

THE GOVERNOR'S COMMITTEE ON PREPARATORY RESEARCH
for the
NEW JERSEY CONSTITUTIONAL CONVENTION

THE APPOINTIVE POWER
TENURE, REMOVAL AND CONFIRMATION OF OFFICERS
(EXCEPTING JUDICIAL OFFICERS)

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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 Appointive Power as Provided by 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.

Bebout, in his summarization of the claims and counter-claims 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 Attorney-Generals, 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, Jersey men 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 pre-destined to be diminished before the delegates to the Convention of 1844 assembled.

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 "retrograde" 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 re-commit was lost by a vote of eleven to twenty-three 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 re-commit and said that to give the appointing power to the Governor and Senate 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 those 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 twenty 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 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 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 those delegates, including himself, 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

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 13th, 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.

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 twenty-two to twenty-eight.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 twenty-one to twenty-one, with the motion only finally decided 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 twenty-two to sixteen.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 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;
- (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 & 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 & 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 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 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

Schedule of Appointive Officers, Conditions of
Appointment and Tenure.
(Constitution of 1844, As Amended)

No.	Title of Officers Title	Reference	How Appointed	Confirmed By	Tenure	Other Conditions
	<u>Provided by Constitution, Article VII, Section I</u>					
	Major-Generals	Par. 5 (as amended 9/7/75)	By Governor	Senate	For life	
	Adjutant-Generals	" "	" "	" "	" "	
	Quartermaster-Generals	" "	" "	" "	" "	
	Subalterns	Par. 7	" "	" "	" "	Conditional upon failure of militia to elect
	Captains	" "	" "	" "	" "	" " " " " " " "
	Field Officers	" "	" "	" "	" "	" " " " " " " "
	Offices Created by Statute	Par. 9 (as amended 9/7/75)	" "	" "	" "	Provisional upon creation
	<u>Article VII, Section II</u>					
	Supreme Court Justices	Par. 1 (as amended 9/7/75)	By Governor	Senate	7 Yrs.	
	Chancellors	" "	" "	" "	7 "	
	Judges, Ct. of Errors & Appeals	" "	" "	" "	6 "	
	" Inferior Ct. of Common Pleas	" "	" "	" "	5 "	
	State Treasurer	Par. 2 (as amended 9/7/75)	Sen. & Assembly	" "	3 "	By joint action of
	State Comptroller	" "	" "	" "	3 "	" " " " " "
	Attorney-General	Par. 3 (as amended 9/7/75)	By Governor	Senate	5 "	
	Prosecutors of the Pleas	" "	" "	" "	5 "	
	Clerk of the Supreme Court	" "	" "	" "	5 "	
	Clerk, Court of Chancery	" "	" "	" "	5 "	
	Secretary of State	" "	" "	" "	5 "	
	Keeper, State Prison	" "	" "	" "	5 "	
	Others provided by Statute	Par. 8 (as amended 9/7/75)	" "	" "	" "	Provisional upon creation
	<u>By Statute</u>					
1	Secretary to the Governor	R.S. 52:15-3	By Governor	" "	3 Yrs.	
8	Members, State Bd. of Agriculture	Chap. 202, P.L. 1944	" "	Senate	4 "	No salary, appointment by recommendation
1	Commr., Alcoholic Beverage Control	R.S. 33:1-3	Sen. & Assembly	" "	7 "	
1	Commr., Athletic Commission	R.S. 5:2-2	By Governor	Senate	5 "	
3	Commrs., Atl. States Fisheries Commission	Chap. 169, P.L. 1941	(1) " "	" "	3 "	(2) ex officio officers
1	State Auditor	R.S. 52:24-1-10 & Chap. 159, P.L. 1938	Sen. & Assembly	" "	5 "	By joint action of
5	Commrs., Aviation Commission	R.S. 6:1-5, 1-7 Chap. 48, P.L. 1938	By Governor	Senate	5 "	No salary
1	Director, Aviation Commission	R.S. 6:1-5, 1-7 Chap. 48, P.L. 1938	" "	" "	5 "	On salary
1	Commr., Banking & Insurance	R.S. 17:1-1-11 & R.S. 34:15-90	" "	" "	3 "	
8	Commrs., Banking Advisory Commission	R.S. 17:1A-1 to 1A-7	" "	" "	5 "	No salary
5	Commrs., Civil Service Commission	Chap. 65, P.L. 1944	" "	" "	5 "	
1	President, Civil Service Commission	" " " "	" "	" "	3 "	
1	Commr., Comm. on Urban Colored Population	Chap. 192, P.L. 1941	" "	" "	5 "	Serves until successor is appointed
1	" " " " " " " "	" " " "	Pres. of Sen.	" "	4 "	No salary, expenses
1	" " " " " " " "	" " " "	Speaker of House	" "	3 "	" " " "
1	Commr., Conservation Department	Chap. 22, P.L. 1945	By Governor	Senate	3 "	Or until successor qualified
1	Council, Fish & Game Division	" " " "	" "	" "	5 "	No salary
2	" , Forestry, Parks, etc. Division	" " " "	" "	" "	5 "	" " " "
2	" , Navigation Division	" " " "	" "	" "	5 "	" " " "
2	" , Shell Fisheries Division	" " " "	" "	" "	5 "	" " " "
9	" , Water Policy & Supply	" " " "	" "	" "	5 "	" " " "
8	Commrs., Crippled Children's Commission	Chap. 150, P.L. 1938	" "	" "	5 "	Upon recommendations. No salary
2	" " " " " " " "	" " " "	" "	" "	1 "	1 from each House. No salary
8	Commrs., Delaware River Joint Commission	R.S. 32: Chaps. 3 to 6	Sen. & Assembly	" "	5 "	8 from Pennsylvania. No salary
5	Commrs., Delaware River Joint Toll Bridge Comm.	R.S. 32:9-1	By Governor	" "	3 "	No salary
1	Commr., Economic Development Dept.	Chap. 85, P.L. 1944 & Chap. 128, P.L. 1945	" "	Senate	4 "	
4	Directors, " " "	Chap. 85, P.L. 1944 & Chap. 128, P.L. 1945	" "	" "	5 "	
12	Council, " " "	Chap. 85, P.L. 1944 & Chap. 128, P.L. 1945	" "	" "	4 "	No salary
1	Commr., Education Department	R.S. 18:3-1	" "	" "	5 "	
12	Members, State Board of Education	Chap. 211, P.L. 1945	" "	" "	6 "	No salary

