

courts. (Record of Proceedings, p. 96.) Opposition to the section was based upon the contention that the section would allow the Legislature to set forth a "general" standard, rather than a "definite and certain" standard such as the decision of our courts seem to require. (Record of Proceedings, p. 101.)

In the revised Constitution which was submitted to the people at the general election in 1944 no attempt was made to declare the principles of law under which administrative bodies may exercise powers delegated by the Legislature. The language of the article setting forth the separation of powers doctrine was substantially the same as that contained in the 1844 Constitution. (See proposed Revised Constitution, 1944, Art II.)

In the "Model State Constitution" prepared by the Committee on State Government of the National Municipal League (1946 revision), the section which sets forth the legislative power attempts to define the power to delegate functions to administrative bodies. Article III, section 300, of that document provides:

> "The legislative power shall be vested in a legislature, which may delegate to other public officers the power to supplement statutes by ordinances, general orders, rules, and regulations, provided a general standard or principle has been enacted to which such delegated legislation shall conform. * * *"

This general grant of legislative power was incorporated in the 1946 edition of the model constitution in order, as the committee explained, to protect the legislature against possible unfavorable judicial decisions on questions involving delegation of legislative powers. This attempt to define the limits of the legislative power to delegate discretion to administrative bodies might, however, cast doubt upon the heretofore judicially declared doctrine, which in its application has been sufficiently flexible to enable the legislature to fix the extent and character of the functions of administrative bodies in accordance with the inherent necessities of the governmental coordination. The language used would, for example, give rise to arguments whether the right to "supplement" statutes includes the right to "interpret" statutes by public regulations, the latter being admittedly within the scope of the administrative process. *Cf. Hampton, Jr. & Co.* v *United States,* 276 U. S. 394, 406.

Of greater concern than the delineation of the power of the Legislature to create administrative agencies has been the lack of any constitutional restriction on the *number* of administrative departments which the Legislature may create pursuant to such power. Under the present Constitution it has become possible for the numerous presently existing autonomous and semi-autonomous instrumentalities of administrative government to be created without direct responsibility to the Executive or Legislature, except as they may be restrained by the appropriating power of the latter. With

a view towards regrouping the state agencies into a much smaller number of major departments and making the Governor primarily responsible for their internal organization and for the distribution of powers among them, the proposed 1942 Constitution made provision for the allocation of all executive and administrative offices, together with their powers, duties and functions, within nine major departments. It was intended that by combining administrative activities into nine departments there would be created a responsible and accountable corps of administrative officers to function as a gubernatorial cabinet. Thus, Article IV, section III, paragraph 1 of the proposed 1942 Constitution provided:

> "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."

The revised New York State Constitution of 1938 (Art. V, sec. 2) had made provision for 18 departments in the state government. By amendment in 1943 the number was increased to 19 by the addition of a Department of Commerce. The New York Constitution, however, also contains a provision (Art. V, sec. 3) allowing the legislature to create "temporary commissions" for special purposes.

The limitation of the number of administrative departments, as suggested by the New York Constitution, was incorporated into the "Model State Constitution" in the following language contained in the article dealing with the Executive (Art. V, sec. 507):

> "There shall be such administrative departments, not to exceed twenty in number, as may be established by law, with such powers and duties as may be prescribed by law. Subject to the limitations contained in this constitution, the legislature may from time to time assign by law new powers and functions to departments, offices and agencies, and it may increase, modify, or diminish the powers and functions of such departments, offices, or agencies. All new powers or functions shall be assigned to departments, offices or agencies in such manner as will tend to maintain an orderly arrangement in the administrative pattern of the state government. The legislature may create temporary commissions for special purposes or reduce the number of departments by consolidation or otherwise."

The effort in the proposed New Jersey Constitution of 1944 to simplify and facilitate executive control of administrative bodies was made in Article IV, section III, where the number of "Principal Departments" was fixed at not more than 20, created by the Governor by executive order, and among which were to be allocated by the Governor all the executive and administrative agencies.

Under the present Constitution the Legislature's power to create

agencies, derived from the power to delegate fact-finding functions to administrative bodies, carries with it the power to constitute such agency in any manner that it deems appropriate. Thus, the Legislature can determine the nature of the agency—whether a commissioner, commission, board, or the like—and can similarly determine the mode of appointment. This has resulted in the creation of a multiplicity of heterogeneous departments. Because the subject is dealt with in the monograph dealing with the Executive Article, we here simply point out that the 1942 proposed Constitution, in Article IV, section III, paragraph 4, provided that the heads of all administrative departments shall comprise a single executive, unless otherwise provided by the Legislature, and that 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. The 1944 proposed Constitution likewise made the Governor the appointing authority. (Art. IV, sec. III.) A model provision vesting the appointive power in the governor may be found in Article V, section 507 of the "Model State Constitution."

II. Powers of Administrative Agencies

Most of the administrative agencies exercise powers that are deemed to be an admixture of law-making, law-enforcement and law-interpretation, the concentration of powers being called the "administrative process." An outstanding example of the concentration of such powers in one agency may be found in the Department of Alcoholic Beverage Control. The Commissioner is authorized to promulgate rules and regulations governing the conduct of licensees. In doing so he is in reality exercising a legislative function. When he institutes prosecutions for violations of the statute and regulations he acts much in the manner of the executive; and when he makes adjudications in original proceedings against licensees and violators of the statute as well as in appellate proceedings from determinations made by subordinate agencies, he acts much in the fashion of a court.

Other important agencies which have a multitude of powers and the duty of constant supervision are the Board of Public Utility Commissioners, the Department of Motor Vehicles, the Department of Banking and Insurance, the Department of Taxation and Finance, and the Workmen's Compensation Bureau. It has been expressly held that the vesting of such combination of powers in one agency is not violative of the constitutional doctrine of separation of powers. *State Board of Milk Control* v *Newark Milk Company,* 118 N. J. Eq. 504. In an apparent exercise of such powers

agencies have, however, on occasion exceeded their functions and encroached upon the province of the constitutional executive, legislative, or judicial departments. Thus, an agency cannot in the exercise of its powers to regulate and control, undertake to repeal a municipal ordinance. *Phillipsburg* v *Burnett,* 125 N. J. L. 157. And while a board of adjustment may grant variances to promote statutory policy, it cannot alter districts demarcated by zoning ordinances. *Brandon* v *Montclair,* 124 N. J. L. 135, affirmed 125 N. J. L. 367. It is the doctrine of separation of powers which provides a guarantee against such arbitrary encroachment upon undelegated functions of the several branches of government. Examination of the legislative standard or criterion and the terms of the particular statute under which the agency operates will indicate whether or not arbitrary power has been conferred and is being exercised.

The power to promulgate rules and regulations is one of the so-called *quasi*-legislative functions delegated to administrative agencies. Such rules and regulations have the force and effect of law. *Cino* v *Driscoll,* 130 N. J. L. 535, 540. The delegation of such power may be broad and the administrative body may be vested with wide discretion in the exercise of the power. For example, the power of the Commissioner of Alcoholic Beverage Control to promulgate rules and regulations includes the power to fix prices by regulation. *Gaine* v *Burnett,* 122 N. J. L. 39, affirmed 123 N. J. L. 317.

Certain other functions delegated to agencies are considered *quasi*-judicial in nature. Thus, when the Director of Milk Control upon his own motion, or upon application of interested parties, holds hearings concerning the propriety of a minimum rate to be established, the hearings are much like those in a court proceeding. Parties present testimony through witnesses, cross-examine witnesses and submit briefs. Likewise, proceedings in various agencies to revoke licenses, or to review the grant or refusal of licenses by subordinate issuing authorities, or to determine whether an individual is entitled to compensation or unemployment insurance benefits, are all procedures which are usually considered to be in the exercise of a *quasi*-judicial power.

Are the agencies in the exercise of such powers guided solely by what is contained in the statutes under which the agencies are constituted, or are there constitutional guarantees that control the exercise of such powers? The concept of due process requires, in general, that at some stage of the administrative determination there be an opportunity to be heard. Although the State Constitution contains no express due process provision, such a clause is nevertheless implied from the State Constitution and treated as analogous to the due process clause in the Fourteenth Amendment to the Federal Constitution. *State Board of Milk Control* v *Newark Milk*

Company, 118 N. J. Eq. 504, 518. Notice and hearing are required where there is an administrative determination, *quasi*-judicial in nature, affecting property rights. *Sears* v *Atlantic City,* 73 N. J. L. 710; *Erie Railroad* v *Paterson,* 79 N. J. L. 512. And this is true also in the case of a determination which affects a privilege rather than a property right. *Garford Trucking, Inc.* v *Hoffman,* 114 N. J. L. 522. Where a statute in authorizing a *quasi*-judicial proceeding is silent upon the question of notice and opportunity to be heard, the statute is generally construed by implication to prescribe reasonable notice and hearing in advance of determination. *Wilson* v *Karle,* 42 N. J. L. 612, 613; *Township of Kearny* v *Ballantine,* 54 N. J. L. 194. But notice and hearing are not prerequisite for the adoption of regulations in the absence of a provision therefor in the statute. It has been held that a judicial review of such administrative proceedings, on notice, satisfies the demand of the due process clause. *State Board of Milk Control* v *Newark Milk Co., supra.*

Due process requires conformity with certain procedural principles. In *quasi*-judicial proceedings the agency's action must not be based upon undisclosed evidence or information outside the record. For example, a board which makes an inspection and renders its decision without disclosing its findings deprives the parties in interest of a fair hearing. A referee in a compensation case cannot base his findings upon personal research into medical authorities and treatises. While an agency may refer matters to a "hearer" for the purpose of compiling the record, the evidence must be appraised and the determination made by the agency itself. By statute a county board of tax appeals may refer to one or more of its members the duty of taking testimony in a matter pending before the board (R. S. 54:3-20.1) but the record must show that such member made a report to the board and that the determination was actually made by the board. It is not necessary for all of the members of the Board of Public Utility Commissioners (R. S. 48:2-32) to hear the witnesses as long as the determination is that of the board. The Civil Service Commission may act as a body or through a single member (R. S. 11:1-16), but the order must be that of the entire commission. The duty to make an independent determination entails study of evidence and briefs and is not satisfied by the reading and adoption of a report of the "law committee" of the agency.

The due process doctrine, therefore, guarantees the basic right to notice and opportunity to be heard in *quasi*-judicial proceedings. Since, however, due process does not afford a hearing prior to the promulgation of rules and regulations in the exercise of the *quasi*-legislative power, suggestions for constitutional provisions relating thereto have been forthcoming.

The 1942 proposed revised Constitution provided as follows (Art. IV, sec. III, par. 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."

This paragraph complemented Article II, paragraph 3 which provided:

> "The exercise of any powers or discharge of any responsibilities of a legislative or executive character by administrative agencies shall be limited to the effectuation of declared general standards or principles set forth by law and, to the extent that private rights are affected or privileges conferred or withheld, shall conform to established and published practices and procedures which, so far as practicable, shall be of uniform character."

This clause was designed, according to the Revision Commission, to guarantee "first, that the public business handled by administrative agencies will be subject to uniform published procedures barring secret and irregular transactions, and secondly, that all citizens shall receive fair and uniform treatment from such agencies."

Similar purposes motivated Congress to enact in 1946 a far-reaching statute called the Administrative Procedure Act (5 U. S. C. A. §1001), which established, for federal agencies, standards for administrative procedures, laid down essential rules as to hearings and the introduction of evidence, and provided clearly as to court review of agency orders and decisions. This statute was, of course, enacted by the federal Legislature without constitutional dictate, and, while many of the provisions are yet untried, it is felt that the distinct separation of prosecuting and judicial functions in agency practice, the significant requirements for handling applications for licenses and methods of doing business, and the statements of policy and other data, constitute a clear guide to the fundamental rights of all persons whose affairs are affected by or who must deal with federal agencies.

The 1942 proposed revision of the New Jersey Constitution not only purported to direct the enactment of a state statute with similar purposes but it made express provision for filing and publishing rules and regulations. Opposition to the latter provision was based upon the argument that it failed to provide for an opportunity to be heard before the promulgation of rules and regulations. Obviously, however, the organic law of the State should not purport to legislate with respect to the details of the practices and procedures of administrative agencies. The New York Constitution, as revised in 1938, merely provides for the filing and speedy publication of rules and regulations. (Art. IV, sec. 8.) In the face of the variety of authority, powers and duties of administrative agencies, it would

be manifestly unwise to proceed beyond that and generalize in the Constitution about the inner workings of agencies in the abstract.

III. Judicial Review of Administrative Action

Nothing in the State Constitution suggests a right of appeal from determinations of administrative agencies. *Cf. McGann* v *La Brecque Co.,* 91 N. J. Eq. 307, 311. The statutes under which administrative agencies are established generally provide for review by the Supreme Court or, in a few instances, the Court of Common Pleas. While a statute may not in terms make any provision for a review of the proceedings of a particular administrative body, it does not follow that such proceedings are beyond investigation in the courts. The Supreme Court has common law jurisdiction to review by writ of *certiorari* the proceedings of all statutory tribunals. *Public Service Co.* v *Board of Public Utility Commissioners,* 84 N. J. L. 463, affirmed 87 N. J. L. 581. In view of the fact that the Supreme Court is a constitutional court this jurisdiction cannot be impaired by the Legislature. *Traphagen* v *West Hoboken,* 39 N. J. L. 232, affirmed 40 N. J .L. 193. Issuance of the writ of *certiorari,* however, lies within the discretion of the court and where application for the writ is denied there is no further appeal. *Daniel B. Frazier Co.* v *Township of Long Branch,* 110 N. J. L. 221.

At common law, generally, the court in reviewing proceedings of special statutory tribunals would review only questions of law and not determinations of facts. *Freeholders of Union County* v *Freeholders of Essex County,* 43 N. J. L. 391. Since administrative agencies are created to determine matters of fact, need was felt for a review of facts as well as law. The Legislature under its power reasonably to regulate the use of the writ of *certiorari,* enacted section 11 of the Certiorari Act (now R. S. 2:81-8) which in broad terms provides for review of questions of fact and law on *certiorari* to review determinations of any statutory tribunal. The courts have consistently held that under that statutory provision the Supreme Court will review facts as well as law, but in application we find a considerable difference in the decisions with respect to the scope of such review.

It has been held that under this statute it is the duty of the Supreme Court to make *independent* findings of facts and law. *State of New Jersey* v *State Board of Tax Appeals,* 134 N. J. L. 34. In such event the court must make specific findings on all the factual issues involved. *Clifton* v *State Board of Tax Appeals,* 133 N. J. L. 379. If the opinion of the Supreme Court does not indicate that the court has determined disputed questions of fact, the Court of Errors and Appeals will remand the case to the Supreme Court with instructions to weigh the evidence and render such decision as it thinks

proper according to its view of the evidence. *Gibbs* v *State Board of Tax Appeals,* 101 N.J.L. 371, 374; *Rubeo* v *Arthur McMullen Co.,* 117 N. J. L. 574, 577. The Court of Errors and Appeals may itself determine disputed questions of fact when the Supreme Court has failed to do so, but it will usually remand the case to the Supreme Court for its finding on the facts. *Freudenreich* v *Mayor, &c., Fairview,* 114 N. J. L. 290, 294.

In some cases, however, the Supreme Court has not undertaken to make independent findings of fact but has contented itself with examination of the record to ascertain whether there is evidence to sustain the finding of the statutory tribunal. *Woodcliff Lake* v *State Board of Tax Appeals,* 14 N. J. Mis. R. 132, affirmed 117 N. J. L. 114. Where the Legislature, in providing for the establishment of an administrative agency, has declared that the findings of the administrative tribunal are to be conclusive, or where the legislation reveals a design to make the findings conclusive, the Supreme Court will not weigh the evidence and exercise its independent judgment upon the facts. *National Dairy, &c., Co.* v *Milk Control Board,* 133 N. J. L. 491, 494. Any doubt as to the legislative purpose in this respect will be resolved in favor of allowing the court to weigh the evidence and resolve the issues of fact. *Atlantic City, &c., Co.* v *Board of Public Utility Commissioners,* 128 N. J. L. 359, 364; affirmed 129 N. J. L. 401. In general, it may be said that in practice the Supreme Court does not upset an administrative determination of fact unless there is no substantial evidence to support it.

While review by writ of *certiorari* is the most important means of judicial examination of administrative determinations, another mode of review is by writ of *mandamus* which issues out of the Supreme Court to compel an administrative official to perform a ministerial act when the facts are undisputed and the legal right of the litigant is clear. *Cooper* v *State Board of Veterinary Medical Examiners,* 114 N. J. L. 10; affirmed 115 N. J. L. 115. This writ is also issued in the discretion of the Supreme Court. *Sagarese* v *Holland,* 116 N. J. L. 137. Also, the Court of Chancery will issue injunctive relief when an administrative official is pursuing an unauthorized course of action, which threatens irreparable injury. *Berdan* v *Passaic Valley Sewerage Commission,* 82 N. J. Eq. 235, affirmed 83 N. J. Eq. 340.

Since the Legislature may endow an administrative agency with power to make findings of fact that are conclusive, provided the exercise of such authority is controlled by requirements of procedural due process (*National Dairy, &c., Co.* v *Milk Control Board,* 133 N. J. L. 491, 494), it will be seen that the scope of judicial review of facts may be limited to the question of whether there is any substantial evidence to support the findings. This has led to

suggestions that a complete review of factual findings be provided by some other method. In only a few instances, such as in the workmen's compensation practice, is an appeal *de novo* provided. A suggestion for the establishment of an independent administrative tribunal with jurisdiction to review action of all administrative agencies which exercise state-wide jurisdiction has been urged. See Jacobs, N. L. and Davis, N., "A Report on the State Administrative Agency in New Jersey" (1938). This was in line with the proposal of the Special Committee on Administrative Law of the American Bar Association. In that committee's 1936 report (61 A. B. A. Reports 720), it was recommended that there be a general "legislative" court to provide for a complete appeal on the facts of all *quasi*-judicial decisions. In its 1937 recommendations the committee abandoned the idea of a general court and suggested instead that there be set up in each department an appeal board to review *quasi*-judicial decisions made in the department. The recently enacted federal Administrative Procedure Act, which supplied new clarity and needed emphasis on the subject of judicial review of the determinations of federal agencies, has, for the time being, silenced criticisms of the scope of judicial review of federal administrative action.

It will be noted that proposals have been for statutory rather than constitutional reform. There are many cases where an administrative review would be useful and appropriate. On the other hand there are cases, such as those involving *quasi*-legislative or summary action, or certain cases of action before a board based upon a complete trial, where a review, in addition to the review provided by the courts, would be inappropriate. This problem, it has been urged, would best be dealt with by statute.

A constitutional guarantee of court review of facts as well as of law, thereby precluding statutory finality to facts as found by certain agencies, has been the most frequently suggested proposal to broaden judicial review of administrative agencies. In the New York Constitutional Convention of 1938, over the very strong protest of a distinguished minority, the following provision was proposed as Article VI, section 27:

> "Whoever is aggrieved by a decision, order or other determination made in the exercise of a judicial or quasi-judicial function by any administrative officer, board, commission, department, agency, tribunal or other body * * * shall be entitled to a judicial review thereof, upon both the law and the facts, in a proceeding in the supreme court, which, if it shall find any such decision, order or other determination to be contrary to the evidence, or not supported by the facts, may direct a reconsideration or a new hearing of the matter. * * *"

The New York voters singled out this provision for defeat. Recognizing that freedom should be left to the Legislature and the

courts to distinguish between agencies, types of actions and situations, the 1942 and the 1944 proposed revisions of the New Jersey Constitution likewise did not undertake to freeze into the Constitution a general provision covering judicial review of facts. There should be ample room for necessary changes and full allowance for different needs of different agencies.

Conclusion

Various states, particularly North Dakota, Wisconsin, North Carolina, Ohio and California, have enacted legislation to bring about organizational and procedural improvements in their administrative systems. The enactment of the federal Administrative Procedure Act has begun a movement in the states for remedial legislation in the field of administrative law, and it will undoubtedly be the forerunner of extensive studies of state administrative processes and legislation to effect fair administrative procedures, either for all or some of the state agencies. Study of the problems as they apply to each particular agency in the State is essential, and even the basic principles involving assurance of proper publicity for administrative rules that affect the public, guarantees of fundamental fairness in administrative hearings and assurances of proper scope of judicial review of administrative errors, should be the subject of legislation upon the basis of extensive investigation and comprehensive reports on our state administrative agencies.

BIBLIOGRAPHY

JACOBS, N. L. and DAVIS, N. A Report on the State Administrative Agency in New Jersey (1938). Reprinted in Eighth Report of the Judicial Council of New Jersey to the Governor, pp. 6-31. This is a concise but comprehensive report, well documented, pointing up abuses in administrative procedure and recommending a state administrative court.

VOGEL, C. C. Study of State Administrative Agencies in New Jersey (1941). This is a 283-page volume which includes separate studies of seven of the more important agencies.

References to the most significant source materials on administrative law are contained in the notes to the foregoing studies. The following reports, treatises and articles are among the most interesting published since 1941:

Attorney General's Committee on Administrative Procedure. Final Report, 1941.

BROWN, R. A. "Fact and Law in Judicial Review," 56 Harv. L. R. 899 (1943).

California. Report of the Judicial Council of California on Administrative Agencies Survey, 1944.

DICKINSON, J. "Administrative Management, Administrative Regulation and the Judicial Process," 89 U. of Pa. L. Rev. 1052 (1941).

DICKINSON, J. "Judicial Review of Administrative Determination; A Summary and Evaluation," 25 Minn. L. Rev. 1052 (1941).

GELLHORN, WALTER. Federal Administrative Proceedings, 1941.

MERRILL, M. H. "Judicial Review of Administrative Proceedings, A Functional Prospectus," 23 Neb. L. Rev. 56 (1944).

New York. Report of Administrative Adjudication in the State of New York, 1942. (The "Benjamin Report").

VOGELER, A. R. "Declaratory Rulings in Administrative Agencies," 31 Ky. L. J. 20 (1942).

VON BAUER, F. T. Federal Administrative Law, Chicago, 1942.

STATE ADMINISTRATIVE ORGANIZATION AND REORGANIZATION[1]

by

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I. NEW JERSEY HISTORY

A. No provision for state administrative organization is contained in either the Constitution of 1776 or the Constitution of 1844.

B. Administrative Officers Given Constitutional Status.

1. *The Constitution of 1776:* Constitutional status is given to three administrative officers:

> ". . . the *attorney-general* and *provincial secretary* shall continue in office for five years, and the *provincial treasurer* shall continue in office for one year . . . they shall be severally *appointed by the council* (legislative) *and assembly* (general) in manner aforesaid, *and commissioned by the governor,* or in his absence, by the vice president of the council; provided always, that the *said officers* severally *shall be capable of being re-appointed* at the end of the terms severally before limited; and that any of the *said officers shall be liable to be dismissed, when adjudged guilty of misbehavior by the council, on an impeachment of the assembly.*" (*Constitution of 1776, Section XII.* Italics supplied and parenthesis added.)

2. *The Constitution of 1844:* The present Constitution gives constitutional status to five administrative officers:[2]

> "The *State Treasurer* and *comptroller* shall be *appointed by the Senate and General Assembly in* Joint meeting. They shall *hold their offices for three years,* and until their successors shall be qualified into office." (*Art. VII, sec. II, par. 2.* Italics supplied.)
>
> "The *Attorney General, . . . Secretary of State, and the Keeper of the State Prison,* shall be *nominated by the Governor and appointed by him with the advice and consent of the Senate.* They shall *hold their offices for five years.*" (*Art. VII, sec. II, par. 3.* Italics supplied.)

C. The Executive Power over State Administration.

1. *Under the Constitution of 1776:*

> ". . . The governor, or, in his absence, the vice president of the council (legislative), shall have the supreme executive power, . . . (*Constitution of 1776, Section VIII.* Parenthesis added.)

However:

(a) The Governor was appointed by the Legislature (Section VII), was president of the Legislative Council and had "a casting vote in their proceedings." (Section VII)

(b) The Legislature appointed the three administrative officers given constitutional status (see Item B-1, *supra*), "and

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[1] Exclusive of the State Militia.

[2] Exclusive of the militia officers—*i.e.,* the Adjutant-General and Quartermaster-General (Constitution of 1844, Art. VII, sec. 1).

did assume from time to time the appointment of other officers: *e.g.,* the keeper and inspectors of the state prison, surrogates after 1822, and county prosecutors after 1823." [3]

2. *Under the Constitution of 1844:*

"The Executive power shall be vested in a Governor." (*Constitution of 1844, Art. V, par. 1*)

However:

(a) *Creation of Administrative Agencies:*

The Constitution leaves the Legislature free to create as many state administrative agencies as it deems advisable. The general pattern during the past century has been the creation of new and independent administrative agencies for the performance of new functions undertaken by the State, rather than the allocation of these functions to existing agencies. Partial consolidation has been effected on a few occasions, after exhaustive surveys by legislative and other committees.

Nevertheless, over 70 independent state administrative agencies exist today through legislative action.[4]

(b) *Appointing Power:*

(1) "Thus the power of appointment was expressly distributed by the constitution itself among all the departments of the government . . ." (69 N.J.L. 291, at p. 297 (1903), Court of Errors and Appeals.)

(2) "All other officers, *whose appointments are not otherwise provided for by law,* shall be nominated by the Governor and appointed by him with the advice and consent of the Senate; and shall hold their offices for the time prescribed by law." (*Constitution of 1844,* Art. VII, sec. II, par. 8. Italics supplied.)

(3) No coherent pattern is provided for the appointment of officers and members of governing bodies of administrative agencies created by legislative acts; the methods currently provided by law being: by the Governor alone; by the Governor with the advice, consent, approval or confirmation of the Senate; by the Governor from lists furnished by designated organizations; and by the General Assembly and Senate in Joint Meeting.

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[3] Introduction to the *Proceedings of the New Jersey State Constitutional Convention of 1844,* by John E. Bebout.

[4] In 1943 there were in existence 102 independent state agencies (exclusive of those provided for in the Constitution), *i.e.,* 42 boards, 47 commissions, 3 councils, 4 authorities, and 6 with miscellaneous designations. Recommendations of the New Jersey Commission on State Administrative Reorganization adopted by the Legislature from 1944 to 1947 provided for the consolidation and reorganization of 24 of the state administrative agencies within 5 major departments . . . See Reports of N. J. Commission on State Administrative Reorganization. In addition, the recommendations of the Commission on Post-War Economic Welfare, adopted by the Legislature in 1944, provided for the consolidation and reorganization of 7 administrative agencies within a State Department of Economic Development.

(c) *Terms of Office:*

(1) The terms of the three constitutional administrative officers appointed by the Governor are longer than the Governor's term of office (see Item B-2, *supra*). Since the Governor may not succeed himself, the terms of these officers necessarily extend into or beyond the next Governor's term.

(2) The terms of office of most statutory officers and members of governing bodies of state administrative agencies overlap the Governor's term of office.

(d) *Removal Power:*

The Constitution makes no provision for the exercise by the Governor of a power to remove appointed officers and members of governing bodies of state administrative agencies.

The Governor's power to remove statutory appointees is dependent on legislative action.

In most cases *no* such power is afforded the Governor.

(e) *Supervisory Power:*

The present Constitution does not:

(1) Vest in the Governor general power to supervise or investigate the conduct of the administrative agencies of the State; or

(2) Grant the Governor power to require information in writing from heads of administrative agencies.

By act of the Legislature the Governor has been given authority "to examine and investigate the management by any State officer of the affairs of any department, board, bureau or commission of the State and to examine and investigate the management and affairs of any department, board, bureau or commission of the State." [5]

3. *Comments on the Executive Power over Administrative Agencies*

(a) *By Governors of New Jersey*[6]

(1) *Former Governor Moore:*

"I am still of the opinion that something should be done at this time about the reorganization of our State administrative machinery. It is needlessly complicated, and neither the Governor nor the Legislature can exercise such prompt and adequate control over many State departments and agencies as is necessary to insure adherence to any fixed policy. I shall not try to schedule now definite savings that should result from a thorough reorganization of the State government. They will be substantial and we must save money. Aside from this

[5] P.L. 1941, c. 16, as amended by P.L. 1941, c. 315.
[6] See also: Message of Governor Green (1889); Annual Message of Governor Wilson (1912); and Inaugural Message of Governor Edge (1917).

there will be tremendous gains in improved administration." (First Annual Message to the Legislature, January 10, 1933.)

(2) *Former Governor Edison:*

"We have more than four-score independent, or semi-independent State agencies, some with their own incomes and budgets, some which are little governments on their own.

No one, therefore, can say just what the government of New Jersey costs. No one can get a complete picture of what is going on.

The Governor should be given effective control over this administrative conglomeration. The eighty agencies should be consolidated into no more than twenty and a Governor's cabinet drawn from their executives." (Inaugural Message to the Legislature, January 21, 1941.)

(3) *Former Governor Edge:*

". . . The Governor must be the actual head of the great business of New Jersey if he is to be held responsible for the results.

Several department heads under the present hodge podge exercise greater authority and influence than the Governor. In some cases they do not even report to the Governor and are responsible only to themselves and indirectly to the Legislature. This conflicting system cannot be successfully defended. . . .

. . . I fully agree that the present situation, presenting over one hundred governmental boards, bureaus, commissions and departments is absolutely unsound and cannot produce the best results." (Inaugural Message to the Legislature, January 18, 1944.)

(4) *Governor Driscoll:*

"Being of the executive branch, I reminded my listeners of the fact that the Governor in this State, a rumor to the contrary notwithstanding, is not the sole Chief Executive of the State. He is just one of the chief executives of the State, because there are many heads of departments, appointed by boards, councils, and former Governors, who exercised authority during the Governor's term, and frequently exercised it entirely apart from the authority exercised by the Governor. I say this, not in criticism of the men with whom I am presently associated—merely in criticism of an antiquated system that, instead of providing for a centralized and responsible authority, provides for divided responsibility and divided authority." (From address given before The Newark Kiwanis Club, May 15, 1947.)

(b) *From Legislative Surveys and Reports:*[7]

(1) From *Report of the Joint Legislative Survey Committee,* 1925 (Bright Committee), pp. 33 and 34:

". . . The appointive power of the Governor, which ordinarily implies responsibility for the subsequent actions of his department heads, is in fact not nearly what it might seem to be. He makes thirteen appointments to departments headed by a single official; all but one—the health officer of Perth Amboy—must be approved by the Senate. He appoints the members of many commissions but here again Senate confirmation is required for positions of any importance. Furthermore, the membership of most of the commissions is large and the terms of the members generally overlap, so that a Governor in the course of a three-year term rarely becomes fully responsible for their activities, since he has not appointed a majority of the board.

In some cases, the boards are ex-officio or entirely outside of the Governor's control as far as appointments are concerned. . . .

It is impossible for the Governor to keep in personal touch with the affairs of 78 administrative units and 18 special commissions. Most

[7] See also: *Report of Reconstruction Commission to Governor Alfred E. Smith on Retrenchment and Reorganization in the New York State Government,* October 10, 1919.

of them are required to submit a report to the Governor and the Legislature. Even if they reported fully upon their activities—which a number do not—it is evident that the Governor could not take the time to analyze their affairs in detail. The Governor is supposed to be fully advised concerning all of the State's operations and to exercise definite control over the entire State government. No such supervision is possible as a matter of fact under the present organization plan."

(2) From *Report to the Governor and the Legislature of New Jersey of the State Audit and Finance Commission,* 1930 (Abell Commission), p. 6:

". . . Reorganization of the government should be built around the Governor. In him is vested the executive power. On him is imposed the duty to execute the laws. The power and the duty go hand in hand. The Constitution itself contemplates centralization of power in the Governor. The power is given in order that he may discharge the duty.

Our objective, therefore, is to make the exercise of executive power most effective. This requires that every administrative activity must be articulated, not only with each other but, primarily, to centralized executive control. The Governor should have the ways and means to carry into practical operation the entrusted reservoir of power."

(c) *From Other Documents:*[8]

(1) From *The New Jersey Constitution—A Barrier to Governmental Efficiency and Economy,* C. R. Erdman, Jr., (1934), p. 8:

"While the constitution happily does not provide for the popular election of any other executive officials, it is responsible for placing a number of state officers beyond the effective control of the governor. The Legislature in joint session elects the comptroller, state treasurer, auditor, commissioner of motor vehicles, commissioner of alcoholic beverages, etc. And even where the governor is given the power of appointment, as in the case of the attorney-general, the term is not coextensive with that of the chief executive. Consequently, no governor has the opportunity of effectively controlling many of the important executive positions which are popularly supposed to be a part of the governor's office. In short, New Jersey cannot obtain the best type of administrative organization without constitutional change."

(2) From *Executive Memorandum C,* Princeton Surveys, January 16, 1942:

"As a practical matter, the extent of the Governor's control of the State administration will depend largely upon the extent of his power to appoint and remove. Power to appoint gives him power to determine the broad lines of administrative policy through the selection of the person who will make policy decisions. Power to remove affords the effective sanction for his continuing day-to-day control of the departments . . .

It needs no demonstration that the very number and disorganization of administrative offices in New Jersey may alone defy and defeat executive control. This situation thus becomes relevant to any

[8] See also: *Record of Proceedings Before the Joint Committee of the New Jersey Legislature Constituted Under Senate Concurrent Resolution No. 19* (1942), pp. 203-270; *Speeches on the Constitution of New Jersey,* by former Governor Charles Edison (1943), pp. 20-23; *Documents and Readings in American Government,* by Mathews and Berdahl (1930)—chapter XXIII, "State Administration . . . Administrative Reorganization"; *Report on a Survey of the Organization and Administration of the State Government of New Jersey* (National Institute of Public Administration, 1930); *Report on a Survey of Administration and Expenditures of the State Government of New Jersey* (School of Public and International Affairs, Princeton University, 1932); D. C. Cline, *Executive Control Over State Expenditures in New Jersey,* (1934).

consideration of an improved constitutional basis for the executive to act as administrative head."

4. *Some reasons for and against giving the Governor wide powers to appoint and remove state officials:*

(a) *As advanced by delegates of the New York Constitutional Convention of 1915* (citations from the Revised Record of the 1915 Convention):[9]

For	*Against*
There should be no divided authority or responsibility in executing and administering the laws of the state. Therefore, the governor should have the power to appoint or remove at pleasure. (Tanner, *vol. III, p. 3334*)	One fundamental rule for statute making is to consider not what a good man will do but what a bad man may do. (Brackett, *vol. IV, p. 3340*)
The people should know whom to hold responsible for maladministration of the government; they should not be distracted by a number of elective executive officials, but they should be able to concentrate and devote attention to the election and defeat of a few officials. (Alfred E. Smith, *vol. III, p. 3353*)	The voters prefer to elect all state officers. (Letters to Mr. Green, *vol. IV, p. 3410*)
If the governor were to have wide powers of appointment, efficiency would be increased. It is important in constitutional government to unite power with responsibility. A person should be responsible for what ought to be done, rewarded if he does it, punished if he doesn't, and he shall have power to do it. (Wickersham, *vol. IV, p. 3372*)	Every appointive officer instead of looking to efficiency keeps his eye on the governor. (Brackett, *vol. IV, p. 3437*)
The closer the state politics is run similar to large business institutions, the better it will be for the taxpayers. No large business has ever been a success without a head. (Letters to Mr. Green, *vol. IV, p. 3412*)	The people ought to be able to fill by election those offices which have large patronage. (Quigg, *vol. IV, p. 3371*)

(b) *Other Reasons Advanced:*

(1) By R. S. Field, on June 12, 1844, at the Constitutional Convention of 1844:[10]

"I am in favor of giving the appointing power to the Governor because it is an *Executive* power—the *great* Executive power. If this is not an Executive, I beg leave to ask what is an Executive power? You may call your Governor the Executive, but if you deprive him of the appointing power, he is the Executive only in name. There are two great departments in government, the Legislature and the Executive. The Legislature make the laws and the Executive is to see that they are carried into execution. But he cannot do this himself. It must be done through the instrumentality of others. Then he must appoint those who are to be the instruments for carrying the laws into execution, or else he is not the Executive. But will you allow the *Legislature* to appoint officers to carry into effect, *their own laws*? If you do, you create a despotism. You may tell us if you please, that the Legislature is the representative of the people, but give them ex-

[9] *New York State Constitutional Convention Committee Report*, 1938, vol. VIII, "Problems Relating to Executive Administration and Powers."
[10] *Proceedings of the New Jersey Constitutional Convention of 1844*, p. 357.

ecutive as well as legislative power and they constitute a tyrannical government, call it what you will."

(2) By Former Governor Edison, on September 17, 1943:[11]

"The governor has no cabinet, as the President of the United States has, and as many governors have. Rather, the men who head the various departments and who would normally make up his cabinet are persons appointed by earlier governors, elected by the Legislature, elected by commissions or boards, or even elected by non-governmental societies or associations. They are not responsible to the governor, and he can discover only at their pleasure what is going on in their departments. They are often political opponents of his. Some of them count that day lost when they cannot find some way to use the powers of their offices to embarrass him and to bring his administration into disrepute."

5. *Comments on, and recommendations for, reorganization of administrative agencies:*

(a) By the *Joint Legislative Survey Committee of New Jersey* (1925) . . . Bright Committee . . .[12]

"The present organization of the executive branch of the State government includes 78 departments, boards and commissions, in addition to which there are 18 special or temporary boards—a total of 96. Neither logic nor consistency is apparent in the present scheme of things. The commission form of organization has been overdone; the Governor can not possibly control so complex a structure nor exercise the authority expected of him; the blame for waste and inefficiency cannot be definitely placed.

Simplicity of organization may be expected to reduce the cost of operating the State government. Centralization of control is recommended. The number of independent executive agencies should be reduced from 78 to 14 through the establishment of large consolidated departments headed as far as possible by single executives rather than by commissions. The establishment of major controlling departments will not effect the internal organization or activities of most of the existing units to any great extent; it will effect marked economies through a simplification of overhead administrative machinery. It will provide adequate executive control. Nine boards and commissions should be abolished and others tied in with the major departments proposed. The plan should be put into effect by enacting a general administrative code."

(b) *Report on a Survey of the Organization and Administration of the State Government of New Jersey Made for the Governor and the State Audit and Finance Commission:*[13]

"It is proposed to establish thirteen major departments which will carry on practically all of the administrative work of the New Jersey State government. In every case, these departments will be administered by single heads responsible to the Governor. Under this type of organization, the Governor will be placed in the position contemplated by Article V, Section 1, of the Constitution; that is, he will become in fact as well as in theory the chief executive of the State. Boards will be retained where there are quasi-legislative, quasi-judicial or advisory functions in connection with the departments.

In addition to the thirteen departments just noted, it is proposed to set up a department of audit headed by the Comptroller. This depart-

[11] *Speeches on the Constitution of New Jersey*, by Governor Charles Edison, (1943), p. 22.
[12] From *Reports of the Joint Legislative Survey Committee of New Jersey* (1925), p. 23.
[13] By The National Institute of Public Administration (1930), p. 12.

ment will serve as the independent auditing office of the State government, since its head will continue to be appointed by the Legislature and will therefore not be controlled by the Governor or any of the administrative departments."

II. Constitutional Provisions in Other States

A. For a table of state administrative agencies and officers given constitutional status in other state constitutions, see Constitutional Revision Projet, Louisiana State University; *Constitutional Problems, Monograph 23: The Executive; Constitutional Provisions for Administrative Offices and Agencies: The Missouri Manual.*

B. The Governor's Power to Appoint Administrative Officers:

1. *In cases not otherwise provided for by the constitution or by law:*

Colorado	Maryland	North Carolina
Idaho	Montana	Utah
Illinois	Nebraska	Vermont
Maine	New Mexico	West Virginia

2. *If provided by the constitution or by law:*

Delaware	Minnesota
Louisiana	Pennsylvania

3. *In 44 states the governor's appointing power is limited by provision for the popular election of some state officers:*

Alabama	Louisiana	Oklahoma
Arizona	Maryland	Oregon
Arkansas	Massachusetts	Pennsylvania
California	Michigan	Rhode Island
Colorado	Minnesota	South Carolina
Connecticut	Mississippi	South Dakota
Delaware	Missouri	Texas
Florida	Montana	Utah
Georgia	Nebraska	Vermont
Idaho	Nevada	Virginia
Illinois	New Mexico	Washington
Indiana	New York	West Virginia
Iowa	North Carolina	Wisconsin
Kansas	North Dakota	Wyoming
Kentucky	Ohio	

4. *In four states the governor's appointing power is limited by provision for election by the legislature of some state administrative officers:*

Maine	Tennessee
New Hampshire	Virginia

C. The Governor's Power to Remove or Suspend:

In 14 state constitutions provision is made for the exercise by the governor of a power to remove or suspend from office:

Colorado	Nebraska
Delaware	New Mexico
Florida	New York
Illinois	Pennsylvania
Maryland	South Carolina
Mississippi	Virginia
Missouri	West Virginia

In Missouri, "all appointive officers may be removed by the Governor." The appointees of the Governor may be *removed for cause* in Colorado, Illinois, Maryland, Nebraska, New Mexico and West Virginia.

In Florida, the Governor may *suspend for malfeasance, misfeasance, neglect of duty in office, commission of felony, drunkenness or incompetency,* and, with consent of the Senate, remove all non-impeachable officers for any of such causes.

In Pennsylvania, the Governor may remove the Secretary of the Commonwealth and the Attorney General *at pleasure.*

In Delaware, the Secretary of State holds office *during the pleasure* of the Governor. Also, the Governor may *for any reasonable cause* remove any officer, except the Lieutenant-Governor and members of the General Assembly, *upon the address of two-thirds of all the members elected to each House of the General Assembly.*

In Virginia, the Governor may, during recess of the General Assembly, *suspend* from office any executive officer at the seat of the government, except the Lieutenant-Governor, *for misbehavior, incapacity, neglect of official duty, or acts performed without due authority of law.* The Governor is required to report the fact of such suspension and the cause therefor to the General Assembly at the beginning of its next session. The General Assembly determines whether the officer suspended shall be restored or finally removed.

In Mississippi and South Carolina the Governor may *suspend financial officers* . . . defaulting state and county treasurers and defaulting tax collectors in Mississippi; and in South Carolina, any officer having custody of public or trust funds who is charged by indictment with embezzlement or misappropriation of such funds.

For removal provisions in the New York Constitution, see subdivision E, *infra.*

D. The Governor's Power to Require Information in Writing from Heads of Executive Departments upon Subjects Relating to the Duties of Their Offices:

1. *Thirty-three states authorize the governor to require such information:*

Alabama	Indiana	Nevada
Arizona	Iowa	North Carolina
Arkansas	Kansas	Ohio
California	Kentucky	Oregon
Colorado	Louisiana	Pennsylvania
Connecticut	Maine	South Carolina
Delaware	Michigan	Tennessee
Florida	Minnesota	Utah
Georgia	Mississippi	Virginia
Idaho	Montana	Washington
Illinois	Nebraska	West Virginia

2. *Seven of these states require such information be given under oath, if the governor so directs:*

Alabama	Montana
Colorado	Nebraska
Delaware	West Virginia
Idaho	

E. The New York Constitution: [14]

1. *Administrative Reorganization:*

(a) Nineteen civil departments in the state government are provided for in Art. V, sec. 2. Except for those temporary in character and special in purpose, all administrative functions may be allocated only to one of such civil departments.[15]

(b) The legislature may, subject to the limitations contained in the Constitution, "from time to time assign by law new powers and functions to departments, officers, boards or commissions, and increase, modify or diminish their powers and functions." (Art. V, sec. 3)

(c) No new department may be created. (Art. V, sec. 3)

(d) The legislature may create temporary commissions for special purposes and reduce the number of departments by consolidation or otherwise. (Art. V, sec. 3)

2. *Appointing and Removal Power of the Governor:*

The head of the department of audit and control is the comptroller (elected by the people). The head of the department of law is the attorney-general (elected by the people). The head of the department of education is the Regents of the University of the State of New York who appoints (and at pleasure removes) a commissioner of education to be the chief administrative officer

[14] See attached Appendix.
[15] *People* v *Tremaine*, 252 N. Y. 27, at p. 51; 168 N. E. 817, at p. 825 (Court of Appeals—in construing a similar provision as it existed in the Constitution of 1926).

of the department. The head of the department of agriculture and markets is appointed "in a manner to be prescribed by law." (Art. V, sec. 4)

". . . Except as otherwise provided in this constitution, the heads of all other departments, and the members of all boards and commissions, except 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." (*Art. V, sec. 4*)

F. Model State Constitution: [16]

"Section 507. *Administrative Departments.* There shall be such administrative departments, not to exceed twenty in number, as may be established by law, with such powers and duties as may be prescribed by law. Subject to the limitations contained in this constitution, the legislature may from time to time assign by law new powers and functions to departments, offices and agencies, and it may increase, modify or diminish the powers and functions of such departments, offices, or agencies. All new powers or functions shall be assigned to departments, offices or agencies in such manner as will tend to maintain an orderly arrangement in the administrative pattern of the state government. The legislature may create temporary commissions for special purposes or reduce the number of departments by consolidation or otherwise.

The heads of all administrative departments shall be appointed by and may be removed by the governor. All other officers in the administrative service of the state shall be appointed by the governor or by the heads of administrative departments, as provided by article IX [Civil Service] of this constitution and by supporting legislation. No executive order governing the work of the state or the administration of one or more departments, offices and agencies, shall become effective until published as provided by law."

III. Recommendations for Change in Constitutional Provisions

A. 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:

1. *Appointing Power:*

(a) Provides for the nomination and appointment of the heads of all administrative departments and the members of all boards, councils and commissions, except the State Treasurer and Comptroller, by the Governor with the advice and consent of the Senate. (*Proposed Constitution, Art. IV, sec. III, par. 4*)

(b) Provides that the State Treasurer and Comptroller shall be appointed by and be responsible to the Legislature. (*Proposed Constitution, Art. IV, sec. III, pars. 1 and 6*)

2. *Removal Power:*

(a) Provides that 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. (*Proposed Constitution, Art. IV, sec. III, par. 5*)

[16] Prepared by the Committee on State Government of the National Municipal League, Partial Revision of 1946.

(b) Authorizes the Governor, on complaint submitted to him by 20 or more citizens, to investigate the conduct 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 such officer, after notice and opportunity to be heard if, in his opinion, the investigation discloses misfeasance or malfeasance in office. (*Proposed Constitution, Art. IV, sec. II, par. 6*)

3. *Power to Require Written Information:*

". . . 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." (*Proposed Constitution, Art. IV, sec. III, par. 6*)

4. *Administrative Organization:*

(a) Provides for the allocation, from time to time, by the Governor by executive order, of all executive and administrative offices, agencies and instrumentalities of the State Government among and within nine named major departments. (*Proposed Constitution, Art. IV, sec. III, par. 1*)

(b) Provides for the allocation from time to time, by the Governor by executive order, of executive and administrative functions, powers and duties, among and within the nine major departments, to promote efficiency and economy in the operation of the State Government; also, to group, coordinate and consolidate the offices, agencies and instrumentalities according to major purposes. (*Proposed Constitution, Art. IV, sec. III, par. 2*)

(c) Any allocation or reallocation of functions, powers and duties is made subject to veto by the Legislature within 30 days. (*Proposed Constitution, Art. IV, sec. III, par. 3*)

(d) Each department is to have a single administrative head, unless otherwise provided by law. (*Proposed Constitution, Art. IV, sec. III, par. 4*)

5. *Comment by the Commission on Revision:*

In the "Summary and Explanation" prefacing its proposed draft of a revised Constitution, the Commission on Revision had this to say regarding Article IV:[17]

"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.

[17] *Report of the Commission on Revision of the New Jersey Constitution*, 1942, pp. 19-21.

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-ordinated conduct of governmental business. The extent of his accountability depends upon his power to obtain from all his subordinates an adequate performance of their duties. This in turn means 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 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 . . ."

6. *Hearings before the Joint Legislative Commission Constituted under Senate Concurrent Resolution No. 19, 1942:*

(a) *Proponents:* Their arguments reflected the observations made in former years by Governors, legislative surveys and reports, and other authorities (*supra*), as well as those generally stated in the Commission Report just quoted. Highway Commissioner Spencer Miller said:[18]

". . . In view of the changes in society and the resulting changes in government which have occurred since that time [1844, when the Constitution was framed], there is no Article which is more in need of reconsideration in the light of present conditions [than the Executive Article, Article V in the Constitution of 1844]. . . .

The results of the traditional neglect of the executive office are apparent on every hand. A modern chief executive in a large scale enterprise is expected to concern himself with matters of general policy and to supervise his organization through a small number of administrators directly responsible to him. Details are left to these chief assistants and their subordinates. In the New Jersey Government the order of things is reversed. The Governor is required to appoint and deal with a whole host of minor functionaries, while most of his principal assistants are carefully insulated against both his legal and his moral influence. A new Governor discovers that the administrative part of State Government, of which he is supposedly the general manager, is divided among something like a hundred independent, often competing agencies. Many of these departments are headed by boards, the numerous members of which it would be utterly impossible for the Governor to become acquainted with during his three-year term. The Governor finds that his duties with respect to the several departments are bewildering in their number and dissimilarity. Furthermore, many of his duties are of such an inferior or inconsequential character that they have no value whatever as instruments of executive power. . . .

[The proposed Executive Article] gives the Governor the power to appoint and dismiss his own chief assistants, and enables him after investigation and hearing to dismiss any other administrative officer found faithless to his trust. This, substantially, follows the precedent set by the United States Constitution. The Governor cannot be held responsible for administration unless he can enforce responsibility down the line through assistants in whom he has confidence. . . .

The time limit on confirmation and the prohibition against further joint meeting appointments except for comptroller and treasurer should go a long way toward making both the Governor and the Legislature more responsible servants of the public interest. . . . Thomas Jefferson said . . .:

'Nomination to office is an executive function. To give it to the Legislature, as we do, is a violation of the principle of the separation of powers. It swerves the members from correctness, by temptations to intrigue for office themselves, and to a corrupt barter of votes; and destroys responsibility by dividing it among the multitude. . . .'

In the second place, the proposed Constitution reduces the number of administrative departments and makes the Governor primarily responsible for their internal organization and for the distribution of powers among them. No chief executive can deal effectively with something like a hundred different agencies. The proposed Constitution would reduce the number to nine. Perhaps this number is too small. . . . The point is that the number should be small enough so that the heads of the departments can sit together with the Governor in intimate conference, for consideration of common problems and co-ordination of effort. . . .

In the third place, the proposed Constitution would diminish the non-

[18] *Record of Proceedings before the Joint Legislative Committee . . .* 1942, pp. 205-9.

essential political and ministerial duties of the Governor. The reduction in the number of departments and the consequent reduction in the number of separate appointments to be made go in this direction. . . ."

(b) *Opponents:* Those who opposed or would radically modify the Commission's proposal, made essentially these arguments:

(1) There is no need to provide for administrative reorganization by constitution; it can be done by statute.[19]

(2) The proposal would freeze all present and future activities of the State Government into nine departments. This takes no account of changing conditions. If any provision were made, it should be that there be such departments as might from time to time be established by law.[20] Others argued for the setting up of specific departments: a separate Department of Education (the draft provided for a Department of Education and Civil Service), a separate Civil Service Department, a Consumers' Department, Recreation Department, Motor Vehicle Department, Banking and Insurance Department, separate Departments of Taxation and of Finance (combined in the draft). One proposal was that the recommended Department of Agriculture be taken out of the Article; it is presently "a private, independent corporation," and that was satisfactory to the farm group.[21]

(3) Empowering the Governor to allocate all administrative and executive offices and agencies among the nine named departments was giving him "a blank check, which he could fill in as he pleased in this regard." The veto power given the Legislature on the Governor's allocation or reallocation of administrative functions, powers or duties would be less effective than thought; one House, by refusing to override the Governor, could thwart the intended purpose of this provision.[22]

(4) The entire proposal would lead to "executive domination and legislative insignificance." [23]

(5) Making the terms of all department heads end at the same time with the Governor's would result in interjecting politics into departments where efficiency and not political expediency is desirable.[24] No person wishing to make administration a career could occupy such a position; there had to be some assurance of tenure.[25]

[19] *Record of Proceedings before the Joint Legislative Committee* . . . 1942, p. 229.
[20] *Ibid.*, p. 230.
[21] *Ibid.*, *pp.* 253-4, 257, 259, 261, 264, 836, 849.
[22] *Ibid.*, pp. 230-1.
[23] *Ibid.*, p. 828.
[24] *Ibid.*, pp. 233, 711.
[25] *Ibid.*, p. 710.

(6) The argument that government is like private business and that the way to get efficient and economical government is by having a strong and powerful executive, is faulty. The supporters of this theory point to New York for example, but the operation of the system installed there under Governor Alfred E. Smith has not been efficient under his successors. It has resulted in the building up of a political machine, and a greatly increased cost of government.[26]

B. Proposed Revised Constitution of 1944:

1. *Appointing Power:*

(a) Provides for nomination and appointment by the Governor of all single heads of principal administrative departments, with the advice and consent of the Senate. (*Art. IV, sec. III, par. 6*)

(b) Provides for appointment by the Governor of the members of all boards and commissions, when same are heads of principal administrative departments, with advice and consent of Senate. (*Art. IV, sec. III, par.* 7)

(c) Provides for election of State Comptroller, State Treasurer and State Auditor by the Senate and General Assembly in joint meeting. (*Art. VI, sec. II, par. 1*)

(d) Provides that if any board, commission, or other body, heading any principal department, has power to appoint an administrator, director, or other chief executive, such appointment shall be made with the approval of the Governor. (*Art. IV, sec. III, par.* 7)

2. *Removal Power:*

(a) Provides that all single heads of principal departments shall hold their office until the next Governor is elected and qualified, and until their successors are appointed and qualified, but they may be removed by the Governor as shall be provided by law. (*Art. IV, sec. III, par. 6*)

(b) Gives the Governor power to investigate the conduct of any state officer, except a member of the Legislature, the Comptroller, Treasurer, Auditor, or a judicial officer, and to remove such officer after service of charges and opportunity for public hearing, if in his opinion the hearing discloses misfeasance or malfeasance in office. (*Art. IV, sec. I, par. 14*)

3. *Power to Require Written Information:*

Provides that whenever, in his opinion, it would be in the public interest, the Governor may require from the State Treasurer, State Comptroller, or State Auditor, written state-

[26] *Ibid.*, p. 710.

ments under oath of information on any matter relating to the conduct of their respective offices. (*Art. VI, sec. II, par. 1*)

4. *Administrative Organization:*

(a) Authorizes the Governor to create, by executive order, not more than 20 principal departments in the State Government. (*Art. IV, sec. III, par. 1*)

(b) Authorizes the Governor to allocate, by executive order, all administrative and executive offices, departments and instrumentalities among and within the principal departments, in such manner as to group the same according to major purposes (*Art. IV, sec. III, par. 1*), subject to veto by both houses of the Legislature within six weeks of transmittal of the order to them. (*Art. IV, sec. III, par. 4*)

(c) Authorizes the Governor to reorganize, merge, consolidate and divide, by executive order, all administrative and executive agencies and principal departments, and to allocate and reallocate them, in whole or in part, and their functions, powers and duties, among and within such agencies and departments, in such manner as to promote efficiency and economy in the operation of the State Government (*Art. IV, sec. III, par. 2*), subject, however, to the veto of both houses acting within six weeks of transmittal of the order to them. (*Art. IV, sec. III, par. 4*)

(d) Any such executive order may provide for the transfer of personnel, property and appropriation balances, and the abolition and creation (within limits of available appropriations) of executive and administrative offices, positions and employments; provided that no person shall be deprived of any right or privilege accorded him by civil service law. (*Art. IV, sec. III, par. 3*)

(e) No executive order shall effect any officer, or his office or the functions, powers, or duties thereof, elected by the Legislature in joint meeting. (*Art. IV, sec. III, par. 9*)

(f) Executive orders are to become effective six weeks after transmission to the Legislature, unless disapproved within such time by resolution. (*Art. IV, sec. III, par. 4*)

(g) The Legislature is given power to assign new functions, powers and duties to, and increase or diminish the functions, powers and duties of, any administrative or executive agency or department. (*Art. IV, sec. III, par. 5*)

(h) The principal departments are to be under the Governor's supervision and control. (*Art. IV, sec. III, par. 6*)

(i) The Governor may appoint such state officers as he may select, to serve at his pleasure, as members of his cabinet. (*Art. IV, sec. II, par. 8*)

APPENDIX

Selected Constitutional Provisions Relating to State Administrative Organization and Reorganization

1. ARKANSAS: (Creation of permanent State offices):

   Art. XIX, sec. 9: "The General Assembly shall have no power to create any permanent State office not expressly provided for by this Constitution."

2. MISSOURI: (Executive Department—assignment of agencies to departments):

   Art. IV, sec. 12: "The executive department shall consist of all state elective and appointive officials and employees except the officials and employees of the legislative and judicial departments. In addition to the governor and lieutenant governor there shall be a state auditor, secretary of state, attorney general, a state treasurer and a department of revenue, department of education, department of highways, department of conservation, department of agriculture and such additional departments, not exceeding five in number, as may hereafter be established by law. 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."

3. NEW YORK:

   (a) *Civil Departments in the State Government:*

   Art. V, sec. 2: "There shall be the following civil departments in the state government: First, executive; second, audit and control; third, taxation and finance; fourth, law; fifth, state; sixth, public works; seventh, conservation; eighth, agriculture and markets; ninth, labor; tenth, education; eleventh, health; twelfth, mental hygiene; thirteenth, social welfare; fourteenth, correction; fifteenth, public service; sixteenth, banking; seventeenth, insurance; eighteenth, civil service; nineteenth, commerce."

   (b) *Assignment of Functions:*

   Art. V, sec. 3: "Subject to the limitations contained in this constitution, the legislature may from time to time assign by law new powers and functions to departments, officers, boards or commissions, and increase, modify or diminish their powers and functions. No new departments shall be created hereafter, but this shall not prevent the legislature from creating temporary commissions for special purposes and nothing contained in this article shall prevent the legislature from reduc-

ing the number of departments as provided for in this article, by consolidation or otherwise."

(c) *Department Heads:*

Art. V, sec. 4: ". . . 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."

4. VIRGINIA: (Power to require information):

Sec. 74: "The Governor may require information in writing, under oath, from the officers of the executive department and superintendents of State institutions upon any subject relating to the duties of their respective offices and institutions; and he may inspect at any time their official books, accounts and vouchers, and ascertain the conditions of the public funds in their charge, and in that connection may employ accountants."

BIBLIOGRAPHY

BUCK, A. E. The Reorganization of State Governments in the United States, 1938 (National Municipal League Series).

CLINE, D. C. Executive Control Over State Expenditures in New Jersey, 1934.

EDGE, WALTER E. Inaugural Message to the New Jersey Legislature, 1917. Legislative Manual, 1917.

EDGE, WALTER E. Inaugural Message to the New Jersey Legislature, 1944. Legislative Manual, 1944.

EDISON, CHARLES. Speeches on the Constitution of New Jersey, 1943.

EDISON, CHARLES. Inaugural Message to the New Jersey Legislature, 1941. Legislative Manual, 1941.

ERDMAN, CHARLES R., JR. The New Jersey Constitution—A Barrier to Governmental Efficiency and Economy, 1934.

FAIRLIE, J. A. "The Executive Power in the State Constitutions." 181 Annals of the Amer. Acad. of Pol. & Soc. Science 59 (1935).

FAUST, MARTIN L. Manual on the Executive Article for the Missouri Constitutional Convention of 1943, September, 1943.

LOUISIANA STATE UNIVERSITY, Constitution Revision Projet. Constitutional Problems: Monograph 23: "The Executive: Constitutional Provisions for Administrative Officers and Agencies: The Missouri Manual," April, 1947.

MACDONALD, A. F. American State Government and Administration, 1940, Chap. 14.

MATHEWS, J. M., and BERDAHL, C. A. Documents and Readings in American Government, 1930, Chap. XXIII.

MILMED, LEON S. New Jersey State Administration, 1943 (typed mss.).

MOORE, A. HARRY. First Annual Message to the New Jersey Legislature, 1933. Legislative Manual, 1933.

NATIONAL INSTITUTE OF PUBLIC ADMINISTRATION. Report on a Survey of the Organization and Administration of the State Government of New Jersey, 1930.

NEW JERSEY. Commission on Post-War Economic Welfare, First Report, 1944.

NEW JERSEY. Proceedings of the New Jersey State Constitutional Convention of 1844, 1942.

NEW JERSEY. Record of Proceedings Before the Joint Committee of the New Jersey Legislature Constituted Under Senate Concurrent Resolution No. 19, 1942.

NEW JERSEY. Report of the Commission on Revision of the New Jersey Constitution, 1942 (Hendrickson Commission Report).

NEW JERSEY. Report of the Joint Legislative Survey Committee of New Jersey, 1925 (Bright Report).

NEW JERSEY. Reports of the Commission on State Administrative Reorganization, Reports 1-5, 1944-47.

NEW JERSEY. Report to the Governor and the Legislature of New Jersey of the State Audit and Finance Commission, 1930 (Abell Report).

NEW YORK. State Constitutional Convention Committee, Report, 1938, (vol. VIII, "Problems Relating to Executive Administration and Powers").

PRINCETON SURVEYS. Executive Memorandum C, January, 1942.

PRINCETON UNIVERSITY, School of Public and International Affairs. Report on a Survey of Administration and Expenditures in New Jersey, 1932 (Princeton Surveys Report).

WILSON, WOODROW. First Annual Message to the New Jersey Legislature, 1912. Legislative Manual, 1912.

CIVIL SERVICE—THE PERSONNEL ARTICLE IN THE STATE CONSTITUTION

by

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Formal personnel procedures in public administration are regarded as recent innovations. The hiring and firing of public employees and the relationships between them and their directing officers, however, are as old as organized society itself. Down the centuries man has been seeking the key to the successful management of people both in government and in private undertakings. Evidences of these efforts appear again and again in our earliest writings, both sacred and profane. The recorded history of every populous ancient and modern nation is interlarded with laws, rules and regulations respecting directing and subordinate employees, employer-employee relationships, terms and conditions of employment, pay, privileges, hours of work and other provisions respecting public officers and employees down to the humblest workman.

The antiquity of the employment processes and of employer-employee relationships in the public service has no direct significance, perhaps, for the pending Constitutional Convention in New Jersey, but it does emphasize the basic importance of these problems and the persistent efforts to solve them in the long evolution of the governing process. This recognition and these past efforts lend support to the widely accepted principle that the effectiveness of government depends directly upon the integrity, the capacity and the wisdom of those who direct its affairs and do its work. And this is particularly true today when, in its efforts to meet the needs and render the services required of it, its regulatory procedures have extended to practically every activity of modern society, its civil employees are numbered in the millions, and its far-flung administration grows increasingly complicated both in its organization and its program.

Since personnel so directly affects the quality and character of modern public administration and since this fact is recognized in both old and new constitutions, it follows that personnel as a factor in government warrants recognition in the organic law of any state or nation. It is submitted, therefore, that the framers of a new Constitution for the State of New Jersey should recognize these facts and should include in the draft Constitution to be submitted to the

people both the recognition of the problem itself and the guiding principles upon which sound personnel administration for the state, county, and municipal governments shall be established.

It would be neither appropriate nor necessary to cite or attempt to cite the numerous personnel laws, rules and regulations as recorded in the history of the progress of public administration or included in ancient and modern constitutional documents. For the purposes of this Constitutional Convention, however, the recognition of the personnel problem and the provisions for dealing with it as contained in the Constitution of the United States are of great significance. While it is unlikely that the most imaginative of the forefathers could have visioned a civil service such as we have today, running into millions of full-time officers and employees, the document itself shows that its writers saw with unusual clarity that the new nation would require not only legislative, executive and judicial officers but other employees as well to provide the services and carry out the prescriptions contained in the new Constitution. A careful reading shows that a very considerable part of it is devoted to matters of the qualifications, selection, induction, terms, duties, powers, privileges, pay and removal of federal officers and employees, both civil and military, required in the operation of the government.

To this day the recruiting authority and responsibility for civil servants in our national government, implemented, to be sure, by numerous laws, regulations and executive orders, remain primarily in the hands of the President, directly, or as he may delegate these functions. Some personnel fundamentals, such as the classification of positions on the basis of their attaching duties and responsibilities, and the appraisal of performance of officers and employees expressed in the form of service ratings, are not mentioned specifically, of course, since these and many other personnel terms are more nearly products of the 20th Century. Nevertheless, the expressed terms of the Constitution are broad enough to permit the administration of an adequate personnel program even today, and it contains several expressions and provisions which seem to indicate that the framers were conscious of the broad principles embraced in a comprehensive personnel program.

It would have been helpful all down the years if the drafters of the Constitution had distinguished more definitely between the office and its incumbent, and if they could have used some synonym or substitute for what we now call an "employee." It would have been equally helpful if the personnel prescriptions could have been brought together in one or more articles or sections, instead of being scattered here and there throughout the whole document, but these are refinements which belong to a later period. They do not detract from the remarkable fact that the soundness of the personnel con-

ceptions and the broad outlines of the procedures authorized in the Constitution remain intact without conscious need for change to this date.

Most state constitutions, including that of New Jersey, are silent with respect to the important matter of personnel administration. While few present state constitutions are as old as that of New Jersey, the Federal Constitution is older, and many state constitutions have been rewritten in recent years. It is as if the drafters of state constitutions generally failed to take into account the fact that great numbers of state and local civil officers and employees were already at work or were potentially required to administer the governmental functions called for in the very state whose constitution was being constructed or reconstructed by them.

A few states, however, have recently written into their organic law some personnel provisions. The extent of the prescriptions provided depend upon the background, philosophy and method of approach of the framers or of the voters in these states. The typical draft is brief and expressed in the most general terms. More often than not it is indefinite and incomplete. The constitutions of the States of New York [1] and Michigan [2] are illustrative of this type of constitutional

[1] New York Const., Art. V, sec. 6. "Appointments and promotions in the civil service of the state and all of the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, as far as practicable, by examination, which as far as practicable, shall be competitive; provided, however, that any member of the armed forces of the United States who served therein in time of war, who is a citizen and resident of this state and was a resident at the time of his or her entrance into the armed forces of the United States and was honorably discharged or released under honorable circumstances from such service, and who was disabled therein to an extent certified by the United States veterans administration, and whose disability is certified by the United States veterans administration to be in existence at the time of his or her application for appointment or promotion, shall be entitled to preference and shall be appointed or promoted before any other appointments or promotions are made, without regard to his or her standing on any list from which such appointment or promotion may be made. Until December thirty-first, nineteen hundred fifty, but in no event for a period less than five years next following the honorable discharge or release under honorable circumstances of a member of the armed forces of the United States who served therein in time of war, who is a citizen and resident of this state and was a resident at the time of his or her entrance into the armed forces of the United States, he or she shall be entitled, after such disabled members of the armed forces shall have been first preferred, to similar preference in appointment and promotion. Upon the abolition or elimination of positions in the civil service, to which the foregoing preferences are applicable, any such member of the armed forces shall be entitled to preference in the retention of any position held by him or her, in inverse order of the preference as provided in this section. Laws shall be enacted to provide for the enforcement of this section."

[2] Michigan Const., Art. VI, sec. 22. "The state civil service shall consist of all positions in the state service except those filled by popular election, heads of departments, members of boards and commissions, employees of courts of record, of the legislature, of the higher educational institutions recognized by the state constitution, all persons in the military and naval forces of the state, and not to exceed two other exempt positions for each elected administrative officer, and each department, board and commission.

There is hereby created a non-salaried civil service commission to consist of four persons, not more than two of whom shall be members of the same political party, appointed by the governor for eight-year, overlapping terms, the four original appointments to be for two, four, six and eight years respectively. This commission shall supersede all existing state personnel agencies and succeed to their appropriations, records, supplies, equipment, and other property.

The commission shall classify all positions in the state civil service according to their respective duties and responsibilities, fix rates of compensation for all classes of positions, approve or disapprove disbursements for all personal services, determine by competitive performance exclusively on the basis of merit, efficiency and fitness the qualifications of all candidates for positions in the state civil service, make rules and regulations covering all personnel transactions and regulate all conditions of employment in the state civil service. No person shall be appointed to or promoted in the state civil service who has not been certified as so qualified for such appointment or promotion by the commission. No removals from or demotions in the state civil service shall be made for partisan, racial, or religious considerations.

The administration of the commission's powers shall be vested in a state personnel director who shall be a member of the state civil service and who shall be responsible to and selected by the commission after open competitive examination.

To enable the commission to execute these powers, the legislature shall appropriate for the

provision. They contain brief mandates as to civilian activities respecting recruiting and one or more other items in a public personnel program, but no serious attempt seems to have been made to provide a constitutional mandate for a complete or adequate personnel program.[3]

The State of Colorado has gone to the other extreme by including in its constitution what are in fact personnel statutes rather than the fundamentals of a complete personnel system.[4] The State of California has followed neither the New York and Michigan plan nor the Colorado plan, but rather has submitted from time to time extensive personnel legislation as constitutional amendments dealing with particular phases, but never of the whole problem.

It is safe to say that no single state has now in its constitution comprehensive and well balanced personnel provisions, and it is safe to say, also, that none of the state constitutions includes personnel provisions equal to those in the Constitution of the United States.

It must be recognized, of course, that New Jersey under legislative authorization and executive support has been able to build a creditable personnel system for the state and the more populous local governments which has been long recognized as among the best in the country. Reasoning from this fact, it could be argued that the proposed new Constitution, as the present one, should not include adequate personnel provisions. There is little doubt, however, but that future legislative bodies and chief executives, however wise, would be both encouraged and strengthened in their efforts in providing government adequate to current requirements if they had a personnel mandate straight from the people setting forth sound guiding principles and the broad objectives involved. Such a mandate, if soundly conceived and executed, could have but a wholesome effect and might well prove a useful guide and a continuing stimulus to good government.

With respect to the article itself, it should be adequate for the purposes sought. It is more important that the draft be adequate and complete than that it be contained in a single paragraph, In the drafting of it the fundamentals found to be sound through the long experience of those who have served in the field should be carefully observed. These fundamentals include:

1. To assure completeness, adequacy, certainty of understanding and easy reference, the personnel provisions, aside from those relat-

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six months' period ending June 30, 1941, a sum of not less than one-half of one per cent, and for each and every subsequent fiscal year, a sum not less than one per cent, of the aggregate annual payroll of the state service for the preceding fiscal year as certified to by the commission.

After August 1, 1941, no payment for personal services shall be made or authorized until the provisions of this amendment have been complied with in every particular. Violation of any of the provisions hereof may be restrained or observance compelled by injunctive or mandamus proceedings brought by any citizen of the state.

This amendment shall take effect on the first day of January following the approval thereof."

[3] National Municipal League, Model State Constitution, (4th ed., 1941, Partial Revision 1946). See also, the same volume, pp. 46-47, "IX. The Civil Service," by W. Brooke Graves.

[4] Colorado Const., Art. XII, sec. 13.

ing to elective and appointive officers, should be assembled in one article.

2. The personnel provisions should deal only with fundamental conceptions, objectives and procedures likely to remain substantially constant as economic employment conditions change, as the state and local government services expand or contract and as technological advances in the personnel field occur. The detailed procedures can be better dealt with from time to time by the Legislature and the Executive as current conditions and needs indicate.

3. The Legislature and the Executive should be given instructions to provide for present essential personnel transactions and a broad mandate to provide for such others as may be required at any future time.

4. The personnel problems of the local governments, which are creations and agents of the State, should be provided for as forthrightly and as competently as those of the State Government.

5. The constitutional mandates as to personnel, other than elective and appointive officers, should be brief but of sufficient length to cover the broad essentials.

The translation of these general principles into an actual draft of a personnel article means the immediate coming to grips with major and minor parts of the problem and a discriminating selection of those things which belong properly in the personnel article and those which do not.

First, is the determination of the types of personnel transactions which are essential. It seems clear that these should include the establishment and abolition of positions; the grouping of established positions into homogeneous classes to be used as a basis for establishing scales and rates of pay for classes, and the adjustment in pay of individual officers and employees; recruiting when vacant positions are to be filled by promotion, demotion, transfer, or by bringing personnel into the service from outside; determining hours and conditions of work, including leaves of various kinds with and without pay; and dealing with the several kinds of separations, including resignations, lay-offs, retirements and removals. Detailed procedures for handling these transactions in the Constitution itself would be highly inadvisable, but it would be equally as unsound to ignore them altogether and ostrichlike proceed as of they will not occur. The point to be emphasized is that the State Constitution should authorize and direct the legislative body to establish procedures, but not detail procedures.

Next in order, perhaps, is the manner of providing the directing heads of the operating agencies with the help they must have in handling personnel transactions in a modern and populous government in such way as to achieve, surely and economically, desired per-

sonnel objectives. It cannot be expected, nor is it wise to expect, that the thousands of supervisory officers in the state and local governments can and should master the science and art of personnel administration. Only those who give years of study and practice to this complicated problem can be reasonably expected to do this. For this reason, if for no other, there is required a central personnel agency properly staffed to establish the necessary procedures based on sound personnel trends and practices and to assist responsible officers in the operating agencies in handling the great volume of personnel transactions that occur from day to day. The exact form of the central personnel agency, the exact amount of authority to be given to it, its particular place in the administrative structure, and its specific part in the several kinds of personnel transactions are not properly a part of the constitutional structure. They should, in the main, be left for legislative determination.

Closely allied with the foregoing matters are the provisions to be made for assistance to local governments in dealing with their personnel transactions. New Jersey has been more successful than most states in providing that the state agency shall serve as the personnel agency for such local governments as, by referendum vote, choose to adopt a formal personnel system. While the system has already been adopted by most of the populous counties and municipalities, and probably 70 to 75 per cent of all local government employees in the State are now covered by the civil service laws, there are numerous other local jurisdictions which should be included in the system without further delay.

It is recognized, of course, that formal personnel procedures are of limited value in the very small local governments having few employees and many of them on a part-time basis. It cannot be successfully argued, however, that regular full-time employees in any local government should not be entitled to tenure, retirement on pension, and other advantages which have come to be regarded as attaching to public employment. It may generally be accepted that formal personnel procedures are desirable in jurisdictions of a population of 10,000 or more, and the New Jersey experience has established, it is believed, both the wisdom and the economy of having the state personnel agency serve the local governments in the same capacity as it serves the State. The drafters of the Constitution may well consider the immediate application of the civil service system to all county and municipal governments having a population of 10,000 or more which are not now operating under the civil service laws.

Finally, the amount and kind of preference to be accorded veterans in the public service or who may seek admission thereto must be given consideration. While the Constitutional Convention itself must determine the validity of the principle involved, it must

be recognized that the State has developed by statutory provision a system of veteran preference which has been widely copied throughout the Nation, and which has proved effective and advantageous to veterans by the test of experience. It is of interest to note that eight out of nine recommendations contained in the report of the committee of the National Civil Service League to study the subject of veteran preference, issued in 1945, were almost identical with the New Jersey provisions and practices.[5] It is not possible, however, to determine now exactly what shall be the terms and conditions of veteran preference in ten or 20 years from now, or in the long future. Here, as in other personnel provisions of the Constitution, the general principle may well be laid down, but the detailed procedures and the character and amount of the preference should be left to the legislative body which can act with greater wisdom in meeting conditions and situations as they develop from time to time. This was the procedure followed in the draft Constitution agreed upon by the 168th Legislature and submitted to the people at the General Election on November 7, 1944.[6]

Adequate public personnel administration in the State and in the local governments warrants recognition in the State's organic law. As a factor in effective public service and in its dollar and cents significance no problem of government is of greater importance.

[5] National Civil Service League, "Veterans Preference in the Civil Service," 1945.

[6] Draft Constitution, 1944, Art. VI, sec. 1, par. 2: "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."

THE LEGISLATURE—QUALIFICATIONS, TERM, AND COMPENSATION OF LEGISLATORS; SESSIONS, ORGANIZATION AND PROCEDURE

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Introduction

American state legislatures and legislative processes have been intensively studied by scholars and by legislative bodies themselves, but there is little agreement as to what specific constitutional provisions can either make or discourage good legislatures.[1] There are several preliminary considerations, however, upon which current study of the New Jersey Constitution must necessarily be premised:

1) *Nature of constitutional specifications*: American state constitutions generally set up legislative bodies with what are known as parlimentary powers. By this is meant that the legislature, in the absence of any specific restriction in the constitution by which it is established, has all powers of government which are not precluded by the Federal Constitution. In practical effect, this means that when a question of a power of the legislature arises, it is unnecessary to find a specific grant of the power in question in the constitution; if there is no prohibition, then the power exists. It is this characteristic of legislative power which has lead to description of state constitutions as documents of limitation and not of grant. This concept is succinctly stated by Chancellor Walker in *Hudspeth* v *Swayze*: [2]

> "The only restraints upon the exercise of the legislative prerogative are those expressly or impliedly contained in the Federal and State Constitutions and those immutable principles which lie at the very foundation of sovereignty."

In the same case, Chancellor Walker goes on to quote one of Justice Holmes' distinguished dissenting opinions, then as a justice of the highest court of Massachusetts, on the matter of legislative power under state constitutions: [3]

> "I admit that the constitution establishes a representative government, not a pure democracy. It establishes a general court (the legislature) which is to be the law-making power. But the question is whether it puts a limit upon the power of that body to make laws. In my opinion the legislature has the whole law-making power except so far as the words

[1] A concise review of the various aspects of the problem may be found in *The Annals*, Vol. 195, "Our State Legislators" (Jan., 1938).
[2] 85 N. J. L. 592, 601 (1913).
[3] *Opinions of the Justices*, 160 Mass. 586, 36 N. E. 488 (1894).

> of the constitution expressly or impliedly withhold it, and I think that in construing the constitution we should remember that it is a frame of government for men of opposite opinions and for the future, and therefore not hastily import into it our own views, *or unexpressed limitations derived merely from the practice of the past.* * * * I agree that the discretion of the legislature is intended to be exercised. I agree that confidence is put in it as an agent. But I think that so much confidence is put in it that it is allowed to exercise its discretion by taking the opinion of its principal if it thinks that course to be wise. It has been asked whether the legislature could pass an act subject to the approval of a single man. I am not clear that it could not. The objection, if sound, would seem to have equal force against all forms of local option. But I will consider the question when it arises. The difference is plain between that case and one where the approval required is that of the sovereign body. The contrary view seems to me an echo of Hobbes's theory that the surrender of sovereignty of the people was final. I notice that the case from which most of the reasoning against the power of the legislature has been taken by later decisions states that theory in language which almost is borrowed from the Leviathan. *Rice* v *Foster,* 4 Harr. (Del.) 479, 488. Hobbes urged his notion in the interest of the absolute power of King Charles I, and one of the objects of the Constitution of Massachusetts was to deny it. * * * I may add, that, while the tendency of judicial decision seems to be in the other direction, such able judges as Chief Justices Parker of Massachusetts, Dixon of Wisconsin, Redfield of Vermont, and Cooley of Michigan, have expressed opinions like mine." (Underscoring added).

2) *Subjects precluded by the referendum*: From the viewpoint of possible changes in the Legislative Article, there are, of course, certain subjects which are precluded from consideration by virtue of the express instructions of the people contained in the referendum setting up the Constitutional Convention. The more common of these that come to mind, and there may be others, are questions of unicameralism *versus* bicameralism, questions of the urban *versus* rural representation, of the size of the constituency which is to be the basis of representation, of county-wide *versus* assembly district selection of members of the House of Assembly. While these subjects are treated extensively in the literature of constitution-making, they are deemed to be outside the scope of the present study.

3) *Functional requirements*: In the Legislative Article, as in other parts of the Constitution, there is a difficult problem of selection of matter appropriate for treatment in a state constitution. For those who would hold that the American state legislature has not fully attained a proper status in our representative form of government, it is necessary to keep in mind that much of the criticism of legislators and of legislatures arises from factors which cannot be treated by constitutional provision. Nor is it apparent that any existing constitutional provision is in itself responsible for the favorable aspects of state legislatures. An examination of the various state constitutions shows that they have, by and large, imposed a minimum of rigid limitations or restrictions on legislative organization and procedure.

TABLE I

QUALIFICATIONS OF MEMBERS OF THE LEGISLATURE

State	Age		Residence in State		Residence in District		U. S. Citizen	Other
	House	Senate	House	Senate	House	Senate		
Alabama	21	25	3 yr.	3 yr.	1 yr.	1 yr.	...	
Arizona	25	25	3 yr.	3 yr.	1 yr.	1 yr.	yes	The ability to understand the English language sufficiently well to conduct the duties of the office without the aid of an interpreter.
Arkansas	21	25	2 yr.	2 yr.	1 yr.	1 yr.	yes	
California	Citizen	..	3 yr.	3 yr.	1 yr.	1 yr.	...	
Colorado	25	25	1 yr.*	1 yr.*	1 yr.	1 yr.	yes	Each house shall judge qualifications of its members
Connecticut	21*	21*	1 yr.*		6 mo.*		...	
Delaware	24	27	3 yr.	3 yr.	1 yr.	1 yr.	...	
Florida	21*	21*	1 yr.	1 yr.	6 mo.*	6 mo.*	yes*	
Georgia	21	25	2 yr.	4 yr.	1 yr.	1 yr.	yes	
Idaho	21*	21*	1 yr.	1 yr.*	1 yr.	1 yr.	yes	
Illinois	21	25	5 yr.	5 yr.	2 yr.	2 yr.	yes	
Indiana	21	25	2 yr.	2 yr.	1 yr.	1 yr.	yes	
Iowa	21	25	1 yr.	1 yr.	60 days	60 days	...	
Kansas	21*	21*	6 mo.*	6 mo.	30 days*	30 days*	yes*	
Kentucky	24	30	2 yr.	6 yr.	1 yr.	1 yr.	...	
Louisiana	21	25	5 yr.	5 yr.	2 yr.	2 yr.	...	
Maine	21	25	1 yr.	1 yr.	3 mo.	3 mo.	yes	5 yr. U. S. citizen
Maryland	21	25	3 yr.	3 yr.	1 yr.	1 yr.	...	
Massachusetts	21*	21*	1 yr.*	5 yr.*	1 yr.	5 yr.	...	
Michigan	21*	21*	6 mo.*	6 mo.*	20 days*	20 days*	yes	
Minnesota	21*	21*	1 yr.	1 yr.	6 mo.	6 mo.	...	
Mississippi	21	25	4 yr.	4 yr.	2 yr.	2 yr.	...	
Missouri	24	30	2 yr.	3 yr.	1 yr.	1 yr.	...	
Montana	21	24	1 yr.	1 yr.	1 yr.	1 yr.	yes	
Nebraska	21*	21*	1 yr.	1 yr.	1 yr.	1 yr.	...	

TABLE I—Continued

State	Age		Residence in State		Residence in District		U. S. Citizen	Other
	House	Senate	House	Senate	House	Senate		
Nevada	21*	21*	6 mo.*	6 mo.*	30 days*	30 days*	yes*	
New Hampshire	21*	30	2 yr.	7 yr.	Inhabitants		...	
New Jersey	21	30	2 yr.	4 yr.	1 yr.	1 yr.	...	Must have right of suffrage
New Mexico	21	25	3 yr.	3 yr.	90 days[1]	90 days[1]		
					30 days[2]	30 days[2]	...	
New York	..	..	5 yr.	5 yr.	1 yr.	1 yr.	yes	
North Carolina	21*	25	1 yr.	2 yr.	1 yr.	1 yr.[3]	...	
North Dakota	21	25	2 yr.	2 yr.	90 days[1]	90 days[1]		
					30 days[2]	30 days[2]	yes*	
Ohio	..	..	1 yr.*	1 yr.*	1 yr.	1 yr.	...	
Oklahoma	21	25	1 yr.*	1 yr.*	6 mo.[1]	6 mo[1]		
					30 days[2]	30 days[2]	yes*	
Oregon	21	21	1 yr.*	1 yr.*	1 yr.	1 yr.	yes	
Pennsylvania	21	25	4 yr.	4 yr.	1 yr.	1 yr.	...	
Rhode Island	..	..	....		...		...	No specification
South Carolina	21	25	2 yr.*	2 yr.*	1 yr.[1]	1 yr.[1]		
					4 mo.[2]	4 mo.[2]	yes*	
South Dakota	25	25	2 yr.	2 yr.	90 days[1]	90 days[1]		
					30 days[2]	30 days[2]	yes	
Tennessee	21	30	3 yr.	3 yr.	1 yr.	1 yr.	yes	
Texas	21	26	2 yr.	5 yr.	1 yr.	1 yr.	yes	
Utah	25	25	3 yr.	3 yr.	1 yr.	1 yr.	yes	
Vermont	..	30	2 yr.	...	1 yr.		...	Persons most noted for wisdom and virtue
Virginia	21*	21*	1 yr.	1 yr.	6 mo.[1]	6 mo.[1]		
					90 days[2]	90 days[2]	yes*	
Washington	21*	21*	1 yr.	1 yr.	90 days[1]	90 days[1]		
					30 days[2]	30 days[2]	yes	Read and speak English
West Virginia	21*	25*	1 yr.	5 yr.	60 days*	60 days*	..	
Wisconsin	21*	21*	1 yr.	1 yr.	30 days*	30 days*	yes*	
Wyoming	21	25	1 yr.*	1 yr.*	1 yr.	1 yr.	yes	

* Implied in qualification of citizenship or elector.
[1] County.
[2] Precinct.
[3] Usually 1 yr.
Source: Constitution Revision Projet, Louisiana State Univ., Constitutional Problems: No. 10, "The Legislature" (La. State Univ., Mar. 1947), pp. 21-22.

Qualifications

There has been little quarrel with the constitutional provision dealing with the qualifications of the members of the Legislature. The New Jersey constitutional requirements are substantially similar to those of other states. The lack of criticism of the present constitutional provisions probably stems from the belief that, aside from a few fundamental qualifications such as age, residence, citizenship, and the barring of dual office holding and incompatible offices, the only significant qualifications of legislators are those which the voters apply at the polls. Table I indicates the principal qualifying requirements in the various states.

Dual Office Holding

The subject of dual office holding can be most clearly understood as consisting of two parts: forbidden offices and incompatible offices. The Constitution may, and does, set forth certain offices for which a member of the legislature may not qualify—these are forbidden offices, described as follows (Art. IV, sec. IV):

> "1. No member of the senate or general assembly shall, during the time for which he was elected, be nominated or appointed by the governor or by the legislature in joint meeting, to any civil office under the authority of this state, which shall have been created, or the emoluments whereof shall have been increased, during such time."

Incompatible offices are of two kinds—those incompatible at common law, and those declared to be incompatible by constitution or statute. In either event, there is no prohibition or disqualification against acceptance of a second office, but the act of acceptance vacates the office first held. The present constitution contains two clauses dealing with incompatible offices (Art. IV, sec. IV):

> "2. If any member of the senate or general assembly shall be elected to represent this state in the senate or house of representatives of the United States, and shall accept thereof, or shall accept of any office or appointment under the government of the United States, his seat in the legislature of this state shall thereby be vacated."
>
> "3. No justice of the supreme court, nor judge of any other court, sheriff, justice of the peace, nor any person or persons possessed of any office of profit under the government of this state, shall be entitled to a seat either in the senate or in the general assembly; but on being elected and taking his seat, his office shall be considered vacant; and no person holding any office of profit under the government of the United States shall be entitled to a seat in either house."

It may be noted that the last clause of paragraph 3, dealing with federal office holders, can operate only as a qualification to hold the office of legislator for the reason that no state constitutional provision could cause a federal office to be vacated.

The fundamental principles of these paragraphs were recognized in the first Constitution of New Jersey, adopted 1776, and have never been seriously challenged. The principal effort has been

toward clarifying, and in some cases broadening, their application. Article 20 of the 1776 document declared:

> "That the legislative department of this colony may, as much as possible, be preserved from all suspicion of corruption, none of the judges of the supreme or other court, sheriffs, or any other person or persons possessed of any post of profit under the government, other than justice of the peace, shall be entitled to a seat in the assembly; but that, on his being elected and taking his seat, his office or post shall be considered as vacant."

To make absolutely sure that the legislative department would be "preserved from all suspicion of corruption," the court in the case of *State* v *Parkhurst*[4] held that under Article 20 (quoted above) a legislator who during his legislative term was appointed to and accepted an office of profit, vacated his seat in the Legislature. In that case, Parkhurst was a member of the General Assembly at the time he accepted an appointment "as clerk of the Court of Common Pleas, and Quarter Sessions of the Peace, of the County of Essex." Parkhurst was held eligible to accept the appointment as clerk, but by his acceptance he was also held to have vacated his seat in the Legislature.

Limitations on dual office holding were enlarged by constitutional provision in 1844, which nevertheless failed to spell out the rule of the *Parkhurst* case. In the 1944 revision, Art. III, sec. III, par. 4 incorporated the rule of *State* v *Parkhurst*.

Most of the state constitutions contain provisions against dual office holding, and many also disqualify legislators from appointment to other public office "during the term for which he shall have been elected." The provisions are reported to vary considerably among the states.[5] Arizona, in 1938, adopted what is said to be the strictest disqualification for other offices, as follows:

> "No member of the Legislature during the term for which he shall have been elected or appointed, shall be eligible to hold any other office, or be otherwise employed by the state of Arizona, or any county or incorporated city or town thereof."[6]

The principal issues have been raised in New Jersey in connection with the prohibitions against dual office holding. The first relates to the manner of statement of Art. IV, sec V, par. 1, which apparently restricts the disqualification of legislators to

> "be nominated or appointed by the Governor or by the legislature in joint meeting."

This language has been understood to impose no bar to appointment of a legislator by a board to an office "created during the time for which" the legislator was elected. The 1944 revision used the

[4] 9 N. J. L. 427 (Appendix) (1802).

[5] "Dual Public Employment of Legislators," *The Book of the States*: 1943-1944, pp. 156-160, reprinted in Martin L. Faust, *Manual on Legislative Article for the Missouri Constitutional Convention of 1943*, Selection No. 12.

[6] Based on a study made in 1938 by Mulford Winsor, Director, State Legislative Bureau, Arizona Department of Library and Archives.

phrase "nominated, elected, or appointed," apparently intending to make the prohibition all inclusive.

The second issue has been raised in connection with the legal definition of the term "office" as used in the three quoted paragraphs of the present constitution. The courts have held that it differs from an "employment"' and from a "position." [7] This affects the provision of paragraph 1 forbidding the legislators to be nominated or appointed to certain "civil offices," that of paragraph 2 providing for the vacation of a seat upon acceptance of any "office" under the government of the United States, and that of paragraph 3 declaring that persons possessed of an "office of profit" under the government of this state are ineligible to sit in the Senate or General Assembly.

Various arguments are advanced for strengthening the prohibitions against dual office holding but these are all variations of the philosophy of strictly applying the doctrine of the separation of powers, which in Article 3 is spelled out to prohibit any person "belonging to, or constituting" one of the three branches from exercising "any of the powers properly belonging to either of the others . . ." Beyond this, the protection of legislation against improper motives of legislators and prevention of executive dominance of the legislature through manipulation of the appointing power have long been advanced as justifying an absolute prohibition of appointment of legislators to positions of profit.[8] Various other exclusions, such as those forbidding a seat in the legislature to any person interested in a government contract, and barring particular individuals on the ground that their occupation incapacitates them for effective legislative service, have long since become outmoded.[9]

The arguments in favor of relaxing the prohibitions against dual office holding by legislators are not infrequently confused with supposed personal interest of those who make them. There is substantial opinion, however, which supports a view of the state legislature as a good training ground for further public service, and which recognizes that often the most competent administrator will be a person with legislative experience. The proper extent of the prohibition can be determined only as a matter of weighing these advantages against the positive undermining influence on the legislative process of any suspicion of motives of personal gain by legislators.

