

**Records of the
Louisiana Constitutional
Convention of 1973:
Convention Transcripts**

VOLUME VI

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Records of the Louisiana Constitutional Convention of 1973: Convention Transcripts

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VOLUME SIX

by

LOUISIANA CONSTITUTIONAL CONVENTION RECORDS COMMISSION

Moise W. Dennery, Chairman
A. Edward Hardin, Coordinator of Research

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NOTES ON THE DOCUMENTS

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Saturday, August 4, 1973

ROLL CALL

[74 delegates present and a quorum.]

PRAYER

Mr. Stovall Let us pray. Eternal God, Father of us all, the One who in the beginning said, "Let there be light", and there was light, the One who led the people in bondage to a promised land, we celebrate Your presence with us here today as the One who continues to give light in our darkness, and as the One who offers to us a new future and a new possibility. Make Yourself known to each one here assembled that we might be opened to Your guidance, that we might enable a new day for our State. We're grateful, Oh Lord, for the faithfulness, the commitment, the deep concern of each of these assembled here. Bless us in our deliberations today that all that we do and say might be in keeping with Your Holy Will for we offer our prayer in your name as the One who was and is and ever shall be. Amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Amendment

Mr. Hardin [Assistant Clerk]. At the time of adjournment yesterday, the convention was discussing Section 5F [of Committee Proposal No. 4]. We have amendments pending, Mr. Chairman.

The first set of amendments is sent up by Delegates Jack, Gravel, Avant, Triche and Stovall. Amendment No. 1, on page 4 delete lines 6 through 12 both inclusive in its entirety and insert in lieu thereof the following:

F. Pardon, Commutation, Reprieve and Remission. Board of Pardons

1. The governor shall have the power to grant reprieves to those convicted of offenses against the state and upon recommendation of the Board of Pardons may grant commutation of sentence, may pardon those convicted of offenses against the state and may remit fines and forfeitures imposed for such offenses, providing however, that each first offender, who has never previously been convicted of a felony shall be eligible for pardon automatically upon completion of his sentence without the aforementioned recommendation.

2. The Board of Pardons shall consist of five electors appointed by the governor subject to confirmation by the Senate. Members of such board shall serve a term concurrent with that of the governor appointing them.

Explanation

Mr. Jack Mr. Chairman, ladies and gentlemen, this is to replace the amendment that I've held in reserve that would put back instead of this material on the yellow pages in case it was amended or wasn't amended. Because I did not like the committee's proposal Number 4. It's replacing the entire power of pardon, commutation of sentence in the governor even though it also stated that the legislature would have a concurrence right. Now, the inherent right of pardon and commutation is, as I said before, it's an executive matter. Now, this amendment we're talking on now is in line exactly with what I stated yesterday over the microphone. Bear in mind this, since 1940 when I became familiar with pardons and paroles and those things and all that kind of clemency, I am yet to see a lieutenant governor or an attorney general that really wanted to serve on the pardon board. Now, this is a different board than the parole board. Most all judges I've talked to have stated that it is an executive power and they shouldn't be on the pardon board. They don't want

to be on it. They do not attend it except with few exceptions. The judges in Orleans Parish do attend, but the rest of the state, some of them do from Caddo. The rules seem to provide that in the rest of the state they can vote by...right at the bottom of the petition. Here is what this amendment now does. It looks about like everybody that wants to be interested in it as far as submitting it, instead of having the lieutenant governor, the attorney general and the trial judge acting as a pardon board, this provides that the Board of Pardons shall consist of 5 electors appointed by the governor subject to confirmation by the Senate and the members of that board shall serve a term concurrent with that of the governor who appointed them... You will have five people appointed by the governor and they will be from whatever walks of life the governor chooses...I will try to answer any questions that any of you may have.

Questions

Mr. De Blieux Mr. Jack, at the present time I believe we have a Court of Parole. Do you know exactly how the Court of Parole is appointed?

Mr. Jack Yes, sir. It's appointed by the governor.

Mr. De Blieux Now, why couldn't the Board of Parole and the Board of Pardons perform the same functions insofar as recommending commutation of sentence and so forth.

Mr. Jack Well, I'm glad you asked that because to be able to answer it...day before yesterday I went over and I talked to William Barnett who is a new member of the Parole Board and I talked, I talked to Miss Sybil Pulletin, who is the Chairman. I talked to one of the other members, I forget his name right now. I checked into this matter over a long period of time. The functions of the two boards are entirely different. On top of it they should be full time board. Just like, you can't always put everything on one court, they don't have enough time, but one of the main differences is that they perform a different duty. A Parole Board deals with people who have served a part of their sentence. They do not deal with pardons. They do not deal with commutations. Now, if you're going to give one board the same duty, I thought of that years ago, and went into it, but if you have one board doing the same thing they're going to, from the beginning get a wrong, unfair slant. We're trying to require the Parole Board to release people when they reach their peak. Now, suppose, kind of like the judge, he shouldn't hear evidence on the outside. He ought to hear it from the witness chairs, and not be biased, and they think better to put that in that way, and they've got their hands full. They have to handle these cases all over the state. You have two different boards. Now, we're doing everything we can under these laws to release people that we do at a proper time. It may be that for instance I personally think a lot of people, and I'm a strong believer in capital punishment, but I think the way way on everything; a lot of people think they ought to drown everybody in the penitentiary, and let me tell you, you might be drowning your cousin or your nephew or...