(Constitution of 1844, As Amended)

No.	Title of Officers Title	Reference	How Appointed	Confirmed By	Tenure	Other Conditions
5	Advisory Council, Div. of Library	Chap. 50, P.L. 1945	By Governor	Senate	5 Yrs.	No salary
5	" " " Museum	" " "	" "	"	5 "	No salary
7	" " Div. Against Discrimination	Chap. 169, P.L. 1945	" "	"	5 "	No salary
8	Trustees, Industrial Education Schools	R.S. 18:15-20	" "	"	4 "	No salary
3	Harbor Masters	R.S. 12:9-10	" "	Senate	2 to 3 Yrs.	No salary
12	Members, State Board of Health	R.S. 26:2, 2-3, 2-4	" "	"	4 Yrs.	No salary
1	Commr., Highway Department	R.S. 27:1-3-15	" "	"	6 "	No salary
5	Commrs., Comm. on Interstate Co-operation	R.S. 52:9B-4, 9B-6	" "	"	Governor's Pleasure	10 members both Houses. No salary
5	Commrs., Interstate Sanitation Comm.	R.S. 32:19-1	(2) " "	Senate	5 Yrs.	2 members from State at large. No salary
1	Commr., Labor Department	R.S. 34:1-17	" "	"	5 "	No salary
5	Members, Migrant Labor Board	Chap. 71, P.L. 1945	By Governor	"	5 "	No salary
7	Members, Mediation Board	Chap. 100, P.L. 1941 & Chap. 32, P.L. 1945	" "	"	3 "	Per diem
5	Members, Law Rev. & Bill Drafting Comm.	Chap. 105, P.L. 1944	(3) " "	"	6 "	2 by both Houses. No salary
3	Members, Milk Control Board	Chap. 274, P.L. 1941	Sen. & Assembly	"	5 "	Per diem
1	Commr., Motor Vehicle Dept.	Chap. 44, P.L. 1944	By Governor	Senate	4 "	No salary
5	Commrs., North Jersey Transit System	Chap. 117, P.L. 1941	(1) By Governor	"	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	" "	Senate	4 Yrs.	Hold-over until successor appointed
5	Commrs., Palisades Interstate Park Comm.	R.S. 32:14-1 to 30	" "	"	5 Yrs.	No salary. 5 members from New York
5	Commrs., Passaic Valley Sewerage Comm.	R.S. 58:14-1 & Chap. 151, P.L. 1942	" "	"	5 "	(2) by each House
5	Members, Comm. on State Admin. Reorganization	J.R. #1, P.L. 1944	(3) " "	"	"	"
1	Super., State Police Dept.	R.S. 53:1-2, Chap. 193, P.L. 1941	" "	Senate	5 Yrs. & 100 days	No salary
5	Trustees, Police & Firemen's Retirement System	Chap. 255, P.L. 1944	(2) " "	"	6 "	No salary. 6 appointed from New York
6	Commrs., Port of New York Authority	R.S. 32:1-3, 1-5, 2-2 to 2-4	" "	"	3 "	Balance, Senate & Assembly. No salary
12	Commrs., Post-War Economic Welfare	Chap. 94, P.L. 1944	(2) " "	"	6 "	Hold-over until successors appointed
3	Commrs., Public Utility Comm.	R.S. 48:2-1, 2-5	" "	Senate	6 "	"
4	Members, Racing Commission	Chap. 17, P.L. 1940	" "	"	6 "	No salary
5	Members, Rehabilitation Commission	R.S. 34:16	" "	"	5 "	"
7	Members, South Jersey Port Comm.	Chap. 167, P.L. 1942	Sen. & Assembly	"	7 "	"