Terms of Office

New Jersey is the only state in which the members of the lower house are elected for a one-year term. Our Senators are elected for

[7] *Wilentz ex rel Golat* v *Stanger*, 129 N. J. L. 294, 29 Atl. (2d) 413, 129 N. J. L. 606, 30 Atl. (2d) 885 (1943).
[8] See R. P. Luce, *Legislative Assemblies*, (Boston, 1924) Ch. XIX.
[9] *Ibid*, Chap. XII.

a three-year term. In 42 of the states, members of the lower house serve for two years, and in 31 the senators serve for four years. (See Table II)

TABLE II

The Legislators—Number and Terms

(From The Book of the States, 1945-1946, p. 106)

State	Senate		House	
	Total	Term	Total	Term
Alabama	35	4	106	4
Arizona	19	2	58	2
Arkansas	35	4	100	2
California	40	4	80	2
Colorado	35	4	65	2
Connecticut	36	2	272	2
Delaware	17	4	35	2
Florida	38	4	95	2
Georgia	52	2	205	2
Idaho	44	2	49	2
Illinois[a]	51	4	153	2
Indiana	50	4	100	2
Iowa	50	4	108	2
Kansas	40	4	125	2
Kentucky	38	4	100	2
Louisiana	39	4	100	4
Maine	33	2	151	2
Maryland	29	4	123	4
Massachusetts	40	2	240	2
Michigan	32	2	100	2
Minnesota	67	4	131	2
Mississippi	49	4	140	4
Missouri	34	4	150	2
Montana	56	4	90	2
Nebraska	..	2	..	..
Nevada	17	4	40	2
New Hampshire	24	2	399	2
New Jersey	21	3	60	1
New Mexico	24	4	49	2
New York	56[b]	2	150	2
North Carolina	50	2	120	2
North Dakota	49	4	113	2
Ohio	33	2	136	2
Oklahoma	44	4	120	2
Oregon	30	4	60	2
Pennsylvania	50	4	208	2
Rhode Island	44	2	100	2
South Carolina	46	4	124	2
South Dakota	35	2	75	2
Tennessee	33	2	99	2
Texas	31	4	150	2
Utah	23	4	60	2
Vermont	30	2	246	2
Virginia	40	4	100	2
Washington	46	4	99	2
West Virginia	32	4	94	2
Wisconsin	33	4	100	2
Wyoming	27	4	56	2

[a] 1943-1944 figures.
[b] Reapportionment in 1944 added 5 members.

As early as 1909, and again in 1927, amendments to the New Jersey Constitution were submitted to the people to increase the terms of the legislators of both houses to four years. The amendments were not approved. In 1942, the Hendrickson Commission recommended a two-year term for Assemblymen and a four-year term for Senators along with a four-year term for the Governor, with elections in odd-numbered years in order to remove the influence of presidential and congressional elections. The Commission's recommendations concerning the length of the legislative terms were written into the Constitution submitted to the people in 1944.

Some states use the same length of term for members of both houses, but the majority have a four-year term for the upper house and a two-year term for the lower house. It is generally believed that this gives a nice balance in the legislature by providing for one house which, by virtue of a relatively short term, must be responsive to the ever-changing will of the people, and for another, more stable body, whose members have an opportunity to give continuity to the legislature and to become more experienced in the art of lawmaking. It has been pointed out that annual elections for Assemblymen prevent the lower house from being an efficient body and carry the responsibility of a member to his constituents too far. So long as a member must be constantly campaigning, his attention is diverted from his legislative duties. Moreover, the time consumed in campaigning for both primary and general elections each year, plus the expense involved could be a real item to the legislator of modest circumstance who receives only $500 per year for his services and who may lack organized support.

Any decision of the Convention regarding the terms of office of legislators must in part depend upon the decisions which are made regarding sessions, term of the Governor and holding of elections in off-presidential years. It would obviously be impractical, for example, to retain the one-year term for Assemblymen and a three-year term for Senators if a biennial session is adopted.

Compensation

The New Jersey Constitution provides that members of the Senate and General Assembly shall receive $500 per year. This provision, although perhaps adequate when written into the Constitution in 1875, was considered wholly insufficient by everyone touching on the salary issue at the public hearings of 1942. Low salaries prevent many competent men of modest means from entering the Legislature and partly account for the large turn-over in legislative personnel. Few citizens can afford to give the kind of time and attention that effective legislative service may require without ade-

quate compensation. The Commission on Revision of the New Jersey Constitution in 1942 recommended that the salary for Senators and Assemblymen be raised to $1500 per year, and the Constitution submitted to the people in 1944 increased the compensation to $2000 annually.

Although almost all of the writers on the subject agree that salaries paid to the legislators are far too low—that mediocre salaries tend to beget mediocre legislators—the majority of states still fix compensation on about a par with New Jersey: 24 states provide salaries ranging from $300 to $500 per session or yearly; other states pay per diems ranging from $3 to $10; only five states pay substantially higher salaries—Pennsylvania, $3,000 per session; New York, Illinois, and Massachusetts pay $2,500 per year, and Ohio pays $2,000 a year. (See Table III). In recent years, however, there has been a trend toward increased salaries. Since 1942, Maryland, Minnesota, Indiana, South Carolina, Kentucky, New Mexico, and Georgia have voted increases for legislators. On the other hand, increases were rejected in California, Utah, and Michigan.[10]

The salaries of legislators are not always fixed by constitutional provision. Some states follow the federal rule which leaves the determination of legislators' salaries to statute. This is the method which is adopted in the "Model State Constitution." It is also recommended in the final report of a special investigating committee in New York as the best way of preventing inflexibility and of providing additional compensation to legislators who take on added duties in connection with their office. The report further points out that experience has shown that Congress and state legislative bodies with the authority to change salary by law have been extremely conservative in determining their own compensation.[11]

As in the case of legislative terms of office, the decision on manner and amount of compensation must necessarily be related to the decision upon the issue of annual *versus* biennial sessions.

Sessions

The frequency and duration of regular sessions of the Legislature is a matter of pervasive importance. The decision of the Convention on this issue will have a significant effect upon the relationship between the executive and legislative branches, as well as upon the requirements for the organization of the Legislature itself.

Questions which arise in consideration of the matter of sessions fall into four general categories:

(1) Annual *versus* biennial

[10] John A. Perkins, "State Legislative Reorganization," 40 *American Political Science Rev.* 510-521, 516 (June, 1946).

[11] New York State Joint Legislative Committee on Legislative Methods, Practices, Procedures and Expenditures, *Final Report,* (Legis. Doc., 1946, No. 31) pp. 170-171.

TABLE III

SALARIES AND COMPENSATION OF THE LEGISLATORS

(From The Book of the States, 1945-1946)

State	Salaries		Compensation
	Regular Session	Special Session	Allowance for Transportation
Alabama	$10 per day[a]	$10 per day	10c a mile, one round trip
Arizona	$8 per day, 60 days	$8 per day, 20-day limit	20c a mile, one way
Arkansas	$1,000, 2 years	$6 per day, 15-day limit	5c a mile
California	$1,200 per year[b]	[b]	Mileage, regular or special session[c]
Colorado	$1,000, 2 years	[d]	Actual traveling expenses
Connecticut	$300, 2 years	.....	10c a mile
Delaware	$10 per day, 60 days	$10 per day, 30-day limit	10c a mile[e]
Florida	$6 per day[f]	$6 per day[f]	10c a mile
Georgia	$6 per day	$8 per day	10c a mile, one regular and one extra round trip
Idaho	$5 per day, 60 days	$5 per day, 20-day limit	10c a mile, one round trip
Illinois	$5,000, 2 years	.....	5c a mile, one round trip per week[b]
Indiana	$1,200 per year[g]	.....	[h]
Iowa	$1,000, 2 years	Not over $10 per day	10c a mile
Kansas	$3 per day[i]	$3 per day[i]	15c a mile, one round trip
Kentucky	$10 per day	$10 per day	15c a mile
Louisiana	$10 per day	$10 per day	10c a mile[j]
Maine	$850	$10 per day	$2 for 10 miles, one way, once each session
Maryland	$1,000 per year	.....	20c a mile[k]
Massachusetts	$2,500 per session	Determined at session	[m]
Michigan	$3 per day[m]	.....	10c a mile, one round trip
Minnesota	$2,000, 2 years	Mileage only	15c a mile, limit $350
Mississippi	$1,000 per session	$10 per day	10c a mile, one round trip
Missouri	$125 per month	$125 per month	$1 per 10 miles. Round trip once each session.
Montana	$10 per day	$10 per day, 60-day limit	5c a mile
Nebraska	$1,744.18, 2 years	None	Actual traveling expenses, one round trip
Nevada	$15 per day[n]	$10 per day	10c a mile for shortest route by rail
New Hampshire	$200 per term	$3 per day, 15-day limit	5c a mile, each day of attendance.
New Jersey	$500 per year	None	Transportation by state railroad pass
New Mexico	$10 per day	$10 per day, 30-day limit	10c a mile
New York	$2,500 per year	.....	Actual trav. exp. round trip once a week
North Carolina	$600 per session	$8 per day, 20-day limit	None
North Dakota	$5 per day, 60 days	$5 per day	10c a mile, one round trip
Ohio	$2,000 per year	None	Mileage
Oklahoma	$6 per day[o]	$6 per day[o]	10c a mile, one round trip
Oregon	$8 per day, 50 days	$8 per day, 20-day limit	10c a mile
Pennsylvania	$3,000 per session	$500 per session[p]	5c a mile round trip, once a week[q]
Rhode Island	$5 per day[r]	None	8c a mile
South Carolina	$1,000 per year	No statutory provision	5c a mile, round trip once a week
South Dakota	$5 per day, 60 days	$5 per day	5c a mile, one round trip[s]
Tennessee	$4 per day, 75 days with pay	$4 per day, 20 days with pay	$4 for 25 miles
Texas	$10 per day[a]	$10 per day	$2.50 for 25 miles
Utah	$300 per year	Included in annual salary	10c a mile
Vermont	$600, 2 years	$6 per day	20c a mile[t]
Virginia	$720 each session	$360 per session	10c a mile[u]
Washington	$5 per day[v]	$5 per day, 60-day limit[v]	10c a mile, one round trip, plus $10 expenses.
West Virginia	$500 per year[g]	None	10c a mile
Wisconsin	$2,400, 2 years[w]	None	10c a mile, one round trip
Wyoming	$12 per day	$12 per day	8c a mile, nearest practical route

[a] President of Senate and speaker of House of Representatives receive $12 a day.
[b] Regular session years: $12 per session day plus balance to $1,200; nonsession years, $100 monthly.
[c] Living expenses while attending session, not over $10 per day.
[d] Legislators receive as compensation $1,000 for each biennial period, payable at the rate of $7 per day during both the regular and special sessions; the remainder, if any, is payable on the first day of the last month of each biennial period.
[e] $25 for supplies regular session, $10 special session.
[f] $50 per session for postage, etc.
[g] The speaker of the House and the lieutenant-governor for acting as president of the Senate shall each receive during the sessions of the General Assembly an additional $5 per day.
[h] Members of the General Assembly shall be paid $5 for each 25 miles they travel from their usual place of residence to the seat of government and back; but when a special session is called to assemble on the day succeeding the expiration of any other session, no mileage shall be allowed.
[i] Not to exceed $150 for regular, or $90 for special session.
[j] Two round trips allowed for regular sessions; one round trip allowed for special sessions.
[k] In terms of fixed amounts for each member.
[l] Not over 50 miles—22½ cents a mile each way, each week (but not less than $4.50 a week). Over 50 miles—4½ cents a mile each way each week and $20 hotel and living expenses or extra travel, weekly.
[m] For elected term.
[n] $15 per day provided total sum does not exceed $900 at any session.
[o] $2 per day after 60 days.
[p] $750 if session lasts over one month.
[q] $150 for postage regular session, $50 special session.
[r] Speaker of the House receives $10 per day.
[s] $5 a day after 120 days.
[t] Regular session; 10 cents a mile special session.
[u] Distance computed by nearest mail route.
[v] $10 a day maintenance during session.
[w] Speaker receives $25 per month additional.
[x] Plus $300 expense allowance per session.
[y] Maximum.
[z] President of Senate and speaker of House of Delegates $2 per day additional during session.

(2) Limited *versus* unlimited
(3) Split *versus* continuous
(4) Special sessions

Annual versus *biennial*: At present, all of the states provide for biennial sessions except California (beginning this year), Massachusetts, New York, New Jersey, Rhode Island, and South Carolina. There is strong sentiment in Connecticut for change to annual sessions but thus far it has not been adopted. The National Municipal League's "Model State Constitution" provides not only for annual sessions but for continuous sessions.

Table IV indicates present constitutional provisions relating to legislative sessions in the various states. But the issue can hardly be indicated by the number of states in each category, since special sessions in the interim years are frequent in all states. One important difference is this: annual sessions mean greater independence of the legislature, since the calling of special sessions in the interim year in biennial session states is ordinarily left to the discretion of the governor. It is also well to recognize that the predominance in numbers of biennial session states is partly accounted for by the fact that most existing state constitutions were adopted during the middle part of the 19th Century when popular indignation at the then current legislative abuses was inclined to produce efforts at remedial provisions. No state has turned to the biennial session since Georgia did it in 1880, except Massachusetts which reverted to the annual session after a brief experience of six years with the other.

Arguments directed toward the actual merits on the issue of annual *versus* biennial sessions may be summarized as follows:

In favor of the biennial session it is argued that continued presence of annual legislatures in Trenton has seriously hampered the administrative process by legislating on details which are better left to day-to-day administration, and has tended to "unsettle large segments of the population having vital interests, not necessarily inconsistent with the general public welfare, in the maintenance of the legislative status quo." The Commission on Revision of the New Jersey Constitution in 1942 advocated the adoption of a biennial session of limited duration, intended to put an end to the use of the continuous session of former years, to "concentrate legislative attention on important proposals, compel a short business-like and continuous session, and curtail the maximum of unnecessary laws."

Prior to the Commission's recommendation, constitutional amendments calling for biennial sessions were voted upon, and defeated, by the voters in 1909 and 1927.

Advocates of the biennial session argue that less frequent sessions

TABLE IV

LEGISLATIVE SESSIONS: CONSTITUTIONAL PROVISIONS

(from the Council of State Governments: *Our State Legislatures,* 1946, p. 20)

State	Years in Which Sessions are Held	Days On Which Sessions Convene	Sessions Limit—Days		Special Session	
			Regular	Special	Legislature May Call	Legislature May Determine Subject
Alabama	Odd	First Tuesday in May[1]	60	30	No	2/3 vote those present
Arizona	Odd	Second Monday in January	60[2]	20[2]	No	No
Arkansas	Odd	Second Monday in January	60	15	No	No
California	Annual[3]	First Mon. after first day in Jan.	None[4]	None	No	No
Colorado	Odd	First Wednesday in January	None	None	No	No
Connecticut	Odd	Wed. after first Mon. in Jan.	([5])	None	No provision in const.	Determined by Legisl. Council
Delaware	Odd	First Tuesday in January	60[6]	30[6]	No	Yes
Florida	Odd	First. Tues. after first Mon. in April	60	20	No	2/3 vote
Georgia	Odd	Second Monday in Jan.	70	None	Petition 3/5 members	No
Idaho	Odd	First Monday after January first	60	20	No	No
Illinois	Odd	Wed. after first Mon. in Jan.	None	None	No	No
Indiana	Odd	Thur. after first Mon. in Jan.	61	40	No	Yes
Iowa	Odd	Second Monday in Jan.	None	None	No	No
Kansas	Odd	Second Tuesday in Jan.	None	None	No	Yes
Kentucky	Even	First Tues. after first Mon. in Jan.	60	None	No	No
Louisiana	Even	Second Monday in May	60	30	Petition 2/3 members	No
Maine	Odd	First Wednesday in Jan.	None	None	No	Yes
Maryland	Odd	First Wednesday in Jan.	90	30	No	No
Massachusetts	Annual[7]	First Wednesday in Jan.	None	None	Majority both houses	Yes
Michigan	Odd	First Wed. in Jan.	None	None	No	No
Minnesota	Odd	Tues. after first Mon. in Jan.	90	None	No	Yes
Mississippi	Even	Tues. after first Mon. in Jan.	None	None	No	No
Missouri	Odd	Wednesday after Jan. first	None	None	No	No
Montana	Odd	First Monday in Jan.	60	None	No	No
Nebraska	Odd	First Tuesday in Jan.	None	None	Petition 2/3 members	No

TABLE IV—*Continued*

Nevada	Odd	Third Monday in Jan.	60	20	No	No
New Hampshire	Odd	First Wednesday in Jan.	None	None	Yes	Yes
New Jersey	Annual	Second Tuesday in Jan.	None	None	No	Yes
New Mexico	Odd	Second Tuesday in Jan.	60[8]	None	No	No
New York	Annual	Wed. after first Mon. in Jan.	None	None	No	No
North Carolina	Odd	Wed. after first Mon. in Jan.	None	20	No	Yes
North Dakota	Odd	Tues. after first Mon. in Jan.	60	None	No	No
Ohio	Odd	First Monday in January	None	None	No	No
Oklahoma	Odd	Tues. after first Mon. in Jan.	None	None	No	No
Oregon	Odd	Second Monday in Jan.	50	20	No	Yes
Pennsylvania	Odd	First Tuesday in January	None	None	No	No
Rhode Island	Annual	First Tuesday in January	None[9]	None	No	No
South Carolina	Annual	Second Tuesday in January	None	None	No	Yes
South Dakota	Odd	Tues. after first Mon. in Jan.	60	None	No	Yes
Tennessee	Odd	First Monday in Jan.	None[10]	None[10]	No	No
Texas	Odd	Second Tuesday in Jan.	None	30	No	No[11]
Utah	Odd	Second Monday in Jan.	60	30	No	No
Vermont	Odd	Wed. after first Mon. in Jan.	None	None	No	Yes
Virginia	Even	Second Wednesday in Jan.	60[12]	30	Petition 2/3 members	No
Washington	Odd	Second Monday in January	60	None	No	Yes
West Virginia	Odd	Second Wednesday in January	60[13]	None	Petition 2/3 members	No
Wisconsin	Odd	Second Wednesday in Jan.	None	None	No	No
Wyoming	Odd	Second Tuesday in Jan.	40	None	No	Yes

[1] Legislature meets on second Tuesday in January after election for purpose of organizing.
[2] No limit on sessions without pay.
[3] Adopted by referendum, November 5, 1946.
[4] Split or bifurcated session.
[5] "The general assembly shall adjourn sine die not later than the first Wednesday after the first Monday in June following its organization." (Art. 35, Conn. Const.)
[6] If sessions continue longer, members serve without pay.
[7] Amendment to constitution providing for annual sessions approved at election of Nov. 1944.
[8] Constitutional amendment adopted in 1940 provides for bifurcated or split session; legislature to convene for 30 days, recess for 30 days, and reconvene for 30 days.
[9] Members are paid for 60 legislative days in one calendar year.
[10] The Tennessee Const. does not actually limit the duration of sessions specifically, but it limits the length of a session in effect by a provision that legislators may not be paid for more than 75 days of a regular session nor for more than 20 days of any extraordinary session.
[11] Except impeachment.
[12] May be extended up to 30 days by 3/5 vote in each house.
[13] May be extended by governor until general appropriation passed.

result in bringing the Legislature greater public attention, that because revision or repeal of a law is delayed for two years the legislation will be given more careful consideration, that the sense of responsibility on the part of the legislators is increased. It is also contended that the biennial session is more economical, that postponement of important legislation is less likely with the biennial session, and that undesirable legislation that comes with log-rolling would be reduced if the Legislature only met every other year.

Those who favor the limited session further point out that some of our most competent citizens who are too busy to give up a great deal of time to public service might, however, be induced to represent the people if they could dispose of their work in one short session every other year.

The above arguments which were highly successful in the last century have been sharply challenged in this one. It is impossible to show that the change from annual to biennial sessions has decreased the amount of unnecessary and undesirable legislation. It is argued that the best way to curtail the legislative product of log-rolling is to strengthen the governor's veto power.

The majority of political scientists today see little advantage in the biennial session and advocate return to the annual unlimited session. They argue that problems of state are not limited to alternate years, and that less time devoted to problems of legislation will result in poorer legislation—legislation which is hastily conceived and ill-considered. They maintain that the biennial session encourages the expansion of executive power at the expense of the legislative branch.

The most concrete arguments in favor of retaining the annual session relate to the operational requirements of state government. Most important among these is that it has been demonstrated that one of the principal reasons for the failure of the budget process in states throughout the country has been the practice of making budgets for a two-year period. This practice is obviously dictated by constitutional provision for biennial session of the Legislature.[12]

The budget is the principal device through which the legislature may exercise any effective control over administrative agencies. Biennial budgets obviously reduce the extent of this control. Moreover, where budget-making authorities must estimate departmental expenditure programs over a two-year period and anticipate state revenues over the same period, the tendency has been to give spending agencies "the benefit of the doubt" rather than toward economy. The issue of an annual session was closely linked in California (which adopted it by referendum on Nov. 5, 1946) with the desire, if not the practical necessity, for an annual budget.

[12] J. Wilner Sundelson, *Budgetary Methods in National and State Governments*, Special Report of the New York State Tax Commission, No. 14 (Albany, 1938), pp. 459 *et seq.*

The experience of Massachusetts is very much to the point. Largely motivated by considerations of expected economies, Massachusetts changed to the biennial session by referendum vote in 1938.[13] Five years later a legislative commission, after reviewing all the arguments on the issue of annual *versus* biennial sessions, came to this strongly worded conclusion: [14]

> "This Commission wishes to point out that the change from annual to biennial legislative sessions not only was a retrogressive step in our democracy, but signified a cataclysmic decline in the scope, value, integrity and importance of our Legislature. As a matter of fact, if biennial sessions had always been the rule in this Commonwealth, now would have been the time to change to annuals. In other years the tempo of life was slower; changes occurred less frequently; in the interest of economy, circumstances might have permitted less frequent meetings of the Legislature. Today, the rapid pace of life and communal affairs demands a Legislature that is in touch with the pulse of the Commonwealth. . . .
>
> This Commission therefore strongly recommends the reconsideration of this whole question and a return to annual legislative sessions as soon as possible as the first step towards an improved legislative system."

In November, 1944, the people of Massachusetts voted to return to an annual session.

Briefly, in addition to the organization and functioning of the legislature itself, the choice between annual and biennial sessions will affect:

1) the influence of the executive in law-making
2) the control of the legislature over administrative agencies, and
3) the character and effectiveness of state budgeting.

* * *

Limited versus *unlimited duration*: It is significant that among the six states now having annual sessions, not one limits the duration of the session by constitutional provision. (See Table IV.) The same philosophy which favors a biennial session leads to a constitutional limit on the duration of sessions. The arguments *pro* and *con* are similar, although it is quite possible to provide for an annual session of limited duration, as in the 1944 revised Constitution. While this might appear to be something of a compromise between the two schools of thought, it would in fact place a restriction on the Legislature which is not imposed on either of the other two branches of government. The principal intent of such a limit would be to force the Legislature to schedule its work, but similar provisions in other states have failed in this respect.

* * *

Split versus *continuous sessions*: In an effort to aid legislative planning, another type of session, the split session, has been used for a

[13] See Massachusetts Special Committee to Investigate the Advisability of Amending the Constitution of the Commonwealth to Provide for Biennial Sessions of the General Court and for a Biennial Budget, *Report* (Senate No. 35, Boston, 1936).

[14] Massachusetts Special Committee on Legislative System and Procedure, *Report* (Senate No. 50, Boston, 1943), pp. 102, 105.

number of years in California and was adopted by New Mexico in 1940. In theory, the split session was conceived as a plan for dividing a session into three parts—for the introduction of bills during the first, consideration during the second, and passage during the third—with the hope that this method would allow ample time for the legislators and the public to study proposed legislation and would prevent the evil of last-minute introduction and passage of bills during the closing days of a session. The split session has not worked out very well in practice. The West Virginia legislature experimented with the idea for four sessions but found it unworkable. The West Virginia legislators allowed bills to be introduced after the recess, or during the first period introduced skeleton bills—bills which contained only titles and enacting clauses and which were amended after the recess so that they became practically new bills. The jam at the end of the session was not reduced. The same faults are in evidence in California and New Mexico.

* * *

Special sessions: In addition to regular sessions, all states make provision for the calling of special sessions. The increase in the number of special sessions in recent years has been attributed to the widespread use of the biennial and limited regular sessions of the legislatures. From 1927 to 1940 there were 281 special sessions called. During that period, Texas and Illinois each held 19 special sessions, Louisiana 14, Ohio 12, Arizona and Kentucky 10, New Jersey 9, and Nevada 1. In other states, the number ranged from two to eight. It should be noted that New Jersey, even with its annual unlimited sessions has had to call many special sessions—nine during the period of 1927-1940 (five of which were held in 1931), one each in 1942, 1944 and 1945, and two in 1946.

Usually, it is the governor who is authorized by constitution to summon the legislators in special session. Thirty states authorize him to specify the subject or subjects to be considered at the sessions and prohibit the legislators from treating any other matter. In New Jersey, the Governor has the right to convene the Legislature whenever in his opinion public necessity requires it, but now no restriction on the subject matter is effective except by party discipline.

Seven states, Connecticut, Louisiana, Massachusetts, Nebraska, New Hampshire, Virginia and West Virginia permit the legislators to determine the necessity for special sessions, but in Louisiana and Virginia a two-thirds vote of all the members is required and in West Virginia a three-fifths vote is required before a special session can convene. In 16 states special sessions are limited to from 15 to 30 days.

* * *

Any changes which the Convention agrees upon in respect to sessions will involve corresponding changes in other sections of the Constitution. The Governor is presently elected for a three-year term. If the biennial session were adopted, the term of the Governor should be changed or a Governor might take office and find he had no Legislature in session to address, hence a special session would have to be called. If a biennial session were adopted, there would be no point in continuing a one-year term for Assemblymen or the three-year term for Senators.

In addition, if the biennial or limited session is voted, the Convention should consider the advisability of permitting the Legislature to determine the necessity of calling a special session, the length of the special session, and the limitation of the number of subjects which can be treated. The Constitution submitted to the people in 1944 called for annual sessions limited to 90 days and provided that

> "Special sessions of the legislature shall be called by the Governor upon petition of a majority of all the members of each house and may be called by the Governor at such other times as in his opinion the public interest may require. In either event, the call for a special session shall specify the matter or matters to be considered, and no other matter shall be considered at such session which is not specified in such call or in any other message from the Governor delivered during such session."

* * *

The provisions of the present Constitution respecting organization and procedure of the Legislature represent the conventional provisions found in most state constitutions. Art. IV, sec. IV still stands as it was adopted in 1844, and its very brevity has given it a lasting quality in operation which more detailed specifications might not enjoy.

The principal provisions of current interest relate to the introduction and progress of bills through the respective houses, including the operation of the committee system. Except for the styling and form of bills, all provisions of the present Constitution on legislative procedure are included in Art. IV, sec. IV, par. 6, as follows:

> "6. All bills and joint resolutions shall be read three times in each house, before the final passage thereof; and no bill or joint resolution shall pass, unless there be a majority of all the members of each body personally present and agreeing thereto; and the yeas and nays of the members voting on such final passage shall be entered on the journal."

Bills for "raising revenue" are required to "originate in the House of Assembly; but the Senate may propose or concur with amendments, as on other bills."

Introduction: The requirement that revenue bills must originate in the lower house is a carry-over from the old notion that taxation must have a basis of popular representation. It is now troublesome in that bills which have incidental revenue features are sometimes

introduced in the Senate and then must contend with the constitutional rule. Some 20 states have the same rule, but 22 states permit introduction of bills in either house; six have no provision and none is required for the unicameral legislature of Nebraska.

Readings: Upon introduction, a bill is deemed to have had its first reading. Were it not for the fact that readings are by title only, the requirement of three readings would be unworkable, and even in those states that require reading "in full" the custom is to read a few sections at most, or to disregard the requirement entirely.[15]

The difficulty with the reading requirement is that it no longer serves any purpose as presently constituted. While it is customary when time permits to advance bills to second reading which may eventually be moved for final passage, the constitutional provision imposes no standard of legislative action in that all readings may occur on the same day. The requirement of readings is an anachronism carried over from the days when high-speed modern printing was not available.

It is common among the states to require the three readings to be on three separate days, which turns the reading requirement into a device intended to prevent excessive haste in legislating. New York seeks the same result more directly by requiring bills to have been printed and on the desks of members, in final form, "at least three calendar legislative days" before final passage, except when the governor may certify to the need of immediate passage.[16] The "Model State Constitution" requires both readings and printing, as follows:

> "Section 314. Passage of Bills. No bill shall become a law unless it has been read on three different days, has been printed and upon the desks of the members in final form at least three legislative days prior to final passage, and has received the assent of a majority of all the members of the legislature. No act shall become effective until published, as provided by law."

The present practice in New Jersey of passing legislation on occasion "under suspension of the rules," without reference and without printing, would be barred by any of these other constitutional provisions since the Legislature could not suspend rules written into the Constitution. There may be instances where such a provision might delay emergency legislation, and it might for this reason be argued that the matter should preferable be left, as it is in 13 states, to legislative rules.

Committees: The committee system has been one of the least successful aspects of American state legislatures, but it is rarely

[15] Illinois Constitutional Convention of 1919, Bulletin No. 8, "The Legislative Department," p. 556.

[16] N. Y. Const. (1938) Art. III, sec. 14. See N. Y. State Constitutional Convention Committee, "Problems Relating to Legislative Organization and Powers" (Albany, 1938), p. 66, which reports that in the nine years 1929 to 1937 inclusive, the governor of New York used this power 980 times, of which 110 were in 1933.

recognized in state constitutional provisions. A few states, such as Alabama, Colorado, Missouri, Mississippi and Pennsylvania provide that no bill may be considered unless it shall be referred to committee and a report made. But the committee system itself has received little attention. The main difficulty in dealing with the committee system by constitutional provision is that the formal legislative committees are in fact subordinate to the majority party caucus, in the practical operation of state legislatures. It is notable that the new constitution of Missouri merely provides:

> "Section 22. Reference of Bills to Committees—Recall of Referred Bills —Records of Committees.
>
> Every bill shall be referred to a committee of the house in which it is pending. After it has become referred to a committee, one third of the elected members of the respective houses shall have power to relieve a committee of further consideration of a bill and place it on the calendar for consideration. Each committee shall keep such record of its proceedings as is required by rule of the respective houses and this record and the recorded vote of the members of the committee shall be filed with all reports on bills."

The new constitution of New York (1938) makes no reference to legislative committees. In the last analysis, the matter of legislative procedure depends as much upon the spirit and care with which rules are followed as upon the letter of the rule itself.

BIBLIOGRAPHY

BEBOUT, JOHN E., ed. Proceedings of the New Jersey State Constitutional Convention of 1844, 1942.

BROMAGE, A. W. State Government and Administration in the United States, 1936 (Chap. IX, "Organization of State Legislatures")

BUCK, A. E. "Modernizing Our Legislatures" (American Academy of Political and Social Science, Philadelphia), 1936.

CHAMBERLAIN, JOSEPH P. Legislative Processes: National and State, 1936.

Council of State Governments. The Book of the States, 1945-46.

CULVER, DOROTHY C. Legislative Reorganization (University of California, Bureau of Public Administration), 1941.

ERDMAN, C. R., JR. The New Jersey Constitution—A Barrier to Governmental Efficiency and Economy, 1934.

ESMOND, B. D. "Rule-Making by the Legislature," 167 Annals of the Amer. Acad. of Pol. and Soc. Science 102 (1933).

FAUST, MARTIN L. Manual on the Legislative Article (Missouri Constitutional Convention of 1943), 1943.

FREUND, ERNEST. Legislative Regulation, 1932.

GRANT, J. A. C. "The Introduction of Bills," 195 Annals of the Amer. Acad. of Pol. and Soc. Science 116 (1938).

GRAVES, W. B. American State Government, 3rd ed., 1946 (Chap. VI, "The State Legislature—Organization").

GRAVES, W. B., ed. "Our State Legislators," Annals of the Amer. Acad. of Pol. and Soc. Science, No. 195, Jan. 1938.

Louisiana State Univ. Constitution Revision Projet, Constitutional Problems, Monograph 10, "The Legislature," 1947.

LUCE, ROBERT. Legislative Assemblies, 1924.

LUCE, ROBERT, Legislative Principles, 1930.

MACDONALD, A. F. American State Government and Administration, 3rd ed., 1945 (Chap. 8, "State Legislatures").

MASON, P. "Methods of Improving Legislative Procedure," 195 Annals of the Amer. Acad. of Pol. and Soc. Science 151 (1938).

National Municipal League. Model State Constitution, Partial Revision 1946.

New Jersey. Record of Proceedings before the Joint Committee of the New Jersey Legislature constituted under SCR No. 19 . . . adopted June 15, 1942, 1942.

New Jersey. Report of the Commission on Revision of the New Jersey Constitution, 1942.

New Jersey Constitution Annotated.

New Jersey Legislative Manual, 1946 (for rules, biographies of members, and county representation).

New York State Constitutional Convention Committee, Report, 1938, (Vol. VII, Problems Relating to Legislative Organization and Powers; Vol. III, Constitutions of the States and United States).

New York State Joint Legislative Committee on Legislative Methods, Practices, Procedures and Expenditures, Final Report (Legisl. Doc., 1946, No. 31).

SCHNADER, W. A. "The Constitution and the Legislature," 181 Annals of the Amer. Acad. of Pol. and Soc. Science 39 (Sept., 1935).

Tennessee, Univ. of, Bureau of Public Administration, monographs:

1. "Constitutional Provisions Governing Terms of the Legislature."
2. "The Compensation of Legislators."
3. "Legislative Sessions."
4. "Constitutional Provisions on Legislative Procedure."

WALKER, HARVEY. Law Making in the United States, 1934.

WILLOUGHBY, W. F. Principles of Legislative Organization and Administration, 1934.

WINSLOW, CLINTON I. State Legislative Committees, A Study in Procedure, 1931.

LEGISLATORS—QUALIFICATIONS, TERM OF OFFICE SALARIES, METHOD OF FILLING VACANCIES

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Qualifications

The present Constitution, in Article IV, section I, paragraph 2, which was adopted in 1844, provides that:

> "No person shall be a member of the Senate who shall not have attained the age of thirty years, and have been a citizen and inhabitant of the State for four years, and of the county for which he shall be chosen one year, next before his election; and no person shall be a member of the General Assembly who shall not have attained the age of twenty-one years, and have been a citizen and inhabitant of the State for two years, and of the county for which he shall be chosen one year, next before his election; provided, that no person shall be eligible as a member of either House of the Legislature, who shall not be entitled to the right of suffrage."

It is interesting to observe that Article III of the original Constitution of New Jersey, in effect prior to the Revision of 1844, contained no age restrictions but imposed certain property requirements. Members of the Legislative Council were required to have been inhabitants and freeholders of the county for which chosen for one year before election; members of the Assembly were required to be inhabitants of the county they represented for the same period.

The 1942 *Report of the Commission on Revision of the New Jersey Constitution* proposed no essential changes in the present section, nor did the 1944 proposed revised Constitution.

The "Model State Constitution" (Partial Revision 1946), published by the National Municipal League, section 301, relating to qualifications of legislators, provides simply that:

> "Except as otherwise provided in this Constitution, any qualified voter shall be eligible to membership in the Legislature."

In New Jersey this would mean that any person having the necessary residence to be a qualified elector, which is presently one year in the State and five months in the county, would be eligible for membership in the Legislature, provided, of course, that he had attained age 21.

An examination of the constitutions of our sister states discloses that in Michigan, New York, Rhode Island, Wisconsin, New Hampshire, Delaware and Connecticut, no age limitation is placed upon eligibility for election to the Legislature; the only requirement is

that of being a qualified elector with the necessary residence attached thereto.

However, in the constitutions of Mississippi, Tennessee, Missouri, Maryland and Pennsylvania, we find age limitations and residence requirements in both the state and county. In all these states the age requirement for membership in the Assembly is 21 years, and in the Senate it varies from 25 to 30 years of age. Mississippi and Pennsylvania require four years' residence in the state, Tennessee and Maryland three years, and Vermont and Missouri require two years.

Research into the general subject of qualifications required for membership in the Legislature discloses that the matter has not been considered as highly controversial in any state and that the several states are rather evenly divided in their requirements.

Term of Office—Senate

The present Constitution of New Jersey, Article IV, section II, paragraph 1, provides that:

> "The Senate shall be composed of one Senator from each County in the State, elected by the legal voters of the Counties, respectively, for three years."

In the *Report of the Commission on Revision of the New Jersey Constitution* (1942), Art. III, sec. II, par. 1, proposed that:

> "The Senate shall be composed of one Senator from each county in the State elected by the legally qualified voters of the counties, respectively, for a term of four years beginning on the second Tuesday in January next following his election."

In the proposed revised Constitution of 1944, Art. III, sec. II, par. 1, provided the following term:

> "The Senate shall be composed of one Senator from each county in the State elected by the legally qualified voters of the counties, respectively, for a term beginning at noon on the second Tuesday in January next following his election and ending at noon on the second Tuesday in January four years thereafter."

It will be noted that in 1942 and 1944 it was proposed that the term of Senator be increased from three to four years, and that certain refinements were made in the language of the existing section to specify the exact beginning and end of the term.

The "Model State Constitution," mentioned above, prepared by the National Municipal League, suggests a single-chamber Legislature with a two-year term (secs. 301 and 302). This is not very helpful, for under the limitations of the law providing for the 1947 Constitutional Convention (P. L. 1947, c. 8), New Jersey will retain a two-chamber Legislature.

New Jersey is unique in that it is the only state whose constitution provides for a three-year term for members of the Senate. Thirty-

one states provide for a four-year term and 16 states establish a two-year term. The arguments for and against increasing the term will be set forth at the conclusion of the references to the term of Assemblymen.

Term of Office—Assembly

Article IV, section III, paragraph 1 of the present Constitution provides:

> "The General Assembly shall be composed of members annually elected by the legal voters of the Counties, respectively, who shall be apportioned among the said Counties as nearly as may be according to the number of their inhabitants *****."

In 1942, the Commission on Revision of the New Jersey Constitution, in Art. III, sec. II, par. 3, proposed that:

> "The General Assembly shall be composed of members from each county elected biennially by the legally qualified voters of the counties, respectively, for a term of two years beginning on the second Tuesday in January next following their election."

The proposed revised Constitution of 1944, Art. III, sec. II, par. 3, provided that:

> "The General Assembly shall be composed of members elected biennially by the legally qualified voters of the counties, respectively, each for a term beginning at noon on the second Tuesday in January next following his election and ending at noon on the second Tuesday in January two years thereafter ****."

Under the proposals in the "Model State Constitution" of the National Municipal League, as indicated above, a two-year term of office was suggested.

An examination of the constitutions of all the other states discloses that New Jersey is unique in that it is the only state prescribing a one-year term of office for members of the General Assembly. Alabama, Louisiana, Maryland and Mississippi provide a four-year term, and the remaining 43 states have a two-year term.

A careful examination of the authorities on constitutional revision fails to disclose any impelling argument in favor of reducing the senatorial term of three years or the Assembly term of one year. On the contrary, the arguments are directed to increasing the term of office. The following significant statement is found in the *Report of the New York Constitutional Convention Committee of* 1938 (vol. VII, "Problems Relating to Legislative Organization and Powers," p. 11):

> "The following arguments to increase the senatorial term to four years have been advocated: The present term of two years is far too short to permit incumbents to gain a comprehensive grasp of the business of state. State governmental affairs have grown so large that no one can hope to present and test a policy or program based upon any degree of knowledge within the time allowed. Good policies may not be thoroughly tested within two years and run the risk of being abandoned at the end of that time. As a result, there is difficulty in having a continuing policy in the management of state affairs."

The present trend in New Jersey, as indicated by the 1942 and 1944 proceedings relative to constitutional revision, is to increase the term of office of the legislators. The arguments that were made in favor thereof are substantially those stated in the above quotation.

New Jersey Assembly members have personally stated a preference for an increased term in order to preclude the need of interrupting their legislative duties in mid-term in order to begin campaigning for reelection in the Fall.

Salaries of Legislators

Article IV, section IV, paragraph 7 of the present Constitution provides that:

> "Members of the Senate and General Assembly shall receive annually the sum of five hundred dollars during the time for which they shall have been elected, and while they shall hold their office, and no other allowance or emolument, directly or indirectly, for any purpose whatever. The President of the Senate and the Speaker of the House of Assembly shall, in virtue of their offices, receive an additional compensation, equal to one-third of their allowance as members."

An 1875 amendment to the original 1844 section struck out certain provisions fixing the compensation of members of the Legislature on a *per diem* basis. It also deleted a provision allowing traveling expenses at the rate of ten cents per mile, in going to and returning from their place of meeting, on the most usual route.

The 1942 *Report of the Commission on Revision of the New Jersey Constitution,* Art. III, sec. III, par. 1, proposed that the salary of members of the Legislature be raised to $1,500 per annum, with no additional allowance of any kind except for service on the Legislative Council or as presiding officer of either House. The President of the Senate and Speaker of the House would, by virtue of their offices, receive an additional compensation equal to one-third of their regular salary.

The proposed revised Constitution of 1944, Art. III, sec. III, par. 1, provided that the salary of Senators and Assemblymen be increased to $2,000 per annum, with no additional allowance of any kind, except that an additional amount equal to one-half of the base salary was allowed to the President of the Senate and the Speaker of the House by virtue of their offices.

The "Model State Constitution," sec. 306, suggests that:

> "The members of the legislature shall receive an annual salary, as may be prescribed by law, but the amount thereof shall never be increased nor diminished during the term for which they are elected."

In considering the problem of salaries to be paid legislators, it is evident that the provision in the present Constitution, which was established in 1875, has long been deemed inadequate. This is reflected in the 1942 and 1944 proceedings looking to the revision of the Constitution.

An examination of the salaries and travel allowances proposed in the constitutions of other states is interesting and enlightening. Only one state, North Carolina, makes no provision for travel allowances. They either provide for actual traveling expenses, transportation costs, or mileage allowance at a rate of from five to 20 cents per mile.

Pennsylvania pays its legislators $3,000 annually for a regular session and an additional $500 for a special session. If the special session exceeds a period of one month, then the additional allowance is $750. Illinois, Massachusetts and New York allow $2,500 per year; Ohio, $2,000 per year; Missouri, $1,500; Maryland, Mississippi and South Carolina, $1,000 per year; and California and Wisconsin grant $1,200 per year.

The following states pay on a *per diem* basis, and the maximum that can be received under a limitation placed on the number of days in the session is: Alabama, Delaware and Louisiana, $950; Indiana, $1,010; Montana, $1,200; Nebraska, $875; Nevada, $800; and Texas, $1,200 for 120 days of legislative session.

A number of arguments have been advanced for increasing the salary of legislators. At a time when New York legislators were receiving $2,500 per year, the *Report of the New York Constitutional Convention Committee of 1938* (vol. VII, p. 27) had this to say:

> "The necessary cost of living has greatly increased. * * * * Members of the Legislature give their time and service to the State at an actual loss. Assuming that the Legislature should be representative of all classes of citizens, at the present rate of compensation, it has become practically impossible for a poor man to accept office and properly attend to its duties. While salary should not be made so large as to make the position attractive merely from a money point of view, it should be sufficient to reasonably compensate for services of the member and prevent him from actual loss. An increase in salaries will result in many more intelligent and well qualified persons aspiring to the position and the general result will be an improvement in the general character and standing of the Legislature."

In the *Report of the Constitution Revision Commission of the State of Tennessee* (1946), the Commission stated (p. 20):

> "We think it is niggardly for a great state to pay its legislators so little that they must bear any part of the expense necessarily incurred in the performance of their duties."

In an article entitled "Modernizing the Legislature," in the March 1947 issue of the *National Municipal Review,* Joseph P. Harris, Professor of Political Science at the University of California, says:

> "The cost of living at the state capitols has grown and the length of sessions have notably increased. Members also stand to lose a greater amount of their private income because of absence from business or profession. For these reasons substantial increases in the salaries of state legislators are needed. At the same time, such increases should not be sufficient to make the position attractive because of the salary or to approximate full time earnings."

The most forceful argument against increasing the salary of legislators appears in the quoted *Report of the New York Constitutional Convention of 1938* (vol. VII, p. 27):

> "The time is not favorable to the increase of official salaries. The expenses of the State are paid in part by persons whose incomes are smaller than the salaries of the majority of the public servants, to which payers any increase of taxation is burdensome. The public service is no place in which to amass a fortune * * * *. There are two lines of reasoning with respect to salaries of those in State service. One is that the largest salary will attract to such service a better and more efficient class of public servants; the other, that such larger compensation will draw to it men who are willing to become professional politicians with a chief view of drawing the salary regardless of the character of the service rendered. The best service is rendered by those who, busy in their own affairs, are yet willing to sacrifice of their time in serving the public and who find much of their compensation for such service in the confidence and regard of the constituency electing them and in the satisfaction that comes from the consciousness of duty well performed."

The sole remaining question to be determined in connection with salaries for legislators is the manner in which they shall be fixed. The majority of the states provide for a maximum salary in the fundamental law of the constitution, but there are instances where the legislature is empowered to fix the rate of compensation. In the latter case it is usually provided that the salary shall not be increased or diminished during the term for which the legislators were elected. Notably, the "Model State Constitution" of the National Municipal League makes such a provision (sec. 306). The authorities seem agreed that either method is satisfactory so long as safeguards are arranged to preclude the possibility of any session of the legislature granting excessive remuneration to its members.

Vacancies

On the question of the manner in which vacancies in the Legislature should be filled, the present Constitution, in Art. IV, sec. II, par. 2, dealing specifically with the Senate, has this to say:

> "* * * * and if vacancies happen, by resignation or otherwise, the persons elected to supply such vacancies shall be elected for the unexpired term only."

Again, in Art. IV, sec. IV, par. 1, with reference to both the Senate and General Assembly, the following provision is found:

> "Each house shall direct writs of election for supplying vacancies, occasioned by death, resignation, or otherwise; but if vacancies occur during the recess of the legislature, the writs may be issued by the Governor, under such regulations as may be prescribed by law."

Obviously, the foregoing constitutional provision required implementing legislation. Accordingly, the Legislature has provided that a special election can be held to fill a vacancy in either the Senate or General Assembly (R. S. 19:3-28). If it is deemed that the seat of the absent legislator may remain vacant without material

harm to the services of the Legislature and that the holder thereof will not be required to present himself during the unexpired term, then the filling of the vacancy can await the next general election. It therefore becomes unnecessary to hold a special election to fill a vacant seat when it is quite apparent that the Legislature has adjourned and will not meet again during the unexpired term.

If the board of freeholders of the county affected by the vacancy signifies its desire that the seat be filled, then a writ of election is to issue forthwith for a special election to fill the vacancy. This gives ample protection to a county desiring full representation in the Legislature where the Legislature itself considered it unnecessary to hold a special election.

The *Report of the Commission on Revision of the New Jersey Constitution* (1942), proposed in Art. III, sec. II, par. 5, that:

> "Vacancies in the office of Senator or Assemblyman shall be filled for the remainder of the unexpired term by election at the next general election held not less than sixty days after the occurrence of the vacancy."

The proposed revised Constitution of 1944, in Art. III, sec. II, par. 4, stated that:

> "Vacancies in the office of Senator or Assemblyman shall be filled by election for the unexpired terms only, as may be provided by law."

This procedure is akin to the existing one and will require implementing legislation.

The "Model State Constitution" provides for a third method of filling vacancies, found in a few of the state constitutions:

> "Whenever a vacancy shall occur in the legislature, it shall be filled by a majority vote of the remaining members from the district in which said vacancy occurs. If, after thirty days following the occurrence of a vacancy, it remains unfilled, the Governor shall appoint some eligible person for the unexpired term."

This provision is inapplicable to New Jersey; there is but a single Senator from each county and there would be no one to vote for the successor. This is also true of small counties having but one Assemblyman.

An examination of typical constitutional provisions of other states discloses that Maryland provides for appointment by the governor to fill vacancies. Michigan, New Hampshire, Texas, Tennessee and Illinois provide for the issuance of a writ of election for a special election, under the authority of the governor. In Pennsylvania, the writ of election is issued by the presiding officer of the legislative chamber affected, and in Delaware this authority is optional either in the presiding officer or the governor. The majority of states provide for a filling of the vacancy for the unexpired term either at the next general election or at a special election held for that purpose.

BIBLIOGRAPHY

Constitutions of Michigan, New York, Rhode Island, Wisconsin, New Hampshire, Delaware, Connecticut, Mississippi, Vermont, Tennessee, Missouri, Maryland, Pennsylvania, Texas, Illinois and Massachusetts.

Council of State Governments. The Book of the States, 1945-6.

Missouri. Manuals for the Missouri Constitutional Convention of 1943.

National Municipal League. Model State Constitution, Partial Revision, 1946.

National Municipal League. National Municipal Review, March, 1947.

New Jersey. Constitution of 1844, as amended.

New Jersey. Proceedings before the New Jersey Joint Legislative Committee . . . to Ascertain the Sentiment of the People as to Change in the New Jersey Constitution, 1942.

New Jersey. Proceedings of the Joint Legislative Committee to Formulate a Draft of a Proposed Revised Constitution, 1944 (mimeo., State Library).

New Jersey. Report of the Commission on Revision of the New Jersey Constitution, 1942.

New Jersey. Revised Constitution for the State, 1944.

New York Constitutional Convention Committee, 1938. Report (vol. VII, "Problems Relating to Legislative Organization and Powers").

Tennessee. Report of the Constitutional Revision Commission of the State of Tennessee, 1946.

PROCEDURAL LIMITATIONS ON THE LEGISLATIVE PROCESS IN THE NEW JERSEY CONSTITUTION

by

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These extracts from an unpublished doctoral thesis written in 1934 are presented with the permission of the author. Although it brings the judicial history of the constitutional provisions under consideration only down to that date, it is believed that no significant modification of the conclusions would result from a review of more recent experience.

I have attempted to include enough material to illuminate the principal problems raised by each provision and to explain and support the principal conclusions arrived at. No textual changes have been made except for smooth transition from one sentence or paragraph to another where intervening material has been omitted. The first section is a short summary of the whole thesis. This is followed by a series of sections dealing with each of the constitutional provisions. These are followed by the concluding chapter of the monograph, which pulls the various parts of the subject together and points up all of the major conclusions. There are some repetitions involved in this treatment but it is believed that they will be found helpful.

This monograph includes proportionately less detail from Dr. Sinclair's thesis on the provision concerning titles of acts (Art. IV, sec. VII, par. 4) than on the other provisions considered. There are two reasons for this. One is that litigation on the title clause has been so extensive that it would be utterly impossible to review even the leading cases within reasonable space limits. The second is that Dr. Sinclair presented a condensed version of this part of his thesis, with citations of all acts and cases, in an article entitled "Operation of a Constitutional Restraint On Bill-Styling," in 2 *University of Newark Law Review* 25, Spring 1937. This article is more readily available than the original thesis. It concludes references to more or less similar constitutional provisions in 39 other states and quotes several of them.

In that article, written three years after the original thesis, Dr. Sinclair reported that a review of leading cases in other states indicates that the title provision has generally not worked more satisfactorily elsewhere than it has in New Jersey. He concludes, "Clearly the title limitation should be cut out of the New Jersey Constitution."

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Summary

This monograph deals with style requirements and also with those touching upon the treatment of a bill after it has been drafted.

Materials inspected included reports on constitutional reform made previous to the Constitutional Convention of 1844, the published Journal of that Convention, and its debates as reported in

the newspapers. Other materials were the Proceedings of the Commission which met in 1873 to revise the Constitution, and the newspaper reports of the debates in that Commission and of the legislative debates on the amendments proposed. These materials yielded very little information. As a result, this monograph deals almost entirely with a large group of cases and with the statutes construed in many of them.

The method used here is historical and analytical. The material was analyzed to ascertain the present state of the law, the value of the constitutional limitations, and possible trends in the future.

By far the major part of the material deals with the first sentence of Article IV, section VII, paragraph 4 which reads:

> "To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object and that shall be expressed in the title."

This limitation was taken from the royal instructions given in 1702 to Lord Cornbury, Governor of New Jersey. Incorporated into the Constitution in 1844, it first received judicial consideration in 1854. No act was held unconstitutional under it until 1877. Some 268 cases have considered the limitation (this excludes inconsequential treatment), and in 49 the courts thought different acts or different parts of acts unconstitutional as conflicting with this limitation. These findings of invalidity are fairly well spread over the period from the first case until 1922. Considering only unconstitutional statutes enacted after 1879, when the Court of Errors and Appeals affirmed the first decision of invalidity, an average time of nearly five years elapsed between their enactment and the first declaration that they were unconstitutional. In the rare instances when separate sections of the same act were declared invalid at different times, each section has been treated as a separate act for the purpose of this computation.

The decisions have been fairly well reconciled by breaking them down into a large number of categories. This accentuates the fact that a complex body of case law has grown up and that the cases themselves do not present workable rules for use in future litigation. Throughout the period considered the courts, consciously or unconsciously, established new categories with ensuing separate lines of decisions. As late as 1911 a new sort of situation was first clearly recognized.

It is usually stated that this limitation had for its purpose the prevention of logrolling, or the giving of notice of the contents of the bill, or both. These purposes were not accomplished. No title was declared to contravene the Constitution because of breadth or vagueness. Thus, ample room was left for logrolling and notice became practically unimportant. Titles were invalid mainly be-

cause they were too narrow or deceptive within the definition of a narrow line of cases.

It is concluded that New Jersey would be better off without this provision. This conclusion is based upon its failure to produce appreciable beneficial results, and upon the large amount of litigation involved, resulting in numerous instances of invalidity and in a complicated field of case law where, upon the basis of actual danger to those affected by the acts involved, some of the cases seem unjustifiable and in conflict.

The other two limitations as to style were adopted in 1875. They appear in Article IV, section VII, paragraph 4 also. The first of these reads:

> "No law shall be revived or amended by reference to its title only, but the act revived, or the section or sections amended, shall be inserted at length."

The object of this provision was to avoid the confusion resulting from referring in one act to a section in another act by number, or altering or repealing words or lines in that section through such reference. This practice is no longer found to exist. In addition, there are few cases and they are fairly consistent. The provision seems beneficial.

The second limitation reads:

> "No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of the act, or which shall enact that any existing law, or any part thereof, shall be applicable, except by inserting it in such act."

This prohibition may have prevented positively fraudulent legislation, but it did not avoid the confusion resulting from extending the effect of a law by reference in a second law. The body of case law is not very large but it is confused. It affords an especially good example of the tendency of the courts to decide cases on the basis of the presence of the same type of fact situation, rather than upon logic. The provision seems to be of slight value.

The usual type of procedural limitations concerning readings, votes, referendums and vetos have been construed very little. They have been circumvented in a good many instances. Only five cases arose under the act of 1873 permitting direct attack where indirect attack is not possible, as is true with some of these provisions.

It is concluded that when there are many cases construing a constitutional limitation, the law on the subject becomes complex and confused. Such a provision is actually harmful. Allowing attack on statutes for a limited time only as, for example, one year, might end some of the difficulties of uncertainty under the present system. It is concluded that a better result could be accomplished by having a bill drafting commission pass upon the style of all acts before they reach the Legislature. The veto power could also be used to

correct any defects of style or incorrect procedure which occur. The Governor could be given sufficient time for a thorough examination of bills. Examinations for defects of style, and advice on incorrect procedure, could come from non-partisan legislative experts who would make their findings public. The limitations might be retained in the Constitution as directory only.

Object and Title of Acts

Most of the cases on procedural limitations in New Jersey deal with the first sentence of Article IV, section VII, paragraph 4:

> "To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title."

This section, according to Professor Freund, in so far as it joined with the title requirement that of unity of subject matter, first appeared in state constitutional law when it took its place in the New Jersey Constitution of 1844.[1] The limitation regarding title alone was not new, however. Very little has been made of the requirement of unity of subject matter; the cases on this section of the Constitution deal primarily with the expression of the object of an act in its title.

The constitutional restriction as to title can be traced back to 1702, where it appears in the instructions to Lord Cornbury, the first Governor to act as executive for both East and West Jersey.[2] Among the instructions was one bearing a surprising similarity to the first sentence of Article IV, section VII, paragraph 4. It read:

> "You are also as much as possible to observe in the passing of all Laws, that whatever may be requisite upon each different matter, be accordingly provided for by a different Law, without intermixing in one and the same Act, Such Things as have no proper Relation to each other; and you are especially to take care that no Clause or Clauses be inserted in, or annexed to any Act which shall be foreign to what the Title of such respective Act imports." [3]

This section is recognized as the source by Justice Van Syckel in *Paul* v *Gloucester,* 50 N. J. Law 585. It is interesting to note that no such provision appears in the Constitution of 1776.

An examination of the cases furnishes us with an abundance of material. We have titles of almost every conceivable sort. There are long and short ones, narrow and broad ones, clear and confusing and even erroneous ones. In this mass of material it is but natural for us to find some confusion and inconsistency. The courts begin by saying they will treat titles with great liberality, and yet in some cases they are very technical. In some cases they say that when

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[1] Ernst Freund. Standards of American Legislation, 1917, at pp. 154-155. However, a provision similar to that on the subject of title in Article IV, section VII, paragraph 4 of the New Jersey Constitution is found in about two-thirds of the states, according to Professor Freund.

[2] Leaming and Spicer. Grants and Concessions of New Jersey, 1758, p. 619.

[3] *Ibid, p.* 623.

subjects have formerly been treated separately, to combine them under a title which would, but for this earlier separation, be sufficiently descriptive, is misleading and unconstitutional.[4] In another case the question of combination is left as a matter of legislative policy.[5]

In some of the cases in which titles were held to be too narrow, the court, although technically correct, seems to have been unnecessarily strict. Would any real harm result from permitting a condemnation clause under the word "purchase," or regulations against unhealthy conditions for cows under a title forbidding adulteration of milk? [6] Or was there real harm where an area in which the sale of liquors was prohibited was smaller in the body of the act than that described in the title? [7]

One purpose of section 4 was to give notice. This purpose, however, may be for different groups—sometimes for both the public and the Legislature, sometimes for the latter alone, and sometimes for a part of the former only. Another purpose often stated is to prevent logrolling.

In construing the cases, the courts have made it clear that it is only necessary to mention the central object of the legislation, and nothing more. This is demonstrated time and again when we find the broadest and vaguest titles upheld. Only where such titles are deceptive are they bad. The element of deception enters, however, only when enough definiteness has been imported into the title to make it mislead rather than simply not inform the reader, as in the broad and vague titles.

From what has been said, it is clear that the frequently recited notice requirement is unimportant in fact. The most usual stumbling block is too great narrowness in the titles. There is generally no way of getting around this defect. Other failures of notice are passed over. The courts will sometimes excuse actual mistakes in the title and often disregard the superfluous matter it contains. Statutes are also construed in the light of their history, which may have either a narrowing or a broadening influence.

Several potential danger points have been disclosed. One is the theory that a statute which has been reenacted several times is always limited by its first title. Another has to do with the amendment of title—here the danger is of importing an amendment into the act itself at the time when the title is amended, the change being expressed only by reciting in the title the purpose of amending the title. Nothing is said about altering the body of the act. This tendency is dangerous in view of the general rules against too narrow titles, because it is out of line with such rules.

[4] *Atlantic City & S. R. R. Co.* v *State*, 88 N. J. Law 219.
[5] *Strait* v *Wood*, 87 N. J. Law 677.
[6] *Griffith* v *Trenton*, 76 N. J. Law 23; *Shivers* v *Newton*, 45 N. J. Law 469.
[7] *Ryne* v *State*, 58 N. J. Law 238.

Finally, we find that the requirement of singleness of object has been rendered practically meaningless, so that the sole test is one of expression in the title of what is contained in the body of the act.

Taking the results of a study of the section as a whole, certainly the picture is not a very satisfactory one. The cases are often not so much contradictory as they are confusing. We do not have a line across the whole field, marking off good titles from bad. Rather, there are a number of special rules which are needed to explain why some titles are good when they actually look worse than invalid ones, and vice versa. This divides the field into sections, in some of which more liberality prevails than others.

The picture one usually gets of the effect of the title provision is that there is some confusion, that some cases have been declared bad, but nothing more. It does not worry us much. When we gather the cases together for a statistical study, the results are shocking indeed.

An examination of the cases will show that there were 268 cases in which titles were considered in at least some small way. This total excludes cases where treatment was so inconsequential as not to furnish material enough for a digest. These cases cover a period of 90 years. Quite a few of the titles were obviously good and the court dismissed the contention that they were bad with a few sentences. Yet out of this number, in 49 cases, or over 18 per cent of the total, statutes or parts of statutes were declared unconstitutional. Further, in three more cases the court expressed doubt as to the validity of statutes, which doubt was never cleared up. In 27 cases out of the total, the court gave or refused to give a certain construction to a statute because of the constitutional limitation placed upon it by its title.

These 27 cases are not particularly significant, but at least they should be placed in a separate category. It seems that without any constitutional limitation, the title would be taken by the courts as expressing legislative intent as to what the body is to contain. The effect of the Constitution has often been the weakening of such a rule, because bill drafters have resorted to vague and very general titles which give little or no guidance as to intent. Probably too, the constitutional significance of titles has, in quite a few instances where true expression of the object is attempted, led to putting more in the title than would normally go there, and thus in some instances made such a rule of construction operate with greater severity.

It should be stated that the above effects upon bill drafters are not the only ones. Questions regarding title are often heard in discussions concerning proposed statutes. Sometimes legislation on a major subject may be dealt with in a number of separate bills to avoid any possible title difficulty.

It is true that some of the acts declared bad were of little importance. It is also true that we have no way of telling how important most of the legislation may have been and how serious the effect of the decisions. Certainly, however, holding the New Jersey estate tax invalid was a blow at a major piece of legislation. The sections of the District Court Act, adversely affected, also seem important.

The number of cases of invalidity alone, however, is extraordinary. According to Evans in his case book on constitutional law, only 53 acts of Congress were declared invalid by the Supreme Court in 135 years.[8] Yet we have a number not far short for one section of the New Jersey Constitution in 90 years.

Another unfortunate fact appears. After 1879, when the Court of Errors and Appeals declared the first law unconstitutional, the average period between the enactment of an invalid act and the first decision as to its invalidity has been just a little short of five years. This includes only acts passed by the Legislature since that decision, the first having been passed in 1881. The average would be much higher for all acts held invalid. Such a period of delay must necessarily result in a good many people relying on more important legislation to their detriment, or at least embarrassment.

This statistical evidence puts a heavy burden of proof upon the defender of this procedural limitation. This is doubly true when we recall that the purpose often stated for the section—that of giving notice—has not been accomplished, but has become merely a rule against using the title as a means of fooling some or all of the readers.

All of this leads, not so much to a criticism of the quality of the court's work, as to the question of whether we would not be better off had the work never been attempted. Had the courts taken the other road when they reflected on the question of whether the provision was only directory, we would probably be better off. Certainly, it is difficult to see how our position could be worse.

Trying to classify and reconcile the cases is a pleasant form of mental gymnastics for one who has time, patience and a legal turn of mind. But too often the thrill of that process keeps us from asking the rather embarrassing question, whether there is any reason for it all? Our tests of constitutionality are apt to bring us into a new period of formalism in the law, where we are more interested in form than in substance. We have gotten rid of rules of pleading in which form was so important that their purpose—helping the litigants—was forgotten. So here, we have little to show in the way of benefit but a long string of cases and a long list of acts, declared unconstitutional, to explain.

[8] Evans. Leading Cases on American Constitutional Law, (2nd ed.), p. 262. This covers the period to 1924.

We shall consider this matter further in our general conclusion on procedural limitations. There are a few matters which the history of this section shows that may throw some light on the future, however.

The first great period of activity under the section was in the years 1899, 1900 and 1901, when out of 25 laws tested, 10 were declared bad. From 1910 to 1915, inclusive, in every year at least eight cases were decided, but only five of the 55 cases for those years were bad. From 1915 on there was only one year when there were eight cases, but in the period 1916-1922 one or more laws were declared bad every year. Since that time only one law has been declared bad, and that was in 1928. There has recently been some indication of considerable liberality on the part of the courts. The spread of time between the enactment of the statute and its being declared invalid has become less in more recent years.

History seems to indicate that it would be a mistake to conclude that the problem is settled and that we shall not encounter the section much in the future. A study will show periods of great and small activity. We must remember, too, how the courts and the Legislature have managed to develop new variations as time went on. They brought in such matters as history, early title and deceptive title at different stages of development, and the whole question of amendment of title is comparatively recent. There are plenty of uncertainties left, and a good many snags provided by the old decisions.

Reference Limitations—Origin

Thus far, we have considered but one sentence of Article IV, section VII, paragraph 4. In 1875 there was added to this an amendment which gives us two more constitutional tests that have been interpreted, and one more that has not been invoked. The amendment reads:

> "No law shall be revived or amended by reference to its title only, but the act revived, or the section or sections amended, shall be inserted at length. No general law shall embrace any provision of a private, special or local character. No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of the act or which shall enact that any existing law, or any part thereof, shall be applicable, except by inserting it in such act."

These provisions are similar in character to the requirement concerning title, in that they deal with the technique of bill drafting. They have not, however, been as serious a limitation upon the Legislature, having resulted in comparatively few cases as compared with the litigation over titles, and an extremely few cases of invalidity. Here, even more than with the first sentence of Article IV, section VII, paragraph 4, consideration is usually very slight and seldom the central point of a case. An examination of *Corpus*

Juris[9] or Cooley's *Constitutional Limitations*[10] will show that similar provisions exist in other states. Cooley says that a similar provision concerning amendment is found in 15 states.

On January 14, 1873, Joel Parker delivered his annual message as Governor and in it he called for a revision of the New Jersey Constitution to deal with the legislative process. He said:

> "It will be admitted by all reflecting persons that there should be such radical reform in our system of legislation as cannot be secured under the present constitution. . . . So important are the interests affected by legislation that in view of the decision of our Supreme Court on the subject, we owe it to the public and to the fair fame of the State that such constitutional checks should be provided as will prevent the possibility of fraud or interpolation." [11]

The Governor was interested particularly in private, special and local laws which were provided for in another amendment.[12] Such acts had been the source of the scandals concerning railroad legislation and the local government of Jersey City. He did, however, remark:

> "There are other evils besides that of hasty legislation that might be cured by an amended constitution. . . . In acts to amend existing laws the section or sections to be amended should be required to be inserted." [13]

The amendments were worked out by a Commission, but the minutes are not instructive.[14] The sections in which we are presently interested were introduced in something similar to their present form. The prohibition against including a private, special or local provision in a general law has not been construed. This is not surprising because there are more convenient provisions under which, in numerous instances, private, special and local laws have been declared invalid. We find very many such cases, but they are not within the scope of this discussion. That leaves two of the 1875 provisions for consideration.

Revival and Amendment by Reference

Let us consider first the final sentence in Article IV, section VII, paragraph 4, which reads: "No law shall be revived or amended by reference to its title only, but the act to be revived, or the section or sections amended, shall be inserted at length." There is a particularly good statement of the specific evils at which the sentence under consideration was aimed:

> "The evils at which this class of constitutional provision was aimed are well known. Acts repealing a sentence or part of a sentence of an existing statute, or amending it by inserting a sentence which, standing alone, either conveyed no meaning or inadequately expressed the purpose

[9] *59 Corpus Juris 863, et seq.*
[10] 8th ed., vol. I, p. 313.
[11] *Newark Daily Journal*, Tuesday, January 14, 1873.
[12] Art. IV, sec. VII, par. 11.
[13] *Newark Daily Journal, supra.*
[14] Minutes of the Commissioners to Revise and Amend the Constitution, 1873. (Office of Secretary of State of New Jersey—in manuscript).

> it was intended to accomplish, and the acts extending the provisions of statutes to a new class of subjects or persons by a simple reference to the title or to the numbers of the sections, were sometimes passed. Much vicious and unjust legislation was obtained in this way by covert means. . . ."[15]

We notice that the evil to be remedied is a narrow one. It has only to do with the drafting of an amending or reviving act in such manner that one has no idea what the act is really attempting to do. To say, for example, strike out certain words on a stated line and page of a previous act, or add other words, presents the typical situation.

It is obvious, then, that there is no prohibition against repealing an act by title only. That was stated in the first case dealing with the provision.[16] An inspection of recent volumes of the Pamphlet Laws will often show hundreds of acts being repealed by their titles in one general repealer.

Since the clause deals with form, it is equally clear that it does not prohibit revival of an act by operation of law.[17] In other words, it does not apply at all to the repealer which revives a pre-existing act by repealing the act which in turn repealed it.

Similarly, an amendment by implication is not within the purview of the constitution.[18] Numerous laws may be modified or altered by an act which does not, in express terms, amend any. This is not the sort of legislation which will result in fraud, but rather the usual situation. Although it might be desirable to know just what other legislation is being affected, only a review of the whole statutory law on the subject could tell us that. The price is too great and the situation is not that aimed at.

The practical effect of extending the Constitution to such acts is well stated in *Evernham* v *Hulit*:

> "A construction of this constitutional provision which would sustain the contention of the plaintiff in certiorari would lead to the most embarrassing results. It would be equivalent to holding that the legislature can pass no act changing any part of the statute law in force in this state without reenacting at length every section in the whole body of existing statutes that might be affected by the new legislation. . . ."[19]

The prohibition does not extend to supplementary legislation.[20] Although the term supplement has been used loosely in New Jersey, the cases do not indicate that a true amendment could be disguised under this name and escape the constitutional prohibition. They rather point out that the supplements involved in them are not

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[15] *Evernham* v *Hulit*, 45 N. J. Law 53, at pp. 57-58.
[16] *State, ex rel. Van Riper* v *Parsons*, 40 N. J. Law 123.
[17] *Ibid; Wallace* v *Bradshaw*, 54 N. J. Law 175; *Hartshorne* v *Avon-by-the-Sea*, 75 N. J. Law 407.
[18] *Evernham* v *Hulit*, 45 N. J. Law 43; *Board of Education of Newark* v *Civil Service Commission*, 98 N. J. Law 417, affirmed 99 N. J. Law 106; *Hutchinson* v *State, ex rel. Board of Health of City of Trenton*, 39 N. J. Law 569; *State, ex rel. Board of Health* v *Trenton*, 53 N. J. Law 566; *State, ex rel. Van Riper* v *Parsons*, 40 N. J. Law 123.
[19] 45 N. J. Law 43, at p. 56.
[20] *Bradley & Currier Co.* v *Loving*, 54 N. J. Law 227; *A. Fishman Hat Co.* v *Rosen*, 6 N. J. Misc. Rep. 667, affirmed 106 N. J. Law 567; *State* v *Hancock*, 54 N. J. Law 393.

amendments and do not change the existing legislation except as every supplement does by adding to and thus improving it.

What the Constitution does require, then, is exactly what it says, that when an act which is in terms an amendment is passed it must not simply refer to the title of the act amended.[21] Remembering that "the object of the constitutional requirement was to show the law-maker the true reading of a proposed enactment without the necessity of resorting to the old one," and that "The mischiefs of the former practice were, that it required the labor of reference and comparison of statutes by legislators, to enable them to understand the effect of acts amended by reference to titles, and bills were often passed which would not have received legislative support if they had been understood," [22] what should be done is clear. It is not necessary to set out the old law as it stood, but to reenact the full section of the old act, as changed, so that the old section no longer has any force, and one can find the present state of the law by reading the section as set out in the new act.[23] This is all that is required. Thus, under this last prohibition in Article IV, section VII, paragraph 4, we find the court holding the limitation down to narrow and sensible limits.

Incorporation by Reference

The section of the 1875 amendment concerning legislation by reference which has received most consideration in the cases reads:

> "No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of the act or which shall enact that any existing law, or any part thereof, shall be applicable, except by inserting it in such act."

We do not have to wait long for cases construing this provision, because in 1883 it received its first consideration in *Campbell* v *Board of Pharmacy*.[24] In that case the court, with the instant section primarily in mind, said:

> "The constitutional provision in question, and that which forbids the revival or amendment of a law by reference to its title only, were designed for the suppression of deceptive and fraudulent legislation, the purpose and meaning of which could not be discovered either by the legislature or the public without an examination of and a comparison with other statutes. Neither of these provisions was intended to obstruct or embarrass legislation. Both were intended only as a means to secure a fair and intelligent exercise of the law-making power." [25]

In this statement we find a frank recognition of the fact that the legislative process had been abused by putting through acts calculated to deceive the legislator unless he happened to be both wary

[21] *Haring* v *State*, 51 N. J. Law 386, affirmed 53 N. J. Law 664.
[22] *Colwell* v *Chamberlain*, 43 N. J. Law 387, at p. 388.
[23] *State, ex rel. Van Riper* v *Parsons*, 40 N. J. Law 123; *Colwell* v *Chamberlain, supra; State* v *American Forcite Powder Mfg. Co.*, 50 N. J. Law 75.
[24] 45 N. J. Law 241, affirmed 47 N. J. Law 347.
[25] 45 N. J. Law 241, at pp. 245-246.

and industrious.[26] We are also informed that there was no desire to hamper legislative freedom of action beyond the point of ensuring this honesty. This we must remember, because otherwise an application of the words of the Constitution at their face value would carry us far beyond the decided cases. In fact, the court has been quite careful to point out the embarrassing result which such construction would entail.

Thus, an act which extended the civil service laws to school districts[27] was attacked as unconstitutional because it did not set out those laws at length. The practical answer was:

> "If this constitutional provision has made it necessary to the validity of a new statute on the subject that every prior statute on the same subject which may be altered or modified should be inserted in it at length, it would be quite impossible to legislate at all on the subjects mentioned, or on kindred subjects." [28]

There is no ground for complaint as far as a rule for the ordinary cases is concerned. This rule was best stated in *Campbell* v *Board of Pharmacy,* which really elaborates on a test for the other provision of the 1875 amendment set up in *Evernham* v *Hulit, supra.* In the *Campbell* case, the court stated:

> "An act of the legislature which is complete and perfect in itself—the purpose, meaning and full scope of which are apparent on its face—is valid, notwithstanding these constitutional provisions, although it may operate to amend a prior act by the repeal of the latter, *pro tanto,* by implication, or may provide for actions or the means of carrying its provisions into effect by a reference to a source of procedure established by other acts of the legislature." [29]

Let us turn now to the decisions. There are not a great number of them. Of these, three decided an act was unconstitutional and in another we have a construction to avoid an interpretation which would have rendered an act invalid. Only one of these acts seems positively vicious. It attempted to legislate on race horse betting by an extremely intricate process.

We shall consider the cases of validity first. They can best be classified on the basis of fact situations. The first group deals with adopting a procedure by reference.

Again we come back to *Campbell* v *Board of Pharmacy,* which established a longer line of cases than any other decision. In that case, the statute under consideration provided that the penalty should be recovered, "In the same manner provided by the statutes of this state for recovery of penalties in other *qui tam* actions." [30] This was found unobjectionable since the court contended the reference to statutes on *qui tam* actions did not enlarge the scope of

[26] See also *State* v *Hancock,* 54 N. J. Law 393; *Christie* v *Bayonne,* 48 N. J. Law 407; *Bradley* v *Loving,* 54 N. J. Law 227; *State, Smith* v *Willetts,* 81 N. J. Law 370.
[27] P. L. 1911, p. 727.
[28] *Board of Education of Newark* v *Civil Service Commission,* 98 N. J. Law 417, at p. 420. See also *In re Haynes,* 54 N. J. Law 6.
[29] 45 N. J. Law, at p. 245. *See also State, DeCamp* v *Hibernia Railroad Co.,* 47 N. J. Law 43; *Bradley & Currier Co.* v *Loving,* 54 N. J. Law 227.
[30] Rev. of 1877, p. 816.

the act since they related only to the practice and procedure by which the penalties were to be governed. By the very use of the words *qui tam,* as with the use of the words assumpsit, debt or distress, all of the statutes governing that form of action in the State came into play without their being mentioned. There was no necessity to refer to them, the name was enough. Thus the act was complete and perfect without such reference.

Since that case the courts have had a definite formula that matters of procedure in other acts may be referred to. Consequently a reference to a method of condemnation provided for in another act, the general act concerning condemnations, was unobjectionable.[31]

We turn next to a group of cases dealing with powers. If the Legislature provided for a new district court, it might say such court should exercise the same powers as other district courts and, in fact, it would not be necessary to say anything. The same thing would be true with the incorporation of a new municipality of a type already in existence. This line of cases on powers indicates that the Legislature can go pretty far in transferring them.

The remaining cases are miscellaneous in character. In *Allen* v *Wyckoff* [32] an act was upheld which made it an offense subject to a penalty for non-residents to violate the by-laws of the game protective societies. The court thought this was like providing that one who violated a municipal ordinance or rode on a railroad train contrary to the regulations of the company should be subject to a penalty. The question was treated as an easy one. The court pointed out that these by-laws were not "existing laws" in the sense of the Constitution at all. They took the word "law" to mean an enactment of the Legislature and not every rule of civil conduct. This seems correct.

The last case of a valid act we have to consider dealt with a law which provided that if the laws in another jurisdiction imposed greater taxes, fines, penalties, licenses, fees, or other obligations or requirements upon the corporations of this State doing business there than does New Jersey on corporations doing business in this State, then the same taxes, etc., shall be imposed by this State upon corporations from that jurisdiction. The court held there was no constitutional difficulty with our clause taking effect upon a contingency.[33] The fact that the taxes and other impositions were to be found in the laws of different states did not command a single word in that opinion. That does seem to raise a serious question. The court, however, was moved by the fact that this was comity legislation, which type of legislation had been held valid in many

[31] *Rutches* v *Hohokus,* 82 N. J. Law 140.
[32] 48 N. J. Law 90.
[33] *State, Texas Co.* v *Dickinson,* 79 N. J. Law 292.

states. Perhaps that is the best explanation of the case. We have here a type of legislation which is desirable for state protection, which does not involve the fraud or deception aimed at by the Constitution. Thus it must not have been intended that comity legislation be made impossible.

On the side of invalidity[34] we have *State* v *Larson,* which decided the State Aviation Act was invalid.[35] It provided for a commission which should establish standards of air-worthiness for aircraft to accord with the federal act. The court applied the test of *State* v *Hancock,* 54 N. J. Law 393, as to striking out improper references, and found the result would be fatal:

> "Applying this rule, if we strike out from the State Aviation Act its reference to the federal act, we at once find ourselves with an attempted delegation of power to an administrative body, but without any standard of guidance, whatsoever fixed for that administrative body, by the legislature."

This review of the cases indicates that there is no clear-cut distinction between them, but that there are some real differences of degree. That the courts have taken a liberal attitude in accord with the purpose expressed seems clear. That the test of whether an act is complete and perfect in itself will be used has been demonstrated. Just when an act is so complete and perfect is not an easy question to answer. There are cases where the reference is perfectly useless, but others which go the same way where the reference is important or even essential to the operation of the act. For example, what is the distinction in principle between *State* v *Larson,* above, and the comity act which might at any time invoke the laws of another state or foreign nation to apply to a corporation from that state doing business in New Jersey? There is a real difference here as far as convenience and clarity are concerned. It would have been impossible to incorporate all of these laws and amend the act every time one of them changed, even if other constitutional hurdles could have been cleared.

Christie v *Bayonne* and *State* v *Haring,*[36] also held invalid, are clear enough cases. Particularly in the latter case was there an attempt at deception. In both cases one would be sent hunting through the statute books to find the meaning of the reference and, as stressed in *Christie* v *Bayonne,* not into statutes which are related as original act and supplement, nor into independent acts as, let us say, different acts concerning boroughs, but rather into totally unrelated fields.

State v *Larson* referred to a similar act, but a federal act, and relied on it for standard without which the statute would be unconstitutional for delegation of law-making power to a commission. It

[34] See also *Christie* v *Bayonne,* 48 N. J. Law 407, and *Haring* v *State,* 51 N. J. Law 386.
[35] 10 N. J. Misc. Rep. 584.
[36] See Note 34.

was the very life of the act. The federal provisions could have been incorporated. The comity act (*State* v *Dickinson*) affected only those aware of the laws referred to because they were laws of their own jurisdiction. It could not have been passed otherwise at all, and is a special and well known type of legislation which the court may very well have felt was not intended to be prohibited.

Sections Subject to Direct Attack

Some sections of the Constitution cannot be used as instruments of collateral attack. These sections deal with the passage of ordinary laws and joint resolutions. It would be appalling indeed to find that a statute upon which substantial rights were based was, in fact, passed by less than the required majority in the Legislature, or was not, in fact, approved by the Governor, if such circumstances would render it unconstitutional. The hazards involved would make it necessary that the one relying upon the act should go into each step in the process of legislation where the Constitution is involved and somehow or other find that it was complied with, or, at least, that there is no possible way of proving it was not complied with.

This argument would lead us to the point of saying that such provisions should be only directory in character. However, legislative experience has shown that there are real dangers of imposition and fraud. Naturally, enforcing these safeguards would appear to be one way of avoiding those evils.

The early case of *Pangborn* v *Young*[37] decided against collateral attack based on such constitutional limitations. The defendants tried to show by the journals of the houses of the Legislature that the act in dispute had not been signed by the Governor in the same form in which it passed the Legislature. Against this evidence was set up the fact that the bill had been endorsed and filed as properly passed.

The court first discussed legislative practice in this regard:

> "From the earliest times, so far as I have been able to ascertain, it has been the invariable course of legislative practice in this state for the speaker of each house to sign the bill as finally engrossed and passed. It is likewise certified by endorsement by the clerk of the house in which it originated. With these attestations of authenticity upon it, it is then filed in the office of the Secretary of State. This has been the course of proceeding from certainly a very remote period to the present time; under our present constitution the written approval of the governor is requisite." [38]

The court then decided against the defense in sweeping terms, saying its conclusion was

> "that upon the grounds of public policy and upon the ancient and well-settled rules of law, the copy of a bill attested in the manner above mentioned, and filed in the office of the Secretary of State, is the con-

[37] 32 N. J. Law 29.
[38] *Ibid*, at p. 33.

> clusive proof of the enactment and contents of a statute of this state, and that such attested copy cannot be contradicted by the legislative journals, or in any other mode." [39]

The *Pangborn* case has established that a statute is not to be collaterally attacked because of some defect in its enactment as long as it is properly enrolled as a law.[40]

In view of this decision, a statute was passed in 1873 allowing direct attack upon acts in certain cases.[41] The statute has been used only five times,[42] however, although in one instance an action was brought under the Uniform Declaratory Judgment Act, P. L. 1924, p. 313. The court was very doubtful if a statute could be subjected to direct attack under the 1924 act, but passed by the matter of procedure because of the immediate importance of the case.[43]

The 1873 statute provided for direct attack within one year after "any law or joint resolution shall have been filed by the Secretary of State." The test was to be by the Attorney General at the instance of the Governor, or by two or more citizens. The basis of the attack must be on the ground that "such law or joint resolution was not duly passed by both houses of the legislature, or duly approved, as required by the constitution." If the attack is successful, the law is to be proclaimed null and void by the Governor.

Three Readings and Majority Required for Passage

The first paragraph which presents itself is Article IV, section IV, paragraph 6, which provides:

> "All bills and joint resolutions shall be read three times in each house, before the final passage thereof; and no bill or joint resolution shall pass unless there be a majority of all the members of each body personally present and agreeing thereto; and the yeas and nays of the members voting on such final passage shall be entered on the journal."

This paragraph dates from 1844. There were, however, proposals adopted by the Commission in 1873 to change it and the direction of those changes is interesting. Coming after the provision was embodied in the Constitution, they do not carry weight in interpretation, but they do show what a group of distinguished jurists probably thought the paragraph did not cover.

Mr. Ten Eyck presented to the Commission the following:

> "Amend article IV, section 4, paragraph 1 (*sic*) in line 20 after the word 'times' insert 'twice section by section in full,' and after the word 'thereof' of line 21 insert 'and no two readings, section by section as aforesaid, shall be on the same day,' and at the end of the same section insert the following 'no private, special or local bill shall be introduced after ten days from the commencement of the session.'" [44]

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[39] *Ibid*, at p. 44.
[40] *Bloomfield* v *Board*, 74 N. J. Law 261.
[41] P. L. 1873, p. 27; C. S. 1910, p. 4978, *et seq.*
[42] *In re Ross*, 86 N. J. Law 387; *In re Jaegle*, 83 N. J. Law 313; *In re Petition of Attorney General*, 98 N. J. Law 586; *In re Low*, 88 N. J. Law 28; *In re Public Utility Board*, 83 N. J. Law 303.
[43] *In re Freeholders of Hudson County*, 105 N. J. Law 57.
[44] Minutes of the Commissioners to Revise and Amend the Constitution, 1873. (Office of Secretary of State of New Jersey—in manuscript).

The newspaper report of the matter when it came to the Senate follows:

> "Mr. Taylor moved to strike out article 4, section 4 'read three times' and insert in lieu thereof the following 'Printed before they are received or considered and shall be read throughout, section by section, on three several days'; also, after the word 'thereof,' insert a clause providing 'must be read entire, printed and distributed among the members at least one day before the vote is taken.' " [45]

This was adopted by the Senate but never became a part of the Constitution.

In view of these attempts to secure deliberation, an example of what can and does sometimes happen, as told in the *Newark Evening News,* is rather interesting.

> "An indication of the hasty action on legislation, shortly before final adjournment is shown by the fact that House 443, a police bill, was drafted and passed both Houses early today in forty minutes. The bill was rushed through because the validity of a bill passed previously was questioned.
>
> The measure was a supplement to the Home Rule Act. It was sponsored by the State Patrolman's Benevolent Association and changed the limitations for appointment of police officers from twenty-one to fifty years to twenty-one to forty years. . . .
>
> Assemblyman Muir of Union introduced the bill under a new number, had the House rules suspended and passed it in five minutes. It was rushed to the Senate and Senator Pierson guided it through without opposition." [46]

The courts have not alluded to this section often. There was a rather interesting dictum concerning the matter of whether the readings had to be at length or could be by title only. The court said:

> "It has always been considered by both houses of the legislature that a reading of a bill or resolution by the title thereof, for at least one of the three readings was a compliance with the constitutional mandate. An examination of the senate journal and the minutes of the assembly will disclose that this is the inveterate practice in both the upper and lower houses." [47]

The dictum goes no further than saying that one reading may be by title only. Looking, however, at the legislative practice of virtually never reading bills, and at the earlier quotations, it does seem that there is no practical argument that the other two readings must be at length. These facts indicate the universal belief that no reading *in extenso* is necessary for the constitutionality of legislative procedure.

In regard to the majority requirement, the court has pointed out in a dictum that there must be a majority of all the members voting in the affirmative to pass a bill.[48] That is to say, 31 of the 60 mem-

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[45] *Newark Daily Journal,* January 29, 1874.
[46] *Newark Evening News,* April 23, 1931; Bebout, Documents and Readings in New Jersey Government, 1931, p. 123.
[47] *State, Anderson* v *Camden,* 58 N. J. Law 515, at p. 519.
[48] *State, Schermerhorn* v *Jersey City,* 53 N. J. Law 112.

bers of the Assembly are necessary, and 11 of the 21 Senators. This seems obvious enough from the language of the Constitution.[49]

A more difficult inquiry is how we are to prove that less than a majority voted for a bill. In the one case on this subject, a reporter for the *Newark Evening News* charged that the necessary majority had not voted, he having checked the names as the roll was called on the particular bill. The court heard his testimony but, since some of the members he said were not present swore they were there and voted, this ground of attack was rejected. Perhaps we can work out from this some leaning toward great liberality in the type of evidence that will be considered. Certainly that would accord with the spirit of a statute which is trying to get at fraud in the passage of acts and which safeguards private rights by limiting attack to a year. Since the time is short, the latitude to accomplish the object intended should be great.

Revenue Bills

Article IV, section VI, paragraph 1 provides:

> "All bills for raising revenue shall originate in the House of Assembly, but the Senate may propose or concur with amendments as on other bills."

This is the usual type of limitation and one which grew upon the English model. The growth of the power in England, as also in the Colony of New Jersey, is traced by the courts. The part concerning New Jersey gives a good background for an understanding of the section. The court said:

> "The right of the popular branch of the government to originate and adopt measures for providing revenue for public purposes was asserted by the colonial assembly as early as 1748. Acts had been passed granting money for the use of the colony, to give effect to which an act was necessary to settle the quotas of the respective counties. Such an act was passed by the house of assembly and sent to the council. The council made amendments to the bill. The house of assembly rejected the amendments, and sent a message to the council unanimously refusing to confer, with a resolution that the council had no right to amend any money bill

[49] The *Schermerhorn* case involved the meaning of the three-fourths vote required by law for the Board of Aldermen of Jersey City to pass a redistricting ordinance. The judge, in deciding that three-fourths of all the members of the full board were required, cited what he said was the established meaning of the constitutional requirement that a majority of all the members of a house of the New Jersey Legislature, *i.e.*, 31 Assemblymen or 11 Senators, are required to pass a bill. As Dr. Sinclair says, this has seemed "obvious enough" to most people who have had to do with the matter. That it is not quite so obvious as it has seemed, however, is evident from the following episode:

Prior to 1947, five bills to call a constitutional convention had been declared passed by the Assembly. One of these was declared passed in 1885. Due to a vacancy the Assembly at that time consisted of only 59 members. Speaker Armstrong declared the bill passed with 30 votes, rendering a written decision which included the following sentence:

"The particular language in Art. 4, Sec. 6 of the Constitution, means that no matter how small the number may be composing a House for the time being, a majority of that number is all that is required to pass any bill or joint resolution."

Mr. Armstrong stated that he had informally consulted with a number of members of the state's highest court and that they agreed with his decision.

No other such case is known. Since the bill did not pass the Senate, there was no occasion for judicial review. Presumably, the usage cited in the *Schermerhorn* case would be accepted by the courts today as having established the meaning of the provision in question. It is to be observed, however, that the dictum in the *Schermerhorn* case was by one Supreme Court justice only. In view of the frequency with which vacancies occur, especially in the Senate, it might be well to state the majority required in language which would not permit of two interpretations.—J.E.B.

> whatever, . . . This controversy continued, leaving the government without adequate support for nearly four years, until the session of February 11, 1752, when the council passed the bill sent up by the house of assembly. *N. J. Archives (First Series)* Vol 16, pp. 22, 201, 218, 256, 352, 357. The privilege thus asserted by the house of assembly was conceded during the colonial period, and was embodied in section 6 of the Constitution of 1776 in these words: 'That the council shall also have power to prepare bills to pass into laws, and have other like powers as the assembly, and in all respects to be a free and independent branch of the legislature of this colony, save only that they shall not prepare or alter any money bills, which shall be the privilege of the assembly.' Const. 1776, s. 6. This provision stands in our present constitution in a modified form, as follows: 'All bills for raising revenue shall originate in the house of assembly, but the senate may propose or concur with amendments as on other bills,' which is substantially the same as section 7, art. 1, of the Constitution of the United States." [50]

Thus we notice that the right to amend, which formerly did not exist in the Council, became a prerogative of the Senate. In only one case has this section been interpreted in New Jersey. In *In re Ross,*[51] the Senate passed what was clearly a revenue bill and transmitted it to the House. The House of Assembly advanced it as far as second reading, after which it was recommitted. The House committee then reported it out again as "Assembly Committee Substitute for Senate Bill No. 176." It was given three readings by the Assembly as an original bill, and sent to the Senate, which passed it as a bill originating in the Assembly. Under the circumstances, the court treated this as a revenue bill originating in the Assembly and therefore valid. It did recognize that if it had originated in the Senate, it would have been unconstitutional, and the court would have declared it so under the act of 1873.

Veto and Repassage of Bills[52]

The power of the Governor to participate in the legislative process through the veto and through signing bills has given rise to several rather interesting cases under the law of 1873.

Where evidence was brought in to show that the Governor had approved a bill 60 days after the Legislature had adjourned, the evidence was rejected because the matter was raised on collateral attack. The doctrine of *Pangborn* v *Young* was quite naturally applied, since the act of 1873 made only direct attack possible.[53] In an earlier case, the court found it unnecessary even to resort to *Pangborn* v *Young* to uphold an act when counsel stipulated that the bill had been signed by the Governor after *sine die* adjournment. The court would not accept such a fact upon stipulation of counsel alone.[54]

Both cases aimed at a practice which had apparently grown

[50] *Township of Bernards* v *Allen,* 61 N. J. Law 228, at pp. 234, 235.
[51] 86 N. J. Law 387.
[52] See the special monograph in this series by Goldmann and Bland on the Governor's veto power.
[53] *Bloomfield* v *Freeholders,* 74 N. J. Law 261.
[54] *Morris* v *Newark,* 73 N. J. Law 268.

up under Governor Abbett. That was to have bills held until the end of the sessions for passage or to be sent to the Governor, or both. The Governor's veto power, which can be overriden by a simple majority, thus became absolute. The Governor took his time about signing acts; in fact an act of 1880[55] provided that:

> "No bill or joint resolution passed by the Legislature of this State, which shall remain in the hands of the Governor, not approved by him, on the final adjournment of any session of said Legislature, or shall be presented to him for his approval after said adjournment shall become a law, unless he shall deliver the same with or without his approval to the Secretary of State of this State, within thirty days after said adjournment."

