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NEW JERSEY CONSTITUTIONAL CONVENTION

LEGISLATORS -- QUALIFICATIONS, TERM OF OFFICE  
SALARIES, METHOD OF FILLING VACANCIES

by

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LEGISLATORS-QUALIFICATIONS, TERM OF OFFICE,

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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 1942 Report of the Commission on Revision of the New Jersey Constitution, Article III, Section II, Paragraph 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, Article III, Section II, Paragraph 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 (Sections 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 Article III, Section II, Paragraph 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, Article III, Section II, Paragraph 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 re-election 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, Article III, Section III, Paragraph 1, proposed that the salary of members of the Legislature be raised to \$1500 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, Article III, Section III, Paragraph 1, provided that the salary of Senators and Assemblymen be increased to \$2000 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", Section 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 twenty cents per mile.

Pennsylvania pays its legislators \$3000 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 \$2500 per year; Ohio, \$2000 per year; Missouri, \$1500; Maryland, Mississippi and South Carolina, \$1000 per year; and California and Wisconsin grant \$1200 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, \$1010; Montana, \$1200, Nebraska, \$875; Nevada, \$800; and Texas, \$1200 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 \$2500 per year, the Report of the 1938 New York Constitutional Convention Committee (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 (Section 306). The authorities seem agreed that either method is satisfactory so long as safe-

guards 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 Article IV, Section II, Paragraph 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 Article IV, Section IV, Paragraph 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 1942 Commission on Revision of the New Jersey Constitution, proposed in Article III, Section II, Paragraph 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 Article III, Section II, Paragraph 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.

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