2	Members, State Employees' Retirement System	R.S. 43:14-1-56	By Governor	"	No term	2 members appointed by both Houses. No salary
7	Members, Tax Policy Commission	Chap. 157, P.L. 1945	(5) " "	"	"	Or until successor appointed
1	Commr., Dept. of Taxation & Finance	Chap. 112, P.L. 1944	" "	Senate	3 Yrs.	"
1	Deputy Comm. (Budget & Taxation)	" " " "	" "	"	3 "	"
1	Director, (Div. of Purchases)	" " " "	" "	"	3 "	"
1	Director, (Div. of Local Government)	" " " "	" "	"	3 "	"
7	Members, (Div. of Tax Appeals)	" " " "	" "	"	5 "	No hold-over provision
1	Trustee, Teachers' Pension Fund	R.S. 18:13-24	" "	"	3 "	"
5	Members, Bd. of Tenement House Supervision	R.S. 55:9-1 to 2	" "	Senate	5 "	No salary
7	Commrs., Unemployment Compensation Comm.	Chap. 203, P.L. 1945	" "	"	7 "	Per diem
3	Commrs., Uniform Tax Laws	R.S. 1:8-1	" "	"	3 "	No salary. Commrs. must be Counselors-at-law
9	Members, Bd. of Control, Dept. of Institutions & Agencies	R.S. 30:1-3, 1-4	" "	"	8 "	No salary, expenses
5	Members, Bds. of Managers, State Institutions	R.S. 30:4-1	By Bd. of Con.	Governor	3 "	No salary. Each Bd. 5 to 7 members
4	Members, State Bd. of Architects	R.S. 45:1-2, 1-3, 3-1	By Governor	"	2 "	From lists supplied by Society. No salary
4	Members, Barber's Licensing Board	R.S. 45:4	(2) " "	"	4 "	2 by State Assoc. Salary \$10 per day
6	Members, Beauty Culture Control Board	R.S. 45:4A-2	" "	"	3 "	Salary and expenses
8	Members, State Board of Dentistry	R.S. 45:1-2, 1-3, 6-1	" "	"	4 "	No salary - from lists of Society
5	Members, Embalmers & Funeral Directors Board	R.S. 45:1-2, 7-1, 7-4	" "	"	3 "	\$10 per day - from lists of Society
11	Members, State Bd. of Medical Examiners	R.S. 45:9-1	" "	"	3 "	\$250 per exam. - from lists of Society
5	Members, State Bd. of Nurses Examiners	R.S. 45:11-1, 11-2	" "	"	3 "	\$5 per day - from lists of Society
5	Members, State Bd. of Optometrist Examiners	R.S. 45:12-2	" "	"	3 "	No salary
5	Members, State Bd. of Pharmacy Examiners	R.S. 45:14-1, 14-4	" "	"	5 "	\$10 per day - from lists of Society
5	Members, State Bd. of Engineers & Surveyors	R.S. 45:8-29	" "	Senate	5 "	No salary - from lists of Society
6	Commrs., of Pilgrimage	R.S. 12:8-1, 8-3, 8-4	" "	"	3 "	Fees
3	Members, State Bd. of Public Accountants	R.S. 45:2-1	" "	"	3 "	\$5 per day
5	Members, Real Estate Comm.	R.S. 45:15-5	" "	"	3 "	\$25 per diem
3	Members, State Bd. of Shorthand Reporting	R.S. 45:15-B	" "	Senate	3 "	\$25 per diem, not to exceed \$300 yearly
5	Members, State Bd. of Veterinary Examination	R.S. 45:1-2, 16-1, 16-2	" "	"	3 "	No salary - from lists of Society
5	Public Trustees, Rutgers College	Chap. 49, P.L. 1945	" "	"	5 "	No salary