This statute was strenuously disapproved by several local writers as an attempt to change the constitutional limitation for signature by the Governor[56] and it has since been repealed.[57]

The practice of Governors is described by Mr. A. Q. Keasbey in the first of these articles (1892):

> "From 1845 to 1884 it was the almost unbroken custom to approve all bills during the session. A very small number, only about 40 out of more than 10,000, were approved after the adjournment, but none of them more than five days afterwards. In 1883, 90 were approved on the last day and none afterwards. The act of 1880 did not change the practice. But in 1884, the first year of the present Governor's former term, 66 bills out of 225 were approved after the adjournment, and only 9 of them within five days. In 1885, out of 250 general public laws, 86 were approved afterwards and only 13 within five days. In 1886 there was an adjourned session in June, and only 5 were approved after the last day. In 1887, out of 182 general public acts, 77 were approved after the close, and only 23 within five days. In 1888 the number was 97 out of 337, and 29 within five days. In 1890, 82 out of 311, and 3 within five days; and in 1891, 159 out of 285, more than half, were approved after adjournment, and only 5 within five days."[58]

A note of caution should be added, because the article states there was a rumor that earlier Governors took their time and then dated the bills so that they appeared to be signed in five days after receipt. The writer depended on the dates of approval given in the statute books.

The second of these articles, published in 1912, deals with *In re Public Utility Board*[59] where the Legislature recessed for 12 days shortly before final judgment. The article states the purpose was to break up the practice of governors of retaining bills for a long period of time after *sine die* adjournment. Thus it seemed the practice continued. The case which we shall now consider cast serious doubt upon that practice, to say the least.

As had been suggested in the first article in 1892, a test was finally made under the act of 1873 on the following facts. The Legislature had passed a bill which it sent to the Governor. It then ad-

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[55] P. L. 1880, p. 259.
[56] A. Q. Keasbey, "Executive Control Over Legislation," 15 N. J. L. J. 116; and "Adjournment and The Veto Power," 35 N. J. L. J. 358.
[57] P. L. 1895, p. 817.
[58] 15 N. J. L. J., at p. 124.
[59] 83 N. J. Law 303.

journed for 12 days, at the end of which time the Governor returned the bill to the house of its origin without his signature. It was passed by that house, but not by the other. Nevertheless, the bill was sent to the Secretary of State with directions that it be filed. The Governor instructed the Attorney-General to bring suit to have the bill declared void.

The court agreed that the act was bad because the Legislature, by its adjournment, had made the return of the bill impossible. The Governor could not return it to the Secretary of State or some officer of the house of origin because the Constitution says it must be returned to the house in which it originated. This means, "It must be returned to the house of origin while that body is sitting, and if it is not put in the possession of that house by the governor, while duly assembled, within five days after he has received it the constitutional provision is not complied with." [60]

The foregoing applies to an ordinary adjournment as well as one *sine die,* because the purpose of the Constitution was to keep the Legislature from hindering the Governor in the exercise of the veto power.

The court concluded that:

> "by force of the constitutional provision under consideration, the adjournment of the house in which a bill originates, after such bill has been presented to the governor, subsequent to final passage, for his approval or disapproval, if it continues for more than five days after the bill shall have been presented to the governor, prevents the return of the bill by the executive to the house of its origin within that period, and that the effect of such prevention is to absolutely destroy the validity of the bill; for the concluding portion of the constitutional provision recited declares that when the legislature by their adjournment have prevented the return of such bill by the governor within five days it shall not be a law. This being so, not only is the governor under no obligation when the house of origin reconvenes after the five-day limit to return the bill to that body with his objections, but should he do so, his action is entirely nugatory, for no matter what course that house, or the other house of the legislature, might hereafter take upon that bill, vitality could not be restored to it." [61]

This case does not conclude us on the instance when the Governor does sign. The language that upon prevention of return the bill becomes absolutely void, could be taken to mean no signature after a *sine die* adjournment is good. In its context it may only deal with the pocket veto, but certainly the attitude displayed is one against any life remaining in the bill after five days of adjournment. We have no further light on the subject in New Jersey. Perhaps the recent federal cases will show the way.[62]

Conclusion

As we have proceeded, each section has contained conclusions as

[60] 83 N. J. Law, at p. 312.
[61] 83 N. J. Law, at pp. 312, 313.
[62] *Edwards* v *United States,* 286 U. S. 482, 52 S. C. 627; *The Pocket Veto Case,* 49 S. C. 463.

to the state of law on the particular subject treated, together with criticisms thereof. There still remains the important matter of looking at these procedural limitations as an entire scheme of things and of comparing them.

Perhaps it is wrong to speak of them as an entire scheme of things. They were, as we know, introduced at different times. The limitations of 1875 were incorporated, it is true, to get at the same type of abuses as those at which some of the earlier provisions were aimed. It is a matter of opinion whether, in the main, they are supplementary or strike out on independent lines.

We do find two distinct aims running through and sometimes uniting in one constitutional requirement. These are the desire to prevent fraud and to force deliberation. Probably the first is predominant, and certainly it is so in those provisions which have contributed most to the volume of litigation. They do not find counterparts in the Federal Constitution.

If we look first at the requirements regarding style, as Professor Freund has termed one division of what we have called procedural limitations, we find our most interesting subject. In the provisions concerning title, incorporation by reference, and amendment, we encounter most of the cases. Perhaps the best approach to these limitations is to compare our conclusions in New Jersey with the general conclusions of Professor Freund. He said:

> "The requirements regarding title and subject-matter undoubtedly inculcate a sound legislative practice, and in the great majority of cases amendment by re-enacting a section is preferable to the amending of words or passages torn from their context." [63]

It is undoubtedly true in New Jersey that at least the possibility of an undesirable legislative practice has been avoided by the sections on amendment and incorporation. Only another long research problem would show the former extent and danger of the practice which the court says existed. At least these provisions ensure us against mixing up legislation by specifically amending or incorporating parts or acts. These provisions, as we pointed out, received a restricted and commonsense construction. Few statutes have been declared invalid under them, and no tenuous or technical rules of construction, smacking of formalism, have grown up. The courts have kept the purposes of these provisions fairly well before them. All of this is much more true of the amendment than the incorporation clause, where the cases are not quite as satisfactory. They are distinguishable and not numerous enough to be especially involved. A few acts were declared invalid where no great harm would have resulted from a contrary decision.

The same concurrence is not possible in regard to the title requirement. Here legislative practice was so well established before

[63] Freund, *op. cit.*, p. 155.

the courts started to work that no beneficial changes from what probably would have been the normal course of legislative action and development seem to have occurred. The courts do not allude to a practice which is being broken up, but rather to one too firmly rooted to budge.

Generally there has been a liberal construction of the title provision. The early cases are the most liberal, giving to the Constitution a very slight limiting effect in this regard. They have been modified in some instances, but hardly to the extent of supplying great protection against possible fraud.

The other side of the picture respecting title is extremely important, as Professor Freund notes in the continuation of the above quotation:

> "Conceding that these requirements have had on the whole a beneficial effect upon legislative practice and the clearness of statutes, they have a reverse side which must not be ignored. They have given rise to an enormous amount of litigation; they have led to the mullification of beneficial statutes; they embarrass draftsmen, and through an excess of caution they induce undesirable practices, especially in the prolixity of titles, the latter again multiplying the risks of defect. While the courts lean to a liberal construction, they have, in a minority of cases, been indefensibly and even preposterously technical, and it is that minority which produces doubt, litigation, and undesirable cumbrousness to avoid doubt and litigation." [64]

The reading of the cases will give illustrations of everything to which Professor Freund has referred. The title section is the only one which operated as a really serious limitation on ordinary legislation, and is therefore the only one concerning which these objections can be strongly urged.

A survey showing that tested statutes ran high into the hundreds makes one hesitate before giving any praise for beneficial effects. This is especially true when we remember that there were 49 cases of unconstitutionality in 90 years. So much litigation needs very strong justification, and yet it is found that the beneficial effects, so far as they could be guaged, were extremely slight. Their only good may have been in striking down a very few obviously bad statutes. To counterbalance this, we find a flood of cases, taking the time of courts and lawyers and the money of clients.

Certainty is a highly desirable thing in the law, yet here uncertainty results unless the draftsman is very careful of something which is not really of the essence of the legislation. There may be no objection to forcing care upon the legislators if that result is really accomplished, but such a result does not seem to follow.

The careless draftsman has been with us throughout our constitutional history, the cases show. True, sometimes his work has been more apparent than at others, but statutes have been found invalid all the way through. Without a censor in the form of a good legis-

[64] *Ibid*, pp. 155-156.

lative drafting bureau, this seems inevitable. Interested parties draft bills, as often do lawyers with slight legislative experience and even a slighter idea of constitutional law. Every once in a while one of these bills may be jammed through, and then no one knows what its force is until it has been the subject of judicial review.

It may be a number of years before the act is invalidated. Individuals want to rely on them but are not in a position to bring the case before the courts. The usual lawyer will not be very conscious of this constitutional problem because constitutional law is out of the realm of his usual activity. When he looks up a law he usually reads it in the *Revised Statutes* without even noticing its title. Nearly always that is safe, but it seems unfortunate that he and his client should be subjected to this slight, but possibly fatal, risk unless it is very necessary.

In this connection, Professor Freund suggests that statutes should be subject to attack only for a limited period. Our provision for direct attack with a limitation of one year is of this type, but, as noted, very restricted in application.

It seems difficult to meet the argument that a short time is long enough to uncover the results of fraud or haste, and that if it is not uncovered within that time, certainty is more valuable than the privilege of attack. The press can be counted on to get wind of the worst cases, as a reading of the *Newark Evening News* over a period of years will show. What good newspapermen and a few other persons who keep up on the Legislature do not find would not be considerable, it seems.

The one obvious difficulty is that no one may be willing to go to the trouble of attacking the law, even if it is the result of fraud. It was many years before direct attack was used as an instrument for breaking up the practice of Governors in signing bills long after the Legislature had adjourned. Most of the cases of direct attack have been commenced at the instance of the Governor. A very good reason is that he is the only one who can do it without cost if unsuccessful.

There have been only five cases of direct attack. The provocation may have been lacking, except in a few instances after the statute began to be used. It does seem that the Governor should discover the effects of fraud or haste before he signs a bill, and exercise his veto power. Giving him a second chance of bringing down poorly styled bills seems unnecessary. Pressure of time is hardly an excuse, since the work of reading bills for defects could easily be delegated to competent assistants. No question of policy requiring the personal attention of an elected executive is involved. Giving the Governor more time to exercise his veto would answer any remaining objection as to pressure of time.

That leaves us, as a justification for the statute, one other chance of attack: the interest of some client in a matter affected by this legislation which results in litigation during the first year, let us say, after the passage of the act. Perhaps that is enough, because if no one is adversely affected at once no more harm may be done than if the vicious subject were enacted into law by a perfectly constitutional method. It is up to the indexers and compilers to keep the subject matter from remaining obscure. The most obvious violations, it may be hoped, would be vetoed on the ground of unconstitutionality.

It seems that there is not much justification, then, for opening statutes to attack for even a year. We are left to rely on private initiative, which does not operate uniformly but rather only where there is a financially powerful private right involved. If indirect attack were permitted within a year, the number of attacks would increase. It must be remembered that these cases often take a couple of years before they are finally decided by the Court of Errors and Appeals, so that we might have over three years of uncertainty under this device. Such uncertainty and this rather spotty manner of checking up on the Legislature would not be necessary if the Governor went on the advice of experts and vetoed bills for procedural defects. Fear that the Governor would not follow such advice for political reasons would be pretty well eliminated by using as his advisers non-partisan experts who would make public their findings.

Professor Freund also complains in the above quotation that an excess of caution forced upon drafters results in undesirable practices, especially prolixity of title. This should be considerably qualified in New Jersey. Prolixity we find, to be sure, but often such titles furnish the courts with their hardest problems. The poor draftsman tries to make an index out of the title, but leaves out something or so narrows down his title by specific matter that the body of the act is too broad.

The skillful draftsman in New Jersey resorts to a very general title which, barring deceit as worked out in a narrow line of cases, is valid in every instance. The effect, of course, is to sap the vitality of the provision of Article IV, section VII, paragraph 4 which had for its purpose requiring that the title give notice. It makes the provision stand alone as a guard to protect one who relies on a too narrow, and in a very few instances, a deceptive title. If that is all the limitation amounts to, it would be better not to permit persons to rely on it when such reliance entails uncertainty as to the validity of the act and has resulted in so many statutes being declared unconstitutional.

The quotation from Freund attacks a minority of the cases as indefensibly technical. This applies with considerable force to a minority of the New Jersey cases.

Where, as in the subject of title, there are a number of cases, a considerable amount of uncertainty results. The idea advanced in many cases that titles are to keep the public informed fades into oblivion. Technical language and rules of construction, as in many other places in the law, put real understanding of a title beyond the ability of fairly intelligent people. As the field of the law of title has grown it has divided out into a number of special branches, as, for example, the questions of validating title amendment and deceptive titles. These branches usually end in uncertainty.

State judges are not often well trained in constitutional law and are too busy to give up for the occasional constitutional problem the time necessary to really make a study of the cases. It has been found that in the course of a fair number of decisions a judge is apt to throw in some language, or even decide a case in such a way, as to cast doubt on the true state of the law. Cases involving the same branch of the subject do not come often enough to straighten this out quickly. Furthermore, other cautious judges are not likely to go out of their way to set matters right when they have not had time to review all the law.

What has been said concerning special lines of cases is equally true concerning the great body of law on title. The writer has attempted to classify and reconcile all the cases, but only after a more intensive study than they have ever been subjected to before. The process may not leave the reader completely satisfied, but he will find that the opinions themselves do not supply him with very much help by dealing with the cases in such a way as to fit them into some pattern of law. That should bring us to the point of agreeing that this main body of cases, as dealt with by judges and lawyers, is the subject of a good deal of doubt.

Even with subjects where there have been comparatively few cases, the courts often begin early in the history of their construction to express doubt if the cases can be reconciled. We cannot expect more of the title provisions.

The idea, for example, that when a section of a statute was formerly enacted under a different title, that early title still acts as a limit within the Constitution seems hopelessly technical. It is the sort of thing which adds needlessly to the complexity of the law and helps no one. Its possibilities for the future are good enough to make us wonder what a technical court might do with it.

Procedural limitations other than those as to style have a better record. We find that they have caused little confusion; in fact, have given rise to very little litigation.

Along with such provisions we have called attention to, there are the usual ones about readings, votes and vetos. These, in so far as they are not evaded, would probably be exercised in much the same

way even if they were not mentioned in the Constitution. They set out what is a normal legislative procedure. The veto would, of course, have to be provided for by Constitution.

We started out to look at all of these limitations together. Some difficulties in generalizing have appeared. We have seen that several of the limitations have proved beneficial, others harmless, and others entail harmful results which must be weighted against any beneficial effects they have had.

The last group consists of the title limitations, and thus most of the litigations. We often hear the argument that greater responsibility will improve the character of our state legislators. This leads to the inquiry whether those limitations should be removed to afford such responsibility. This line of argument can be strengthened by pointing out that the Constitution has not prevented logrolling and political maneuvering of the sort usually frowned upon. A few bad practices have been prevented, but for the most part the limitations do not seem to have improved legislative behavior.

New Jersey's statutory law has been classified by a law revision commission into intelligible divisions. A permanent body to draft bills and, after they are passed, to fit them into the proper sections of the revision could, if well supported, do more good than any number of constitutional provisions.

To expect such a plan to work perfectly is to hope for too much. The Legislature now violates its own rules when political expediency or the results of carelessness require. It might not always treat a bill drafting bureau with great respect. If such a bureau were given a real chance or even half-hearted cooperation, we might well argue that the situation would be considerably better and that certainly it could not change appreciably for the worse.

ZONING

by

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LEGAL ASPECTS

Zoning is exercised under the police power of the state—the inherent power of the sovereign to provide for the health, safety, morals and general welfare of the people. Zoning may therefore be practised without any explicit authorization in the constitution of the state, but the extent to which zoning is permitted depends upon the courts. On the one hand, with reference to the Federal Constitution, the courts interpret the 14th Amendment (which protects the individual from being deprived of liberty or property "without due process of law") to prevent such zoning as may be considered to be an arbitrary and unreasonable interference with liberty or property rights. On the other hand, the courts, in the absence of any provision for zoning in a particular state constitution, limit zoning according to their interpretation of the extent to which the police power of the state may justify the zoning statute or ordinance. If the state constitution provides for zoning, the courts are necessarily called upon to consider whether a specific zoning statute or ordinance is authorized under the constitutional provision. Certain phases of zoning have been well established under the police power, but many new proposals for governmental activity in the field of zoning and planning, such as the more advanced attempts at the control of billboards along highways, may encounter constitutional obstacles.[1]

In New Jersey zoning was expressly authorized under a constitutional amendment adopted in 1927. The reason for this amendment is discussed below. In revising the Constitution the question is raised whether it is desirable to have any provision relating to zoning in the revised Constitution and, if so, whether the present provision should be altered.

History of Zoning

While zoning was instituted at the close of the 19th Century in several German cities, it was not until 1916 that the first comprehensive zoning ordinance was adopted in the United States. From that time on zoning spread rapidly. Starting with the regulation of

[1] New York State Constitutional Convention, 1938. Report, Vol. IV, "State and Local Government in New York," p. 364.

certain districts in cities, it was later applied to suburban communities. In 1933 the zoning method was used for the first time to cope with a distinctly rural problem: promoting the development of forestry and recreation in cut-over, decadent forest areas in Wisconsin.[2] This extended use of the zoning power was given approval by the author of the article on Zoning in the *Encyclopedia of the Social Sciences* in the following words: [3]

> "Zoning should develop as an integrated part of a regional planning program, and its objectives should include . . . recreation and watershed protection; . . . the regulation of the cultivation of soils subject to excessive erosion or the zoning of such areas for pasture or forestry; the regulation of development along highways in the interest of both traffic efficiency and protection of the beauty of the countryside."

Where the court's interpretation of the extent of the police power has been considered as leaving the state without powers adequate to accomplish a desired regulation, a constitutional amendment has sometimes been adopted to achieve the aim. Thus, in Massachusetts when the police power was deemed inadequate to control billboard advertising a constitutional amendment was approved in 1918 as follows:[4]

> "Advertising on public ways, in public places, and on private property within public view may be regulated by law."

However, comparatively few states have included a zoning provision in their constitution: Delaware, Georgia, Louisiana, Massachusetts and New Jersey. The "Model State Constitution" of the National Municipal League makes no provision for zoning. In most states a constitutional provision has been considered unnecessary.

Zoning in New Jersey

The zoning provision in the New Jersey Constitution (Art. IV, sec. VI, par. 5) reads as follows:

> "The Legislature may enact general laws under which municipalities, other than counties, may adopt zoning ordinances limiting and restricting to specified districts and regulating therein, buildings and structures, according to their construction, and the nature and extent of their use, and the exercise of such authority shall be deemed to be within the police power of the state. Such laws shall be subject to repeal or alteration by the legislature." (Amendment of 1927)

This amendment was necessitated by adverse decisions of the New Jersey courts. The proposal was not opposed by either major party and it was carried by an overwhelming vote.[5] The proposal for the amendment was criticized at the time by a writer in the *New Jersey Law Journal*,[6] but discussion in recent years has turned on the ques-

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[2] *Ibid.*, p. 328.
[3] Vol. XV, p. 538.
[4] Illinois Legislative Reference Bureau, Constitutional Convention Bulletins, 1920. Bulletin 7, "Eminent Domain and Excessive Condemnation," p. 486.
[5] Erdman, Charles R. The New Jersey Constitution—A Barrier to Governmental Efficiency and Economy, 1934, p. 22.
[6] On the ground that the amendment would empower municipalities, if authorized by the Legislature, to regulate the nature and extent of the use of buildings. "The enormity of this power is, on reflection, startling." Hardin, Chas. R., "Proposed Amendment of the New Jersey Constitution Relating to Zoning," 50 N. J. L. J. 221 (1927).

tion whether or not the power of zoning under the present Constitution is adequate. In the proposed revised Constitution of 1942 the power to zone was extended to counties and was broadened to include the regulation of land uses and of property adjacent to any public parkway, highway or other public improvement or public place (Art. III, sec. VII, par. 6):

> "The Legislature may enact general laws under which municipalities and counties may limit and restrict to specified districts and regulate therein, land uses, buildings and structures according to their construction, and the nature and extent of their use. The Legislature may similarly limit and restrict the uses of property adjacent to any public parkway, highway, other public improvement or public place for the protection and conservation thereof. Such laws shall be deemed to be within the police power of the State and shall be subject to repeal or alteration by the Legislature."

In the Report of the Commission on Revision of the New Jersey Constitution, 1942, it was stated that changes "relating to protection of public property and beautification of highways and the building of parkways, are included so as to remove any possible implication from present provisions in the Constitution that such power does not already exist.[7]

Dean George S. Harris of the then University of Newark Law School urged the necessity for this extension of the zoning power: [8]

> " . . . great strides have been made in the public consciousness of the necessity for limiting and restricting use of property adjacent to public owned lands, including highways. . . . I deem it highly essential that the grant of power for these purposes should be included in the fundamental law since I have grave doubts that our Courts would sustain a mere legislative grant of power for these purposes."

Russell Watson, representing the New Jersey State Chamber of Commerce, agreed that this change was "eminently desirable."[9] On the other hand, the proposal was opposed by Mr. R. Robinson Chance, representing the Manufacturers Association of New Jersey, who said:[10]

> "We feel that the present limitation on the police power should not be broken down so as to allow the restriction of the use by a man of his own property any more than it is now restricted."

In spite of strong representations by the Committee of the New Jersey Federation of Official Planning Boards[11] the provision for

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[7] Proceedings before the New Jersey Joint Legislative Committee . . . as to . . . Change in the New Jersey Constitution, 1942, p. 918.

[8] *Ibid.*, p. 202.

[9] *Ibid.*, p. 124.

[10] *Ibid.*, p. 151.

[11] The Committee's proposal in 1944 read as follows:

"The Legislature may enact general laws empowering municipalities to adopt ordinances restricting to specified districts and regulating therein: land uses; uses of buildings and structures, their location and construction, their maximum and minimum height and bulk; minimum lot sizes; density of population; and, to the extent only that is necessary to prevent depreciation of other property values, the design of buildings and structures. The Legislature may grant similar powers to counties to be exercised within the limits of any municipality which has not adopted such an ordinance and to remain in effect pending the adoption of such an ordinance by the municipality. The Legislature may by law authorize a State agency to limit and restrict, for the protection and conservation of any State-owned parkway, highway, or other public improvement or public place owned by the State, the uses of property adjacent thereto. Laws enacted under this section shall be deemed to be within the police power of the state."

Commenting on this proposal the Committee wrote: "Much of the recommended phraseology and even some whole provisions are recommended by the Committee as being unusual and

zoning as incorporated in the 1944 proposed Constitution eliminated counties as zoning agencies and did not include the extension of the zoning power to cover property adjacent to public improvements. However, as compared with the existing constitutional provision, the 1944 proposal did extend the zoning power to the uses of land. The 1944 provision read as follows (Art. III, sec. VI, par. 5):

> "The Legislature may enact general laws under which municipalities, other than counties, may adopt zoning ordinances limiting and restricting to specified districts and regulating therein, buildings and structures according to their construction, and the nature and extent of their use and the nature and extent of the uses of land. The exercise of such authority shall be deemed to be within the police power of the State and such laws shall be subject to repeal or alteration by the Legislature."

In general, with respect to desirable practice in regard to constitutional revision a legal commentator wrote:[12]

> "It is submitted, however, that in the constitutional revision too much should not be provided in relation to zoning practices, for zoning has just been born into a rapidly changing world and to hedge it in with too stringent limitations, or those that may in the future become so, could gravely hinder its growth toward the public good."

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superfluous in the usual constitutional construction. They have been inserted and are recommended, however, because the Courts of New Jersey, unlike those of most other states, have been extraordinarily conservative. As a result there were prior to the constitutional amendment, numerous adverse decisions on such widely accepted community practices as zoning."

This Committee consisted of a senior member of a manufacturing corporation with plants throughout the country, the editor of an outstanding magazine on municipal operations and well known in planning and zoning circles, a high ranking employee of a large life insurance company, two members of planning staffs, a city engineer, and two lawyers.

New Jersey Federation of Official Planning Boards, Committee on Constitutional Revision, "Planning and Zoning Clauses Recommended for Inclusion in the Revised Constitution of New Jersey" and "Reasons for the Content and Construction of the Constitutional Provisions on Planning, Zoning and Related Matters." 1944. Mimeographed.

12 "Zoning and the Constitution," 27 Wash. Univ. Law Quarterly, p. 466 (1942).

BIBLIOGRAPHY

BAKER, N. F. "Constitutionality of Zoning Laws," 20 Ill. Law Review 213 (1925).
BAKER, N. F. Legal Aspects of Zoning. Chicago, 1927.
BASSETT, E. M. Zoning: Laws, Administration, and Court Decisions during the First Twenty Years. Russell Sage Foundation, 1936.
BETTMAN, A. "Constitutionality of Zoning," 37 Harvard Law Rev. 834 (1924).
BYRNE, T. A. "Constitutionality of a General Zoning Ordinance," 11 Marquette Law Rev. 189 (1927).
CHAMBERLAIN, J. P. "Zoning Progress," 15 Amer. Bar. Assn. J. 535 (1929).
"Constitutional Zoning without Constitutional Amendments," 50 N. J. Law J. 2 (1927).
Encyclopedia of the Social Sciences. Vol. XV, "Zoning."
HARDIN, C. R. "The Proposed Amendment to the New Jersey Constitution Relating to Zoning," 50 N. J. Law J. 220 (1927).
Illinois Legislative Reference Bureau. Constitutional Convention Bulletins, Bulletin 7, "Eminent Domain and Excessive Condemnation," 1920.
METZENBAUM, JAMES. The Law of Zoning. N. Y. 1930.
MEUTH, G. W. "Constitutionality of Zoning Ordinances," 14 Ky. Law J. 237 (1927).
New Jersey. Proceedings before the New Jersey Joint Legislative Committee, 1942.
New Jersey Federation of Official Planning Boards. Planning and Zoning Clauses Recommended for Inclusion in the Revised Constitution of New Jersey (mimeo.) 1944.
New Jersey Federation of Official Planning Boards. Reasons for the Content and Construction of the Constitutional Provisions on Planning, Zoning and Related Matters (mimeo.) 1944.
New York Constitutional Convention Committee. Report, 1938 (12 vols.).
WERTHEIMER, R. B. "Constitutionality of Rural Zoning," 26 Cal. Law Rev. 175 (1938).
WETTACH, R. H. "Constitutionality of Zoning Legislation," 5 N. C. Law Rev. 237 (1927).
"Zoning and the Constitution," 27 Wash. Univ. Law Q. 459 (1942).

EXCESS CONDEMNATION

by

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Definition

Under the power of eminent domain the state, or its subdivisions or agencies when authorized by the state, may take private property for public use. This attribute of sovereignty requires in the United States no express mention in the constitution, but compensation must always be paid to the former owner. Most states have, however, made some provision in their constitutions for such taking of private property, often copying the wording of the Fifth Amendment to the Federal Constitution to specify that private property may not be taken for public use without just compensation.[1]

Excess condemnation relates to this process of taking private property. It has been defined as follows:[2]

> "Excess condemnation is the practice of taking by public authority under the right of eminent domain more land than is actually needed for a contemplated improvement, with a view to selling the excess when the improvement is finished. It is thus an extension of the power of taking private property for a public purpose on payment of just compensation."

Legal Aspects

In the United States the power of eminent domain is usually restricted, in the absence of an extension of the power by constitutional amendment, to the condemnation of such land as is required for actual use. In some states—California, Massachusetts, Michigan, New York, Ohio, Pennsylvania, Rhode Island, Utah—constitutional amendments have been adopted to authorize the taking of more land than is actually needed at the time in order to serve certain other objectives. In a few cases where constitutions have been elastic enough, this end has been achieved by general statutes without the necessity for constitutional amendment.[3] For the most part, however, the courts in the United States have held unconstitutional statutes for excess condemnation on the ground that it is not for a public purpose.[4] In New Jersey, under the decisions of the courts the use of excess condemnation probably requires a constitutional

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[1] New York Constitutional Convention Committee, 1938. Report, Vol. VI, pp. 106-109.
[2] Encyclopedia of the Social Sciences, "Excess Condemnation," Vol. V, p. 663.
[3] *Ibid*, pp. 663-664.
[4] Illinois Constitutional Convention, 1920. Bulletin 7, "Eminent Domain and Excessive Condemnation."

amendment.[5] The fee to land cannot be taken by condemnation—only an easement. The purposes for which excess condemnation is urged and the arguments advanced against it are discussed below.

Purposes and Practice of Excess Condemnation

Three main purposes are urged as a justification for excess condemnation:[6] (1) consolidation of remnants of lots; (2) controlling the character of the neighborhood surrounding the improvement; and (3) recouping the cost of the improvement.

Consolidation of Remnants of Lots

When remnants of lots are left in private hands after part has been taken under eminent domain, they are not promptly attached to neighboring property. "The result is that the usefulness of the street is impaired. The practice of condemning such areas is common in Europe."[7] Condemnation proceedings have often left owners with parcels of such size and shape as to be practically worthless. The result was both protracted litigation and social loss due to the fact that continuation of these minute subdivisions of land in private ownership prevented the erection of buildings appropriate to the improved conditions.[8] Excess condemnation, it is claimed, makes possible the consolidation and favorable sale of such remnants.

In providing by constitutional amendment for excess condemnation, the states of Massachusetts, New York, Pennsylvania and Rhode Island have limited the power to the taking of only sufficient land for suitable building sites abutting on the improvement. California, in its constitutional authorization for excess condemnation, limits the taking to parcels lying within 150 feet of the closest boundary of the improvement, provided that when parcels lie partially within the limit of 150 feet, only such portions may be acquired which do not exceed 200 feet from the closest boundary of the improvement.[9]

Controlling the Character of the Neighborhood Surrounding the Improvement

The use of eminent domain for this purpose has been common in Europe. In the United States, commissions which have

[5] New Jersey. Record of Proceedings before the Joint Legislative Committee . . . as to Change in the New Jersey Constitution, 1942, p. 918.

[6] Encyclopedia of the Social Sciences, *supra*, pp. 663-664; Illinois, Bulletin 7, *supra*, pp. 504-505; Massachusetts, Bulletin 19 of the Constitutional Convention, 1917-1918, "Excess Condemnation," Vol. II, p. 112.

[7] Illinois, Bulletin 7, *supra*, p. 504.

[8] New York Constitutional Committee, 1938. Report, Vol. VI, p. 147; Groves, Harold M., Financing Government, New York, rev. ed., 1945, p. 405: "Excess condemnation generally has been used in the United States to wipe out uneconomic property lines resulting from the widening of a street or the construction of a diagonal thoroughfare. Occassionally it has been used to ensure some improvement against having its beauty and enjoyment marred by objectionable uses of adjoining land. Odd remnants of territory left after relocation of a highway may be useful in private hands only for shoe-shining, rubbish piles, or other undesirable purposes. If such land is purchased by the public, it can at least be landscaped. Undesirable uses can be barred in the government's contract of sale or lease."

[9] Art. I, sec. 14½.

studied this aspect of excess condemnation and individual writers have favored it. Some writers, however, have thought that the power would not be properly exercised, that the danger of political favoritism overrides the economic advantage in view, that the financial results would be uncertain, and that it may be better to rely on the zoning power to accomplish the purpose.[10] On the other hand, it is urged that controlling the character of the neighborhood surrounding the improvement is necessary to facilitate good city planning. The history of excess condemnation indicates that where the aesthetic protection of public improvements is an important consideration, excess condemnation is a useful tool.[11] The constitutional provisions of Michigan, Ohio, Utah and Wisconsin are sufficiently broad to provide for this purpose.

Recouping the Cost of the Improvement

When public improvements are made there is often a large increase in real estate values in the surrounding area. To some extent, special assessments on the benefitted property may provide reimbursement, but it is claimed that more of the expenditures could be recouped if the municipality condemned the surrounding area and sold it later after the improvement was completed. For example, Worcester, Massachusetts, used excess condemnation to finance the widening of a street[12] and it is said that the city sold the excess land condemned at three times what it cost.[13]

However, it is a mistake to put too much emphasis on this point, for the amount of recoupment is usually below expectations.[14] It is pointed out that acquisition by eminent domain is an expensive process, that ultimate disposal is often long delayed and carrying charges must be borne, and that sometimes politics play a part in the sale of property to favored purchasers at low prices. Actual experience with excess condemnation has been somewhat disappointing, particularly in regard to the matter of recoupment.[15]

Variations in Excess Condemnation Constitutional Provisions

There is considerable variation as to the nature of the public improvements to which excess condemnation may be applied, the amount of land that may be taken, and the requirements for executory legislation.[16] Massachusetts limits the right to take land for the purpose of streets; Pennsylvania limits the improvement to

[10] Illinois, Bulletin 7, *supra*, p. 504.
[11] Encyclopedia of the Social Sciences, *supra*, pp. 663-664.
[12] Massachusetts, Bulletin 19, *supra*, pp. 121-122.
[13] Groves, p. 405.
[14] Encyclopedia of the Social Sciences, *supra*, p. 663.
[15] Encyclopedia of the Social Sciences, *supra*, p. 664.
[16] Massachusetts, Bulletin 19, *supra*, p. 117.

highways or streets connecting with bridges crossing streams, or tunnels under streams which form boundaries between Pennsylvania and any other state; New York to parks, public places, highways or streets; California to memorial grounds, streets, squares, parkways and reservations; Rhode Island to public highways, streets, places, parks, or parkways. Ohio, Utah and Wisconsin do not limit the nature of the improvement.

The constitutional amendments of four states limit the right of excess condemnation to taking only land suitable for building sites abutting on the improvement: Massachusetts, New York, Rhode Island and Pennsylvania. California limits the quantity of land taken to a specified number of feet from the improvement.

In some states the constitutional amendment provides that authorization for the exercise of excess condemnation must be obtained from the legislature, while in other cases the grant of power is made directly to the municipalities.[17]

Examples of Constitutional Provisions for Excess Condemnation

CALIFORNIA

The State, or any of its cities or counties, may acquire "lands for memorial grounds, streets, squares, parkways and reservations in and about and along and leading to any or all of the same, providing land so acquired shall be limited to parcels lying wholly or in part within a distance not to exceed one hundred fifty feet from the closest boundary of such public works or improvements; provided that when parcels which lie only partially within said limit of one hundred fifty feet only such portions may be acquired which do not exceed two hundred feet from said closest boundary, . . ." and after completion of improvements may convey the rest with reservations concerning future use so as to protect the "improvement and their environs and to preserve the view, appearance, light, air and usefulness of such public works." (Art. I, Sec. 14½)

MASSACHUSETTS

"The Legislature may by special acts for the purpose of laying out, widening or relocating highways or streets, authorize the taking in fee by the Commonwealth, or by a county, city or town, of more land and property than are needed for the actual construction of such highway or street: provided, however, that the land and property authorized to be taken are specified in the act and are no more in extent than would be sufficient for suitable building lots on both sides of such highway or street, and after so much of the land or property has been appropriated for such highway or street as is needed therefor, may authorize the sale of the remainder for value with or without suitable restrictions." (Article of Amendment XXXIX)

NEW YORK

"The Legislature may authorize cities and counties to take more land and property than is needed for actual construction in the laying out, widening, extending or relocating parks, public places, highways or streets; provided, however, that the additional land and property so authorized to be taken shall be no more than sufficient to form suitable building sites abutting on such park, public place, highway or street. After so much of the land and property has been appropriated for such park, public

[17] *Ibid*, p. 118.

place, highway or street as is needed therefor, the remainder may be sold or leased." (Art. I, Sec. 7 (c))

OHIO

"A municipality . . . acquiring property for public use may in furtherance of such public use appropriate or acquire an excess over that actually to be occupied by the improvement, and may sell such excess with such restrictions as shall be appropriate to preserve the improvement made." (Art. XVIII, Sec. 10)

WISCONSIN

"The State or any of its cities may acquire by gift, purchase, or condemnation lands for establishing, laying out, widening, enlarging, extending, and maintaining memorial grounds, streets, squares, parkways, boulevards, parks, playgrounds, sites for public buildings, and reservations in and about and along and leading to any or all of the same; and after the establishment, layout, and completion of such improvements, may convey any such real estate thus acquired and not necessary for such improvements, with reservations concerning the future use and occupation of such real estate, so as to protect such public works and improvements, and their environs, and to preserve the view, appearance, light, air, and usefulness of such public works." (Art. XI, Sec. 3a)

MODEL STATE CONSTITUTION OF THE NATIONAL MUNICIPAL LEAGUE (PARTIAL REVISION, 1946)

"The State, or any civil division thereof, appropriating or otherwise acquiring property for public use, may, in furtherance of such public use, appropriate or acquire an excess over that actually to be occupied by the improvement, and may sell such excess with such restrictions as shall be appropriate to preserve the improvement made. Bonds may be issued to supply the funds in whole or in part to pay for the excess property so appropriated or acquired; and such bonds, when made a lien only against the property so appropriated or acquired, shall not be subject to the restrictions or limitations on the amount of indebtedness of any civil divisions prescribed by law." (Art. VII, Sec. 708)

Excess Condemnation in New Jersey

The power of eminent domain is covered in two sections in the present Constitution:

> *Art. I, par. 16:* "Private property shall not be taken for public use without just compensation; but land may be taken for public highways as heretofore until the Legislature shall direct compensation to be made."
>
> *Art. IV, sec. VII, par. 8:* "Individuals or private corporations shall not be authorized to take private property for public use, without just compensation first made to the owners."

In 1915 a proposal for an amendment authorizing excess condemnation was on the ballot. There was only scattered editorial objection to the amendment which provided that the Legislature might authorize the State or its subdivisions to take more land than needed for actual construction of parks, public places, highways or streets, provided that no more land was taken than was sufficient to form suitable building sites abutting thereon.[18] However, the amendment was "carried down to defeat on the skirts of the woman suffrage proposal which was also on the ballot." [19]

[18] Illinois, Bulletin 7, *supra*, Appendix No. 4, p. 511.
[19] Erdman, Charles R. New Jersey Constitution—A Barrier to Governmental Efficiency and Economy, Princeton, 1934, p. 20.

The proposed revision of the Constitution of 1942, in addition to recommending a change in the wording of the above quoted article,[20] provided for excess condemnation in connection with highways, parkways or other public improvements (Art. III, sec. VII, par. 7):

> "Any agency of the State or any political subdivision thereof which is empowered to take or otherwise acquire private property for any public highway, parkway, other public improvement or public place, may acquire the fee or any lesser interest, and may be empowered by law to take or otherwise acquire the benefit of a fee or restrictions or easements upon abutting property to preserve and protect the public highway, parkway, other public improvement or public place."[21]

The 1944 proposed revision (Art. I, par. 16 and Art. III, sec. VI, par. 10) retained the existing provisions relating to eminent domain (Art. I, par. 16 and Art. IV, sec. VII, par. 8). This revision likewise included a provision for excess condemnation with a slight change in wording as compared with the 1942 proposal. The 1944 provision for excess condemnation read as follows (Art. III, sec. VI, par. 6):

> "Any agency or political subdivision of the State or any agency of a political subdivision thereof, which is empowered to take or otherwise acquire private property for any public highway, parkway, place, improvement, or use, may be authorized by law to take or otherwise acquire the fee or any lesser interest, and may be authorized by law to take or otherwise acquire a fee in, easements upon, or the benefit of restrictions upon, abutting property to preserve and protect the public highway, parkway, place, improvement, or use; but such taking shall be with just compensation."

This provision for excess condemnation followed fairly closely the recommendation of the Committee of the New Jersey Federation of Official Planning Boards,[22] and corresponds to the provisions for excess condemnation adopted in Wisconsin, rather than to the provisions of Massachusetts and New York in their restrictions of the property acquired to just the land necessary for building lots.

Use of Eminent Domain and Excess Condemnation for Housing Construction Programs and Urban Redevelopment

Massachusetts in 1915 adopted a constitutional amendment to authorize the taking of land to relieve congestion of population and to provide homes (Articles of Amendment XLIII):

> "The General Court shall have power to authorize the Commonwealth to take land and to hold, improve, sub-divide, build upon and sell the

[20] See, Report of the Commission on Revision of the New Jersey Constitution, 1942, p. 34 (Art. I, par. 16).

[21] *Ibid*, p. 40.

[22] This recommendation (mimeo., 1944) read as follows: "Any agency of the State or any political subdivision thereof, which is empowered to take or otherwise acquire private property for any public highway, parkway, other public improvement or public place, may be authorized by law to take or otherwise acquire the fee or any lesser interest, and may be authorized by law to take or otherwise acquire a fee in, easements upon, or the benefit of restrictions upon, abutting property to preserve and protect the public highway, parkway, other public improvement or public place. No such taking shall be without just compensation. When the fee is acquired for property in excess of that needed for direct public use, the remainder may be sold or leased, with restrictions for the preservation and protection of the public highway, parkway, other public improvement or public place."

same, for the purpose of relieving congestion of population and providing homes for citizens: provided, that this amendment shall not be deemed to authorize the sale of such land or buildings at less than the cost thereof."

Authorization to cities to undertake slum clearance and rehabilitation is included in the 1946 revised *Model State Constitution* of the National Municipal League (Art. VIII, sec. 804 (i)), containing a grant of power to them:

"To provide for slum clearance, the rehabilitation of blighted areas, and safe and sanitary housing for families of low income, and for recreational and other facilities incidental or appurtenant thereto: and gifts of money or property, or loans of money or credit for such purposes shall be deemed to be for a city purpose."

A similar power, but with more detailed provisions, was included in the 1944 recommendations of the Committee of the New Jersey Federation of Official Planning Boards.[23] The New York Constitution amendments adopted in 1938 contained not only a provision for the use of the power of eminent domain for clearance and rehabilitation of substandard areas but added the right to take certain excess property. The provisions in the New York Constitution are as follows (Art. XVIII):

"Subject to the provisions of this article, the legislature may provide in such manner, by such means and upon such terms and conditions as it may prescribe for low rent housing for persons of low income as defined by law, or for the clearance, replanning, reconstruction and rehabilitation of substandard and insanitary areas, or for both such purposes, and for recreational and other facilities incidental or appurtenant thereto." (Sec. I)

"Any agency of the state, or any city, town, village or public corporation, which is empowered by law to take private property by eminent domain for any of the public purposes specified in section one of this article, may be empowered by the legislature to take property necessary for any such purpose but in excess of that required for public use after such purpose shall have been accomplished; and to improve and utilize such excess, wholly or partly for any other public purpose, or to lease or sell such excess with restrictions to preserve and protect such improvement or improvements." (Sec. 8)

"Subject to any limitation imposed by the legislature, the state or any city, town, village or public corporation, may acquire by purchase, gift,

[23] "EMINENT DOMAIN AND URBAN REDEVELOPMENT.

"(a) Any municipality may acquire or assemble the real property of any area within its limits, to facilitate the development or redevelopment of such area in accordance with a plan for such development or redevelopment, whether the uses to which such area is to be devoted, according to the plan, be either public uses or private uses or both; and the acquisition or assembly of such real property, as a step in the accomplishment of the development or redevelopment, is hereby declared to be a public use. The Legislature shall make laws governing the procedure for the exercise of this power, the holding, leasing or selling of the property under controls to be exercised by the municipality, and the method of financing such acquisition or assembly.

(b) The Legislature may authorize the organization of corporations or authorities to undertake such development or redevelopment, and may authorize municipalities to exempt their improvements from taxation, in whole or in part, for a limited period of time, under conditions as to special public regulation to be specified by law or by contract between any such corporation or authority and the municipality; provided that, during the period of tax limitation the profits of any corporation, and the dividends paid by it shall be limited by law.

(c) The Legislature may also provide, in such manner, by such means and upon such terms and conditions as it may prescribe, for low-rent housing for persons of low income as defined by law, or for the clearance, replanning, reconstruction, and rehabilitation of substandard and insanitary areas, or for both such purposes, and for recreational and other facilities incidental or appurtenant thereto."

eminent domain or otherwise, such property as it may deem ultimately necessary or proper to effectuate the purposes of this article, or any of them, although temporarily not required for such purposes." (Sec. 9)

BIBLIOGRAPHY

CUSHMAN, ROBERT E. Excess Condemnation, New York, 1917.

Encyclopedia of the Social Sciences, "Excess Condemnation," Vol. V.

GROVES, HAROLD M. Financing Government (rev. ed.), New York, 1945, pp. 405-406.

ILLINOIS. Legislative Reference Bureau, Constitutional Convention, 1920, Bulletin No. 7, "Eminent Domain and Excessive Condemnation."

LEVIN, DAVID R. Public Control of Highway Access and Roadside Development, U. S. Public Roads Administration, U. S. Government Printing Office, 1947.

MASSACHUSETTS. Commission to Compile Information and Data for the Use of the Constitutional Convention, 1917-1918, Bulletin No. 19, "Excess Condemnation."

NEW JERSEY. Record of Proceedings before the Joint Committee of the New Jersey Legislature . . . to Ascertain the Sentiment of the People of the State as to . . . Change in the New Jersey Constitution, 1942.

NEW YORK. Constitutional Convention Committee, Report, 1938 (12 vols.).

The Problem of "Excess Condemnation," 27 Wash. Univ. Law Q. 466 (1942).

PURDY, L. "Why We Need Excess Condemnation," Nat. Munic. Rev., Vol. XII, (1923), pp. 363-368.

STEINER, J. B. "Excess Condemnation," 3 Mo. Law Rev. 1 (1938).

SHOULD THERE BE A CONSTITUTIONAL PROVISION LIMITING OR FORBIDDING MANDATORY LEGISLATION REGARDING LOCAL SPENDING?

by

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State legislation requiring local governing units to make certain expenditures has been questioned by many. Some believe that local governments should have the final word in matters of expenditure, while others hold that the legislature, representing state authority over its component parts, must definitely assume some oversight of municipal expenditure. In any event, it seems to be generally admitted that local governments have not acted with wisdom or efficiency in managing local finances.

Mandatory local spending laws have appeared in state legislatures in increasing numbers. However, over the years, it has been seen that not all spending laws show a desire on the part of the state to deal oppressively with its local units.

In New Jersey the expansion of industry led to concentration of industrial power in the north, while South Jersey has remained largely agricultural. This has resulted in great differences in the financial strength of municipalities in each region. Where necessary, the State has helped municipalities in financial difficulties, and curbed the extravagances of those with surpluses. In general, the State has allowed local governments to rule on matters of local concern except where they had obviously bungled their tasks. It has interfered only in matters of a more general nature and of obvious public importance.

This does not mean that there has been a disregard of the principles of home rule. Mandatory spending legislation does not reflect a desire for further centralization of government. It is, rather, a means of correcting the faults of previously lax local administrations and of bringing some uniformity in functions of statewide concern. Laws governing local spending are often corrective measures to make amends for the failure of many local governments to observe good business judgment.

There are several forms that mandatory local spending legislation may take. The primary form is that of requiring municipalities to make certain expenditures that they might not otherwise make. State grants-in-aid may also be used as mandatory legislation in that they often stipulate minimum administrative require-

ments for municipalities before the requested grant is made effective. The most common mandatory spending laws require municipalities to pay stated minimum salaries, to establish tenure of office, to create new positions, and to maintain welfare funds.

The effect of such legislation has at times been to contribute to poor government. This may be true, for example, when the stipulated minima for educational salaries makes for a greater total than the amount allocated in the budget will permit. In consequence, a smaller number of teachers is hired. Similarly, in police and fire protection the number of persons that can be retained may prove to be insufficient for the municipality. In general, the overall effect of mandatory spending laws has been to decrease the amount remaining for locally determined purposes.

Local spending laws are more common in certain fields than in others. Welfare activities, which were once almost entirely local, are more extensively coming under the control of state administrative agencies. The nature of our school system has forced us to consider uniform standards of education as of greater state concern than local independence in education matters. In the field of police and fire protection, the municipalities must help maintain pension funds. There are other governmental areas in which laws have been enacted, but it has been in the field of education that legislative intervention has been the most comprehensive.

Municipalities have, of course, repeatedly objected to mandatory spending laws and for various reasons. One of their reasons is that such laws ignore differences in financial ability of communities in different parts of the State. A second objection is that the laws, although seemingly applicable to all cities, are often aimed at one. State legislation has sometimes been enacted despite objections by local governments on the grounds of insufficient need and inability to pay. The majority of the members of the Legislature voting on the issue are usually not familiar with the municipality at which the legislation is aimed. A third objection comes from considerations of the financial status of a municipality. Increased expenses necessitate increased revenue. The rates of property taxes, from which cities receive the greatest portion of their revenue, are, it is claimed, close to their maximum limit.

The result of municipal objection to legislative regulation has led in some cases to proposals for constitutional amendments limiting the fields in which the legislature may act. The reasons for such amendments may be summarized as follows:

1. The legislators would be protected from the pressure of groups seeking special legislation, while at the same time the taxpayers would be shielded from unjust taxation.
2. The reckless expenditures arising from separate tax levying and revenue spending powers would be avoided.
3. Local governments would be encouraged to provide better government and in so doing to seek new sources of revenue.

Reasons against such amendments may in turn be summarized as follows:

1. The present state-local governmental relations would become so confused that an entirely new system would, in effect, have to be developed.
2. The right of the legislature to control its own creatures would be curtailed.
3. Municipalities, even under home rule principles, must be subject to the greater control of state government.
4. The expenditures which are placed upon municipalities are not large enough to call for special state funds.
5. The progress toward uniform minimum standards for municipalities would be impeded.

In conclusion, it is said by those who are against constitutional regulation that a proper administrative advisory body would be of more help toward eliminating inefficiency in local governments.

BIBLIOGRAPHY

GROVES, HAROLD M. Financing Government, rev. ed. New York, 1945.

HEER, CLARENCE. "Effective State Control of Local Expenditures," Public Finance, Selected Readings, by Elmer R. Fagan and C. Ward Macy. New York, 1934.

LUTZ, HAROLD L. Public Finance. New York, 1936.

NEFF, FRANK A. Trend in Municipal Finance Since 1900, Lincoln, Neb., 1939.

NEWCOMBER, MABEL. "Tendencies in State and Local Finance and Their Relation to State and Local Functions." Political Science Quarterly, Vol. XLIII, March, 1928.

New Jersey Commission to Investigate County and Municipal Taxation and Expenditures. Reports. Trenton, 1931.

New Jersey Taxpayers Association, Bulletins.

New York State Constitutional Convention Committee, 1938. "The Problem of Mandatory Expenditures and State Financial Supervision." Report, Vol. X. Albany, 1938.

THE LEGISLATIVE INITIATIVE AND REFERENDUM

by

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The legislative initiative and referendum, devices of so-called direct democracy, exemplify a desire to increase popular control of government. They represent an effort to supplement or supplant the legislative process at points where that process has positively transgressed the popular will or negatively failed to express it. The following paragraphs, after defining terms, aim: (a) to indicate the history of these devices in the United States; (b) to describe their operation, and (c) to state as objectively as possible the advantages and disadvantages supposedly attaching to their operation.

The initiative permits the electorate to remedy sins of omission; it is a spur applicable to a legislature which neglects or refuses to enact laws demanded by the electorate. By it, through a petition, a measure may be proposed and carried to a popular verdict. It is of two kinds: the direct type places a proposed measure upon the ballot for submission to the electorate, without legislative action; in the indirect type, more frequently used, the initiated measure goes to the legislature, which must act upon it within a reasonable period. If passed unchanged and signed by the governor, it becomes law forthwith, unless a referendum petition has been entered. If amended, or if not acted upon within the specified period, it must be submitted to a referendum. Thus the electorate acts twice, once through the filing of the petition, and again through a referendum, should the legislature fail to accept the exact proposition presented by the petition.

The referendum is a device for subjecting an enacted law to a further verdict of the voters. It also takes two forms: the compulsory, in which the law must be referred to the people, and the more common optional type, in which, by petition, it may be placed upon the ballot. The latter serves as a brake whereby the voters may reject legislation believed contrary to the public interest.

History

South Dakota (1898) was the first state to adopt the legislative initiative. Between that date and 1918 approximately 20 states put the state-wide initiative and referendum into operation (12 adoptions betwen 1910 and 1916); two others (New Mexico, 1911, and

Maryland, 1915) have the referendum alone. Geographically, only five of these are east of the Mississippi. Six restrict themselves to the indirect type of initiative; 11 have only the direct; and three provide for both. The foregoing brief analysis indicates that Progressivism furnished the great impetus to the movement, which has found its greatest incidence beyond the Mississippi. It will be noted that recent years have marked no new adoptions. Scattered evidence suggests some current dissatisfaction with the operation of the devices, but no adoption has been rescinded.

Operation

The Initiative. Though state practice varies widely, certain basic procedures recur. An attempt will therefore be made to trace a hypothetical measure, pointing out variations as these appear. Assuming that an active group desires a law which ordinary methods have not secured, its first step is to circulate initiative petitions. These must contain the proposed measure in full or in synopsis, and must be filed originally with the secretary of state. In some states the attorney-general must rule on the proposal's conformity with constitutional requirements as to scope and subject-matter. Having received approval, it is circulated by qualified voters for signature by qualified voters only; each copy of the petition must carry the text of the proposal. There is no uniformity as to the number of signatures required to put the initiative into operation. It is usually fixed in terms of a percentage of the total vote for a prominent state officer (governor, secretary of state, or justice of the supreme court) at the last general election. Frequently a law and a constitutional amendment may be initiated in precisely the same way. Where a distinction is made, a typical figure would probably be 8% for a law and 10% for an amendment.

After the secretary of state certifies that the completed petitions satisfy procedural regulations, the proposal is ready for submission to a popular referendum, in the case of the direct initiative, or to the legislature under the indirect form. In the legislature an initiated proposal commonly takes precedence over everything except appropriation bills, and action is frequently required within 40 days. As indicated above, the legislature may amend or in some cases enact a competing substitute, in which instance both measures are referred to the voters. Legislative inaction automatically places the measure before the electorate. It is commonly required that the voters must have an opportunity to pass on the legislature's work within three or four months. In order to inform the electorate on the issues involved, several states circulate to all voters literature describing the measure to be referred.

Initiated measures may be submitted to special elections or added

to the ballot on a general election. Practice varies as to the requirements for passage: sometimes a majority of the votes cast on the proposition is demanded; in other states a majority of all ballots cast in the election. Most states provide that measures enacted by the initiative and referendum are exempted from the veto power of the governor, on the ground that the electorate is superior to its agent. There is no uniformity regarding the power of subsequent legislatures to amend or repeal measures enacted through the initiative and referendum. Several states expressly grant this power, occasionally restricting its operation in some manner. In the absence of express provisions, the power probably exists by implication. There remains in the courts the right to review unconstitutional enactments by direct legislation, and to resolve conflicts resulting from such action. A few states limit the areas of activity to which the initiative may apply, with the object of preserving religious freedom, the safety of the judiciary, and the sanctity of the taxing power. Some also limit the frequency with which the same proposition may recur.

The Referendum. The above discussion has commented upon the referendum resulting as a necessary consequence of the initiative. It may also be invoked substantively to secure a popular verdict on laws originally passed by the legislature. In the compulsory referendum no petition is necessary; submission is mandatory under terms of law or constitution. The optional referendum applies to ordinary legislation, and provides that within a specified period (frequently 90 days after the enactment of the law, or after the end of the session) a petition may demand a referendum. The procedure is similar to that of the initiative, execept that the percentage of signatures required is usually smaller—normally 5%. Filing of a referendum petition suspends operation of the law until the electorate has acted. Procedure from this point parallels that involved in the previous discussion of referenda on initiated measures. More careful limits are placed upon use of the referendum than in the case of the initiative; commonly exempted from its operation are laws pertinent to the preservation of the public peace, health, or safety, and making appropriations for current expenses of state government, public schools, and institutions.

Pros and Cons

Observation of direct democracy in practice over nearly 50 years has produced both favorable and unfavorable criticism. On the plus side may be noted the democratizing and educative influence exerted upon the electorate when called upon to initiate or pass upon important public questions. Such devices serve as a positive vehicle for the expression of public opinion, whether momentarily

successful or not. To this extent they not only keep legislatures alert to avoid mistakes, but act as signposts pointing the way to a better legislative output; this, of course, in addition to the traditional and very important gun-behind-the-door function which brought about their original introduction. Too, contrary to predictions of critics, the attitude of voters on referred measures has tended to be conservative on fiscal policy, and most active along lines of morals and education. To the valid criticism that the initiative has tended to be overworked when first instituted, it is replied that the new-toy phase usually passes soon, leaving the device to play its intended role.

Critics insist that once the novelty has worn off, the initiative either falls into disuse or serves as an instrument of fanatical minorities or organized pressure groups which overwork it. This is less true of the referendum, which can be invoked only after the legislature has acted in a way disliked by a considerable portion of the electorate. The facility with which measures can be brought before the electorate, furthermore, tends to lessen the legislature's sense of responsibility; the compulsory referendum, particularly, cultivates the well-developed American tendency to buck-passing. Moreover, presenting numerous proposals at general elections violates the principle of the short ballot and confuses the voter. This, along with the typical inertia of the average voter, results in a much lower degree of popular interest than proponents of direct legislation have claimed for it. Again, there is a tendency to present the voters with technical questions on which they are not equipped to pass, rather than broad matters of principle on which their judgment may be trusted. Finally, the mechanics of direct democracy prevent the clarification of issues possible in the give-and-take of legislative debate.

In conclusion, it would appear that the initiative and referendum are and will continue to be a recognized feature of American constitutional paraphernalia. Decades of experience have demonstrated that they are neither as useful as their original sponsors predicted nor as dangerous as early opponents feared. Their greatest importance has been as a combined stimulus and governor, toning up the legislative process where it has failed to take desired action, and correcting it where it has gone astray. The correctives of experience point to certain desirable features of a workable system: it should be geared to the capabilities of the electorate, not offering the voters too many or too complicated questions; it should be surrounded with careful administrative regulations, assuring the public against aggressive minorities; it should provide for invoking the informed interest of a considerable portion of the electorate; its results should be removed from the executive veto, but not from judicial interpretation.

BIBLIOGRAPHY

HOLCOMBE, A. N. State Government in the United States, 1931, pp. 539-569.

Massachusetts. Bulletins for the Constitutional Convention, 1917-1918, No. 6, 1918.

New York State Constitutional Convention Committee, 1938, Problems Relating to Legislative Organization and Powers, vol. VII, pp. 313-316.

OBERHOLTZER, E. P. The Initiative, Referendum, and Recall in America, 1911 (the standard academic treatise).

STEINBICKER, P. G. and FAUST, M. L. (comps.). Manual on the Amending Procedure and the Initiative and Referendum for the Missouri Constitutional Convention of 1943 (the best brief resume).

THE LEGISLATURE—INVESTIGATIONS

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The Constitution of New Jersey contains no provision giving the Legislature power to investigate state or local governments, the fidelity of any public officer or employee, or the performance of any public office, employment or trust. Whatever power the Legislature possesses is that inherent in it under the common law. The constitutional deficiency has become increasingly serious with the whittling down of the original legislative investigatory power by the courts.

The law relating to this power has been well summarized in *59 Corpus Juris,* pages 95-102: [1]

> "*Investigations.*[2] The legislature has power to investigate any subject respecting which it may desire information in aid of the proper discharge of its function to make or unmake written laws, or perform any other act delegated to it by the fundamental law,[3] and the legislature may proceed, with that end in view, by a duly authorized committee of one or both branches of such body.[4] * * * It is the general rule that the legislature has no power through itself or any committee or other agency to make inquiry into the private affairs of a citizen, except to accomplish some authorized end [5] * * *. Neither the legislature nor a committee appointed by it can constitute itself into a court of general jurisdiction or a grand inquest for the purpose of inquiring into the conduct of a citizen not a member of its body,[6] and the legislature has no power to conduct an investigation for the detection of crime,[7] except in connection with impeachment proceedings, although it is not a valid objection to an investigation that it may disclose crime or wrongdoing on the part of individuals, provided its object is the framing and enactment of proper laws or regulations.[8] A

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[1] See also, 49 *American Jurisprudence,* pp. 256-61.

[2] 59 C. J. 96-98.

[3] *Ex parte McCarthy,* 29 Cal. 395; *Greenfield* v *Russell,* 292 Ill. 392; *Atty. Genl.* v *Brissenden,* 271 Mass. 172; *People* v *Keeler,* 99 N. Y. 463; *State* v *Frear,* 138 Wis. 173.

[4] "Power to secure needed information by such means has long been treated as an attribute of the power of the legislature. It existed in the British Parliament and in the colonial legislatures, and has been carried into effect in most if not all of the state legislatures." 49 Am. Jur. 257, s. 39. *McGrain* v *Daugherty,* 273 U. S. 135. In order for the legislature to enact wise and timely laws, necessity of investigation must exist as an indispensable incident and auxiliary to the proper exercise of legislative power. *Re Battelle,* 207 Cal. 227. The power is as broad as the subject to which the inquiry properly entered upon has relation. *Re Battelle, supra.* Where there is a proper use that the legislature can make of the information sought, an ulterior purpose cannot be imputed, nor can an improper use of the information, when secured, be presumed. *Robertson* v *Peoples,* 120 S. C. 176.

[5] *Ex parte Hague,* 105 N.J. Eq. 134, which held that the New Jersey Legislature had no authority to require petitioner to answer questions relating to his private affairs and property. *Greenfield* v *Russell, supra; In re Barnes,* 204 N. Y. 108; *Atty. Genl.* v *Brissenden, supra.*

[6] *Ex parte Hague, supra.*

[7] *Ex parte Caldwell,* 138 Fed. 487; *Atty. Genl.* v *Brissenden, supra.*

[8] *People* v *Milliken,* 185 N. Y. 35.

legislature, a joint session, or a committee cannot violate the constitutional rights of a person by conducting a public investigation of charges against him under the pretense or cloak of its power to investigate for the purpose of laying a foundation for the institution of criminal proceedings, for the aid and benefit of grand juries in finding indictments, for the purpose of intentionally injuring or vindicating any institution or individual, or for any other ulterior purpose.[9] A general, roving, inquisitorial, compulsory investigation, conducted upon allegations, with no fixed principles, and governed by no rules of law or evidence, is illegal.[10]

It has been held that, whatsoever means the two houses of the legislature use for the purpose of investigating, the right to investigate is separate and distinct in each house." [11]

Authority to obtain information necessary for its determination concerning the exercise of the power to enact laws may be conferred upon non-legislative bodies.[12]

In the exercise of its power to make investigations, the legislature may incur reasonably necessary expenses, payable out of public funds.[13] * * *

* * * While the powers allowed to a legislative committee are necessarily exceedingly broad and include a search into the subject matter of the investigation far beyond the scope of a judicial trial, not being confined to evidence such as would be required upon a trial at law, its powers are not unlimited and its inquiring must be confined to facts relevant to the inquiry,[14] and the answer of a witness cannot be compelled either by the legislature or one of its committees on an inquiry or investigation, except for legislative purposes or in acquiring information upon which to predicate remedial action.[15]

While in some aspects legislative investigations may partake of judicial attributes and require the exercise of quasi-judicial faculties, it is not a judicial function belonging exclusively to the courts.[16] * * * But where an inquiry involves the investigation of criminal charges, the general rule is to the effect that it would be an invasion of the province of the judiciary for the legislature to undertake it.[17]

Compelling Attendance of Witnesses and Production of Evidence.[18] By the weight of authority, if the subject of investigation is within the range of legitimate legislative inquiry and the questions are pertinent thereto and do not call for privileged matter, either house, if so authorized, or a committee thereof, * * * may summon witnesses and compel obedience thereto,[19] it being held that the inherent and auxiliary power reposed in legislative bodies to conduct investigations carries with it such power.[20] * * *

* * * The right to compel a witness to produce books and papers before a legislative committee turns upon whether their production is necessary to the inquiry which it is conducting,[21] and the production of papers material to an inquiry may not be refused merely because they are private.[22] When, however, it appears that the legislative committee in issuing a subpoena is attempting to embark upon a 'fishing expedition,' it will be declared void.[23]

When a witness, lawfully summoned, refuses to appear, a warrant or

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[9] *Greenfield* v *Russell* and *Ex parte Hague, supra.*
[10] *Ex parte Hague, supra.*
[11] *Ex parte Hague,* 103 N.J. Eq. 31.
[12] *Atty. Genl.* v *Brissenden, supra.*
[13] *State* v *Frear, supra.*
[14] *Yoe* v *Hoffman,* 61 Kan. 265; *People* v *Foster,* 198 N. Y. S. 7.
[15] *Ex parte Hague,* 105 N.J. Eq. 134; *Ex parte Wolters,* 64 Tex. Cr. 238.
[16] *Ex parte Battelle. Atty. Genl.* v *Brissenden, People* v *Keeler, supra; Lowe* v *Summers,* 69 Mo. App. 637; *People* v *Sharp,* 107 N.Y. 427.
[17] *Greenfield* v *Russell, supra.*
[18] 59 C.J. 99-102.
[19] *Ex parte Hague,* 104 N.J. Eq. 369; *People* v *Keeler, supra.*
[20] *Atty. Genl.* v *Brissenden, supra.*
[21] *In re Barnes, supra.*
[22] *Burnham* v *Morrisey,* 14 Gray (Mass.) 226.
[23] *Ex parte Hague,* 104 N.J. Eq. 31; *In re Barnes, supra.*

attachment may issue to compel his attendance,[24] the statutes in some instances so providing, and the procedure, when not fixed by statute, being controlled by the customary rules and practice of the legislative bodies. * * *

Each house of the legislature may punish contempts of its authority by other persons where they are committed in its presence,[25] and equally may it be a contempt of the house for a witness to refuse to appear, or to testify, before its duly empowered committee, or to produce books or papers,[26] and a statute empowering either house to imprison a contumacious witness is not in excess of the legislative power.[27] * * * No person can be punished * * * unless his testimony is required in a matter into which the house has jurisdiction to inquire.[28] Furthermore, the evidence sought by the committee must be material and wilfully withheld,[29] and a witness may not be required to answer incriminating questions.[30]"

The extent of the New Jersey Legislature's general investigatory power was first explored at length in the case of *In re Hague,*[31] cited as authority for many of the statements in the above quotation. The 1928 Legislature had by joint resolution set up a joint investigating committee. Mayor Hague refused to obey a subpoena issued by that committee. It thereupon adjudged him in contempt and reported to the Legislature, which then met in joint session and passed a concurrent resolution upon the authority of which a warrant was issued directing the arrest and detention of Mayor Hague and his arraignment before the bar of joint sessions. On *habeas corpus* proceedings brought to test the validity of the warrant, Chancery ordered him discharged from custody. It held that the joint resolution setting up the inquiry, the appointment of the joint investigating committee, the subpoena, the committee's action in adjudging petitioner guilty of contempt of the Legislature, the concurrent resolution and the warrant based thereon, were all unconstitutional and therefore void.[32] On appeal, the Court of Errors and Appeals held that: [33]

1. The joint resolution, taken as a whole, was a valid exercise of legislative power, even if one or more of the inquiries suggested therein might be unlawful.

2. The subpoena was lawfully issued and lawfully required attendance before the investigating committee, notwithstanding the assumed inclusion therein of illegal requirements for the production of documents.

3. It was lawful to order a warrant for arrest of the mayor

[24] *Ex parte Hague,* 104 N.J. Eq. 369.
[25] *In re Barnes, Lowe* v *Summers, supra. Ex parte Hague,* 104 N.J. Eq. 31, held that the right to punish a recalcitrant witness must be vindicated by the Senate and the Assembly in their separate relations, since the right is separate and not joint. Action by the joint session of the houses was held unauthorized.
[26] *In re Gunn,* 50 Kan. 155; *Burnham* v *Morrisey, Lowe* v *Summers,* and *In re Barnes, supra.*
[27] *People* v *Keeler, supra.*
[28] *In re Barnes, supra.*
[29] *People* v *Foster,* 204 App. Div. 295.
[30] *Ex parte Hague,* 9 N.J. Misc. Rep. 89; *Emery's Case,* 107 Mass. 172.
[31] 104 N.J. Eq. 31, affirmed *Ibid,* 369 (first case); 105 N.J. Eq. 134, affirmed 9 N.J. Misc. Rep. 89 (123 N.J. Eq. 475) (second case).
[32] 104 N.J. Eq. 31, at p. 77.
[33] 104 N.J. Eq. 369.

and to bring him before the Legislature; and the warrant was, if otherwise valid, not vitiated by lack of a seal.

4. The warrant, ordering the arrest and arraignment before the bar of the Senate and General Assembly "to answer as and for a contempt in refusing to obey" the subpoena, by its language contemplated penal action.

5. However, it was not within the power of the Senate and General Assembly to inflict such punishment.

6. It was not competent for the Legislature to direct the arrest under conditions which might involve imprisonment until six days later before the mayor could be brought before that body in session.

The vote was unanimous on the first four points. The court split 6-6 on points (5) and (6), as well as on the ultimate question of reversing Chancery. The Chancery order therefore stood.

The 1929 Legislature adopted a supplemental resolution to the joint resolution of 1928, appointing a joint committee whose members were specifically named, requiring it to

> "make a survey of all questions of public interest; to investigate violations of law and the conduct of any state, county or municipal official, * * * department, * * * commission, * * * board, or * * * body; to report whether the functions of such officials, departments, commissions, boards and bodies have been or are being lawfully and properly discharged for the purpose of obtaining information relative thereto as a basis for such legislative action as the senate and general assembly may deem necessary and proper."

In the course of the investigation made by the committee, there was evidence of alleged waste of public moneys in condemnations instituted by Hudson County and by Jersey City, of sums paid by motion picture theatres in Hoboken and Jersey City in order to stay open Sundays, and of illegal manipulation of bus franchise fees which defrauded Jersey City of substantial tax monies. The committee subpoenaed the Mayor of Jersey City and asked ten questions of him relating to his financial and property affairs. Upon his refusal to answer any of them, the joint committee reported that fact to the Legislature. The joint session then subpoenaed the witness to appear before it. He did, the questions were again submitted by the joint session, and again he refused to answer. Thereupon the joint session adjudged him in contempt and caused a warrant for his arrest to be issued, directing his confinement in jail until such time as he was willing to answer. Upon being arrested, the mayor instituted *habeas corpus* proceedings. The vice-chancellor concluded the arrest was without legal justification and ordered him discharged.[34] On appeal, the Court of Errors and Appeals held that in submitting the questions the Legislature invaded the judicial department of the government, thereby violating Article III, para-

[34] 105 N.J. Eq. 134.

graph 1 of the New Jersey Constitution relating to separation of powers.[35] The questions, said the court, were clearly meant to show that the witness was involved in the alleged criminal conspiracies resulting in the mulcting of the public treasuries of Hudson County and Jersey City:

> "The questions were within the scope of the resolution which directed an investigation of violations of law by county or municipal officers; but, as has already been stated, investigations of alleged violations of the criminal law are strictly judicial in their nature, and, under the constitution the legislature has no more power to conduct such investigations than has the governor, who constitutes the third branch of our governmental system, even if the latter desired the information sought for the purpose of advising the legislature with relation to changes in our criminal laws that would make violations thereof by county and municipal officers less likely to occur. In refusing, therefore, to answer these questions, relating as they did to matters, inquiry into which was outside of the jurisdiction of the legislature, Hague was exercising a legal right, and this being so the legislature was without power to punish him for such refusal, for, as was stated by Mr. Justice Miller in the case of *Kilbourn* v *Thompson,* 103 U. S. 190: 'No person can be punished for contumacy as a witness before the legislature unless his testimony is required in a matter into which the legislature has jurisdiction to inquire.' " [36]

After indicating that the Legislature is not entirely without power to exercise any judicial functions—it does so in impeachment proceedings as well as in cases where it investigates the truth of a charge brought to its attention involving swindling the State out of property—Chief Justice Gummere went on to hold that even if the Legislature were considered as authorized by the Constitution to investigate the alleged criminal charges which were the basis of questions asked, yet there was no power *to compel* the witness to answer. The Legislature had attempted to exercise such power in issuing the warrant, for it directed arrest and confinement in jail until the witness was ready to answer. The court declared that a witness is protected by law from being compelled to give evidence that tends to criminate him.[37]

The Chancery decision, thus affirmed, was broader and stronger in the language used, as indicated by these paragraphs from the headnotes to the opinion: [38]

> "It is a well-settled rule that the legislature cannot, nor can any committee appointed by it, constitute itself into a court of general jurisdiction or a grand inquest, for the purpose of inquiring into the conduct of a citizen not a member of its body, nor can it compel the answer of a witness on an inquiry or investigation before it except for legislative purposes or in acquiring information upon which to predicate remedial legislation."
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> "A legislature, and *a fortiori* a joint session or a committee, cannot violate the constitutional rights of a person by conducting a public in-

[35] 123 N.J. Eq. 475, at p. 478.
[36] *Ibid,* at p. 479.
[37] *Ibid,* at pp. 480-81.
[38] 105 N.J. Eq. 134-35.

> vestigation of charges made against such person, either directly or by innuendo—under the pretense or cloak of its power to investigate for the purpose of acquiring information for legislation, whether the investigation be for the purpose of laying a foundation for the institution of criminal proceedings, for the aid and benefit of grand juries in finding indictments, for the purpose of intentionally injuring such person, or for any ulterior purpose."
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> "Joint session was without authority to require petitioner to answer questions propounded to him which he declined to answer—all of which related to his personal private affairs and property. The legislature, as such, lacks such authority. Neither the senate nor the general assembly possesses, or can be invested with, such authority."
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> "It is axiomatic that citizens are subject to the duty to appear and testify and produce books and papers in a court of law when duly subpoenaed in a case pending therein, when such disclosure is relevant and material to a judicial determination of such case; but they are not subject to a duty before a legislative investigating committee."
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> "A general, roving, offensive, inquisitional, compulsory investigation, conducted by a committee or a joint session without any allegations, upon no fixed principles, and governed by no rules of law, or of evidence, and no restrictions except its own will, or caprice, is unknown to our constitution and laws. Such an inquisition would be destructive of the rights of the citizen."

In re Kelly,[39] decided eight years after *In re Hague,* closely followed the principles enunciated in the latter case. The 1938 Assembly had appointed an investigating committee pursuant to an Assembly resolution reciting claims made by the defeated gubernatorial candidate of malconduct, fraud and corruption in the General Election of 1937 in Hudson County. The resolution directed the committee to

> "make a survey of all questions of public interest, including a survey of the finances and expenditures of the State, counties, and municipalities, to investigate violations of law and the conduct of any State, county or municipal official; * * * department; * * * commission; * * * board; or * * * body; to investigate alleged fraudulent and illegal conduct of the general election on November second, one thousand nine hundred and thirty-seven; * * * and to report its findings as a basis for such legislative action as the General Assembly may deem necessary and proper."

Kelly and two others were subpoenaed and asked certain questions by the committee relating to the election in Jersey City. Each one refused to answer on advice of counsel. They were then arrested and committed to jail on warrants issued by a magistrate on the complaint of the Assembly investigating committee chairman. On *habeas corpus* proceedings, Chancery held that the petitioners were justified in refusing to answer, and ordered their discharge from custody. The vice-chancellor pointed out how closely the Assembly resolution resembled the joint resolution in the *Hague* case, except that it directed investigation of the allegations of election fraud and criminality. The court quoted the Court of Errors and Appeals decision in the former case at length and held that the Assembly resolution under consideration attempted to usurp the func-

[39] 123 N.J. Eq. 489.

tions of the judiciary and was, therefore, under the separation of powers provision (Art. III, par. 1), unconstitutional and void. The fact that a joint committee had tried to hold the witness for contempt in the *Hague* case, whereas here the Assembly committee complained to a magistrate who thereupon issued the warrant of arrest, was held to make no difference, since the resolution itself was invalid.

In re Kelly was affirmed on appeal,[40] the *per curiam* opinion simply stating that the affirmance was "for the reasons stated in the opinion filed in the court below." Justice Case, dissenting, said:[41]

> "* * * the courts should not impinge upon, or withhold recognition of, legislative powers. . . . I perceive no effort at the usurpation of constitutional powers in the granting of so much authority as was necessary to support the incidents hereinafter mentioned, or in the inquiries addressed to the respondents or in the consequent arrests. . . .
>
> * * * the assembly had the right to obtain information legitimately pertinent to the subject-matters upon which it was called to legislate.
>
> The elections constitute an essential and exceedingly fertile subject of legislation. None more so or more appropriately so. . . . There is no doubt in my mind of the authority of the assembly to seek enlightenment on the manner in which the elections are actually conducted, and to seek it with compulsory process. Any other view would cut directly and seriously into the roots of our form of government. . . .
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> * * * The specific questions come squarely within my conception of what the assembly was entitled to ask and to have answered. They were clearly introductory and they in nowise constituted an inquiry into crime . . . we have no justification for assuming that if these questions had been answered, subsequent ones would have concerned subjects beyond the pale of legislative inquiry. * * *"

Justice Case discussed the *Hague* cases at length to show that they were not authority for the non-admissibility of the questions in the *Kelly* case.

The *Kelly* case has been criticized,[42] as has the *Hague* decision.[43] Just how seriously these cases have cut down the legislative power of investigation can only be understood from a further consideration of the nature of that power and the history of its development.

Legislative power is not a self-defining concept. And yet it is a very ancient power, exercised at an early date by the British Parliament over persons guilty of disturbing conduct in its presence. Such conduct might consist of insults and libels on the legislature as a whole or on its individual members, or of attempts to bribe a member. The legislative practice of punishing such conduct by commitment for contempt is long established and supported by

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[40] *McRell* v *Kelly*, 124 N.J. Eq. 350. The court divided, 12-3.

[41] *Ibid.*, at pp. 351, 352-53.

[42] See, for example, 48 *Yale Law Journal* 1434, at pp. 1438-39 (June 1939): "The New Jersey court seems to go rather far in restricting (the legislature's) powers of investigation. . . . It is to be hoped that other jurisdictions will not follow. . . ." See, also, 4 *Univ. of Newark Law Review* 189, at pp. 199-200, holding that neither of the *Hague* cases supports the *Kelly* decision: "What could be more appropriate or competent for the legislature to investigate than the conduct of elections?"

[43] See, for example, 30 *Columbia Law Review* 1059, at p. 1060 (November 1930): "The . . . case is unusually extreme in its language in denying the legislature's power of investigation . . . the question remains whether the information sought might not have been useful as a basis for legislation."

judicial decision. The source of the power lies "in the necessity for self-help and self-defense—the employment of an efficient instrument to protect the institutions of government from unwarranted interferences with their work." [44] It is like the summary power exercised by courts to cope with offenses to decorum committed in their presence, as well as the power to comit contumacious witnesses for contempt. Landis states the matter thus:[45]

> "With both courts and legislatures the exercise of such a power is not the primary purpose of their creation * * * It secures to them the power to function as courts and legislatures * * * It is accurate * * * to regard the power as subsidiary to the exercise of a greater and more comprehensive power for which the institution, whether court or legislature, is created. Both institutions * * * have adopted the same device—summary commitment—to effectuate the main purpose of their existence * * * The existence (of the legislative power to commit for contempt) * * * in a certain class of cases proves that the device of summary commitment has been deemed necessary in those instances to maintain the legislative process. Proof of a similar necessity is required in order to establish the legislature's power over a contumacious witness before a committee of inquiry * * *."

The legislative committee of inquiry with power to summon witnesses and compel the production of records and papers is found in British parliamentary history as early as 1604, when there were legislative inquiries into disputed elections. Investigating committees for other purposes, armed with powers to compel the production of persons and papers, to administer oaths and to report recalcitrant and untruthful witnesses to Parliament, are also found in this early period. Such committees might be for the purpose of discovering data for proposed legislative ends, or of determining whether public funds had been spent for authorized purposes.[46] The investigating committee, extensively used in the years following 1688, when Parliament won its long struggle for supremacy, had by 1728 become the common instrument of the legislative process.[47]

When, finally, the power of Commons was challenged in the courts, Lord Coleridge was able to say:[48]

> "That the Commons are, in the words of Lord Coke, the general inquisitors of the realm, I fully admit: it would be difficult to define any limits by which the subject matter of their inquiry can be bounded: it is unnecessary to attempt to do so now: I would be content to state that *they may inquire into every thing which it concerns the public weal for them to know; and they themselves, I think, are entrusted with the determination of what falls within that category. Coextensive with the jurisdiction to inquire must be their authority to call for the attendance of witnesses, to enforce it by arrest when disobedience makes that necessary* * * *." (Underscoring supplied.)

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[44] Landis, "Constitutional Limitations on the Congressional Power of Investigation," 40 *Harvard Law Rev.* 153 (December 1926), at pp. 156-57.

[45] *Ibid.*, at pp. 158-59.

[46] *Ibid.*, at p. 161.

[47] *Ibid.*, at pp. 162-64, where various legislative investigations are detailed.

[48] *Howard* v *Gosset*, 10 Q. B. 359, at pp. 379-80 (1845). See, also, Hallam, Principles of British Constitutional Law, pp. 307-8 (1925).

On appeal, Baron Parke approved Lord Coleridge's statement, and said:[49]

> "* * * (The House of Commons), which forms the Grand Inquest of the Nation, * * * has a power to institute inquiries and to order the attendance of witnesses, and, in case of disobedience * * * bring them into custody to the bar for the purpose of examination."

The colonial legislatures here in America followed the parliamentary precedents and practice. They, too, used committees of inquiry and exercised the power of punishing for contempt as a necessary incident of the legislative power. And when the colonies declared themselves free and independent states, the new legislatures freely resorted to investigating committees and punishment for contempt. The tradition of the British Parliament and the institutions developed by it in aid of the legislative process "were neither alien to the newer soil of America nor inimical to Revolutionary ideals of independence." [50] The power so asserted, says Landis, was upheld by the state courts when challenged; prior to 1880 no court denied or curtailed its exercise.[51] Judge Daly, of New York, reflected the existing view when he said in *Briggs* v *MacKellar*:[52]

> "* * * It is a well-established principle . . . that either house (of the legislature) may institute any investigation having reference to its organization, the conduct and qualifications of its members, its proceedings, rights, or privileges, or any matter affecting the public interest, upon which it may be important that it should have exact information, and in respect to which it would be competent for it to legislate. The right to pass laws, necessarily implies the right to obtain information upon any matter which may become the subject of law. . . . In American legislatures the investigation of public matters before committees, preliminary to legislation, or with the view of advising the house appointing the committee, is, as to parliamentary usage, as well established as it is in England, and the right of either house to compel witnesses to appear and testify before its committees, and to punish for disobedience, has been frequently enforced. . . . The right of inquiry, I think, extends to other matters, in respect to which it may be necessary, or may be deemed advisable, to apply for legislative aid. * * *"

The reason assigned by some courts, as in the *Hague* cases, for drastically cutting down the legislative power is that the investigation trespassed upon the doctrine of separation of powers. The legislature was invading the area reserved to the judicial branch of the government. This reasoning has been criticized as based on a misconception of just what separation of powers in general, and the legislative power in particular, means.

The fact is that the framers were not dealing with something new when they wrote the principle of separation of powers into the Federal Constitution. As has been shown above, those powers al-

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[49] 10 Q.B. 411, at pp. 450-51 (1847).

[50] *Ibid.*, at p. 166. And see pp. 165-67. See also, Potts, "Power of Legislative Bodies to Punish for Contempt," 74 *Univ. of Pa. Law Rev.* 691 (1926), for colonial and early state precedents.

[51] Landis, *op. cit.*, at p. 167.

[52] 2 Abb. Pr. 30, at pp. 41, 55-57, 61 (N.Y., 1855). See Landis, *op. cit.*, p. 168, note 62, for state courts that have adhered to the principles enunciated by Judge Daly, and note 63 for those which have reflected the contrary view of the U. S. Supreme Court in *Kilbourn* v *Thompson*, 103 U. S. 168 (1880).

ready had a fairly certain and clear definition. To the founders the legislative power certainly possessed a genuine content, which was[53]

> "the residue of the past and the possibility of adaptation to the exigencies of the future . . . Its meaning was for them disclosed by the legislative histories of England and the colonies, but that meaning also embraced within it the conception of the process of its development. * * *
>
> Legislative power in 1789 already possessed a content sufficiently broad to include the use of committees of inquiry with powers to send for persons and papers. This may be admitted, and yet the question as to the limits of inquiry by the legislature remains. * * * Legislative power does not operate *in vacuo;* the guide to its content is to be found in its history, not in generalization from inadequate data nor deduction from a preconceived premise relegating legislatures to a role certainly unhistorical and in all probability politically undesirable."

Legislative precedents, contemporaneous with the framing of the Constitution, are the background against which the founders worked. They are, therefore, entitled to great weight.[54] Legislative investigating committees, as has been pointed out, existed before 1789, checking into the expenditures of public moneys and into various areas of governmental administration. Such committees became increasingly more important and necessary, and their range of investigation of the broadest scope, as the nation expanded. A great number of these committees were (obviously) concerned with the investigation of the executive branch of the government, and yet the separation of powers doctrine was never seriously considered as a bar to such procedure.

Congressional committees invariably had the power to send for persons and papers, as did many on the state level.[55] When one of the witnesses summoned before an 1860 U. S. Senate committee which investigated the seizure of the federal armory and arsenal at Harpers Ferry, Va., refused to testify and a resolution was proposed to imprison him for contempt, Sumner went to his defense, claiming the Senate was attempting to exercise judicial power. The resolution was overwhelmingly passed, 44 to 10; the Senate's reply was that what it did was the accepted practice of legislative assemblies, arose out of the practical necessities for the exercise of legislative power, and found its justification in the legislative process.[56]

It has been said that "no single notion has contributed so much to judicial confusion" in considering the legislative powers of investigation as the separation of powers doctrine.[57] A court's denial of the power because it is deemed "judicial"

> "* * * loses sight of the fact that the underlying theory was never meant to apply to powers ancillary to an ultimate governmental function.

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[53] Landis, *op. cit.*, p. 169; and see, also, p. 156.

[54] *Cf.*, Chief Justice Taft in *Myers* v *United States*, 272 U. S. 52, at pp. 174-75 (1926); *United States* v *Midwest Oil Co.*, 236 U. S. 450, at p. 473 (1915).

[55] Landis, *op. cit.*, at pp. 171-209 contains a detailed account of the Congressional committees, their fields of investigation and powers.

[56] *Cong. Globe*, 36th Cong. 1st Sess. (1860) pp. 1100-1102.

[57] Herwetz and Mulligan, "The Legislative Investigating Committee," 33 *Columbia Law Rev.* 1, at p. 6 (January 1933). *Cf.*, Bondy, "The Separation of Governmental Powers," 5 *Columbia University Studies in History, Economics and Public Law* 114 (1896).

> The need for identical incidental powers may be felt in each department; and necessity justifies implication. The power to investigate is justified, if at all, as one of these incidental or implied powers. An altered nomenclature may be useful: the 'separation of ultimate functions.' " [58]

The case of *Kilbourn* v *Thompson,* 103 U. S. 168 (1880), so strongly relied upon in the *Hague* and *Kelly* cases, and in similar cases denying the legislature the right to commit a contumacious witness for contempt on the ground that this was a judicial function, has been strongly criticized as completely ignoring parliamentary, colonial and state legislature precedents, as misconceiving entirely the nature and extent of the legislative process, and as even misunderstanding the real nature of the inquiry launched by the House of Representatives.[59]

The court in the *Kilbourn* case also demanded definiteness of legislative purpose in launching the inquiry. It has been argued that this is no ground for cutting down an investigation; the results that may be achieved can rarely be foretold, they depend on the exhaustiveness of the examination. Landis cites Congressional precedents to illustrate the gap one finds between purpose and accomplishment.[60]

It cannot be assumed, as did the Supreme Court in the *Kilbourn* matter, that the legislature has no legislative purpose in mind in ordering the inquiry. For a court to do so is to indulge in dangerous conjecture;[61] moreover, "such assumptions are contrary to the traditional attitude of courts in reviewing the constitutionality of legislative action." [62] The answer to the narrow rule of the *Kilbourn* case is found in a decision of the Supreme Court 16 years later:[63]

> "What the Senate might or might not do upon the facts when ascertained, we cannot say, nor are we called upon to inquire whether such features may be defensible. . . ."

That court in a still later case likewise avoided the pitfall of assuming that an unconstitutional exercise was contemplated by the legislative inquiry:[64]

> "The purpose of an investigation is the penetration of disguises or to form a definite estimate of any conduct of the carriers that may in any way affect their relation to the public. We cannot assume that an investigation will be instituted or conducted for any other purpose or in mere wanton meddling."

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[58] Herwetz and Mulligan, *op. cit.,* at pp. 6-7.

[59] See, for example, Landis, *op. cit.,* at pp. 215-17, and Herwetz and Mulligan, *op. cit.,* at pp. 9-11.

[60] *Op. cit.,* at pp. 217-18.

[61] Herwetz and Mulligan, *op. cit.,* at p. 10: "A court should withhold interference with fact-finding unless there is no scintilla of possibility that the facts when obtained will be useful. . . . One cannot afford to deal with this problem on *a priori* grounds; the situations are so alive that their content may alter while judges deliberate." *Cf.,* Case, J. (dissenting), *McRell* v *Kelly,* 124 N.J. Eq. 350, at p. 353.

[62] Landis, *op. cit.,* at p. 218.

[63] *In re Chapman,* 166 U.S. 661, at p. 669 (1897).

[64] *Smith* v *Interstate Commerce Comm.,* 245 U.S. 33, at p. 46 (1917). And see *People* v *Keeler,* 99 N.Y. 463, at p. 487 (1885); *Robertson* v *Peeples,* 120 S.C. 176 (1919), and *Atty. Genl.* v *Brissenden,* 271 Mass. 172 (1930) that it will be presumed that the legislative action was taken in good faith, and an effort will be made to justify the inquiry.

The argument of *Kilbourn* v *Thompson* that the non-official conduct of a citizen is immune from legislative scrutiny has also been a target of criticism. In discussing this phase of the case, one authority says:[65]

> "Established privileges of immunity, of course, exist before such (legislative) committees as well as before courts of law. But the mere fact that by a *subpoena duces tecum* a court is subjecting to the public gaze the private affairs or private business of a citizen has never been suggested as a bar to the court's process. The efficient exercise of judicial power imposes upon private citizens a duty to submit their conduct to its scrutiny; the interests of privacy are there over-balanced by the interest in efficient government. That efficiency should be accorded judicial power and withheld from legislative power, is contrary to the dictates of public policy as well as inimical to a theory of separate but equal governmental powers. The use of such evidence for a legitimate purpose within the scope of the power adducing it, can as well be presumed for legislatures as for the courts.
>
> The bar of privacy does not prevent requiring a public utility to submit its accounts to investigation, not because they have ceased to be private and are public records, but because such accounting is a prerequisite of the efficient exercise of legislative control.
>
> Their relevancy to the legislative inquiry constitutes the authority for their production. Tariff powers similarly are the basis for authorizing an inquiry into costs of production, even though such costs concern private manufacturers and their accounts. The control over the safe-keeping of the public funds authorizes an inquiry into their expenditure and tracing such expenditure into the accounts of private citizens. The power to create and abolish departmental offices, the necessity for acquaintance with administration as a prerequisite for legislation, permits an inquiry into the conduct of such private citizens and their affairs when the evidence leads to an inference that their conduct has made, encouraged, or shielded official malfeasance. The bar of privacy, otherwise, would make only the most superficial of examinations possible."

The observation made concerning *Kilbourn* v *Thompson* ("It's result contradicts an unbroken Congressional practice continuing even after the decision, with the increasing realization that committees of inquiry are necessary in order to make government effectively responsible to the electorate") and *Ex parte Daughtery*[66] ("in its practical effect [it] elevates executive power beyond the reach of responsibility"),[67] might well be directed to decisions which follow their reasoning.

The Commission on Revision of the New Jersey Constitution of 1942 (the Hendrickson Commission) undoubtedly had these decisions and their significance in mind when it proposed the following provision in its draft of a revised Constitution:[68]

> "The Legislature or either house thereof may by resolution constitute

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[65] Landis, *op. cit.*, at pp. 219-20. *Cf.*, Lord Coleridge in *Howard* v *Gosset*, Note 48 *supra*, and Herwetz and Mulligan, *op. cit.*, p. 6 and Note 9.

[66] 299 Fed. 620 (1924). The U. S. District Court for the Southern District of Ohio released Daugherty, who had been arrested under a Senate resolution investigating the Attorney-General of the United States' failure to prosecute certain malefactors, for refusing to obey a subpoena issued by a Senate subcommittee commanding him to appear and testify as to what he might know relative to the matters being considered by the subcommittee. The subcommittee had power to send for persons, books and papers.

