

CONSTITUTIONAL CONVENTION OF NEW JERSEY OF 1966

SIZE OF THE LARGER HOUSE

New Jersey State Library

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Most delegates seem to feel that the larger house (or, in a unicameral legislature, the only house) of the New Jersey legislature should be large enough so that each county can be guaranteed at least one legislator. They also feel that it should not be larger than necessary to achieve this goal.

It is proposed here that the size of the larger house be set at 106 until the census of 1970 and that the State Constitution be left sufficiently flexible to permit modest changes in the size of the house after the 1970 and subsequent censuses.

On the basis of the 1960 population figures, the smallest relative deviations in the population per legislator are achieved at sizes of 105, 106, 111, 112, and 113. For all other sizes from 21 to 197 inclusive, the largest deviation is larger than it is for any of these 5 sizes, and the range between the largest positive and largest negative deviation is larger than it is for any of these 5 sizes.

For the 5 best sizes, the largest deviation varies from 17.0% to 17.8%, and the range of deviations varies from 33.4% to 34.0%. Therefore the decision among the 5 best sizes can reasonably be made on factors other than deviations.

A size of 105 or 106 is preferable to a size of 111, 112, or 113 just because it is smaller. It is also preferable for another reason: In increasing the size from 106 to 112 or 113, we would be assigning 4 or 5 extra legislators to counties which are growing less rapidly than the rest of the State, according to the 1965 population estimates of the Department of Conservation and Economic Development. Some of these counties will lose, after the 1970 census, not only the extra legislators they would gain now by an increase from 106 to 112, but also one or more additional legislators beyond that. Several of these legislators could not even be saved by a small increase in the size of the house after the 1970 census.

Between 105 and 106, 106 seems preferable because it allots an extra legislator to the third most rapidly growing county in the State. Projecting current growth trends to 1970 will give this county 6 legislators after 1970 in a house of around 106, and it therefore should be allocated a fifth legislator now.

Furthermore, allocation of a fifth legislator now to this county (Morris) will in some measure compensate for a present inequity. The major reason a larger Assembly is being considered now is that the present apportionment overrepresents the 5 smallest counties. It is Morris County which has suffered most from this overrepresentation, since Morris would have been the first county to receive extra representation if this overrepresentation had been corrected.

Some delegates have argued that we can get by with representing each county in a house as small as 94. They maintain that the courts have recognized that in order to achieve representation of individual

counties, deviations somewhat larger than otherwise should be permitted. This argument has merit.

However, the size should not be set even temporarily at 94 unless the Constitution is provided with some sort of escape hatch to the effect that the size can be increased if a court finds that it produces deviations larger than permitted. The Constitution is sufficiently difficult to amend that it is foolhardy to insert possibly unconstitutional provisions without an escape hatch.

It would be difficult to argue that there is no danger that a size of 94 could be found invalid. The deviations are not only large (nearly 25% in one case and with a range of over 40%) but easily correctible in the sense that a small increase to 105 or 106 brings the largest deviation down below 18% and the range down below 34%. Even an increase of only one legislator brings the largest deviation down below 24% and the range below 36%.

In addition to producing much smaller deviations than 94, a size of 105 or 106 has the significant advantage of producing deviations which are not easily correctible: The house would have to be increased to well over 200 before the largest deviation could be substantially reduced. Obviously there would be no necessity or utility for an escape hatch if the size were set at 105 or 106.

If there is merit, as argued here, in the idea of setting the size of the house so that the deviations are of reasonable size and not easily correctible, then it is also worth while to consider permitting the same idea to be applied when the house is reapportioned after future censuses. If the size is set at any fixed number, the apportionment after some future census may produce deviations which a court will strike down.

On the other hand, there are strong objections to large changes in the size of the house after each census. Different rates of growth throughout the State will produce substantial shifts in the apportionment of legislators among the counties, without the compounding of the problem which large size changes would produce.

A reasonable compromise may be a requirement that the size of the house should not change by more than 3 legislators from one census to the next and that, subject to this limitation, that size should be chosen which will minimize the largest deviation. In addition, it may be reasonable to impose a ceiling of about 120 and a floor of about 100 to prevent major variations with the passage of time. With an initial size of 106, the ceiling could not be a limiting factor before the year 2010.

These limitations would on the one hand assure the courts that New Jersey is making a good-faith effort to keep deviations down and on the other hand keep the size of the house under reasonable control.