Mr. De Blieux You still haven't answered my question.

My question is, why can't the same board, since they are dealing with inmates in our penal institutions, perform both these functions? I know they are different, but I just want to know why.

Mr. Jack All right, that's one of the things. They're different functions. Just like the district attorney can't handle...be the judge...lot's of functions...they kind of conflict.

Mr. De Blieux What would be the conflict between the Pardon Board and the Parole Board?

Mr. Jack Well, you're dealing with different

things. You're dealing with...you're always dealing with guilty people when you're fooling with the Parole Board. Now, if you want to save some money, Mr. De Bileux, you could just let the governor handle all pardons, paroles, ...and delegate the authority to wherever he wants. Now, it's just been shown that it's better to have separate boards...that you get better justice. Now, it would take me an awful long time to tell you how much investigation goes on. Now, people are concerned about a slip up and release the person too soon. Now, where you've got two boards, you're not eligible to the Parole Board until you reach a certain plateau. Now, if you leave it to that one board, you're liable to turn loose a person that you wouldn't have turned loose if you had two boards.

Mr. De Bileux Mr. Jack, as I understand and have been informed that the Parole Board has to review the records of all the inmates at certain intervals. Now, since they would have knowledge of all this, wouldn't they be in a better position to recommend a commutation or a pardon than an outsider who doesn't know anything about those records?

Mr. Jack No, because the Pardon Board has access to everything itself. The Department of Corrections is over it all. It can furnish it to all of them.

Mr. Chatelain Delegate Jack, I understand your amendment deals only with pardons. Is that correct, sir?

Mr. Jack It deals with pardons, commutations of sentences, remission of fines and forfeitures, just like the present law.

Mr. Chatelain I'd like to ask another question, sir. I'm having a little difficulty in understanding about the middle of your amendment here, you have "may pardon those convicted of offenses against the state..."

Mr. Jack Wait just a minute. There's so much noise, I can't hear the question, Mr. Chairman.

Mr. Chatelain ..."may pardon those convicted of offenses against the state and may remit fines"... will you tell me just a little bit more about that, sir?

Mr. Jack About what?

Mr. Chatelain "Remit fines and forfeitures imposed".

Mr. Jack Well, I've never seen a fine remitted. I never have. That's in the present constitution. They could remit a fine. I don't know the forfeiture, what it would be. One is, when you get convicted of a felony, you forfeit your citizenship, I don't know whether it's talk about it or not; that's just tracking the line on that word "forfeiture".

Mr. Chatelain I'm having a little problem in correlating the two. On the one subject you're talking about recommendation of a pardon and the other time you're talking about remitting fines. You see, that's what I'm having...

Mr. Jack It's all under the Pardon Board, under the same law for the governor to do it. He's got to have the recommendation of the trial judge, the attorney general and lieutenant governor or any two of them. Under this amendment, we track the same language; the only difference is instead of those three people being the Pardon Board, we're having a five member Pardon Board appointed by the judge. We're not changing the law at all as it presently is.

Mr. Chatelain Thank you, sir.

Mr. Lanier Delegate Jack, in order to carry up on some of these points brought up by Mr. Chatelain,

your provision provides that the power of the governor to grant a reprieve is unlimited as is the present law, is that not correct?

Mr. Jack That's correct. It's exactly the same. It's always been the governor grants the reprieve, so everybody will understand, a reprieve doesn't turn you loose. It just holds up the starting of whatever sentence. Usually when a person had the death penalty and all his court procedure was exhausted, the governor would hold up with a reprieve until the Pardon Board passed on it.

Mr. Lanier Now, Mr. Jack. With reference to the granting of a pardon or a commutation or a remission of a fine, is it not correct that it is your intention that this may only be done by the governor with the positive recommendation of the Board.

Mr. Jack That is absolutely correct. The only thing that the governor can do by himself under this amendment we're talking on is exactly what the present law in the constitution provides. The only thing in the constitution the governor can do by himself is grant a reprieve and where a person has served his sentence, that's the amendment in the last eight years. The governor can grant a pardon, to use the word "automatically", without the recommendation of the Pardon Board. You've got...I saw one last week, where a man was convicted in 1950 when he was a boy, no, you see them having to hire a lawyer...that's really one of the purposes...but those things are checked out thoroughly by the Department of Corrections. They just don't automatically sign them, I assure you of that. They get the...