[67] Landis, *op. cit.*, at p. 220.

[68] Art. VI, sec. I, par. 3, Report of the Commission on Revision of the New Jersey Constitution, 1942, p. 50.

> 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."

The Committee thus sought to reconstitute and revitalize the legislative power in the field of investigation. In the "Summary and Explanation" accompanying the draft Constitution, the Committee said:[69]

> "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."

In the hearings on the Hendrickson Commission report held before a Joint Legislative Committee in the summer of 1942, this proposal was supported as a provision to confirm and strengthen the investigatory power of the Legislature:[70]

> "The whittling of this, one of the original powers of all English-speaking Legislatures, which has taken place in recent years has held great potential danger for the State. To give the Legislature the essentially executive power to appoint to public office, and then deny it adequate power to investigate the conduct of public officers has been a great mistake. 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."

Another witness, who had acted as counsel for the Legislature in the *Hague* cases, had this to say:[71]

> "The power of the New Jersey Legislature to investigate State and local governments and officials for the purpose of obtaining information as a basis of legislative action has been narrowly limited by decisions of the Court of Errors and Appeals, as you all know. The rule which obtains in New Jersey under these judicial decisions is very much narrower than that which obtains in the federal jurisdiction and in the jurisdiction of every State in which the question has arisen. * * * Our Court of Errors and Appeals has held, in effect, that the investigatory power of the Legislature is limited to impeachment cases and to cases

[69] Report, *op. cit.*, at p. 26.

[70] Record of Proceedings before the Joint Committee of the New Jersey Legislature . . . , 1942, p. 116.

[71] *Ibid.*, pp. 375-76. For a view questioning the advisability and legality of the Hendrickson Commission provision, see pp. 382-85; for modification of the provision, pp. 392 and 393-94; against the provision, pp. 815-16.

> in which the State is swindled out of its property, and the reasoning is if the conduct or matter being investigated happens to be criminal in nature, it is solely the function of the judicial branch of the Government, and that the investigating power of the Legislature is confined to cases in which the State is directly affected, the kind to which I have just referred. The rule of other jurisdictions is that the Legislature has power to investigate the conduct of public officers and public agencies for the purpose of obtaining information as a basis for legislative action, and that if such conduct be criminal in nature, it is the function of the judicial branch to try the guilty ones criminally, and if convicted, punish them. The two functions are complementary. The Legislature has the power to procure information and ascertain facts as a basis for the exercise of its legislative function. The judiciary has the power to prosecute criminally and to convict and punish if a criminal offense is disclosed.
>
> It is high time that this salutary legislative power be recaptured by the New Jersey State Legislature."

In the proposed revised Constitution submitted to and rejected by the people in 1944, the apposite provision read:[72]

> "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."

One of the charges made in the revision campaign which preceded the November 1944 referendum was that Article VI, section III, would wipe out the privilege which attaches to a confidential communication, such as between attorney and client, priest (minister) and communicant, newspaper man and news source, and spouses. The charge, taken at face value, was not a merited criticism and was undoubtedly intended in some quarters to confuse and mislead the voters.

Privileges are of two distinct kinds. The first is that against self-incrimination—rendering the witness infamous or subjecting him to penalty or forfeiture. Insofar as this privilege is embodied in the Fifth Amendment to the Federal Constitution, it is settled that, like all the other first ten amendments it is not operative upon the states. The United States Supreme Court has rejected the contention that the privilege is one of the fundamental rights of citizenship and protected by the Fourteenth Amendment. The basic rea-

[72] Art. VI, sec. III.

son is that this privilege is not an inherent attribute of freedom; it is not derived from any of the great instruments declaratory of fundamental rights and has never ranked in English or American law as among the inalienable rights of mankind. It is not inherent in due process of law.[73]

The privilege against self-incrimination is a *personal* privilege of the witness and one which he may ordinarily waive. The 1944 revision would give no person this privilege in the course of a legislative investigation, whether he were the one being investigated or not.

The second type of privilege, relating to confidential communications of the kind indicated, is of an entirely different nature. It is not the personal privilege of the witness at all, but attaches to the confidential communication itself. It is for the protection of the person who confided to the witness and cannot be waived by him, for, in contrast to the first type of privilege discussed above, it does not belong to him. The revision provision would not affect this type of privilege in any way.[74]

Provisions in other state constitutions relating to the legislature's investigatory power are set out in Appendix A that follows. Those of Florida, Kentucky, Louisiana, Maryland, Mississippi, Ohio, Oklahoma and South Dakota—eight states—contain express powers. Those of three states—Arkansas, Colorado and Pennsylvania—have provisions from which one can imply the power to investigate. It will be noted that the brief Florida provision directs that the manner of exercising the legislative investigatory power shall be exercised through legislation, and the South Dakota provision deals with self-incrimination in bribery cases.

The "Model State Constitution," issued by the National Municipal League, provides simply: [75]

> "The legislature . . . shall have the power to compel the attendance and testimony of witnesses and the production of papers either before the legislature as a whole or before any committee thereof."

The only New Jersey statutory provisions relating to legislative investigations are those found in Title 52, chapter 13 of the *Revised Statutes.* Sections 52:13-1 to 3, set out in Appendix B, date back to 1877; sections 52:13-5 to 13 (not reproduced) relate to contempts of joint legislative committees and were—significantly in the light of the court decisions mentioned—the first legislation passed by the 1929 legislative session.

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[73] *Twining* v *New Jersey,* 211 U. S. 78 (1908).

[74] In New Jersey the confidential communications between attorney and client have the protection of the common law. Those made to a newspaper reporter are protected by R.S. 2:97-11 ("the source of any information . . . published in the newspaper."), and confessions made to a clergyman by P.L. 1947, c. 324 (Senate Bill 213) signed by the Governor on June 20, 1947. Communications between spouses also have most of the protection accorded them under the common law.

[75] Section 308, Partial Revision, 1946.

APPENDIX A

Constitutional Provisions
Relating to Legislative Investigations

CONSTITUTION OF ARKANSAS

Art. V, sec. 12. *Powers of each house.* Each house shall have the power to determine the rules of its proceedings; and punish its members or other persons for contempt or disorderly behavior in its presence; enforce obedience to its process; to protect its members against violence or offers of bribes or private solicitations; and, with the concurrence of two-thirds, expel a member, but not a second time for the same cause. A member expelled for corruption shall not thereafter be eligible to either house; and punishment for contempt or disorderly behavior shall not bar an indictment for the same offense. * * *

CONSTITUTION OF COLORADO

Art. V, sec. 12. *Parliamentary rules.* Each house shall have power to * * * punish its members or other persons for contempt for disorderly behavior in its presence; to enforce obedience to its process; * * * punishment for contempt or disorderly behavior shall not bar an indictment for the same offense.

CONSTITUTION OF FLORIDA

Art. III, sec. 10. *Attendance of witnesss.* Either house shall have power to compel the attendance of witnesses upon any investigations held by itself, or by any of its committees; the manner of the exercise of such power shall be provided by law.

CONSTITUTION OF KENTUCKY

Sec. 39. *Parliamentary rules.* Each house of the General Assembly may * * * punish for contempt any person who refused to attend as a witness, or to bring any paper proper to be used as evidence before the General Assembly, or either house thereof, or a committee of either, or to testify concerning any matter which may be a proper subject of inquiry by the General Assembly, or offers or gives a bribe to a member of the General Assembly, or attempts by other corrupt means or device to control or influence a member to cast his vote or withhold the same. The punishment and mode of proceeding for contempt in such cases shall be prescribed by law but the term of imprisonment in any such case shall not extend beyond the session of the General Assembly.

Sec. 53. *Treasurer and auditor.* The General Assembly shall provide by law for monthly investigations into the accounts of the Treasurer and Auditor of Public Accounts, and the result of these investigations shall be reported to the Governor, and these reports shall be semi-annually published in two newspapers of general cir-

culation in the State. The reports received by the Governor shall, at the beginning of each session, be transmitted by him to the General Assembly for scrutiny and appropriate action.

CONSTITUTION OF LOUISIANA

Art. V, sec. 17. *Action of legislature not requiring Governor's signature.* Orders, votes and resolutions of either or both houses of the Legislature, affecting the prerogatives and duties thereof, or relating to adjournment, to amendments to the Constitution of this State or of the United States, to the investigation of public officers, and the like, shall not require the signature of the Governor; and such resolutions, orders and votes may empower legislative committees to administer oaths, to send for persons and papers, and generally make legislative investigations effective.

CONSTITUTION OF MARYLAND

Art. III, sec. 24. *Power to investigate.* The House of Delegates may inquire, on the oath of witness, into all complaints, grievances and offenses, as the grand inquest of the State, and may commit any person for any crime to the public jail, there to remain until discharged by due course of law. They may examine and pass all accounts of the State, relating either to the collection or expenditure of the revenue, and appoint auditors to state and adjust the same. They may call for all public or official papers and records, and send for persons whom they may judge necessary, in the course of their inquiries, concerning affairs relating to the public interest, and may direct all office bonds which shall be made payable to the State to be sued for any breach thereof; and with the view to the more certain prevention or correction of the abuses in the expenditures of the money of the State, the General Assembly shall create, at every session thereof, a joint standing committee of the Senate and House of Delegates, who shall have power to send for persons and examine them on oath and call for public or official papers and records; and whose duty it shall be to examine and report upon all contracts made for printing, stationery, and purchases for the public offices and the library, and all expenditures therein, and upon all matters of alleged abuse in expenditures, to which their attention may be called by resolution of either House of the General Assembly.

CONSTITUTION OF MISSISSIPPI

Art. IV, sec. 60. *Amendment of bills.* No bill shall be so amended in its passage through either house as to change its original purpose, and no law shall be passed except by bill; but orders, votes, and resolutions of both houses, affecting the prerogatives and duties thereof, or relating to adjournment, to amendments to the Con-

stitution, to the investigation of public officers, and the like, shall not require the signature of the Governor; and such resolutions, orders, and votes, may empower legislative committees to administer oaths, to send for persons and papers, and generally make legislative investigations effective.

CONSTITUTION OF OHIO

Art. II, sec. 8. *Parliamentary rules.* Each house * * * shall have all powers, necessary to provide for its safety and the undisturbed transaction of its business, and to obtain, through committees or otherwise, information affecting legislative action under consideration or in contemplation, or with reference to any alleged breach of its privileges or misconduct of its members, and to that end to enforce the attendance and testimony of witnesses, and the production of books and papers.

CONSTITUTION OF OKLAHOMA

Art. V, sec. 42. *Contempt.* In any legislative investigation, either House of the Legislature, or any committee thereof, duly authorized by the House creating the same, shall have power to punish as for contempt, disobedience of process, of contumacious or disorderly conduct, and this provision shall also apply to joint sessions of the Legislature, and also to joint committees thereof, when authorized by joint resolution of both Houses.

CONSTITUTION OF PENNSYLVANIA

Art. II, sec. 11. *Powers of each house.* Each House shall have power to determine the rules of its proceedings and punish its members or other persons for contempt or disorderly behavior in its presence, to enforce obedience to its process, to protect its members against violence or offers of bribes or private solicitation, and, with the concurrence of two-thirds, to expel a member, but not a second time for the same cause, and shall have all other powers necessary for the Legislature of a free State.

CONSTITUTION OF SOUTH DAKOTA

Art. III, sec. 28. *Self incrimination in bribery cases.* Any person may be compelled to testify in investigation or judicial proceedings against any person charged with having committed any offense of bribery or corrupt solicitation, and shall not be permitted to withhold his testimony upon the ground that it may criminate himself, but said testimony shall not afterwards be used against him in any judicial proceeding except for bribery in giving such testimony, and any person convicted of either of the offenses aforesaid shall be disqualified from holding any office or position or office of trust or profit in this State.

APPENDIX B

New Jersey Statutory Provisions Relating to Legislative Investigations

R. S. 52:13-1.

Any joint committee of the legislature, any standing committee of either house, or any special committee directed by resolution to enter upon any investigation or inquiry, the pursuit of which shall necessitate the attendance of persons or the production of books or papers, shall have power to compel the attendance before it of such persons as witnesses and the production before it of such books and papers as it may deem necessary, proper and relevant to the matter under investigation. Any such committee shall also have the power to employ such legal and clerical assistance as it may deem necessary to the proper conduct of the investigation.

R. S. 52:13-2.

If any person upon being summoned in writing by order of any committee mentioned in section 52:13-1 of this title to appear before such committee and testify, fails to obey such summons, the speaker of the house of assembly or the president of the senate may, upon application to him, by warrant under his hand order the sergeant at arms of the house over which he presides to arrest such person and bring him before the committee, and the sergeant at arms shall thereupon execute the warrant to him so directed.

R. S. 52:13-3.

Witnesses summoned to appear before any committee authorized by this article or any other law to conduct an investigation or inquiry shall be entitled to receive the same fees and mileage as persons summoned to testify in the courts of the state. All such witnesses may be sworn by any member of the committee conducting the investigation or inquiry; and all witnesses sworn before any such committee shall answer truly all questions put to them which the committee shall decide to be proper and pertinent to the investigation or inquiry; and any witness so sworn who shall swear falsely shall be guilty of perjury. No such witness shall be excused from answering any such questions on the ground that to answer the same might or would incriminate him; but no answers made by any witness to any such questions shall be used or admitted in evidence in any proceeding against such witness, except in a criminal prosecution against the witness for perjury in respect to his answers to such questions.

Any witness who refuses to answer any questions decided by the committee to be proper and pertinent shall be guilty of a misdemeanor; and any witness who, having been summoned to appear before any such committee, fails to appear in obedience to the summons or, appearing, refuses to be sworn shall be guilty of a misdemeanor.

THE LEGISLATURE — THE LEGISLATIVE COUNCIL

by

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The vast amount, diversity and complexity of subject matter which our legislators must deal with today, due to the ever-broadening scope of governmental activity, requires an extraordinary amount of technical knowledge and understanding in a great number of unrelated fields on their part if they are effectively to discharge their duty to the people. The situation of necessity calls for division of work, sound planning and adequate fact-finding facilities. New Jersey has tried to meet the problem in part through joint legislative committees, the Law Revision and Bill Drafting Commission, and the establishment of various independent commissions which, with the aid of research staffs, study some of the more important and difficult legislation and then submit their findings and recommendations.

As opposed to the legislative council idea, there is much merit to the argument that New Jersey has been especially fortunate in the extent of voluntary citizen participation on *ad hoc* study commissions. This type of agency may be specially constituted as best fits the needs of each problem, and has the advantage of enlisting the participation and judgment of leading citizens as well as legislators in the process of legislative planning and development. By contrast, the legislative council, being a regular state agency, is subject to the political difficulties of staff relationships and the restrictions of annual appropriation acts.

Fifteen states, preferring to retain legislative responsibilities for the legislative program, have created legislative councils or committees on legislative research made up from their own membership. A number of the earlier legislative councils were composed of representatives from the executive department as well as from the legislature, but one by one the states have eliminated members of the executive branch from their councils. With the repeal in 1944 of a provision that the governor and five administrative officials be members of the Kentucky council, all legislative councils became entirely legislative.

Whether or not this newer form of council composition will suffice remains a question whose answer must await longer experience with the legislative councils. In Michigan, antagonism between the governor and the all-legislator council contributed to the council's

downfall. In Kansas, and elsewhere, similarly organized councils have not come into serious conflict with the governors, although the Kansas council's research director testifies to some gubernatorial "skepticism" of the council.[1] The possibilities of conflict between such councils and the governors increase in proportion both to the frequency of party differences between the governor and the majority in the legislature and council, and the tendency of the councils to develop the capacity for aggressive legislative leadership in competition with the governor's. Where partisan differences prevail between governor and council majority, however, conflicts between the two agencies could hardly be avoided merely by giving the governor or his representative a seat upon the council, although such a device might serve to insure that gubernatorial views receive a fair and continuous presentation to the council.

The main purpose of the legislative council, as it was originally conceived, was to give continuity to the legislative process between sessions and to provide planning and study facilities in anticipating the work of the next session. It was particularly applicable to the biennial session states. The legislative council was first proposed by the Council of State Governments in its "Model State Constitution" in 1921. Today legislative councils or comparable agencies are in operation in the following states:[2]

Kansas	1933	Pennsylvania	1939
Kentucky	1936	Maine	1940
Virginia	1936	Missouri	1943
Connecticut	1937	Indiana	1945
Illinois	1937	Alabama	1945
Nebraska	1937	Colorado	1945
Maryland	1939		

Most of the above councils were set up to fulfill the legislative planning function, to act as a method of coordinating the work of various legislative committees and agencies, to save legislative time, to weaken the influence of pressure groups, and to save unnecessary expense. Very important to the success of the idea has been the work of the councils' research agencies. Not only did they aid the councils in studying proposed legislation, but they also offered individual legislators impartial assistance in the technical problems of lawmaking. The size of the legislative councils varies from 5 to 27 members. The larger ones, as in Illinois, Kansas, Maryland, and Nebraska, usually are broken up into subcommittees to study particular problems. In general, members serve for a fixed term of two years and receive no additional compensation other

[1] Guild, Frederic H., "The Development of the Legislative Council Idea," *Annals of the American Academy of Political and Social Science,* 195:144, 149. See also Maryland State Planning Commission, Publication 21, p. 37 ff.

[2] Arkansas, Minnesota and Washington provided for legislative councils in 1947.

than expenses for their service on the council, except in states which pay per diem compensation.

The councils are reported to be working more or less satisfactorily in the majority of the states that have them, and their efficiency and desirability have been recognized. However, the Michigan legislative council, which was established in 1935, was abolished in 1939 mainly as a result of difficulties between the council and the governor. The Oklahoma council, authorized in 1939, is inoperative today and the legislature has failed to make an appropriation for it since 1941. The Rhode Island legislative council, which was authorized in 1939, is inoperative today because the appointees of the minority party have always refused to serve. It is interesting to note that Rhode Island is the only state with annual sessions that has set up a legislative council.

In general, bills prepared by the councils have been well received and their research reports have been of great value.

The Book of the States, 1943-44, reports (page 148):

> "Especially notable has been the work done by the legislative councils during the past decade on taxation and finance, public welfare, and education. The councils have made it possible for their legislatures to act promptly on the basis of current factual information as problems have come up. Heretofore, the solution of these problems has frequently lagged behind by at least a biennium, while data was being collected on which to base legislative action. Further, the councils have been able to minimize hasty and ill-considered legislation."

The early criticism that the councils might tend to become "little legislatures"—that they might result in the centralization of legislative powers in the members of the council—has proved unfounded. Although the majority of councils were set up to plan a legislative program, in the last few years a number of the councils, particularly those in the larger states, have avoided active participation in developing a legislative program and have confined themselves to the preparation of factual reports. Although the fact-finding agencies in Illinois, Missouri and Nebraska have the statutory power to recommend legislation, they do not use it. The Connecticut legislative council does not exercise its authority to formulate policy and assists mainly in the preparation of material for the legislature. Today it would seem that the research activity of the legislative council is its most important and popular function and that it has managed to survive by avoiding one of the principal purposes for its creation—that of legislative planning.

Constitutional Status

Missouri is the only state which has followed the "Model State Constitution" in giving the legislative council constitutional status. All other legislative councils owe their existence to statute. The

Commission on Revision of the Constitution, 1942, recommended a legislative council for New Jersey with constitutional status.[3]

> "1. There shall be a legislative council, ex officio, of the Governor or, in his absence, the Attorney-General, the President of the Senate and the Speaker of the House of Assembly, the majority leaders and the leaders of the ranking minority party, for the time being, of each house of the Legislature. Members of the legislative council except the Governor and Attorney-General, shall receive the sum of one thousand five hundred dollars per annum while they serve as members thereof.
>
> 2. The legislative council shall: (a) make or cause to be made sound technical studies of the governmental needs of the State, and shall plan and formulate a program of necessary legislative measures predicated thereon in the form of draft bills, for consideration during each session of the Legislature: (b) provide independent research and consultative services in aid of its other powers and duties, within the limits of available appropriations, and co-operate with such other legislative agencies as may be established by law; (c) hold its first meeting at the call of the President of the Senate at such time and place as he shall designate, organize for the transaction of its business, adopt such rules of procedure as it may deem necessary, except as such rules may be established by law, and report at the opening session of each Legislature, and at such times thereafter and with respect to such matters as the council may deem in the public interest: (d) have such other powers and duties, not inconsistent with the foregoing, as may be from time to time prescribed by law."

Commenting on this proposal, the Commission said:[4]

> "A major cause of legislative confusion has been the lack of opportunity for full and careful consideration of legislative matters . Each member of the Legislature is expected to be familiar with criminal laws, state departmental needs, the tax structure and a host of other intricate and involved questions. Meanwhile, most committees in the Legislature meet neither long nor often. To aid in consideration of legislative affairs, many states have set up legislative councils which devote all their time to the study of proposed legislation, with a full-time research staff assisting.
>
> The council as established in the proposed constitution promises guidance, coordination and planning for the legislative process. Between biennial sessions, the council would investigate important legislative problems which require technical competence. During the session, its program would form a guide for the most efficient use of legislative time. After each session, the council will follow up important new legislation to check upon its practical results in operation."

The legislative council proposal was strongly supported in the hearings before the Joint Legislative Committee which considered the Revision Committee Report. One of the speakers had this to say: [5]

> "It is practically impossible for all of the members of the Legislature to be expertly conversant with the great variety of legislative subjects which they must consider, many of which are technical and complex. It is well known that much of such legislation is drafted and promoted by special interests which are specially concerned and that the full meaning and effect thereof are not fully comprehended by all of the legislators who vote thereon, and this is because the Legislature lacks the facilities with which to do its own research and to do its own bill drafting. An approach toward it has been made in our friends the Commission on

[3] *Report of the Commission on Revision of the New Jersey Constitution*, 1942, p, 38, Art. III, sec. V of proposed revised Constitution.
[4] *Ibid*, p. 18.
[5] Record of Proceedings before the Joint Legislative Committee . . . to Ascertain the Sentiment of the People . . . as to Change . . ., 1942, pp. 123-24.

> Statutes, who do excellent work in coordinating legislation with the Revised Statutes, but the functions of such a legislative council are really necessary. Legislators must rely upon the representation oftentimes of the sponsors of such legislation—and I say this advisedly, oftentimes it is of dubious quality with respect both to draftsmanship and contents, and specific instances can be cited, recent ones, too. Committee meetings have been irregular and infrequent. That is inherent in the one meeting a week system, and cannot be avoided. The establishment of a legislative council consisting of the Governor, or in his absence, the Attorney General, the President of the Senate, the Speaker, and the Majority and Minority Leaders of both Houses, adequately staffed for the preparation of legislative programs, accurate and thorough research and the drafting of legislation would at once improve the quality of bills and, by reason of their source, would inspire the confidence of the legislators in their purpose and integrity. This council of six legislative members, consisting of the duly elected officers of the Legislature itself, would be at all times subject to the direction and control of the Legislature, and certainly then, as now, the Legislature would be the seat of legislative power. Here again there is no diminution whatever of legislative power or authority. Another consideration in this connection is that the representation of the Governor upon the council would make for better understanding between the executive and legislative branches."

One of the few who opposed the proposal claimed that the presence of the Governor on the legislative council was inconsistent with the principle of the separation of powers and that the council idea had "nothing of substance in it except insofar as you might substitute. . . . a legislative reference bureau." [6] Another called the Commission's proposal a "questionable innovation" and suggested that "the Legislature itself, to its own advantage, might create a council of its own members." [7] One speaker favored the council but recommended that minority parties be given representation on it,[8] and another suggested that provision be made for public hearings before the council.[9]

The revised Constitution submitted to the people in 1944 contained no provision for a legislative council.

The chief advantage to be expected from the constitutional creation of a council are the obvious ones of security against legislative abolition and the prestige of constitutional status. The latter is an intangible factor; the former is subject to important qualifications:

> 1. Unless the council in New Jersey is made something more than the purely advisory agency that it is in other states, the successful performance of its function depends altogether upon the capacity to secure the confidence of the legislature. If the council secures that confidence, it will stand in little jeopardy of abolition, even if its basis be purely statutory. If the council has not that confidence, a constitutional basis will not preserve it as a vital factor in government but may only assure the continued existence of a useless agency. On balance, constitutional status would seem, in this aspect, to have significant value in preventing an over-hasty abolition of the council by a temporarily exercised legislature.
>
> 2. If constitutional creation of the council is effectively to prevent

[6] *Ibid*, pp. 142-44 and 146-47.
[7] *Ibid*, pp. 192-93.
[8] *Ibid*, 172
[9] *Ibid*, 178

legislative abolition, the constitutional provisions must organize the council definitely and in detail. Whatever the constitutional detail, the matter of appropriations must be left largely in legislative hands, and, with it, the practical fate of the council. More significantly, however, too detailed constitutional specification or organization seems undesirable in the present state of fluidity of the council idea.

In summary, it would seem desirable to restrict any constitutional basis for the council to a statement of principle and such additional elements as prestige may require. If the legislative council is given constitutional status in New Jersey, the Constitution should possibly contain a provision allowing for an adjustment in salary for the members of the Legislature who serve on the council, since membership will entail considerable time and work. Should the Convention be convinced of the desirability of a legislative council but believe that it should be created by statute, the Constitution should be so drawn as to make possible extra compensation to the council members.

APPENDIX

MISSOURI, CONSTITUTION, 1945, Art. III, Sec. 35:

Committee on Legislative Research—There shall be a permanent joint committee on legislative research, selected by and from the members of each house as provided by law. The general assembly, by a majority vote of the elected members, may discharge any or all of the members of the committee at any time and select their successors. The committee may employ a staff as provided by law. The committee shall meet when necessary to perform the duties, advisory to the general assembly, assigned to it by law. The members of the committee shall receive no compensation in addition to their salary as members of the general assembly, but may receive their necessary expenses while attending the meetings of the committee.

MODEL STATE CONSTITUTION, Partial Revision of 1946, Sec. 317:

Legislative Council—There shall be a legislative council consisting of not less than seven nor more than fifteen members, chosen by and from the legislature. Members of the legislative council shall be chosen by the legislature at its first session after the adoption of this constitution and at each subsequent session following a general election. Members of the legislative council shall be elected in such manner as the legislature shall direct, and when elected shall continue in office until their successors are chosen and have qualified. The legislature, by a majority vote of all its members, may dissolve the legislative council at any time and proceed to the election of a successor thereto.

EXPLANATORY ARTICLE: "III. THE LEGISLATURE" [10]

"The Legislative Council

Previous recommendations concerning a legislative council have been continued except that the governor is no longer a member. The legislative councils which have been making the most progress in the last few years apparently have been those composed solely of legislators, developing more legislative sense of responsibility, without interfering with the governor's legislative leadership. This has given the legislature greater assurance that it would have available adequate information from its own sources on which to judge the merits of measures presented to it, with a staff of its own to which to turn for such information, and with its own

[10] National Municipal League, *Model State Constitution,* Partial Revision, 1946, pp. 29-30.

committees continuously at work on major problems. The legislative task of considering recommendations of the administration or arguments of lobbyists is greatly simplified.

On the whole, existing legislative councils have borne out recommendations upon which provisions for such a council were included in the 1933 revision of the Model State Constitution. They have already made substantial progress in making legislation more of a continuous operation, have been fairly successful in demonstrating that the legislature itself can prepare a legislative program, have subjected the administration to observation and criticism in keeping with the fundamental responsibility of the legislature therefor without acrimonious debate or attempts to interfere with administration itself. In most instances they have brought the administration and the legislature closer together, guaranteeing to the administration more careful consideration of some of its needs and of policies suggested, and assuring the legislature itself of better understanding of administrative problems.

A new departure is the provision permitting delegation of authority to the legislative council to supplement existing legislation by general orders. Delegation of quasi-legislation powers to administrative boards has been common, but in the United States no agency of the legislature itself has as yet been given rule-making powers comparable to those exercised by administrative boards or commissions. Since the council would have available the recommendations and advice of any administrative agencies affected, it would be acting as an additional review agency, representing the legislature, in coming to any final decision concerning general orders which it might issue. In the numerous instances where inconsistencies or omissions are found after legislation is enacted, this might solve the present dilemma of relying on opinions of the attorney-general to bridge the administrative gap or of requiring the courts to legislate. And not least it would force the legislature itself to follow legislation through to administrative adequacy and practicability.

With the ever increasing complaint that administrative bodies, through their rules and regulations, exercise an important function of legislation without adequate check by the legislature itself, this authorization would place a legislative agency on a par with administrative agencies as the recipient of delegated authority. With the extent of the power to be exercised and the procedures to be followed determined by the legislature, this provision would permit experimentation as to the proper exercise of this important and necessary function of sub-legislation. As section 300 also requires that all administrative regulations be submitted to the legislative council, the latter would become a clearing house for the entire field of delegation of legislative powers."

BIBLIOGRAPHY

BONE, H. A. "Legislative Council for Maryland," 28 National Municipal Review 428, 1939.

BONE, H. A. "Maryland's Legislative Council in Action," National Municipal Review 146-153, 1942.

Council of State Governments, The Book of the States, 1945-46, "Legislative Councils," pp. 114-15.

Council of State Governments, Report of the Committee on Legislative Processes and Procedures, Our State Legislatures, 1946.

CULVER, DOROTHY C. Legislative Reorganization (University of California, Bureau of Public Administration, 1941).

GUILD, F. H. "Development of the Legislative Council Idea," 195 Annals of the Amer. Acad. of Pol. and Soc. Science 144, 1938.

Louisiana State University, Constitution Revision Projet, Constitutional Problems, Monograph No. 30, "Constitution of Missouri," (April, 1947).

LUCE, ROBERT. Legislative Assemblies, 1924.

Maryland State Planning Commission, "Legislative Councils," Publication 21, 1939.

National Municipal League. Model State Constitution, with Explanatory Articles. Partial Revision, 1946.

New Jersey. Record of Proceedings before the Joint Legislative Committee . . . to Ascertain the Sentiment of the People . . . as to Change, . . ., 1942.

New Jersey. Report of the Commission on Revision of the New Jersey Constitution, 1942.

New York State Joint Legislative Committee on Legislative Methods, Practices, Procedures and Expenditures, Final Report, Legisl. Doc., 1946, No. 31.

SMITH, GEORGE D. "Aids for Lawmakers, A Survey of Legislative Reference Services and Legislative Councils," (University of Washington, Bureau of Public Administration, 1946).

WALKER, HARVEY. "Legislative Councils—An Appraisal," 28 National Municipal Review, 829 (1939).

THE LEGISLATURE—LOBBYING

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Problem of Regulation

The regulation of lobbying involves, essentially, a reconciliation of the realities of the legislative process with the guaranteed right of the people "to make known their opinions to their representatives, and to petition for redress of grievances." [1] Lobbying has generally been subject to some form of regulation. The Georgia Constitution of 1877 declared lobbying a crime. Massachusetts and Wisconsin adopted the first lobby registration laws in 1890 and 1899 respectively.

It is common to refer to "the old" and "the new" in lobbying. The bribery and corrupt practices sections of the New Jersey Statutes (R. S. 2:114-1 *et seq.*; R. S. 19:34-25 *et seq.*) are directed at the older and fast disappearing practices in lobbying. The newer techniques rarely descend to bribery. The modern lobbyist seeks on the one hand to persuade legislators that their support at home, both voting and financial, is at stake, and on the other, to cultivate opportunities to ingratiate himself with legislators in any legitimate manner.

Lobbying in New Jersey

A list of over 100 organizations in New Jersey appears in Fitzgerald's *New Jersey Legislative Manual.* Lobbyists represent these and other interests. Exactly how their influence is exerted has not been officially investigated since the frank but somewhat superficial work of the Lobby Committee of 1905.[2] That committee report made recommendations substantially as follows:

> "I. Persons accorded the privileges of the floor of either house should, by rule, be deprived of such privilege and publicly reprimanded if they are found guilty of attempting to influence members of the legislature during a session.
>
> II. An accredited newspaper representative guilty of similar conduct should thereafter be deprived of desk room or admission to the floor for the remainder of the session.
>
> III. A registration law modeled upon the Wisconsin, Massachusetts and Maryland statutes should be enacted.
>
> IV. The judiciary committees of each house should sit as a special court to hold at least two public hearings on all bills pertaining to taxa-

[1] N. J. Const., Art. I, par. 18. See also, Chancellor Green in *Story* v *Jersey City and Bergen Point Plank Road Co.,* 16 N. J. Eq. 13, at 20 (1863).

[2] Report of Committee Appointed to Investigate Rules and Regulations Affecting the Privileges of Lobbyists (1905), in Minutes of New Jersey Assembly, 1906, pp. 56-169.

tion, the capitalization and privileges of corporations, the investment of the assets of banks and insurance companies, franchise rights or privileges.

V. Any attempt to influence members of the committees with respect to any such measures at other times should debar the party guilty from further appearance before the committee and subject him to public reprimand.

VI. Public notice of each hearing of the Judiciary Committee should be published in the leading daily newspapers of the cities of the state three days prior to the hearing.

VII. Arguments in behalf of corporations and public bodies at such hearings should be by designated agents, but any citizen may appear in his own interest.

VIII. Each person seeking the privilege of arguing a measure should disclose his interest therein.

IX. The judiciary committees should report to the legislature with the reasons for their decisions.

X. The introducer of each bill should be required to state by whom it was drawn and in whose interest it is presented.

XI. The Attorney-General should settle any dispute as to whether a bill falls within one of the classes set forth.

XII. Anyone frequenting the State House who is 'under strong suspicion of improper lobbying' should be compelled to account properly for his presence to the Governor, and if unable to do so should thereafter be excluded from the State House.

XIII. Certain amendments to the Corrupt Practice Act and the bribery laws should be passed.

XIV. Legislation should be enacted to complement the legislative power of investigating charges of improper lobbying."

Group representation through the lobby has obviously become as much a part of the democratic process as the political party. The Lobby Committee of 1905 plainly foresaw this development. It is emphasized by all the investigators, and most recently by Dayton D. McKean in his *Pressures on the Legislature of New Jersey* (1938).

Trends in Regulation

The need to curb secretive and unprincipled agents has long been recognized. Mr. Justice Black, then Senator, made this plain in support of the registration bill he sponsored in 1935.[3] Professor Herring[4] adds that:

> "The evils to which the present lobby gives rise are deception and coercion. The forces of a group opinion can be vastly exaggerated by skillful manipulation and used to threaten a public official. Cowardice is a common political weakness and one that permits lobbyists often to be taken at their own evaluation. Most of the legislation for the regulation of lobbying simply demands of the lobbyist that he appear in his true colors."

It has been variously reported that "32 states have enacted some form of regulatory legislation" [5] and that ". . . Sixteen states have passed laws requiring lobbyists to register and furnish financial

[3] Hearings before Subcommittee of Committee on Judiciary on S. 2512, 74th Cong., 1st Sess., 1935.

[4] Herring, E. P., "Lobby," in *Encyclopedia of the Social Sciences*, 1933, vol. IX, pp. 565-68.

[5] Herring, *ibid*, and Logan, E. B., "Lobbying," Supp. to vol. 144, *The Annals of the American Academy of Political and Social Science*, July, 1929.

statements. Six others require registration but no financial statements, and the rest have no lobby registration laws at all." [6]

In recent years, new regulations or amendments of existing statutes were enacted as follows:

Ga., 1927, p. 76; L. 1935, p. 39 (license tax)

Ky., 1930, ch. 547; Ohio, 1929, p. 784 (temporary provisions for furnishing members a weekly list of lobbyists)

N. C., 1933, pp. 9-11, c. 11 (registration of legislative counsel or agents)

Wis., 1933, p. 635, c. 309 (disclosure of interest of newspapers required)

Wis., 1933, p. 1149, c. 487, s. 242 (by insurance companies)

Ariz., 1935, p. 141, c. 35 (personal representative of the governor at national capitol)

Cal., 1935, pp. 92-93, c. 26 (representatives of counties and municipalities before legislature and its committees)

N. D., 1935, pp. 9-10, c. 4, s. 7 (agricultural lobby)

S. C., 1935, pp. 3-5, No. 3 (registration, etc., of lobbyists)

Conn., 1937, c. 43 (Supp. s. 4 d) (docket of legislative appearances)

Va., 1938, pp. 148-149, c. 85 (registration of legislative agents)

Wis., L. 1941, c. 304 (three copies (instead of 25) of any statement, argument or brief to be delivered by a lobbyist to a member of the legislature shall be deposited with the secretary of state (instead of before delivery) within five days after delivery)

The principal difficulty in the regulation of lobbying has been the definition of lobbying. In Congress, the "Federal Regulation of Lobbying Act," constituting Title III of the Legislative Reorganization Act of 1946[7] resorts to the devices of registration, disclosure of financial consideration, and publicity, as in the better developed state laws. The new federal law meets the problem of definition as follows:

"Sec. 307. The provisions of this title shall apply to any person (except a political committee as defined in the Federal Corrupt Practices Act, and duly organized State or local committees of a political party), who by himself, or through any agent or employee or other persons in any manner whatsoever, directly or indirectly, solicits, collects, or receives money or any other thing of value to be used principally to aid, or the principal purpose of which person is to aid, in the accomplishment of any of the following purposes:

(a) The passage or defeat of any legislation by the Congress of the United States.

(b) To influence, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States.

Sec. 308. (a) Any person who shall engage himself for pay or for any consideration for the purpose of attempting to influence the passage

[6] Blaisdell, D. C., *Economic Power and Political Pressures*, T.N.E.C. Monograph No. 26, 1941.
[7] 60 Stat. 753, 2 U.S.C.A. 261 *et seq.*

or defeat of any legislation by the Congress of the United States shall, before doing anything in furtherance of such object, register with the Clerk of the House of Representatives and the Secretary of the Senate and shall give to those officers in writing and under oath, his name and business address, the name and address of the person by whom he is employed, and in whose interest he appears or works, the duration of such employment, how much he is paid and is to receive, by whom he is paid or is to be paid, how much he is to be paid for expenses, and what expenses are to be included. Each such person so registering shall, between the first and tenth day of each calendar quarter, so long as his activity continues, file with the Clerk and Secretary a detailed report under oath of all money received and expended by him during the preceding calendar quarter in carrying on his work; to whom paid; for what purposes; and the names of any papers, periodicals, magazines, or other publications in which he has caused to be published any articles or editorials; and the proposed legislation he is employed to support or oppose. The provisions of this section shall not apply to any person who merely appears before a committee of the Congress of the United States in support of or opposition to legislation; nor to any public official acting in his official capacity; nor in the case of any newspaper or other regularly published periodical (including any individual who owns, publishes, or is employed by any such newspaper or periodical) which in the ordinary course of business publishes news items, editorials, or other comments, or paid advertisements, which directly or indirectly urge the passage or defeat of legislation, if such newspaper, periodical, or individual, engages in no further or other activities in connection with the passage or defeat of such legislation, other than to appear before a committee of the Congress of the United States in support of or in opposition to such legislation.

(b) All information required to be filed under the provisions of this section with the Clerk of the House of Representatives and the Secretary of the Senate shall be compiled by said Clerk and Secretary, acting jointly, as soon as practicable after the close of the calendar quarter with respect to which such information is filed and shall be printed in the Congressional Record."

The problem goes far beyond a matter of definition. The failure of state regulation is, of course, as much a matter of the unwillingness of legislative bodies to enforce the regulation of pressure groups as it is to define the proper scope of their activities.[8]

The following state constitutions deal with lobbying in the manner indicated:

TABLE: *Summary of Constitutional Provisions*

Alabama, Art. IV, sec. 101—Lobbying by state or county officials for any valuable consideration is prohibited.

Arizona, Art. XXII, sec. 19—Legislature directed to regulate practice of lobbying.

California, Art. IV, sec. 35—Any persons who seek to influence a legislature by dishonest means shall be guilty of a felony; compulsion of testimony with protection against subsequent prosecution.

Colorado, Art. V. sec. 40, sec. 41, sec. 42—(40) log-rolling to constitute "solicitation of bribery" or "bribery"; guilt of offense

[8] In general, see Note 56 *Yale Law Jour.* 304-332 (1947), "Improving the Legislative Process: Federal Regulation of Lobbying."

shall result in expulsion from legislature plus such further penalty as prescribed by law; (41) bribery of executive or judicial officer punishable by law; (42) legislature to define and punish offense of "corrupt solicitation."

Georgia, Art. I, sec. II, par. V.—"Lobbying" is declared to be a crime; legislature to provide suitable penalties.

It is notable that in the only states which have had any reported success with lobby regulation—Wisconsin, Maryland and Massachusetts—publicity is the main device that has been used. As one competent observer has said:[9]

> "The purposes have been to disclose the identity of the lobbyists and their employers, to reveal the legislative measures which the lobbyists and employers are promoting or opposing, to restrict the activities of the lobbyists, to prohibit some from acting as lobbyists, to cut down the incentive to illegitimate activities by prohibiting contingent compensation, to reveal the amount of money which has been used to influence legislation and to inflict penalties for violation."

Since enforcement is obviously difficult, if not impossible, it would appear that successful regulation of lobbyists depends more upon the tradition of law enforcement amongst legislators than upon any specific form of license.

The practice of the British Parliament in dealing with parliamentary agents—that is, those employed in the preparation and promoting or opposing private bills— is instructive in this connection. The notion of a special parliamentary bar subject to rules of the legislative body, in a similar manner to attorneys in the courts, is the basis of the practice of these agents. Holdsworth summarizes the system as follows:[10]

> ". . . And these independent parliamentary agents, when they made their appearance, resembled the attornies or solicitors, who appeared for litigants in the courts, in one important respect. Just as these attornies and solicitors were regarded as officers of the court to which they were attached, and so subject to its control, so these parliamentary agents are subject to the control of the House of Commons exercised through the Speaker. They must subscribe a declaration to the effect that they will be personally responsible to the Speaker and the House for the observance of its orders and of the rules made by the Speaker, and for the payment of fees; and they are liable to be suspended by the Speaker for misconduct or breach of rules."

Basis for Adequate Control

In summary, regulation may take the form of constitutional provision, statute or rule. It must be so designed as to permit the admittedly useful functions of lobbying to continue. These are commonly recognized as:

1. The furnishing of technical information to legislators.
2. Guidance of legislators as to the situations that given proposals will have to meet.

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[9] Logan, *op. cit.*, p. 68.
[10] *A History of English Law*, 1938, vol. XI, pp. 334-335.

3. Sifting of proposals through the mesh of conflicting views and interests.
4. Post-election follow-up of legislators to achieve legitimate representation of constituents' views.

If a legislative council is adequately set up, it would discharge the first function fully and the second and third in large part, in an unbiased manner—a legislative reference service can sometimes do as well. Any evils associated with the remaining functions of lobbyists might well be regulated on the model of the Wisconsin legislation, as amended by chapter 304 of the Laws of 1941, or by rule of each house. The subject appears to require too much flexibility of treatment to permit more than a mandate to the Legislature and statement of principles in the Constitution.

APPENDIX

State Constitutional Provisions

ALABAMA, Article IV

> Sec. 101. (Lobbying by public officers): No state or county official shall, at any time during his term of office, accept either directly or indirectly any fee, money, office, appointment, employment, reward or thing of value, or of personal advantage, or the promise thereof, to lobby for or against any measure pending before the Legislature, or to give or withhold his influence to secure the passage or defeat of any such measure.

ARIZONA, Article XXII

> Sec. 19. (Lobbying): The Legislature shall enact laws and adopt rules prohibiting the practice of lobbying on the floor of either house of the Legislature, and further regulating the practice of lobbying.

CALIFORNIA, Article IV

> Sec. 35. (Bribery): Any person who seeks to influence the vote of a member of the Legislature by bribery, promise of reward, intimidation, or any other dishonest means, shall be guilty of lobbying which is hereby declared a felony; and it shall be the duty of the Legislature to provide by law, for the punishment of this crime. Any member of the Legislature, who shall be influenced in his vote or action upon any matter pending before the Legislature by any reward, or promise of future reward shall be deemed guilty of a felony, and upon conviction thereof, in addition to such punishment as may be provided by law, shall be disfranchised and forever disqualified from holding any office or public trust. Any person may be compelled to testify in any lawful investigation or judicial proceeding against any person who may be charged with having committed the offense of bribery or corrupt solicitation, or with having been influenced in his vote or action, as a member of the Legislature, by reward or promise of future reward, and shall not be permitted to withold his testimony upon the ground that it may criminate himself, or subject him to public infamy; but such testimony shall not afterwards be used against him in any judicial proceeding, except for perjury in giving such testimony.

COLORADO, Article V

> Sec. 40 (Acceptance of bribes): If any person elected to either house of the General Assembly shall offer or promise to give his vote or influence

in favor of or against any measure or proposition pending or proposed to be introduced in the General Assembly in consideration or upon condition that any other person elected to the same General Assembly will give or will promise or assent to give his vote or influence in favor of or against any other measure or proposition pending or proposed to be introduced in such General Assembly, the person making such offer or promise, shall be deemed guilty of solicitation of bribery. If any member of the General Assembly shall give his vote or influence for or against any measure or proposition pending in such General Assembly, or offer, promise or assent so to do, upon condition than any other member will give or will promise or assent to give his vote or influence in favor of or against any other measure or proposition pending or proposed to be introduced in such General Assembly, or in consideration that any other member hath given his vote or influence for or against any other measure or proposition in such General Assembly, he shall be deemed guilty of bribery; and any member of the General Assembly or person elected thereto, who shall be guilty of either of such offenses shall be expelled, and shall not be thereafter eligible to the same General Assembly; and on conviction thereof in the civil courts, shall be liable to such further penalty as may be prescribed by law.

Sec. 41 (Offer of bribes): Any person who shall directly or indirectly offer, give, or promise any money or thing of value, testimonial, privilege or personal advantage to any executive or judicial officer or member of the General Assembly, to influence him in the performance of any of his public or official duties—shall be deemed guilty of bribery, and be punished in such manner as shall be provided by law.

Sec. 41 (Corrupt solicitation): The offense of corrupt solicitation of members of the General Assembly or of public officers of the State or of any municipal division thereof, and any occupation or practice of solicitation of such members or officers to influence their official action, shall be defined by law, and shall be punished by fine and imprisonment.

GEORGIA, Article I, Section 2

Par. 5. (Lobbying): Lobbying is declared to be a crime, and the General Assembly shall enforce this provision by suitable penalties.

BIBLIOGRAPHY

BLAISDELL, D. C. Economic Power and Political Pressures, T.N.E.C. Monograph No. 26, 1941.

CRAWFORD, K. G. The Pressure Boys, 1939.

HERRING, E. P. Group Representation Before Congress, 1929.

HERRING, E. P. "Lobby," in Encyclopedia of the Social Sciences, 1933, vol. IX, pp. 565-68.

"Improving the Legislative Process: Federal Regulation of Lobbying," 56 Yale Law J. 304-32, Note, 1947.

LOGAN, E. B. Lobbying, Supp. to Vol. 144, The Annals of the American Academy of Political and Social Science, July, 1929.

LUCE, R. Legislative Assemblies, 1924, ch. XVII.

MCKEAN, D. D. Pressures on the Legislature of New Jersey, 1938.

U. S. Congress, Hearing before Subcommittee of Committee on Judiciary on S. 2521, 74th Cong., 1st Sess., 1935.

U. S. Congress, Hearing before Committee on Judiciary of the House of Representatives on S. 2512 and H. R. 5725, 74th Cong., 1st Sess. (1935).

ZELLER, BELLE. Pressure Politics in New York, 1937.

ZELLER, BELLE. "State Regulation of Legislative Lobbying," Council of State Governments, The Book of the States, 1943-44, pp. 161-6.

ORGANIZATION OF COURTS[1]

by

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If one were called on to set up a system of courts *de novo,* with only a problem of how to make the administration of justice achieve its purposes efficiently, he would, one may be reasonably assured, think of three types of tribunal for which he must provide. Beginning at the bottom, he would seek to set up an efficient tribunal for small causes, the causes with respect to which after all the law comes most frequently in contact with the most people and from which the mass of the people are likely to derive their idea of the judicial administration of justice. Moreover, he would seek to provide for a speedy and inexpensive review of the decisions of this tribunal, since no one can be suffered to wield the force of politically organized society at the expense of his fellow men without the check of a reasonable possibility of review. Second, he would seek to set up a system of tribunals of general jurisdiction of first instance, with a branch in which a bench of judges sit to review the action of single judges for the reason already given. Third, he would seek to set up an ultimate court of review, needed to keep the benches of judges in the court of general jurisdiction to a sound and uniform course of decision, and to pass upon public questions of great importance as to which the public will not be satisfied unless assured that the best talent of the legal system is applied to their solution.

It is true in the system of tribunals of general jurisdiction of first instance there might have to be some differentiation. One type of case requires jury trial, and the tribunal which tries cases to juries has problems of its own calling, if not for specialists, at least for judges of much experience of jury trials and what they involve. Another type of case calls for trial to a court without a jury and involves more complicated transactions, more discretion in the application of remedies and often certain *quasi*-administrative functions. Here a different kind of experience is needed. A third type of case involves even more of the administrative, yet less of the discretionary, namely probate, administration of estates, guardianship and the like. The English, when they reorganized their courts in 1873, saw how to deal with this matter. They set up the King's Bench Division of the High Court for the first type, the Chancery

[1] Address before the Junior Bar Section of the New Jersey Bar Association, delivered at the annual meeting in 1941.

Division for the second type, and the Probate Division for the third. Each had its particular work to do, but they were all divisions of one court.

How did it happen that the actual organization of courts in this country departs so far from the simple system which I venture to think would be set up as a matter of course by the reflecting lawyer if he had a free hand and a full acquaintance with the problems of judicial administration of justice? The answer is, of course, historical.

It would not be too much to call the 19th Century the century of history. History for a time was to teach us everything. It was to solve all problems. In the last half of the century, under the name of evolution, it explained how everything came into being and grew to be what we knew it. Today, by way of reaction, in the fashionable thought of the time, history is discredited or ignored. But institutions are no more made of whole cloth than something is made of nothing. History does not point us to to a duty by showing us the course of development of institutions in the past. But it does tell us what men have found at hand to work with. What institutions are, as we know them, is apt to be what has been handed down from the past, shaped by the exigencies of the present and handed down again. We are not morally bound to hew to historical lines of development. Conformity is rather what Terence Mulvaney called a "superfluous and impertinent necessity."

What we had immediately at hand to build to in setting up courts in America was the system of courts in 17th Century England as described in Coke's Fourth Institute, and later the 18th Century English courts as described by Blackstone. It would be hard to find a more unfortunate model for a system of courts for a politically organized society in the new world than the system of English courts at the time of colonization. It had grown up by setting up a new tribunal for every new task between the 13th and the 17th Century. It had been built by imposing one group of tribunals upon another as old ones became unsatisfactory and new ones took over their work or part of it. There were tribunals harking back to Anglo-Saxon times and tribunals deriving from the feudal organization between William the Conqueror and the Tudors. There were the King's Courts which grew up from the time of Henry II to the Puritan Revolution. There were the administrative tribunals of the Tudors and Stuarts. There were ecclesiastical courts, speaking from before the Reformation but still functioning as courts to the middle of the 19th Century and ridiculed by Dickens. There was a hopelessly heterogeneous mass of inferior courts, borough courts and courts of special jurisdiction of first instance, created at all sorts of times and for every sort of special situation. All these went on, often with ill-defined limits of jurisdiction, often

concurrent in their jurisdiction, and only held to some general accord in the exercise of their powers by the general superintending powers of the King's Bench, which, however, by no means extended to all of them.

Multiplying of tribunals is a characteristic of the beginnings of judicial organization. When some new type of controversy or some new kind of situation arises and presses for treatment, a new tribunal is set up to deal with it. So it was at Rome, where praetors, or judicial magistrates, were multiplied as the litigation of aliens and the invention of testamentary trusts called for judicial treatment. So it was in England from the 12th to the 16th Century and even to some extent to the 19th Century. In the same way in the United States we have multiplied administrative tribunals in the present century, with no system, with no uniform provisions for or practice as to review, and not infrequently with no clear definition as between one and another. The reason in each case is the same. Every new condition is met at first by a special act; and so for every new problem there is likely to be a new court or at least a new administrative tribunal.

Those who settled the colonies were likely to have had more experience with the inferior courts of limited jurisdiction than with the King's Courts at Westminster. At any rate, in our earlier colonial history we copied the inferior courts very generally and some, such as the Hustings Court in Virginia, have survived into the present century.

Some of the colonies sought radical simplifications, such as we have been coming to gradually in the present century. Some, particularly in New England, succeeded to a certain extent in having their own way. But in general the veto power of the Privy Council, exercised, as Mr. Dooley would have put it, with no gentlemanly restraint, enforced adherence to the main lines of the English organization. Pennsylvania was kept out of a valid organization of her courts for 21 years because the legislature objected to setting up a system with a court of equity and the analogue of the ecclesiastical courts and endeavored to begin a much needed work of unification.

There was, it is true, a certain system discernable in the English organization of courts in the 18th Century. One could conceive of a unit made up of the magistrates and the many varieties of petty courts, although they were wholly unorganized. Each of these courts was independent of the others. Many of them had no records and so were not subject to review by writ of error from the King's Bench. As they did not proceed according to the course of the common law, they could only be reached by certiorari. There was little real superintending power over them. Blackstone made the three superior courts of the common law look like a system of courts of general jurisdiction of first instance. But they had concurrent jurisdiction

and had to be eked out by the courts in which the judges sat at circuit, by the court of chancery for the half of the legal system which we call equity, and by the ecclesiastical court for probate and kindred subjects. In all of this, too, there was more or less overlapping.

In practice the tendency was to take the King's Bench to furnish a type and adapt the type to American conditions. In the same way the appellate jurisdiction of the King's Bench over the Common Pleas, and of the Exchequer Chamber over the King's Bench and Exchequer, could be made to look something like a system of intermediate appellate tribunals. Finally, the House of Lords as to courts of law and equity, the Privy Council as to some other tribunals, and the Delegates of the King as to the ecclesiastical courts, could be made to look like a system of ultimate courts of review. In America we largely took this appearance, as Blackstone had created it, as giving us a model, and you in New Jersey have kept pretty close to it. Indeed it could be made to serve as the plan of what became the characteristic American organization of courts.

In the formative era of our institutions, from independence to the Civil War, much happened to the original colonial model as successive new states set up organizations on the general lines of those of their older neighbors. Under the pioneer, rural conditions of the forepart of the last century there was a general demand for decentralizing the administration of justice which has had a bad effect upon our system of courts in many parts of the country. In a country of long distances, in states of large territorial extent, in a time of slow communication and expensive travel, central courts of law and equity of first instance involved intolerable expense. There was an increasing tendency to set up a local court of general jurisdiction, generally a one-judge court, at every man's door. In New Jersey you were fortunate in escaping the worst features of this tendency. With the central organization of your courts of first instance you are in a better position to unify the system than in states which have lost or never had any centralization below the ultimate court of review. Indeed some states, by a system of Supreme Court Districts went far toward decentralizing even that court.

In the present century, when improved conditions of transportation have reduced distances so that one can go from Cambridge to Philadelphia by rail in as many hours as it took days for Washington to make that journey on horseback in 1775, and if one goes by air, less than half as many hours as Washington had to take days, the need of extreme localizing has gone by. A tendency to return to a centralized system is manifest everywhere. The English unified their inferior courts by the county court system replacing the com-

plete lack of system which had come down to the 19th Century. The Municipal Court of Chicago (1906) was a long step toward unification. A very good example is the California Municipal Court Act of 1925. Unified and responsible administrative control of the courts has been growing in recent years. Connecticut in 1937 authorized the judges to appoint an Executive Secretary to the Judicial Department of the State Government. About the same time Pennsylvania took a similar step under the rule-making power then newly conferred upon the Supreme Court. The federal courts have been provided for in the same way. Sooner or later what we have been doing piecemeal for parts of the judicial system must be done thoroughly for the whole. In this process of making over and simplifying the organization of courts, the controlling ideas should be unification, flexibility, conservation of judicial power and responsibility.

Unification is called for in order to concentrate the machinery of justice upon its tasks. Flexibility is called for to enable it to meet speedily and efficiently the continually varying demands made upon it. Responsibility is called for in order that some one may always be held and clearly stand out as the official to be held if the judicial organization is not functioning the most efficiently that the law and the nature of its tasks permit. Conservation of judicial power is a *sine qua non* of efficiency under the circumstances of the time. There are so many demands pressing upon our state governments for expenditures of public money that so costly a mechanism as the system of courts cannot justify needless and expensive duplications and archaic business methods.

Looking at the country as a whole, although much improvement has been made in the past 40 years, the conspicuous defects involved in the organization of courts as it came down to us from the last century are waste of judicial power, wasting the time of courts, not to speak of the time and money of litigants, in piecemeal handling of single controversies simultaneously in different courts, and general want of cooperation between court and court, and at times and in some places between judge and judge in the same court, for want of any real administrative head. In the federal system much has been done toward providing effective administrative machinery. But in the states, even in those which had inherited courts of central organization, the conditions of the forepart of the last century did not require efficient heads of judicial tribunals and administrative headship did not develop or was generally suffered to lapse. Moreover, it nowhere extended to the whole system, and the inferior and small cause courts, where it has been conspicuously needed, have always been without it.

Waste in the treatment of cases in bits, part in one court or proceeding and part in another, with no power to refer all the proceed-

ings to one tribunal, is illustrated by a saying which used to be current at sessions of the National Conference of Social Work. It was said that in almost any one of our cities at one and the same time a juvenile court, passing on the deliquent children, a court of equity and divorce jurisdiction entertaining a suit for divorce, alimony and custody of children, a court of law entertaining an action for necessaries furnished by a grocer to an abandoned wife, and a criminal court or domestic relations court, in a prosecution for desertion of wife and children, might all be dealing piecemeal, at the same time or successively, with different phases of the same difficulties of the same family. This situation grew out of historical lines of development of different branches of the law in different courts, and rigid jurisdictional lines arising from that development. But we are not bound to keep fast to those historical lines at the expense of public time, the energy of judges, and the time and pocketbooks of litigants. Granting that the different proceedings growing out of the difficulties of the one family, if we had only one of them to look at, could very well be assigned to different courts, when more than one is brought there is waste in going over the same matter in different courts and settling the result in each with no necessary relation to that in the other. Each court, in order to deal intelligently with the phase before it, will have to be advised as to the difficulty as a whole, and so it will be thrashed out more than once. The remedy for such things lies in organization of judicial business and responsible headship of the organizations.

Waste of judicial power impairs the ability of courts to give to individual cases the thorough-going consideration which every case ought to have at their hands. The work of our appellate courts has increased enormously. A computation which I made 20 years ago showed that judges of our highest courts had five times as much work to do as judges of the same courts had had to do 100 years before. Six years ago I made a computation for the larger of our states which told the same story. Conservation of judicial power is obviously indicated under such a condition. But throughout the country we habitually waste judicial power, for example, in the number of judges who sit on appeals. Three ought to be enough in intermediate appellate courts and five, or at most seven, in cases of unusual difficulty or public importance, in the ultimate court of review. Indeed three sit regularly in the Circuit Courts of Appeals, in the intermediate appellate courts in California, Georgia, Indiana and Tennessee, and in the Supreme Court as in effect an intermediate appellate court here in New Jersey.

For the most part, the feeling of lawyers in the United States that five or more judges make up a court of review is simply traditional from the courts of our formative era where there was no great press of work. In England until the last third of the 19th Century three

lords sat habitually on writs of error and appeals in the House of Lords, and three members of the Judicial Committee of the Privy Council have commonly sat in the ultimate court of review for the British colonies and dominions. In exceptionally grave constitutional cases five have sometimes sat. Five commonly sit in appeals in the House of Lords today, three sit in appeals in the Court of Appeal and three in even the most serious criminal cases in the Court of Criminal Appeals. Down to the Judicature Act, three sat in the old Court of Appeal in Chancery. Down to 1830, four justices of the King's Bench heard writs of error to the Common Pleas. There is a serious waste of judicial power in the large benches habitually sitting on ordinary appeals in our courts.

It is not necessary to have a large bench sitting on each case in order to prevent conflict of decision or impairment of the uniform course of decision. It is true there has been some conflict of decision between separate intermediate appellate courts in Ohio and in Texas, between the Supreme Court and the Court of Criminal Appeals in Texas, and at times between federal Circuit Courts of Appeals. But in these cases there was no common head over the distinct tribunals to scrutinize their work as it went on and insure uniformity of decision. Where a head of the judicial organization is empowered to take care of this matter by directing a hearing in which the conflict can be resolved, and is responsible to the public and to the profession for exercising his power, there is little reason to apprehend such conflict. In England, where the Court of Appeal sits in divisions of three, they are unknown. Eleven to 16 judges, which the reports show as sitting habitually in your Court of Errors and Appeals, is sheer waste.

We should avoid too rigid an organization. It should be flexible enough to take care of new tasks as they arise without perpetual reference to the legislative *deus ex machina*. Courts set up for one thing become conspicuous examples of waste of judicial power when the class of work for which the judges were provided ceases to require them. But there is always work enough for them somewhere else in a modern flexible organization with a responsible administrative head of the organization responsible for turning them to the right places. The principle cannot be too often repeated. A modern organization calls not for specialized courts but for specialist judges, dealing with their special subjects when the work of the courts is such as to permit, but available for other work when the exigencies of the work of the courts require it. The idea must be, specialist judges in a unified court, sitting habitually in a special division dealing with a special type of case, but whenever the center of gravity of the dockets shifts, liable to be assigned for a time somewhere else.

My proposition, then, is that the whole judicial power of the

state should be concentrated in one court. This court should be set up in three chief branches. To begin at the top, there should be a single ultimate court of appeal. A second branch should be a superior court of general jurisdiction of first instance for all cases above the grade of small causes and petty offences and violations of municipal ordinances. It should have numerous local offices where papers may be filed, and rules of court should arrange that these local offices, being offices for the whole court, may function for all branches, or one or more, as the exigencies of business demand. Different jurisdictions, with different procedural traditions, would no doubt feel differently about the internal organization of this branch. You in New Jersey, as the lawyers did in England, would no doubt feel that this branch should be organized in three divisions, one for actions at law and other matters requiring a jury or of that type, one for equity causes, and one for probate, administration, guardianship and the like. But however this branch is organized, all the judges should be judges of the whole court. If they are chosen primarily for one or the other branch, and assigned to this or that division in some appropriate way by the administrative head, yet they should be eligible to sit in any other branch or division or locality when called upon to do so, and it should be the duty of the administrative head to call upon them to go where work awaits to be done whenever the general state of the business of the whole court makes that course advisable.

No doubt it will appear startling to some of you when I suggest including the tribunals for the disposition of causes of lesser magnitude in the plan for unification of the judicial system. It was too startling for the British legislator when Lord Selborne proposed it in the plan of the Judicature Act. But no tribunals are more in need of precisely this treatment. Even small causes call for a high type of judge if they are to be determined justly as well as expeditiously. A judge dignified with the position and title of Judge of the Court of Justice of the State, assigned to the County Courts, is none too good for cases which are of enough importance to the parties to bring to court. Such cases ought to be important, also, to a state of a democratic polity seeking to do justice to all. It is perfectly feasible, as the experience of the County Courts has shown in England, to administer a very much higher grade of justice than what we have dispensed through justices of the peace and magistrates of that type, without resorting to the more expensive methods of the courts of general jurisdiction of first instance. The judges who are assigned to small causes should be of such caliber that they can be trusted and will command the respect and confidence of the public. If they are, there will cease to be need of retrial of cases on appeal. Review can be confined to ascertaining that the law was properly ascertained and applied. The further we get away from

the old justice-of-the-peace idea for small causes, the better.

While the head of the judicial system might well sit in the first branch, the ultimate court of review, as the Lord Chancellor in England sits in the House of Lords as judge of the court, this branch should have its own immediate head charged primarily with the proper functioning of this part of the court. The head of the whole court, whether he is called Chancellor or Chief Justice or President, as the head of the highest court is called in Virginia, will have much to do in exercising a supervising administrative control over the whole system. In accordance with rules of court under his authority and perhaps in conference with the heads of the two main branches, judges may be called from one to sit in the other as the state of the dockets may require. It should be possible for the appellate branch to sit in divisions, if necessary to the prompt dispatch of business. Especially when dockets are swollen, three judges ought to be enough for all but the most difficult and important cases. Thus there would be more time for oral argument and more time and opportunity for consultation among the judges and consideration of the merits of cases.

If a simple, speedy, inexpensive procedure could be developed for administrative appeals, one which insured due process of law, adherence to the law of the land and action upon evidence of rational probative force, without substituting the discretion of the court for that of the administrative commission or board or bureau or agency, such appeals would be likely to become a large part of the work of the ultimate appellate tribunal. If this type of work should increase, it might become advisable to set up a division to deal with it. There should be a flexible organization and full rule-making power adequate to finding and meeting such situations as they arise.

The second branch, the court of general jurisdiction of first instance, whatever name is given it, should be organized under a chief justice responsible to the head of the judicial system. Rules of court would determine the times and places of sittings in the several counties, and all the judges, being judges of the same court, would be subject to be assigned where the demands of judicial business make it advisable. Rules should provide for regional or local appellate terms according to the requirements of the dockets. Thus there would be no need of an intermediate appellate court. The procedure at these terms could be as simple as at the hearings *en banc* at Westminster a hundred years ago, after a trial at circuit. Three judges assigned to hold the term would pass on a motion for a new trial, or for judgment on or notwithstanding a verdict, or for modification, or setting aside of findings and judgment accordingly, or for modification or setting aside of a decree or order. If it proved advisable to limit the cases which could go thence to the highest branch of the court, rules could restrict review to cases which the

reviewing court, after petition, selected for review as intrinsically entitled thereto.

You in New Jersey have the foundation of a modern system already. You have much less decentralization to undo than is true of the country generally. Also you have less to do in simplifying review of what is done in courts of first instance than is the case in most of the states. The ideal is to hear motions for new trial or to set aside findings, or to render judgment upon or notwithstanding verdicts or findings, or to modify or set aside decrees or orders, before a bench of three judges of the court of general jurisdiction at appellate terms or in an appellate division, as the exigencies of business require, with no more formal or technical procedure than is involved in such motions made in a trial court today. This would provide a simple, speedy, relatively inexpensive means of reviewing the great bulk of the litigation in the court of general jurisdiction of first instance.

Even more, it would help rid us of the burdensome multiplication of reports which has come with the development of intermediate appellate courts. Such courts have tended to imitate the ultimate appellate courts. If only as a matter of dignity, it is felt that appellate courts must write opinions, and if written they must be published. Indeed, statutes sometimes require them to be written in all appellate courts. But if there is no appellate court, short of the ultimate court of review, a written opinion on every motion in the court of general jurisdiction will not seem to be required in the nature of things. It is true there is a real and important function of an opinion as a check upon the bench. But that purpose and the purpose of advising the reviewing court, if the cause goes to the ultimate court of review, as to the reasons and basis of the decision, would be served sufficiently by a memorandum of the questions decided and the grounds of decision. Much time and energy are spent in writing opinions in cases which involve no new questions or new phases of old questions. This is a prime source of waste of judicial power in our higher courts. A short statement of points and reasons will suffice both as a check and as an aid to the higher court. A qualified and responsible reporter, having no interest except to make the reports useful to the public and the profession, could select occasional memoranda worth publishing. Even at appellate terms of the lowest branch of the court, the court for small causes and magistrate's cases, it might well be at times that questions come up and are decided which will deserve publication of the grounds of decision. An energetic head of the judicial system and energetic chiefs in the two lower branches, with the help of the Judicial Council, could devise rules to govern these things. Then, if the courts and the bar were given control of reporting, as the bar has long had control in England, one of the hard problems of the law

and of the profession in America, the multiplication of reports, would be solved.

As to the lowest branch of the unified court, I should be inclined to call it by the historic common law name of "county court," a name that goes back to Anglo-Saxon times and is older than the name given to any of the higher courts. But there is little in a name. Any name that the history of the courts in New Jersey suggests to the draftsmen of a constitutional provision will do well enough. The great point is to have a unified court, not an aggregate of independent one-judge tribunals. This branch, too, should be organized under the headship of a chief. Municipal courts in large cities should constitute a division of this branch, and there should be power to set up juvenile courts and family and domestic relations courts and courts for petty causes, as divisions or as sections of municipal courts as they may be needed. There should be appellate terms and causes could go direct to the ultimate appellate court on petition for leave to appeal and showing of a case calling for review.

There are peculiar needs in metropolitan cities which may make municipal court divisions desirable. If they are set up, each should have an administrative head subject to the superintendence of the head of the branch court. There should be such complete flexibility of organization that judges could be assigned from a municipal court to a rural locality where work was pressing, or from the rural locality to a municipal court where dockets were becoming congested, or could be taken from the court of general jurisdiction of first instance to relieve congestion or *vice versa*. Rules could be worked out for appellate terms for petty cases in cities, with a simple, direct procedure so that the public might be persuaded that causes too small to justify retaining a lawyer were not for that reason ignored by the law or neglected by the state.

Supervision of the administration of judicial business of the whole court should be committed to the head of the court, who should be made responsible for effective use of the whole judicial power of the state. Under rules of court, he should have authority to make re-assignments or temporary assignments of judges to particular branches or divisions or localities, according to the amount of work to be done and the judges at hand to do it. Disqualification, illness, or disability of particular judges, or vacancies in office, could be speedily provided for in this way. He should have authority, under rules of court, to assign or transfer cases for hearing and disposition as circumstances may require. Moreover, each branch and each division should have an administrative head who should each be responsible for efficient dispatch of the work of his organization. Such things are too big for clerks, although clerks under proper direction and control may do not a little. They call

for strong, well-trained lawyers, with experience of tribunals and knowledge of what they can do and what not, with clear responsibility laid upon them to preclude their falling into perfunctory routine or allowing abuses to grow up through their inertia.

Perhaps you will have felt that I have laid too much stress upon the organization and functioning of what I have pictured as the third branch of the unified court. But it is here that the great mass of an urban population, whose experience of law is not unlikely to have been experience only of the arbitrary discretion of the police, might be made to feel that the law is a living force for securing their individual as well as their collective interests. Nor should petty criminal prosecutions be left out of account in this connection. The humbler inhabitants of our great cities have deserved better provision for a feature of government that touches some of their nearest interests than our judicial organization, as it was shaped for rural, agricultural America of the formative era, made for them. It takes a strong and experienced and learned judge to deal properly with cases involving wide discretion and free scope for judicial action. The judge who decides petty causes is in the position of the King administering justice in person. When we are setting up courts for such cases we need to remember that we are setting up a tribunal to do the work of St. Louis under the oak at Vincennes, or Henry II in the royal court.

Unification would result in a real judicial department as a department of government. The federal Department of Justice, under the headship of the Attorney-General, has acquired not a little administrative power with respect to the courts and has given the general government some things in the line of what is proposed. But I should hate to see the attorney-general become the administrative head of the judicial system. I should deprecate such executive supervision of the judiciary growing up in the states. It is out of accord with the genius of our institutions that one who practices in the courts, especially one who represents so powerful an adversary as against private litigants, should be in any way the head, either in theory or in practice, of a department of government charged with superintendence or supervision of the courts. But some such superintendance and supervision is urgently called for. The rise of administrative tribunals of every kind and on every hand, with few or no checks upon them and with wide and far from clearly defined powers over the liberty, property and fortune of the citizens, is threatening our inherited conception of the supremacy of the law and the separation of powers, born of experience of the undifferentiated powers of the Privy Council and Royal Governor and Council, and put at the foundation of the constitutions adopted by the newly freed colonies on the morrow of the Declaration of Independence. That this turning over of

adjudication to administrative agencies has gone so far in a country which even a generation ago was jealous of administration, is due chiefly to the ineffectiveness of the law under an archaic organization of courts and the archaic appellate procedure which obtained until the recent turning over of procedure to rules of court, and still obtains in too many of our states.

You may conceivably think that the plan of unified organization I have outlined is too ambitious and far reaching; that each of the three branches I have indicated, organized as a unified court in the way suggested, would be a thoroughgoing improvement on the present system, would not disturb settled traditions of the bar, and would achieve the more significant features of what is proposed. This is what English legislators felt when they cut off the highest court of review at the top and the county courts at the bottom of Lord Selborne's plan of unification. But much has happened since 1873. Efficient administrative organization has come to be as well understood today as it was ignored two generations ago. It is easy to make branches of a single court cooperate toward the ends of justice. It is not so easy to make independent courts work together smoothly, speedily and effectively. Cooperation enforced by appeals and prerogative writs is a different thing from the harmonious operation of a unified system under a responsible head.

Unification of courts will not do everything. There must be judges equal to their tasks and unafraid to do them. There must be an able, intelligent, well-trained body of honorable men filled with a true professional spirit to practice before them. But things are done by the combined working of men and machinery and in that combination machinery is no negligible item. Our American judiciary, as we look back at five generations of our legal and political experience, has by far the best record of our three departments of government. Let us give it the modern organization which will enable it to maintain that record.

THE PRESENT COURT SYSTEM OF NEW JERSEY

by

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The Courts

The courts of New Jersey are, for the most part, provided for in Article VI (known as the Judiciary Article) of the present State Constitution which was adopted in 1844. Article VI, section I, provides:

> "The Judicial power shall be vested in a Court of Errors and Appeals in the last resort in all causes, as heretofore; a Court for the trial of impeachments; a Court of Chancery; a Prerogative Court; a Supreme Court; Circuit Courts, and such inferior Courts as now exist, and as may be hereafter ordained and established by law; which Inferior Courts the Legislature may alter or abolish, as the public good shall require."

The Constitution also provides for a Court of Pardons (Article V, par. 10) and a Court of Impeachment (Art. VI, sec. III, par. 1).

Pursuant to the above provision, the Legislature by statute has established the Courts of Common Pleas,[1] Courts of Oyer and Terminer,[2] Courts of Quarter Sessions,[3] Courts of Special Sessions,[4] Orphans' Court,[5] civil district courts,[6] criminal judicial district courts,[7] county traffic courts,[7a] and small cause courts.[8] The Legislature has also empowered municipalities to establish local courts of limited civil and criminal jurisdiction, such as the police courts, recorder's courts, magistrate's courts and family courts.

While the Constitution provides for the election of a surrogate in each county,[9] the powers and authority of surrogate courts are established by legislative enactment.[10]

Their Jurisdictions

The jurisdiction of a court, both as to territory and the nature and extent of its authority, determines whether it is called a higher court or lower court. At the base of the structure of New Jersey's present judicial system are the justice of the peace courts, the local small cause courts and the local police courts which have limited

[1] R.S. 2:6-1.
[2] R.S. 2:11-1.
[3] R.S. 2:12-1.
[4] R.S. 2:13-1.
[5] R.S. 2:7-1.
[6] R.S. 2:8-1 to 4.1; R.S. 2:8-48.1 *et seq.*
[7] R.S. 2:212-1; R. S. 2:212-4 and R.S. 2:212-4.1.
[7a] R.S. 2:229-1.
[8] R.S. 2:9-15.
[9] *N. J. Const.*, Art. VII, sec. II, par. 5.
[10] R.S. 2:7-12 *et seq.*

jurisdiction in both civil and criminal cases. Just above them are the district courts, civil and criminal, and the county traffic courts, with county-wide jurisdiction in civil matters and in criminal matters in certain designated counties. (See notes 6, 7 and 7a.)

The next tier of courts is what are commonly known as the county courts. While their jurisdiction territorially is confined to each county, the courts have broad authority as to the nature of the cases that may be brought before them. Civilly, an action for damages may be instituted in the Common Pleas Courts for any sum, just the same as it could be done in any of the higher courts (Circuit Court or Supreme Court).[11] Appeals in certain cases from the police and traffic courts and in workmen's compensation cases are also heard in the Common Pleas Courts. The Court of Quarter Sessions has county-wide jurisdiction to try, with a jury, all criminal offenses of an indictable nature, except murder or treason.[12] The Courts of Special Sessions have similar jurisdiction, except they may try such criminal cases without a jury where the defendant waives his right of trial by jury.[13] The Courts of Oyer and Terminer have jurisdiction to try all cases of an indictable nature, including murder and treason.[14]

The Orphans' Courts have jurisdiction over matters involving administration of the estates of decedents, mental incompetents, minors and others; guardianships, fiduciaries, adoptions and disputes involving the existence of wills.[15] Surrogates have statutory powers to probate wills, audit accounts of fiduciaries and to perform other specified functions concerning the administration of estates.[16]

The Circuit Courts are constitutional courts of general civil jurisdiction. For the most part, the same type of actions-at-law for damages as may be brought in the Common Pleas Courts and in the Supreme Court may be instituted in the Circuit Courts.[17]

The Supreme Court exercises the jurisdiction of the old English courts of King's Bench, Common Pleas and Exchequer.[18] It has original jurisdiction in civil cases for damages similar to the Circuit Courts and Courts of Common Pleas. It has exclusive original jurisdiction in matters pertaining to the great prerogative writs of *certiorari, mandamus, quo warranto* and prohibition. This court also passes on appeals from the Common Pleas, Quarter Sessions and Circuit Courts and has "supervisory jurisdiction, by certiorari, of all inferior tribunals," including public agencies and officials.

[11] R.S. 2:6-8; *Allara* v *Stevens*, 104 N.J.L. 240.
[12] R.S. 2:12-2.
[13] R.S. 2:13-1.
[14] R.S. 2:11-6; *Andrews* v *Swartz*, 156 U.S. 272; 15 S. Ct. 389; *Ex parte Daniecki*, 117 N.J. Eq. 527.
[15] See Revised Statutes, Title 3, Administration of Estates, Decedents and Others; see *State* v *Kelsey*, 64 N.J.L. 1, affirmed 65 N.J.L. 680, for history of legislation relating to the Orphans' Courts and powers of the Ordinary in the Prerogative Court.
[16] R.S. 2:7-12 *et seq.*; *Mellor* v *Kaighn*, 89 N.J.L. 543.
[17] R.S. 2:5-7; see *Nitti* v *Public Service Ry. Co.*, 104 N.J.L. 67.
[18] See *Traphagen* v *West Hoboken*, 39 N.J.L. 232.

The Prerogative Court is an historic constitutional court, having jurisdiction over probate matters, trust and decedent estates, and certain fiduciaries. Much of its jurisdiction is concurrent with that of the Orphans' Court.[19] It also determines appeals from the Orphans' Courts.

The Court of Chancery has jurisdiction over the broad domain of equity jurisprudence. In addition to the historic and traditional field of a court of equity, *i.e.,* to afford relief where none was available in the other established courts, this court's power in New Jersey now extends to many other fields by virtue of statutory provisions and decisional law.[20]

The Court of Errors and Appeals in the last resort is the highest court in the State. It has ultimate appellate jurisdiction in all cases. Appeals from the Chancery and Supreme Courts are taken to this court. In some instances, as in appeals from the Circuit Court and Court of Oyer and Terminer (in murder cases), appeals may be taken directly to the Court of Errors and Appeals.

The Court of Pardons and the Court for Impeachment are not judicial tribunals in the general sense of this term but have limited special jurisdiction. The Court of Pardons "may remit fines and forfeitures, and grant pardons, after conviction, in all cases except impeachment." The Court of Impeachment, consisting of the Legislature, has jurisdiction to impeach and to try cases involving the misconduct in office of state officials, including members of the executive, judicial and legislative branches.

Each court has the right to establish rules of procedure applicable to that particular court.

Their Judges

While the Constitution and statutes provide for each one of the foregoing courts and their individual jurisdictions, the judges of these courts, in many instances, are required by the same Constitution and laws to function in more than one of these courts, or are empowered to do so if they so desire.

In the lowest courts—justices of the peace, small cause courts, local police, traffic and family courts, and (except in the larger counties) the district courts—it is true that the judge serves only in one court. However, in all of these instances the judge serves on a part-time basis and is permitted to engage in business or in the practice of law, besides performing his judicial duties.

In the next level of courts—the county courts of Common Pleas, Oyer and Terminer, Quarter Sessions and Special Sessions, and the Orphans' Court—the same judge sits in all of them. Here again,

[19] For history of this court see *In re Dittman's Ex'rs.*, 87 N. J. Eq. 297, and *In re Thompson*, 85 N.J. Eq. 221.

[20] For history of Court of Chancery in New Jersey see *In re Vice-Chancellors*, 105 N.J. Eq. 759; *Pennsylvania R. R. Co.* v *National Docks & N. J. Junction Connecting Ry. Co.*, 54 N.J. Eq. 647.

except in the larger counties, the judges function only part-time on the bench, devoting the remaining time to their private law practices. With the same exception as to the larger counties, judges of the Juvenile and Domestic Relations Courts also serve as part-time judges.

The Circuit Court Judges and the 13 Advisory Masters in the Court of Chancery serve only in their respective courts. The ten Vice-Chancellors of the Court of Chancery also serve as Vice-Ordinaries of the Prerogative Court. By statute, these judges may not practice law in any of the courts of New Jersey.[21] This does not necessarily preclude them from maintaining a strictly office practice. However, only in exceptional instances do any of the foregoing judges maintain a private law practice of any kind. Generally, these judges serve full-time.

The Court of Chancery, strictly speaking, consists of the Chancellor alone. (*Constitution, Art. VI, sec. IV, par. 1*). The work in this court has, however, increased to such an extent since 1844 that it is now necessary for the Chancellor to have ten Vice-Chancellors and 13 Advisory Masters. Technically, they merely advise him as to what his judgment should be in a given case; actually, they hear and decide (without juries) all matters referred to them, and serve as judges within their spheres, just as Circuit Court or Common Pleas Court Judges do in the law courts, usually with juries.

The Chancellor, who constitutionally is the Court of Chancery, is thus in actual practice the administrative head of an important and busy court of broad jurisdiction, with 23 other judges to assist him in administering equity jurisprudence throughout the State. The Chancellor is also the head of the Prerogative Court as the Ordinary, or Surrogate-General. As will be noted shortly, the Chancellor is also a member of the Court of Errors and Appeals and of the Court of Pardons.

The Supreme Court consists of the Chief Justice and eight Associate Justices. Besides their duties arising out of the court's original and appellate jurisdiction, the Justices of the Supreme Court are also members of the Court of Errors and Appeals and are ex-officio judges of the Court of Common Pleas, the Orphans' Court, the Court of Oyer and Terminer and the Court of Quarter Sessions of the counties to which they are assigned.[22] They are also designated by statute to sit as Circuit Court Judges[23] although, as a matter of practice, they are rarely, if ever, called upon to do so. In the smaller counties the statute provides that no session of the Court of Oyer and Terminer shall be held in the absence of a Supreme Court Justice, unless the appropriate Justice authorizes, in writing, a

[21] R.S. 2:5-4; 2:2-3; 2:2-14.
[22] R.S. 2:4-4.
[23] R.S. 2:5-1.

Common Pleas Judge to serve. Supreme Court Justices also charge grand juries, particularly where special investigations seem to be called for; appoint park commissioners and jury commissioners; and hear motions on pending matters either in their home towns, at Trenton, or at the county seat of any one of the counties to which they are assigned. The Chief Justice is, of course, the administrative head of the Supreme Court and also of the Circuit Court.

The Chancellor, Vice-Chancellors (as already noted), and Justices of the Supreme Court are not precluded by law from private law practice, but rarely does one of these judges avail himself of this opportunity.

The Court of Errors and Appeals consists of the Chancellor, the nine Justices of the Supreme Court, and six special Judges—16 in all. However, all 16 judges do not always sit at one time. Thus, in appeals from the Court of Chancery, the Chancellor does not sit. Nor do the Justices who decided a case in the Supreme Court sit when their decision is appealed to the highest court. The Chancellor is the presiding judge of the Court of Errors and Appeals, but when he is disqualified from sitting or is absent for other reasons, the Chief Justice becomes the presiding officer.

The six special Judges are paid on a *per diem* basis and may pursue their professions, trades, or businesses when not serving as judges in the court of last resort.

The Court of Pardons, with its special kind of jurisdiction, considers approximately 1,000 applications for clemency or ameliorating action per year. This court consists of the Governor of New Jersey, the Chancellor and the six special Judges of the Court of Errors and Appeals. The Governor must be part of the majority of the court in any affirmative action it takes.

Comment

While there have been numerous critiques, analyses and articles concerning New Jersey's court system since 1844, none can be found that supports or justifies its existence in its entirety as presently constituted.[24]

The New Jersey court system has been generally criticised for its overlapping jurisdictions, the multiplicity of duties of the members of the higher courts, inordinate delays in the administration of justice, and a general lack of supervision by any one administrative head of the courts, with the attendant inefficiency in operations.

New Jersey's judicial system was the object of study and report by the Judicial Council in 1931 and 1932 and by a Commission appointed by the Governor and the Legislature in 1942.

[24] See editorial *N. J. Law Journal*, April 17, 1947, page 1.

The Judicial Council made the following observations in its 1932 report to the Legislature: [25]

> "In the appellate courts of other states it now takes anywhere from six weeks to two months to obtain a decision, while in our Court of Errors and Appeals and the Supreme Court it takes anywhere from eight months to two years. This deplorable situation cannot be attributed to the judges of those courts; on the contrary, the wonder is that the situation is not worse. The evil is inherent in the organization of these courts. The chancellor, as the president judge of the Court of Errors and Appeals, gives but a portion of his time to the work of that court; he has his other duties to perform in attending to the extensive administrative machinery of the Court of Chancery, in performing his duties as ordinary or surrogate-general and in acting as a member of the Court of Pardons. The justices of the Supreme Court must divide their time between their duties in the Court of Errors and Appeals and their work in the three terms of the Supreme Court. In addition, they are obliged to hear motions, charge grand juries, open terms of court in the several counties in their respective judicial districts, and most of them are compelled, in addition, to hear homicide cases in their judicial districts. The six judges of the Court of Errors and Appeals specially appointed likewise divide their time between the work of that court and the duties of the Court of Pardons, and in addition are permitted to, and in fact do, engage in private practice or private business pursuits.
>
> The judicial system provided by the Constitution of 1844 was perhaps suited to the needs of the state at the time the Constitution was adopted. In 1840 the state had a population of 373,306 and its largest city, 17,290. In 1930 the state had a population of 4,041,384 and its largest city, 442,337. In other words, a single city today has a population considerably in excess of that of the whole state in 1840. Agriculture has long since yielded its supremacy to manufacturing and commerce. The state is now the home of hundreds of thousands of commuters who occupy land formerly devoted to farming. The judicial system suited to an agricultural civilization is clearly outworn. It must be replaced with a system more in keeping with modern economic and social demands. There is no reason why New Jersey cannot provide a system of courts in which appeals may be disposed of within two months, as in Connecticut, New York or Massachusetts, and in which trials may be had within a reasonable time."

The Commission on Revision of the New Jersey Constitution, 1942, known as the Hendrickson Commission, in its "Report to the Governor, the Legislature and the People of New Jersey," made the following pertinent comment: [26]

> "New Jersey has the most complicated scheme of courts existing in any English speaking state. These courts were modeled after the chief English courts of the period before the American Revolution. They were continued here first under the Constitution of 1776 and then under the Constitution of 1844. Indeed, the jurisdiction of these courts can only be ascertained even today by an historical inquiry into the jurisdiction before the Revolution of their predecessor courts in England. In England three-quarters of a century ago, and in nearly every other American State as well, the court structure was simplified into a simple system consisting generally of (1) a Supreme Court with appellate jurisdiction only, (2) a trial court of general jurisdiction with appellate divisions, and (3) lower courts of limited jurisdiction created by the Legislature with local or special jurisdiction. Of all the common law jurisdictions New Jersey alone has lagged, due to the difficulties of amendment under the present constitution, in simplifying its judicial system.

[25] Judicial Council of New Jersey, Third Report, December 15, 1932, pp. 7-8.
[26] Pp. 22-23.

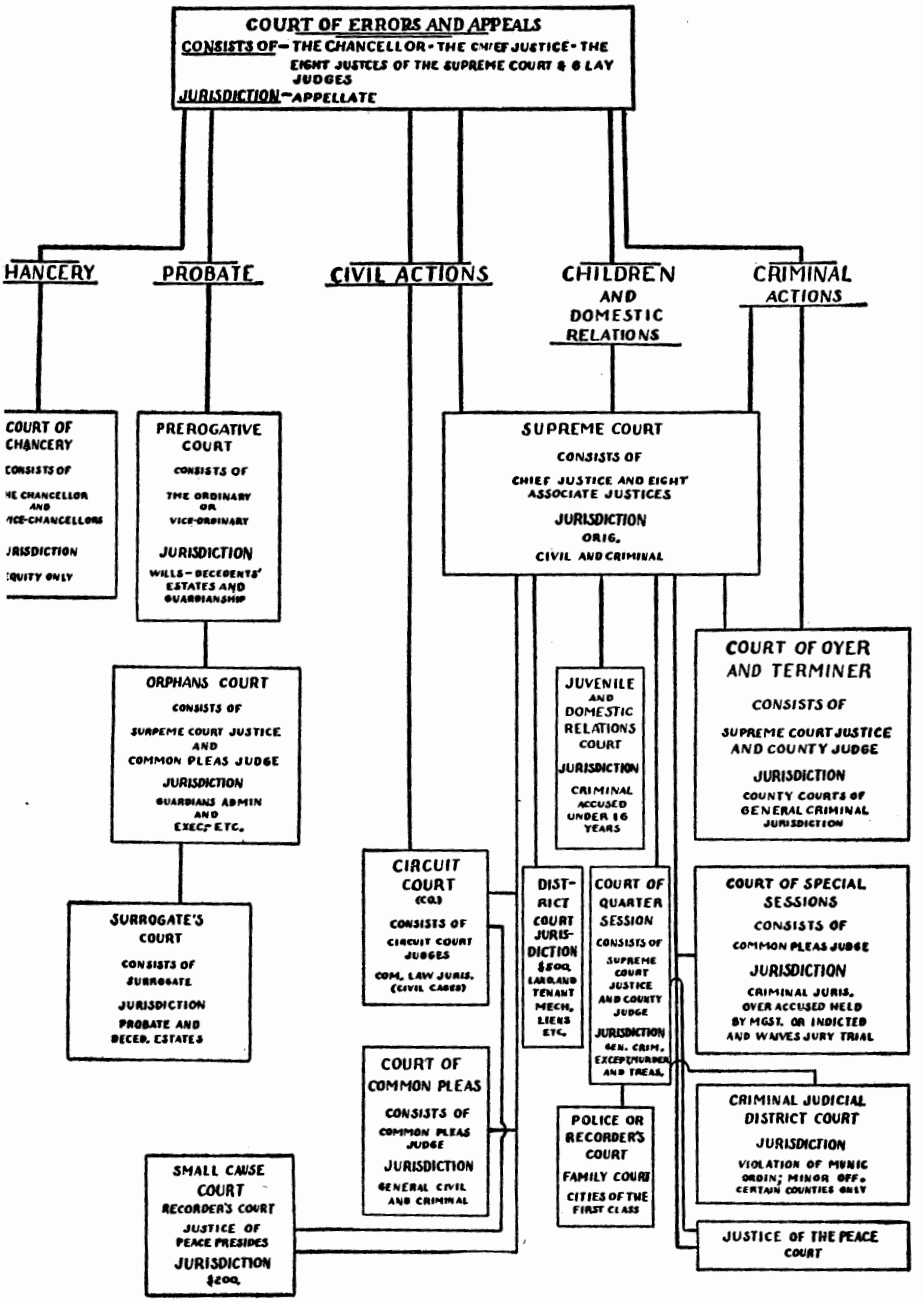
Due also to the same cause, New Jersey is the only common law State except Delaware in which the highest judges have a multiplicity of duties in different courts. Thus, the Chancellor is not only the Court of Chancery, and the Ordinary or Surrogate-General, but he also is a member of and part of the time the presiding judge in the Court of Errors and Appeals, as well as a member of the Court of Pardons, as it is popularly called. The nine Supreme Court Justices are not only members of the Court of Errors and Appeals, but they also sit in the appellate terms of the Supreme Court three times a year, and in addition thereto they have responsibilities of presiding justices in the courts of the twenty-one counties. The special judges of the Court of Errors and Appeals, popularly called 'lay judges,' are not only judges of that court but members of the Court of Pardons, and in addition, they are permitted to practice law or engage in private business. That such multiplicity of function is unbusinesslike and results not only in diminution of judicial efficiency but delay in the disposition of the business of the courts is too obvious to require argument. Not only is a simplification of the judicial system essential; a simplification of the functions of each judge is needed.