SCHEDULE I (Continued)

Schedule of Appointive Officers, Conditions of
Appointment and Tenure.
(Constitution of 1844, As Amended)

<u>No.</u>	<u>Title of Officers</u>	<u>Reference</u>	<u>How Appointed</u>	<u>Confirmed By</u>	<u>Tenure</u>	<u>Other Conditions</u>
<u>County Appointments</u>						
Per						
Cty. 4	Members, County Bds. of Election	R.S. 19:6-17, 6-18	By Governor		2 Yrs.	Nominations by County Committee Chairmen
" 2	Jury Commissioners	Chap. 96, P.L. 1944	" "		1 "	Salary \$500 to \$900
" 3	Members, County Bds. of Taxation	54:3-2, 3-3, 3-6	" "		3 "	Essex & Hudson 5 members
" 1	Prosecutor of the Pleas	R.S. 2:182-1, 182-10	" "		5 "	Salaries vary by counties
2	Superintendents of Elections	Chap. 45, P.L. 1944	" "		5 "	Only 1st class counties
<u>Judicial By Statute</u>						
14	Judges, Circuit Court	R.S. 2:5-4	By Governor	Senate	7 Yrs.	
6	Judges, Criminal District Court	R.S. 2:212-6, -9, Chap. 201, P.L. 1940	" "	"	5 "	Salary variable
37	Judges, District Courts	R.S. 2:8-1-14	" "	"	5 "	Salary variable
4	Judges, Juvenile & Domestic Relations Cts.	R.S. 9:18-5, 18-7	" "	"	5 "	

Sources: Legislative Manual, State of New Jersey, 1947; Lists of appointments as prepared by Governor's Office and Laws of New Jersey.