The courts of New Jersey also suffer through the lack of a single responsible head. Thus, while the Chancellor is designated as the president judge of the Court of Errors and Appeals, because he is the Court of Chancery he cannot sit on appeals from his court. In such appeals, which comprise a substantial part of the work of that court, the court is presided over by the Chief Justice. Again, while the Chancellor has limited rights of supervision over the Vice-Chancellors and his Advisory Masters, he has no jurisdiction whatsoever over the numerous judges of the law courts. Neither has the Chief Justice, or even the entire Supreme Court for that matter, any substantial power of direction as to the work of the judges of the law courts. What is needed, therefore, to effect a businesslike administration of the courts is a single responsible executive head with competent administrative assistance. In this field the Federal Courts with a Director of the Administrative Office of the United States Courts have set an example which the several States would do well to emulate.

Another matter in which the courts of New Jersey have lagged has been in the tradition of separate courts of law and equity, resulting frequently in resorting to two trial courts to dispose of a single controversy. Law and equity have long since been merged in every State except New Jersey and Delaware. In the United States courts under the Federal rules of civil procedure legal and equitable controversies are disposed of in a single case. A merger of law and equity in this State would tend to bring our practice in line with that of the Federal Courts and other American jurisdictions.

A citizen when obliged to litigate is entitled to have his right to a speedy disposition of his case guaranteed by the constitution. The present constitution sets up no standards as to what constitutes a reasonable time within which to try a case or dispose of an appeal. There is no provision under the present constitution making it easy to send the judges where they are most necessary to relieve any congestion in litigation. Nor is there any provision for setting up temporarily appellate and trial courts when the work of either system of courts falls in arrears. Without the power in the Chief Justice to assign judges to areas where litigation is congested, and without any provision for setting up temporary special courts to meet emergencies, a citizen's right to a speedy disposition of his case becomes recognized only in the breach."

PRESENT NEW JERSEY COURT SYSTEM



THE COURTS OF NEW JERSEY
THE 1944, 1942 AND 1909 PROPOSALS

by

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The purpose of this monograph is to outline the salient features of:

(a) The Judicial Article agreed upon by the Legislature in 1944 and rejected by the people that year.[1]

(b) The Judicial Article proposed in 1942 by the Commission on Revision of the New Jersey Constitution, consisting of Robert C. Hendrickson, Chairman, Walter J. Freund, Crawford Jamieson, James Kerney, Jr., John F. Sly, Walter D. Van Riper and Arthur T. Vanderbilt.[2]

(c) The amendment to the Judicial Article submitted to and rejected by the people in 1909, drawn by a commission consisting of Governors John W. Griggs and Franklin Murphy, Justice Bennet Van Syckel and Messrs. Charles L. Corbin and John R. Hardin.[3]

Of all the proposals advanced since 1844 for the revision of the Judicial Article of the Constitution, the three listed above are most worthy of study.[4]

Consideration is given in another monograph to the matter of the qualifications and tenure of the judges.

THE 1944 AND 1942 PROPOSALS

The 1944 and 1942 proposals follow; except as noted, they are alike:

1. *The Supreme Court.* Under these proposals the highest court in the State was denominated the Supreme Court. It was to consist of a Chief Justice and six Associate Justices. Besides its appellate functions noticed below, it was given the power to make rules of practice and evidence applicable to all the courts of the State, and also rules governing the administration of all courts. Under the 1942 proposal (this provision does not appear in the 1944 proposal), whenever the Supreme Court (a) should fail to hear a case within two months after an appeal was perfected, or (b) should fail to decide a case within two months after it had been

[1] New Jersey. Revised Constitution for the State Agreed upon by the 168th Legislature, 1944. Art. V ("Judicial") and Art. XI ("Schedule"), Sec. IV.

[2] Report of the Commission on Revision of the New Jersey Constitution, 1942. Art. V ("Judicial") and Art. XI ("Schedule"), Sec. IV.

[3] See Schedule A, *post.*

[4] For the other proposals, see William W. Evans, "Constitutional Court Reform in New Jersey," 7 Newark Univ. Law Rev. 1.

argued or submitted, the Chief Justice was obliged to certify that fact to the Governor; and the latter was given the authority thereupon to appoint at least five Justices of the Superior Court, to sit as a special term and exercise concurrently the jurisdiction of the Supreme Court until the delay was cured.

2. *Appellate Divisions.* Two or more Appellate Divisions were established in the Superior Court, as prescribed by rule of the Supreme Court, each Appellate Division to consist of three Justices. Appeals to an Appellate Division were to be taken from the trial Sections of the Superior Court, as designated by rules of the Supreme Court. By setting up at least two Appellate Divisions, the proposal envisaged at least one Appellate Division to hear appeals from each of the two Sections of the Superior Court. Appeals from the inferior courts were to be heard by an Appellate Division or in one of the Sections of the Superior Courts, as provided by law.

3. *Further as to Appeals.* The Supreme Court and the Appellate Divisions were given authority to set aside judgments, wholly or in part, where the finding of fact was against the weight of the evidence or the verdict excessive or inadequate. Moreover they were authorized to exercise such original jurisdiction as might be incident to the complete determination of the controversy and (under the 1944 proposal) to enter final judgment on a reversal, unless the ends of justice or the right of trial by jury required a new trial. Appeals to the Supreme Court from any court were to be taken only:

(1) in capital cases and cases involving a constitutional question;

(2) in the event of a dissent in an Appellate Division;

(3) on certification by an Appellate Division; or

(4) on certification by the Supreme Court to the Appellate Division or any inferior court of the State.

Prerogative writs were made returnable in an Appellate Division or before a single Justice, which Division or Justice was required to determine, in such manner as the rules of the Supreme Court might prescribe and without a jury, questions of fact arising therein. If the hearing was before a single Justice, his determination, both as to law and fact, was reviewable by an Appellate Division.

4. *The Superior Court.* The Superior Court, sitting in each county, was given original general jurisdiction throughout the State in all cases; and each Justice thereof was given authority to exercise the full powers of the court, subject to rules of the Supreme Court. Under the 1942 draft, the court was to consist of not less than 25 Justices and under the 1944 draft of not less than 27 Justices. In effect, the business of the Superior Court was to embrace that now attended to by the Court of Chancery; the law courts, namely, Common Pleas Courts, Circuit Courts and the Supreme Court Cir-

cuit; the contentious business of the probate courts, namely, the Orphans' Court and the Prerogative Court; and the criminal courts, namely, the Courts of Quarter Sessions, Special Sessions and Oyer and Terminer. The Superior Court was to be divided into

(1) a Law Section to exercise civil and criminal jurisdiction at law; and matrimonial jurisdiction and jurisdiction over the allowance of alimony and maintenance and the custody of children, without jury trial; and

(2) an Equity and Probate Section to exercise all other jurisdiction of the court.

Either Section, however, was required to exercise the jurisdiction of the other Section when the ends of justice required it.

5. *Inferior Courts.* Inferior courts could be established, altered and abolished by law, and, if provided by law, integrated with the Superior Court. A Justice of the Superior Court was given authority to exercise the powers of a Judge of any court established by law in the county or counties to which he might be assigned, and moreover to hold any such court with like jurisdiction, as a Judge thereof.

6. *Judges.* Under the 1942 and 1944 proposals the Governor, with the advice and consent of the Senate, was to appoint the Chief Justice and Associate Justices of the Supreme Court, and the Justices of the Superior Court. Under the 1942 proposal he was in like manner to appoint the Judges of any inferior court with jurisdiction extending to more than one municipality; and there was to be provided by law a uniform method of appointing all other Judges. Under the 1944 proposal the Governor was to appoint, with the advice and consent of the Senate, the Judges of all inferior courts, except those Judges elected in, or appointed by the governing body of, any county or municipality when so provided by law. Under the 1944 proposal there was to be at least one Resident Justice of the Superior Court for each county who must be resident in the county, assigned to the Law Section in the county and assignable elsewhere only if his duties in the county should not require his presence there. Except as provided with respect to the Resident Justices, it was incumbent upon the Chief Justice of the Supreme Court to assign the Justices of the Superior Court to counties, Sections and Parts, when they were first appointed to the court and annually thereafter.

Under the 1942 proposal, all Judges in the State were removable for lack of good behavior. The issue of good behavior, with respect to the Justices of the Supreme Court, was triable by the Senate and, with respect to all inferior court Judges, it was triable by the Supreme Court. Under the 1944 proposal the Justices of the Supreme and Superior Courts were liable to impeachment for misconduct in office under provisions much like those in the 1844 Con-

stitution, except that a conviction in the Senate could be had on the vote of a majority of all the members of the Senate (the 1844 Constitution requires a vote of two-thirds of all the Senators). Under the 1942 proposal, the Governor could, on request of the Chief Justice, nominate and appoint special Judges, by and with the advice and consent of the Senate, for temporary service not exceeding one year whenever and so long as any court failed to hear any case within two months after notice of trial was filed or an appeal perfected; or failed to decide any case within two months after it has been argued and submitted.

7. *Administration.* The Chief Justice of the Supreme Court was constituted the administrative head of all the courts of the State; he was directed to supervise their work and annually to report thereon to the Governor and Legislature. He was to appoint an executive director whose duty it was to

(1) assist the Chief Justice in all matters related to the administration, finance and personnel of the courts;

(2) publish a statistical record of the judicial services of all courts and judiciary and of the cost thereof;

(3) prescribe records, reports and audits for the inferior courts;

(4) have such other duties as might be delegated by the Chief Justice.

The 1909 Amendments to the Judicial Article

Under the 1909 proposal the following courts were to be established by the Constitution (aside from a court for the trial of impeachments): (1) a Supreme Court, consisting of three divisions, an Appeals Division, a Law Division and a Chancery Division; (2) County Courts sitting in each county; and (3) such other courts, inferior to the Supreme Court, as might be established by law, which inferior courts could be altered or abolished by law.

1. *Appeals Division of the Supreme Court.* The Appeals Division of the Supreme Court was constituted the highest bench of the State. It consisted of a Chief Justice and six other Justices. Four Justices constituted a quorum (whereas under the 1942 and 1944 proposals five Justices were necessary to constitute a quorum). To the Appeals Division was granted the appellate jurisdiction possessed by the Court of Errors and Appeals, the Supreme Court and the Prerogative Court, together with such further appellate jurisdiction as might be conferred upon it by law, and also such original jurisdiction as might be incident to the complete determination of any cause before it, saving however the right of trial by jury. Should the number of causes before the Appeals Division not be heard and determined promptly, the Governor, if authorized by statute, was required to assign temporarily five Justices of the

Law and Chancery Divisions to sit in the Appeals Division, which thereupon was required to sit in two Divisions.

2. *The Law Division and the Chancery Division.* The business of the Law Division of the new Supreme Court embraced the original jurisdiction of the present Supreme Court and the Circuit Courts, and such further original jurisdiction not of an equitable nature and such further appellate jurisdiction from inferior courts, as might be conferred by statute. The business of the Chancery Division embraced the jurisdiction of the Prerogative Court, the Court of Chancery and such further original equity and probate jurisdiction as might be conferred by statute. Neither the presiding Justice of the Law Division, styled the President Justice thereof, nor the presiding Justice of the Chancery Division, styled the Chancellor, sat on the Appeals Bench. The Supreme Court was authorized to provide by rule of court for the transfer of any cause from one Division to the other or from the County Court to either Division, and for the giving of complete legal and equitable relief in any cause in the court or division where it was pending.

3. *County Courts.* The County Courts were made constitutional courts which could not be altered or abolished by the Legislature. To them was granted the jurisdiction exercised by the Courts of Common Pleas, Orphans' Courts, Oyer and Terminer and Quarter Sessions. The final judgment of a County Court was appealable to the Appeals Division.

4. *Judges.* The Chief Justice of the Supreme Court, the President Justice of the Law Division, the Chancellor and the Associate Justices of the Supreme Court were to be nominated and appointed by the Governor with the advice and consent of the Senate. The Governor was to assign to the Appeals Division the six Justices who, with the Chief Justice of the Supreme Court, made up that bench. The entire Supreme Court was to assign the remaining Justices to the Law or Chancery Division, as the business of the court might require. Any judge of any of the courts of the State might, by a two-thirds vote of the Legislature, be removed for disability continuing for one year or for refusal to perform the duties of his office.

5. *Administration.* The 1909 proposal contained no express provisions as to the administration of the courts, worthy of notice here.

Schedule A

AMENDMENTS TO THE JUDICIAL ARTICLE PROPOSED IN 1909

(See Laws 1909, p. 378)

Change section I of Article VI so as to read as follows:

SECTION I

The judicial power shall be vested in a court for the trial of impeachments, a Supreme Court, County Courts, and such other courts, inferior to the Supreme Court, as may be established by law, which inferior courts the Legislature may alter or abolish as the public good shall require.

Strike out all of Sections II, IV, V, VI and VII of Article VI, change the number of Section III of Article VI to Section II, and insert the following sections in Article VI:

SECTION III

Any judge of any of the courts of the State may be removed for disability continuing for one year, or for refusal to perform the duties of his office, by a vote of two-thirds of all the members of the Senate and of two-thirds of all the members of the House of Assembly voting separately, after a hearing before both Houses in joint session.

SECTION IV

1. The Supreme Court shall be organized in three divisions, namely, the Appeals Division, the Law Division and the Chancery Division. It shall consist of a Presiding Justice of the Appeals Division who shall be styled the Chief Justice, a Presiding Justice of the Law Division, who shall be styled the President Justice, and a Presiding Justice of the Chancery Division, who shall be styled the Chancellor, and eighteen Associate Justices, which number may be increased by law.

2. The Appeals Division shall consist of the Chief Justice, and six other Justices of the Supreme Court to be assigned by the Governor. A Justice of the Supreme Court assigned by the Governor to the Appeals Division shall serve in said division until the end of his term.

The remaining Justices shall be assigned by the Supreme Court to the Law or Chancery Division, as the business of the Court may require.

3. Whenever the number of causes before the Appeals Division shall be so great that the Division cannot promptly hear and determine them, the Governor shall, when authorized by statute, temporarily assign five of the justices of the other divisions to sit in the Appeals Division, which shall thereupon sit in two divisions for the hearing and decision of causes pending at the time of such assignment.

4. Four justices shall be necessary to constitute a quorum on the final hearing of any cause in the Appeals Division, but the Supreme Court may provide by rule for the making of interlocutory orders by a lesser number of justices or by one justice; such orders to be subject to revision by the Appeals Division.

On the hearing of a cause in the Appeals Division, no justice who has given a judicial opinion in the cause in favor of or against the judgment, order or decree under review shall sit at the hearing to review such judgment, order or decree, but the reasons for such opinion shall be assigned to the Court in writing.

5. A majority of all the members of the Supreme Court, to be presided over by the Chief Justice, shall constitute a quorum for the assignment of justices, and for the appointment of officers, and the enactment of rules.

6. The Supreme Court shall appoint one or more reporters, not exceeding three, to report the decisions of the Court, and shall by rule define his or their duties and powers. The reporters shall hold office for five years, subject, however, to removal at the discretion of the Court.

SECTION V

1. The Appeals Division shall have and exercise the appellate jurisdiction heretofore possessed by the Court of Errors and Appeals, the jurisdiction heretofore possessed by the Supreme Court on writ of error, and the jurisdiction heretofore possessed by the Prerogative Court on appeal, and by the Ordinary on appeal, and such further appellate jurisdiction as may be conferred upon it by law, together with such original jurisdiction as may be incident to the complete determination of any cause on review, saving, however, the right of trial by jury.

2. The jurisdiction heretofore possessed by the Supreme Court and the Justices thereof not hereby conferred on the Appeals Division, and the jurisdiction heretofore possessed by the Circuit Courts and the judges thereof, and such further original jurisdiction not of an equitable nature, and such further appellate jurisdiction from inferior courts as may be conferred by statute, shall be exercised by the Law Division of the Supreme Court and by the several justices thereof, in accordance with rules of practice and procedure prescribed by statute, or in the absence of statute by the Supreme Court.

3. The jurisdiction heretofore possessed by the Prerogative Court and the Ordinary, not hereby conferred on the Appeals Division, and the jurisdiction heretofore possessed by the Court of Chancery and the Chancellor, and such further original equity jurisdiction as may be conferred by statute, and such further original jurisdiction as is now conferable on the Prerogative Court shall be exercised by the Chancery Division and by the Chancellor and the several justices of said division in accordance with rules of practice and procedure prescribed by statute, or, in the absence of statute, by the Supreme Court, but the justices of that division shall be under such control and supervision by the Chancellor as shall be provided by the Supreme Court.

4. Terms of the Supreme Court presided over by a single Justice of the Law Division for the trial of issues joined in or brought to the Law Division of the Supreme Court shall be held in the several counties at times fixed by the Supreme Court. Until so fixed, such trial terms shall be held at the places and times now fixed by law for the holding of the Courts of Common Pleas in the several counties.

5. The Supreme Court may provide by rule for the transfer of any cause or issue from the Law Division to the Chancery Division, or from the Chancery Division to the Law Division of the Supreme Court, and from the County Court to the Law Division or the Chancery Division of the Supreme Court, and for the giving of complete legal and equitable relief in any cause in the court or division where it may be pending.

6. Nothing herein contained shall prevent the alteration, by law, of any statutory power or jurisdiction conferred upon any court or judge since the adoption of the Constitution in the year one thousand eight hundred and forty-four, and nothing herein contained shall prevent the Legislature from conferring upon any inferior court which may hereafter be established such power or jurisdiction as was exercised by or which may now be conferred upon the inferior courts mentioned in section I of Article VI of the Constitution of 1844.

SECTION VI

The County Courts shall have and exercise, in all cases within the county such original common law jurisdiction concurrent with the Supreme Court, and such other jurisdiction heretofore exercised by courts inferior to the Supreme Court and the Prerogative Court as may be provided by law. The final judgments of the County Courts may be brought for review before the Supreme Court in the Appeals Division. Until otherwise provided, the jurisdiction heretofore exercised by the Courts of Common Pleas, Orphans' Courts, Courts of Oyer and Terminer, Courts of Quarter Sessions, or by the judges thereof, shall be exercised by the County Courts pursuant to rules prescribed by the Supreme Court. The justices of the Law Division of the Supreme Court shall be exofficio judges of the County Courts. All other jurisdiction or authority now vested in any court, judge or magistrate with jurisdiction inferior to the courts in this section mentioned, and not superseded by this article, shall continue to be exercised by such court, judge or magistrate until the Legislature shall otherwise provide.

SECTION VII

This amendment to the Constitution shall not cause the abatement of any suit or proceeding pending when it takes effect. The Supreme Court shall make such general and special rules and orders as may be necessary for the transfer of all suits and proceedings to

the appropriate division or court created by this amendment. Matters pending when this amendment takes effect shall be decided by the judge or judges to whom they were submitted, and the order, judgment or decree made or advised by said judge shall be entered as that of the division or court to which the suit or proceeding shall have been transferred.

Strike out paragraphs 1, 2, 5 and 8 of section II of Article VII; and substitute the following paragraphs in place of paragraphs 1 and 2, and change the numbers of the paragraphs following 5 to correspond:

1. The Chief Justice of the Supreme Court, the President Justice of the Law Division, the Chancellor and the Associate Justices of the Supreme Court shall be nominated by the Governor and appointed by him, with the advice and consent of the Senate. They shall not be less than thirty-five years of age, and shall have been practicing attorneys in the State for at least ten years. They shall hold office for the term of seven years; shall, at stated times, receive for their services a compensation which shall not be diminished during their term of office, and they shall hold no other office under the government of the State, or of the United States, and shall not engage in the practice of law during their term of office. The Chancellor and the Chief Justice of the Supreme Court, and the Vice-Chancellors and Associate Justices of the Supreme Court, in office when this amendment takes effect, shall be Justices of the Supreme Court until the expiration of their respective terms.

The Circuit Court Judges in office when this amendment takes effect shall be continued in office with the powers of the Justices of the Supreme Court at the circuit until the expiration of their respective terms. They may hold the County Courts, subject to assignment by the Law Division of the Supreme Court.

2. The Governor, by and with the advice and consent of the Senate, shall appoint one judge of the County Court in each county, and such additional County Judge or Judges in any county as may be authorized by law. The County Judges may hold court in any county subject to the control of the Supreme Court. The County Judges shall not be less than thirty years of age, and shall have been practicing attorneys in this State for at least five years. They shall hold office for the term of five years; shall at stated times receive for their services such compensation, which shall not be diminished during their term of office, as the Legislature in its discretion shall fix for each county, and they shall hold no other office under the government of the State or of the United States, and shall not engage in practice of the law in the courts of the county where they hold court during their term of office. The judges of the Common Pleas in office when this amendment takes effect shall be

the judges of the County Courts until the expiration of their present terms.

3. This amendment shall take effect on the first Monday in February, in the year next following its adoption by the people.

4. The Legislature shall pass all laws necessary to carry into effect the provisions of the constitution and this amendment thereof.

CHANCERY IN A UNIFIED COURT SYSTEM

by

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New Jersey, Delaware, and Tennessee are the only states with separate Courts of Chancery. The wave of court reform which started in the 19th Century and resulted in the adoption of the English Judicature Act of 1873 also brought about the abolition of most separate chancery systems in our country. Illinois, the last great stronghold, fell in 1942.

Why is it that England and most of our states have abandoned chancery as a separate system in favor of a unified court? To understand the problem, a brief history of our Court of Chancery and its jurisdiction is essential.

Jurisdiction of Chancery

Our Court of Chancery administers a branch of jurisprudence known as "Equity," and grants certain relief known as "equitable remedies." Its jurisdiction is sometimes classified into three categories: (1) the exclusive, (2) the concurrent, and (3) the auxiliary. The first category includes the administration of trusts, and the remedies of injunction, specific performance of certain types of contracts, removal of clouds on titles, reformation of contracts, cancellation of documents, etc. The second class includes foreclosure of mortgages, accounting, and relief in cases of fraud. In the latter two instances, Chancery usually remains passive unless special circumstances are present and the remedy at law is inadequate. The third category includes a group of miscellaneous remedies designed to assist and render more effective the processes and judgments of the law courts, such as bills for discovery in aid of actions or unsatisfied judgments at law, injunctions to restrain transfers of stock in aid of attachments and execution, and the like. In addition, the court possesses sundry statutory jurisdictions, such as the winding up of insolvent corporations, dissolution of partnerships, construction of wills, etc.

The above sketchy outline of the jurisdiction of Chancery is not intended to be either complete or exact, but is stated merely by way of illustration to distinguish Chancery's jurisdiction from the jurisdictions of the law courts which give damages for tort or breach of contract, or award possession of real or personal property, or administer decedents' estates, or enforce the criminal laws of the State.

The origin of our Court of Chancery and the development of its

jurisdiction are rooted in English history. For present purposes, however, it is sufficient to say that we have had a Court of Chancery in New Jersey since 1705 when New Jersey was a British Colony; and, as may be expected, its inherent jurisdiction and much of its procedure is derived from the old English High Court of Chancery.[1]

By our first State Constitution, July 2, 1776, the Governor or, in his absence, the Vice-President of the Council, was the Chancellor of the Colony, and he so continued until the Constitution of 1844.[2] The Constitution of 1844 provided that the Court of Chancery shall consist of the Chancellor,[3] who shall be appointed by the Governor by and with the consent of the Senate, for a term of seven years.[4]

In the early days of our State the business of the Court of Chancery was not great. It could, therefore, be handled by the Chancellor alone. By 1870, the business of the court had outgrown the ability of the Chancellor alone to conduct it, and it became necessary to devise some means whereby relief could be afforded. There was no power given by the Constitution to create additional judges in Chancery who could be independent, like the Associate Justices of the Supreme Court. The Chancellor in office at the time consulted with leading judges and lawyers and evolved the idea of appointing a Vice-Chancellor; and following that plan the Legislature made provision for creating the first Vice-Chancellor.[5] The number of Vice-Chancellors has been increased from time to time; there are now ten Vice-Chancellors sitting in different parts of the State. The business of the Court is divided among the Vice-Chan- received by the court. They hold office at the pleasure of the Chancellor.

For many years contested matrimonial cases were heard by the Vice-Chancellors, and the uncontested cases were referred to Special Masters of the court. But in 1933 the Chancellor appointed a group of 12 standing Advisory Masters who now handle all matrimonial litigation.[6] These Advisory Masters are paid out of the fees received by the court. They hold office at the pleasure of the Chancellor.

No matter what officer of the Court of Chancery handles a given matter, everything he does is done in the name of the Chancellor, and no decree has any validity unless the Chancellor's signature is endorsed thereon. Since the Chancellor appoints his officers, they are answerable to him only.

Criticisms of the Court of Chancery As Now Constituted

The criticisms of the Court of Chancery as now constituted have

[1] *West* v *Paige*, 9 N. J. Eq. 203 (1852); *Southern Nat'l Bank* v *Darling*, 49 N. J. Eq. 398 (1892); *Fraser* v *Fraser*, 77 N. J. Eq. 205 (1910).
[2] First Constitution of New Jersey (1776), Sec. VIII.
[3] N. J. Constitution (1844), Art. VI, sec. IV, par. 1.
[4] N. J. Constitution (1844), Art. VII, sec. II, par. 1.
[5] *In re Vice-Chancellors*, 105 N. J. Eq. 759 (1930).
[6] And see P. L. 1941, c. 307; R. S. 2:2-14.

been of two kinds: (1) objections to the Chancellor's sole appointing power of Vice-Chancellors, and to the fact that the Vice-Chancellors are not independent judges, as are the Justices of our Supreme Court; and (2) objections to the court as a separate judicial system.

The objections first noted are of a political nature and the *pros* and *cons* are obvious. The objections secondly noted require some discussion. During the last 100 years there has been a strong movement in the United States and in England to bring about a fusion of procedure in law and equity. In 1848 New York adopted a Code of Civil Procedure which resulted in the abolition of the separate procedures of law and equity, and their fusion into a single action.

By the Judicature Act of 1873, the historically independent English common law courts and Court of Chancery were merged into one Supreme Court. All the old English courts were abolished. At the head of the new tribunal was placed the Lord Chancellor, the next in rank to him being the Chief Justice. Provision was made for the establishment of a uniform system of pleading and procedure for the various branches into which the new tribunal should be divided. It was also provided that wherever the rules of common law and of Chancery should conflict, the rules of the latter—equity—should prevail.

The new tribunal was authorized to subdivide itself into several divisions for the transaction of the various classes of business. It now consists of the Chancery Division, the King's Bench (common law) Division, and the Probate, Divorce and Admiralty Division—the old familiar names being used to designate the various branches of the tribunal.

Similar mergers have taken place in most of the states of our nation. Such a consolidation exists in the federal courts.

The 1942 Commission on Revision of the New Jersey Constitution recommended a unified court system. The revised Constitution proposed by the Commission provided for a Superior Court, immediately below the Supreme Court (the court of last resort), possessing original jurisdiction throughout the State in all cases. The Superior Court was to be divided into: (a) a law section, to exercise civil, criminal and matrimonial jurisdiction, and (b) an equity and probate section, to exercise all other jurisdiction of the court.[7] In all matters presenting a conflict or variance between equity and law, equity was to prevail and, subject to rules of the Supreme Court, every controversy was to be fully determined by the justice hearing it.[8] Commenting upon these provisions, the Commission noted that a merger of law and equity had long since taken place in practically every state and in the federal system, and expressed its

[7] Report of the Commission on Revision of the New Jersey Constitution, 1942, p. 47, Art. V, sec. III, par. 2.
[8] *Ibid*, p. 46, Art. V, sec. I, par. 2.

considered judgment that a like merger in New Jersey "would tend to bring our practice in line with that of the Federal Courts and other American jurisdictions." [9]

The revised Constitution agreed upon by the 168th Legislature of New Jersey in 1944 for submission to the electorate, also provided for a unified court system and contained provisions like those cited from the 1942 draft. The 1944 draft also provided that either section of the Superior Court was to exercise the jurisdiction of the other when the ends of justice so required.[10]

Briefly, the principal argument of the opponents of a unified court is that the separate court system results in the evolution of better law and equity, in the training of better judges, and in specialization,—all of which brings about a better administration of justice.

The proponents of unification argue that our equity jurisprudence and the specialization of the judges need not be sacrificed by a fusion, particularly if we adopt a plan like the English system, of having Chancery as a special division in a unified court, with a permanent personnel administering equity. They further contend that the present system results in delay, piecemeal litigation, jurisdictional disputes, duplication of effort and expense, and the shunting of cases from court to court until the parties are exhausted; and that sometimes the rights of the parties are lost in the shuffle. They also declare that even experienced lawyers have difficulty, at times, in determining the proper forum; and that the maintenance of separate courts of law and equity has stunted the development of miscellaneous remedies such as proceedings under the Declaratory Judgment Act and the Uniform Fraudulent Conveyance Act, and has also handicapped the law courts in the effective enforcement of their own processes.[11]

The Role of Equity in a Unified Court

The proponents of unification argue that if we have a unified court modeled on the modern English system, many of the deficiencies of our present Chancery set-up will be eliminated, and yet the prestige of our equity law will be preserved.

Under a consolidated system, the traditional equitable remedies involved in the administration of trusts, abatement of nuisances, actions for injunctions, foreclosure of mortgages, specific performance, receiverships, etc., will be handled by the Chancery Division. But ordinary equitable defenses arising incidentally in common law

[9] *Ibid*, p. 23.
[10] Art. V, sec. III, pars. 2 and 3, and sec. I, par. 2.
[11] See generally, Clapp, Alfred C., "Chancery as a Section of a Unified Court," 64 N. J. L. J. 336, 355. For proponents who appeared before the 1942 Joint Legislative Committee which considered the Report of the Commission on Revision of the New Jersey Constitution, see Record of Proceedings before the Joint Committee, 1942, pp. 283-5, 289, 296, 559-60, 592; for other views, see pp. 591, 593, 599, 603, 604-5, 607-8.

actions will be adjudicated by the trial judge sitting in the role of Chancellor.

Examples are cited to illustrate the merits and efficiency of such system:

1. A is in possession of a factory under an agreement to obtain a lease. The landlord brings an action in ejectment against A because of an alleged breach of the agreement. Under the present system A is compelled to file suit in Chancery for specific performance of the contract to give him a lease. He cannot defend at law on the ground that he is in possession under an agreement to give a lease. Under a unified system, the trial judge would view the situation in the light of equitable principles and treat A as the tenant under the lease.

2. A has a claim against a decedent's estate. The executor carries on settlement negotiations with A until the statute of limitations runs, and then disallows the claim. In an action on the claim the executor pleads the statute of limitations. Under the present system A is compelled to bring suit in Chancery to restrain this defense. But under a unified court the trial judge could relieve the plaintiff of this defense on the ground of equitable estoppel.

3. In an action at law A obtains a judgment against B and wants to levy on stock in a New Jersey corporation which B owns and has concealed. To make the levy effective A must presently obtain an injunction from Chancery restraining B's transfer of his stock. Under a unified court the trial judge could issue such a restraint in aid of the execution.

4. A brings an action against C to recover on a bond signed by B and C. C wishes to defend on the ground that he was not a principal, that he signed as a surety for B, to A's knowledge, and that B was discharged by A; hence C was likewise discharged. Under the present system the law court has no jurisdiction to entertain such a defense. C must therefore sue in Chancery where he can prove that he was a surety and not a principal. Under a unified court that defense could be entertained by the trial judge.

5. A brings an action to abate a nuisance against B. Under the present system Chancery can only grant an injunction. It cannot award damages. That remedy must be sought at law. Under a unified system the court could award the damages as part of complainant's relief.

Those who have studied the operations of the present legal system declare that these illustrations can be multiplied many times over. The unified court proposed under both the 1942 and 1944 revised drafts of the Constitution would eliminate the patent deficiencies of our present procedure and at the same time preserve our equity jurisprudence free of its present handicaps.

LAW COURTS IN A UNIFIED JUDICIAL SYSTEM

by

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For many years it has been recognized by those who have studied the New Jersey court system that there is no sound reason for maintaining three separate courts where actions at law may be commenced and tried. Various changes have been suggested and some of the suggestions have been submitted to the people of the State in the form of amendments to the present Constitution, but they have all failed of adoption.[1] It it the purpose of this monograph briefly to summarize the major proposals suggested over the past 75 years or more.

Agitation for court reform began soon after the adoption of the present Constitution a century ago. In 1885, two plans for court reform were introduced by joint resolution to the General Assembly. One of these provided for a court of 12 judges in three divisions, the first being for common law cases and jury trials. It died in the Legislature. Amendments to the Judicial Article proposed by a commission appointed in 1894 were not adopted. In 1895 the Senate Judiciary Committee proposed a plan which, among other things, would have permitted the Legislature to divide the Supreme Court into divisions and confer on each the jurisdiction of the court as established. Nothing came of this.

In the following year the Legislature tried its hand at reform of the county courts. It passed an act abolishing the inferior Courts of Common Pleas, Oyer and Terminer and Jail Delivery, and Quarter Sessions in the several counties, and instead established a County Court having jurisdiction over all crimes, misdemeanors and offenses of an indictable nature. The Supreme Court struck down the legislation as unconstitutional in *Schalk* v *Wrightson,* 58 N. J. Law 50, because the act provided for the election of county judges, whereas the Constitution required them to be appointed by the Governor with the advice and consent of the Senate.

Amendments were proposed in the Legislature of 1896 which would have abolished the Court of Chancery and set up a single court of three divisions—Chancery, Law and Appellate. Hearings were held at which lawyers attacked the plan, arguing in favor of a separate court of appeals. The Senate then appointed a com-

[1] For a history of attempts at court reform in New Jersey by constitutional amendment down to 1941, see William W. Evans, "Constitutional Court Reform in New Jersey," 7 Univ. of Newark Law Rev. 1-41 (Dec., 1941).

mittee of lawyers to see if they could agree upon a set of amendments. The committee consisted of outstanding members of the Bar of New Jersey, and after a week of study and discussion it brought in a report recommending an independent Court of Appeals. The Supreme Court would be continued and would consist of a chief justice and six associate justices. The other courts would remain substantially the same, but the Circuit Courts were to be held by the justices of the Supreme Court and not by judges appointed for that purpose. One member dissented; he was against an independent appeals court and proposed a Supreme Court divided into common law, equity and appellate divisions.

Despite all this agitation for court reform, the century closed without any structural change being made in the judicial system. However, in 1900 the New Jersey State Bar Association adopted a court plan which later ripened into an amendment that was submitted to and rejected by the voters in 1903. It provided for a Court of Errors and Appeals, a Court of Chancery and, with respect to actions at law, the following: [2]

"The Supreme Court

1. The Supreme Court shall consist of a chief justice and four associate justices. The number of associate justices may be increased or decreased by law, but shall never be less than two. The court may sit in divisions at the same or different times and places.

Common Pleas

The Court of Common Pleas shall be constituted and held in each county in such a manner as may be provided by law."

These amendments were defeated at a special election held in September, 1903, on a very light vote.

In 1909, another amendment was submitted to and rejected by the people of the State. This amendment was based upon the recommendations contained in a report made by the commissioners on the revision of the judiciary, in 1906. It eliminated all the constitutional courts except the court of impeachment and provided for the establishment of a Supreme Court in three divisions, one of which was to be known as the Law Division headed by the presiding justice. In place of the Circuit Courts and the Courts of Common Pleas there were established County Courts with original jurisdiction in common law actions concurrent with the Supreme Court, and such other jurisdiction theretofore exercised by courts inferior to the Supreme Court and Prerogative Court as might be established by law.[3]

From 1909 until 1941 various plans were suggested by different individuals and organizations, but none of them was ever sub-

[2] *Ibid*, pp. 11-12.
[3] For details of the amendment, see Evans, *op. cit.*, pp. 10-17.

mitted to the voters of the State. Among these various proposals were: (1) the report by the committee on court reform of the New Jersey State Bar Association in 1926, after interest in court reform had been revived by an address made by Governor George S. Silzer before the Association in 1925, and (2) the recommendations of the Judicial Council in 1932 in its annual report to the Legislature.

With respect to actions at law, the 1926 report recommended an amendment that would provide, among other things, for:

> "(4) A Supreme Court of three divisions with all the jurisdiction throughout the State now possessed by the New Jersey Supreme Court, the Court of Chancery, the Circuit Courts, and at common law by the Court of Common Pleas, said Court to be divided into three divisions as follows:
>
> (a) An Appellate Division, consisting of one or more departments * * *
>
> (b) A Law Division with original jurisdiction in all actions at law now possessed by the Supreme Court, Circuit Courts and the Courts of Common Pleas. * * *
>
> (5) In each county there should be provided two courts:
>
> (a) County Courts having jurisdiction in all probate, workmen's compensation and criminal causes, with appeals to County Courts from Police Courts, Small Cause Courts and from decisions of the Workmen's Compensation Aid Bureau, and from such inferior tribunals as the Legislature may from time to time establish;
>
> (b) District Courts having jurisdiction throughout the given county only. * * *"

The Bar committee in its report said: [4]

> "The system now in effect is not adequate for present day conditions. There is no sound reason why there should be three courts, the Supreme Court, Circuit Court and Common Pleas Court, each having practically the same original jurisdiction in action at law. . . ."

The 1926 Legislature adopted six proposed constitutional amendments, one providing for a reorganization of the state judiciary with a new Court of Appeals and a new Court of Pardons. However, this amendment was not submitted to the people in 1927.[5]

The 1932 recommendations of the Judicial Council—which was established by act of the Legislature in 1930, to make a continuous study of the organization and relation of the various courts of the State, counties and municipalities, report to the Governor thereon and cooperate with the Legislature in drafting bills regarding the courts and their practice—were as follows: [6]

> "Section I.
>
> 1. The judicial power shall be vested in a court of appeals; a supreme court; a court of chancery; a circuit court; a court for the trial of impeachments; and, except as herein otherwise provided, such inferior courts as now exist, and as may be hereafter ordained and established by law, which inferior courts the legislature may alter or abolish as the public good shall require. * * *

[4] 49 *N. J. Law Journal* 200.

[5] Despite the defeat of the judiciary amendment, the interest of the State Bar Association continued unabated. See the address of James D. Carpenter, member of the Committee on Reorganization of New Jersey's Judicial System acting for the State Bar Association, before the December, 1929 meeting of the Union County Bar Association, 53 *N. J. Law Journal* 9-14.

[6] For text see 15 *N. J. Law Journal* 231, summarized in Evans, *op. cit.*, pp. 30-35.

Section V.

1. The circuit court shall possess the original jurisdiction in actions at law *inter partes* not involving prerogative writs heretofore vested in the supreme court, and the jurisdiction heretofore vested in the several circuit courts. * * *

Section VII.

1. There shall be a county court in each county, which shall possess all the jurisdiction heretofore vested in the court of common pleas, orphans' court, court of oyer and terminer, court of quarter sessions, and court of special sessions. The judges of the county courts shall possess all the powers heretofore vested in the judges of the court of common pleas, orphans' court, court of oyer and terminer, court of quarter sessions, and court of special sessions. Each judge of the county court may exercise the jurisdiction of that court. The county court and the powers of the judges thereof may be altered or abolished by the legislature as the public good may require."

These suggested amendments failed to go through the Legislature and therefore never came to a referendum vote.

In his inaugural address on January 21, 1941, Governor Charles Edison stressed the need of court reform,[7] a subject to which he came back again and again in his subsequent addresses on the subject of constitutional revision.[8]

Popular interest was such that by joint resolution the 1941 Legislature created a Commission on Revision of the New Jersey Constitution which, after long and thorough study, brought in a report in May, 1942. The revised Constitution proposed by it in that report made the following provisions with regard to courts having jurisdiction over law actions (Art. V). The most essential are indicated:

"Section I: Judicial Power

1. The judicial power shall be vested in a Supreme Court and a Superior Court, and in inferior courts of original jurisdiction which may from time to time be established, altered and abolished by law. Such inferior courts may be integrated with the Superior Court in any manner and to any extent, not inconsistent with this constitution, as may be provided by law. * * *

Section III: Superior Court

1. The Superior Court shall consist of such number of justices as may be authorized by law, but not less than twenty-five, each of whom may exercise the powers of the court, subject to rules of the Supreme Court. The Superior Court shall have original general jurisdiction throughout the State in all cases.

2. The Superior Court shall be divided into a law section, to exercise civil, criminal, and matrimonial jurisdiction, and an equity and probate section, to exercise all other jurisdiction of the court, each section having such parts as may be provided by rules of the Supreme Court.

3. Any justice of the Superior Court may grant prerogative writs, returnable in an appellate division which shall otherwise have original jurisdiction relating thereto, and shall determine in such manner as the rules of the Supreme Court may prescribe, and without a jury, questions of fact arising therein; or the hearing may be in the first instance before a single justice, whose decision, both as to law and fact, shall be reviewable by the appellate division. * * *

Section V: Judicial Officers

6. A justice of the Superior Court may exercise the powers of a judge

[7] Minutes of the House of Assembly, 1941, p. 50.

[8] See, for example, his "Speeches on the Constitution of New Jersey," 1943, pp. 23-27, and "A New Constitution for New Jersey, Addresses . . . 1941-1944," 1944.

> of any court established by law in the county or counties to which he may be assigned, and may hold any such court with like jurisdiction, powers and duties as a judge thereof. * * *"[9]

The arguments on the proposed Judiciary Article advanced at the hearings held by a Joint Legislative Committee which sat through the summer of 1942 to ascertain the sentiment of the people of New Jersey as to change in the Constitution, were long and varied. There were strong proponents for the unification plan, a few equally strong in opposing it, and some who asked for modification of the Article in one respect or another. After a review of the reported testimony,[10] it seems quite clear that the balance of the argument was very definitely in favor of court reform. A great deal of the argument was addressed to the very question of improving the structure and procedure of the law courts, and the solution was found in the unification plan advanced by the Commission.

Nothing came of the Commission report for the time being, the Legislature being of the opinion that the question of revision should not then be put to the electorate. Governor Edison led those pressing for revision, and when his term was at an end, Governor Walter E. Edge took up the campaign with undiminished vigor. He made the question the outstanding subject of his inaugural address of January 18, 1944. Among the basic principles relating to revision, he said, was: [11]

> "*First, to reorganize the judiciary*: This requires, in my thinking, the establishment of a unified court structure to consist of a Supreme Court of seven judges with appellate jurisdiction only; and a Superior Court, consisting of at least one justice appointed from, resident in, and sitting in each county—with State-wide original jurisdiction in all civil and criminal cases; having Appellate Divisions to hear appeals in all cases as a matter of right. * * *"

An unofficial committee had already been working on a draft Constitution, and the program for revision was formalized by the appointment of a Joint Legislative Committee, constituted under Senate Concurrent Resolution No. 1, adopted January 11, 1944. It drew up a proposed revised Constitution and at once proceeded to hold hearings thereon (February 1, 2, 3, 9 and 15, 1944). The result was the revised Constitution submitted to the voters on November 7, 1944, which was rejected. Article V of that Constitution dealt with the judiciary.[12] It abolished the present Supreme

[9] Report of the Commission on Revision of the New Jersey Constitution, 1942, pp. 46-49. And see the Committee's Summary and Explanation, pp. 22-25, relating to the proposed Judicial Article.

[10] Record of Proceedings before the Joint Legislative Committee . . . , 1942. See appropriate headings in Index to Record of Proceedings prepared for the Governor's Committee on Preparatory Research for the New Jersey Constitution Convention, for reference to the various phases of the argument.

[11] Journal of the Senate, 1944, p. 52.

[12] *Cf.*, the proposed frame of a modern, unified court system given by Roscoe Pound, former Dean of the Harvard Law School, in his address, "Organization of the Courts," given before the N. J. Bar Association at its annual meeting in 1941, reprinted in 64 *N. J. Law Journal* 293, and again in 70 *N. J. Law Journal* 125. See, also, the well considered plan proposed by Alfred C. Clapp in "Constitutional Provisions for a Unified New Jersey Court System," 64 *N. J. Law Journal* 565. Both of these articles received prominent consideration in connection with the 1942 draft Constitution and those who appeared at the 1942 hearings on the Hendrickson Commission Report.

Court, Circuit Court and Court of Common Pleas, all three of which now have practically concurrent jurisdiction over common law actions, and substituted in their place a Superior Court with original general jurisdiction throughout the State in all cases. The essential provisions of the 1944 proposed Constitution with respect to courts having jurisdiction over actions at law were:

"Section I

1. The judicial power shall be vested in a Supreme Court and in a Superior Court and in inferior courts of original limited jurisdiction, which inferior courts may from time to time be established, altered and abolished by law. Such inferior courts may be integrated with the Superior Court in any manner and to any extent, not inconsistent with this Constitution, as may be provided by law. * * *

Section III

1. The Superior Court shall consist of such number of justices as may be authorized by law, but not less than twenty-seven, each of whom may exercise the original jurisdiction of the court subject to rules of the Supreme Court. There shall be at least one Resident Justice of the Superior Court for each county who shall be appointed from the residents of the county and who shall reside in, and shall annually be assigned by the Chief Justice to sit in the law section of the Superior Court in said county, but who shall be subject to assignment, from time to time, to sit without the county, only, if and when his duties within the county shall not require his presence there.

2. The Superior Court shall have original general jurisdiction throughout the State in all cases.

3. The Superior Court shall be divided into

(1) a law section, to exercise civil and criminal jurisdiction at law; and matrimonial jurisdiction and jurisdiction in cases involving the allowance of alimony and maintenance and the custody of children, without jury trial; and

(2) an equity and probate section, to exercise all other jurisdiction of the court,

but either section shall exercise the jurisdiction of the other when the ends of justice so require. Each section of the Superior Court shall have such parts as may be provided by rules of the Supreme Court. * * *

Section V

7. A Justice of the Superior Court may exercise the powers of a judge of any court established by law in the county or counties to which he may be assigned and may hold any such court with like jurisdiction, powers and duties as a judge therein."

The latest proposal for judicial reorganization is that advanced in the recent report of the Special Committee of the Essex County Bar Association Concerning Constitutional Revision of the Judicial Article.[13] It recommends the creation of a single state-wide court, called the Supreme Court, with original jurisdiction over actions at law. The proposal is substantially that of the 1944 revision set forth above. With reference to this recommendation the committee report says:

"Most proposals for constitutional revision of New Jersey's judicial structure contemplate merger of the law courts into a single tribunal of statewide jurisdiction. In its several branches, the court thus constituted would try cases and also serve as an appellate tribunal for certain of its

[13] Reprinted in *N. J. Law Journal* for June 5, 1947.

own determinations as well as all decisions of any inferior courts and administrative agencies created by the legislature.

In criminal matters, the new court would hear all cases now brought in the Courts of Special Sessions, Quarter Sessions, Oyer and Terminer and Supreme Court. Civil actions now commenced in the Courts of Common Pleas, Circuit Court and Supreme Court would also be brought in the new court. In the same way, this court would amalgamate the functions of the Surrogate and Orphans' Court in the administration of decedents' estates.

The merger of law courts would not eradicate the inherent variety and complexity of matters which are brought into litigation. Nor would the creation of a single forum obliterate the differences, for example, between an indictment for assault and battery and an application of executors to sell real estate in order to pay estate taxes. However the existence of a confusion engendered by the variety of courts, many hearing the same general type of case, would be eliminated. Moreover, as members of a single court having equal rank among themselves, the entire body of judges would be available for assignment as needed. Minimum standards of accomplishment in the dispatch of judicial business could be established, and the comparison invited by the example of able and efficient judges would tend to improve the standards of the entire membership of this court. The great variety of special procedures which are now encountered, according to the court in which the action is brought and the subject matter of the proceeding, could be replaced by uniform sets of rules governing all practice and procedure.

In affecting these improvements it would not be necessary to blaze new trails. The system of federal courts and those of most other states having a comparable volume of judicial business have long since been revised in the interests of simplicity, uniformity and efficiency in the conduct of litigation. The improvements desired in New Jersey can be accomplished by a selective choice from among alternatives which have been tried and proved successful in other jurisdictions."

The foregoing briefly summarizes the major proposals for changing the present system under which we maintain three separate courts having concurrent jurisdiction over original common law actions. By and large it can be said that there has been over the years virtual unanimity of opinion that the present system cannot be justified. The only differences of opinion have been as to the remedy. The 1909 proposals whereby a County Court was to be created having concurrent jurisdiction within the county with the state-wide Supreme Court, and the 1944 proposals, whereby the law section of a state-wide Superior Court would sit in each county of the State, represent a fair composite of the different views as to the best remedy. All of the other suggestions and proposals throughout the years merely represent variations, under other names, of the foregoing two proposals.

PROBATE COURTS IN A UNIFIED JUDICIAL SYSTEM

by

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The present system for the trial of probate disputes in New Jersey has been described as "mothered by the ecclesiastical courts, grandsired by obsolete concessions to the church and the landed gentry." [1] Simes and Basye, in their recent definitive study of the organization of the probate courts in America,[2] refer to New Jersey as one of a number of states where remnants of the English ecclesiastical practice of the 17th and 18th Centuries still persist:

> "Its intricacies can only be appreciated by a detailed description. Three courts have probate jurisdiction: the surrogate's court, the orphans' court and the prerogative court. There is one prerogative court for the entire state presided over by a chancellor sitting as ordinary or surrogate-general.[3] There is one surrogate in each county[4] and also one orphans' court in each county.[5] The surrogate is both the judge and clerk of his own court;[6] he is also clerk of the orphans' court.[7] The prerogative court has jurisdiction throughout the state to probate wills, grant letters and to hear and finally determine disputes that arise thereon.[8] The surrogate of each county also has power to probate wills and grant letters except when doubt appears on the face of a will or a caveat is filed against a will or a dispute or contest arises as to the existence of a will or the right to letters.[9] In any of these cases the matter is transferable to the orphans' court.[10] In general the orphans' courts have no original jurisdiction to probate wills or grant letters. Their sole jurisdiction to do so arises on *transfer* from the surrogate in case the matter is disputed or contested.[11] The orphans' courts also have power to grant allowances to widows and children pending a will contest,[12] to determine heirship of an intestate where real estate is involved,[13] to approve compromises of will contests or claims of the estate against a third person,[14] to order the sale of real estate for the payment of debts,[15] determine rights of beneficiaries under a will or of the next of kin in an estate,[16] and determine controversies respecting allowances of accounts.[17] In short, the jurisdiction of the surrogate is limited to the probate of wills and issuance of letters in nonadversary proceedings. The remainder of the administration is had in the orphans' court. The probate

[1] "Probate Law under a Unified Court System," *New Jersey Law Journal*, May 8, 1947; 70 N.J.L.J. 149.
[2] Simes, L. M. and Basye, P. E., "The Organization of the Probate Court in America," 42 Mich. Law Rev. 965-1008 (Part I) and 43 Mich. Law Rev. 113-154 (Part II).
[3] *New Jersey Constitution*, Art. VI, sec. IV, par. 2.
[4] R.S. 2:7-12.
[5] R.S. 2:7-1.
[6] R.S. 2:31-4 and 16.
[7] R.S. 2:7-4.
[8] R.S. 3:1-1.
[9] R.S. 3:2-22 and 3:7-5.1.
[10] *Ibid.*
[11] *Ibid.*
[12] R.S. 3:2-29.
[13] R.S. 3:4-1 to 3.
[14] R.S. 3:15.
[15] R.S. 3:25-23.
[16] R.S. 3:26-2 and 6.
[17] R.S. 3:1-2.

> of a will may be either before the surrogate of the proper county or in the prerogative court.[18] Thus, if a proceeding is initiated before the local surrogate, the services of the orphans' court will certainly be required; but if a proceeding is initiated in the prerogative court in the first instance that court has power to conduct the entire proceeding." [19]

Thus, in New Jersey contentious probate matters are now handled by three courts of original jurisdiction. The work of the Prerogative Court, with state-wide jurisdiction and headed by the Chancellor as Ordinary or Surrogate-General, is handled by him and ten Vice-Ordinaries, who are also Vice-Chancellors of the Court of Chancery. Another and larger piece of the work is attended to by the Orphans' Courts, with county-wide jurisdiction; there are 33 Orphans' Court Judges who, sitting as judges in other courts (Common Pleas, Quarter Sessions, etc.) exercise general civil and criminal jurisdiction. And a small piece is the concern of the surrogate's courts, each with county-wide jurisdiction; there is, as noted, a surrogate in each of the 21 counties. Proceedings in the Orphans' Courts are reviewable in the Prerogative Court, and proceedings in the Prerogative Court, both original and appellate, are reviewable in the Court of Errors and Appeals.

It has been estimated that the Vice-Ordinaries and Common Pleas (Orphans' Court) Judges devote less than ten per cent of their time to probate matters, and that the Orphans' Courts refer 60 to 75 per cent of contentious probate business to Masters to report, or to *ad hoc* Advisory Masters. This situation has been strongly criticized, the most recent comment appearing in the *New Jersey Law Journal* for May 8, 1947: [20]

> "Could any system of courts be worse than that under which judicial business is turned over by the bench to the bar for hearing, with the judicial services of the bar paid for on a fee basis? The Court of Errors and Appeals has put it too mildly: 'The practice of referring Orphans' Court matters to a master should not be encouraged.' "

The criticisms directed against the present system are substantially as follows:

1. Judges exercising probate jurisdiction devote so little time to those matters that, no matter how competent, they cannot achieve the desired expert knowledge necessary for efficiency and dispatch of business. This circumstance is said to underlie the practice of reference to masters, with the resultant expense to estates and litigants.

2. Matters originating in the Orphans' Court are subject to successive appeals to two higher tribunals.

3. Probate courts do not possess jurisdiction to determine all matters which arise in the administration of estates, a notable

[18] R.S. 3:2-3.
[19] Simes and Basye, *op. cit.*, pp. 982-3.
[20] 70 N.J.L.J. 149.

example being a lack of jurisdiction to construe a will. Frequently, therefore, independent proceedings must be brought in the Court of Chancery.

4. The overlaps of Chancery and probate jurisdiction as to the settlement of accounts, distribution of estates, proceedings for discovery and relief, proceedings to secure the advice and direction of the court, and proceedings for the construction of wills give rise to fruitless litigation as to whether the court has jurisdiction to entertain the cause.

Both the revised Constitution proposed by the Commission on Revision of the New Jersey Constitution in its 1942 Report[21] and the draft submitted to the electorate by the 168th Legislature in 1944[22] proposed a unified court system for New Jersey, with a Superior Court of original general jurisdiction throughout the State in all cases, immediately below the Supreme Court and composed of two sections, a law section exercising civil, criminal and matrimonial jurisdiction, and an equity and probate section "to exercise the other jurisdiction of the court." Each section of the Superior Court was to have such parts as might be provided by rules of the Supreme Court. In the section of their monograph entitled "Standards for an Ideal Probate Court," Simes and Basye spoke of the 1944 proposal as an "example of a scientific and comprehensive legislative approach to probate reform. . ." [23]

Alfred C. Clapp, author of the treatise *Wills and Administration in New Jersey,* speaking before the Joint Legislative Committee which considered the Report of the 1942 Commission just referred to, said:[24]

> "Were one to devise a system for the adjudication of probate disputes, could aught be more obvious than to turn the business over to specialist full-time judges sitting in the Probate Part of a Probate and Equity Section of a court 'having original jurisdiction throughout the State in all cases'? Such Part could determine as well the construction of wills, inter vivos trusts and devises, as pass upon caveats, settle accounts and distribute estates. Because there would not be enough business for such a specialist in each county, one justice would be assigned to several counties with a weekly, or in the smaller counties a less frequent, motion day in each county, the justice traveling to the litigants and not vice versa. Too, there should be only one appeal as of right instead of two or three; and that to a court en banc—with a further review only if allowed by the banc or the highest court or if there be a dissent in the banc or if a constitutional question be raised. Again the clerical work and non-contentious business of the Probate Part should be handled by a specialist, the present Surrogate; and there should be a single head for all the courts of the State, a Chief Justice, with the fullest administrative powers. Thus there would be offered the specialization making up the genius of the New York Surrogates with their jurisdiction, taken from the Chancellor, over

[21] Pp. 46-47; Art. V, and particularly sec. III, pars. 1 and 2.
[22] Art. V, and particularly sec. III, pars. 2 and 3.
[23] *Op. cit.* 43 Mich. Law Rev. 153, footnote.
[24] Record of Proceedings before the Joint Legislative Committee . . . to Ascertain the Sentiment of the People . . . for Change in the New Jersey Constitution, 1942, p. 300. And see 70 N.J.L.J. 149.

> the construction of wills and, taken from the law courts, over land as well as personality; but added thereto, flexibility for improvement and administration."

If the objections to the present system noted above are to be met, and the present difficulties and deficiencies of New Jersey probate administration eliminated, the probate court should have such jurisdiction as will enable it to handle and completely dispose of matters arising in connection with wills and the administration of estates. In a unified court, like the one recommended in 1942 and 1944 and proposed by authorities on probate practice, probate matters would be handled by a division possessing equitable jurisdiction, with a probate part in such a division to deal exclusively with probate matters.

Such integration would further permit the grouping of probate matters with kindred matters, to be handled by the part of the court specializing in problems common to all such matters. Testamentary trusts are now within the jurisdiction of both the probate courts and the Court of Chancery. *Inter vivos* trusts, however, are within the exclusive jurisdiction of Chancery. Both kinds of trusts present substantially the same judicial problems and accordingly may well be handled in a single part of a unified court. So also the administration of estates of infants and incompetents —a jurisdiction now shared by the probate courts and Chancery— could properly be allocated to the same part, subject to the disposition of the non-contentious aspects of such matters locally before the surrogate or clerk, as in the case of other non-contentious probate matters to be mentioned shortly. It may also be desirable to empower the probate part of the unified court to declare constructive trusts incidentally to the exercise of probate jurisdiction, a power now exercisable only by Chancery.

The Orphans' Courts presently have jurisdiction of some essentially non-related matters, such as adoption and assignment for the benefit of creditors. The disposition of jurisdiction over such matters would appear to be appropriately left to legislative action or rule of court.

In any consideration of probate matters, a distinction must generally be made between non-contentious and contentious matters. With respect to non-contentious matters—the probate of wills, issuance of letters of administration, the settlement of estates where neither doubtful questions or controversy are involved—the need for a simplified, inexpensive practice is apparent. To this end, the present surrogates could serve as clerks of the probate part of the unified court, with the necessary judicial power vested in them to deal with and dispose of non-contentious matters in the respective counties. The right would be reserved to interested parties to appear before a Superior Court Justice assigned to the probate part

in any litigated matter, including the right within a limited time to open up a surrogate's common probate decree. The surrogate himself, or the parties, should be authorized to certify or lay before the Justice any non-contentious matter presenting difficulties.

Details for handling non-contentious matters should not, of course, be written into a constitution. It would be more appropriate and practical to leave this aspect of probate practice to legislative action or rule of court, to the end that changing needs may in the future be met quickly.

It is difficult to categorize probate systems of other jurisdictions.[25] Historical factors and local considerations, largely geographic, are evident. In general, however, the trend of legal thinking is toward the unification of the probate courts, enlargement of their powers to permit complete disposition of an entire matter in a single proceeding before a single judge, specialization by probate judges where probate business is sufficiently large to occupy the time of one or more judges, and a single appeal. In some instances, this system is established in basic law, and in others it rests upon statute.

BIBLIOGRAPHY

"Equitable Jurisdiction of Probate Courts and Finality of Probate Decrees," 48 Yale Law Journal 1273, May, 1939.

New Jersey. Record of Proceedings before the Joint Legislative Committee . . . to Ascertain the Sentiment of the People . . . for Change in the New Jersey Constitution, 1942.

New Jersey. Report of the Commission on Revision of the New Jersey Constitution, 1942.

New Jersey. Revised Constitution for the State, agreed upon by the 168th Legislature, 1944.

POUND, ROSCOE. Organization of the Courts, 1940.

"Probate Law under a Unified Court System," 70 N. J. L. J. 149, May 8, 1947.

SIMES, L. M. and BASYE, P. E. "The Organization of the Probate Court in America," 42 Mich. Law Rev. 965-1008, and 43 Mich. Law Rev. 113-154.

[25] See Simes and Basye, *op. cit*

PROBLEMS OF JUDICIAL SELECTION AND TENURE

by

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I—METHODS OF SELECTION

Independence of the judiciary is the fundamental principle of our American court systems. How to achieve that independence is a problem still unsolved in the 48 states. The first step, all agree, is to find the right method of selection of judges which will insure a bench free from the influence and control of party politics, individuals, or pressure groups.

The variety of selection methods used in the 48 states, and the variety of methods used even within a single state,[1] indicate the dissatisfaction with the systems.[2] It also indicates that we are still searching for the right system.[3] The great majority of the states nominate and elect their judges by popular vote, and these elections take place on partisan ballots. The movement for nomination and election by non-partisan ballots, however, continues to grow and we find these non-partisan trends stronger in the West and in the North. Other elective methods include election by popular vote after nomination by a special commission, and election by the legislature.

Selection by appointment is maintained in 11 states, including New Jersey. Variations of the appointive method provide for nomination by the governor with confirmation by majority vote of the senate,[4] appointment by the governor with confirmation by his council, appointment by special commission, and appointment by members of the judiciary.

Although selection by election still prevails in approximately three-fourths of the states of the Union, the demand for either a return to the appointive system or adoption of some compromise method of appointment and election keeps recurring. Some years

[1] New York, for example, uses four different methods in the various courts.

[2] For methods used in each state see annexed Schedule A, "Selection of Judges," taken from the Council of State Governments' "The Book of the States," 1945-46, p. 445. See also Table III and Table IV, pp. 16-24, in "State Court Systems," published by the Council, September 1940.

[3] For an excellent summary on the selection and tenure of judges in all state and federal courts, see Evan Haynes, Selection and Tenure of Judges, chapter II, "Present State of Affairs," pp. 27-50, published by the National Conference of Judicial Councils.

[4] All members of the judiciary in New Jersey are appointed by this method, with the exception of the Vice-Chancellors and Advisory Masters appointed solely by the Chancellor, the local magistrates selected according to local ordinances, and the justices of the peace elected by constitutional provision. See New Jersey Constitution, Art. VI, sec. VII, pars. 1 and 2, and Art. VII, sec. II, par. 7, for election of justices of the peace, and R. S. 2:2-3 and 2:2-14 for Chancery appointments.

ago the American Bar Association sent out a questionnaire on judicial selection to bar association committees in the several states. The replies indicated that lawyers in the states where judges are appointed by the governor or chosen by the legislature are strongly opposed to changing to the election system, while the profession in those jurisdictions where the judges are elected is unsatisfied with the present methods and wants something else.[5]

The dramatic incidents which attended the nomination and election of a New York Supreme Court Justice several years ago focused attention on the necessity for better procedure in nominating and electing judges of the state courts. Although it became public knowledge within a short time after the bi-partisan nomination of New York City Magistrate Thomas A. Aurelio to the Supreme Court that he was closely associated with the notorious racketeer Costello, the election machinery, once put in motion, could not be checked and Aurelio was elected. Popular outcry brought a pledge from New York's Governor Dewey that the "drafting of better methods of judicial selection will receive prompt study from my administration in Albany." [6] Advocating the change from elective to appointive selection, the *New York Herald Tribune* declared that:

> "It is not compatible with either the usefulness or the dignity of the Bench that its members engage in public contests for their posts; their function is not a party function, nor even, in the narrow sense, a political function. Hence, many judges are appointed: since those of the New York State Supreme Court are not, the practice of bi-partisan nominations arose with the laudable intent of taking the administration of justice out of politics. . . . It was not alone the specific choice of Aurelio which showed that system to be at fault; the whole atmosphere of secret trading, of catering to special groups and interested individuals demonstrates that the bi-partisan system of judiciary nominations has failed. Centralized and open responsibility is the answer—judges must be appointed by an elected executive." [7]

The *New York Times* also took up the fight for a change in New York, urging that "it is important to correct the system by which this sort of nomination is possible" and stating further:

> "We believe that appointment by the governor, subject to approval by two-thirds of the state senate, would raise the level of the judiciary. Another method, which may be immediately more practicable, was suggested to the constitutional convention of 1937 by a Committee of the Association of the Bar of the City of New York headed by Paul Windels. The Windels committee proposed that in each judicial department one candidate be named for each post by a nominating board consisting of the Presiding Justice of the Appellate Division, two resident lawyers appointed by the Court of Appeals and two resident laymen appointed by the governor. Other candidates could be nominated, if enough voters wished, by petition. The 1937 Convention rejected this proposal. It deserves consideration." [8]

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[5] "The Bars' Opinion on Judicial Selection," Amer. Bar Assn. J., vol. XX, p. 529, September 1934.

[6] "New York's Experience Shows Need for Better Method of Selecting Judges," Amer. Bar Assn. J., vol. XXIX, p. 690, December 1943.

[7] Editorial, November 2, 1943.

[8] Editorial, November 2, 1943.

Another voice of protest came from *PM*. In a signed editorial, urging a change of political leadership, Max Lerner proposed still another solution. He said:

> "The second step will be to rethink the whole question of how the members of the judiciary are nominated and elected. I don't think that appointments are the answer; they would only be an abdication of the democratic process. But I do know that the bi-partisan system, whereby judges are selected in two back rooms instead of one, has an unmistakable stench about it. I should suggest some method of combining bar association choices with the election machinery." [9]

Summarizing the proposals for improving the method of selection in New York which stemmed from the Aurelio scandal, the *American Bar Association Journal* stated:

> "The proposals chiefly under consideration, by way of an improvement, start with a plan rejected in the last state constitutional convention in 1938. The basic idea is that official nominating boards be created to *make* nominations, but not to have power to elect or appoint. The people would still elect whichever nominees, named by the official nominating boards, they preferred. There would be a board for each judicial district, to consist of the Presiding Justice of the Appellate Division, two lawyers to be appointed by the Court of Appeals and two laymen to be appointed by the Governor. Members of the board would serve for fixed terms, without compensation, and would be selected without regard to political affiliations." [10]

II—The Situation in New Jersey

New Jersey remained one of the few states in the Union to resist the popular movement for election of judges which spread through the country in the second quarter of the 19th Century. From the earliest days of established government, when New Jersey was divided into the Provinces of East and West Jersey, through the period as a Colony, and then as a State, her judges have always been appointed by the Chief Executive, with a few exceptions mentioned below.

Today, the majority of our state judges are appointed by the Governor with the advice and consent of the Senate.[11] In the Court of Chancery, the Chancellor, appointed by the Governor and confirmed by the Senate, appoints his own assistants without confirmation. This exclusive power of appointment has been vested in the Chancellor by legislative enactments, and at the present time ten Vice-Chancellors and 14 Advisory Masters are so selected.[12] Indeed,

[9] Editorial, November 2, 1943.

[10] Amer. Bar Assn. J., Vol. XXIX, p. 694, December 1943.

[11] New Jersey Constitution, Art. VII, sec. II, par. 1, but see also the following par. 2. This anomaly results from the fact that when the amendment providing for the appointment of Common Pleas judges was adopted in 1875 no provision was made for striking out of the Constitution par. 2 providing for legislative action on those same judges. Consequently contradictory provisions for selection of Common Pleas judges exist in adjacent paragraphs in our fundamental law. It is interesting to note that although an amendment to strike out the old method was submitted to the electorate at several special elections after 1875, it was always defeated, the last time being in 1927.

For appointment of judges not mentioned in the Constitution see R. S. 2:5-4 (Circuit Court), R. S. 2:8-9 (District Court).

[12] See R. S. 2:2-3 for appointment and tenure of Vice-Chancellors, and R. S. 2:2-7 for their jurisdiction. That Vice-Chancellors are "constitutional officers" even though they are not mentioned in the Constitution and act as independent judges in Chancery, see *Scranton Button Co.* v *Neonlite Corporation of America,* 105 N. J. Eq. 708.

For appointment and tenure of Advisory Masters, see R. S. 2:2-14, as amended by P. L. 1941, c. 307.

the Legislature, in enacting such measures, has merely been implementing the power granted to the Chancellor when the Court of Chancery was established by the Ordinance of 1770.[13] The only exceptions to appointive officers in our judicial system are the justices of the peace whose election is provided for by the Constitution,[14] and those local magistrates, who by particular municipal ordinances, may be elected by some group in the local governing body, if not appointed.

Apparently, New Jersey is, by and large, satisfied with the appointive method of judicial selection. Outside of a few scattered demands for changing to an elective system,[15] such dissatisfaction as has been expressed over the years involves mainly the influence of partisan politics due to the *machinery* of our appointive system, and the exclusive appointing power of the Chancellor.

Apparently, too, there is general agreement that partisan politics does enter into the selection of judges in some of our courts.[16] As a matter of fact, the Legislature has provided that judges of the Court of Common Pleas and judges of the District Court *must* be selected on a bi-partisan basis, thereby ruling out all possible consideration of any but members of the two dominant political parties.[17] The Governor, then, finds himself bound by bi-partisan machinery in his approach to the problem of nominations.

Further evidence of the intermingling of partisan politics and judicial appointments is the accepted practice, in some of the courts, of judges contributing to the party "war chest." It is a custom of long standing that office holders contribute to the political party which was instrumental in securing their appointments, and judges have not been entirely exempt from that custom. Although such a contribution is not considered as unethical, it does tend to create a practical working relationship between the judge and the party.

Another factor, perhaps more personal than partisan, which operates in the machinery of confirmation of a Governor's nomination, is the matter of senatorial courtesy. A judicial appointment must run the gamut of the Senate, which, in practice, means that it must be acceptable to the Senator who represents the nominee's county. This unwritten but effective "gentleman's agreement" in the New Jersey Senate is almost certain to bar the confirmation of

[13] *In re Vice-Chancellors*, 105 N. J. Eq. 759, where the court held that the Ordinance of 1770 concerning the establishment of the Court of Chancery is still in full force and effect, and that one of the powers it confers on the Chancellor is the appointing of all officers of the court, including the Vice-Chancellors.

[14] New Jersey Constitution, Art. VI, sec. VII, pars. 1 and 2; Art. VII, sec. II, par. 7.

[15] For arguments for the election of judges in New Jersey, see "Record of Proceedings before the Joint Committee of the New Jersey Legislature . . .," 1942, Part I, the legislative committee which held public hearings on the Report of the Commission on Revision of the New Jersey Constitution, commonly referred to as the Hendrickson Commission. See pp. 352-3 for statement of Manuel Cantor representing the Communist Party of New Jersey, and pp. 364-5 for statement of Morris Isserman representing the C. I. O. and the American Labor League.

[16] Feightner, Milo N., "Judicial Selection and Tenure," Indiana Law Journal, vol. 15, p. 215. See New Jersey abstract on p. 222.

[17] As to Common Pleas judges, R. S. 2:6-4; District Court judges, R. S. 2:8-9.1 to 9.4

any judicial candidate not pleasing to the home Senator. He need give no reason for his disapproval. The Governor's nominee may be of the most highly qualified type, the rest of the Senate may approve of the selection, nevertheless senatorial courtesy is a powerful instrument and if the home Senator says "thumbs down" it has been thumbs down, with very few exceptions.

Considerable criticism has been levelled at the Chancellor's exclusive power of appointment, but as has been indicated, the courts have upheld such power. In supporting the proposal (Art. V, sec. V, par. 1 of the revised Constitution proposed in 1942) of the Hendrickson Commission for the appointment of all state judges in a unified court system by the Governor, with the advice and consent of the Senate, one speaker declared:

> "The most obvious of the changes is the shearing off of the Chancellor's power of appointment that has grown in magnitude over the last forty years until it is lushly attractive to the political machinist. Regal are these appointments, made without the advice or consent of any openly acknowledged power. As it stands now, the appointments are of ten men at $18,000 and fourteen men at, say, $16,000, not to speak of the more numerous underlings and the vast deal of patronage which inheres in Chancery's jurisdiction in the appointment of receivers and trustees, the making of references and the allowance of substantial counsel fees. The proposal checks and channelizes the course of these appointments through our usual democratic processes. The controversy over the Chancellor's loss of this power will not be much talked of but it will underlie much that is talked of." [18]

III—Some Proposals to Improve Selection Methods

No subject has elicited more suggestions and aroused more interest among lawyers and bar associations in the United States than the subject of selection of judges. The issue of election versus appointment to the judiciary has pretty generally narrowed down to the issue of appointment versus appointment *plus* popular ratification.[19] Austin F. MacDonald, in his "American State Government and Administration," says:

> "Students of government and members of the bar are generally agreed that the judges of all courts should be appointed by the chief executive and not forced to engage in the hurlyburly of an election campaign. 'Popular election' is likely to be synonymous with 'political selection'; therefore judges chosen by popular vote may reasonably be expected to be cogs in the dominant political machine. Judges should be experts—technicians of the highest order; but experts cannot be obtained by popular election, except at rare intervals and under unusual circumstances. It is an axiom of public administration that appointment should be used when skill is desired, and that election should be employed only to secure representation." [20]

An international authority on the technique of judicial appoint-

[18] Statement of Alfred E. Clapp, "Record of Proceedings before the Joint Committee of the New Jersey Legislature . . .," 1942, pp. 297-8.

[19] Haynes, *op. cit.*, in a chapter entitled "Are Elected Judges with Short Terms More Liberal than Appointed Judges with Secure Tenure?" pp. 184-216, disproves the theory that elected judges are more liberal than those appointed. A comprehensive survey of decisions of appointed and of elected judges throughout the Union on subjects which would show the liberalism or conservatism of a judge provides an enlightening comparison.

[20] Rev. ed., 1940, p. 232.

ment, discussing the variety of systems in the states and criticizing the elective systems in particular, writes:

> "I believe, therefore, that the nomination of judges by the executive is the only feasible system of appointment. But is clearly undesirable to leave it in the hands of the unfettered discretion of any executive politician to make a choice so momentous as this. Personal friendship and political eminence would exert far too great an influence on him.
>
> The active power of nomination might be resident in the governor * * * ; the governor would be assisted by a committee of judges of the Supreme Court, together with the State Attorney-General and the President of the State Bar Association. It would be necessary of course to transform all state judicial tenure into a permanent tenure. The maxim that judges should hold office 'quamdiu se bene gesseret' is of the essence of their independent position; and the danger that they might cling to their position too long could easily be met by a provision for compulsory retirement at 70 or 75." [21]

No state in the Union grants the governor complete control of nomination and confirmation of judges. It is generally acknowledged that selection by the governor needs a check, but many groups feel that the legislature is too politically partisan to do the checking. The answer to this is a suggestion which has come from many sources, that a special commission be established — a group politically "uncapturable" because of its diversity in makeup — to confirm the judicial nominations.[22] The composition of such a commission, the manner in which its members are selected, and the terms of the members, have been the subjects of many and varied proposals. The general theme of the proposals, however, seems to set a pattern of membership which would contain the highest judicial offices of the state, a number of lawyers selected by the State Bar Association and an equal number of laymen selected by the governor. Other plans would use such a commission to make the nomination to the governor, or to submit a list of several nominees for the governor's selection.

Two states in the Union which have heretofore used the election system for the selection of judges have adopted a combination system of appointment and election. California, by constitutional amendment in 1934, has provided that justices of the Supreme Court and of the District Court of Appeals, and judges of the Superior Court in any county where the electors have adopted the provisions of this *optional* constitutional amendment, shall be appointed for a full term of six years by the governor, with confirmation by a small commission on qualifications.[23] This commission is composed of (1) the Chief Justice of the Supreme Court, (2) the Presiding Justice of the District Court of Appeals of the district in which the judge is to serve, and (3) the Attorney-General. The judge so appointed and

[21] Laski, Harold J. "The Technique of Judicial Appointment," Mich. Law Rev., Vol. 24, No. 6, April 1926.

[22] New York State Constitutional Convention Committee, 1938. Report, vol. IX, chap. XIV, p. 994.

[23] California Constitution, Art. VI, sec. 26, (approved November 6, 1934).

confirmed must run on his own record for re-election every six years. He must file a declaration of his candidacy and he runs unopposed. The only question for the voters to decide is whether or not he should be returned to office. If the majority of voters voting upon such a candidacy vote "yes," such person is elected; but if a majority vote "no," he is not elected and may not thereafter be appointed to fill any vacancy in that court. If the incumbent judge does not file a declaration of candidacy to succeed himself, the governor must nominate a suitable person, or if the majority of voters vote against his continuation in office, the governor must appoint a suitable person, with the confirmation of a majority of the commission on qualifications, to fill the vacancy until the next general election.

Missouri's "non-partisan court plan" was adopted by constitutional amendment in 1945.[24] It differs from the California system in that a non-partisan judicial commission takes the initial step in presenting a list of three names of candidates for judgeship to the governor, and the governor making the appointment from that list. The California method gives the governor the first step in making the selection, and the commission on qualifications the final act of confirmation. Otherwise the systems are alike: the incumbent judge filing a declaration of his candidacy to succeed himself, an unopposed election, and the voters determining whether or not he shall be returned to office.

As pointed out above, both of these methods developed from the elective system of selecting judges in the respective states. Both have received endorsement and high commendation from national, state and local bar associations throughout the country and from civic organizations and legal publications on a nation-wide scale.

A plan that fits in with New Jersey's present method of selection, without bringing the element of popular election into play, is the proposed amendment for the Washington Constitution. There the incorporated bar of the state sponsored a provision to place the appointment of judges in a commission composed of the governor of the state, seven members of the board of governors of the bar associations and three laymen chosen by the governor.[25] Another plan which excludes all element of election is the one suggested in the proposal for reorganization of the Illinois judiciary. Here it was advocated that the governor appoint the chief justice from among the members of the Supreme Court for a term co-extensive with his own; the chief justice thereafter would appoint all of the judges for life, upon the advice of a judicial council representing the bench, the bar and the public.[26]

[24] Missouri Constitution, Art. V, sec. 29 (a) to (g).
[25] 18 Jour. of Amer. Jud. Soc. 141 (1935).
[26] McCormick, Charles T. "Proposed Reorganization of the Illinois Judiciary," 29 Ill. Law Review 31 (1934).

A special plan for New Jersey was submitted to the New Jersey State Bar Association some years ago.[27] This provided for the establishment of a non-political state board to recommend judicial appointments to the Governor, the board to be composed of the president of the State Bar Association and officers of other state associations including commerce, labor, etc. An interesting reaction to this plan was the immediate response of the then gubernatorial candidates who telegraphed to the annual meeting of the State Bar Association that they would welcome such recommendations on judicial appointments.

An analysis of the current proposals for the selection of judges has revealed that any plan which would combine all of the best features would probably be one such as follows: appointment by the governor from a list of eligible lawyers selected by a commission consisting of representatives of the various courts, the legislature, the bar, labor and commercial groups; appointments to vacancies in the courts above the trial court restricted to those judges who have had a certain minimum of experience in the trial courts, with all appointments to be announced 30 days before going into effect and subject to withdrawal during that period by the Governor; appointments to be for a definite term, at the end of which time the judge would be a candidate for election without opposition, the question on the ballot being whether or not he should continue in office; the nominating commission to be organized on a permanent basis with definite terms for its members (unpaid, but with a salaried staff), and responsible for the efficient operation of the courts; this commission to have full power to investigate the conduct of any judge and, after investigation, to bring charges of misconduct or of incapacity to conduct the affairs of his office against him directly in the Supreme Court.[28]

IV—Qualifications, Salaries and Terms

(A) Qualifications

Once the method of selecting a judge has been determined, the next question is, what should his qualifications be? The majority of the states require that judges must be citizens of the United States and a resident within the state for a certain period of time. A minimum age is also established in a majority of the states, which ranges from a minimum of 35 to 21 years, with 20 of the states setting up a 30-year age minimum.

The requirement of legal experience is more prevalent than any other single qualification. Thiry-nine jurisdictions require that the judges must be "learned in the law," while 25 demand actual legal

[27] "Minutes of the Annual Meeting," 1 N. J. State Bar Assn. Quart. 56 (July, 1934).

[28] This summary was prepared by Paul H. Sanders, a member of the Texas bar and assistant to the Director of the National Bar Program; "Appointment of Judges, etc.," Amer. Bar Assn. J., vol. 22, p. 131, February 1936.

experience or admission to the bar. Good character is a prerequisite in four states and North Carolina requires that he "believe in God." [29]

There are no constitutional requirements for qualifications for New Jersey judges, and no statutory qualifications for the law judges, but in the Chancery courts there is a statutory provision which requires a Vice-Chancellor to be a counsellor-at-law of at least ten years' standing. There seems to be growing support for the requirement of legal experience for our judges. The Report of the Commission on Revision of the New Jersey Constitution in 1942 provided that

> "Each justice of the Supreme Court shall, prior to his appointment, have been a justice of the Superior Court for at least one year. Justices of the Superior Court shall, prior to their appointment, have been counsellors at law in good standing for at least ten years." [30]

And in the revised Constitution for the State which the New Jersey Legislature adopted in 1944 there is a lesser provision that

> "The Chief Justice and each Associate Justice of the Supreme Court and each Justice of the Superior Court shall, prior to his appointment, have been an attorney-at-law of this State in good standing for at least ten years." [31]

According to the American Municipal Association "formal educational and professional requirements are not of too great importance." W. Brooke Graves, in his "American State Government," says:

> "The unwritten and informal qualifications are likely to be more important than those specified. Many efforts are made to divorce judges from politics, yet in many jurisdictions it is impossible for a lawyer to get the support necessary to be elected (or appointed) [32] unless he is active politically. After he becomes a judge, his political activity becomes an even more serious problem. The American Bar Association has taken a strong stand to require members of the bench seeking political office to resign from the bench. Most such candidates now do resign, but there are occasional situations when judges refuse to resign. A memorable example of this was Arthur H. James, a member of the Superior Court in Pennsylvania. He was nominated for Governor of Pennsylvania in 1938, refused to resign from the bench, continued to draw his eighteen-thousand-dollar a year salary while campaigning, and after his inauguration as Governor handed his resignation as Judge to himself as Governor. Fortunately, such violations of judicial ethics are not common." [33]

Several plans to pass upon the judicial character of a candidate and to continue to pass upon his fitness once he has qualified have been recommended by the American Bar Association. One, a non-political veto council on judicial character and fitness, was advocated

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[29] The Book of the States, *op. cit.*, pp. 439-442, and Table on p. 454. The Council of State Governments has published a comprehensive series of charts on state court systems, and this contains a digest of constitutional and statutory provisions with respect to qualifications of judges. See "State Court Systems," pp. 3-15. It was, however, published in 1940 and hence may not be as up-to-date as The Book of the States charts.

[30] Proposed Constitution of the State of New Jersey, Art. V, sec. V., par. 2, as contained in the Report, p. 48.

[31] State of New Jersey, Revised Constitution for the State Agreed upon by the One Hundred Sixty-eighth Legislature, 1944, Art. V, sec. V, par. 2.

[32] Parenthetical words supplied.

[33] Rev. ed., 1941, p. 608.

by Judge Finch of New York. This council, consisting of laymen, and leaders in the various activities of the state and community, would have the power to veto any nomination or appointment to judicial office on the ground of the candidate's lack of fitness and character. This plan, it is argued, would take the election or appointment to judicial office out of of politics.[34] Another proposal provides that an official commission on qualifications should "keep book" on the judges, compiling statistical information showing the number of cases tried, the number of reversals, and the capacity, diligence and devotion to duty of each judge. This commission would determine at least 30 days before the end of the term whether the judge should be retained, and a recommendation from this committee would be binding upon the governor.[35]

(*B*) *Salaries*

The salary for a judge should be commensurate with the position:

> "The very stability of our system of government, a government of laws rather than of men, depends upon the confidence and respect of the people for those who hold the scales of justice in their hands and, therefore, depends upon the character and wisdom of the judges. The ablest and best of our citizens and those most learned in the law are needed to fill these positions of power and responsibility. . . . Adequate salaries are a necessary part of any plan to keep competent men in the courts. Membership in the Judiciary is an honor, but honor alone cannot compensate; it is more a question of economic competition. If men of worth and capacity are to be induced to accept and to continue in judgeships, there must be an available monetary compensation sufficiently attractive to the caliber of men desired." [36]

New Jersey agrees with the above theory of adequate salaries for judges in the upper court brackets. There are only two states in the Union paying higher judicial salaries in the upper courts—New York and Pennsylvania. The Presiding Justice of the New York Court of Appeals receives a salary of $29,500 and the Associate Justices $29,000; in the Pennsylvania Supreme Court, the Chief Justice received $20,000 and the Associate Justices $19,500; in New Jersey the Chief Justice of the Supreme Court and the Chancellor receive $19,000 and the Associate Justices and Vice-Chancellors, $18,000.[37] The Circuit Court Judges, Advisory Masters, and Common Pleas Judges in the first and second class counties fare proportionately as well, but the County Judges in the third and fourth class counties, the District Court Judges in all but the metropolitan districts, and the Municipal Court Judges do not fare as well. Judges in the upper courts and first and second class county courts of New Jersey are prohibited by statute from practising law during their

[34] Finch, E. R. "A Non-Political Veto Council on Judicial Character and Fitness for Those About to be Nominated or Appointed to the Bench," Amer. Bar. Assn. J., 144-7 (1934).

[35] New York State Constitutional Convention Committee, Report, vol. IX, p. 993. This is the plan of John Perry Wood, member of the Los Angeles Bar. His plan is described at length in Edward Martin's "Role of the Bar in Electing the Bench in Chicago," 1936.

[36] "How to Get and Keep Competent and Independent Judges," Amer. Bar Assn. J., vol. 31, p. 631, December 1935.

[37] *Ibid.* For salary charts, see p. 633.

terms as judges; but judges in the lower courts, where the great mass of litigation is carried on, are forced by economic circumstances to continue their private practice. It has been suggested that a few full-time judges in the lower courts, in place of the present numerous part-time judges, would be more beneficial to the parties most interested, the litigants. It is interesting to note that in the constitutions proposed by the Hendrickson Commission in 1942 and the 168th Legislature in 1944, mentioned heretofore, all the judges in the unified court system were to serve full time and were prohibited from practising law during their tenure in office.[37a]

(C) *Terms*

Although New Jersey ranks high among the states in the matter of judicial salaries, she ranks lower than average in the length of the terms of the judges. In colonial times and under the orginal 13 state constitutions the judges enjoyed life tenure during good behavior. However, that same upsurge of democracy during the second quarter of the 19th Century which brought about a change in most of the states in the method of selection, from appointment to election, also brought about a great decrease in the length of the term. It was believed that a short term was the only democratic way to represent the people. In some of the jurisdictions the judicial terms dropped to two years. The pendulum is now swinging back and the tendency in recent years has been to increase the length of the term. "There is no justification for a short term"—the function of the court is "not supposed to be a matter of determining the present public policy and therefore there is no need of direct representation to reflect the public pulse." [38]

The terms of judges vary amongst the states, from two years in one state (Vermont) to indefinite tenure on good behavior in three states (Massachusetts, New Hampshire and Rhode Island—New Hampshire requiring retirement at the age of 70, and Rhode Island having life tenure in only the highest courts). The terms also vary within each jurisdiction, according to the court. It is customary to provide the judges in the upper courts with longer terms. For example, in New York State the Supreme Court Judges serve 14 years, while the County Judges (except within New York City) serve six years; Pennsylvania's Supreme Court Judges have a 21-year term and all other judges ten years; New Jersey's Court of Errors and Appeals and Supreme Court members have seven-year terms, while the county and district courts have five-year terms.[39] The two recently proposed revised Constitutions for New Jersey provided that Justices of the Supreme Court were to hold office during

[37a] Art. V, sec. V, par. 5, and Art. V, sec. V, par. 6, respectively.
[38] Graves, *op. cit.*, p. 609.
[39] See Schedule B annexed, taken from The Book of the States, p. 443; also Table IV, State Court Systems, *op. cit.*, pp. 17-24.

good behavior and the Justices of the Superior Court for an initial term of seven years and, if reappointed, for good behavior. Retirement was to be at the age of 70.[40]

The movement for increased tenure for judges still meets with disapproval in many quarters. The arguments advanced for a short judicial term emphasize that it is a more democratic system; it makes the judge more responsible to the will of the people; it doesn't saddle the people with a man unfit for the bench for too long a period; it makes the judge more conscious of his responsibilities and prevents a tendency to grow lax in the discharge of his duties, and it provides machinery for periodic check-ups by the people on their judges.

On the other hand, students of government and leaders in the legal profession are fairly well agreed that security of tenure is essential to judicial independence:

> "Permanent tenure is necessary in order to attract competent men to the bench and to give incumbents that independence which will insure fair and impartial performance of judicial duties. The common argument against permanent tenure takes the form of an objection to giving the corrupt or incompetent judge a secure berth for life. Of course, if our methods of selection function as they should, there is little danger that a corrupt or incompetent individual will obtain a judicial place; the danger is reduced to a minimum. And even if an occasional mistake be made and a weak or inferior judge does pass through the selective sieve and secures a permanent job, the advantages of secure tenure may still predominate. We are not without our weak, corrupt and incompetent judges at the present time. The general average of capacity on the bench is what really counts—the proportion of strong to weak judges on the bench as a whole. If secure tenure helps to draw more good men to the bench and results in a higher general average of ability, it will still be preferable to the present system of election for short terms, whose net effect is merely to produce a more frequent turnover among men of second-rate ability.
>
> Nevertheless, this advantage of secure tenure furnishes only an indirect answer to the objection to giving the unfit judge a life job. The direct answer is that secure tenure, or as it is more commonly called, tenure during good behavior, should not mean tenure for life. It should mean tenure for so long as the judge is fit to hold judicial office. Judicial tenure should be secure, but it should be subject to termination whenever the incumbent becomes incapacitated by reason of age or mental or physical disability, or whenever he proves to be incompetent, or whenever he willfully neglects the duties of his office, or whenever he misconducts himself in such way as to show that he is morally unfit to be a judge. That these four general grounds—disability, incompetence, neglect of duty and moral unfitness—justify removing a judicial incumbent from office, all would agree. The crucial problem is to devise right methods of retirement and removal. If these methods are in operation, little if any force is left to the objection that secure tenure gives the bad judge a life job." [41]

Recognizing the popular prejudice against long tenure, but holding that "moderately long tenure is not only desirable but necessary for the proper conduct of judicial business," an eminent Chicago Attorney, Albert Kales, wrote:

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[40] Report of Commission on Revision of the New Jersey Constitution, 1942, Art. V, sec. V, par. 3. Revised Constitution of the State, Agreed upon by the One Hundred Sixty-eighth Legislature, Art. V, sec. V, par. 3.

[41] Shartel, Burke. "Retirement and Removal of Judges," 20 Jour. of the Amer. Jud. Soc., pp. 133-4, December 1936.

> "It is a grave mistake to suppose that judges exercise their judicial power in a distasteful and arbitrary manner merely because they hold for life or during good behavior. An arbitrary or disagreeable course of action by a judge arises principally from the fact that he is subject to no authority which can receive complaints against him and act upon those complaints by way of private or public criticism and correction of the judge. The best protection against arbitrary and disagreeable actions by judges is a duly constituted body of fellow judges who hold a position of superior power and authority and to whom complaints as to the conduct of judges may be brought and who may investigate those complaints and exercise a corrective influence. When a considerable number of judges in a metropolitan district are provided with a chief justice and organized for the efficient handling of a great volume of business, the means of securing the exercise of a corrective influence over their conduct at once appears." [42]

One further practical problem arises in connection with long tenure for judges, and that is the matter of promotion. If, because of life or long tenure, there appears little opportunity for advancement for members of the bench, there is a danger of judicial stagnation, due to lack of incentive. There is no custom in many of the jurisdictions, including New Jersey, which raises a judicial incumbent to the higher courts automatically, upon the creation of a vacancy in that higher court. Judges are picked from the group of practising lawyers as frequently as they are picked from the bench, to sit in the higher courts. The solution which has been offered to this problem is to establish a system of promotion, reserving the highest positions for men already on the bench. Such a system would necessarily entail the creation of a judicial committee on promotions, or the extension of the functions of an existing commission on judicial appointments or of the Judicial Council.

V—Retirement and Removal

The question of *when* a judge should retire from active service on the bench is one which the courts, the legislatures and the lawyers have been struggling with for a long time. Twenty-six states have some provision about judicial retirement, but only four of them have established a compulsory retirement age. It is a problem that is as vital to the public as it is to the judge. When a judge reaches the age when he becomes mentally or physically incapacitated, the public should be protected from decisions which bear evidence of this incapacity. On the other hand, a man who has given long and honored service on the bench is reluctant to relinquish his post, especially when he believes himself to be still mentally and physically capable of continued service, and especially, too, if he faces the future without any financial assurance.

It is a dual problem: there is first, the question of the right age

[42] Kales, Albert. "Methods of Selecting and Retiring Judges in a Metropolitan District," Annals of the Amer. Acad. of Pol. and Soc. Science, March 1914, pp. 1-12. See also an article on the address delivered in the New York Constitutional Convention of 1853, entitled "Rufus Choate on Judicial Tenure," Jour. of the Amer. Jud. Soc., July 1933, pp. 10-20.

for retirement, and second, the question of compensation after retirement.

Retirement ages vary in the states which have legislated on the subject, from 65 to 80 (Louisiana is the only state setting 80 as the limit), with the majority setting the limit at 70.[43] With the exception of the four states which provide for *compulsory* retirement, these ages represent the *minimum* age at which a judge *may* retire. New Hampshire, Connecticut, Louisiana and New York compel retirement by constitutional provisions. Although Maine has a statutory provision for voluntary retirement at 70, it is practically mandatory in effect since the statute grants compensation for life but with the provision that the compensation shall be forfeited unless it is accepted within one year from the commencement of eligibility.

The period of service a judge must have given before he is eligible for retirement with compensation varies in the states from ten to 30 years. In some states the amount of retirement compensation is determined by the length of service, in others by the salary of the last court the judge served in, and in still others by an arbitrary statutory sum.

In New Jersey the Chancellor, Chief Justice, any Associate Justice of the Supreme Court, Judge of the Circuit Court or Common Pleas Court, or Vice-Chancellor who has served in one or more of these positions for at least 14 years, and is 70 years of age or over, *may* retire from service on a pension equal to one-half the annual salary received. Appointed Judges of the Court of Errors and Appeals may retire on a pension of $6,000 annually, after serving in judicial office in the State for at least 15 years in the aggregate and having reached the age of 64.[44]

The methods of removal of a judge are far less satisfactory in the various states than the methods of retirement. Outside of death, resignation and retirement, the removal process may consist of impeachment, recall, concurrent resolution of the legislature, or action by the Supreme Court:

> "In the United States impeachment is the most common method used for removing judges of higher courts. The United States Constitution and all the state constitutions except two, provide for the impeachment of judges. The impeachment proceeding consists of two parts: (1) a charge of misconduct presented by the lower house of the legislature, and (2) a hearing and decision on the charge by the upper house (senate) sitting as a court of impeachment.
>
> As a method of eliminating unfit judges, impeachment has not proved effective. The houses of the legislature are not equipped to try and investigate questions of judicial misconduct, incompetency, neglect of duty or disability. These legislative bodies do not have time to handle such matters along with their other business. The senate is usually too large to act in a judicial capacity. And the houses of the legislature do not meet frequently enough

[43] See Table VI, "Provision for Judicial Tenure and Retirement in the Various States," "State Court Systems," *op. cit.*, pp. 33-4-5.
[44] R.S. 43:6-3 and 43:6-7.1.

to give judicial disciplinary cases the careful consideration or the immediate attention which they demand.

Impeachment has almost always been regarded as a penal proceeding. This character is given to impeachment by the nature of the causes for removal which are specified in the constitutional provision. These causes are commonly restricted to various forms of misconduct, and sometimes even more narrowly, to misconduct *in office*. * * * But however liberally we may interpret the meaning of the usual impeachment clauses, they all fall short of embracing causes for judicial removal unconnected with moral delinquency or wrong-doing. In most states the disabled or incompetent judge cannot be impeached.

Impeachment is a tool which easily falls into the hands of partisan politicians. The houses of the legislature are not organized in a way to eliminate partisan bias. Consequently this form of removal may be used to intimidate or get rid of able and independent judges. That this danger is inherent in impeachment is well attested by many instances in the early history of the courts of this country. * * *

However, leaving aside the dangers of possible abuse, impeachment is not an adequate remedy for the removal of unfit judges, both because of its cumbersomeness and because of the narrow grounds of removal which are usually specified in the impeachment clauses of our constitution." [45]

Of the 12 states that use the recall for the removal of elective offices, four of them specifically exclude judges from recall (Idaho, Washington, Michigan and Louisiana). There are serious objections to submitting the judiciary to a recall election. When former President Taft vetoed a joint resolution of Congress providing for the admission of Arizona into the Union in 1911, he did so because of the provision in the Arizona Constitution which provided for recall of the judges by the electorate. In a special message to Congress, President Taft declared:

"This provision of the Arizona Constitution, in its application to county and state judges, seems to me so pernicious in its effect, so destructive of independence in the judiciary, so likely to subject the rights of the individual to the possible tyranny of a popular majority and therefore to be so injurious to the cause of free government, that I must disapprove a constitution containing it."[46]

Another serious objection to the system of judicial recall is that it can be a threat to minority rights:

" (Judges) are charged with the protection of the rights of the individual, and in the performance of their duties they may frequently find it necessary to safeguard minority rights, guaranteed by federal and state constitutions, against momentary desires of a majority of voters. Thus they are the representatives, not merely of the dominant element in the commonwealth, but of every element. And their decisions must be based on law—not on popular notions of right and wrong. This theory, the theory of an independent judiciary, is the basis of the American judicial system. The recall, however, as applied to judges, is predicated upon an entirely different assumption. It implies that judges shall be the representatives of the majority and subject to majority rule, since they may be removed from office at any time by a vote of the majority of voters. Fortunately, in those states where recall has been adopted it has been used with great moderation. *But it is an ever-present menace to judicial independence.*

Of course, there is another side to the story. It can be argued, with reason, that secure tenure for judges operates to the benefit of the incompe-

[45] Shartel, *op. cit.*, pp. 144-6.
[46] Special Message to Congress, August 15, 1911, House Document No. 106, 62nd Congress, 1st Session.

TABLE I

SELECTION OF JUDGES*

State	Selection of Judges[a]: Elected on Partisan Ballot	Elected on Non-partisan Ballot	Chosen by Legislature	Appointed by Governor	Appointed by Other	Filling of Vacancies[a]: Governor	Filling of Vacancies[a]: Other
Alabama	AT	....	....	....	....	AT	....
Arizona	....	AT	....	....	....	AT	....
Arkansas	AT	....	....	....	....	AT	....
California	....	T	....	....	A[b]	AT	....
Colorado	AT[e]	....	....	....	....	AT	C[d]
Connecticut	P	....	AT[e]	....	I[f]	AT	....
Delaware	....	....	....	AT	....	AT	....
Florida	A	....	....	T	....	AT	....
Georgia	AT[e]	....	....	C	....	AT	....
Idaho	....	AT	....	....	....	AT	P[d]
Illinois	AT[e]	....	....	F	....	AT	AT[g]
Indiana	AT[e]	....	....	M	I[h]	AT	....
Iowa	AT[e]	....	....	....	....	AT	....
Kansas	AT[e]	....	....	....	....	AT	....
Kentucky	AT[e]	....	....	....	....	AT[i]	....
Louisiana	AT	....	....	....	....	AT	T[j]
Maine	P	....	....	AT	....	AT	....
Maryland	AT	....	....	J	....	AT	....
Massachusetts	....	....	....	AT	....	AT	....
Michigan	....	AT	....	....	....	AT	....
Minnesota	....	AT	....	....	....	AT	....
Mississippi	AT	....	....	....	....	AT	....
Missouri	TC	....	....	AT[k]	....	AT	....
Montana	....	AT	....	....	....	AT	....
Nebraska	....	AT	....	....	....	AT	....
Nevada	....	AT	....	....	....	AT	....
New Hampshire	....	....	....	AT	....	....	....
New Jersey	....	....	....	AT	E[l]	AT	....
New Mexico	AT	....	....	....	....	AT	....
New York	AT[e]	....	....	A[m]	A[m][n]	AT	....
North Carolina	AT	....	....	S[o]	I[o]	AT	....
North Dakota	....	AT	....	....	....	AT	....
Ohio	....	AT	....	....	....	AT	....
Oklahoma	AT[e]	....	....	....	....	AT	....
Oregon	....	AT	....	....	....	....	AT[p]
Pennsylvania	AT	....	....	....	....	AT	....
Rhode Island	....	....	A	T	P[q]	AT	....
South Carolina	....	....	AT	C	....	AT	....
South Dakota	....	AT	....	....	....	AT	....
Tennessee	AT[e]	....	....	....	....	AT	....
Texas	AT[e]	....	....	....	....	AT	....
Utah	AT	....	....	....	....	AT	....
Vermont	....	PC[d]	AT	....	....	AT	....
Virginia	PC	....	AT	....	....	AT	....
Washington	....	AT	....	....	....	AT	....
West Virginia	AT	....	....	....	....	AT	(r)
Wisconsin	....	AT	....	....	....	AT	....
Wyoming	....	AT	....	....	....	AT	....

[a] Explanation of symbols:
A—Appellate court judges
C—County court judges
E—Equity Courts
F—Judges of Court of Claims
I—Inferior court judges
J—Juvenile Court judges
M—Municipal Court judges
P—Probate judges or surrogates
S—Superior Court judges
T—Trial court judges

[b] Nominated by governor to a judiciary commission; if the commission confirms the nomination, the judge serves until the next general election when his appointment must be re-confirmed by a majority of the voters. Method applies only to Appellate Court judges, although counties may adopt it for trial judges if they desire to do so.

[c] Independent ticket or non-partisan nomination permitted.

[d] Board of Commissioners.

[e] Nominated by governor.

[f] Selectmen of town choose trial justices; chief justice of Supreme Court appoints if selectmen fail to do so.

[g] Special election if more than one year until next general election.

[h] Judge of magistrates court chosen by judge of Circuit Court.

[i] Court of Appeals and Circuit court judges. County judges by vote of justices of the peace of county.

[j] Special election if more than one year of term left.

[k] Appellate Court judges and judges of trial courts in St. Louis and Jackson county are appointed by the governor from a panel presented by a judicial selection commission, representing the bar, the bench, and the public; appointment must be confirmed by a majority of the voters.

[l] Vice-chancellors are selected by the chancellor.

[m] Appellate division judges chosen by governor; appellate term judges chosen by appellate division judges.

[n] Local officers select Inferior court judges.

[o] Special judges of Superior Court chosen by governor.

[p] Special election.

[q] Assistant judges of County Court.

[r] Special election if more than two years of term left.

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TABLE II

QUALIFICATIONS OF JUDGES*

State	U. S. Citizenship: Supreme Court	U. S. Citizenship: Superior Court	U. S. Citizenship: Others†	Residence: Supreme Court	Residence: Superior Court	Residence: Others†	Minimum Age: Supreme Court	Minimum Age: Superior Court	Minimum Age: Others†	Experience: Learned in Law	Experience: Legal Experience‡	Good Character
Alabama	★	....	★	5 yrs.	.....	5 yrs.	25	....	25	★[a]	....	....
Arizona	....	....	....	5 yrs.	2 yrs.	.....	30	25	....	★	★	....
Arkansas	★	....	★[b]	2 yrs.	.....	2 yrs.[b]	30	....	(c)	★	★	★
California	★	★	★	5 yrs.	5 yrs.	.....	....	....	....	★	★	....
Colorado	★	....	★	2 yrs.	.....	2 yrs.	30	....	30[d]	★	....	....
Connecticut	★	★	★	.....	.....	.....	....	....	....	....	....	....
Delaware	★	....	★	.....	.....	(e)	....	....	....	★	★	....
Florida	....	....	....	.....	.....	5 yrs.[f]	25	....	25[g]	★	....	....
Georgia	★	★	★	3 yrs.	3 yrs.	.....	30	30	....	★	★	....
Idaho	....	....	....	2 yrs.	.....	2 yrs.	30	....	30	★	....	....
Illinois	★	★	★	5 yrs.	5 yrs.	5 yrs.	30	....	25	....	....	....
Indiana	....	....	★[h]	.....	.....	5 yrs.[h]	....	....	30[h]	★[h]	★[h]	★[h]
Iowa	....	....	....	.....	.....	(i)	....	....	....	....	★[j]	....
Kansas	....	....	....	.....	.....	(i)	30	....	30[d]	★	★	....
Kentucky	....	....	....	5 yrs.[k]	.....	2 yrs.[b]	35[k]	....	35[b]	★	★	....
Louisiana	★	....	★[k]	yrs.	.....	2 yrs.[k]	35	....	....	★	★	....
Maine	....	....	....	.....	.....	.....	....	....	....	★	....	★
Maryland	....	....	....	5 yrs.	5 yrs.	5 yrs.	30	30	30[l]	★	....	★
Massachusetts	....	....	....	.....	.....	.....	....	....	....	....	....	....
Michigan	....	....	....	.....	.....	(m)	....	....	....	★	★	....
Minnesota	....	....	....	.....	.....	(n)	....	....	....	★	....	....
Mississippi	....	....	....	5 yrs.	.....	5 yrs.	30	....	26[o]	★	★	....
Missouri	★	....	★	5 yrs.	.....	(p)	30	....	(q)	★	....	....
Montana	★	....	★	2 yrs.	.....	1 yr.[d]	30	....	25[d]	★	....	....
Nebraska	★	....	★	3 yrs.	.....	3 yrs.[d]	30	....	30[d]	★	★	....
Nevada	....	....	....	2 yrs.	.....	2 yrs.	25	....	25	★	....	....
New Hampshire	....	....	....	.....	.....	.....	....	....	....	....	....	....
New Jersey	....	....	....	.....	.....	.....	....	....	....	★[r]	★[r]	....
New Mexico	....	....	....	3 yrs.	.....	3 yrs.[d]	30	....	30	★	★	....
New York	★	....	★	yes	.....	yes	21	....	21	★[s]	★[s]	....
North Carolina	★	....	★	1 yr.	.....	1 yr.	21	....	21	★	★	★[t]
North Dakota	★	....	★	3 yrs.	.....	2 yrs.[u]	30	....	25[u]	★	....	....
Ohio	....	....	....	.....	.....	(v)	....	....	....	★	★	....
Oklahoma	★	★	★	2 yrs.	2 yrs.	2 yrs.	30	....	25[d]	★	★	....
Oregon	★	....	★	3 yrs.	.....	3 yrs.	....	....	....	....	....	....
Pennsylvania	★	★	★	1 yr.	1 yr.	1 yr.	21	21	21	★	....	....
Rhode Island	★	★	★	2 yrs.	2 yrs.	2 yrs.	21	21	21	....	....	....
South Carolina	★	....	★[b]	5 yrs.	.....	5 yrs.[b]	26	....	26[b]	★	★	....
South Dakota	★	....	★	2 yrs.	.....	1 yr.[w]	30	....	25[w]	★	....	....
Tennessee	....	....	....	5 yrs.	.....	5 yrs.[x]	35	....	30	★	....	....
Texas	★	★[k]	★	.....	.....	2 yrs.[i]	30	30[k]	25[d]	★	★	....
Utah	....	....	....	5 yrs.	.....	3 yrs.[i]	30	....	25[d]	★	★	....
Vermont	....	....	....	.....	.....	.....	....	....	....	....	....	....
Virginia	★	....	★	.....	.....	(i)	21	....	21	★	★	....
Washington	★	★	★	1 yr.	1 yr.	1 yr.	21	21	21	★	★	....
West Virginia	....	....	....	5 yrs.	.....	5 yrs.	30	....	30	....	....	....
Wisconsin	★	....	★	1 yr.	.....	1 yr.	25	....	25	★	....	....
Wyoming	★	....	★	3 yrs.	.....	2 yrs.[d]	30	....	28[d]	★	★	....

† The star (★) in this column applies to all or to a majority of the other courts in the state, except as indicated below.
‡ Legal experience includes either the actual practice of law for a specified or unspecified number of years, or simply admission to the bar.
[a] Except probate judge.
[b] Judge of circuit court.
[c] Circuit judge, 28; county judge, 25.
[d] District court judge.
[e] Court of common pleas, 5 years residence in New Castle County or resident of Kent County.
[f] Civil court of record.
[g] Circuit, criminal, and civil court of record.
[h] Appellate court.
[i] District judge shall be resident of district.
[j] Superior court.
[k] Court of appeals.
[l] Judges of all courts of record.
[m] Probate judges must be residents of county.
[n] District and probate judges must be residents of district.
[o] Circuit, county, and chancery judges.
[p] Court of appeals, 5 years; circuit courts, 3 years; probate and county courts, resident of county 1 year.
[q] Court of appeals and circuit court, 30; probate and county courts, 24.
[r] Vice-chancellor, 10 years legal experience.
[s] Justice of court of claims, 10 years experience.
[t] Must believe in God.
[u] District and county courts.
[v] Court of common pleas judges must reside in district.
[w] Circuit and county judges.
[x] Circuit and chancery judges.

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tent as well as the competent, and sometimes keeps men on the bench who have amply demonstrated their unfitness for public office. But the danger of keeping some judges too long seems less serious than the danger of rendering the entire judiciary subservient to the whims of popular fancy. And no way has yet been found to make good judges independent, while subjecting bad judges to the constant necessity of retaining the support of the voters." [47]

Twenty-eight of our states provide a method of removal of judges by concurrent resolution of the legislature, or "joint address."

"The constitutions of those states always restrict this form of removal in many ways. Usually an address requires a vote of two-thirds of the members elected to each house of the legislature. The person to be removed is entitled to notice as well as an opportunity to be heard. And the cause or causes of removal are required to be entered on the journals of both houses . . . Most of the constitutions specify the causes for which a judge or other officer may be removed,—'for reasonable cause,' 'for good cause,' 'for cause,' etc. * * * But whatever may be the scope of the power to remove judges by joint address . . . it seems clear that the power to remove by address is a wider power than the power of impeachment. . . .

Like impeachment, address might, and perhaps has sometimes been used for political ends. But address has tended in the same way as impeachment to become a quasi-judicial proceeding.

In conclusion, it may be said that while both legislative methods of removal are cumbersome and ineffective, there is not sufficient reason for abolishing them. They should be supplemented by some method of removal by judicial action." [48]

Impeachment proceeding is the only method which New Jersey has to remove unfit judges.[49] Even the Chancellor, who has sole control over the appointment of Vice-Chancellors, may not remove a Vice-Chancellor.[50] It would seem that some other fairer and more effective way of removing judicial officers could be developed, that would fit in with New Jersey's system of appointments.

Removal by judicial action provides a method of calm, deliberative and investigatory action by a judge's peers. A few states have already adopted by constitution this system for removal of judges in the upper courts.[51] Others have adopted it by statute for inferior courts.[52] Shartel, in the quoted article on "Retirement and Removal of Judges" (note 41), says:

"The supreme court or an administrative council composed of judges

[47] MacDonald, *op. cit*, pp. 235-6.
[48] Shartel, *op. cit.*, pp. 146-7.
[49] New Jersey Constitution, Art. VI, sec. III, pars. 1-3.
[50] *In the Matter of the Petition of New Jersey State Bar Association,* 112 N. J. Eq. 606, it was held that the Chancellor did not have the power to remove a Vice-Chancellor from office on the ground that a Vice-Chancellor is a constitutional officer and as such could only be removed according to the constitutional provision for impeachment.
[51] Alabama, Texas, Louisiana, Oregon.
[52] California, Idaho, Oklahoma, New York. New York also has a constitutional amendment to be voted on in the general election in 1947 which creates a "court on the judiciary" to try cases of removal or compulsory retirement of judges of the Court of Appeals, justices of the Supreme Court, judges of the Court of Claims, General Sessions, county judges and surrogates. The court on the judiciary consists of the chief judge of the Court of Appeals, the senior associate judge of the Court of Appeals and one justice of the Appellate Division in each department. Removal shall be for cause only, and retirement for mental or physical disability. The chief judge may convene the court on the judiciary upon his own motion and *shall* convene the court upon written request by the governor, or by the presiding justice of any Appellate Division, or by a majority of the judicial council or a majority of the executive committee of the New York State Bar Association. The legislature is given the power to prefer the same charges "for cause" only (not for disabiilty), and if it does so, by impeachment, the action of the court on the judiciary is stayed until the determination of the legislature. Concurrent Resolution of the Senate and Assembly, No. 313 in Assembly, January 14, 1947.

would be the proper tribunal to be vested (with such jurisdiction).

Judicial removal proceedings might be initiated in one or all of several ways. The attorney-general might be authorized to initiate proceedings; or such proceedings might be started by state or local bar associations; or they might depend upon the petition of a certain number of attorneys. Or finally, the chief justice might have authority to initiate such proceedings, especially if he were charged with the general supervision of the judicial system.

The method of removal by judicial action has important advantages. A tribunal constituted of judges is able to dispose of disciplinary matters expeditiously; it is fitted by training and experience to try questions of fact. It is closely associated with problems of administering justice and is confronted daily by problems of judicial ethics which should give it the proper appreciation of the conduct of any judge accused of malfeasance in office, as well as a sound estimation of those qualities which would be involved in a compulsory retirement on account of age or health. Cases of retirement and removal necessarily involve discretion. They cannot be settled by stiff and arbitrary rules. No one is so well qualified by training and experience to exercise discretion fairly as a court consisting of supreme court judges. By comparison, existing methods of removal furnish no adequate test of the incumbent's fitness or capacity. For example, a senate, or a state legislature, which tries an impeachment charge consists almost entirely of men untrained in judicial matters. In its hands discretion readily degenerates into a mere partisan or emotional determination. And, of course, the other prevailing method of removal, to wit, the defeat for re-election, is even less discriminating; it results too often in injustices either to the public, or to the incumbent, or both. A judicial removal proceeding is the only form which is entirely consistent with security of judicial tenure." [53]

BIBLIOGRAPHY

"The Bars' Opinion on Judicial Selection," Amer. Bar. Assn. Journal, September 1934, pp. 529-532.

California. Constitution.

CHOATE, RUFUS. "Rufus Choate on Judicial Tenure—Address in the Constitutional Convention, 1853," Jour. of the Amer. Jud. Soc., July 1933.

Council of State Governments. The Book of the States, 1945-46.

Council of State Governments. "State Court Systems," September 1940.

CUSHMAN, R. E. "Our Antiquated Judicial System." 181 Annals of the Amer. Acad. of Pol. & Soc. Science 90 (1935).

FAIRMAN, CHARLES. "The Retirement of Federal Judges," 51 Harvard Law Review 397 (Jan. 1938).

FEIGHTNER, MILO M. "Judicial Selection and Tenure," Indiana Law Journal, February 1940, pp. 215-226.

FINCH, E. R. "A Non-Political Council on Judicial Character and Fitness for Those About to be Nominated or Appointed to the Bench," 20 Amer. Bar Assn. Journal 144-174 (1934).

GRAVES, W. BROOKE. American State Government, (chap. XVI, "State Courts: Organization and Jurisdiction"), 1946.

HAYNES, EVAN. The Selection and Tenure of Judges (National Conference of Judicial Councils, 1944).

HYDE, LAURENCE M. "Selection and Tenure of Judges," Amer. Bar. Assn. Journal, December 1941, pp. 763-765.

KALES, ALBERT. "Methods of Selecting and Retiring Judges in a Metropolitan District," Annals of the Amer. Acad. of Pol. & Soc. Science, March 1914.

LASKI, HAROLD J. "Technique of Judicial Appointment," 24 Mich. Law Review 529 (1926).

Louisiana State Univ., Constitutional Revision Projet. Constitutional Problems (Monograph 8, "The Judiciary—State Judicial Systems"; Monograph 16, "The Judiciary—Selection of Judges").

[53] Shartel, *op. cit.*, pp. 140-1.

MACDONALD, AUSTIN F. American State Government and Administration (chap. 11, "State Courts"), 3rd ed., 1945.
MARTIN, EDWARD M. The Role of the Bar in Electing the Bench in Chicago, 1936.
MCCORMICK, CHARLES T. "Bar Association Plan for the State of Washington," 18 Jour. of Amer. Jud. Soc. 141 (1935).
MCCORMICK, CHARLES T. "Proposed Reorganization of the Illinois Judiciary," 29 Ill. Law Review 31 (1934).
MCNUTT, PAUL V. "The Elective Method of Judicial Selection and Proposed Remedies," Amer. Bar Assn. Journal, vol. XX, October 1934, pp. 639-649.
Missouri. Constitution.
New Jersey. Constitution.
New Jersey. Equity Reports.
New Jersey. Record of Proceedings before the Joint Committee of the New Jersey Legislature Constituted under Senate Concurrent Resolution No. 19, . . . adopted June 15, 1942, 1942.
New Jersey. Report of the Commission on Revision of the New Jersey Constitution, 1942.
New Jersey. Reports of the Judicial Council of New Jersey.
New Jersey. Revised Constitution for the State, Agreed upon by the One Hundred Sixty-eighth Legislature, 1944.
New Jersey. Revised Statutes Annotated (West Pub. Co.).
New Jersey State Bar Association. Minutes of the Annual Meeting, N. J. State Bar Assn. Quarterly, July 1934, p. 56.
New York. Concurrent Resolution of Senate and Assembly to Establish Court on the Judiciary, No. 313 in Assembly, January 14, 1947.
New York Constitutional Convention Committee, 1938. Report. (Vol. IX, "Problems Relating to Judicial Administration and Organization), 1938.
"New York's Experience Shows Need for Better Method of Selecting Judges," Amer. Bar Assn. Journal, December 1943, p. 690.
New York *Herald Tribune,* November 2, 1943.
New York *Times,* November 2, 1943.
PM, November 2, 1943.
POUND, ROSCOE. "The Judicial Office To-day," Amer. Bar Assn. Journal, September 1939, pp. 731-737.
SANDERS, PAUL H. "Appointment of Judges—An Analysis of Current Proposals," Amer. Bar Assn. Journal, February 1936, pp. 131-136.
SHARTEL, BURKE. "Retirement and Removal of Judges," 20 Jour. Amer. Jud. Soc., No. 4, December 1936.
"Summary of Judicial Selection Plans," Jour. of the Amer. Jud. Soc., April 1935, pp. 166-169.
TAFT, WM. H. President, Special Message to Congress, August 15, 1911, House Doc. No. 106—62nd Cong.—1st Session.

JUDICIAL ADMINISTRATION

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Introduction

The most striking aspect of judicial administration, from the point of view of the general public, is an apparent total disregard for ordinary business efficiency and economy.[1] Apart from the confusing welter of courts and overlapping jurisdictions, each tribunal has its own collection of special procedures which varies not only for each court, but sometimes for different judges in that court.[2] Moreover, the various personnel employed in the administration of justice are often independent of each other and function without central regulation.[3] Finally, many of the practices and office procedures employed in dispatching judicial business are cumbersome, time consuming and expensive, dating from the time when the mails were unreliable and typewriter, films, telephones and business machines had not been invented.[4]

Almost every business man has drawn up his own prospectus for changes in the administration of justice, while pacing the court house corridors waiting for a case to be reached for trial.[5] Nearly every judge and lawyer could add to that list of improvements out of long experience in coping with the diffuse and unintegrated court structure and unwieldly procedures. However, the 1844 Constitution and subsequent legislation established a rigid pattern for judicial administration which is not readily susceptible to change.[6] Moreover, central organization and supervision of judicial business, which is the core of almost every proposal for revision, is opposed to the tradition of local self-government, which was so largely responsible for the present discrete court structure.[7]

According to experts, the nature of the judicial process is altogether compatible with techniques of efficiency and economy employed in modern business and in other branches of government.[8] Moreover, the proposals developed in this report have actually been

[1] Willoughby, W. F. Principles of Judicial Administration, 1929, p. 3, *et seq.*
[2] See Revised Statutes, Title 2, Administration of Civil and Criminal Justice.
[3] See, *e.g.*, the enumeration of non-judicial officials concerned with the administration of justice, *post.*
[4] See R. H. Temple, "Court Officers: Their Selection and Responsibilities," p. 5, *et seq.* Paper presented at the 42nd annual meeting of the American Political Science Assn., Cleveland, Ohio, December 28, 1946.
[5] Sunderland, E. R. "The English Struggle for Procedural Reform," 39 Harv. L. Rev. 725 (1926).
[6] N. J. Constitution, Art. VI, Judiciary. See also Art. X, Schedule, sec. 1.
[7] See Proceedings of the New Jersey Constitutional Convention of 1844, p. 249.
[8] See Willoughby, *supra*, p. 11.

tested in the operation of other judicial systems. Several of the recommendations could be given effect without constitutional revision, but all would be advanced by specific constitutional authorization.

Other reports deal with the merger and simplification of the court structure, the most basic of the changes necessary to modernize the administration of justice. This report is concerned with improvement of the day-to-day business administration of the work of the courts, however they may be constituted.

Rules of Practice and Procedure

The body of legislation, precedents and practices which governs the procedure of courts is generally referred to as *adjective law,* while *substantive law* defines the rights and duties asserted or enforced by litigation.[9] Logically, adjective law should have been closely adapted to its functional purpose, namely the efficient presentation of controversies for decision by courts. In fact, the development of that branch of the law took a very different course. For reasons not particularly relevant to the 20th Century, adjective law very early became crystallized into a set of rigid patterns for legal redress.[10] The ability to discover an applicable writ of action and to formulate the controversy by highly stylized pleadings eventually overshadowed the merits of the litigation.[11] The predominance was so complete that it became practically as well as philosophically impossible to identify substantive rights and duties except in terms of the procedures available for their enforcement.[12]

In more recent history, the unbalanced development of adjective and substantive law has been at least partially redressed. Lord Mansfield's observation that the common law forms of action rule us from the grave is no longer completely valid. However, the traditional predominance of adjective law has left at least two heritages which still afflict judicial administration. The first is the body of voluminous, inflexible and minutely detailed codes of procedure which almost every state legislature has enacted in an effort to compel the displacement of archaic judicial practices. The second is a continuing tradition of regard for technicality in the presentation and trial of controversies.

New York is an outstanding example of the first tendency. In 1846 its constitution was revised to permit the merger of courts and the simplification of the judicial structure. The Field Code, adopted by the legislature in 1848, laid down minute specifications for practice and procedure in the courts. This action became the model

[9] Morgan, E. M. The Study of the Law, (1926) p. 1, *et seq.*
[10] Pollack and Maitland, History of English Law, 2nd ed., vol. 2, p. 561.
[11] See Morgan, *supra,* p. 58.
[12] See Report of Essex County Bar Association Committee on Constitutional Revision of the Judicial Article, N. J. Law Journal, June 5, 1947, p. 2.

for other constitutional conventions and legislatures engaged in the reform of judicial administration.[13] However modern they may have been at their inception, legislative codes became outmoded in turn. Meanwhile they had developed their own cults of observances, which were difficult to eradicate.

The second tendency, namely, a continuing regard for procedural technicalities, was in a sense a product of the first. So long as legislative codes regulated judicial practices, courts found in the letter and intent of practice acts both the opportunity and the duty to follow outmoded procedures.[14]

The right to govern their own practice and procedure, at least in matters not controlled by the constitution or legislation, has always been asserted by courts as an inherent attribute of the judicial function.[15] Nearly all New Jersey courts have formulated and published general rules of practice, which have the effect of law, subject to the court's power to suspend the rules as the needs of justice may require.[16] Most experts in judicial administration would have the scope of court rules amplified to include all phases of practice and procedure.[17] They argue that judges and lawyers are among the best informed critics of their own procedures. Concentration in the courts of all responsibility for judicial practices would abolish the present causes and excuses for antiquated methods of administration. The courts would become answerable not merely for the product of their work but also for the methods by which they get their business accomplished. The element of rigidity in constitutional or legislative codes of practice would be displaced. Procedures completely within the control of the courts would be the subject of recurrent study and evaluation and could be revised as promptly and as often as conditions required.

This solution for the deficiencies in legislative practice codes was long advocated and finally adopted in the federal judicial system. By an Act of Congress, adopted in 1934, the United States Supreme Court was authorized to displace the existing procedures in all civil cases and to promulgate a single, uniform set of general rules of court.[18] The former practice was governed by a medley of state and federal legislation, separate rules of court for law and equity cases, a variety of state court rules of procedure, and a residual composite of mixed practices.[19] The United States Supreme Court appointed

[13] Millar, R. W. "Notabilia of American Civil Procedure," 50 Harv. L. Rev. 1017 (1937).

[14] *E.g.*, the refusal of appellate courts to review decisions on questions of evidence, where counsel failed to note an exception after the objection was overruled. This practice dates from the time when testimony was not taken down stenographically and the trial paused with each exception to permit counsel to write out the subject of the exception and to enable the judge to sign and seal the exception.

[15] Millar, *supra*, p. 1063.

[16] Supreme Court Rule 218; Chancery Rule 4.

[17] See Roscoe Pound, "Regulation of Judicial Procedure by Rules of Court," 10 Ill. L. Rev. 163; Wheaton, "Procedural Improvements and the Rule Making Power of Our Courts," 22 Amer. Bar Assn. Journal.

[18] Act of June 19, 1934, c. 651, 48 Stat. 1064, 28 U. S. C. A. sec. 723 b, c.

[19] See testimony of Justice Sutherland, Hearings Before Subcommittee of Senate Committee on the Judiciary. 68th Cong., 1st Session, (1924), p. 54.

a committee, consisting of judges, lawyers and teachers, who spent four years devising a set of rules, which were officially adopted in 1938. By means of these rules of court, civil practice in the federal courts throughout the nation was made uniform, procedure was greatly simplified, cumbersome, outmoded and expensive methods of conducting litigation were discarded and the work of the courts was greatly expedited.

The Constitution proposed for adoption by New Jersey in 1944 made provision for a similar program.[20] The highest court of appeal was directed to "make rules governing the administration of all of the courts in this State." In addition, the court was authorized to lay down general rules of pleading, practice and evidence to govern all the courts, subject to the overriding power of the Legislature to change or abrogate these rules.

Since the reform of federal civil procedure was made possible by an Act of Congress, opinions may differ as to need for a constitutional provision in New Jersey on the subject. However, the desirability of a modern, uniform, simplified code of practice is beyond controversy. The superior advantages of rules of court, as a means of accomplishing this urgently needed reform, has been demonstrated in the federal judicial system and elsewhere. Of itself, the simplification of court practice, expedition of litigation calendars, and elimination of much unnecessary expense and delay, will go far towards correction of the most severely criticized deficiencies in judicial administration.

A Business Office for the Courts

The judiciary apart, almost every other branch of government functions under a central, directing authority with power to coordinate the activities of the various units and to assign personnel, as needed for the dispatch of business. In New Jersey, the Chancellor has both the power and the duty to direct the business operations of the Court of Chancery. Similarly, the Chief Justice controls the assignment of state judges and occasionally gives temporary assignments to county judges as well. However, sustained, day-to-day supervision and coordination of judicial business throughout the State has been lacking in New Jersey. For the most part, each judge functions independently of his associates on the bench, minimum standards of performance are not available or enforced, and the condition of court calendars in the several counties and often within the same county varies widely.[21]

[20] Article V, sec. II, par. 3.

[21] In Essex County, for example, negligence cases started at the same time, will be reached for trial sooner in the Court of Common Pleas than in the Circuit or Supreme Court. Yet both courts have equivalent jurisdiction, unlimited as to amount and distinguished only by the fact that the Court of Common Pleas is not available if the defendant cannot be served within the county.

It is difficult to imagine a successful business enterprise as loosely organized and as poorly coordinated as the system of courts in New Jersey. While the history from which New Jersey's court structure developed may account for this condition in the past, it will not satisfy the need and current demand for a business-like administration of the judicial branch of government.

Here again, the federal judicial system offers a model. A Conference of Senior Circuit Judges was created by an Act of Congress in 1925.[22] It served as a clearing house for the exchange of information among the several circuits into which the federal judicial system is divided and also investigated and recommended changes in practice and procedure. The experience gained in this fashion merely emphasized the need for more accurate and detailed information as to the day-to-day activities of the courts and the advantages which might be realized by closer supervision and coordination of their activities. As a result, Congress established in 1939 an Office of Administration of the United States Courts, under a Director and Assistant Director to be appointed by and responsible to the United States Supreme Court.[23] The function of this office is to administer all fiscal affairs of the court system, to prescribe and collect statistics as to the number and type of cases brought in each district and before each judge in that district, the volume of business transacted by the several judges and the time required for the decision of cases, the condition of local calendars and the availability of individual judges for special assignment to other districts.

The Constitution proposed for adoption by New Jersey in 1944 followed the federal model in providing for an executive director to assist the Chief Justice who was constituted "the administrative head of all of the courts in this State." [24] Specifically, the director was required to collect and publish statistical records of the work of all judges and courts and the cost thereof.[25]

If the desirability of a centralized, business administration of the judicial system be conceded, a constitutional provision on the subject is indispensable. Since the courts themselves are created by the Constitution, the commission to administer, supervise and coordinate their activity would seem to require authority of equal degree. Whatever objection may be made to the integration of local courts into a single, statewide system, there is little room for difference as to the public need for regular and accurate reports of the work of the court. The creation of a business office for New Jersey's court system is the only practical, tested method of satisfying that demand.

[22] 42 Stat. 837, 28 U.S.C.A. par. 218.
[23] Public Statutes No. 229 Chap. 501, 76th Cong., 1st Session.
[24] Article V, sec. VI, par. 1.
[25] Article V, sec. VI, par. 2 (2) and (3).

Judicial Control Over Non-Judicial Officers Concerned With the Administration of Justice

The primary duty of judges is to try cases. Yet no court could function without a varying number of administrative officials to maintain the court records, file papers, serve documents, execute judgments, make transcripts of court proceedings and assist in preserving order in the court room. At present such duties are distributed among a number of officials, variously appointed, subject to different discipline and without central direction either as to procedure or performance. For example, the Secretary of State, appointed by the Governor with the advice and consent of the Senate, is clerk of the Court of Errors and Appeals.[26] The respective clerks of the Supreme Court and the Court of Chancery are appointed in the same way.[27]

County clerks, elected by the people, are the clerks of a number of the local courts.[28] The surrogate, who also acts in a clerical capacity, is likewise chosen by popular election.[29] The county sheriffs, who serve documents, execute judgments and also perform other duties in connection with the administration of justice, are elected officials.[30] A complete list would substantially extend this enumeration.

The practices of these officers are as varied as their official titles and methods of selection. In matters of office routine, each county clerk establishes his own procedure. Even the clerks of statewide courts do not follow the same practice. The plaintiff, in an action commenced in the Supreme Court, must purchase a copy of the papers in the file, for use of the judge at the trial.[31] The clerk will not permit the papers to leave his office at Trenton except under subpoena. The Chancery Court clerk, by contrast, will forward files for use of the Vice-Chancellor or Advisory Master who conducts the hearing. Until very recently, the clerk enrolled, *i.e.,* had copied in writing at length, all final decrees of the court, at the expense of the litigants.[32] Here again, the number of instances could be multiplied.

Centralized judicial administration, controlled by the courts themselves, would be only partially effective unless the activity of non-judicial officials, concerned with the administration of justice, could be integrated as well. The consensus of all expert opinion is that all clerks of court should be appointed by and subject to the discipline of the courts, and that the operation of clerical offices,

[26] N. J. Const. Art. VI, sec. II, par. 4; Article VII, sec. II, par. 3.
[27] N. J. Const. Art. VII, sec. II, par. 3.
[28] N. J. Const. Art. VII, sec. II, par. 5.
[29] N. J. Const. Art. VII, sec. II, par. 5.
[30] N. J. Const. Art. VII, sec. II, par. 6.
[31] R. S. 2:27-186.
[32] R. S. 2:29-52. On May 28, 1947, the Governor signed Senate Bills 77 and 78 (P.L. 1947, c. 228 and c. 229), authorizing the Chancellor to have pleadings, decrees and other papers entered or enrolled by the use of "any photostatic, photographic, or mechanical process whatsoever," including microfilming.

like court procedure and practice, should be governed by rules of court.[33]

The 1944 proposed Constitution adopted that plan. The highest appellate court was empowered to appoint its own clerk and the clerk of the only other court (Superior Court) mentioned in that document. The approval of the Governor was required for the appointments and the incumbents were to hold office at the pleasure of the court. While county clerks and surrogates, elected as heretofore, were continued in their functions as court clerks, they were to perform only "such duties as may be prescribed by rules of the Supreme Court subject to law."[34]

Both the need and the desirability of equivalent provisions in any newly proposed Constitution would seem to be apparent. In no other way can the advantages possible from flexible, informed and economical administration of the judicial system as a whole be realized fully.

Judicial Council

An act adopted by the New Jersey Legislature in 1930 created a permanent judicial council, comprised of judges, legislators, the Attorney-General, the president of the State Bar Association and five lawyers of his selection. Their function was to

> "make a continuous study of the organization and relation of the various courts of the state, counties and municipalities, the rules and methods of procedure and practice of the judicial system of the state, the work accomplished and the results produced and shall, from time to time, submit, for the consideration of the justices and judges of the various courts, such suggestions in regard to the rules of practice and procedure as it may deem advisable." [35]

The prior recommendations for improving judicial administration have the common feature of centralizing power in the Chief Justice or in the Court of Appeals. Necessary as this may be in the interest of efficiency and uniformity in direction, practice and procedure, no provision is made for independent, critical appraisal of the results accomplished and the work which remains to be done.

Judicial councils have been established as a regular part of the judicial structure of many states, frequently by constitution.[36] A judicial council in New Jersey could become the principal independent agency for recurrent review of the operation of the judicial system as a whole, and for the investigation and initiation of methods and programs for improvement.

Conclusion

A discussion of judicial administration is not complete without consideration of the rules of grand and petit juries, the prosecutor's

[33] See Temple, *supra*, p. 12.
[34] Article V, sec. VI, pars. 3 and 4.
[35] R. S. 2:17-7.
[36] See Willoughby, *supra*, p. 264.

office, the desirability of public defenders, probation departments, specialized courts to deal with small causes, domestic relations, juvenile offenders and the like, the coordination of the work of courts and other governmental agencies, as for example, police courts and the Commissioner of Motor Vehicles, and numerous other topics. Few, if any, of these subjects are proper material for treatment in a Constitution. The salient changes in judicial administration, suitable and eligible for constitutional consideration, are the items which have been dealt with under the main topic headings, to which this report is accordingly confined.

THE JUDICIAL COUNCIL

by

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I—Functions

The primary function of the judicial council is to study the court system in the state and to recommend desirable changes. For this purpose it conducts "a continuous survey of the volume and condition of business in the various state courts and also observes the result of experiments in other jurisdictions." [1] It devises

> "ways of simplifying judicial procedure and handling cases more expeditiously. Proposals for improved organization and method are submitted to the legislature and occasionally to the judges of the courts. Special investigations are made from time to time at the legislature's request. In most instances, therefore, a judicial council merely investigates and recommends. It is without power to compel adoption of any of its suggestions. It has no final authority. But in a few states, of which California is the most notable example, it has a certain measure of control over the court system. The California Judicial Council assigns judges to care for crowded calendars, and also to make rules of procedure that supplement rules established by state law." [2]

More than a third of the states have created judicial councils for the purpose of scrutinizing the operations of the courts, expediting their business, and bringing order into their transactions.[3]

Apparently many states evidenced a critical need for a more efficient administration of justice. It became obvious that some agency was essential to conduct a systematized study for the improvement of unsatisfactory conditions in the courts, especially in connection with congestion of the court calendars, delays, and miscarriages of justice.[4] Consequently

> "the Judicial Council became one of the most important devices employed * * * for the improved efficiency of the court system." [5]

Chief Justice Lucien D. Gardener, Chief Justice of the Alabama Supreme Court, writing recently on the subject, said: [6]

> "Judicial Councils are organizations set up to study and report on the state's judicial system, with recommendations for improvement as investigations of the Council show to be necessary. * * * The work of the Council involves the collection of statistical and other information concerning the courts and litigation conducted in them; the efficiency with which the business of the courts is being administered, the soundness of the rules of prac-

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[1] MacDonald, A. F. American State Government and Administration, (3rd ed., 1945) p. 239.
[2] *Ibid*, p. 240.
[3] Grant, J. A. C. "The Judicial Council Movement," Amer. Pol. Science Review, November 1928.
[4] Louisiana State University, Constitution Revision Projet. Constitutional Problems, No. 6, "Judicial Council," p. 1, 1947.
[5] *Ibid*, Introduction by Kimbrough Owen.
[6] "Judicial Councils," 5 Alabama Lawyer 297 (1944).

tice, procedure and evidence, and other matters of similar nature. Experience has demonstrated that the legislatures of the several states can give only limited and intermittent time and effort to the problems involved in the administration of justice. The Judicial Council is, therefore, a state agency to gather information and to make suggestions which concern the welfare of the courts and the disposition of the business of the courts."

The nature of the functions of the average judicial council might well be determined by a listing of the powers of such a council in a pertinent section of the Georgia statute of 1945, which empowered the judicial council:

"1. To make continuous study of the organization of the courts; the rules and methods of procedure and the practice of the judicial system of the state; of the work accomplished, the results attained and the uniformity of the discretionary power of the courts, to the end that procedure may be simplified, business expedited and better justice administered.

2. To receive and consider suggestions from judges, public officers, members of the bar and citizens, touching remedies for faults in the administration of justice.

3. To formulate methods for simplying judicial procedure, expediting the transaction of judicial business and correcting faults in the administration of justice.

4. To gather judicial statistics from the several judges and other court officials of the state.

5. To study and make suggestions regarding admission to the bar, the conduct of attorneys admitted to practice, and disbarment, and to file such suggestions and the recommendations thereon, with the Supreme Court and the Governor.

6. To make a complete detailed report, on or before December 1 of each year, to the Governor and to the Supreme Court of all of its proceedings, suggestions, and recommendations, and such supplemental reports from time to time as the Council may deem advisable. All such reports shall be considered public reports and may be given to the Press of the State, as soon as filed.

7. To make investigations and reports upon such matters, touching the administration of justice as may be referred to the Council by the Supreme Court or the General Assembly.

8. To make a careful and thorough study of the cost of the courts and of the administering of justice in the state, and to gather statistics and data thereon, and report the same from time to time to the General Assembly, with their recommendations for effecting economies and reducing the cost of the state and counties and to litigants in the several courts of the state."[7]

II—The Methods of Creating and the Composition of the Judicial Council in the Various States

The first state to establish a judicial council was Ohio, in 1923. Massachusetts soon followed with a similar statute in 1924. By 1947, 32 states in the Union had created judicial councils.[8] The majority of these states created the councils by statute, but we find that in several of the jurisdictions the councils were authorized by state bar association resolutions or by supreme court rules.[9] In Arkansas

[7] Georgia Code Annotated, Ch. B I—1606; Acts 1945, pp. 155, 156.
[8] For list of states with Judicial Councils see Schedule A from The Book of States, 1945-46, p. 452.
[9] See footnote 4, *supra.*

a voluntary judicial council has been operating since 1941, composed of 49 members of the supreme court, circuit court and chancery court.[10] Illinois has a unique statute, passed in 1931, which provides that "any county over 500,000 in population may establish a Judicial Council by resolution of the County Board." This Council receives no compensation for its services, but its expenses are paid by the county board. So far, only Cook County has established such a council.[11] California is the only state which authorizes a judicial council by constitutional provision.[12]

The size of the judicial councils range from a membership of 6 in Rhode Island to 52 in Kentucky, with the average membership ranging from 9 to 12.[13] In composition they include judges, lawyers, legislators and laymen, exclusively, or in combinations. While a few states have only judges serving on the council, and in a few other states only practicing lawyers are allowed to serve, the majority of the states provide for a combination of judges and practicing lawyers, or judges, practicing lawyers and legislators. It is interesting to note that in states where there are state universities they require that the judicial council membership must include a member of the state law school faculty.[14]

Comparatively few states include laymen in the judicial council although they are becoming more and more recognized as valuable members. A few years ago the president of the American Bar Association declared:

> "I asked an informed individual which kind of group gets the best results. His answer was, 'Those councils which have laymen on them. Where either lawyers or judges serve alone they seem to lack energy for sustained attack. Where judges and lawyers serve together each group seems to have a diffidence about imposing its views upon the other, which stultifies action. Where, however, laymen are included, their presence seems to act as an ice-breaker and to stir activity among the professional members of the council. Laymen's criticisms are sharper.' "[15]

Similarly, Chief Justice Lucien D. Gardener of the Alabama Supreme Court, in reference to the work of his committee on the creation of a judicial council for Alabama stated:

> "Your committee discovered that the most successful Judicial Councils of the various states are those which embrace among the membership some outstanding laymen, and, as a consequence, our report provides the laymen on the Council."[16]

III—The Judicial Council in New Jersey

In 1930 the New Jersey Legislature established by statute a Judicial Council to consist of ten members, one appointed by the

[10] *Ibid.*
[11] *Ibid.*
[12] California Constitution, Judicial Department, Judicial Council, sec. 1a, adopted November 2, 1926.
[13] See footnote 4, *supra.*
[14] *Ibid.*
[15] Morris, George. "The Judicial Councils of the States," 29 Amer. Bar Assn. Journal 366, 367.
[16] Gardener, Lucien D. "Judicial Councils," 5 Alabama Lawyer 297, 1944.

Chancellor from the Court of Chancery, four appointed by the Chief Justice from the law courts, and five lawyers appointed by the president of the New Jersey State Bar Association; there are also three *ex officio* members, the Attorney General, the Chairman of the Judiciary Committee of the Senate and the Chairman of the Judiciary Committee of the Assembly.[17]

The function of Council was established as follows:

> "It shall be the duty of the Judicial Council to make continuous study of the organization in relation to the various courts of the state, counties and municipalities; the rules and method of procedure and practice of the judicial system of the State; the work accomplished; and the results produced. It shall from time to time submit for the consideration of the justices and judges of the various courts such suggestions in regard to the rules of practice and procedure as it may deem advisable, and shall report annually to the Governor on or before December 15 such matters as it may wish to bring to his attention or to the attention of the Legislature. The Council shall cooperate with the Legislature and its committees and shall from time to time, upon request, aid and advise the Legislature and its committees upon any subject of law or procedure which may be before the Legislature for action."[18]

That same year the Judicial Council made its first annual report to the Governor, and continued to do so for the next eight years. The reports indicate exhaustive research in the collection of data concerning the work of the courts, a thorough analysis of the court systems, and well considered recommendations to bring about improvements in the systems. Some of these recommendations took the form of bills to be introduced in the Legislature and some were in the nature of rules to be adopted by the courts. Of the 11 bills recommended by the Council in its supplement to its first annual report, five became enacted into law.[19]

In 1931 the Legislature, by Joint Resolution, directed the Judicial Council to "make a complete study of the status of the judicial system of the State and report and submit to the next Legislature its findings and recommendations as to the State Constitution." [20] The Judicial Council thereupon did submit proposed judiciary amendments the following year, but the Legislature failed to act favorably upon them.[21]

An examination of the printed reports of the Judicial Council of New Jersey reveals that the function of the Council is not only of a research and statistical nature but also advisory. The fact that New Jersey's Judicial Council makes recommendations to the appropriate authorities places it on the level of agencies capable of practical achievements. One need only to look at the Council's eighth annual report to the Governor to appreciate the fact that

[17] R.S. 2:17-1 to 10.
[18] *Ibid.*
[19] For an explanation of these measures see Second Report of the Judicial Council of New Jersey to the Governor, December 15, 1931, pp. 1-5.
[20] 155th Legislature, Joint Resolution No. 16, adopted April 27, 1931.
[21] Report of the Judicial Council of New Jersey to the Senate and General Assembly of the State of New Jersey, May 31, 1932.

here is a body whose field of activity is broad in nature and whose ability to grasp, study and resolve a problem is particularly evident.

Such a Judicial Council could prove to be of inestimable value to the courts and to the public. The fact that little benefit has been derived from the Council in the past few years may be explained by the failure of the Legislature to appropriate funds for its operation. Although the members of the Council serve without compensation, funds are necessary to maintain a sufficient clerical and secretarial staff to carry out the work of the Council. As a matter of fact, lack of, or sub-standard appropriations for, the operation of judicial councils has been the greatest handicap of judicial councils throughout the country. Appropriations in other states vary from $100 in Indiana to over $64,000 in California. New York's annual appropriation averages $27,500, Massachusetts $5,300, and the remainder of the states $3,000 or less. In the majority of the states no compensation is paid to the members of the judicial council, but their expenses are paid. Five councils have paid staffs and three councils are able to pay for expert aid.[22] In some jurisdictions, therefore, such as New Jersey, research and study is done by law school students, law faculty and the members of the council themselves. Consequently the extent and comprehensiveness of the research depends to a great degree upon the gratuitous contributions of individuals and state bar organizations, supplementing or substituting for state financial aid.

IV—Evaluation of the Judicial Council

That judicial councils serve a vital and necessary function seems to be beyond controversy. The reports of these councils are used regularly as a basis for informed legislation.[23] Their research is utilitarian as well as informative.[24] The California Judicial Council is credited with securing the passage of 60 statutes leading to judicial reforms within an 11-year period, and Massachusetts 50 such statutes. The states of Arizona and Iowa were able, after many long years, to get the rule-making power back into the courts.[25]

> "The legislation these groups sponsor appears, in variety, to touch every aspect of court procedure, processes, pleadings, pre-trial, trial, evidence, judgment, appeal, court fees, court administration, admission to the bar, selecting juries, instructing juries, parole, pardons, code revision, etc. . . ." [26]

The presiding judge of the first division of the Missouri Supreme Court believes that:

> "The public expects lawyers not merely to practice law but to improve law. * * * There is no better way to carry out this obligation and duty

[22] See footnote 4, *supra.*
[23] *Ibid,* p. 6.
[24] For example, in New Jersey, see Ralph R. Temple, "Report on the Constitutional Courts of the State of New Jersey," 1942, for references to the work of the New Jersey Judicial Council.
[25] See footnote 4, *supra.*
[26] Morris, *op. cit.,* p. 366.

> to the public than through a Judicial Council. * * * With the end of the war we are entering a new era, in which the institutions of democracy will be tested as never before * * *. The improvement of the administration of justice is a continuous process. The operations and needs of the judicial system must be constantly surveyed, tested and improved. That is the purpose of the Judicial Council. It can compile statistics on the operation of your judicial system and determine its needs. It can do the research work for improvement. It provides a means for cooperation of Bench and Bar by which the judicial system can remedy its defect, increase its efficiency and better serve the public. But to obtain results it must have cooperation. There must be enough lawyers willing to take some time from the practice of law to try to improve law."[27]

The public nature of the service performed by the judicial council is well expressed in the Third Report of the Judicial Council of California, as follows:

> "Combining the task of examining the conditions existing in our courts with the study of the causes which have given rise to those conditions which have led to widespread criticism of these tribunals * * * particularly to congestion and the delays therein * * * and involving, as it does, the responsibility of considering, devising and recommending the remedies for improving the administration of justice, the Judicial Council movement offers to the legal fraternity, to the Bench and Bar alike, the greatest opportunity for genuinely constructive public service." [28]

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[27] Hyde, Laurence M., "The Place of the Judicial Council in Improving the Administration of Justice," 16 Oklahoma Bar Assn. Journal 1595-1600 (November 24, 1945).

[28] Hollzer, Harry A., in the Third Report of the Judicial Council of California. See also the Twelfth Annual Report of the Judicial Council of the State of New York, 1946, Leg. Doc. No. 17, for an excellent picture of the scope of activities of New York's Judicial Council.

SCHEDULE A

JUDICIAL COUNCILS*

State	Date Established	Authorization: Constitution	Authorization: Statute	Authorization: State Bar Resolution	Authorization: Supreme Court Rule	Number of Members	Term	Appropriation, 1943	Functions: Judicial Statistics Compiled	Functions: General Judicial Research
Alabama	....	....	....	....	....	....	.....	.....	....	....
Arizona	1936	....	....	★	....	9	4 yrs.	None	....	★
Arkansas	1941	....	....	(a)	....	45	.....	None	....	....
California	1926	★	....	....	....	11	2 yrs.	$64,780[b]	★	★
Colorado	....	....	....	....	....	....	.....	.....	....	....
Connecticut	1928	....	★	....	....	9	4 yrs.	$500	★	★
Delaware	....	....	....	....	....	....	.....	.....	....	....
Florida	....	....	....	....	....	....	.....	.....	....	....
Georgia	....	....	....	....	....	....	.....	.....	....	....
Idaho[c]	1929	....	....	★	....	....	.....	.....	....	....
Illinois	1929[d]	....	....	(d)	....	5	4 yrs.	$2,500	....	....
Indiana	1935	....	★	....	....	9	4 yrs.	$100[b]	★	★
Iowa	1936	....	....	....	★	13	4 yrs.	None	★	★
Kansas	1927	....	★	....	....	9	4 yrs.	$2,750	★	★
Kentucky	1929	....	★	....	....	52	.....	$800	★	★
Louisiana	....	....	....	....	....	....	.....	.....	....	....
Maine[c]	1935	....	★	....	....	....	.....	.....	....	....
Maryland[c]	....	....	....	....	....	....	.....	.....	....	....
Massachusetts	1924	....	★	....	....	10	4 yrs.	$5,300	★	★
Michigan	1929	....	★	....	....	10	6 yrs.	$1,500	★	★
Minnesota	1937	....	★	....	....	12	3 yrs.	$750	★	★
Mississippi	....	....	....	....	....	....	.....	.....	....	....
Missouri	1943	....	★	....	....	9	3 yrs. expense allowed		....	....
Montana	....	....	....	....	....	....	.....	.....	....	....
Nebraska	1939	....	....	....	★	11	.....	None	....	★
Nevada	....	....	....	....	....	....	.....	.....	....	....
New Hampshire	....	....	....	....	....	....	.....	.....	....	....
New Jersey	1930	....	★	....	....	14	5 yrs.	$1,850	★	★
New Mexico	1933	....	★	....	....	10	(e)	None	....	★
New York	1934	....	★	....	....	20[k]	2 yrs.	$27,500	★	★
North Carolina	....	....	....	....	....	....	.....	.....	....	....
North Dakota	1927	....	★	....	....	28	2 yrs.	None	★	★
Ohio	1924	....	★	....	....	13	3 yrs.	$1,500	★	★
Oklahoma	1934[f]	....	....	....	....	....	.....	.....	....	....
Oregon	....	....	....	....	....	....	.....	.....	....	....
Pennsylvania	....	....	....	....	....	....	.....	.....	....	....
Rhode Island	1939	....	★	....	....	6	3 yrs.	$500	★	★
South Carolina	....	....	....	....	....	....	.....	.....	....	....
South Dakota	1933	....	....	★	....	12	.....	(g)	★	★
Tennessee	1943	....	★	....	....	14	4 yrs.[i]	$3,000	★	★
Texas	1929	....	★	....	....	16	6 yrs.	$1,350	★	★
Utah	1931	....	....	★	....	11	3 yrs.	None	....	★
Vermont	....	....	....	....	....	....	.....	.....	....	....
Virginia[b]	....	....	....	....	....	....	.....	.....	....	....
Washington	1926	....	★	....	....	10	4 yrs.	$2,500	★	★
West Virginia	1934	....	★	....	....	9	6 yrs.	$1,455	....	★
Wisconsin	1929	....	★	....	....	10	1 yr.	(h)	....	★
Wyoming	....	....	....	....	....	....	.....	.....	....	....

[a] Voluntary.
[b] For two years.
[c] Inactive.
[d] In Cook County only, by resolution of Board of County Commissioners.
[e] Indefinite.
[f] State Bar act under which Council was established now repealed.
[g] State Bar funds.
[h] In process of reorganization.
[i] Expenses only.
[j] Two chairmen of Judiciary Committees of Legislature, for the term of office as chairmen; Attorney General, ex-officio.
[k] Eleven by virtue of their office; six appointed by Governor, three advisory members.

* Prepared from *Handbook, National Conference of Judicial Councils,* 1942, 744 Broad Street, Newark, New Jersey. Revised for publication in March, 1945, by William E. Hannan, Legislative Reference Librarian, New York State Library. From *The Book of the States, 1945-46.*

SCHEDULE B

MODEL STATE CONSTITUTION*

SECTION 606. *Establishment of Judicial Council.* There shall be a judicial council, to consist of the chief justice, and one justice of the supreme court department and two judges of the inferior court departments to be designated for four years by the chief justice; three practicing lawyers, to be appointed by the governor for over-lapping terms of three years, from an eligible list containing three times as many names as there are appointments to be made and presented to him by the governing board of the state bar association; three laymen citizens of the state, to be appointed by the governor for overlapping terms of three years; and the chairman of the judiciary committee of the legislature. The judicial council shall meet at least once in each quarter, at a time and place to be designated by the chief justice.

SECTION 607. *Powers of the Judicial Council.* The judicial council, in addition to other powers herein conferred upon it or hereafter conferred by law, shall have power to make or alter the rules relating to pleading, practice, or procedure in the General Court of Justice, and to prescribe generally by rules the duties and jurisdiction of masters and magistrates; and also to make rules and regulations respecting the duties and the business of the clerk of the General Court of Justice and his subordinates and all ministerial officers of the General Court of Justice, its departments, divisions, or branches. The legislature may repeal, alter, or supplement any rule of pleading, practice, or procedure, by a law limited to that specific purpose. No such rule made by the judicial council shall be effective until published as provided by law.

* National Municipal League, "Model State Constitution" (Partial Revision, 1946), p. 14.

BIBLIOGRAPHY

California. Constitution.
California. Judicial Council, Reports.
Council of State Governments. The Book of the States, 1945-1946.
GARDENER, LUCIEN D. "Judicial Councils," 5 Alabama Lawyer, 297, 1944.
Georgia. Code Annotated.
GRANT, J. A. C. "The Judicial Council Movement," 22 Amer. Pol. Science Review, November 1928.
HOLLZER, HARRY A. Third Report of the Judicial Council of California.
HYDE, LAURENCE M. "The Place of the Judicial Council in Improving the Administration of Justice," 16 Oklahoma Bar Assn. Journal, November 24, 1945.
Louisiana State University. Constitutional Revision Projet. Constitutional Problems, Monograph 6, "Judicial Council," 1947.
MACDONALD, A. F. American State Government and Administration, (3rd ed., 1945) chap. 11, "State Courts."
MORRIS, GEORGE M. "The Judicial Councils of the States," Amer. Bar Assn. Journal, July 1943.
New Jersey Legislature, 155th Session, Joint Resolution No. 16, adopted April 27, 1931.
New Jersey. Judicial Council, Reports.
New Jersey. Revised Statutes.
New York. Judicial Council, Reports.
PIRSIG, MAYNARD E. Judicial Councils (American Bar Association, monograph of Committee on Improving the Administration of Justice, 1942).
POUND, ROSCOE. "Judicial Councils and Judicial Statistics," Amer. Bar Assn. Journal, February 1942.
TEMPLE, RALPH R. Report on the Constitutional Courts of the State of New Jersey, 1942.

THE SINGLE BUDGET, SINGLE STATE FUND AND SINGLE FISCAL YEAR

THE PREPARATION OF THE BUDGET AS AN EXECUTIVE FUNCTION

by

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PROVISIONS OF THE PRESENT CONSTITUTION, PROPOSED REVISIONS OF 1942 AND 1944, AND THE "MODEL STATE CONSTITUTION"

The Constitution of New Jersey deals with state finances in four short paragraphs (Art. IV, sec. VI, pars. 1 to 4). The state fiscal structure is, therefore, almost entirely the product of legislation. The one constitutional provision touching on the subject of this monograph is Art. IV, sec. VI, par. 2:

> "No money shall be drawn from the treasury but for appropriations made by law."

The Report of the Commission on Revision of the New Jersey Constitution submitted in May, 1942, recognized the deficiencies of the present Constitution. Art. VII, "Finance," of its recommended draft Constitution, provided:

> "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 State or local public officers or employees or for a specific public purpose required by a private donation.
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> 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."

(The mention of a "general appropriation bill for each biennium" reflects the provision for regular biennial legislative sessions recommended in Art. III ("Legislative"), sec. I, par. 3 of the proposed Constitution.)

In its Statement of Transmittal, the Commission had this to say about its recommended fiscal provisions:

"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 cost of all State government will be plainly apparent."

The revised Constitution submitted to the electorate by the 168th Legislature and which was rejected at the general election held in November, 1944, in substance followed the 1942 proposal. Art. VII, "Finance," pars. 2 and 3, read:

"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."

The *Model State Constitution,* prepared by the National Municipal League (Partial Revision of 1946), stresses the executive function in state budgetary procedure. It recommends that:

"SECTION 703. *The Budget.* Three months before the opening of the fiscal year, the governor shall submit to the Legislature a budget setting forth a complete plan of proposed expenditures and anticipated income

of all departments, offices and agencies of the state for the next ensuing fiscal year. For the preparation of the budget the various departments, offices and agencies shall furnish the governor such information, in such form, as he may require. At the time of submitting the budget to the Legislature, the Governor shall introduce therein a general appropriation bill to authorize all the proposed expenditures set forth in the budget. At the same time he shall introduce in the legislature a bill or bills covering all recommendations in the budget for new or additional revenues or for borrowing by which the proposed expenditures are to be met.

SECTION 704. *Legislative Budget Procedure.* No special appropriation bill shall be passed until the general appropriation bill, as introduced by the governor and amended by the legislature, shall have been enacted, unless the governor shall recommend the passage of an emergency appropriation or appropriations, which shall continue in force only until the general appropriation bill shall become effective. The legislature shall provide for one or more public hearings on the budget, either before a committee or before the entire legislature in committee of the whole. When requested by not less than one-fifth of the members of the legislature it shall be the duty of the governor to appear in person or by a designated representative before the legislature, or before a committee thereof, to answer any inquiries with respect to the budget.

The legislature shall make no appropriation for any fiscal period in excess of the income provided for that period. The governor may strike out or reduce items in appropriation bills passed by the legislature, and the procedure in such cases shall be the same as in case of the disapproval of an entire bill by the governor.

SECTION 705. *Expenditure of Money.* No money shall be withdrawn from the treasury except in accordance with appropriations made by law, nor shall any obligations for the payment of money be incurred except as authorized by law. No appropriation shall confer authority to incur an obligation after the termination of the fiscal period to which it relates. The governor shall have authority to reduce expenditures of state departments, offices and agencies under appropriations whenever actual revenues fall below the revenue estimates upon which the appropriations were based and through allotments or otherwise, to control the rate at which such appropriations are expended during the fiscal year, provided that the legislature may exempt specific appropriations from the exercise of this power by the governor."

THE SINGLE FISCAL YEAR

New Jersey's more recent experience with a single fiscal year dates from 1944. Beginning with 1923 there had been two fiscal years in state affairs—the calendar year of the Highway Department and the July 1-June 30 fiscal year of the rest of the State Government.[1]

When the Highway Department was first created in 1917 its fiscal year was the same as the other state departments and agencies—November 1 to October 31.[2] The fiscal year of the State was changed in 1918 to cover the period from July 1 to June 30,[3] and the highway fiscal year changed with it as a matter of course. But in 1922 the Legislature made the calendar year the fiscal year of the Highway Department, beginning January 1, 1923.[4] This provision was con-

[1] The material which follows, covering the period to 1942, is taken from "The Organization and Administration of the New Jersey State Highway Department," by Sidney Goldmann and Thomas J. Graves, 1942. Chapter IV is a definitive study of the fiscal administration of the State generally and the Department in particular.

[2] P.L. 1917, c. 14, s. 18.

[3] P.L. 1918, c. 144.

[4] P.L. 1922, c. 161, amending P.L. 1917, c. 14, s. 18.

tinued in the 1927 act revising the highway system, as well as in the Revised Statutes of 1937.[5] Highway officials strongly opposed any suggestion or legislation that would have made the Highway Department fiscal year conform to the general one.[6]

A full-dress rehearsal of all the arguments for and against the setting up of a single fiscal year was afforded in the course of the public hearing held March 21, 1940, on Assembly Bill No. 116, sponsored in the 1940 Legislature by Assemblyman Jacob S. Glickenhaus, who proposed a general fiscal year (July 1-June 30) for the entire State Government.[7] Highway officials argued that the change would seriously interfere with the Department's Spring highway programs, and that it would throw local government budgets and highway plans into confusion because counties and municipalities were also on a calendar year basis and depended on appropriations from the Highway Fund (then a separate fund) as state aid for road construction, repair and maintenance.

State Comptroller Frank J. Murray, who during his five years in office had consistently recommended to the Legislature, and especially in his annual reports, that appropriations from the State Highway Fund be put on the same fiscal year as those from the General State Fund, could see no controlling reason for not making the change. All it involved was that for the first year revenues and expenditures from the Highway Fund be appropriated for 18 instead of 12 months. Thereafter the Appropriation Bill would be for a 12-month (July 1-June 30) period. As it was, the two different fiscal years made it "impossible to make an accurate, complete, unqualified and satisfactory statement or report of the State's fiscal operations." [8]

As had previously been pointed out publicly and privately on many occasions, the Glickenhaus hearing also noted that a change to a uniform fiscal year was to be favored for two important reasons. In the first place, "it will eliminate the present confusion which now (1940) exists under two separate fiscal year set-ups within the State government, and will pave the way for a much more simplified accounting procedure, which should assure a clearer and more comprehensive picture of State finances to our legislators, our State officials, and to the public." Further, "it will pave the way toward giving the State a more effective control over the fiscal and spending activities of its largest service unit (the Highway Department)." [9]

This change had repeatedly been advocated over a period of

[5] P.L. 1927, c. 319, s. 117; R.S. 27:1-11.

[6] See, for example, Minutes of the Abell Commission, 1929-1930, New Jersey State Library, typewritten transcript, Sept. 9, 1930, p. 48; and statements made at the Glickenhaus hearing, *post*, pp. 35, 39 and 41, and the then State Highway Commissioner, Highway Engineer, and General Solicitor.

[7] Hearing on Assembly Bill 116, March 21, 1940; stenographic transcript, Office of the Commissioner of Taxation and Finance.

[8] *Ibid*, pp. 4-8.

[9] *Ibid*, p. 16

years by high state finance officials[10] and by various commissions and agencies that had studied the problems of the State Government.[11] Governor Charles Edison had pressed for the change.[12]

In 1940 there were 21 states whose highway departments operated on a July 1-June 30 fiscal year uniform with that of the other state agencies. These departments had found no difficulty under the arrangement in planning and carrying out their programs.[13] The entire Federal Government, including the Public Roads Bureau, operates on a July to June basis, and federal aid allotments to the several states for highway work, health, education and other activities, are not available until the beginning of the federal fiscal year.

The Goldmann-Graves highway report of 1942, from which the above material is taken, strongly recommended that the Highway Department fiscal year be made uniform with that of the rest of the State Government.[14]

The proposal for a single fiscal year found wide and reasoned support in the hearings before the Joint Legislative Committee of 1942 which considered the Report of the Commission on Revision of the New Jersey Constitution (Hendrickson Commission). Speaking on Article VII, "Finance," of the revised Constitution proposed by that Commission, Spencer Miller, State Highway Commissioner, said: [15]

> "There will be minor inconveniences in making a change from the present system to any new system which may be adopted. But those inconveniences will cease when the change has been effected, and they are insignificant in comparison with the continuing inconveniences resulting from the present system. Take for example the need for the uniform fiscal year. Admittedly, there will be a period of adjustment, during which both the highway department itself and county and municipal officials responsible for administering State aid will have to become used to new ways of doing things. Is it unreasonable to assert that New Jersey could and would adjust to a system that has been found feasible in twenty-one other States of the Union? This is especially so when we reflect that under the present system the highway appropriations act is seldom passed until near the middle of the year for which it provides. With a biennial budget there would necessarily be one whole year in which there could be no doubt about what a county or municipality would have to spend. It is the conclusion of Goldmann and Graves that it would be

[10] *Ibid,* p. 4 (State Comptroller Murray); pp. 8 and 9 (State Treasurer William H. Albright, who stated that it would "greatly facilitate work in the offices of the State Comptroller and State Treasurer"); pp. 10 and 11 (Finance Commissioner Bernard Lamb: "Much of the legislative confusion that has prevailed in New Jersey for the past five years in my opinion has resulted from misunderstanding caused by the State having different fiscal year periods. I am convinced that this legislative confusion has worked to the economic and social disadvantage of every citizen in our State."); and Finance Commissioner Lewis Compton, Report to the Governor, October 1, 1941.

[11] National Institute of Public Administration, Report on a Survey of the Organization and Administration of the State Government of New Jersey, 1930, p. 263; N. J. Taxpayers' Assn., platform adopted at Sixth Annual Business Meeting, December 4, 1936; Glickenhaus hearing, *supra,* p. 33; N. J. Chamber of Commerce, Glickenhaus hearing statement, pp. 14-28. The Princeton Survey (Princeton University, School of Public and International Affairs, Report on a Survey of Administration and Expenditures of the State Government of New Jersey, 1932), pp. 42-43, stated that the existence of two fiscal years was confusing and made it difficult to obtain a reliable sum for the total State expenditures in a given fiscal year period.

[12] Budget Messages, January 19, 1942, p. VIII; January 18, 1943, p. VI.

[13] Glickenhaus hearing, *supra,* pp. 21-23.

[14] *Op. cit.,* p. 167.

[15] Record of Proceedings before the Joint Committee of the New Jersey Legislature . . . to Ascertain the Sentiment of the People . . . for Change in the New Jersey Constitution, 1942, p. 401-2.

perfectly feasible to make appropriations for State aid to counties and municipalities half a year ahead and to finance local activities during the next two full calendar years."

Others supported the same position.[15a]

In 1944, the Legislature, carrying out the program recommended by Governor Walter E. Edge in his Inaugural Message,[16] amended R. S. 27:1-11 and placed the Highway Department on the July 1-June 30 fiscal year used by the rest of the State Government.[16a] Statements current at the time were to the effect that the new arrangement would be unworkable and incapable of being carried out. Experience since then has demonstrated that a uniform fiscal year can operate successfully and without confusion, that it gives a clearer and more comprehensive picture of state finances, and that it provides a more effective control over the fiscal operations of the government, as had been contended in the course of the 1940 Glickenhaus hearing.

The Federal Government and 41 of the 48 states have a fiscal year beginning July 1. Of the remaining seven states, three begin on April 1, and one each on January 1, June 1, September 1 and October 1. There seems to be no question as to the advantage of a single fiscal year, but the periods covered should be fixed by statute rather than by constitutional provision. New Jersey, as has been the experience of other states in the past, particularly New York, may some day find it advisable to change the period of her fiscal year. A study of other state constitutions reveals that where the fiscal year date is fixed by constitutional directive, there is usually a saving clause, "unless otherwise provided by law." The 1944 proposed revised constitution quoted above provided for a single fiscal year, "except that, when change in fiscal year is made, necessary provision may be made to effect the transition."

The Single State Fund

New Jersey's system of dedicated funds had for many years been a target of criticism by those interested in bringing fiscal order into state affairs. The so-called "Bright Commission" in its Report of December 9, 1925, spoke of this system as "the greatest single evil in the administration of the finances of the State." It summarized the indictments against special funds as follows: [17]

"(1) They are largely responsible for the intricate and confusing financial reports and accounting procedure.

(2) They place restrictions upon the Legislature in the expenditure of State moneys.

(3) Many of whom represent a clumsy way of doing or trying to do

[15a] *Ibid*, State Comptroller Homer Zink, p. 411, and Alcoholic Beverage Commissioner, now Governor, Alfred E. Driscoll, p. 421.

[16] Journal of the Senate, 1944, p. 54. See, also, his first Budget Message, Feb. 7, 1944, p. VI.

[16a] P.L. 1944, c. 159. See, also, P.L. 1945, c. 33, s. 3 which provided for a single budget, single State Fund, single appropriation act and single fiscal year.

[17] Report of the Joint Legislative Survey Committee of New Jersey, 1925, pp. 83, 87 ff. and 98.

what the budget should do and can do—that is, the assigning of money to State activities on the basis of proved needs.

(4) Endowment funds are responsible for the tieing up in securities of the taxpayers' money which could be better employed.

In the final analysis, the special fund system is incompatible and irreconcilable with a thorough budget system and seriously impairs the desired effectiveness of the budgetary control of expenditures."

The Commission recommended the abolition of the numerous special funds, including the State Road (later Highway) Fund.

The "Abell Commission" created by the Legislature, in its 1930 report, likewise pointed out that dedicated funds meant that the annual Budget Message "did not review the complete fiscal situation nor embrace the entire fiscal policy," and that the Legislature, in turn, reviewed and passed on only part of the annual expenditures.[17a]

The long debated issue of a single State Fund *versus* dedicated funds found its reflection in the hearings before the 1942 Joint Legislative Committee which considered the report and recommended revised Constitution submitted by the Hendrickson Commission. State Highway Commissioner Miller, the first of the proponents of Article VII of the Commission draft to speak declared: [18]

"Report after report has declared that the present complicated system of dedicated revenues, continuing appropriations, diverse and overlapping administrative controls, together with the two fiscal years which prevail in the State Government, make it utterly impossible either to get a true picture of the financial condition of the State or to secure sound planning and responsible administration of public spending. Among the by-products of this condition have been wasting of public funds, inadequate support of essential public functions, and doubt among our citizens about the propriety and even the honesty of much of our public spending. I regret to say that some of this doubt has been directed toward the activities of the highway department in the past. This fact alone makes it important that this and all other departments of the State Government be put on the same footing as to their source of revenue, the control of their expenditures, and accountability for their actions. . . .

The most serious objection to a dedicated revenue in the judgment of students of Government is that it tends to create a vested interest in continuing arrangements, which experience and lapse of time may prove to be contrary to the public interest. Even if there be at first a proper relation between the proceeds of a given tax and the need for expenditure for a given service, there is no reason to assume that that relationship will continue to exist. Experience demonstrates that once a dedicated fund has been set up, it is extremely difficult to deal with it on its merits. If a revenue proves to be greater than is needed, it is likely to encourage improvident expenditure for the particular function, merely because of the supposedly equitable connection between the revenue and the function. This may mean either than an inordinate tax is perpetuated or that some public services languish while others flourish in extravagance. On the other hand, the purpose for which the fund is dedicated may not be fulfilled if revenue fails to keep pace with need."

Russell Watson, Vice-Chairman of the New Jersey State Chamber

[17a] Report on Audit of the Financial Affairs of the State Government of New Jersey, p. 9.
[18] Report of Proceedings before the Joint Committee, *supra*, pp. 401-402.

of Commerce, was equally critical of the dedicated fund system of New Jersey: [19]

> "The vice of the system of dedicated funds as it has obtained in New Jersey for a long, long while is that certain revenues are dedicated to certain specific purposes, regardless of the State's resources and regardless of its needs and requirements. Under this system the State might have more money than is needed in a particular dedicated fund and yet be rather hard put to it for money for essential governmental services. No private business practices such a system, or could long survive under it. It seems to us that the sound principle is that all of the State's revenues and resources should be pooled in one fund and dedicated according to the supply and according to the need. The system of dedicated funds has created a State fiscal situation—and I think the members of the Committee will bear with us that we have tried to be at these hearings conservative in our statements—but with respect to this system of dedicated funds against which our organization has been for so long, it seems to us that the present situation as it has existed for the last few years, is nothing short of scandalous, and that is one of the strongest terms we have used.
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> The Annual Report of the Comptroller for the year ended June 30, 1941, at pages 96 and 97, lists 37 dedicated funds, which at July 1, 1940, had aggregate balances of $44,000,000. I use round figures. These 37 funds had receipts during the fiscal year ended June 30, 1941, of $123,500,000; a total at the end of the year of $167,000,000, of which, during the year, were expended $129,500,000, leaving aggregate balances at June 30, 1941, of $38,000,000. These figures indicate how large a piece of the State's financial pie dedicated funds have come to be.
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> An expert researcher in this subject, who recently studied the subject of dedicated funds, found that if the professional boards were separately listed and if certain revolving and certain State-Federal funds were included, which are not among these 37, the number of dedicated funds would be 58. Whether the correct number be 37 or 58, the principle and the vice are the same. The viciousness of this system is self-evident."

Others spoke in similar vein, urging the abolition of the dedicated fund system and the adoption of the single fund proposal in the revised Constitution of 1942.[20]

The proposal was opposed by a number of speakers, among them representatives of the Highway Users Conference, motor fuel industry, and freeholder boards, licensing boards, and those interested in the allocation of the gross receipts tax, second-class railroad tax and other funds dedicated to counties and municipalities.[21] The main argument was made by Frederick Petry, Jr., Vice-President of the New Jersey Highway Users Conference: [22]

> "There is good reason and established precedent for the approved governmental practice of segregating special and trusteed highway funds from the general funds. Car and truck owners in New Jersey pay local and State property taxes and all the regular levies, and then in addition pay the gasoline tax and motor vehicle fees. In the fiscal year ending in 1941 the motor fuel and motor vehicle taxes in New Jersey accounted for not quite 50 per cent of all State tax collections. In normal times well over 50 per cent of this group's driving was for essential purposes. . . .
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> When these taxes are levied, the State enters into a relationship with

[19] *Ibid*, p. 405, and see his references to similar criticisms made in the 1932 Princeton Survey, on pp. 406-7.
[20] *Ibid*, *e.g.*, pp. 409, 411-12 (State Comptroller Homer Zink), 413-15, 421-22 (then A.B.C. Commissioner Alfred E. Driscoll), 423.
[21] *Ibid*, pp. 455-70; and briefs 472-88.
[22] *Ibid*, pp. 456-57.

> the motorist and truck owner taxpayers quite similar to the function performed by the trust department of a bank. The State undertakes to act as trustee in guaranteeing that the money will be invested in and expended only for highways. When the money is collected, like all other special and trusteed funds, it logically must be kept separate and distinct from the general funds. Whenever such special funds are diverted into the general fund the practice can only be classed with the diversion of assets from a trust fund into the general funds of a bank. Even if the general fund were operating at a deficit, which is hardly the situation developing in New Jersey, there is no justification for such diversion. Whenever a banking institution becomes involved in serious operating difficulties and faces a deficit, the responsible officials are not relieved of the legal responsibility of maintaining separate sets of accounts for the special funds. Even though the bank might fail completely, the integrity of trusteed funds is protected by law. And so it should always be with special highway revenues paid by a minority of the citizens.
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> It is for this reason that in recent years, California, Colorado, Idaho, Kansas, Michigan, Minnesota, Missouri, Nevada, New Hampshire, North Dakota, and South Dakota have amended their Constitutions to prohibit the diversion of highway funds. For all intents and purposes, sixteen other States, Arizona, Arkansas, Connecticut, Delaware, Iowa, Maine, Mississippi, Montana, Oklahoma, Oregon, South Carolina, Utah, Vermont, Virginia, West Virginia, and Wyoming, retain revenues from their motorists for highway purposes. Twenty-seven of our States have taken definite action to protect highway funds. Against this sound and beneficial practice, New Jersey led all other States in percentage of diversion in 1939. And in 1940 diversion in New York, New Jersey, Pennsylvania, and Ohio alone accounted for over half of the highway funds thus mishandled."

The Goldmann-Graves report on the New Jersey Highway Department, 1942, dealt particularly with the Highway Fund, described as "the largest of the many dedicated funds that turn the State's financial picture into a tortured maze of figures which only the initiate may venture to negotiate." [23] The fund was first mentioned by name in the 1931 act providing for a state budget system,[24] but the idea of a dedicated fund for highway purposes, the report points out, was then 35 years old.[25] Chapter 331 of the Laws of 1927 had dedicated certain revenues, including the two cents per gallon motor vehicle fuels tax imposed under P. L. 1927, c. 334, federal aid funds, and revenues derived from motor vehicle registrations and drivers' licenses, to state highway purposes, and was then still on the statute books.[26] The report then went on to say: [27]

> "The abolition of the State Highway Fund, as well as all permanently dedicated funds, and the payment of all revenues into the general State treasury, has been urged again and again in the strongest possible terms.[28] The recommendation has been opposed with the utmost vigor and ingenuity.
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> One of the rallying points of the opposition has been the argument

[23] *Op. cit.*, pp. 181-190.
[24] P.L. 1931, c. 142, s. 18; as amended by P.L. 1933, c. 193 and c. 451; P.L. 1935, c. 36 and P.L. 1938, c. 13.
[25] P.L. 1906, c. 113; and see P.L. 1912, c. 396; P.L. 1917, c. 15 and P.L. 1927, c. 331.
[26] R.S. 52:22-20 (i).
[27] *Op. cit.*, pp. 182-186.
[28] National Institute of Public Administration Report, *op. cit.*, pp. 15, 58 and 59; Princeton Survey report, *op. cit.*, pp. 11, 39, 40, 44 and 46; Report of the Commissioner of Finance to the Governor, 1941 (mimeo.); N. J. State Chamber of Commerce, "State Fiscal Reform," Bulletin No. 15, 1932.

that the Highway Fund is derived almost entirely from motor fuel taxes and motor vehicle fees originally earmarked for highway purposes. They claim that these revenues should continue to be earmarked and kept separate from all other revenues. The gasoline tax was referred to as 'sacred money' by the President of the State Freeholders' Association and the State Farm Bureau during the course of the hearings on the 1940 Glickenhaus Bill mentioned above. He spoke of the Highway Department as being 'a department unto itself,' and expressed the fear that if a single treasury were created, counties and municipalities would have to engage in 'a grand budget scramble' with other State agencies in order to get their road funds.[29]

The State Highway Commission, answering the findings and recommendations of the Princeton Survey, recommended that motor vehicle fees and gas tax funds continue to be dedicated to highway purposes by the Legislature.[30] The American Petroleum Industries Committee has consistently and openly opposed abolition of dedicated highway funds over a period of years. It maintains that motor vehicle and motor fuel taxes are levied on the theory of benefit to the highway users, and compares these revenues to special trust funds to be spent only on highways.[31] The National Highway Users Conference has also carried on a campaign for dedicating motor fuel taxes and motor vehicle fees exclusively to highway purposes.[32]

Those who champion the dedicated highway fund—highway officials, local government officials, farmers' organizations, the automobile and petroleum industries, dealers in highway materials, road contractors, and many others (in all, a very large and influential group by any standard)—concentrate their fire on the evils of what they call 'diversion.' One general treasury, they say, means that funds collected from highway users may go to other governmental purposes. This will result in all sorts of dire consequences, ranging from roads falling into disrepair and defense roads going unbuilt, to double taxation and the encouragement of higher taxes.[33] Those behind the movement to preserve the dedicated highway fund urge constitutional amendments to effectuate that end.[34]

A few of the arguments advanced for a dedicated highway fund have some merit to them, especially in the case of a State which has not yet completed the main web of its highway system. Such are the States of the Middle West, West and South, with their wide areas, predominantly rural populations, and road systems projected at a relatively late date. New Jersey does not belong in their category.

Most of the reasons advanced for the dedicated highway fund lack a valid basis and are without essential merit. They are strictly the arguments of special pleaders who are only too ready to disregard the fundamental realities of the whole issue.

The Princeton Survey report put the argument against dedicated funds in perhaps its strongest form: *'It is not proper that any unit of government should live to itself alone. Each one is a part of a vast machine operating for the benefit of the people as a whole.* It is unthinkable that any agency should be allowed to spend all it can collect, while another agency, relying upon specific appropriations, starves its essential services. Only by the

[29] Glickenhaus hearing, *supra*, pp. 54-63.

[30] "Statement of the State Highway Commission on the Princeton Report," January 30, 1933, typed mss., Recommendation No. 7.

[31] Tax Economics Bulletins, Vol. IV, No. 3, June 1939, and Vol. IV, No. 11, February, 1940.

[32] "Dedication of Special Highway Revenues to Highway Purposes, published by the Conference in 1941, presents a complete brief for the dedicated fund.

[33] *Ibid*, pp. 3 and 8.

[34] See, for example, the resolution adopted by the American Automobile Assn. at its November 31, 1944 meeting at Chicago. The National Highway Users Conference lists the following 16 states as having constitutional anti-diversion amendments (as of Jan., 1945): Cal., Art. XXVI; Col., Art. X, Sec. 16; Idaho, Art. VII, Sec. 17; Iowa, Art. VII, Sec. 8; Kan., Art XI, Secs. 5 and 10; Maine, Art. IX, Sec. 22; Mich., Art. X, Sec. 22; Minn., Art. XVI, Sec. 3; Mo., Art. IV, Sec. 44a; Nev., Art. IX, Sec. 5; N. H., Art. VIa; N. D., Art. LVI; Ore., Art. IX, Sec. 3; S. D., Art. XI, Sec. 8; Wash., Art. II, Sec. 40; W. Va., Art. VI, Sec. 52. Kentucky should be added, a proposal for such an amendment having carried there. The arguments in Kentucky, as well as in Vermont where an amendment did not carry in 1940, are much the same as those presented at the 1942 Joint Legislative Committee hearings.

merest accident can the needful expenditures of a department coincide with its receipts from particular fees or taxes. *The single factor in determining what a department is to be allowed to spend should be the public value of its services.'* The system of permanently dedicated funds may have been reasonable in some past day, but its continuance 'has become an illogical if not impossible policy.' [35]

As long as dedicated funds continue—particularly one the size of the State Highway Fund—a unified system of expenditure control cannot be achieved. Their existence breaks the financial resources of the State into a series of self-contained compartments so that it becomes impossible for the State to 'mass its fiscal resources and direct them to points at which they are most needed.' [36]

One recognizes, of course, the existence of the constitutional provision requiring the Legislature to specify the ways and means by which the principal and interest of State bonds are to be met.[37] In this sense, and to this extent, it is impossible to avoid a certain amount of 'dedication' of revenues. But beyond that the whole system of dedicated funds is open to attack. Such a system means that State money is held in escrow, beyond full control of the Governor and the Legislature. It means the fragmentation of the fiscal program and policy of the State.

One naturally assumes that when motor vehicles fees and motor fuel taxes are collected from highway users, a good part of these revenues will go for highway purposes. But this does not mean that such revenues must definitely and irrevocably be dedicated to the State Highway Fund, where they will remain completely segregated from the rest of the State revenues. An appropriation for the highway needs of the State can quite readily 'be related to the revenue derived from the object that it serves, without an inflexible law permitting no other use of that revenue.' [38]

The New Jersey Legislature has been faithful to the State Highway Fund after its own fashion. It has annually dedicated revenues from motor vehicle fees, the motor fuels tax and other sources to highway purposes, and then unhesitatingly proceeded to appropriate very large amounts of these revenues having no relation whatsoever to the highway function."

The report then summarized the purposes and amounts thus appropriated for the decade 1931-40, totaling over $80,000,000. In 1941, $11,572,271 additional, or 19.5 per cent of the total funds available to the State Highway Fund, was appropriated for non-highway purposes. The large sums appropriated for purposes considered by the Legislature and some members of the Highway Department as "related" to highway work, are also mentioned. They totaled over $12,700,000 in the 1931-40 period and almost another $1,000,000 in 1941.[39] The authors of the report conclude on this note:

"In the face of all this one may well ask why the fiction of a dedicated State Highway Fund should be kept alive. The Legislature has by its own repeated action shown that highway needs, in the words of the Princeton Survey report, can 'no longer be determined separately, as though the function of providing highways were sacrosanct and unchangeable, regardless of the need for all other services of the State.' [40]

The Legislature has been accused of inconsistency and deception in dedicating various revenues to highway purposes and then appropriating these very funds to relief, inland waterways, State institutions and educa-

[35] *Op. cit.*, pp. 11 and 192. Italics supplied.
[36] *Ibid.*
[37] N. J. Constitution, Art. IV, sec. VI, par. 4.
[38] N. J. State Chamber of Commerce, "State Fiscal Reform," *supra*, p. 3.
[39] Goldmann and Graves, pp. 188-89; and see Schedules 2 and 2-A at p. 188.
[40] *Op. cit.*, p. 191.

> tional aid. It can escape that charge by taking the logical, constructive step of abolishing the State Highway Fund and directing that all revenues now dedicated to the fund be paid directly into the General State Fund. From this single fund the Legislature would annually appropriate such amounts as it might determine should go to each of the State agencies after a careful study of their needs and all attending factors. There can be little doubt that in the case of the Highway Department, one of these factors is bound to be the amount realized from the revenues now dedicated to the Highway Fund. The sum that will be spent annually by the State on highways will in large measure reflect the yield from highway user fees and taxes.
>
> The past decade has made it quite clear that modern government has become too complex, its functions too numerous and varied, to allow of the continuance of a 19th century institution like the dedicated fund. The only proper and sound basis for fiscal operations today is the single general State fund.[41] The elimination of the State Highway Fund—in fact, the elimination wherever possible of all dedicated revenues and segregated funds—will lay the foundation for an improved administration of State fiscal affairs. Better budgeting, a more unified and effective control of expenditures, a simplified accounting procedure, and a clearer, more complete picture of State finances, will be the result.
>
> It is recommended that the State Highway Fund be abolished and all revenues previously dedicated to the fund be paid directly into the general treasury of the State. All receipts of the State Highway Department (as, for example, from sales of condemned property, road permit fees, collection of claims, and highway services), should likewise go into the general State fund. Finally, all unexpended and uncommitted balances of the Department should lapse into the general treasury at the close of the fiscal year."

Many of the arguments advanced in the extensive quotations just made apply with equal force to any dedicated fund.

In 1943, Governor Edison suggested the advisability of a single fund,[42] but no legislative action was taken. This fiscal reform was urged by many who appeared before the Joint Legislative Committee which sat in 1944 to draft a revised Constitution for submission to the electorate (Art. VII, par. 2, quoted above). The arguments for and against creating one State Fund were much the same as in 1942.