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)

- (3) Neither House, or 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 thirty 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 twenty 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) Paragraphs 1, 2 and 3, Sec. III, Art. IV, 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 veto any such executive order within thirty days after its receipt, by concurrent resolution.
- (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 Article III. He said that prohibitions had been placed upon the legislative power of appointment as a means of freeing the Legislature 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 thirty 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 for the defense 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 one hundred 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 result in a neglect of 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 ninety 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 Art. IV, Sec. 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 with his. 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 thirty 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.

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 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 ninety 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 without 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, term, 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 forty-five 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 twenty 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 Items "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 (Items "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 twenty-eight day consideration period was extended to six weeks.
- (12) Executive orders outlined in Items "8" and "9" above shall remain unaltered and in full force unless superceded 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 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 those provisions relating to the appointment of public officers, as 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 Sec. VI, Par. 1 of Article III, 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."

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 "co-terminus 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.

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 Sub-Committee on the Legislative Section, relative to the time limitation placed upon the Senate in its confirmation of the Governor's nominations, received further clarification by debates which took place before the Sub-Committee on the Executive Article of the proposed revised Constitution.

Mr. Martin had contended that the limitation of time placed upon the Senate would result in unfair indignity to the nominee by forcing the Senate to actually reject the nominee rather than to simply allow 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 of the Governor, within the period allotted, 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 Sub-Committee 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 Sub-Committees 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 forty-seven 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 presented on the following page.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 twenty-seven states. In twelve states, such officers are selected entirely apart from the Governor; in seven states, by the Governor and Senate, and in two states, by the Governor alone.

CHART 1

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	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	*	GS	GS	GS	*	*	GS	*	X	GS	G	7	1	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	*	G	*	*	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	5	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	G	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	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

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 Gov- ernor with con- sent 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	11
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	2	7	7
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	0	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 Office of Treasurer is common to each of the forty-eight states. In forty-seven 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 thirty-six 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 forty-seven 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 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)

TEXT REFERENCES

1. Proceedings of the New Jersey State Constitutional Convention of 1844 (n.p. 1942), p. XVII, Introduction.
2. Ibid., pp. LXIII-LIX, Introduction.
3. Ibid., pp. 271-274.
4. Ibid., pp. 274-275.
5. Ibid., pp. 348-350.
6. Ibid., pp. 350-352.
7. Ibid., pp. 352-353.
8. Ibid., pp. 353-356.
9. Ibid., pp. 356-360.
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.
19. Ibid., pp. 481-485.
20. Ibid., pp. 499-502.
21. Ibid., pp. 503-505.
22. Record of Proceedings before the Joint Committee of the New Jersey Legislature.... (1942), (n.p., 1942), p. 913.
23. Ibid., For detail see pp. 930-950.
24. Ibid., pp. 114-115.

25. Ibid., pp. 117-125.
26. Ibid., pp. 131-138.
27. Ibid., p. 177.
28. Ibid., pp. 205-210.
29. Ibid., pp. 214-219.
30. Ibid., pp. 266-270.
31. Ibid., pp. 231-242.
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.
33. "Public Hearings on Revised Constitution", 1944. Sub-Committee on the Legislative Article, Feb. 15, 1944, pp. 8-20.
34. Ibid., pp. 27-33.
35. Ibid., Sub-Committee on the Executive Section, Feb. 2, 1944, pp. 14-20.
36. Council of State Governments, The Book of the States, 1945-46, pp. 160-163.
37. National Municipal League, Model State Constitution, Partial Revision, 1946.

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" - Sub-Committees on the Legislative and Executive Articles, Feb. 1, 2, 3, 9 and 15, 1944. Transcripts

New Jersey. Record of Proceedings before the Joint Committee of the New Jersey Legislature....., 1942

New York State Constitutional Convention Committee Report, 1938, Volume VIII, Executive Administration and Powers