Revision failed in 1944. Governor Edge at once took up the fight for fiscal reform. His Annual Message of January 9, 1945,[43] strongly urged the establishment of the single fund. His Budget Message of January 15th following was even stronger.[43a] It declared that "sound state fiscal policy and practice require that there be a uniform fiscal year (already achieved under P. L. 1944, c. 159), a single state fund and a single budget which requires only one general appropriation act." The existence of a $50,000,000 State Highway Fund side by side with the General State Fund had

> "resulted in unbalanced services and administrative organization, complicated accounting procedures and a confused and incomplete picture of State finances. It has also made it necessary to engage in fiscal gymnastics

[41] It has been observed that state laws require municipalities to consolidate into one fund all municipal purpose tax receipts and other revenues. The argument is that what is good for municipalities—creatures of the State—should be good for the State itself.

[42] See, for example, Budget Message, January 18, 1943, p. XIII.

[43] Minutes of the Assembly, 1945, p. 29.

[43a] Pp. XX and XXI.

to keep accounts orderly as between the two funds. . . .

Modern government has become too complex to allow the continuance of separate funds like the Highway Fund. The concept of such a separate fund connotes that the Highway Department is, in effect, a government unto itself, instead of being part of an integrated State administrative system. . . . As long as a separate fund of the size of the Highway Fund exists there must be a fractionalization of the fiscal program and policy of the State. . . .

A single State Fund will make for better budgeting, a more unified and effective control of expenditures, simplified accounting procedure, and a clearer, more complete picture of State finances. . . ."

The Legislature moved quickly on the recommendation and passed chapter 33 of the Laws of 1945, providing for a single budget, a single General State Fund and one general Appropriation Act covering one and the same fiscal year.

The Single State Budget

Prior to the passage of P. L. 1945, c. 33, just cited, there was no single budget covering recommended appropriations to be made from state revenues to meet the costs of all State Government activities, and there was no single Appropriation Act. The situation, as must be apparent, was due to the complete fiscal independence of the State Highway Department. It still presented its own separate budget, and appropriations for its work were the subject of a separate act.

The Goldmann-Graves report gives the complete background of the situation existing in 1942—a situation which continued until 1945.[44]

"Highway moneys were not included in the so-called State budget under the 1916 act first establishing a budget system for the State.[45] The budget message that the Governor was required to send to the Legislature each year contained no reference to highway expenditures. These were budgeted exclusively by the Highway Commission, without executive check or legislative approval. The Abell Commission report of 1930 criticized the entire arrangement in recommending a complete revision of the budget-making procedure. Among other things, it was proposed that all agencies and all funds of the State government be budgeted; 'highway expenditures should be included in the budget presented by the Governor to the Legislature; otherwise some $30,000,000 of the State's annual expenditures are unaccounted for in the financial plan.'[46]

One of the direct results of the Abell Committee investigation was the enactment of P. L. 1931, c. 142, providing for a budget system directed by a State Budget Commissioner appointed by the Governor. State agencies were required to file their requests for appropriations with the State Budget Commissioner on forms to be furnished by him. He would certify and transmit these requests, with his findings, comments and recommendations thereon, together with a report of the financial condition and operations of the State (as of June 30 last preceding) prepared by the Comptroller, to the Governor on or before December 31. After examining and considering the requests for appropriations, as well as the findings and recommendations of the Budget Commissioner the Governor would formulate his budget recommendations and transmit them to the Legisla-

[44] Goldmann and Graves, *op. cit.*, pp. 190-194.
[45] P.L. 1916, c. 15.
[46] National Institute of Public Administration report, *op. cit.*, pp. 50 and 263.

ture in a budget message which contained certain required information. The Legislature would then proceed to consider the budget message and finally pass the annual appropriation bill.

The State Highway Department managed to keep itself out of this revised pattern of budget procedure. All that the 1931 act required of it was that the State Highway Commission annually submit a report of the work, operations and financial condition of the Department for the current year (projected to December 31), directly to the Governor on or before December 1. At the same time, the Commission was also to submit a schedule of the estimated anticipated revenues available for highway purposes during the ensuing calendar year, together with a schedule and program for which it proposed to expend such funds, drawn up according to purposes, routes and sections of routes. The Governor was to review the schedule of anticipated revenues and the program, and upon his approval the program was to become the established program for State highway work for the next calendar year, and control the administration of funds. The Governor was required to include a synopsis of the Highway Commission's revenues, and the schedule and program that he had approved, in his budget message to the Legislature.[47]

Under the 1931 act, therefore, neither the expenditures nor the revenues of the Highway Department were included in the State budget, and this despite the announced intent of the act, which was 'to provide for the budgeting or scheduling of all State revenues and expenditures.'[48] The Governor had about one month to analyze and approve a highway program which had involved as much as $40,000,000 in recent years. The Legislature, whose action has always been deemed an essential part of a good budget system, was by-passed entirely. All it received was the synopsis contained in the Governor's budget message.

The Department still maintained its independent position, with its separate fiscal year, its dedicated funds, and its separate budget. It is true that the 1931 act gave the Governor some financial supervision over the Department where he had had none before, but the control was only partial.

The Princeton Survey report called attention to some of the weaknesses of the 1931 Budget Act, particularly in the provisions relating to the Department, and recommended a single budget for all State agencies. Like other budgets, the highway budget was to be submitted to the Governor for transmission to the Legislature and be effective only when approved by that body.[49]

The Department opposed this recommendation. Answering the Princeton Survey report, the State Highway Commission indicated that the 1931 Budget Act provisions were adequate to meet the situation; the synopsis of highway revenues and of the approved schedule and program contained in the Governor's budget message gave the Legislature the highway budget for the year.[50]

The Princeton Survey recommendations regarding budget procedure found partial reflection in several amendments to the 1931 Budget Act passed by the Legislature in 1933. The intent of the act was now declared to be 'to provide for the budgeting of all State revenues and expenditures, whether or not they involve free treasury funds or prededicated funds.' The ultimate purpose was 'to afford legislative control over the expenditure of dedicated funds as well as free treasury funds, and to provide a comprehensive budget of all State funds.'[51] The State Highway Commission was required to submit a schedule of estimated anticipated revenues available for highway purposes during the ensuing calendar year, as well as the schedule and program for which it proposed to expend such funds, to the Governor before October 15 annually. After reviewing this material, the Governor was to formulate his budget recommendations and submit

[47] P.L. 1931, c. 142, s. 18.
[48] P.L. 1931, c. 142, s. 1.
[49] *Op. cit.*, pp. 16, 39 and 192.
[50] Statement by the State Highway Commission on the Princeton Report, *supra*.
[51] P.L. 1933, c. 293, s. 1, amending P.L. 1931, c. 142, s. 2, R.S. 52:22-2.

them to the Legislature at the same time that he submitted the regular budget message for the other State agencies. The Legislature was then to pass a separate appropriation act, to be known as the State Highway Fund Appropriation Act.[52] . . .

The immediate observation to be made is that the 1933 amendments, representing a long step forward in State budgeting, still failed to do what seemed so clearly indicated. Instead of requiring Highway Department expenditures to pass through the regular State budget, the Legislature authorized the creation of an entirely separate arrangement. It would seem that the Legislature would have seized upon the opportunity of setting up a simple, unified State budget system. Instead, it gave its blessing to one of the strongest of all divisive forces in State fiscal affairs—a separate highway budget.

Those who have had to work with two different budgets have consistently advocated the need and advisability of a single State budget and a single appropriation act.[53] Such an arrangement is possible even with the continuance of dedicated funds, as witness the expenditures for educational purposes from railroad tax revenues, made in accordance with the general Appropriation Act. If the Legislature is to carry out its announced purpose of providing 'a comprehensive budget of all State funds'[51] it should carry to a reasoned conclusion the budget system started over a decade ago and improved in 1933. One budget and one appropriation bill covering all revenues and all expenditures for the same fiscal year will at last give New Jersey a basis for operations that will meet the requirements of fiscal administration in the modern State."

As noted in the report just quoted, the lack of a single state budget had been strongly criticized by two previous definitive studies of state fiscal procedure, the 1930 National Institute of Public Administration report[54] and the 1932 Princeton Survey report,[55] as well as by fiscal authorities.

Those who supported the recommendation for a single fiscal year and single state fund before the 1942 Joint Legislative Committee considering the Hendrickson Commission draft Constitution logically and inevitably championed the proposal for a single state budget and appropriation act.[56] There was similar support given before the 1944 Joint Legislative Committee.

In his Budget Message of 1945, Governor Edge called attention to the announced intention of the Legislature of 1933 in enacting chapter 293 of the Laws of that year—"to provide for the budgeting of all State revenues and expenditures whether or not they involve free treasury funds or prededicated funds," the ultimate purpose being "to afford legislative control over the expenditure of dedicated funds as well as free funds, and to provide a comprehensive budget of all State Funds." He indicated that the 1933 legislation had not, however, resulted in a single budget because of the Highway Department situation. He called for "necessary legislation providing for one budget and one general appropriations bill cover-

[52] P.L. 1933, c. 193 and c. 451, amending P.L. 1931, c. 142, s. 18, R.S. 54:22-20.

[53] See, for example, the statement of State Comptroller Murray at the Glickenhaus hearing (Note 8, *supra*) and Report of the Commissioner of Finance to the Governor, 1941.

[54] *Op. cit.*, pp. 50 and 263. See also Note 17a.

[55] *Op. cit.*, pp. 16, 39, 192.

[56] Record of Proceedings . . . 1942, *op. cit.*, pp. 401, 406, 410, 417, 421 and 423. For a contrary view, pp. 443-45, 450.

ing all revenues and all expenditures for a single fiscal year." [57] The result was the enactment of chapter 33 of the Laws of 1945, so providing.

The Budget as an Executive Function

The conception of "the state budget" changed greatly in the past two decades. The term has successively meant:

> "(a) a schedule of proposed expenditures;
> (b) a document showing an estimate of anticipated revenues *and* expenditures;
> (c) a *plan* for preventing fiscal irregularities, involving estimates of revenues and expenditures by the executive, approval by the legislature, and execution by the administration; and finally,
> (d) a comprehensive and flexible financial plan emphasizing positive executive assistance to revenue collecting and to spending agencies in the economical management of functional activities and stressing the general, rather than merely the fiscal, control possibilities of budgeting." [58]

The same writer goes on to say that although some states have yet to advance beyond the initial stage, several have in recent years made definite forward steps. "Aside from defects in comprehensiveness, at least Alabama, Kentucky, New York and Virginia now have elements of the most advanced idea of the state budget."

New Jersey is definitely in the third group outlined above, and working in the direction of the fourth stage. Chapter 112 of the Laws of 1944, providing for the establishment, organization and functions of a State Department of Taxation and Finance, completely integrated budgeting and accounting functions in a Division headed by a director who is designated in the law as the Commissioner of Taxation and Finance (the head of the new Department of Taxation and Finance), himself. New Jersey had given the nation leadership in budget practices as early as 1916. Other states overtook New Jersey in this field during the 1930's. The vigorous espousal given by recent Governors to improved budgeting and accounting practices, is regaining for New Jersey the place once held by the State in progressive and constructive fiscal administration.

Executive control of the budget becomes more possible and more efficient as the administrative organization of state government becomes more coordinated, centralized and simplified. A governor who has real control over and responsibility for state administration is naturally in a better position, given the necessary constitutional or legislative authority, to prepare and carry out a true executive budget. The reorganization of state departments, boards, commissions and agencies that has been going on in the past four years, effectively instituted in the administration of Governor Walter

[57] Pp. XXI and XXII. See, also, Annual Message, Jan. 9, 1945, Minutes of the Assembly, 1945, p. 29.

[58] Martin, James W., "Tax Administration and the Control of Expenditures," The Book of the States, 1945-46, Council of State Governments.

E. Edge (1941-44), has made for more clear-cut budgeting, budget understanding and budget control. The proposal made in the Hendrickson Commission Report of 1942 (Art. IV, sec. III, par. 1) for nine administrative departments in the State Government, and in the 1944 proposed Constitution (Art. IV, sec. III, par. 1) for no more than 20 principal departments—the departments in each case to be headed by a single executive unless otherwise provided by law—was a natural step. The purpose was to assure an efficient, centralized administration of State Government under the Governor. This would have been reflected as of course in even better budgeting procedure and control.

While the Governor has prepared the annual budget of New Jersey for the past three decades, his authority to do so is statutory. There is no indication that New Jersey has ever considered a constitutional direction that the Governor do so. A review of other state constitutions reveals that there is little, if any, constitutional authority for what might be called a true executive budget. The "Model State Constitution" of the National Municipal League, whose provisions are cited at the beginning of this monograph, incorporates a constitutional provision for an executive budget. That may well be the future trend. However, reliance on legislative enactment regarding the details of budget preparation makes it possible to meet changing conditions in a manner which might not be possible if the mechanics of budget making were written into the constitution.

BIBLIOGRAPHY

Council of State Governments, The Book of the States, 1945-46.

GOLDMANN, S. and GRAVES, T. Organization and Administration of the New Jersey Highway Department, 1942.

National Institute of Public Administration. Report on Audit of the Financial Affairs of the State Government of New Jersey, 1930. (Abell Commission Report)

National Institute of Public Administration. Report on a Survey of the Organization and Administration of the State Government of New Jersey, 1930.

National Municipal League. Model State Constitution, Partial Revision, 1946.

New Jersey. Abell Commission, Minutes, 1929-30.

New Jersey. Annual Messages and Budget Messages of Governor Walter E. Edge, 1944-46.

New Jersey. Annual Messages and Budget Messages of Governor Charles Edison, 1941-43.

New Jersey. Hearing on Assembly Bill 116, 1940.

New Jersey. Record of Proceedings before the Joint Committee . . . to Ascertain the Sentiment of the People . . . for Change in the New Jersey Constitution, 1942.

New Jersey. Report of the Joint Legislative Survey Committee of New Jersey, 1925. (Bright Commission Report)

New Jersey. Revised Constitution for the State, 1944.

Princeton University, School of Public and International Affairs. Report on a Survey of Administration and Expenditures of the State Government of New Jersey, 1932. (Princeton Survey Report)

TAXATION — THE TAX CLAUSE

(NEW JERSEY CONSTITUTION—ART. IV, SEC. 7, PAR. 12)

by

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I

PRESENT CONSTITUTION PROVISION AND AMENDMENTS HERETOFORE PROPOSED

Constitution of 1844

The Constitution of 1844 did not contain a tax clause. Although the subject was debated before the Convention of that year, all attempts to write a tax clause into the Constitution were defeated.[1] The only references in that Constitution to taxes are to be found in Art. 1, par. 3, providing against tithes, taxes, or other rates for building or repairing churches or for the maintenance of ministers, and in Art. IV, sec. 6, par. 1, requiring that all revenue measures originate in the House of Assembly. For the next 30 years, therefore, the State Government functioned without any constitutional provision—as it had done for the previous 70 years, since the first Constitution of 1776 was also silent on the subject of taxation.

Revision of 1875

At a special election on September 7, 1875, the people ratified, *inter alia,* a new paragraph 12 to sec. VII of Legislative Art. IV, reading as follows: [2]

> "12. Property shall be assessed for taxes under general laws, and by uniform rules, according to its true value."

This provision has prevailed without change to the present time. So that 18 words, two commas and a period have, from a constitutional point of view, been the only limitation on the assessment and collection of revenues in this State for the past 70 years.

Revision Commission of 1941 [3]

The report of this Commission which contained a draft of a proposed revised Constitution,[4] recommended no change in the tax

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[1] *Proceedings, New Jersey Constitutional Convention, 1844,* pp. 343, 366, 396, 554, 570-572.

[2] *P. L. 1876, pp. 433, 436. Black, Taxation in New Jersey,* (4th ed.), 9.

[3] Commission on Revision of the New Jersey Constitution, (Hendrickson, Chairman), created by J. R. 2, Nov. 18, 1941, P. L. 1941, p. 1084; continued by J. R. 1, Jan. 24, 1942, P. L. 1942, p. 735.

[4] *1942 Senate Journal, 672, 712.*

clause other than that it be moved from Legislative Art. IV, to a new Art. VII, Finance, as paragraph 6.

Governor Edge Draft of 1944 [5]

Governor Walter E. Edge, on January 24, 1944, submitted to the Legislature a draft of a revised Constitution, under Art. VII, Finance, par. 4, of which the following change in the tax clause was proposed:[6]

> "4. Property shall be assessed for taxes under general laws, and by uniform rules, according to fixed standards of value."

Joint Legislative Committee Draft of 1944 [7]

A draft of a proposed revised Constitution was submitted by this committee on February 25, 1944 to the Legislature[8] and agreed upon by both houses.[9] The tax clause as set forth in that draft, being the same as submitted to and rejected by the people at the general election on November 7, 1944, appeared under Art. VII, Finance, par. 4, in the following language:[10]

> "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."

(Note: There was also a Joint Legislative Committee of 1945 to consider proposed amendments to the Constitution. This committee did not submit a draft of a Revised Constitution. However, a proposal to add an exemption clause was contained in its report which is quoted under the appropriate subheading of Part IV, *infra.)*

II

Judicial Interpretations of the Tax Clause

Power to Tax is Inherent in Legislature

All taxes are state taxes even though levied for county or municipal purposes.[11] The power of taxation is an essential, inherent attribute of sovereignty. It is unlimited in scope except as it may be restrained by constitutional edict or irrepealable legislative contract.

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[5] "Prepared by members of the Legislature acting in an unofficial capacity" during the latter part of 1943 *(1944 Assembly Minutes 56).*

[6] *1944 Assembly Minutes 86.*

[7] Created by S. C. R. 1, adopted Jan. 11, 1944 (Eastwood, Chairman), "to formulate a draft of a proposed Revised Constitution for the State of New Jersey" *(1944 Assembly Minutes 41).*

[8] *1944 Assembly Minutes 270; 1944 Senate Journal 242.*

[9] *S. C. 9 (1944 Assembly Minutes 330, 358; 1944 Senate Journal 302, 330).*

[10] *P. L. 1944, c. 92, pp. 195, 226.*

[11] *Jersey City* v *Martin,* 126 N. J. L. 353, 360; State Board of Assessors* v *Central R. Co.,* 48 N. J. L. 146, 280.*

* Indicates Court of Errors and Appeals decision.

The self-executing[12] tax clause of the present Constitution is, therefore, a limitation upon and not a grant of that power.[13]

Classifications for Purposes of Taxation

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.[14] 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; that uniformity prevails throughout the whole class; and that the property is taxed at true value.[15] But classification must be of *property,* according to its *characteristics,* or the *use* to which it is put,[16] and not according to the status of the owner,[17] or the mere incidence of location of the property.[18]

Consistent with the right of classification is the Legislature's power to prescribe different rates of tax for different classes of property, provided, always, that there is rate uniformity within each class.[19] Because real and personal property, in legal contemplation, belong to different classes, a tax law may constitutionally affect one without affecting the other.[20] So it is, as more fully pointed out later, that the Legislature has established innumerable classifications of property for special tax treatment, which, with few exceptions, have been upheld by the courts.

Classifications for Purposes of Exemption

Since the tax clause does not require that *all* property shall be assessed for taxes,[21] the Legislature may classify property for purposes of exemption from taxation,[22] subject always, of course, to strict observance of the classification rule. Elimination of a single member of a natural class will invalidate the statute.[23]

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[12] It requires no legislation to put it into operation. *Trustees of Public Schools* v *City of Trenton,** 30 N. J. Eq. 667, 676.

[13] *State Board of Assessors* v *Central R. Co.,* supra,* 277; *Township of Bernards* v *Allen,** 61 N. J. L. 228, 236; *Standard Underground Cable Co.* v *Attorney General,** 46 N. J. Eq. 270, 273; *Jersey City* v *Martin,* supra,* 360.

[14] *Singer Sewing Machine Co.* v *Unemployment Compensation Commission,* 128 N. J. L. 611, 619, *affirmed** 130 N. J. L. 173.

[15] *State Board of Assessors* v *Central R. Co.,* supra,* 279; *Mechanics National Bank* v *Baker,* 65 N. J. L. 113, 117, *affirmed,** 65 N. J. L. 549; *Salem and Pennsgrove Traction Co.* v *State Board, etc.,* 97 N. J. L. 386, 387, 388, *affirmed,** 98 N. J. L. 570; *Chancellor* v *Elizabeth,* 65 N. J. L. 479, 481, *affirmed,** 66 N. J. L. 687; *Koch* v *Essex County Board of Taxation,* 97 N. J. L. 61, 64, 65; *Braunstein* v *Jersey City,** 98 N. J. L. 478; *Black, Taxation in New Jersey,* (4th ed.) 22.

[16] *Camden* v *Camden County Board of Taxation,* 121 N. J. L. 262, 264, *affirmed,** 122 N. J. L. 381; *State Board of Assessors* v *Central R. Co.,* supra,* 313; *Mechanics National Bank* v *Baker, supra,* 117; *Central R. Co.* v *State Board of Assessors,** 75 N. J. L. 771, 786; *State* v *Mercer County Board of Taxation,* 118 N. J. L. 408, 410.

[17] *Tippett* v *McGrath,* 70 N. J. L. 110, 112, 113, *affirmed,** 71 N. J. L. 338.

[18] *Essex County Park Commission* v *West Orange,** 77 N. J. L. 575, 577.

[19] *State Board of Assessors* v *Central R. Co.* supra,* 279; *Jersey City* v *State Board of Tax Appeals,* 133 N. J. L. 202, 204, *modified* (on another point),* 134 N. J. L. 239.

[20] *Chancellor* v *Elizabeth, supra,* 481.

[21] *State Board of Assessors* v *Central R. Co.,* supra,* 279, 290, 320; *Tippett* v *McGrath, supra,* 112.

[22] *State Board of Assessors* v *Central R. Co.,* supra,* 279; *Camden* v *Camden County Board of Taxation, supra,* 264; *Tippett* v *McGrath, supra,* 112; *Schwartz* v *Essex County Board of Taxation,* 129 N. J. L. 129, 133, *affirmed,** 130 N. J. L. 177.

[23] *Essex County Park Commission* v *West Orange,* supra,* 577.

Legislative attempts to create special or limited classifications of persons and property have been consistently ruled out under the tax clause. Thus, an attempted special exemption of $500 for exempt firemen,[24] and an attempted exemption of improvements on real property within a period of five years, have been voided on the ground of improper classification.[25] Even a pressing emergency has been held insufficient to warrant special classification for tax purposes,[26] although exemption, by classification, has been upheld for purposes of industrial encouragement, as well as for the more common charitable, religious and educational uses.[27] Of the numerous statutes granting exemptions from tax few have been set aside.

Taxation of Privileges, Franchises, Trades, etc.

Because the tax clause is limited in its application to property taxes, the Legislature is free to levy indirect taxes such as excise or franchise taxes on the privilege of transacting business;[28] inheritance and estate taxes on the right to receive and transfer property by descent, will, gift, etc.;[29] unemployment compensation taxes on wages;[30] and license taxes on business, trades, etc.[31]

State vs. Federal Relief in Case of Discrimination

Where *ad valorem* taxes are involved the Constitution requires that property shall be assessed at true value. Because of this, our courts have ruled that an assessment at true value cannot be reduced merely on a showing that other property in the same taxing district has been assessed at less than true value. The remedy in such cases has been held to be by application to the county board of taxation to increase those assessments which are below true value.[32]

The federal courts have held, however, that the casting of such an onerous duty upon a taxpayer who has been discriminated against does not satisfy the requirements of the equal protection clause of the Federal Constitution and that he is, therefore, entitled to have his valuation placed on a parity with others in the taxing district.[33]

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[24] *Tippett* v *McGrath, supra.*

[25] *Koch* v *Essex County Board of Taxation, supra; Braunstein* v *Jersey City,* supra.*

[26] *Koch* v *Essex County Board of Taxation, supra, 65, 66.*

[27] *Schwartz* v *Essex County Board of Taxation, supra, 134; Burlington Distilling Co.* v *State Board of Assessors, 86 N. J. L. 92, affirmed,* 87 N. J. L. 315.*

[28] *Standard Underground Cable Co.* v *Attorney General,* supra, 273; Salem and Pennsgrove Traction Co.* v *State Board, etc. supra, 388; North Jersey Street Ry. Co.* v *Jersey City, 73 N. J. L. 481, 483; affirmed,* 74 N. J. L. 761; Jersey City* v *Martin,* supra, 359; Jersey Central Power and Light Co.* v *Asbury Park, 128 N. J. L. 141, 145, affirmed,* 129 N. J. L. 253.*

[29] *Renwick* v *Martin, 126 N. J. Eq. 564, 573; Howell* v *Edwards, 88 N. J. L. 134, affirmed,* 89 N. J. L. 713; Eastwood* v *Russell,* 81 N. J. L. 672, 677.*

[30] *Raines* v *U. C. C., 129 N. J. L. 28, 30, affirmed,* 129 N. J. L. 387, cert. den., 319 U. S. 757; Singer Sewing Machine Co.* v *U. C. C., supra.*

[31] *Johnson* v *Asbury Park, 58 N. J. L. 604, 608, affirmed,* 60 N. J. L. 427.*

[32] *Royal Mfg. Co.* v *Board of Equalization of Taxes,* 78 N. J. L. 337, affirming, 76 N. J. L. 402.*

[33] *Hackensack Water Co.* v *Oradell, 17 Fed. Supp. 39.* See also: *Hillsborough Township* v *Cromwell, 326 U. S. 620; Sioux City Bridge Co.* v *Dakota County, 260 U. S. 441.*

III

There are Numerous Statutes Based on Classification for Purposes of Taxation and Exemption from Taxation

Classifications for Purposes of Taxation

The statutes of this State are replete with classified tax laws. The Legislature has always presumed the presence of the power to classify property for the purpose of more equitably distributing the tax burden. In addition to property taxed locally under general laws, by uniform rules and at true value, the Legislature has created many classifications of property, according to use, for separate consideration.[34] And then there are several indirect tax statutes, not deemed to be of a property-tax character, which levy excise taxes on the transfer or sale of property.[35]

Classifications for Purposes of Exemption

Also always assumed to be within the legislative prerogative is the power to classify property according to its characteristics or use for purposes of exemption from taxation. There is an extensive body of the tax law devoted to the elimination of property from general taxation.

Numerous items of personal property are either partially or wholly exempted from *ad valorem* taxes.[36] Property in political ownership and for public use has always been excluded.[37] And property of educational, religious, charitable and benevolent organizations has likewise always been accorded tax exemptions;[38] as well as cemeteries and graveyards *(R. S. 54:4-3.9)*, and fraternal organizations.[39] Also taken out of the *ad valorem* tax category is property otherwise taxed,[40] rights accruing under public pension funds *(18:13; 43:10; 43:13; 43:14)* and old age assistance payments *(47:7-35)*.

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[34] Bank stock *(R. S., R. S. Cum. Supp.,* or *N. J. S. A. 54:9; P. L. 1946, c. 146)*; corporations *(54:10A; P. L. 1945, c. 162)*; financial business *(54:10B; P. L. 1946, c. 174)*; certain utilities *(54:13)*; various types of insurance business *(54:16; 54:18, 54:18A; P. L. 1945, c. 132)*; railroads *(54:29A; P. L. 1941, c. 291)*; public utilities-excise *(54:31-15.16)*; public utilities-gross receipts, *54:31-45)*.

[35] *E. g.:* inheritance taxes *(R. S. 54:33)*; estate taxes *(54:38)*; motor fuels taxes *(54:39)*; alcoholic beverage taxes *(54:41)*.

[36] U. S. securities *(R. S. 54:4-3)*; state, county and local securities *(54:4-3.1)*; household goods to extent of $100 *(54:4-3.16)*; personal property out of state *(54:4-3.2)*; corporate stock exempt by contract *(54:4-3.8)*; intangible personal property *(P. L. 1945, c. 163)*; mortgages *(54:4-3.14* and *54:4-33)*; personal property in storage *(54:4-3.20)*; metals in transit *(54:4-3.19)*; building and loan investments *(54:4-3.22)*; cash on hand and on deposit *(54:4-3.23)*; growing crops, trees, shrubs, etc. *(54:4-3.28)*; veterans' loans held by savings banks *(54:4-3.29)*.

[37] U. S., state, county and local *(R. S. 54:4-3.3)*; Morris Canal and Banking Co. *(54:4-3.3)*; military use *(54:4-3.5)*; various port, bridge, sewerage and transit authorities *(32:1; 32:3; 32:13A; 48:21; 54:4-3.4; 58:15)*.

[38] Benevolent societies *(R. S. 54:4-3.7)*; educational, religious, hospital and charitable organizations *(54:4-3.6)*; fire patrols and salvage corps *(54:4-3.13)*; organizations for the relief of victims of pestilence, famine, fire, flood, etc. *(54:4-3.27)*.

[39] Exempt firemen's associations *(R. S. 54:4-3.10)*; organizations for aid of crippled soldiers *(54:4-3.15)*; YMCA, YWCA, YMHA, YWHA *(54:4-3.24)*; veterans' organizations *(54:4-3.25)*; lodges *(54:4-3.26)*.

[40] *E. g.:* Stock of corporations the property of which is otherwise taxed *(R. S. 54:4-3.8)*; railroad property and franchises *(54:4-3.11)*; bank stock *(54:4-3.17)*; motor vehicles *(54:4-3.21)*.

There are, of course, many others,[41] but the foregoing will sufficiently demonstrate the extent to which the Legislature has exercised its power of classification for exemption purposes.

As previously observed, statutes granting exemptions have been invalidated only where the classification was found to be defective because it did not include all reasonably within the class, or where the classification was based merely on the incidence of location of the property or solely on its ownership.[42]

IV

Proposals Relating to Taxation Before the Constitutional Convention of 1844, and Revision Commissions and Committees Since that Date

Convention of 1844

While the subject of taxation was debated at some length in that Convention, nevertheless, a tax clause did not emerge. There was a proposal to add two paragraphs to the Constitution in the following tenor:[43]

> "All property hereafter shall be taxed according to its value, that value to be ascertained in such manner as the Legislature shall direct, so that the same shall be equal and uniform throughout the state.
>
> No one species of property for which a tax may be collected, shall be taxed higher than any other species of property of the same value."

This brought forth substantially the same arguments as appeared a hundred years later when the tax clause was under consideration in 1942 and 1944. Real estate, it was said, bore an "unjust and unequal" burden of the tax, while personal estate escaped *(343, 344)*. The fairness of taxing personal property was quite generally conceded but deemed impractical since "the effort to do it had given great dissatisfaction in this state." The whole matter, it was urged, "could safely be left to the Legislature." *(344)*

Another delegate thought the proposal to tax *all* property very objectionable. "We shall have to tax all property—household furniture and luxuries, watches and spectacles, everything. * * * it would not be just to tax all property alike." If the Legislature "choose to try experiments and tax bonds and mortgages," there was no objection, but "we ought not tie up the hands of the Legislature by a Constitutional provision." *(397)*

Then followed a proposal that, instead of a rigid requirement that *all* property be taxed, the provision be modified so as to leave to the Legislature what property should be taxed; but, if taxed, it

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[41] For a more detailed list of exemptions, see Appendix A, 1945 Report of Commission on Taxation of Intangible Personal Property, 89 *et seq.*, and the Report of the State Tax Commissioner, filed with the Legislature in 1938 pursuant to *J. R. 3, P. L. 1938, p. 1001.*

[42] *Supra* 5, 6.

[43] *Proceedings, New Jersey Constitutional Convention, 1844, p. 343.* Figures in parentheses in this subsection refer to the Proceedings.

should be "rated equal." This, it was answered, would destroy the benefit of the whole section. Still another delegate said "he was afraid to adopt the plan of New York, to put a man upon his oath as to what he is worth. But if a plan can be devised, to discover honestly and justly all a man's visible and other property, so as to carry out fairly the abstract principle"—that all property be uniformly taxed—"he should be entirely satisfied; but otherwise, I think [*sic*] it had better be left to the Legislature." *(398, 399)*

In an attempt to reconcile these divergent views a third proposal was made *(571)*:

> "Every taxable inhabitant in this state shall hereafter be taxed according to the value of his property, whether real or personal, to be ascertained in such manner as the Legislature shall direct; *provided nevertheless,* the Legislature shall have power to tax special privileges, in such manner as they may from time to time direct."

Again it was argued that the Legislature should not be compelled, by constitutional fiat, to tax all property. "It would drive domestic capital from the state." "If the Legislature saw that good would arise by exempting manufacturers from taxation, should they not have the power of doing so?" Finally it was urged, if a section on taxation was to be incorporated in the constitution, that it be sufficiently broad to give the Legislature power "to tax salaries, professions and trades." So amended, the whole provision was defeated on final vote *(571, 572)*, and the effort to write a tax clause into the 1844 Constitution was abandoned.

Revision Commission of 1873[44]

The report of the 1873 Commission proposed to the Legislature the following amendment, to appear as a new paragraph (16) in Art. IV, Legislative, sec. 7:[45]

> "16. Property shall be assessed for taxes under general laws, and by uniform rules, according to its true value in money. No property of any kind, protected by law, except that owned by the United States, the state, counties, townships, cities, towns or boroughs, shall be exempt by law from its full share of all state, county, township and city taxes and assessments, except burying grounds and cemeteries not held by stock companies. No law shall be enacted or contract entered into by which the exercise of the power of taxation shall be restricted, impaired or impeded. The legislature may provide by law for taking away from any person or persons, natural or artificial now possessing or entitled to the same, any right of exemption from taxation which cannot be revoked without compensation, and for paying to such person or persons a just compensation for the right so taken away."

After Senate and Assembly action, only the first sentence, exclusive of "in money," was accepted.[46] All attempts to limit the legislative power to grant exemptions were unsuccessful. The ab-

[44] Created by J. R., April 4, 1873, to suggest and propose amendments to the State Constitution for submission to and consideration by the next Legislature *(1873 Assembly Minutes 1426, 1431)*.

[45] *1874 Senate Journal 54.*

[46] *1874 Senate Journal 365-367, 785.*

breviated sentence was submitted to and adopted by the people at a special election on September 7, 1875, becoming par. 12, of Art. IV, Legislative, sec. VII, which is the tax clause as it stands today.[47]

Revision Commission of 1941[48]

The report of the 1941 Commission[49] recommended that the tax clause, without change, be incorporated in the draft of the revised Constitution, under Art. VII, Finance, par. 6. There is no record of the proceedings before that Commission, so that discussion on the question of taxation is not available, but in a letter written after the report was filed, the chairman of the Commission had this to say:[50]

> "* * * to my best recollection, the Commission on Constitution 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 ofttimes 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."

Joint Legislative Committee of 1942[51]

Before the 1942 Joint Legislative Committee, it was vigorously urged[52] that the old tax clause was archaic and inadequate and should not, therefore, be carried verbatim into a modern constitution as proposed by the Revision Commission of 1941; that real property, although probably representing less than 30 per cent of the total property wealth of the State, is bearing a disproportionate share (approximately 80 per cent) of the tax burden; that equalization of assessments is wholly lacking; that billions of dollars of personal property are escaping taxation; that outright exemptions and partial exemptions granted through so-called "in-lieu of" tax policies, have shifted the burden of property taxes to real property owners; that failure to deduct mortgages in valuing real property is unfair; that "tax lightning"[53] is injurious to the social economy of the State; that classification of property for tax purposes, which presently exists, should be given "formalized status" in the Constitution; that the transfer of a large percentage of privately held real estate to institutional ownership is working undue hardship;

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[47] *P. L. 1876, p. 433.*

[48] Created by *J. R. 2*, Nov. 18, 1941 *(P. L. 1941, p. 1084).*

[49] *1942 Senate Journal 672, 712.*

[50] ***Proceedings before the 1942 Joint Legislative Committee on Revision of the Constitution,*** *479.*

[51] Constituted under *S. C. R. 19*, adopted June 15, 1942, to ascertain the sentiment of the people as to constitutional changes *(1942 Senate Journal 755).*

[52] By John F. O'Brien, speaking as a tax official, real estate broker and on behalf of the New Jersey Association of Real Estate Boards *(Proceedings before the Joint Legislative Committee of 1942, pp. 424-430).*

[53] The unpredictable practice of municipalities swooping down upon large holdings of intangible personalty owned by corporations, estates and occasionally individuals, with assessments at existing local rates (See Message of Governor Charles Edison to Legislature, October 26, 1942, proposing a mill-tax on intangibles—*1942 Assembly Minutes 952*—and *Hillsborough* v *Cromwell, 326 U. S. 620).*

and, finally, that the present tax clause "should be radically changed or completely deleted from the new Constitution."

To remedy these evils it was proposed that the tax clause provide for the classification of all property, with legislative power to establish varying rates of tax for the different classes so as to permit solution of the tangible and intangible personal property tax problem and put a stop to the growing evil of "tax compromises"[54] on intangibles; prescribe limitations on the legislative power to grant exemptions; and define the line of demarcation between state and local tax jurisdiction.[55]

Although it assembled much material, the committee did not prepare a draft of a revised Constitution. The majority report recommended that all attempts at constitutional revision await the termination of World War II. A minority report urged submission of the question of a revised Constitution to the people.

Joint Legislative Committee of 1944[56]

This committee used as a basis for discussion Governor Walter E. Edge's draft of a revised Constitution in which the phrase "according to fixed standards of value" was substituted for the words "true value."

The first charge levelled against this change was that the safeguards set up by the "true value" phrase of the present Constitution for the taxation of railroad property would be destroyed, since the Legislature could create a new method of valuation, using such criteria as "stock and bond" values, capitalization of earnings, gross earnings, or some other formula in lieu of the long-established policy of physical valuation at true value, thereby permitting the roads to gain from the Legislature the very preferences which, it was alleged, they had been unsuccessful in obtaining since the adoption of the tax clause in 1875. Aided by proposed Art. III, sec. 6, par. 8, sub-par. 3, (prohibiting private, special or local laws "relating to taxation or exemption therefrom"), it was further charged that the Legislature could even exempt from taxation all property used for railroad purposes.[57]

The next witness approved elimination of "true value," but thought that the substituted phrase, "fixed standards of value," would lead to confusion and much litigation. The word "fixed" might be construed to mean fixed to the time of the adoption of the revision.

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[54] The practice in certain municipalities of agreeing upon an intangible tax base, less than actual value, which when subjected to tax at the local rate would produce a tax equal to three mills on the dollar of true value. (See *Report of Commission on Taxation of Intangible Personal Property, 1945, pp. 9-15).*

[55] *Proceedings before the Joint Legislative Committee of 1942, pp. 429-430.*

[56] Created by *S. C. R. 1,* Jan. 11, 1944, "to formulate a draft of a proposed Revised Constitution for the State of New Jersey" *(1944 Senate Journal 32).*

[57] Walter J. Tierney, "representing all of the municipalities comprising the County of Hudson." Transcript of Hearings before Legislative Section of Joint Legislative Committee, Feb. 3, 1944, pp. L-4, 17-21 (mimeo.).

To overcome this possibility and also to incorporate a provision limiting the power of the Legislature to grant tax exemptions, it was proposed that the tax clause be worded as follows:[58]

> "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.
>
> 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 sub-divisions.
>
> Assessments where based on an *ad valorem* basis shall never exceed the full 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."

Covering the same principles was the following suggestion of another speaker:[59]

> "Property shall be assessed for taxes under general laws, and by uniform rules, according to classification and standards of value to be established by the Legislature. *Ad valorem* assessments shall not exceed true value.
>
> Laws establishing classification and standards of value for the purpose of taxation, or providing for exemption from taxation shall require for passage an affirmative vote of two-thirds of the members elected to each of the two houses of the Legislature."

Next came a proposal on behalf of veterans for a new Art. IX as follows:[60]

> "*Veterans*
>
> "1. Notwithstanding anything in this 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."

This addition was urged upon the committee because of the alleged possibility that several existing laws granting special privileges and exemptions to veterans might be unconstitutional under the case of *Tippett* v *McGrath, 70 N. J. L. 110, affirmed,* 71 N. J. L. 388.*[61]

The last speaker, believing that the "fixed standards" clause was too indefinite and would result in years of litigation, urged that the "true value" provision be retained, since everything that could be done under the former could be done under the latter, and the latter had a very definite advantage in that its meaning had become crystalized by years of litigation.[62]

The tax clause finally emerged from this Committee as par. 4, Art. VII, Finance, in this language:[63]

> "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

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[58] John F. O'Brien, representing the New Jersey Association of Real Estate Boards, (*Ibid.*, Feb. 3, 1944, pp. L-4, 22 and 23; also Feb. 9, 1944, p. L-1, 4).

[59] James J. Smith, Executive Secretary, New Jersey State League of Municipalities (*Ibid.*, Feb. 9, 1944, p. L-1, 7).

[60] Thomas E. Duffy, American Legion, Department of New Jersey (*Ibid.*, Feb. 9, 1944, pp. L-1, 8-15).

[61] *Ibid.*, Feb. 9, 1944, p. L-1, 14.

[62] J. H. Thayer Martin, Counsel, Newark Chamber of Commerce and former State Tax Commissioner of the State of New Jersey (*Ibid.*, Feb. 15, 1944, pp. L-1, 16-17).

[63] *1944 Assembly Minutes 270, 358.*

service in any branch of the military or naval forces of the United States in time of war."

It will be observed that the committee did not, as suggested, set up a separate article on veterans' preferences. Instead, it added to the tax clause a permissive exemption provision for veterans. This action subsequently raised complications, not because of the exemption, as such, but because of the place where the committee decided to insert it.

Constitutional Revision Campaign of 1944

During the 1944 campaign on the revision issue there were charges and rebuttals on the question of the power of the Legislature to grant exemption to religious, educational and charitable organizations and the rights of the Legislature respecting railroad taxation under the proposed tax clause.[64]

The opponents of the revision, apparently on the premise that the singling out of veterans for exemption under the tax clause and the provision of Art. III, sec. 6, par. 8, prohibiting the passage of private laws relating to taxation and exemption therefrom, charged that the existing power of the Legislature to grant exemptions to religion and charity would be destroyed. The designation of one (the veterans), they apparently reasoned, would exclude all others (religion, education, charity): *expressio unius est exclusio alterius.*

Proponents of the revision[65] answered that the specific provision in the tax clause for veterans was simply to overcome the implications of *Tippett* v *McGrath, supra;* that the exemption was based on the personal status of the owner of property and therefore in no way affected the existing power of the Legislature to classify property according to its use for purposes of exemption; that the *expressio unius est exclusio alterius* rule was not applicable in constitutional interpretations; that since the amended tax clause did not require that *all* property should be taxed, the Legislature was unrestrained, as theretofore, in its power to exempt property in charitable, religious and benevolent use; and that limitations or restrictions on the law-making power of the Legislature will never be raised by implication.

There is some support for the proposition that

> "* * * where the constitution grants to the legislature authority to exempt from taxation particular persons * * * a prohibition against any other or further exemptions is implied * * *." *61 Corpus Juris, par. 390, p. 389.*
>
> "* * * where the constitution enumerates the exemptions, it is generally held that statutes exempting property not enumerated are void * * *." *61 Corpus Juris, par. 391, p. 390.*

Still another compilation states the rule this way:

[64] *Trenton Evening Times,* Nov. 5, 1944, p. 2; Nov. 2, p. 8; Oct. 29, p. 6; Oct. 27, p. 1; Oct. 24, p. 8; *Sunday Call,* Newark, Nov. 5, pp. 1 and 19.

[65] Memoranda of Attorney General, October 11, 1944, October 25, 1944; Memoranda, Arthur J. Edwards, March 25, 1944, October 24, 1944; copies of which are on file in the State Library, Trenton.

> "The Legislative power to grant tax exemptions may be restricted by constitutional provisions expressly denying the power in this respect, or by the enumeration in the Constitution of specific subjects of tax exemptions. * * *
>
> As a general rule, when the state constitution enumerates certain permissible subjects of exemptions from taxation, the legislature is without power to lighten the burden of taxation on property not within any of the classes enumerated; such enumeration of the kinds of property that may be exempted is construed by implication to preclude the legislature from exempting any other kind of taxable property * * ." *51 Am. Juris. secs. 501, 503, pp. 507, 509.*

The claim that the amendment of the tax clause was instigated by and was especially favorable to the railroads of this State does not find support in the records. It unequivocally appears that the changes in the tax clause were sponsored by the New Jersey Association of Real Estate Boards and the New Jersey State League of Municipalities.[66]

Joint Legislative Committee of 1945

The 1945 Joint Legislative Committee, created by Senate Concurrent Resolution No. 15, of 1945, in a report filed with the Legislature on May 21, 1945, *(1945 Assembly Minutes 887; 1945 Senate Journal 901)* proposed the addition of a new paragraph to sec. VII of Article IV of the present Constitution to be known as par. 13, reading as follows:

> "13. Exemption from taxation may be granted by general laws as to real or personal property used exclusively for religious, educational or charitable purposes, as has been or shall be defined by law, and owned by any corporation or association organized, as prescribed by law, and conducted exclusively for one or more of such purposes and not operated for profit; and exemption from taxation may be granted by law to persons while serving honorably, and 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; but nothing in this paragraph shall be deemed to make invalid any exemption from taxation heretofore granted by law in conformity with this Constitution or to limit or restrict the power of the Legislature to grant exemption from taxation in conformity with this Constitution."

No further action was taken on the report of this Committee.

V

Comments on the Tax Clause by Tax Inquisition Commissions and Committees

There have been numerous reports over the years[67] by legislative commissions and committees dealing with the subject of taxation in

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[66] *Supra*, pp. 15, 18; Memorandum, Arthur J. Edwards, Sept. 23, 1944; copy on file in the State Library, Trenton; "Useful Reflections on the Constitution Election," Walter J. Bilder, 67 *N. J. Law Journal, 397, et seq.*

[67] A few of the more recent: 1919 Commission to Investigate Tax Laws (Jess); 1929 Commission to Investigate County and Municipal Taxation and Expenditures (Martin); 1933 Committees on Taxation of the Senate and House (Reeves); 1934 Committee on Taxation of Railroad and Canal Property (Stout); 1939 Committee on Tax Law Revision (Stout); 1941 Governor's Committee on Railroad Taxation; 1941 Joint Committee to study Railroad Tax Problems; 1942 Joint Committee to study operation of 1941 Railroad Tax Law; 1945 Commission on Taxation of Intangible Personal Property; 1946-7 Commission on State Tax Policy.

New Jersey. Minute analysis of all of these would serve no useful purpose here. It is sufficient to say, in a general way, that for the most part they relate to equalization problems in the tax structure, and, more specifically, to point out that there has been no tendency to blame the tax clause of the Constitution for the inequitable distribution of the tax burden. To the contrary, most of these reports have proceeded to recommend various solutions of the equalization problem without even mentioning the tax clause. Power in the Legislature to levy taxes and to classify property for purposes of taxation and exemption has apparently been quite generally assumed by these investigating bodies. Where the subject has been discussed the conclusions have been uniform. By way of illustration, attention is directed to the reports of two of these commissions.

The first is the report of the 1919 Commission to Investigate Tax Laws (Jess), wherein the following appears (pp. 4, 5):

> "The power of the Legislature to devise ways and means of raising revenue for the support of government is co-extensive with the sovereignty of the State, subject only to such limitations as the Constitution may impose. * * *
>
> The power of the Legislature to classify property for taxation and impose taxes of a special kind, for example, franchise taxes, has been established by judicial decisions. The earliest legislative attempt at classification and the application of a special rate to a portion of the class resulted in the Railroad Tax Acts, which were sustained by the highest judicial authority and are still in successful operation. The most recent example of classification is furnished by the act which segregates bank stock for taxation and applies a flat rate to the value of the shares.
>
> It will thus be seen that our adherence to the general property tax as the chief means of raising the revenue needed for local government is due, not to necessity, but to choice or inertia. * * *"

The second is the very extensive report of the 1929 Commission to Investigate County and Municipal Taxation and Expenditures (Martin), which contains the following comments *(Report No. 6, pp. 61, 62, 63)*:

> "This provision [the tax clause] is clearly more liberal and more flexible than somewhat similar constitutional references to property taxation in other states. It does not say that *all* property shall be assessed * * *. It does not forbid or limit exemptions or the substitution of some other kind of tax. It does not forbid classification of property. Fortunately, New Jersey has established an intelligent and sensible judicial construction, which has not read these or other ridiculous meanings and instructions into the basic constitutional provision, a fate which has befallen some other states with a less enlightened judiciary. * * *
>
> *(P. 62)* * * * There is complete legislative discretion as to whether any class of property shall be taxable or exempt, and if taxable, as to the method of taxation to be applied to it. * * *
>
> * * * There is no necessity for any serious inequality in the distribution of tax burdens to go long uncorrected, so far as the constitution is concerned. * * *
>
> *(P. 63) These qualities are neither given nor withheld by the constitution. The people of New Jersey may make their tax system what they will."* (Emphasis not supplied)

There have been several recommendations in the past few years to classify tangible and intangible personal property in an endeavor to shift some of the burden of *ad valorem* taxes from realty to personalty.

The 1939 Commission on Tax Law Revision *(Part 1, p. 7)* recommended to the Legislature that household furniture, personal belongings and farm equipment be exempted; that intangibles of individuals, not used in business, exceeding $10,000 be taxed at the rate of one mill of its value; that intangibles used in industry and business other than in retail business, be wholly exempted and in lieu thereof a tax at the rate of one mill be assessed on the capital and surplus; that business tangibles be taxed at a fixed rate of $20 per $1,000 on true value; that tangibles and intangibles of retail businesses be exempted in lieu thereof a three per cent tax be imposed on gross receipts; and that a "use tax" of three per cent be imposed on out-of-state purchases to protect local merchants.

This was followed by the recommendation of Governor Charles Edison,[68] as set forth in a statement and draft of a bill submitted to the Legislature in special session on October 26, 1942, that the taxation of intangibles be removed from local jurisdiction and that all such property be taxed by the State at a fixed rate of three and one-half mills per dollar of valuation in excess of an exemption of $500.

In 1945 the Commission on Taxation of Intangible Personal Property, urged *(p. XIV)* that intangibles be entirely exempt from local taxation and that there be imposed a corporate business tax in lieu of all other state, county and local taxation on intangibles. These recommendations have been enacted into law by the Legislature *(P. L. 1945, c. 163; P. L. 1945, c. 162)*, so that intangibles are no longer subject to local taxation.

The Commission on State Tax Policy, *Second Report, 1947*, now recommends that tangibles be classified so that machinery and equipment used in industry will be taxed at one-half of the local tax rate on true value, but not in excess of the previous year's average state rate, and that business inventories and stock in trade be excluded from local taxation and in lieu thereof there be a "general business excise tax" at the rate of two mills on the value of goods produced in New Jersey, in the case of manufacturers, and on gross business in the case of all other enterprises.

Classifications and varying rates of tax have been the essence of all these recommendations, but it has never been seriously urged that the tax clause of the present Constitution stands in the way of granting tax relief by such means, except in the yet unexplored

[68] *1942 Assembly Minutes 952.*

field of intangible taxation based on minute classifications for equality and administrative reasons.[69]

VI

Tax Provisions of Other State Constitutions

Rigid principles controlling taxation, it has been quite generally found, cannot successfully be incorporated into a state constitution. Even the ever-present desire to achieve equality of taxation has never been attained solely by constitutional edict. True, legislative power to classify is the first essential in the struggle for uniformity, but that is an integral part of its inherent control over the whole subject of taxation. It need not be conferred by the constitution, although it ofttimes is circumscribed, specifically or impliedly, by constitutional limitations.

Taxation has been said to be an immensely practical problem. Being in a continuous state of flux it must be dealt with currently, necessitating broad power in the law-making body to cope with ever-changing conditions. Professor S. E. Leland, in his article on the classified property tax, published in the Tax Policy League's symposium, *Property Taxes, p. 115, (1940)* says that

> "* * * no one will approve of all of the classification measures which have been adopted, but the history of classification does demonstrate that legislatures will act with reasonable wisdom when given broad constitutional powers relative to taxation. And, if property is to be taxed, the legislature should possess the right to classify property. The prudence of wide-open constitutional provisions concerning taxation has been repeatedly demonstrated."

To the same end are the following cautionary remarks of the chairman of the New York State Constitutional Convention Committee, 1938:[70]

> "Perhaps the most valuable service which this compilation can perform is to warn delegates, and the public as well, against the inclusion of certain types of detailed provisions in the basic law. This volume discloses that such clauses almost invariably require amendment and reamendment. Still further detailed provisions are often added until what should be a fundamental law becomes a welter of conflicting and overlapping provisions. The experience of those states which have suffered most from this tendency indicates that, unless the practise is checked, the distinction between a constitution and statute law may be altogether broken down."

Professor Harley L. Lutz, of Princeton University, said many years ago that[71]

> "* * * the taxation provisions and references in our state constitutions have become too numerous, too complicated and too rigid for the best results and * * * the efforts of those concerned with sound and equitable taxation should be expended in the direction of simplifying, and even of

[69] *First Report, Commission on State Tax Policy, 1946.*
[70] N. Y. State Const. Conv. Committee, 1938, *Report, Vol. III, p. V.*
[71] *Proceedings of the Twenty-First Conference* (1928), National Tax Association, pp. 6-9. For a more thorough collection of material on this subject see *The Univ. of Tenn. Record, Vol. XII, No. 2, pp. 57, et seq.*

> eliminating altogether the existing constitutional verbiage on this subject. * * * the greater the detail with which the constitution outlines a tax system * * * the more imperative becomes the necessity of adopting further amendments in order to accomplish any departure from the established order. * * * I conclude that from the standpoint of sound taxation, that constitution is best which says least about taxation."

Because taxation is highly localized, constitutional provisions on the subject differ widely. In many instances the provisions are peculiar to the individual state, and in other instances, violating the brevity rule, they more nearly approach legislation than fundamental law. Several cover pages of minutely detailed regulations on the assessment, collection and distribution of taxes. For these reasons no attempt will be made to deal with the tax provisions of each constitution. A few concise tax clauses will be quoted and the others briefly summarized to bring out the fundamental principles which most commonly appear in the organic law.

It might be observed that there are still a few states without specific tax clauses in their constitutions.[72]

The Model State Constitution

The *Model State Constitution*[73] deals completely with taxation in these twelve words:

> "Sec. 700. The power of taxation shall never be surrendered, suspended, or contracted away."

Although appearing as a part of the tax article of many state constitutions,[74] this clause seems not to have been adopted, to the exclusion of all other provisions, by any state.

Delaware Constitution

Delaware, in concise form, writes two of the major fundamentals *(viz.,* classification and exemptions) into its constitution in these words (Art. VIII):

> "Sec. 1. All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws, but the General Assembly may by general laws exempt from taxation such property as in the opinion of the General Assembly will best promote the public welfare."

New York Constitution

Art. XVI, Taxation, as adopted by Constitutional Convention and approved by the people of New York in 1938, contains the following provisions:

> "Sec. 1. The power of taxation shall never be surrendered, suspended or contracted away, except as to securities issued for public purposes pursuant to law. Any laws which delegate the taxing power shall specify

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[72] Connecticut, Iowa, Rhode Island, Vermont.

[73] As prepared by the Committee on State Government of the National Municipal League, 4th ed., 1941, Partial Rev. 1946, Art. VII, Finance, sec. 700.

[74] Ariz., IX; La., X; Minn., IX; Mo., X; N.Y., XVI; N. C., V; Okla., X; Wash., Amendment 14; Wyo., XV.

the types of taxes which may be imposed thereunder and provide for their review.

Exemptions from taxation may be granted only by general laws. Exemptions may be altered or repealed except those exempting real or personal property used exclusively for religious, educational or charitable purposes as defined by law and owned by any corporation or association organized or conducted exclusively for one or more of such purposes and not operating for profit."

Section 2 provides for the equalization of assessments. Section 3 precludes the *ad valorem* taxation of intangibles. And section 5 subjects to taxation

"* * *all salaries, wages and other compensation, except pensions, paid to officers and employees of the state and its subdivisions and agencies. * * *"

Pennsylvania Constitution

The Pennsylvania Constitution, under Art. IX, Taxation and Finance, contains, *inter alia,* the following provisions relating to taxation:

"Sec. 1. All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws; but the General Assembly may, by general laws, exempt from taxation public property used for public purposes, actual places of religious worship, places of burial not used or held for private or corporate profit, institutions of purely public charity, and real and personal property owned, occupied, and used by any branch, post, or camp of honorably discharged soldiers, sailors and marines. (As amended November 6, 1923.) * * *

Sec. 2. All laws exempting property from taxation, other than the property above enumerated, shall be void."

Classification Provisions

About half of the state constitutions specifically provide for classification. Common to many, with slight variations, is the phrase:[75]

"All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax."

Some substitute the word "property" for "subjects," in the foregoing clause.[76] Others go into more detail, *e.g.:*

Georgia, Art. VII, par. III (as amended, 1945):

"* * * Classes of subjects for taxation of property shall consist of tangible property and one or more classes of intangible personal property including money. The general assembly shall have the power to classify property including money for taxation, and to adopt different rates and different methods for different classes of such property."

Missouri, Art. X, Sec. 4 (as amended, 1945):

"All taxable property shall be classified for tax purposes as follows: Class 1, real property; Class 2, tangible personal property; Class 3, intangible personal property. The general assembly, by general law, may provide for further classification within classes 2 and 3, based solely on the

[75] Ariz., IX; Colo., X; Del., VIII; Idaho, VII; Ky., Sec. 171, as amend.; La., X; Minn., IX; Mo., X; Mont., XII; N. C., V; N. Dak., Sec. 176; Pa., IX; Va., Sec. 168; Wash., Amendment 14; Ga., VII.

[76] Ariz., IX; N. C., V; N. Dak., Sec. 176; Wash., Amendment 14.

> nature and characteristics of the property, and not on the nature, residence or business of the owner, or the amount owned. * * * "

To the common phrase first above quoted Oklahoma adds the following (Art. X, sec. 22):

> "Nothing in this Constitution shall be held or construed to prevent the classification of property for purposes of taxation; and the valuation of different classes by different means and methods."

Exemption Provisions

Approximately two-thirds of the states have self-executing or permissive exemption provisions. Delaware leaves the subject of exemptions entirely in the hands of the legislature under the following clause (Art. VIII, sec. 1):

> " * * * the General Assembly may by general laws exempt from taxation such property as in the opinion of the General Assembly will best promote the public welfare."

And a few have substantially the same provision in conjunction with a brief clause exempting one, or more, or all of the following: public property, charity, religion and education.[77] Of course, there are several which have no provision on the subject.[78]

But a majority of the states have constitutional provisions which specifically exempt public property and enumerate, often in great detail, those religious, charitable, educational, etc., organizations which shall be free of the burden of taxation. The variations in these provisions are so wide as to make it impracticable to discuss each one.

Many states also provide exemptions, some with limitations on the extent, for the head of a family, veterans, widows, orphans, *et als.*, and for the exclusion of a limited amount of household goods, farming implements, personal effects, etc.[79]

And then there are several which preclude exemptions beyond those specifically enumerated in the Constitution.[80]

Veterans' Exemptions

At least four state constitutions carry detailed provisions on exemptions for veterans, their widows, and others. Arizona, by an amendment in 1946, provides under Art. IX, sec. 2 that:

> " * * * There shall be further exempt from taxation the property of widows, honorably discharged soldiers, sailors, United States marines, members of revenue marine service, nurse corps, or of the components of auxiliaries of any thereof, residents of this state, not exceeding the amount of two thousand dollars, where the total assessment of such widow and such other persons named therein does not exceed $5000; provided, that no such exemption shall be made for such persons other

[77] Idaho, VII; N. Y., XVI; Wash., Amendment 14; Wyo., XV.
[78] Conn.; Ia.; Me.; Md.; Mass.; Miss.; N. H.; R. I.; Vt.
[79] Ariz., IX Cal., XIII; Colo., X; Fla., IX; Ga., VII; Kans., XI; Ky., Sec. 170; La., X; Mich., X; Neb., VIII; N. Mex., VIII; N. C., V; Okla., X; S. Dak., XI; Tenn., II; Utah, XIII; Wash., Amendment 14; W. Va., X.
[80] Ark., XVI; Colo., X; Ky., Sec. 170; Mo., X; Neb., VIII; Pa., IX; S. Dak., XI; Utah, XIII.

than widows unless they shall have served at least sixty days in the military or naval service of the United States during time of war, and shall have been residents of this state prior to September 1, 1945. * * *"

California treats the subject in even greater detail. The provision in its entirety is too extensive to quote fully here. By Art. XIII, sec. 1¼, as amended in 1944, it is provided in substance that property to the amount of $1,000 of every resident veteran, his widow, widowed mother and pensioned fathers and mothers and property of the veteran's wife to that amount, if the veteran does not possess property of a value sufficient to take up the credit, is exempted from taxation; provided, however, that such exemption shall not apply to any person owning property of the value of $5,000 or more, or where the wife of such veteran owns property of that value.

The New Mexico Constitution provides (Art. VIII, sec. 5) that:

"Sec. 5. The legislature may exempt from taxation. * * * property of every honorably discharged soldier, sailor, marine and army nurse, and the widow of every such soldier, sailor, or marine, who served in the armed forces of the United States at any time during the period in which the United States was regularly and officially engaged in any war, in the sum of two thousand dollars. * * *"

Art. XIII, sec. 2, of the Utah Constitution, as amended in 1946, contains this provision for *disabled* veterans, their widows and orphans:

"Sec. 2. * * * Property not to exceed $3,000 in value, owned by disabled persons who served in any war in the military service of the United States or of the State of Utah and by the unmarried widows and minor orphans of such persons may be exempted as the legislature may provide."

Income Tax Provisions

Whether a valid income tax law can be enacted under a tax clause like the one presently in the New Jersey Constitution appears to be a debatable issue. The general rule is, of course, that the legislature, under its inherent tax powers, may impose such a tax in the absence of constitutional prohibition or restriction. But the question still remains whether a "true value" or "uniformity" clause constitutes a restriction on the power to levy such a tax. In the final analysis the issue turns on the narrow point as to whether "income" is or is not "property" within the constitutional meaning of that word. There is a conflict of authority on the question *(11 A. L. R. 313; 25 A. L. R. 578; 70 A. L. R. 468; 97 A. L. R. 1488).* While the weight of the decisions is said to lean toward the view that "income" is not "property" and therefore the taxation of income is not controlled by constitutional limitations respecting property taxes, nevertheless, there is authority for the contrary proposition that a graduated and progressive income tax law, with exemptions, cannot be enacted where there is a uniformity clause in the constitution *(61 C. J. pars. 2306, 2307, pp. 1559, 1561; In re Opinion*

of the Justices, In re Taxation, 220 Mass. 613, 108 N. E. 570; Bachrach v *Nelson, 349 Ill. 579, 182 N. E. 909).* Doubts on this score have been resolved in many jurisdictions by specific constitutional provision.

Twenty-one state constitutions specifically authorize the imposition of taxes on income.[81] Three of these (Ohio, South Dakota and Texas) do not, however, have laws imposing income taxes. Thirty-one states levy such taxes and 17, including New Jersey, do not. Only Florida has a constitutional provision specifically prohibiting the assessment of a state income tax.

Most of the income tax clauses provide, in substance, that the tax may be "graduated and proportional" (Colorado) or "graduated and progressive" (Wisconsin, Kansas) and that "reasonable exemptions" may be provided (Wisconsin). Others, contrary to the brevity rule, fix the maximum rates of tax to be imposed and specify the minimum exemptions to be allowed *(e.g.,* Alabama; Utah; North Carolina).

Arizona's Constitution simply says that (Art. IX, sec. 12):

> "The law-making power shall have authority to provide for the levy and collection of * * * graduated income taxes * * *."

The following are also brief and to the point:

Louisiana, Art. X, Sec. 1:

> "Equal and uniform taxes may be levied upon net incomes, and such taxes may be graduated according to the amount of the net income. Public officials shall not be exempted. Reasonable exemptions may be allowed."

South Dakota, Art. XI, Sec. 2:

> "* * *The legislature is empowered to impose taxes upon incomes and occupations, and taxes upon incomes may be graduated and progressive and reasonable exemptions may be provided."

Kansas, Art. II, Sec. 2:

> "2. The state shall have power to levy and collect taxes on incomes from whatever source derived, which taxes may be graduated and progressive."

Still others treat the subject from the negative point of view, as in:

Kentucky, Sec. 174:

> "* * * Nothing in this Constitution shall be construed to prevent the General Assembly from providing for taxation based on income * * *."

Missouri, Art. X, Sec. 4:

> "* * * Nothing in this section shall prevent the taxing of * * * incomes * * *."

Alabama (Amend. XXV) and Montana (Art. XII, sec. 1a) provide that if income taxes are imposed they shall be in reduction of property taxes.

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[81] Ala., Amendment XXV; Ariz., IX; Cal., XIII; Colo., X; Kans., XI; Ky., Sec. 174; La., X; Mass., XLIV; Mo., X; Mont., XII; N. C., V; Ohio, XII; Okla., X; S. C., X; S. Dak., XI; Tenn., Art. II, sec. 28; Tex., VIII; Utah, XIII; Va., Sec. 170; W. Va., X; Wis., VIII.

To overcome the claims of some public officials that their renumeration is protected by the constitution against reduction during their terms of office, Alabama, Louisiana, New York and Virginia specifically subject their compensation to the state income tax law.[82] The reason and the rule are briefly stated in the Virginia Constitution (Sec. 183a) as follows:

> "The provisions of this Constitution forbidding the diminution of the salary or compensation of a judge or other officer during his term of office shall not be construed to exempt such salary or compensation from State income tax thereon."

Equalization Provisions

Several state constitutions provide machinery for the equalization of taxes.[83]

Industrial Exemptions

As an inducement to industry to locate in the state, several constitutions provide exemptions from taxes for limited periods.[84] For a thorough treatment of this subject, which, incidently, labels this practice as a "violation of the first principles of a sound tax program," see *Tax Exemptions,* a symposium published by the Tax Policy League in 1939, p. 39; also J. P. Jensen's *Property Taxation in the United States,* pp. 156, *et seq.* (1931).

VII

Summary

It is quite apparent from what has been previously set forth that there are many ways of treating the problem of taxation in a constitution. There is that school of thought which believes that the less said about taxation the better. There are, it will be remembered, still a few state constitutions which are completely silent as to taxes, leaving the whole subject in the hands of the legislature. Another group feels that the wide-open tax clause is best. The framers of the *Model State Constitution* deem it sufficient simply to preclude the legislature from bargaining away the power of taxation. And still another group is satisfied with a provision for classification, leaving everything else to the discretion of the law-making body. It is necessary, of course, for those charged with the duty of writing a constitution to choose which of these courses is to be followed, having due regard for the special problems at hand.

In this State the principal demands to date have been for: (1) a specific classification clause; (2) a limitation provision on the

[82] See also "Problems Relating to Taxation and Finance," N. Y. State Const. Conv. Comm., 1938, *Report, Vol. X, p. 466.*

[83] Ariz., IX; Colo., X; Cal., XIII; Idaho, VII; Mich., Sec. 8; Mo., X; N. Y., Art. XVI; Okla., X; Tex., VIII; Utah, XIII; Wyo., XV.

[84] Ark., Amendments 12 and 27; Fla., IX; Ky., Sec. 170; La., X; Miss., Sec. 192; S. C., VIII; Va., XIII.

power of the Legislature to grant exemptions; and (3) a veterans' exemption provision. The following provisions—some paraphrased—gathered from other state constitutions, have been used elsewhere in an attempt to solve these and other related tax problems:

General Tax Clause

"The power of taxation shall never be surrended, suspended or contracted away, except as to securities issued for public purposes pursuant to law."

Classification Clause

"All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax.

Different classes of subjects may be valued by different methods and taxed at different rates."

Income Tax Clause

"The Legislature may, by general laws, provide for a tax upon incomes from whatever source derived, which tax may be graduated and progressive and reasonable exemptions may be allowed.

All salaries, wages and other compensation, except pensions, paid to officers and employees of the state and its subdivisions, and agencies shall be subject to taxation."

General Exemption Clause

"Exemptions from taxation may be granted by general laws."

Clause Exempting Public Property and Property in Religious, etc., Use

"Property of the public, used for public purposes, and property used exclusively for religious, educational, charitable and burial purposes, as defined by law, and not held or used for profit, shall be exempt."

Veterans' Exemption Clause

"Exemption from taxation may be granted, by general laws, to persons while serving honorably, and 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."

Insertion of a separate article on veterans' preferences, privileges and exemptions, as has heretofore been suggested in their behalf, would render the last clause unnecessary.

The foregoing, not intended to be exhaustive, are simply references to a few of the provisions which commonly appear in the organic law.

BIBLIOGRAPHY

BILDER, WALTER J. "Useful Reflections on the Constitution Election," 67 N. J. Law Journal 397.

BLACK, CHARLES C. Taxation in New Jersey, 4th ed., 1935.

EDISON, CHARLES, GOVERNOR. Recommendations to Legislature, 1942, *re* taxation of intangibles. 1942 Assembly Minutes 952.

EDWARDS, ARTHUR J. Memoranda of March 25, 1944 and October 24, 1944, *re* right of Legislature to grant religious, etc., exemptions under revised Constitution, 1944. (Copies on file in State Library, Trenton)

EDWARDS, ARTHUR J. Memorandum of September 23, 1944, *re* effect of revised Constitution, 1944, on railroad taxation. (Copy on file in State Library, Trenton)

JENSEN, JENS P. Property Taxation in the United States, 1931.

LELAND, S. E. "The Classified Property Tax," published in the Tax Policy League symposium, Property Taxes, 1940.

LUTZ, HARLEY L. "Tax Simplification and the Constitution," Proceedings, Twenty-first Conference, 1928, National Tax Association.

MARTIN, J. H. THAYER. Report to Legislature, 1938, *re* exemptions under general property tax laws. (Copy on file in State Library, Trenton)

MCCARREN, KENNETH J. "Luring Industry Through Tax Exemption," published in the Tax Policy League symposium, Tax Exemptions, 1939.

NATIONAL MUNICIPAL LEAGUE. Model State Constitution, Partial Revision, 1946.

NEW JERSEY. CONSTITUTION.

Commission on Revision of New Jersey Constitution, 1941. Report, 1942 Senate Journal 672.

Commission on Revision of New Jersey Constitution, 1873. Report to Legislature, 1874 Senate Journal 54.

Joint Legislative Committee on Revision of New Jersey Constitution, 1944. Proceedings (mimeo.)

Joint Legislative Committee on Revision of New Jersey Constitution, 1944. Report to Legislature, 1944 Senate Journal 242.

Joint Legislative Committee to Consider Proposed Amendments to the Constitution, 1945. Report to Legislature, 1945 Senate Journal 901.

Joint Legislative Committee to Ascertain Sentiment of People on Constitutional Changes, 1942. Proceedings and Report of, 1942.

Proceedings of Constitutional Convention, 1844 (1942).

NEW JERSEY. TAXATION.

Commission on Taxation of Intangible Personal Property, 1945. Report. (Copy on file in State Library, Trenton)

Commission to Investigate Tax Laws, 1919. Report. (Copy on file in State Library, Trenton)

Commission to Investigate County and Municipal Taxation and Expenditures, 1929. Report. (Copy on file in State Library, Trenton)

Commission on State Tax Policy, 1946, 1947. Report. (Copy on file in State Library, Trenton)

Committee on Tax Law Revision, 1939. Report. (Copy on file in State Library, Trenton)

NEW YORK. State Constitutional Convention Committee, 1938. Report. Vol. III, "Constitutions of the States and United States."

VAN RIPER, WALTER D. Memoranda dated October 11, 25, 1944, *re* right of Legislature to grant religious, etc., exemptions under revised Constitution, 1944.

CONSTITUTIONAL LIMITATIONS ON THE CREATION OF STATE DEBT

by

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Colonial and State Debts to 1844

The issuance of circulating notes by the Colonies has been called the origin of American state debts. It has been suggested that these notes were issued equally as much to supply a medium of exchange as to raise funds.[1] While this may have been the case in the beginning, the continued and expanded practice was to create money and raise funds for the Treasury, to create funds to be loaned out on mortgages, to supply funds to cover the costs of wars and to cover deficits in ordinary expenses of the Colonies.[2]

During the period of the Revolution, the new states authorized the emission of paper money or certificates as a means of meeting the expenses incidental to the establishment of new governments and the prosecution of the war. After the war, the debts so incurred by the states were largely assumed by the Federal Government. It is estimated that by 1795 the debt of the states had been reduced to $3,000,000.[3] New Jersey is listed among those states whose debts were nominal or non-existant.

The development of state debts, as they are more commonly recognized today, occurred after 1820 when the states began to borrow for internal improvements. These loans were voluntary; the states "funded" their debts and state bonds made their appearance on the investment market.[4] Although New Jersey remained one of the nine non-borrowing states, by 1843 state indebtedness exceeded $230,000,000. This was a staggering sum when considered in relation to the population and the tax revenues enjoyed by the 21 states which had incurred the liability.

Until 1830 state borrowing was orderly and was indulged in mainly by the older states of the East and South. After 1830 the movement got out of hand. Most of the indebtedness was incurred for projects which were expected to be self-supporting, such as banks, canals and railroads.[5] For a time many of these projects

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[1] Davis, A. McF. Currency and Banking in the Province of Massachusetts Bay, (New York, 1900), Part I, "Currency," p. 8.
[2] Ratchford, B. V. American State Debts, pp. 9-10.
[3] *Ibid*, pp. 33-35.
[4] *Ibid*, p. 73.
[5] *Ibid*, pp. 79-80.

were highly profitable, as was evidenced by New York's spectacular success with the Erie Canal.

In the very midst of this program of internal improvements the states found themselves confronted by the severe panic of 1837. Following the banking collapse of 1839 all of the borrowing states were in difficulties, and by 1842 nine states had defaulted and several others avoided defalcation by a very narrow margin.[6]

As a result of the sad experiences of the borrowing states for the decade previous to the New Jersey Constitutional Convention of 1844, it is not surprising that New Jersey elected to safeguard its future credit position by adopting limitations in its new Constitution against dangers of similar unwise debt expansion. Previous to 1840 no state constitution limited the debt which the legislature might incur. In 1842 Rhode Island led the way by adopting an amendment forbidding the legislature, without the consent of the people, to pledge the faith of the state, or to incur debts in excess of $50,000 except in times of war, insurrection, or invasion. The New Jersey provision, adopted two years later, was widely copied. Within a period of 15 years the constitutions of 19 states were amended to include debt limitation provisions. Eventually similar provisions on borrowing were written into nearly all the state constitutions.[7]

The New Jersey Constitutional Convention of 1844

The dispatch with which the several committees charged with the responsibility of drafting the proposed Constitution acted has been commented upon by students of the Convention of 1844.[8] On May 28, 1844, the Committee on the Legislative Department submitted its report. Section XIX of the Legislative Article dealt with limitations on the incidence of state debt; the section is duplicated immediately below for purposes of study and comparison:

> "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, at any time exceed $100,000, except for purposes of war, or to repel invasion, or to suppress insurrection, unless the same shall be authorized by a law for some single object or work, to be distinctly specified therein; which law shall impose and provide for a direct annual tax sufficient, with such other appropriations as may be made therein, exclusive of loans, to pay the interest of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability within twenty years from the time of the contracting thereof; and 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 or against it at such election; and all the money to be raised by the authority of such law shall be applied, only, to the specific object stated in such law, and to the payment of the debt thereby created." [9]

While most of the delegates assembled were in substantial agree-

[6] *Ibid*, pp. 98-99.
[7] MacDonald, A. F. American State Government and Administration, (3rd ed., 1945) p. 383.
[8] Proceedings of the New Jersey Constitutional Convention of 1844, (1942), p. LXV (Introduction).
[9] *Ibid*, p. 114.

ment with the provisions set forth in Section XIX, a few did not appear to be unduly impressed by the bitter experience of some of New Jersey's sister states. These delegates agitated for the addition of a proviso which would enable the State to exercise its future option to acquire, without restraint, certain public works, namely, the Camden and Amboy Railroad and the Morris Canal and its feeders. Opposition developed on the grounds that members of the Legislature might be "bought" to vote for the purchase of the facilities under discussion.

It was finally agreed, however, that the 20-year retirement stipulation, as set forth in the report, would make difficult the future purchase of the facilities, and on this consideration, the Convention approved an amendment to substitute, in its stead, a 35-year maximum.[10] Earlier in the deliberations of the Convention a suggestion to amend the same provision by extending the debt retirement period to 30 years had failed on the theory that such an extended time would arouse the speculative appetite of future legislatures.[11]

Other amendments to Section XIX discussed and approved included:

(1) "Monies that are or may be deposited with this State by the Federal Government," shall be exempt from the provisions of Section XIX;[12]
(2) There shall be inserted after the word, "aggregate" the words, "with any previous debts or liabilities";[13] and
(3) In order that some subsequent legislature could not repudiate the state debt by repealing the tax prescribed to liquidate the debt, there be inserted after the words "contracting thereof," the words "and shall be irrepealable until such debt or liability, and the interest thereon are fully paid and satisfied."[14]

(For a later discussion of this same subject, see sections dealing with the public hearings of 1942 and 1944.)

Except for very minor changes in phraseology, the amendments considered above were the only ones which materially changed Section XIX as originally drafted by the Committee on the Legislative Department. The Convention completed its work on June 29, 1844, and the people, by public vote, ratified the new Constitution, August 13, 1844. Section XIX, as amended and approved, became Article IV, section 6, paragraph 4. This section of our present Constitution reads as follows:

> "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, 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 interest of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability within *thirty-five* years from the time of

[10] *Ibid,* p. 343.
[11] *Ibid,* p. 310.
[12] *Ibid,* p. 310.
[13] *Ibid,* p. 519.
[14] *Ibid,* p. 519.

the contraction thereof, *and shall be irrepealable until such debt or liability and the interest thereon, are fully paid and discharged;* and 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 the votes cast for and against it at such election; and all money to be raised by the authority of such law shall be applied only to the specific object stated *therein,* and to the payment of the debt thereby created. *This section shall not be construed to refer to any money that has been, or may be deposited with this state by the government of the United States."* [15]

The History of State Debts from 1844 to 1945 with Emphasis upon Trends in New Jersey

Improved business conditions, the restoration of state credit after 1845, and the demand for better railroad facilities, to be financed largely through the use of state credit, account in large measure for the rapid increase in state debts just previous to the Civil War.[16] Total state debt for all 33 states rose from $189,909,000 in 1841 to $257,328,000 in 1860. *(See Table 1)*

The desperate plight and subsequent debt repudiation of the Confederate states following the war is too well known to require comment here.[17] It should be noted, however, that during the latter part of the 19th Century, state borrowing was generally unpopular. Although the borrowing habit persisted in a few southern states, there was a general reduction in the total of state debt between 1860 and 1902. In the latter year, the total net debt of the states stood at $249,411,000 *(Table 1)* despite the admission of 15 additional states and a population increase of 150 per cent.

The advent of the automobile and the demand for improved highways between 1902 and 1916 were responsible for a doubling of indebtedness. Table 1 shows that the total debt in 1916 jumped to $465,139,000.

State loans which had been held to a minimum during the first World War increased after the war to amounts far above any ever before known. This was attributable to growing demands for highways and to other post-war factors. In 1921 the states borrowed heavily for highway improvement and soldiers' bonuses. The depression of 1930 brought new financial demands for unemployment relief, and borrowing even by 1932 had again broken all previous records. Table 1 reveals the fact that state indebtedness in 1932 had mounted to $2,369,713,000, and this upward trend continued until 1934 when the Federal Government began its program of generous financial assistance.

When the United States entered the second World War in 1941, the net indebtedness of the states again stood at a new high. Despite unparalleled state revenue increases, the total state debt in 1942 was

[15] Sections *italicized* indicate amendments to Section XIX as originally reported by the Committee on the Legislative Department.

[16] MacDonald, *supra,* pp. 383-4.

[17] For a concise and valuable description of the financial position of the southern states following the Civil War, chapters VI and VII of Ratchford, American State Debts, pp. 135-196.

TABLE 1

NET DEBTS OF THE STATES

Selected Years, 1841-1942

(In Thousands of Dollars)

STATE	1841	1860	1902	1916	1932	1942
Alabama	$15,400	$3,445	$12,727	$13,564	$82,342	$74,739
Arizona	....	....	3,099	844	3,676	3,134
Arkansas	2,676	3,093	1,101	1,239	164,424	154,558
California	....	3,824	2,955	33,376	145,723	219,436
Colorado	....	....	3,797	3,753	6,747	24,099
Connecticut	....	....	1,678	13,064	108	30,213
Delaware	....	....	762	796	2,072	5,174
Dist. of Columbia	....	....	14,540	5,470	....	....
Florida	4,000	383	1,032	602	391	....
Georgia	1,310	2,671	7,876	6,322	12,488	22,967
Idaho	....	....	324	1,712	6,961	2,689
Illinois	13,527	10,277	2,155	2,067	221,404	149,252
Indiana	12,751	10,179	2,914	768	4,730	7,923
Iowa	....	352	50	....	16,495	2,038
Kansas	....	....	632	....	21,810	15,522
Kentucky	3,085	5,479	2,291	2,607	16,224	9,053
Louisiana	23,985	4,561	13,593	13,479	83,743	182,112
Maine	1,735	699	2,785	2,638	27,219	26,323
Maryland	15,215	14,877	4,942	16,575	31,198	57,965
Massachusetts	5,424	7,133	65,964	86,043	62,856	111,187
Michigan	5,611	2,316	6,566	6,915	60,582	41,094
Minnesota	....	319	1,755	1,516	40,156	105,221
Mississippi	7,000	5,753	2,877	5,127	36,320	82,998
Missouri	842	25,952	4,366	7,033	103,302	87,907
Montana	....	....	1,204	1,186	9,316	13,509
Nebraska	....	53	2,005	....	929	947
Nevada	....	....	624	680	1,370	431
New Hampshire	....	50	1,551	1,951	6,505	17,912
New Jersey	....	....	....	116	62,198	105,906
New Mexico	....	....	999	2,562	11,470	27,242
New York	21,797	33,570	8,187	148,740	463,068	703,412
North Carolina	....	9,130	6,755	8,884	177,210	135,445
North Dakota	....	....	968	511	5,005	29,971
Ohio	10,924	16,928	4,685	5,341	7,696	12,062
Oklahoma	....	....	510	6,447	11,438	40,159
Oregon	....	....	236	....	33,388	31,225
Pennsylvania	33,301	37,970	389	473	75,858	288,784
Rhode Island	....	....	2,620	6,391	16,807	29,333
South Carolina	3,691	4,047	6,730	5,387	77,984	86,537
South Dakota	....	....	457	....	15,510	32,056
Tennessee	3,398	20,899	17,984	15,864	94,032	94,394
Texas	....	....	3,993	4,548	10,317	18,169
Utah	....	....	974	2,691	5,694	2,019
Vermont	....	120	363	611	9,545	6,850
Virginia	4,037	33,248	23,546	23,772	25,983	25,716
Washington	....	....	1,271	1,209	8,257	16,262
West Virginia	....	....	....	....	86,394	79,695
Wisconsin	200	....	2,278	2,157	1,184	1,184
Wyoming	....	....	301	108	5,568	3,240
Totals	$189,909	$257,328	$249,411	$465,139	$2,369,713	$3,218,064

Source: Bureau of the Census; Ratchford, American State Debts, pp. 127 and 254 and Graves, American State Government, p. 601.

$3,218,064,000. *(Table 1.)* During 1943, however, state debt retirement was pronounced and total indebtedness reverted to a figure more in keeping with that of 1932. Continued high tax revenues have enabled the states further to reduce their debt obligations since 1943. Net indebtedness for all 48 states, as reported by the Bureau of the Census for 1945, was considerably under the 1932 figure and amounted to $1,838,971,000.

Table 2 has been prepared as a means of presenting the New Jersey debt trends from 1844 to 1946. Previous to the outbreak of the Civil War, New Jersey, together with five sister states,[18] was debt-free. Between 1861 and 1864 the State approved, without the need of a public referendum, three measures authorizing the issuance of war bonds in a total amount not to exceed $4,000,000. From available records, not too easy of interpretation, it appears that the State's total war debt was about $3,395,000,[19] and that by March of 1905, the Federal Government had repaid to the State $2,226,000.[20] There are indications, however, that by 1902 New Jersey had freed itself from its share of the Civil War debt.

The beginnings of New Jersey's bonded indebtedness may really be said to have originated in 1920 when the people approved, by public referendum, chapter 159 *(P. L. 1920)* which authorized the issuance of bonds in the amount of $12,000,000 to pay a bonus to veterans of the first World War. Previously, in 1916, the people had approved a $7,000,000 bond issue for highway improvement. These bonds were never issued due to this country's participation in the war. From 1920 to 1932, all laws authorizing bond issues approved by the people were for purposes of internal improvement, mainly highways. In 1921 the people rejected chapter 201 *(P. L. 1921)* which called for issuance of bonds in the amount of $14,000,000 for institutions. *(See Note 3, Table 2)*

New Jersey's borrowing from 1932 to 1939 was mainly for the purpose of financing unemployment relief, with one issue in 1933 dedicated to educational aid. From 1939 to 1945 there was no borrowing. In 1946 the people approved chapter 324 *(P. L. 1946)* authorizing the issuance of bonds in the amount of $35,000,000 for veterans' housing. Of this amount only $7,400,000 has been issued to date and it is at present unlikely that the balance will ever be issued.

The peak of New Jersey's bonded indebtedness was reached in 1935, at which time the State's outstanding obligations totaled $197,000,000. The low in the State's debt since 1935 was realized by July 1946 when outstanding obligations totaled $63,000,000.

[18] Connecticut, Delaware, Rhode Island, Texas and Wisconsin.
[19] Compilation of State Treasurer's Reports, (1866) p. 230.
[20] House Report, No. 1162, 74th Congress, 1st Session, pp. 6-7.

TABLE 2

SCHEDULE OF NEW JERSEY STATE BOND ISSUES

Years 1844 to 1946

(In Thousands of Dollars)

P.L. and Chap. Reference	*Purpose*	*Type of Issue*	*Revenue Source*	*Amount*	*Present Status*
1861, c. 8	Civil War		Property	$ 2,000	Paid
1863, c. 250	Civil War		Property	1,000	Paid
1864, c. 433	Civil War		Property	1,000	Paid
1916, c. 285	Highway improvement		Motor Vehicle	7,000	Never issued [1]
1920, c. 159	Soldiers' bonus	S.F.	Property	12,000	Paid
1920, c. 352	Highway extension	S.F.	Property & Operating Profit	28,000	Paid [2]
1921, c. 201	Institutions	S.F.	Property	14,000	Defeated referendum [3]
1922, c. 262	Roads & bridges	S.F.	Property	40,000	Paid
1924, c. 262	Highway extension	S.F.	Property & Operating Profit	8,000	Paid
1927, c. 181	Highway improvement	S.F.	Property	30,000	One-third paid
1930, c. 226	Water supply	S.B.	Motor Fuels	7,000	Partly amortized
1930, c. 227	State institutions	S.B.	Motor Fuels	10,000	Partly amortized
1930, c. 228	Highway improvement	S.B.	Motor Fuels	83,000	Partly amortized [4]
1932, c. 250	Reduced above by			—20,000	
1932, c. 251	Unemployment relief	S.B.	Motor Fuels	20,000	Paid
1933, c. 387	Educational aid	S.B.	Motor Fuels	7,000	Paid
1933, c. 388	Repealed P.L. 1930, c. 226			—7,000	
1933, c. 398	Unemployment relief	S.B.	Motor Fuels	5,000	Paid
1934, c. 255	Unemployment relief	S.B.	Property & Inheritance	10,000	Paid
1939, c. 329	Unemployment relief	S.B.	Multiple	21,000	Paid
1946, c. 324	Veterans' housing	S.B.	Multiple	35,000 [5]	

Source: State Treasurer's Office and Laws of New Jersey.

[1] Highway improvement prevented by World War 1.
[2] Construction of Camden Bridge and Holland Tunnel.
[3] A careful search fails to reveal any other bond issue ever rejected by the people on a referendum. The vote was 151,726 for, and 212,643 against.
[4] *P.L. 1932, c. 250*, approved, reduced amount to $63,000,000, of which only $46,400,000 has been issued.
[5] Only $7,400,000 has been issued.

The balance of redeemed state bonds on January 1, 1947 was $72,200,000.[21]

Report of the Commission on Revision of the New Jersey Constitution, May 1942, and the Public Hearings of 1942

No attempt was made to amend the New Jersey constitutional provision limiting the States indebtedness (Art. IV, sec. VI, par. 4) until 1942. On May 18 of that year the legislative Commission on Revision of the New Jersey Constitution (constituted under Joint Resolution No. 2, approved November 18, 1941, and reconstituted under Joint Resolution No. 1, approved January 24, 1942, as amended April 1, 1942) submitted to the Legislature and the Governor the text of "A Revised Constitution for the State of New Jersey."

The proposed revised Constitution contemplated a separate article for all matters pertinent to state finance (Article VII) and treated the subject of "Debt Limitations" in three distinct paragraphs (pars. 7, 8, 9) which are quoted directly below:

> "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 any 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 provisions 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." [22]

The changes proposed by paragraphs 7, 8, and 9 were summarized and explained by the Commission in this manner:

> "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.

[21] These figures and facts were obtained through the cooperation of G. S. Fisher, Assistant Cashier, State Treasurer's Office.

[22] Proceedings before New Jersey Joint Legislative Committee . . . as to Change in the New Jersey Constitution, 1942, p. 951.

> 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 authorized 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." [23]

(For a discussion of the provision enabling the State to retire a debt obligation at its option, the only other change not discussed immediately below, see "Hearings of 1944" to follow.)

On August 19, 1942 public hearings were conducted on Article VII, paragraphs 7, 8, and 9 of the proposed revised Constitution. Among those speaking in favor of the provisions as contained in the paragraphs were: Spencer Miller, Jr., Chairman of the New Jersey Committee on Constitutional Convention[24]; Russell Watson, Vice-Chairman of the New Jersey State Chamber of Commerce,[25] and Mrs. Alloway, member of the State Board of the New Jersey League of Women Voters.[26]

Mr. Russell Watson, in discussing paragraph 9, placed emphasis upon his approval of the provision enabling the Legislature to repeal the original law authorizing the source of revenue to retire a debt and to substitute therefor alternate methods. He reasoned that within a period of 35 years, or during the life of a bond issue, many factors might conspire to make desirable and imperative additional or new sources of revenue to complete the debt retirement. The revenue source as contained in the original law might diminish or entirely disappear, or other events might dictate its repeal.

Opposition to many of the changes proposed in paragraphs 7, 8, and 9 were registered by Mr. R. Robinson Chance representing the Manufacturers' Association of New Jersey.[27] They will be discussed in the order of their presentation.

While Mr. Chance recognized merit in using serial bonds, he felt that future occasions might well prove that there were equal advantages in the utilization of term bonds and sinking funds. He recommended that rather than place the Legislature in a future "straight-jacket," the matter of selection between term or serial bonds be left to the judgment of the Legislature.

Speaking of the feature contained in paragraph 9 enabling the Legislature to repeal a revenue measure specifically enacted to retire a given state debt, Mr. Chance said: " * * * under the present Constitution when a bond is issued the investor who buys the bond has a definite specified irrepealable contract as to where the

[23] *Ibid*, p. 928.
[24] *Ibid*, pp. 398-403.
[25] *Ibid*, pp. 404-409.
[26] *Ibid*, p. 414.
[27] *Ibid*, pp. 446-451.

money is coming from to redeem the principal and pay the interest. In place of such an irrepealable arrangement, the proposal would require a bond for the payment of which no particular ways and means were actually guaranteed, since the ones originally specified might be wiped out by the repeal of the law." He continued with the reasoning that such uncertain methods of financing the state debt might affect the State's credit and the future salability of its bonds.

The position taken by Mr. Chance in regard to the provision contained in paragraph 8 limiting the State to the use of serial bond issues has recently been supported by the Office of the State Treasurer. There is quoted immediately below a statement prepared for this study by G. S. Fisher, Assistant Cashier of that office, with the consent and approval of the present State Treasurer:

> "In general a Sinking Fund Issue will command a better figure (*i.e.* lower coupon rate and larger premium) than a serial issue due to the added security and the simplicity of arranging yield and redistribution.
>
> The State of New Jersey has had very good experiences with its sinking funds. Not only have they been able to meet maturities but they have been able to exercise their prior call privileges. They have all enjoyed substantial surpluses from which they have paid other obligations. The surplus of the Soldiers Bonus Sinking Fund retired a deferred payment due by the State to the Teachers' Pension and Annuity Fund; that of the Highway Extension Sinking Fund helped materially to pay the Unemployment Relief Bonds, and that of the Road and Bridge Sinking Fund is pledged to retire an interest bearing promise to the Teachers' Pension and Annuity Fund.
>
> The sinking funds were able to support the credit of New Jersey municipalities, thereby keeping the interest rate (and incidentally the tax rate) down. The full extent of this will never be entirely known, but during the depression it was not necessary to ask for laws extending the interest level beyond the existing limit of six per cent.
>
> This aid to the municipalities reacted favorably in the sinking funds, and is one of the factors in establishing the substantial surpluses.
>
> Supporting the New Jersey municipal bond market also established the State's credit and indirectly helped the banks following the 'Bank Holiday.'
>
> It would be as unwise to eliminate sinking fund issues as to eliminate serial issues. The issuing officials or the Legislature should be unhampered so they can take advantage of the prevailing conditions when a bond issue is contemplated."

Public Hearings of 1944 Before the Joint Legislative Committee on the Proposed Revised Constitution

Under Senate Concurrent Resolution No. 1, adopted January 11, 1944, a Joint Legislative Committee was constituted to conduct a further series of public hearings on a redraft of the proposed revised Constitution. The subcommittee on the Legislative Section was authorized also to consider Article VII, "Finance." In this draft of the proposed revised Constitution, all three paragraphs (7, 8, 9) contained in the draft of 1942, with changes, were combined in one paragraph, identified as paragraph 5, Article VII, the complete text of which follows:

> "The Legislature shall not, in any manner, create any debt or debts,

liability or liabilities, of this 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;* [28] unless the same shall be authorized by 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. In contracting any such 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. 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 or until equally secure provision is otherwise made for the payment of the remaining annual installments of the principal and interest of such debt or liability." [29]

Mr. Charles O. Frye, Director of the American Citizenship Foundation, appears to have been the only individual whose presence and testimony at the hearing resulted in changes in paragraph 5, Article VII as cited above. Mr. Frye agreed that it was very desirable to reserve to the Legislature the right to relieve bonds prior to their maturity. He felt, however, that such a reservation should be stated so clearly as to make this fact plain to the investor at the particular moment of purchase of any bond issue. He pointed to litigation in the courts of two states where fixed callable dates had appeared on the face of the bonds and which were subsequently called at an earlier date. To avoid any uncertainty in the matter he proposed instead of the words "upon such terms as may be provided by law," the insertion of the words "upon such terms as may be provided by the law authorizing the debt." [30]

Referring to the last sentence in paragraph 5, Mr. Frye took exception to the reservation enabling the Legislature to substitute "equally secure provisions" for the payment of the remaining debt, as leaving the investor and the State in an "extreme uncertainty." He contended that the uncertain element so introduced would appeal to the more speculative investor who would demand a higher interest rate on the bonds. He suggested, therefore, that the last sentence terminate at the word "discharged," with the remainder of the sentence deleted.[31] Both of Mr. Frye's amendments were incorporated in the following final draft of Article VII, para-

[28] Words in italics indicate the addition of a new provision not previously appearing in any redraft of the proposed Constitution.
[29] Hearings before Joint Legislative Committee to Formulate a Draft of a Constitution, February 3, 1944, Sub-Committee on the Legislative Section, p. 19.
[30] *Ibid*, pp. 24-25.
[31] *Ibid*, p. 26.

graph 5 of the proposed revised Constitution as it was submitted to the people on November 7, 1944. Except for minute changes in terminology, it will be noted that no other differences of account appear:

> "The Legislature shall not, in any manner, create any debt or debts, liability or liabilities of this 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 thereof, are fully paid and discharged."

Constitutional Debt Limitation Provisions in the 48 States and Their Relative Effectiveness

The mere tabulation of a state's indebtedness alone, while of considerable value and interest, is not sufficient to evaluate that state's actual debt load or its relative position in a comparative analysis of each state's debt position. Accordingly, Table 3 has been prepared to indicate the gross per capita debt load of each state and its rank among the other 47 states for selective years between 1940 and 1945.

It will be remembered that in 1935 New Jersey's indebtedness reached the high point in its entire debt history, and that from 1936 to 1946 there was a gradual yet substantial reduction. Table 3 indicates that New Jersey ranked eleventh among the states in its per capita debt load in 1940. In 1944 its position was considerably improved, ranking nineteenth, and in 1945, despite the absence of rich tax revenues enjoyed by a majority of the states, its position was twenty-first.

While Table 3 establishes New Jersey's relative position among the 48 states in per capita debt load for the past five years, it does nothing to establish the effectiveness of New Jersey's constitutional debt limitation provision or of the various types of constitutional debt limitation provisions in effect in the 48 states. For the purpose of a rough appraisal, it is possible, from a study of Summary 1 [82] below, to divide the 48 states into three groups according to the

[82] The Tax Foundation, Provisions in State Constitutions Controlling Debt, (1945).

TABLE 3

GROSS STATE DEBTS, 1945

Per Capita Debt and Rank 1945, 1944, 1940

(Gross Debt in Thousands)

State	Gross Debt Totals	1945 Per Capita	1945 Rank	1944 Per Capita	1944 Rank	1940 Per Capita	1940 Rank
Alabama	$ 66,810	$24.58	16	$26.43	17	$28.00	23
Arizona	3,328	5.85	35	6.07	36	6.09	40
Arkansas	139,494	80.37	1	83.21	1	79.67	2
California	172,929	21.94	18	30.80	14	48.69	6
Colorado	18,298	17.15	23	18.85	25	26.07	24
Connecticut	23,600	13.50	29	14.40	30	14.17	32
Delaware	4,502	16.45	25	17.30	26	16.61	29
Florida	1,297	.64	46	.66	47	.53	48
Georgia	15,210	5.11	36	6.25	35	9.57	36
Idaho	535	1.13	44	2.97	39	7.02	38
Illinois	115,122	15.22	26	16.54	27	22.10	27
Indiana	6,431	1.90	41	2.04	42	2.60	43
Iowa	1,403	.62	47	.72	46	1.91	44
Kansas	11,548	6.88	33	7.65	33	10.12	35
Kentucky	6,083	2.39	39	2.70	40	6.64	39
Louisiana	164,359	70.95	2	72.80	2	80.52	1
Maine	19,178	24.51	17	27.07	16	33.02	16
Maryland	38,359	19.34	20	22.11	21	32.28	20
Massachusetts	70,160	17.14	24	19.54	24	33.71	15
Michigan	15,808	2.94	38	4.38	37	16.93	28
Minnesota	75,080	29.73	13	32.63	13	42.33	9
Mississippi	70,276	35.20	10	37.26	10	37.17	13
Missouri	73,499	20.85	19	22.95	20	28.52	22
Montana	11,736	24.97	15	26.13	18	25.92	25
Nebraska	970	.82	45	.95	45	1.10	47
Nevada	....	....	..	....	..	4.90	41
New Hampshire	14,350	31.65	12	35.67	12	32.79	17
New Jersey	76,957	18.86	21	24.32	19	40.60	11
New Mexico	22,875	46.67	3	50.58	4	50.40	5
New York	571,993	45.97	5	49.25	5	54.20	4
North Carolina	111,202	33.22	11	35.86	11	42.28	10
North Dakota	20,342	37.92	8	39.62	9	39.61	12
Ohio	10,604	1.55	42	1.69	43	1.74	45
Oklahoma	26,877	13.52	28	15.05	28	15.14	31
Oregon	20,327	17.33	22	21.10	22	35.67	14
Pennsylvania	130,129	14.03	27	20.48	23	30.59	21
Rhode Island	26,189	37.70	9	39.72	8	45.69	7
South Carolina	77,854	43.50	6	46.06	6	32.71	18
South Dakota	25,301	46.44	4	50.87	3	68.43	3
Tennessee	78,095	27.71	14	29.89	15	32.62	19
Texas	11,964	1.91	40	2.33	41	4.41	42
Utah	1,718	2.94	37	3.71	38	8.22	37
Vermont	3,674	11.62	31	13.77	31	23.91	26
Virginia	23,316	8.42	32	9.43	32	10.79	34
Washington	12,951	6.80	34	7.64	34	12.44	33
West Virginia	71,317	41.17	7	43.38	7	42.54	8
Wisconsin	3,943	1.34	43	1.42	44	1.72	46
Wyoming	3,168	13.44	30	14.80	29	15.21	30
Total and averages	$2,471,161	$19.54		$22.08		$27.87	

Source: Bureau of the Census, State Finances, vol. 2, (1945)

TABLE 4

STATES GROUPED ACCORDING TO CONSTITUTIONAL BORROWING POWER

Gross Debt and Rank for Year 1945

(Gross Debt in Thousands)

BY CONSTITUTIONAL AMENDMENT

State	*Debt*	*Per Capita Rank*
Alabama	$ 66,810	16
Arizona	3,328	35
Colorado	18,298	23
Florida	1,297	46
Georgia	15,210	36
Indiana	6,431	41
Louisiana	164,359	2
Maine	19,178	17
Michigan	15,808	38
Minnesota	75,080	13
Missouri (Before 1935)	73,499	19
Nebraska	970	45
Ohio	10,604	42
Oregon	20,327	22
Pennsylvania	130,129	27
Texas	11,964	40
West Virginia	71,317	7
Wisconsin	3,943	43

BY REFERENDUM

State	*Debt*	*Per Capita Rank*
California	$172,929	18
Idaho	535	44
Illinois	115,122	26
Iowa	1,403	47
Kansas	11,548	33
Kentucky	6,083	39
Montana	11,736	15
New Jersey	76,957	21
New Mexico	22,875	3
New York	571,993	5
Oklahoma	26,877	28
Rhode Island	26,189	9
Virginia	23,316	32
Washington	12,951	34
Wyoming	3,168	30

LEGISLATIVE ACTION NO LIMIT

State	*Debt*	*Per Capita Rank*
Arkansas (Before 1934)	$139,494	1
Connecticut	23,600	29
Delaware	4,502	25
Maryland	38,359	20
Massachusetts	70,160	24
Mississippi	70,276	10
New Hampshire	14,350	12
Nevada	....	..
No. Carolina (Before 1936)	111,202	11
No. Dakota	20,342	8
So. Carolina	77,854	6
So. Dakota	25,301	4
Tennessee	78,095	14
Utah	1,718	37
Vermont	3,674	31

Sources: Bureau of the Census, State Finances, vol. 2 (1945); The Tax Foundation, Provisions in State Constitutions Controlling Debt (1945); Ratchford, American State Debts, p. 443.

borrowing powers conferred upon each by its respective constitution. A study of Table 4 will indicate that the states have been divided in accordance with the provisions governing the more important uses of state credit. Fully explained, states in the first group have constitutional provisions which, with minor exceptions, forbid the legislature to incur any debt except those authorized by a constitutional amendment. States in this group may be said, therefore, to have the most stringent debt limitation provisions.

States in the second group are those which, with certain exceptions, have constitutions which require each individual law authorizing borrowing to be submitted to a popular referendum. New Jersey is typical of this group.

States in the third group are those wherein the legislature may be said to exercise all powers over the extension of the state's credit.

The reader, in his appraisal of Table 4, should be conscious of the fact that at least one exceptional state distorts the final results in each of the three groups. Louisiana and to some extent West Virginia are representative of those states in the first group whose constitutions are ambiguous and whose courts have been overgenerous in their interpretations. New York, in Group 2, is representative of the state with the largest single indebtedness. In 1938, for example, its total net debt was 19 per cent of the total for the whole country. Arkansas, in Group 3, is a decided exception to the general rule and Nevada, which has no necessity to create a debt because of its exceptional source of tax revenue, represents an extreme which few states have cared to copy.

In addition to the exceptions outlined above, the reader should also evaluate Table 4 with due consideration to population density, industrial density, per capita income, tax revenue yields per capita, the limitations of the tax base and related factors.[33]

For purposes of comparison, the full text of the provisions relating to debt limitation to be found in three state constitutions—one typical state in each group in Table 4—is detailed at the end of the following Summary:

SUMMARY 1

Summary of State Constitutional Limitations on Debt

(In nearly all states provision is made for borrowing to repel invasion, suppress insurrection, or to aid the United States in time of war.)

Alabama:	Governor may negotiate temporary loans up to $300,000. After 1933 no additional state debt is possible without a constitutional amendment.
Arizona:	The state may contract debts up to a $350,000 total. Additional borrowings require constitutional amendments.
Arkansas:	Except for highway purposes, education, war pensions, and existing debts, the General Assembly is prohibited from appropriating or expending more than 2½ million

[33] A study of Table 3 will show that the groupings in Table 4 would remain substantially the same if any other year (1940 or 1944) were employed as a basis of comparison.

	dollars in any biennium. Additional state debt must be approved by a majority of the voters at a general or special election.
California:	Legislature may create debt up to $300,000. Additional debt requires authorization by voters at an election and must be accompanied by provisions by which the principal and interest can be met within 75 years. A sinking fund also is required.
Colorado:	If the appropriations of the legislature exceed the total tax provided for by law additional taxes must be levied within the defined limits or the appropriations reduced. Additional debt requires a constitutional amendment. Existing amendments authorize highway bonds and earmark certain revenues.
Connecticut:	No applicable provision.
Delaware:	Debt may be created by concurrence of three-quarters of all members of each house.
Florida:	A constitutional amendment would be needed to create state debt.
Georgia:	Debt shall not exceed taxes lawfully levied each year; however, $500,000 is permitted to meet casual deficiencies. Additional indebtedness requires sanction by constitutional amendment.
Idaho:	Appropriations or expenditures may not exceed the total tax unless provision is made to increase the tax within the over-all limitation. At a general election the voters may authorize additional borrowings, but these must be accompanied by measures to raise the necessary amount to pay interest and principal.
Illinois:	Loans up to $250,000 are permitted to meet casual deficits. Additional borrowing must be submitted to the voters at a general election and receive the approval of a majority. Provision must be made for a tax to be levied sufficient to meet the interest payments.
Indiana:	Additional debt must be authorized by a constitutional amendment.
Iowa:	Debts up to $250,000 are permitted to meet casual deficits. Other debts must be authorized by law which shall also provide revenues to meet interest and repay the principal within 20 years.
Kansas:	Debts up to $1,000,000 are permitted for extraordinary expenses. Every other debt shall be authorized by a vote of the electors at a general election; such debts must be accompanied by provision for taxes to pay the principal and interest (*see full text below*).
Kentucky:	No applicable provision.
Louisiana:	Additional borrowings require constitutional amendment.
Maine:	Debt limited to $2,000,000 except for highways and bridges. Otherwise a constitutional amendment is needed.
Maryland:	Borrowing requires provision for meeting interest and paying principal in 15 years.
Massachusetts:	The commonwealth may borrow by a vote of two-thirds of each house present and voting (*see full text below*).
Michigan:	$250,000 is debt limit to meet deficits in revenue. Fifty million may be borrowed for highways, and thirty million for veterans' bonus.
Minnesota:	For meeting extraordinary expenses, up to $250,000 may be borrowed. Additional loans would require a constitutional amendment.
Mississippi:	The only provision is the one which requires all revenue bills to be approved by members of each house.

Missouri:	From the present time on borrowings in excess of $250,000 must be submitted by the Assembly to the voters who must give the measure approval by a two-thirds majority.
Montana:	No appropriation shall exceed the total tax provided by law applicable to such expenditure. Borrowing for casual deficits must not exceed $100,000. Additional debts must be approved by a majority of the voters and means must be provided to meet principal and interest.
Nebraska:	Debts in excess of $100,000 total requires constitutional amendment *(see full text below)*.
Nevada:	Debt must not exceed one per cent of assessed valuation. All debt authorization must be accompanied by provision to pay principal and interest.
New Hampshire:	No applicable provision.
New Jersey:	Debt of $100,000 is permitted for casual deficiencies. Additional debt must be approved by a majority of voters at an election; provision to pay interest and extinguish principal in 35 years must be made.
New Mexico:	Debt of $200,000 is permitted for casual deficits. Additional debt must be approved by a majority of state electors and there must be provision for payment of interest and principal within 50 years.
New York:	State debt requires approval by majority of voters.
North Carolina:	State may borrow in anticipation of taxes, to meet casual deficits or when the existing debt is reduced. Other borrowings must be voted upon by the people of the state.
North Dakota:	State may borrow when authorized by law and provision is made to pay the interest and principal within thirty years.
Ohio:	Debts to meet casual deficits are limited to $750,000. Additional debt must be by means of constitutional amendment and there must be provided means to meet interest payments and to provide a sinking fund to redeem the principal.
Oklahoma:	$400,000 may be borrowed to meet casual deficits. Additional borrowing must be authorized by law and approved by the people voting at a general election. Such law must provide for payment of interest and principal within 25 years.
Oregon:	$50,000 debt is permitted and up to four per cent assessed valuation for highways. Other debts require constitutional amendment.
Pennsylvania:	$1,000,000 is permitted for deficiencies in revenue and $100,000,000 may be borrowed for highways.
Rhode Island:	$50,000 is the limit on borrowing by the General Assembly.
South Carolina:	Additional debt must be approved by two-thirds of the state's voters and the assembly shall levy a tax sufficient to pay interest.
South Dakota:	$100,000 may be borrowed for casual deficits. Other indebtedness up to five per cent of valuation may be made by a vote of two-thirds of the members of each branch of the Legislature.
Tennessee:	No applicable provision.
Texas:	$200,000 may be borrowed for revenue deficiencies. Additional borrowing requires a constitutional amendment.
Utah:	Appropriations must not exceed the total tax. Borrowings to a maximum of 1½ per cent of assessed valuation may be made for revenue deficiencies.
Vermont:	No applicable provision.

Virginia:	Casual deficits may be met by borrowing. Other debts must be approved by the voters and a sinking fund must be provided.
Washington:	$400,000 may be borrowed to meet failures in revenues. Additional debt must be approved by voters and provide means to pay interest and principal within 20 years.
West Virginia:	Debt may be contracted to meet casual deficits.
Wisconsin:	$100,000 debt is permitted for extraordinary expenditures.
Wyoming:	No debt in excess of taxes for current year may be created without approval of the voters.

Group 1—Nebraska Constitution (1920)

Article XIII, section 1

"The state may, to meet casual deficits, or failures in the revenues, contract debts never to exceed in the aggregate $100,000, and no greater indebtedness shall be incurred except for the purpose of repelling invasion, suppressing insurrection, or defending the state in war, and provision shall be made for the payment of the interest annually, as it shall accrue, by a tax levied for the purpose, or from other sources of revenue, which law providing for the payment of such interest by such tax shall be irrepealable until such debt be paid."

(The language of the section quoted above is such, that debt may only be incurred by amending the Constitution.)

Group 2—Kansas Constitution (1936)

Article II, section 6

"For the purpose of defraying extraordinary expenses and making public improvements the state may contract public debts; but such debts shall never, in the aggregate, exceed one million dollars, except as hereinafter provided. Every such debt shall be authorized by law for some purpose specified therein and the vote of a majority of all the members elected to each house shall be necessary to the passage of such law; and every such law shall provide for levying an annual tax sufficient to pay the annual interest of such debt, and the principal thereof, when it shall become due; and shall specifically appropriate the proceeds of such taxes to the payment of such principal and interest; and such appropriation shall not be repealed nor the taxes postponed or diminished, until the interest and principal of such debt shall have been wholly paid."

Article II, section 7

"No debt shall be contracted by the state except as herein provided, unless the proposed law for creating such debt shall first be submitted to a direct vote of the electors of the state at some general election; and if such proposed law shall be ratified by a majority of all votes cast at such general election, then it shall be the duty of the legislature next after such election to enact such law and create such debt, subject to all the provisions and restrictions provided in the preceding section of this article."

Article II, Section 8

"The state may borrow money to repel invasion, suppress insurrection, or defend the state in time of war; but the money thus raised, shall be applied exclusively to the object for which the loan was authorized, or to the repayment of the debt thereby created."

Article II, Section 9

"The state shall never be a party in carrying on any work of internal improvement except that it may adopt, construct, reconstruct and maintain a state system of highways, but no general property tax shall ever be laid nor bonds issued by the state for such highways."

Group 3—Massachusetts Constitution (1927)

Article LXII, section 2

"The commonwealth may borrow money to repel invasion, suppress insurrection, defend the commonwealth, or assist the United States in time of war, and may also borrow money in anticipation of receipts from taxes or other sources, such loan to be paid out of the revenue of the year in which it is created."

Article LXII, section 3

"In addition to the loans which may be contracted as before provided; the commonwealth may borrow money only by a vote, taken by yeas and nays, of two-thirds of each house of the general court present and voting thereon. The governor shall recommend to the general court the term for which any loan shall be contracted."

Model State Constitution

Article VII, section 702

"No debt shall be contracted by or in behalf of this State unless such debt shall be authorized by law for some single project or object distinctly specified therein; and no law shall, except for the purpose of repelling invasion, suppressing insurrection, defending the state in war, meeting natural catastrophes, or redeeming the indebtedness of the state, outstanding at the time this Constitution is approved, take effect until it shall have been submitted to the qualified voters at a general election and have received a favorable majority of the votes cast upon such question at such election; except that the state may, by law, borrow money to meet appropriations for any fiscal year in anticipation of the collection of the revenues of such year, but all debts so contracted in anticipation of revenue shall be paid within one year." [34]

The Effects of Constitutional Debt Limitations Upon Creatures of the State

Over the years the courts have frequently been called upon to decide whether certain obligations incurred by a state or one of its agencies is a debt within the meaning of the Constitution. With the passage of time the courts gradually developed what has become known as the Special Fund Doctrine.[35]

Although the courts of several states have resisted the Special Fund Doctrine,[36] it has spread to a remarkable degree and in some cases has greatly modified existing constitutional debt provisions.[37]

Generally speaking, cases involving the application of the Special Fund Doctrine have been those wherein the bond issues were to be serviced from some special income or dedicated revenue, such as the revenue accruing from the operation of a special public project, or the revenue from a specific tax such as the motor fuel tax when its entire proceeds are dedicated by constitution or statute to the purpose or purposes for which the bond issue was pledged.

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[34] "Model State Constitution," Partial Revision, 1946, prepared by the Committee on State Government of the National Municipal League, Article VII, section 702, p. 15.

[35] For a full treatment, see Ratchford, American State Debts, chapter 18, pp. 446-466.

[36] *Newell* v *People, 7 N. Y. 9, 12* (1852); *State* v *McMillan, 12 N. D. 280* (1903); *State* v *Candland, 36 Utah 406, 428* (1909); *Rowley* v *Clarke, 162 Iowa 732* (1913).

[37] *State* v *State Highway Comm., 138 Kan. 913* (1934); *Alabama State Bridge Comm.* v *Smith, 317 Ala. 311* (1928); *In re California Toll Bridge Authority, 212 Cal. 298, 302* (1931); *California Toll Bridge Authority* v *Kelly, 218 Cal. 7* (1933).

In 1912 New Jersey enacted a law[38] authorizing the State Water Supply Commission (now the State Water Policy Commission) to issue bonds of par value of $1,000,000 in payment of land acquired to protect the State's water supply. The bonds were to be secured only by the holdings of the Commission. The court declared the act unconstitutional on the grounds that the commission was merely a state agency, subject to all of the restrictions placed upon the State by the Constitution, and that the sinking fund to retire the bonds was to come from state appropriations. It held that the argument that the indebtedness was not a state debt because it was to be paid from a special fund was "an illogical argument that carries with it its own refutation." [39] New Jersey's position with regard to the Special Fund Doctrine was, therefore, established at a very early date in its history of state indebtedness. Had the law of 1912 specified that the Commission could not pledge the credit of the State, it is possible that the court's decision might have been different.

There has been created in New Jersey and elsewhere, however, certain corporate entities of a governmental nature whose right to create debt obligations without regard to constitutional debt limitations is not questioned. Civic or state corporations of this character are often referred to as "authorities." To all intents and purposes they are agencies of the state, but are not "agents of the state." They may borrow only on their own credit and may not pledge the credit of the state, except as may be expressly permitted by the state. Such "authorities" or "commissions," as they are sometimes called, are usually controlled by a board whose members are appointed by the governor, and to this extent they are representative of the executive level of the state government. Although in several states such "authorities" or "corporate entities" have been created by action of two or more municipalities, in New Jersey the most common types have been those created by compacts between neighboring states for the operation of certain joint facilities or resources, which, in the public interest, are better controlled in this fashion. Typical of such agreements in New Jersey have been the establishment of the Port of New York Authority, The Delaware River Joint Commission, the Palisades Interstate Park and the Interstate Sanitation Commission.

[38] *P.L. 1912, c. 318, pp. 557-560.*
[39] *Wilson* v *State Water Supply Comm., 84 N. J. Eq. 150-158* (1915).

BIBLIOGRAPHY

CARPENTER, W. S. and STAFFORD, P. T. State and Local Government in the United States, New York, 1936.

GRAVES, W. B. American State Government, (3rd ed.) New York, 1946.

GROVES, H. M. Financing Government, New York, 1939.

MACDONALD, A. F. American State Government and Administration, (3rd ed.) New York, 1945.

NATIONAL MUNICIPAL LEAGUE. Model State Constitution, Partial Revision, 1946.

NEW JERSEY. Hearings . . . before Joint Legislative Committee to Formulate a Draft of a Proposed Revised Constitution . . , 1944.

NEW JERSEY LAW REPORTS, 1844-1946.

NEW JERSEY. Proceedings of the New Jersey Constitutional Convention of 1844, 1942.

NEW JERSEY. Proceedings before the New Jersey Joint Legislative Committee . . . to Ascertain the Sentiment of the People as to Change in the New Jersey Constitution, 1942.

NEW JERSEY. Report of the Commission on Revision of the New Jersey Constitution, 1942.

NEW JERSEY. State Treasurer, Reports.

RATCHFORD, B. U. American State Debts, Duke Univ. Press, 1941.

TAX FOUNDATION. Provisions in State Constitutions Controlling Debt, New York, 1945.

HOME RULE

by

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> "Municipal corporations owe their origin to, and derive their powers and rights wholly from, the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so it may destroy. If it may destroy, it may abridge and control. Unless there is some constitutional limitation . . . the legislature might, by a single act, if we can suppose it capable of so great a folly and so great a wrong, sweep from existence all the municipal corporations of the state, and the corporations could not prevent it."[1]

This statement from a 75-year-old court decision describes the status of local government in New Jersey today. Although this doctrine has been contested, the United States Supreme Court has made it clear in a New Jersey case that there is no inherent right of local self-government in the United States:

> "Municipal Corporations have, in the absence of Constitutional provisions safeguarding it to them, no inherent Right of Self Government which is beyond the legislative control of the State.
>
> The State, at its pleasure, may modify or withdraw all such powers may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or part of it with another municipality, repeal the charter, and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the State is supreme; and its legislative body, conforming its action to the State Constitution, may do as it will, unrestrained by any provisions of the Constitution of the United States."[2]

In many states the people have not been satisfied to leave local government in this inferior category. They have included in their constitutions "home rule" sections which granted varying degrees of power to localities and made them free from legislative interference to a more or less limited degree.

The home rule movement has spread slowly from the first constitutional provisions in Missouri in 1876 until today 20 states[3] possess constitutional provisions authorizing home rule. It is not, therefore an untried theory. It has worked with more or less success for many years and so far there has been no move to abandon it where it exists.

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[1] *City of Clinton* v *Cedar Rapids and Missouri Railroad Co.*, 24 Iowa 455 (1868).
[2] *Trenton* v *New Jersey*, 262 U.S. 182 (1923)
[3] Eighteen state constitutions grant localities the right of adopting charters of their own choosing. They are: Arizona, California, Colorado, Maryland, Michigan, Minnesota, Missouri, Nebraska, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, Utah, Washington, West Virginia, and Wisconsin. Two states—Georgia and Idaho—have much more limited provisions.

The home rule movement in New Jersey resulted in an amendment to the Constitution in 1875 prohibiting special legislation concerning municipalities, the optional forms of local government, and the Home Rule Act of 1917.

What is Home Rule?

What is "Home Rule"? It does not and never has meant complete local self-government. It has always limited self-government. It means freedom from dependence upon the state and freedom from state interference in limited fields only.

Broadly speaking, "Home Rule" refers to any power of government which may be conferred upon a city whether by statute or constitution. The more usual definition is limited to the powers that are conferred upon municipalities by constitutional provisions —especially the power of municipalities to frame and adopt their own charters.

The Development of Home Rule

One hundred years ago legislation directed at a single municipality was the rule in nearly every state. Often such legislation served a useful purpose, for it could fit local governments to local needs.

The practice, however, led to numerous abuses. Since the laws were of little concern to most of the legislature, they were easy to pass. Often they were passed before the citizens of the affected community knew of their existence. Pressure groups found the device particularly useful.

Local legislation burdens the state government with local matters of no real concern to it. It leaves insufficient time for considering problems of state-wide importance, and accentuates the feeling of localism in the legislature. By encouraging the trading of votes, it prevents fair consideration of both special and general legislation. The system brings uncertainty and confusion to localities, injects state-wide politics into local affairs, and makes self-government difficult.

Prohibitions Against Local Legislation

These abuses led to the adoption of constitutional prohibitions against special legislation concerning municipalities. Such prohibitions are found in the constitutions of 42 states today. The history of nearly every one of these states indicates that the provisions were by no means completely successful. It is apparent that the prohibition left a vacuum. Whatever the faults of special legislation, it filled a real need in constructing governments to meet the requirements of particular municipalities.

State legislatures have shown great inventiveness in circumventing the prohibition against local legislation. The most popular device is by classification of municipalities. If classification is "reasonable," the courts ordinarily sustain it. In some states certain general classification laws place only one city in a class. And in most states, laws which are adopted in general form are often intended for only one city.

Classification Charters

Since special charters could no longer be passed by legislatures, a few states attempted to draft uniform charter laws. These failed because of excessive rigidity. It soon became evident that diverse local conditions could not be covered in a single charter. No state today has a completely uniform charter system.

The classification charter was developed as a compromise between special charters and the uniform charter. It acknowledges that cities of different sizes require different forms of government. At the same time, by making charters uniform for a class it tends to stop special legislation.

It is not an entirely satisfactory solution to either problem. The needs of the municipality are the result of geographic and industrial conditions as well as population; and in respect to population, density is often more important than mere numbers. Classification has not been able to take these factors into account.

Optional Charters

Optional forms of government which may be adopted by the voters of any municipality provide a somewhat better plan. In some states, powers of local government are also optional.

The optional charter and power system can provide a substantial amount of home rule without any constitutional provisions. It provides considerable flexibility both as to form and powers.

Home Rule Charters

The home rule method of municipal charter drafting is now provided in the constitutions of 18 states. Within various limits, home rule cities establish their own governments and define the scope of their local affairs.

The home rule provisions vary considerably from state to state. In five of the states the system operates with very little success. In Pennsylvania the constitutional provision has never been implemented by legislation. In Utah no cities have made use of the home rule amendments. In West Virginia only one city has a home rule charter. In Maryland home rule extends only to one city. In Missouri, under the old constitution, only two cities were granted home

rule. (The new constitution, however, extends the provision to all cities of more than 10,000.)

In the other states, home rule operates more satisfactorily.

What are Municipal Affairs?

In nearly every home rule state the problem of deciding what matters were primarily local has been a troublesome one for the courts. The terms used in the constitutions, such as "municipal affairs," "all local and municipal affairs," "local affairs in government," "local concerns," and "property, affairs or government" are general and vague. They have no well-understood technical meaning and though the home rule movement is 70 years old, no definition of what may properly be called "municipal affairs" has been evolved.

The courts generally have placed a narrow construction on "local affairs." Even where constitutional provisions seem most inclusive, the courts have narrowed the field of local affairs considerably. There is some indication that home rule cities generally possess a greater range of powers than cities without home rule. A study[4] made in 1938 indicated that, of 27 powers studied, cities in ten of the 13 home rule states analyzed had at least 21 of the powers. Cities in only three of the other 31 states studied possessed that many powers. It is interesting to note, however, that New Jersey was one of the three states.

There is some evidence that the existence of home rule constitutional provisions tends to promote a liberal legislative attitude with respect to general laws; and general laws, even in home rule states, can be an important source of municipal freedom.

Also, in states such as Wisconsin, where little use has been made of the home rule charter-making powers, the cities very often make use of the home rule charter amending powers, and that is perhaps the most important feature of home rule—the advantage of flexibility in meeting the day-to-day problems of municipalities.

Home Rule in New Jersey

The first important step towards home rule in New Jersey came in 1875 when a constitutional prohibition against local legislation was adopted.[5]

Governor Joel Parker, in support of the amendment, pointed to the evils of hasty and ill-considered legislation. He also said that the amendment "would dispense with at least nine-tenths of the business brought before the legislature under the present system. The general public laws passed at the last session are contained in about 100 pages of the printed volume, while the special and private laws occupy over 1250 pages."

[4] *The Municipal Year Book*, 1938, pp. 149-165.
[5] *Constitution*, Art. IV, Sec. 7, pars. 9, 11.

The abuses prior to the adoption of the amendment were outlined in a decision by Chief Justice Beasley:

> "The evils which had been inflicted under the guise of laws operative only within certain areas were of the most serious character; . . . they constituted one of the principal causes that led to the . . . amending of the constitution of the state. Experience had conclusively shown that the system itself was vicious, that permitted a city, or other political district, to be governed by laws applicable to it alone, such laws being enacted by persons having no particular interest in such locality, and having no constituency living within its bounds, to whom they were accountable for the measures to which they gave their sanction. This, in truth, was but one remove from the oppression of being governed by strangers. The result was such as might have been anticipated: laws were to be had for the asking by scheming persons, that were subversive of the rights of property, which tended to the most reckless expenditure of the public moneys, so that the debts of some of these public bodies accumulated to such a degree as to threaten them with insolvency. Besides these grievances there were others of a lesser magnitude, * * * sources of much vexation and inconvenience. Among these minor mischiefs was the practice of amending and supplementing municipal charters with a profusion that knew no bounds."[6]

As in other states, the prohibition was not an immediate success. As the Home Rule Commission in 1917 reported:

> "Much ingenuity has been displayed in attempts to evade the plain mandate of the constitution, that no special law shall be passed regulating the internal affairs of municipalities."

The Stokes Commission on Municipal Government in 1908 had this to say:

> " * * * the laws have become so intricate as to confuse even the legal profession, * * *. The system of law-making under which this system has grown up is wholly wrong in principle and mischievous in practice. * * * "

The Commission also pointed to a remedy:

> "Your Commission, however, believes that there is a remedy for these evils, and that a long step in that direction can be made by the adoption of a municipal code, which on the one hand shall clearly limit the sphere of state activity and obviate the need of state interference in local affairs, and, on the other hand, shall clearly mark the sphere of local government and provide that within that sphere the citizens shall be allowed to manage their own affairs in their own way."[7]

The Home Rule Commission

The 1875 amendment had directed that the Legislature pass general laws concerning local government, but it was not until 1916 that a commission to revise and codify the statutes relating to municipalities was created.[8]

The appointment of this commission marked an important advance in the New Jersey home rule movement. The Legislature, by resolution, directed the commission to provide municipalities with the "largest possible measure of home rule, consistent with constitu-

[6] *Van Riper v Parsons*, 40 N.J.L. 1 (1878).
[7] *Report of the Commission on Municipal Government to the State of New Jersey* (1908).
[8] *Report of Commission to Revise and Codify the Statutes of the State Relating to Cities and Other Municipalities.* The members were appointed by the Governor under a 1916 resolution.

tional limitations * * * so that each of them, may * * * deal with every matter of local concern. * *"

This resolution also pointed to the abuses which had not been cured as yet under the constitutional prohibition—the number of bills general in form, but special in application (the laws referred to the commission included one-third of all the statutes of the state), the time consumed on local legislation, and the confusion and uncertainty of local law.

The commission became known as the Home Rule Commission and it clearly desired to live up to its name. It gave serious consideration to a clause conferring complete power of local self-government on all municipalities. It discarded this proposal because of the uncertainty, discussed above, in determining which matters are of "local concern." The commission saw that such a clause would leave the decision to the courts.

The commission decided that it would be preferable to state in the act the matters which were of local concern. Then, if additional powers were needed, they could always be added by amendment. The commission agreed that "the making of improvements and the rendering of service by the municipalities to its citizens, were particularly matters of local concern."

The powers granted municipalities in the Home Rule Act[9] included: the right to own and operate utilities, the right to acquire property, the right to engage in all activities which "any statutes now permit any municipality to engage in," the power to make local improvements, the power to assess benefits in connection with these improvements, and the power to undertake activities with other municipalities.

The police powers were considered of more than local concern and were left with the State Legislature. The commission pointed out that any other course would necessitate the repeal of general laws regulating tenement houses, factories, etc.

Matters concerned with municipal finance were under study at that time by the Pierson Commission, so the Home Rule Act did not cover financial matters. The Pierson Acts adopted in 1917 and 1918 included a Local Budget Act, a Local Bond Act, an Annual Auditing Act, a Financial Statement Act, and a Department of Municipal Accounts Act. These laws stated the limits of local power in financial matters and provided for some state supervision.[10]

It is interesting to note that while the Home Rule Commission did not recommend the granting of home rule powers to counties

[9] P.L. 1917, c. 152. Now cited principally in R.S. 40:42-1 through 40:67-17. Also R.S. 1:1-2, R.S. 2:27-255, R.S. 44:3-1, R.S. 44:5-1.

[10] The Pierson Acts: P.L. 1917, c. 192; P.L. 1916, c. 252; P.L. 1918, c. 268; P.L. 1917, c. 155; P.L. 1917, c. 154.

because "public opinion was not sufficiently formed," it did consider the matter a subject for future study.

Optional Charters

The Home Rule Commission was careful not to interfere with the form of government in any municipality, for it felt that would be a violation of home rule.

The Legislature had already passed the Walsh Act,[11] which provided commission government for any community which adopted it. The commission form of government was popular at that time and the commission seemed to believe that it was the answer to the needs of every type of municipality.

Later on a council-manager form of government was made available to the municipalities.[12] Other forms of local government, though drafted in general terms, seem to illustrate the legislative habit of passing laws in general form to meet the needs of single municipalities.[13]

Nevertheless, the provision of optional forms of government was another step forward in the home rule movement.

From time to time other laws have been adopted, amending these basic laws or adding new powers. The most notable of these are the Cash Basis Act, the new Local Bond and Budget Acts, the Local Government Act, the Local Fiscal Administration Act, and the Unsound Municipalities Acts.[14]

The Status of Home Rule in New Jersey Today

Home rule in New Jersey stems from the constitutional provision prohibiting special local legislation. This prohibition left a void in local law which has been filled by (1) special legislation masquerading as general law, (2) general law of universal application, (3) classification of municipalities, and (4) optional forms and powers of government.

Special Legislation

It is the concensus of opinion today that the need of municipalities for power and forms of government vary in connection with numerous factors—size, density of population, location, economic status, industrialization, and political characteristics are some of them.

Special legislation may not be undesirable in itself. Local acts in large part fill legitimate needs. The trouble is not that too many

[11] R.S. 40:70-1 to 78-5.
[12] R.S. 40:79-1 to 85-12.
[13] Several old statutes, probably adopted for one municipality, are still in effect, making available various forms of mayor-council government. Among the more important of these are R.S. 40:103-4, R.S. 40:104-1 and R.S. 40:107-1. Other statutes of more limited applicability are also still on the statute books.
[14] R.S. 40:1-1 to 40:1-86, R.S. 40:2-1 to 40:2-54, R.S. 52:24A-1 to 52:24A-79 (three acts), and R.S. 40:2-22.1.

laws are made but that too many laws are necessary. It is against the interest of both the Legislature and the municipalities to place the complete burden of making such decisions in the Legislature.

It is evident that the constitutional provision against local legislation has lessened this burden. General laws have been encouraged and considerable home rule in respect to city activities has been granted.

General Laws

General laws, however, cannot provide for the special needs of different municipalities. The Princeton Local Government Survey in 1937 pointed out that "whether a municipality is a rural hamlet or a metropolitan center, the law gives it almost the same complete powers of local government."[15]

The report raised the question of whether communities of such widely different characteristics as Newark with nearly 450,000 population and North Cape May with a population of five, Hamilton Township with an area of 115 square miles and East Newark with an area of one-tenth of one square mile, Hoboken with a density of 46,000 per square mile and Pahaquarry with a density of four per square mile, all needed exactly the same powers.

New Jersey has never made the experiment of requiring uniform charters for all municipalities. Other states have, but nowhere successfully. Such provisions have been repealed wherever tried.

General laws work best in matters in which the needs of localities are the same. They work worst when they treat of matters which concern only one or only a few municipalities.

Classification of Municipalities

The classification of municipalities is probably a necessary development where a prohibition against special legislation is not accompanied by substantial home rule powers.

Where classification has been ruled out, it has had serious consequences. In Ohio the classification system was declared unconstitutional and the legislature was forced to adopt a general code for all cities. As a result, "the larger municipalities complained that they were undermanned in officials and deficient in powers—that they could not handle their big problems within the rigid terms of the general law. * * * The smaller cities, on the other hand, found themselves burdened with much administrative machinery which they did not want and provided with many powers which they could not use."[16]

The Home Rule Commission of 1917 pointed out that the classification system was "quite arbitrary and without logical reasoning

[15] *Readjusting Local Government and Services*, Princeton Local Government Survey (1937).
[16] Munro, William B., *The Government of American Cities*, pp. 75-76, New York, 1926.

to support it." These classifications of boroughs, towns, townships, cities, etc., however, still exist today.[17]

The commission went on to say that since there was so little existing difference in powers, now "identical powers may be conferred on all municipalities of the state. * * * " This was done in the Home Rule Act so that today, as the Princeton Survey reported, "Frequently self-government, service area, and taxpaying capacity are so far out of adjustment that public services can operate only in a cramped, distorted and expensive manner."

The report advocated the classification of cities according to their "required service range." This would be a difficult undertaking and would undoubtedly bring protests from municipalities whose powers were reduced. The Legislature has so far shown no intent to undertake the task.

However, unless such a classification can be developed, it is inevitable that some municipalities will have more power than they need and that others will have less, under the general law and classification system.

Classification does permit some flexibility in meeting the needs of different types of municipalities. As it has developed in New Jersey, however, it does not provide the amount of flexibility which is generally believed to be desirable. It can only do so by legislation, which, though classification in form, is special in application.

Optional Forms and Powers of Government

One method of avoiding the bad features of special legislation, general laws, and classification is to provide optional forms and powers by general law. This method has the added feature of providing more home rule.

Under the optional system, the legislature provides that any municipality may adopt a law by referendum or by vote of the governing body. In New Jersey optional forms of government have been provided for boroughs, towns, villages and townships. In addition, the commission form of government and council-manager form may be adopted by any municipality. Also, some optional powers have been provided.

It should be noted that some of the optional laws in New Jersey are one-way streets. The municipality may adopt them but has no way of repealing them. This was true at one time of the Commission Government Law.

The optional system is not developed in New Jersey to a very high degree. For example, only one form of commission government and one form of council-manager government is available to a munici-

[17] Classification by population is also used in New Jersey—first class: over 150,000 population; second class: 12,000 to 150,000 population; third class: all others, "except cities binding upon the Atlantic Ocean, and being seaside or summer resorts." There is one New Jersey class on a geographical basis, being "cities binding upon the Atlantic Ocean and being seaside or summer resorts." (R.S. 40:167-1, 2 and 3)

pality, and there is no standard mayor-council plan of general application.

As noted above, most powers are given to all municipalities, whether or not the citizens or the governing body desire them.

Comments on Home Rule in New Jersey

Municipalities in New Jersey have considerable home rule powers except in respect to the form of government. However, because of the lack of flexibility in the New Jersey system, some municipalities have more and others less power than they need or might like to have.

Prohibition against legislation has led to more home rule for New Jersey municipalities but it has raised certain problems which have not as yet been satisfactorily solved. These problems have to do with fitting government to the peculiar needs of the municipalities.

Constitutional Home Rule

Since so many states have adopted home rule provisions in their constitutions, consideration should be given to the possible effects of such a provision in New Jersey.

Degrees of Home Rule

As noted above, home rule is never absolute. The principle of municipal inferiority is so firmly established in American law that no city ever has complete self-government.

The Colorado constitution goes furthest in granting powers to municipalities. It provides that the charter of a home rule city shall "be its organic law and extend to all its local and municipal affairs" and "shall supersede within the territorial limits * * * any law of the state in conflict therewith." However, even in Colorado the courts found that home rule cities were subject to general laws having to do with general matters. In matters of local concern, home rule cities are free from legislative interference. However, as in other states, only the courts can determine what matters are of local concern.

Even when the legislature has no constitutional mandate to set the limits of municipal home rule, it may do so. This is generally accomplished under constitutional clauses which provide that home rule city activities shall be "consistent with and subject to general laws of the state."

There is no function, no matter how local in character, which is immune from general laws. McBain concluded that home rule is "more largely a matter of legislative grace than a constitutional right."[18]

[18] McBain, Howard Lee, *The Law and Practice of Municipal Home Rule*, New York, 1916.

Only two states other than Colorado have attempted to prohibit general legislation in local affairs. These are California and Ohio. (The Oklahoma courts have held, however, that in matters of municipal concern action by a city prevails in the face of state law.) In other states the legislature is expected to regulate municipal affairs by general law.

Legislative Definition of Home Rule

The Minnesota constitution authorizes the legislature to "prescribe by law the several limits under which" home rule "charters shall be framed." The Texas constitution provides for the erection of home rule charters "subject to such limitations as may be prescribed by the legislature."

In such states home rule is measured in terms of legislative enabling statutes. In Pennsylvania the legislature has failed to define any sphere of municipal discretion, and in West Virginia the legislature has maintained control over all aspects of municipal government. Home rule has, therefore, failed in those states. Home rule under similar provisions has operated well in Texas, Michigan and Minnesota.

The attitudes of the people, their legislatures and their courts usually have more effect on the operation of home rule than the constitutional provisions. Missouri and Oregon have similar provisions, but home rule had only a rudimentary development in Missouri (under the old constitution) while Oregon has a well-ordered system.

General Law Provisions

In New York the supremacy of the legislature is recognized, but special legislation is prohibited by a clause which states "the legislature shall not pass any law relating to the property, affairs or government of cities, which shall be special or local either in its terms or its effect." Wisconsin achieves the same purpose by stating that home rule charters are "subject only to this constitution and to such enactments of the legislature of state-wide concern as shall with uniformity affect every city or every village." In these states, though legislative supremacy is maintained, general laws cannot be diluted by classification. McGoldrick has pointed out that this is consistent with home rule:

> "If the legislatures of these states are carefully confined to uniform legislation on municipal affairs—whatever the term comes to include—the cities can be certain that the volume of such legislation will not be large or its character oppressive."[19]

[19] McGoldrick, Joseph D., *The Law and Practice of Municipal Home Rule*, 1916-1930, p. 164, New York, 1933.

The Courts and Home Rule

These constitutional definitions of "general laws" were designed to avoid one of the two major causes of litigation in home rule matters. The term "general laws" may be interpreted in a number of ways. As the Council of State Governments points out,

> "it may mean laws of general concern, as opposed to municipal concern; or laws of general application, as opposed to special application. Or it may mean laws of both general concern and general application. To complicate the situation further, even laws of general application need not apply to all municipalities since a classification of cities may produce the anomaly of a general law applicable to a single municipality."[20]

It is now clear in all states that general laws of general concern are binding on all municipalities.

The courts are continually called upon to decide whether classified laws are general laws and in many states whether general laws of local concern are binding upon municipalities, and of course there is always the no-man's land between affairs of "local" and of "general" concern.

The terms generally used in constitutional home rule provisions have actually left the final word to the judiciary. This is not sound —the powers that a municipality should exercise are a matter of political policy, not law.

It would appear, therefore, that it is preferable to have the scope of home rule defined either in the constitution or by the legislature (as in the New Jersey Home Rule Act).

Constitutional definition of home rule is much more cumbersome than legislative definition. In California and Colorado, constitutional amendments have conferred specific powers on cities after the courts had ruled them out. The delay in such a process is considerable. The constitutions of Oklahoma, Michigan, Ohio, Utah and New York also contain some listing of powers.

The method of Minnesota and Texas might seem preferable. In these states the enabling legislation establishes a definition of "municipal affairs."

It may be concluded that the powers of cities must always be defined in some other way than by the localities themselves.[21] In many states they are defined by the legislature, in a few states by the constitution. Where powers are not completely defined in the above manner, the courts define the powers by determining what are "municipal affairs."

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[20] Council of State Governments. *State-Local Relations*, p. 169, 1946.

[21] In New Jersey, "Any reasonable or fair doubt of the existence of the asserted power" of a municipal corporation, "or any ambiguity in the statute whence (such power) springs, . . . is to be resolved against the municipality, and the power is denied." *N. J. Good Humor* v *Board of Com'rs of Borough of Bradley Beach* (124 N.J.L. 162, 11 Atl. (2d) 113, reversing 123 N.J.L. 21, 7 Atl. (2d) 824.

Form of Government

The difficulties discussed above have to do with the powers rather than the form of local government. The least controversial phase of home rule has to do with the structure of local government.

In home rule states, municipalities have the right to create their own form of government guaranteed in the constitution. There is considerable uniformity in the methods. Either the local governing body, or the voters by petition, may call for an election of a charter commission. The commission has the power to prepare a charter and submit it to the voters. The charter becomes effective through the favorable vote of a majority of those voting. Usually, charter amendments may be adopted in the same manner.

Most constitutional provisions are self-executing—the procedure is set out in the constitution and requires no legislative action to put it into effect. The "Model State Constitution" of the National Municipal League formerly provided for a self-executing charter, but no longer does so.

The Advantages of Home Rule

The advantages of home rule have been summarized as follows by the Council of State Governments:

> "A home rule charter is best calculated to give the people of a given city the form of government they consider best suited to their own need. The basic construction of local government is left in the hands of those directly governed. This technique has a practical advantage: the city's charter may be uniquely fitted to the city's needs. And a locally constructed charter puts an end to log-rolled special charters and to charters planned for a group of cities without fully meeting the problems of any single city. Home rule charters offer the greatest measure of local self-government possible under the American system of government.
>
> There is often a genuine need for local laws. In effect, home rule gives municipalities the power to pass (within limits) local laws for their own use, while simultaneously freeing the legislature from this burden and freeing the municipalities from their legislature abuses inherent in the practice of local legislation.
>
> Most important of all, home rule gives a much needed power of initiative to municipalities. The original constitutional provision, the activity of the legislature, and the decisions of the courts, singly or in combination set the limits to which this local initiative may be put. Within these limits, however, local discretion with respect to local matters has free play. Localities are emancipated from the doctrine that each of their acts must spring from a specific statute. Day-to-day problems may be met without waiting for permissive legislation.
>
> It may be concluded that home rule is one satisfactory solution to the problem of state-local legal relations."[22]

Considerations in Drafting Home Rule Provisions

The advantages of a general grant of power[23] to municipalities should not be ignored. Even though it leaves some uncertainty as to

[22] *Cf.* Note 20; pp. 170-171.

[23] Such as the New York clause: "Every city shall have the power to adopt and amend local laws not inconsistent with the constitution and laws of the state. . . ."

what are matters of local concern, it serves a very useful purpose, for it prevents the necessity of granting all cities the powers needed by any one of them—an unsatisfactory feature of the present New Jersey system. Under a general grant of power, the people of each municipality can, in local affairs, determine what powers they need.

Grants of home rule in general terms, by themselves, may lead to litigation and uncertainty. It is, therefore, desirable that some specified powers be given to localities.

A constitutional enumeration should be confined to those matters which are likely to remain within the realm of local affairs. This enumeration could include many of the powers now included in the Home Rule Act or it could be limited to the right of localities to initiate and adopt a form of government of their own choosing. In view of the satisfactory experience in New Jersey with legislative definition of local powers, a limited constitutional enumeration might seem preferable.

In any event the Legislature should have the power to enact general laws in the sphere of local affairs whether or not there is a general grant of authority in the Constitution. At the same time, some safeguard should be erected so that legislative classification cannot reduce home rule to an empty shell. The "Model State Constitution" of the National Municipal League permits statutes no matter how local in character so long as they are "uniformly applicable to every city."

The present constitutional prohibition against special legislation has worked only partially because it was not accompanied by a positive grant of powers to localities. However, if a general grant of power is made, this vacuum does not exist and general laws can be required.

Confusion may result if the grant of powers is confined to cities which create charters under the home rule provisions. It is probably better to grant the powers to all municipalities.

Even if home rule powers are granted, optional forms of government and optional powers may be provided by general laws. This combination of a liberal system of general laws and local initiative may be of benefit to both the State and the localities. Under such a system a wide range of local freedom may be retained even without the adoption of a home rule charter. This would probably be of special value to small communities.

If a system of home rule as described above were adopted, the role of the courts would be minimized.

County Home Rule

Municipalities, such as cities and towns, are voluntarily formed. They perform activities in their own local interest and at the same time act as administrative arms of the state.

Counties are sometimes called "*quasi*-municipalitites," in that they are involuntarily formed and function only as administrative units of the state.

In recent years, however, the actual difference between cities and counties has tended to diminish. On the one hand state supervision has been extended to cities as well as counties, and on the other hand counties have increased the scope of the local services they perform. Some observers believe that it is inevitable that counties will take on more such services.

The Commission to Investigate County and Municipal Taxation and Expenditures in 1931 pointed out that "municipalities now provide certain services for which they are no longer the most efficient and satisfactory administrative units. These matters are no longer of purely local concern, and should be transferred to the wider jurisdiction."

The commission pointed to the "wasteful duplication of services" and the "diffusion of administrative responsibilities—in the perpetuation of numerous administrative areas that are inadequate to perform many of the tasks now devolving upon local governments." The county, the commission believed, was better able to provide local services than such localities.[24]

The relation of the county to the state is also changing. The state is tending to deal more directly with localities in highway and school financing, for example. It is probable that in the future the county may act less as an agent of the state and more as a municipality rendering local services.

Flexible County Government

These developments may make it desirable to have the form and powers of county government less rigid.

At present authority for county affairs, except for the officers provided for in the Constitution, is in the hands of the Legislature. As in the case of cities, the Legislature could provide broad powers to all counties or classes of counties. Or it could provide optional forms of county government.[25]

County Home Rule

The Constitution could also provide for county home rule. The character of counties varies as much as that of municipalities. It might be beneficial to allow each county to frame and adopt its own charter based on its own needs.

[24] Commission to Investigate County and Municipal Taxation and Expenditures. *Report No. 1*, sec. 3, pp. 209, 215 (second printing), 1931.

[25] In New Jersey, four classes of counties are based upon population groupings; less than 50,000; from 50,000 to 200,000; from 200,000 to 500,000, and over 500,000. The two other classes are those bordering on the Atlantic Ocean, having more than, or less than 50,000 population. The sole structural variation between counties lies in the size and method of election of the board of freeholders. Depending upon past referenda, a county may elect board members at large, or have them representative of the various municipalities; may have a large or small board; and may follow one of several formulae for representation established by the Legislature.

The "Model State Constitution" of the National Municipal League makes county home rule available subject to legislative definition.

Thirteen states now authorize county home rule or optional forms of county government. They are California, Georgia, Louisiana, Maryland, Missouri, Montana, New York, North Carolina, North Dakota, Ohio, Oregon, Texas and Virginia. Wisconsin gives home rule to county boards in regard to internal administrative matters, but not home rule. Counties have been slow to act under these home rule provisions. In New York several county home rule laws provide a number of options but only three counties have yet taken action. The same is true generally throughout the country. By March 1946, only nine counties had adopted the manager form of government. However, other forms have been utilized to replace the traditional county structure.

The Council of State Governments says that, "Generally speaking, the reconstruction of county government to give it greater centralized leadership has achieved significant successes in those places in which it has been tried."[26]

Limited Home Rule for Counties

The status of counties is undergoing change. There may be real need for flexibility in form and powers of counties in the future. This flexibility can be provided under the existing Constitution by the passage of optional forms of county government or by permitting the voters of counties to frame their own charters.

There must necessarily be more control by the Legislature than in the case of cities for counties are more closely related to the State. Moreover, if localities are given a general grant of power confusion would result from granting counties general powers in the same territory.

The term "home rule" in connection with counties has a more limited meaning than when used in connection with cities. It includes optional charters adopted by the Legislature as well as the right of drafting and adopting a charter in the county itself.

A constitutional provision in New Jersey would probably grant counties only the additional authority of framing and adopting a charter for their own government. It might, however, also grant the Legislature authority to adopt optional charters for counties. Either one or both of these provisions would undoubtedly increase the flexibility of county government and make it more adaptable to change.

[26] *Cf.* Note 20; p. 178.

The Need for Constitutional Provisions for Home Rule in New Jersey

Under the present Constitution a reasonably satisfactory legal relationship between the State and the municipalities and between the State and the counties could be developed by the use of rational classification and by optional charters. However, the localities and counties probably will not be completely satisfied until they have the right to frame their own charters to meet their own needs.

The fact that New Jersey, as well as many other states, have had reasonably satisfactory state-local relations without home rule must be balanced against the fact that more and more states are providing constitutional home rule, and no state which has experimented with home rule has abandoned it.

APPENDIX

A. Local Government Provisions of the Model State Constitution of the National Municipal League (1946 Revision)

Article VIII

Local Government

Section 800. *Organization of Local Government.* Provision shall be made by general law for the incorporation of counties, cities, and other civil divisions; and for the alteration of boundaries, the consolidation of neighboring civil divisions, and the dissolution of any such civil divisions.

Provision shall also be made by general law (which may provide optional plans of organization and government) for the organization and government of counties, cities, and other civil divisions which do not adopt locally framed and adopted charters in accordance with the provisions of section 801, but no such law hereafter enacted shall become operative in any county, city, or other civil division until submitted to the qualified voters thereof and approved by a majority of those voting thereon.

Section 801. *Home Rule for Local Units.* Any county or city may adopt or amend a charter for its own government in accordance with such conditions as the legislature shall by law prescribe. Any charter framed as herein provided, or any amendments to a charter so framed, shall be submitted to the qualified voters of the county or city at an election to be held at a time to be determined by law, but not less than thirty days nor more than six months subsequent

to the publication of the charter and its distribution among the qualified voters.

SECTION 802. *Powers of Local Units.* Counties shall have such powers as shall be provided by general or optional law. Any city or other civil division may, by agreement, subject to a local referendum and the approval of a majority of the qualified voters voting on any such question, transfer to the county in which it is located any of its functions or powers and may revoke the transfer of any such function or power, under regulations provided by general law; and any county may, in like manner, transfer to another county or to a city within its boundaries or adjacent thereto any of its functions or powers, and may revoke the transfer of any such function or power.

SECTION 803. *County Government.* Any county charter shall provide the form of government of the county and shall determine which of its officers shall be elected and the manner of their election. It shall provide for the exercise of all powers vested in, and the performance of all duties imposed upon, counties and county officers by law. Such charter may provide for the concurrent or exclusive exercise by the county, in all or in part of its area, of all or of any designated powers vested by the constitution or laws of this state in cities and other civil divisions; it may provide for the succession by the county to the rights, properties, and obligations of cities and other civil divisions therein incident to the powers so vested in the county, and for the division of the county into districts for purposes of administration or taxation or of both. No provision of any charter or amendment vesting in the county any powers of a city or other civil division shall become effective unless it shall have been approved by a majority of those voting thereon (1) in the county, (2) in any city containing more than 25 per cent of the total population of the county, and (3) in the county outside of such city or cities.

SECTION 804. *City Government.* Except as provided in sections 802 and 803, each city is hereby granted full power and authority to pass laws and ordinances relating to its local affairs, property and government; and no enumeration of powers in this constitution shall be deemed to limit or restrict the general grant of authority hereby conferred; but this grant of authority shall not be deemed to limit or restrict the power of the legislature to enact laws of statewide concern uniformly applicable to every city.[1]

The following shall be deemed to be a part of the powers conferred upon cities by this section:

(a) To adopt and enforce within their limits local police, sani-

[1] General grant follows New York Constitution. Last clause follows Wisconsin Constitution.

tary and other similar regulations, not in conflict with general laws uniformly applicable to all cities.

(b) To levy, assess and collect taxes, and to borrow money and issue bonds, within the limits prescribed by general laws uniformly applicable to all cities; and to levy and collect special assessments for benefits conferred.

(c) To furnish all local public services; and to acquire and maintain, either within or without its corporate limits, cemeteries, hospitals, infirmaries, parks and boulevards, water supplies, and all works which involve the public health and safety.[2]

(d) To maintain art institutes, museums, theatres, operas, or orchestras, and to make any other provision for the cultural needs of the residents.

(e) To establish and alter the location of streets, to make local public improvements, and to acquire by condemnation or otherwise property, within its corporate limits, necessary for such improvements, and also to acquire additional property in order to preserve and protect such improvements, and to lease or sell such additional property, with restrictions to preserve and protect the improvements.

(f) To acquire, construct, hire, maintain and operate or lease local public utilities; to acquire, by condemnation or otherwise, within or without the corporate limits, property necessary for any such purposes, subject to restrictions imposed by general law for the protection of other communities; and to grant local public utility franchises and regulate the exercise thereof.

(g) To issue and sell bonds, outside of any general debt limit imposed by law, on the security in whole or in part of any public utility or property owned by the city, or of the revenues thereof, or of both, including in the case of a public utility, if deemed desirable by the city, a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate such utility.

(h) To organize and administer public schools and libraries, subject to the general laws establishing a standard of education for the state.

(i) To provide for slum clearance, the rehabilitation of blighted areas, and safe and sanitary housing for families of low income, and for recreational and other facilities incidental or

[2] Michigan Constitution, Art. VIII, sec. 22.

appurtenant thereto; and gifts of money or property, or loans of money or credit for such purposes, shall be deemed to be for a city purpose.[3]

SECTION 805. *Public Reporting.* Counties, cities and other civil divisions shall adopt an annual budget in such form as the legislature shall prescribe, and the legislature shall by general law provide for the examination by qualified auditors of the accounts of all such civil divisions and of public utilities owned or operated by such civil divisions, and providing for reports from such civil divisions as to their transactions and financial conditions.

SECTION 806. *Conduct of Elections.* All elections and submissions of questions provided for in this article or in any charter or law adopted in accordance herewith shall be conducted by the election authorities provided by general law.

B. SELF-EXECUTING PROVISION OF 1941 MODEL STATE CONSTITUTION OF THE NATIONAL MUNICIPAL LEAGUE

(Relevant to the Model City Charter)

City Charters

Any city may frame and adopt a charter for its own government in the following manner:

The legislative authority of the city may by a majority vote of its members, and upon petition of ten per centum of the qualified electors shall, forthwith provide by ordinance for submission to the electors of the question, "Shall a commission be chosen to frame a city charter?" The ordinance shall require that the question be submitted to the electors at the next regular municipal election, if one shall occur not less than sixty nor more than one hundred and twenty days after its passage; otherwise, at a special election to be called and held within the time aforesaid. The ballot containing such question shall also contain the names of candidates for the proposed commission, but without party designation. Such candidates shall be nominated by petition signed by not less than one per centum of the qualified electors and filed with the election authorities at least thirty days before such election, except that the signatures of more than one thousand qualified electors shall not be required for the nomination of any candidate. If a majority of the electors voting on the question of choosing a commission shall vote in the affirmative, then the nine candidates receiving the highest numbers of votes (or if the legislature provides by general law for the election of such commissioners by means of proportional repre-

[3] Paragraph (b) gives general bonding power, subject to general limitation by general law, and paragraph (g) gives additional bonding power for public utilities, etc. Paragraph (i) is an addition agreed to by the Committee on Revision of the Model City Charter.

sentation, then the nine chosen in the manner required by such general law) shall constitute the charter commission and shall proceed to frame a charter. The legislative authority of the city shall, if so requested by the charter commission, appropriate money to provide for the reasonable expenses of the commission and for the printing of any completed charter and any separate and alternative provisions thereof and for their distribution to the electors as required by section 4 of this article.

Submission of City Charter to Electors

Any charter framed as provided in section 3 of this article shall be submitted to the qualified electors of the city at an election to be held at a time to be determined by the charter commission, but at least thirty days subsequent to the completion of the charter and not more than one year after the election of the charter commission. Any part of such a charter, or any provision alternative to a part thereof, may be submitted to be voted upon separately. Any charter so proposed which is approved by a majority of the electors voting thereon, with the addition of such parts and as modified by such alternative provisions as may have been separately submitted and approved by a majority of those voting on any such parts or provisions shall become the organic law of the city at the time fixed in such charter, and shall supersede any existing charter and all laws affecting the organization and government of the city which are in conflict therewith. The commission shall make provision for the distribution, not less than fifteen days before any such election, of copies of the proposed charter, and of any separate parts and alternative provisions thereof, to the qualified electors of the city. Within thirty days after its approval, the election authorities shall certify a copy of the charter to the secretary of state, who shall file it as a public record in his office and publish it as an appendix to the session laws enacted by the legislature.

Charter Amendments

Amendments to any such charter may be framed and submitted by a charter commission in the same manner as is provided in sections 3 and 4 for framing and adopting a charter. Amendments may also be proposed by a majority vote of the legislative authority of the city, or by petition of ten per centum of the qualified electors; and any such amendment, after due public hearing before such legislative authority, shall be submitted to the qualified electors of the city at a regular or special election as in the case of the submission of the question of choosing a charter commission. Such proposed amendments shall be published in the manner provided by law. Any such amendment approved by a majority of the electors voting thereon shall become a part of the charter of the city at the time fixed in

the amendment and shall be certified to and filed and published by the secretary of state as in the case of a charter.

C. Home Rule Provisions of Various State Constitutions

1. *Selected Provisions*

COLORADO

(This is the most extreme home rule provision. It attempts to prevent even general legislation concerning local affairs. It is also self-executing and lists specific powers granted.)

Art. XX, Sec. 6. Home rule for cities and towns. * * The people of each city and town of this state, having a population of two thousand inhabitants * * * are hereby vested with, and they shall always have power to make, amend, add to or replace the charter of said city or town, which shall be its organic law and extend to all its local and municipal matters.

Such charter and the ordinances made pursuant thereto in such matters shall supersede within the territorial limits and other jurisdiction of said city or town any law of the state in conflict therewith.

Proposals for charter conventions shall be submitted by the * * * body in which the legislative powers of the city or town shall then be vested, at special elections, or at general, state or municipal election, upon petition filed by qualified electors, all in reasonable conformity with section 5 of this article, and all proceedings thereon or thereafter shall be in reasonable conformity with sections 4 and 5 of this article.

From and after the certifying to and filing with the secretary of state of a charter framed and approved in reasonable conformity with the provisions of this article, such city or town, and the citizens thereof, shall have the powers set out in sections 1, 4 and 5 of this article, and all other powers necessary, requisite or proper for the government and administration of its local and municipal matters, including power to legislate upon, provide, regulate, conduct and control:

a. The creation and terms of municipal officers, agencies and employments; the definition, regulation and alteration of the powers, duties, qualifications and terms or tenure of all municipal officers, agents and employes;

b. The creation of police courts; the definition and regulation of the jurisdiction, powers and duties thereof, and the election or appointment of police magistrates therefor;

c. The creation of municipal courts; the definition and reg-

ulation of the jurisdiction, powers and duties thereof, and the election or appointment of the officers thereof;

d. All matters pertaining to municipal elections in such city or town, and to electoral votes therein on measures submitted under the charter or ordinances thereof, including the calling or notice and the date of such election or vote, the registration of voters, nominations, nomination and election systems, judges and clerks of election, the form of ballots, balloting, challenging, canvassing, certifying the result, securing the purity of elections, guarding against abuses of the elective franchise, and tending to make such elections or electoral votes non-partisan in character;

e. The issuance, refunding and liquidation of all kinds of municipal obligations, including bonds and other obligations of park, water and local improvement districts;

f. The consolidation and management of park or water districts in such cities or towns or within the jurisdiction thereof; but no such consolidation shall be effective until approved by the vote of a majority, in each district to be consolidated, of the qualified electors voting therein upon the question;

g. The assessment of property in such city or town for municipal taxation and the levy and collection of taxes thereon for municipal purposes and special assessments for local improvements; such assessments, levy and collection of taxes and special assessments to be made by municipal officials or by the county or state officials as may be provided by the charter;

h. The imposition, enforcement and collection of fines and penalties for the violation of any of the provisions of the charter, or of any ordinance adopted in pursuance of the charter.

It is the intention of this article to grant and confirm to the people of all municipalities coming within its provisions the full right of self-government in both local and municipal matters and the enumeration herein of certain powers shall not be construed to deny such cities and towns, and to the people thereof, any right or power essential or proper to the full exercise of such right.

The statutes of the state of Colorado, so far as applicable, shall continue to apply to such cities and towns, except in so far as superseded by the charters of such cities and towns or by ordinance passed pursuant to such charters.

* * *

This article shall be in all respects self-executing.

NEW YORK

(The New York provision is an example of home rule regulated by general laws. It also lists certain powers specifically granted to localities.)

Art. XII. Power of cities to enact local laws relating to property, affairs or government. * * *

Sec. 12. Every city shall have power to adopt and amend local laws not inconsistent with the constitution and laws of the state relating to its property, affairs or government. Every city shall also have the power to adopt and amend local laws not inconsistent with this constitution and laws of the state, and whether or not such local laws relate to its property, affairs or government, in respect to the following subjects: the powers, duties, qualifications, number, mode of selection and removal, terms of office and compensation of all its officers and employees except of members of the governing elective body of the county in which such city is wholly contained, the membership and constitution of its local legislative body, the transaction of its business, the incurring of its obligations, the presentation, ascertainment and discharge of claims against it, the acquisition, care, management and use of its streets and property, the ownership and operation of its transit facilities, the collection and administration of local taxes authorized by the legislature, the wages or salaries, the hours of work or labor, and the protection, welfare and safety of persons employed by any contractor or subcontractor performing work, labor or services for it, the government and regulation of the conduct of its inhabitants and the protection of their property, safety and health.

Every city may repeal, supersede or modify any law which was enacted upon and which required, pursuant to the constitution, a message from the governor declaring that an emergency existed and the concurrent action of two-thirds of the members of each house of the legislature, insofar as such law relates to the property, affairs or government of such city, except that no city may, unless hereafter authorized by the legislature, (a) reduce any salary or compensation or change any working conditions or hours of employment if such salary, compensation, working conditions or hours of employment shall have been heretofore approved upon referendum pursuant to law, except upon approval of such city voting thereon, or (b) repeal or supersede any law enacted by the legislature relating to any pension or retirement system or to the making and review of assessments or to the judicial review of dismissals from the civil service.

The provisions of this article shall not be deemed to restrict or diminish the existing powers of any city.

TEXAS

(The Texas provision is an example of home rule under legislative regulation.)

Art. XI, Sec. 5. Cities having more than five thousand (5,000) inhabitants may by a majority vote of the qualified voters of said city, at an election held for that purpose, adopt or amend their charters, subject to such limitations as may be prescribed by the legislature, and providing that no charter or any ordinance passed under said charter shall contain any provision inconsistent with the constitution of the state, or of the general laws enacted by the legislature of this state; * * * and provided further that no city charter shall be altered, amended or repealed oftener than every two years.

(The parts not quoted provide for tax limitation and regulation of debt.)

OREGON

(The Oregon provision is an example of home rule under legislative regulation, where the legislature acts under a "general law" provision.)

Art. XI, Sec. 9. Corporations Formed Under General Law, Not Special. * * * Municipal Charters Enacted Only by People. Corporations may be formed under general laws, but shall not be created by the legislative assembly by special laws. The legislative assembly shall not enact, amend or repeal any charter or act of incorporation for any municipality, city or town. The legal voters of every city and town are hereby granted power to enact and amend their municipal charter, subject to the constitution and criminal laws of the state of Oregon, and the exclusive power to license, regulate, control, or to suppress or prohibit, the sale of intoxicating liquors therein is vested in such municipality; but such municipality shall within its limits be subject to the provisions of the local option law of the state of Oregon.

2. *List of Constitutional Provisions*

Municipal Home Rule Provisions In State Constitutions

Arizona: Art. XIII, secs. 2, 3, 4, 5, 6.
California: Art. XI, sec. 8.
Colorado: Art. XX, sec. 6.
Georgia: Art. XV, sec. 1, par. 1.
Maryland: Art. XI-A, secs. 1, 2, 3, 4, 5, 6.
Michigan: Art. VIII, secs. 20, 21, 22, 23, 24, 25.
Minnesota: Art. IV, sec. 36.

Missouri: Art. VI, secs. 19, 20.
Nebraska: Art. XI, secs. 2, 3, 4, 5.
New York: Art. XII, sec. 12.
Ohio: Art. XVIII, secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14.
Oklahoma: Art. XVIII, secs. 3, 4, 6, 7.
Oregon: Art. XI, sec. 2.
Pennsylvania: Art. XV, sec. 1.
Texas: Art. XI, sec. 5.
Utah: Art. XI, sec. 5.
Washington: Art. XI, secs. 10, 11, 12.
West Virginia: Art. VI, sec. 39.
Wisconsin: Art. XI, sec. 3.

D. County Home Rule Provisions in State Constitutions

1. *Selected Passages*

New York

(The New York constitution authorizes optional forms of County Government.)

Art. IX, 1b. The legislature shall provide by law for the organization and government of counties. No law which shall be special or local in its terms or in its effect, or which shall relate specially to one county only, shall be enacted by the legislature unless (a) upon the request of the board of supervisors or other elective governing body of each county to be affected, or, in any county having an alternative form of government providing for an elective county executive officer, upon the request of the board of supervisors or other elective governing body with the concurrence of such executive officer of each county to be affected; or (b) upon a certificate of necessity by the governor to the legislature reciting the facts of such necessity existing in the county to be affected and the concurrence of two-thirds of the members elected to each house of the legislature. *(As amended, 1938)*

Art. IX, 2a. The legislature shall provide by law alternative forms of government for counties except counties wholly included in a city and for the submission of one or more such forms of government to the electors residing in such counties. No such form of government shall become operative in any such county unless and until adopted at a general election held in such county by receiving a majority of the total votes cast thereon in the county, and if any such form of government provides for the transfer of any function of local government to or from the cities, the towns or the villages of the county, or any class thereof, it shall not take effect with

respect to such transfer unless the transfer or the form of government containing it, shall also receive a majority of all the votes cast thereon in such cities, towns, villages, or class thereof, as the case may be. (*As amended, 1938*)

OHIO

(*The Ohio constitution authorizes the voters of a county to frame their own charter.*)

Art. X, 3. Any county may frame and adopt or amend a charter as provided in this Article. Every such charter shall provide the form of government of the county and shall determine which of its officers shall be elected and the manner of their election. It shall provide for the exercise of all powers vested in, and the performance of all duties imposed upon counties and county officers by law. Any such charter may provide for the concurrent or exclusive exercise by the county, in all or in part of its area, of all or of any designated powers vested by the Constitution or laws of Ohio in municipalities; it may provide for the organization of the county as a municipal corporation; and in any such case it may provide for the succession by the county to the rights, properties, and obligations of municipalities and townships therein incident to the municipal power so vested in the county, and for the division of the county into districts for purposes of administration or of taxation or of both. No charter or amendment vesting any municipal powers in the county shall become effective unless it shall have been approved by a majority of those voting thereon (1) in the county, (2) in the largest municipality, (3) in the county outside of such municipality, and (4) in each of a majority of the combined total of municipalities and townships in the county (not including within any township any part of its area lying within a municipality). * * * (*As amended, 1933*)

2. *List of Constitutional Provisions*

County Home Rule Provisions In
State Constitutions

California: Art. XI, sec. 7½
Louisiana: Art. XIV, sec. 3.
Montana: Art. XVI, sec. 7.
New York: Art. IX, sec. 1.
Ohio: Art. X, secs. 1, 3.
Texas: Art. IX, sec. 3.
Virginia: Art. VII, sec. 110.

E. Proposed Home Rule Provisions, New Jersey Constitution

1. *Home Rule Provisions presented to 1944 Legislature by New Jersey Committee for Constitutional Revision.*

Provision shall be made by general or optional law for the incorporation and powers of counties, cities, and other political subdivisions of the state; and for the alteration of boundaries, the consolidation, the cooperation and the dissolution and the interchange of powers of such corporations.

Provision shall also be made by general law for optional plans of organization and government for counties and other local units, excepting school districts, which do not adopt a locally framed charter, but no such law shall become operative in any unit until approved by a majority of the qualified voters thereof voting thereon.

Any county, city, or other political subdivision, excepting a school district, may frame and by a majority of the qualified voters voting thereon may adopt a charter for the organization and powers of its own government, subject only to such specific limitations or requirements as may be imposed by this constitution or by general law.

By two-thirds vote of the governing body or on submission of petition of 10% of the qualified voters of any such unit, the question "Shall a commission be chosen to frame a charter for.....?" shall forthwith be placed by the local officer responsible for the contents of election ballots on the ballot at the next general election to occur not less than 60 days thereafter. One or more procedures for the selection of a charter commission and the framing and submission of its proposals to the people may be prescribed by general act of the legislature. If optional procedures are provided, the particular one to be followed shall be designated in the resolution of the governing body or the petition calling for the preliminary referendum. If the legislature fails to prescribe any procedure, the local governing body shall determine the procedure to be followed.

Amendments to a charter may be made in any manner provided for the framing and adoption of a charter, or by any method provided by said charter.

Special Legislation

(a) The legislature shall pass no private, local or special act in any case where a general act can be made applicable, and whether a general act can be made applicable shall be a matter for judicial determination. No local act shall take effect until approved by a majority of the qualified voters voting thereon in the district to be affected, except acts repealing local or special acts in effect before the adoption of this constitution.

(b) In determining that an act applying to a particular class or category is general, not special or local, the courts shall find as a matter of fact that the criteria by which the units within the class or category are distinguished from other units represent differences that are genuine, positive, and substantial and have a material bearing on the applicability of the act. This test shall be applied strictly with a view to preventing the adoption of legislation that is special or local in intent or in fact, and the rule of construction shall be applied against rather than in favor of any classification.

2. *Home Rule Provisions prepared by George H. Hallett, Jr., Contributing Editor, National Municipal Review, June 4, 1947.*

CITY HOME RULE PROPOSAL

The voters of any city by a petition and vote of the people may adopt or amend a city charter or create a charter commission to present a new charter or charter amendments to the people for adoption. Any such petition shall be signed by qualified voters of the city equal in number to at least ten per centum of the number who voted in the city for the office of governor at the last gubernatorial election, except that the number of signers need never exceed ten thousand. Any such petition shall be filed with the city clerk at least 60 days before the general election held in the year in which it is filed.

If the petition proposes a new city charter or an amendment to the existing city charter, such charter or amendment shall be submitted to the voters at the next general election after its filing and if approved shall take effect on the first day of January thereafter unless the charter or amendment specifies a different date.

If the petition proposes to create a charter commission to present a new charter or charter amendments to the people for adoption, the petition shall either name the members or specify the method of their election or appointment. The proposal shall be submitted to the voters at the next general election. If it is approved by the voters, the charter commission specified in the petition shall propose a new charter or charter amendments for submission to the voters not later than the second general election after the commission is authorized and at least 60 days after the charter or amendments are made public. The commission may submit a new charter in two or more parts so arranged that corresponding parts of the existing charter shall remain in effect if one or more of such parts are not adopted, and may also submit alternative charters or alternative provisions to supersede designated portions of a proposed charter or amendment if adopted. If any proposal submitted by the commission is approved by the voters, it shall take effect as prescribed by the commission at the time of its submission.

If there be a conflict between the provisions of two or more charter proposals adopted by the voters at the same election, the proposal receiving the largest number of affirmative votes shall prevail to the extent of such conflict.

The legislature may adopt regulations for the manner in which the requirements of this section shall be given effect.

AMENDMENT AND REVISION OF STATE CONSTITUTIONS

by

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No constitution can serve its function as basic law without being adaptable and adapted to the changes of modern life. Needed formal changes in state constitutions can be effected through either an amendment or a revision. Amendment is usually employed to obtain specific changes. Revision is reserved for overhauling the entire constitution.

I—AMENDMENTS

A. Proposing An Amendment

1. Legislative proposal of amendments is provided for in 47 state constitutions. In 41 the amendment may originate in either house. In 20 states a majority of each house is sufficient to pass the proposed amendment: seven require a three-fifths vote; 20 specify a two-thirds vote.

Thirteen states require action by a succeeding session of the legislature to complete the proposing of an amendment; in 34 states action by one session suffices.

2. Popular initiative may originate amendments in 13 states, ten of them being west of the Mississippi, and Massachusetts being the only seaboard state. Requisite signatures for a popularly initiated amendment usually equal the votes cast for a specified state office at the preceding election, and range from eight to 15 per cent of such votes. Massachusetts requires 25,000 signatures, and North Dakota, 20,000.

3. In a few states, notably New York, amendments may emanate from a convention assembled to consider the whole constitution.

B. Publication of Amendments

1. Legislature-proposed

Forty-two states require publication of amendments proposed by the legislature. The period of publication, among the few states so specifying, ranges from four weeks to six months.

The area of publication is often the county; the congressional district has been used; Pennsylvania directs that publication

be had in "two newspapers" in the state, and Vermont requires publication in the "principal newspapers of the state."

California, Nevada, Iowa, Tennessee, Wisconsin, Michigan, Virginia, New Jersey and New York leave the manner of publication to the legislature.

2. The four states expressing themselves in the matter leave publication of convention-proposed amendments to the determination of the convention.

3. Popular initiative amendments are to be published in a variety of detail ranging from specific instructions to general legislative determination.

In four states publication includes distribution of arguments for and against the amendment, along with the amendment itself. Oklahoma and California make these arguments official arguments; they are printed at state expense.

Failure to comply with publication requirements exposes an amendment to invalidation after its approval.

C. Ratification of Amendments

1. Time of Election at which Amendments are Submitted

(a) Amendments Offered by Legislature

More than half the states specify that amendments be submitted "at the next general election." Nine leave the time to legislative fixation without restriction. New York is an important example. Three specify no time at all for submission. A few, including Mississippi and New Jersey, specify a period subsequent to legislative proposal of the amendment.

(b) Amendments Proposed by Constitutional Convention

Seventeen states make no requirement of popular ratification at all. Of those requiring popular ratification, ten specify no time for submission. Five leave to convention determination the time of ratification submission, Missouri specifying not less than 60 days and not more than six months after convention adjournment. New York requires a minimum of six weeks between convention adjournment and submission election on the amendments proposed by the convention.

(c) Popular Initiative Amendments

Ten of the 13 states using this instrument direct submission of initiated amendments at the next general election after petitions are filed, several prescribing a minimum time-lapse between the filing and the popular voting on the initiated amendment. Three direct submission "at election" to be held a specified minimum time after petitions are filed.

2. At a General or Special Election?

About half the states require amendments to be submitted at a general election. A few specify a special election. Several defer to legislative discretion, and a few are silent on the matter.

3. Amendments Submitted Separately?

(a) For legislative amendments nearly every state provides that if more than one amendment is submitted, the voters must be allowed to vote on the amendments separately. New York, North Carolina, Virginia and Wisconsin leave to legislative fixation the manner of submitting amendments. Arkansas, Illinois, Kansas, Kentucky and Montana prescribe a maximum number of amendments to be submitted at one time.

(b) The states using convention amendment leave to convention discretion the separateness or collectivity of amendments on submission. In 1938 the New York convention submitted eight separate amendments and grouped a large number of others into a ninth and catch-all "general amendment."

(c) Detailed and specific instructions to the secretary of state as to the form of submitting initiated amendments appear in the state constitutions authorizing this instrument of constitutional amendment.

4. Popular Vote Necessary to Ratify an Amendment

(a) Forty-six states require popular ratification of legislative-proposed amendments. Of these, 34 require a majority of voters voting on the amendment as necessary to adopting it. Nine states require a majority of those voting in the election in which the amendment is submitted. Connecticut exacts a majority of qualified voters present at town meetings. Rhode Island raises the figure to three-fifths of those present and voting on amendments in town meetings. Idaho demands simply a majority of the electors.

(b) Wherever authorized, popularly initiated amendments must go to referendum. In 12 states a majority of those voting on the amendment suffices. Massachusetts and Nebraska add further that those voting on the amendment must equal 30 and 35 per cent, respectively, of those voting at the election. Oklahoma alone requires that the popularly initiated amendment must receive a majority of those voting at the election.

D. Amendment of the New Jersey Constitution

Article IX of the New Jersey Constitution, copied word for word from the 1838 constitution of Pennsylvania, provides amendment as the only means for formal changing of the New Jersey basic instrument.

Either house may originate an amendment, a majority of

members elected to each house being sufficient to pass the proposed amendment. Publication for at least three months prior to choosing a succeeding Legislature, in at least one paper in each county which has a newspaper, must be had before the succeeding Legislature thus chosen proceeds to consider the proposed amendment a second time. If a similar majority of the succeeding Legislature passes the proposed amendment, it is referred to the voters in a special election. At least four months must lapse between adjournment of the second Legislature and the referendum special election.

A favorable majority of those voting on the amendment at the special election adopts the amendment.

Any number of amendments can be submitted at the special election, and each amendment must be submitted separately. But no amendment can be submitted to referendum oftener than once in five years.

In the period 1844-1934, 92 amendment proposals have passed one or both houses of the New Jersey Legislature. Fifteen amendments (including the horse racing amendment in 1939) have gone to the voters. Though as many as five amendments have been submitted on one occasion, the Constitution has been amended only four times. Obviously, the New Jersey amending process has proved extremely difficult in practice.

II—Revision of State Constitutions

Increasingly often it is recognized that piecemeal amendments to the constitution are inadequate and that only overhauling through revision will suffice.

Revision may be undertaken through a revision commission as was attempted in New Jersey in 1942 and successfully employed in Georgia in 1944. Such a commission may be created by the legislature or by the governor and legislature. The legislature may substantially transform itself into a revision commission, as was done in New Jersey in 1944.

Nearly universal, however, is the practice of revising the constitution by a convention provided especially for that purpose. Some 200 conventions have been held.

A. Authorization and Assembling of the Convention

1. Twelve state constitutions, including that of New Jersey, are silent on the constitutional convention. However, it is well-established that the silence of the constitution means the legislature may provide for calling a convention. About 30 conventions have been thus assembled.

In 1883 the Supreme Court of Rhode Island interpreted the

silence of the constitution to mean that no convention could be had. *(14 R. I. 649.)* In 1935 the earlier position of negation was reversed by the same court. Thus constitutional silence in Rhode Island means that a convention *can* be called.

2. Three-fourths of the states provide in their constitutions for a constitutional convention. Of these 36, at least 26 permit the legislature to initiate the call for a convention, but require popular vote approval of the legislative proposal to call a convention. A few allow the call by the legislature without popular referendum. Twenty states require a two-thirds vote in each house to pass the call for a convention; ten accept a majority; three-fifths suffices in Nebraska.

3. When May a Convention be Called?

(a) Occasionally. Most constitutions leave the legislature free to decide when a convention should be called.

(b) Periodically. Seven constitutions provide that the question of calling a convention shall go on the ballot ever so often, ranging from every seven years, as in New Hampshire, to every 20 years, New York appearing in the 20-year group.

(c) Popular approval of the proposal to call a convention is expressed in various terms: a majority of those voting on the question, a majority of those voting at a general election or at the particular election, or even "a majority of the electors qualified to vote for members of the state legislature."

4. Implementing Details for Assembling the Convention

The constitutions of New York, Michigan, and Missouri contain sufficient minutiae on the convention to eliminate "all need for supplementary legislation." Most constitutions leave detail to legislative specification or to convention determination.

5. Selection of Delegates

This is done usually by popular election in districts on party tickets or non-partisan tickets. Non-partisan often proves strictly partisan. At-large delegates are sometimes provided for, Missouri constituting a recent example.

6. Constitutions of four states, including New York, designate the state capitol as meeting place for the convention.

B. Adoption of Convention Proposals

The American practice until about 1840 was to put constitutions into effect without popular approval. That procedure was followed by several states in the period 1860-1900. A few similar instances have occurred in the 20th Century, sharp examples appearing in Louisiana and Virginia. Despite specific direction by the Virginia legislative authorizing act, that the new constitution be submitted to popular vote, the convention on its own authority declared the constitution of 1902 in force and effect.

Beginning with New Hampshire in 1792, it has become practically universal to obtain popular approval of a new constitution. Nineteen constitutions require that conventions submit the new instrument to popular vote.

The convention may submit its work to the voters in various forms. The entire product may go to referendum as a unit; Georgia and Missouri used this plan recently. Or the offering may be made as separate amendments, each to be voted on independently of the others. New York followed this procedure a few years ago. Relative to the above plans, the convention can present its work in alternative form: as a unit, *and* any parts of the constitution may be submitted separately. Should voters accept the entire constitution, no determinative result would attach to the vote on separate amendments. But if the entire instrument is rejected by the voters, they may at the same time approve any or all of the separate proposals. This alternative plan will be utilized wherever the convention is quite uncertain about the ratification prospects.

The popular referendum may use either the special or general election. While the special election seeks to isolate the constitutional change as an issue, it seldom results that the number of voters who turn out is comparable to those who express themselves on a constitutional proposal submitted in a general election.

Most of the 19 specifying constitutions exact "a majority vote on the proposal"; a few merely state that the convention proposals shall be "ratified by the people."

C. Constitutional Convention in New Jersey

Within 30 years after the adoption of the Constitution in 1844, its failure to provide for future conventions was recognized as a serious omission. Experience with the amending process has proved it practically unusable. Generally, the view is that governmental life at the constitutional level has become static in New Jersey. So great is the need for extensive change that piecemeal amendment is recognized as inadequate.

Such a situation has not burst upon us suddenly. Since 1873 nearly every Governor has urged a constitutional convention to revise the entire instrument. The four most recent Governors have supported such a move. On February 17, 1947, the Governor approved a lengthy legislative measure authorizing a convention. Chief features of the measure warrant attention:

1. Proposal to the voters that a convention be held. Voting on this proposal is to be by paper ballot at a special election held the same day as regular primary, June 3. A simple majority of those voting on the question insures that a convention will be held.
2. On the same ballot voters are asked their preference for

county delegates as among those delegate-candidates whose names appear on the ballot. Provision is made in the statute for petition placement on the June 3 ballot of these delegate-candidates. Any number of delegate-candidates is permitted on the ballot, but in each county the voters will elect only as many delegates as that county has members in the Legislature. In 16 of the 21 counties bipartisan distribution of delegates has been agreed upon.

3. The creative act declares reserved from convention action the current basis of representation in the Legislature.

4. Implementing detail is provided in convention matters. The place of meeting is designated as New Brunswick, the opening day, June 12, and the hour, 11 A.M. The Governor will open the convention and "preside at its first session and until permanent officers are selected." To be adopted, proposals must receive 41 votes (of 81 total members). Convention labors may end earlier, but they must cease not later than September 12. Membership compensation is precluded, but maximum expenses up to $10 per day are provided. Total convention expenses up to $350,000 are to be paid from treasury funds, and $125,000 appropriated for costs of the special constitutional election of June 3.

5. Publication of convention proposals is dealt with in a non-conclusive manner: direction is given the convention on two details, but wide discretion is left to it concerning notice, publication and distribution of the "address to the people," and the text of the convention proposals.

D. Current Questions in Constitution Changing

1. What important, recently developed matters must be dealt with in the modern constitution?

2. By what formal processes shall constitutions be changed?

3. Shall the convention be made a periodic *and* an occasional institution?

4. Does our "Dynamic Age" require easier constitutional adjustability?

BIBLIOGRAPHY

Council of State Governments, Book of the States, 1945-46.

DODD, W. F. Revision and Amendment of State Constitutions, 1945.

ERDMAN, C. R., Jr. The New Jersey Constitution—A Barrier to Governmental Efficiency and Economy, 1934.

GRAVES, W. B. American State Government, 3rd ed., 1946.

Louisiana State Univ. Constitutional Revisional Projet, Constitutional Problems, Monograph 3, "The Amending Process," 1947.

MACDONALD, A. F. American State Government and Administration, 3rd ed., 1945.

New Jersey. Proceedings before the New Jersey Joint Legislative Committee. . . . to Ascertain the Sentiment of the People as to Change in the New Jersey Constitution, 1942.

New Jersey Session Laws, 1947, Chapter 8 (Senate Bill No. 100).

OGG, F. A. and RAY, P. O. Introduction to American Government, 1945.

STEINBICKER, P. G. and FAUST, M. L. Manual on the Amending Procedure and Initiative and Referendum for the Missouri Constitutional Convention of 1943, 1943.

Tennessee, Univ. of, Bureau of Public Information. The Amending Process in State Constitutions, 1946.

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