Further Discussion

Mr. Burns Mr. Chairman and fellow delegates, I certainly don't intend to take up much of your time on this amendment because I think it was thoroughly discussed and debated last night and everyone pretty much made up their mind when they voted on that amendment. However, this is an entirely different matter, and I spoke to many delegates and many delegates spoke to me last night after adjournment and all agreed on this one thing...that they thought that there should be some machinery set up to, not so much as to put a restriction on the governor... his unlimited power in granting commutations of sentences and reprieves and paroles and pardons and so forth, but to have a system in addition to his power whereby there would be some checks and balances on it, just as we've always had. Now, I think this amendment that we're discussing now together with an amendment that Mr. Burson is going to introduce in a few minutes will go just about as far, together with the proposals that the committee has introduced, to take care of this situation which we have to be confronted with, because after all ladies and gentlemen, we are responsible to the public. I think that they would be a lot more receptive and a lot more satisfied if we have the proposal of the committee...this Pardon Board set up under this new proposal or amendment...together with the amendment that Mr. Burson is going to introduce which I don't think you're going to find objectionable. If we pass these two, I think we've done just about as well as we can under the circumstances. I ask your earnest consideration. I want to say while I'm up here that just because I was district attorney for 24 years, one of the speakers inferred it was only the district attorneys who were in favor of this blood-curdling remedy and I assure I have no prejudice in this matter. I have no religious, political aspirations and my only desire up here, as I know it is yours, is to do the best we can to give the people a good constitution. That's all I'm interested in. I would ask very sincerely that you give your earnest consideration to these two amendments as they come up.

Question

Mr. LeBleu Mr. Burns, in reference to Paragraph

2 on this amendment, do you think this Board would really be effective since the governor appoints the Board and the Board's terms run concurrently with that of the governor? Do you think the Board would really be effective?

Mr. Burns Actually, I couldn't give a definite answer on that, Mr. LeBlou, because in all these matters, all such things depend entirely on each individual. If you get a good governor in office, we're not going to have any trouble, and I'm not saying that we don't have a good governor in office now, by any means. But, if you get a bad governor, we'll say, and he'll circumvent this some kind of way, and you don't have to worry. He'll appoint a bad Board to begin with. It's just one of those things we have to live with and we have to do the best we can in setting up this machine.

Further Discussion

Mr. Dennis Mr. Chairman, fellow delegates, I rise in support of this measure. I think it is of tremendous improvement over the present Pardon Board. As you have heard several times, the present Pardon Board is made up of the sentencing judge, the governor and the lieutenant governor. In my opinion, the sentencing judge is probably in the worst position possible to evaluate a prisoner as to whether or not he should receive a pardon after he has been incarcerated. 85 to 90% of the people who are incarcerated in our prisons got there by pleading guilty. Only about 10 or 15% went through a trial, so usually all the sentencing judge knows about a man he sentences is what he reads in a four or five page pre-sentence report which is written up by the Department of Corrections. Certainly, he knows nothing about the behavior or the record of a man after he goes into prison. So, in most cases, the judge is faced with the prospect of reading an application with a very skimpy report about what the man's been doing in prison. He's sitting up in Monroe, or somewhere far away from the prison, far away from the Pardon Board, and he's asked to vote. I feel like it's a vote in the dark. I feel like the judge in doing this is not really even performing a judicial function. Although we say in our constitution judges shall only perform judicial functions, I feel this is really an executive function that has been tagged on to the office of judge. What happens in most of these cases is that the friends and the legislators or other political allies of the families of these people will go to the governor and the lieutenant governor and they will be told, "well it's up to the judge. If you can get the judge to go along with it, we will too." So, everybody then descends upon the judge sitting in his office far away from any real information about this person and says "Judge, you're the only one holding this whole thing up." I just don't think that the judge is in a good position to evaluate these cases after they go to prison. I don't believe it's a judicial function in the first place. I think this amendment does what we have needed for many, many years and that is give us the chance of having a real professional non-political Pardon Board. So, I ask you to support this amendment.

[Previous Question ordered. Quorum Call: 102 delegates present and a quorum. Record vote ordered. Amendment adopted: 102-1. Motion to reconsider tabled.]

Amendment

Mr. Hardin The next set is by Mr. Burson. Amendment No. 1, on page 4, line 12, immediately after the period add the following: "the legislature may restrict or limit by law the exercise of the powers of governor to reprieve, grant commutation of sentence, or pardon in establishing penalties for any crime punishable by life imprisonment". A technical amendment is also necessary.

Explanation

Mr. Burson Fellow delegates, the amendment that I offer today is considerably less broad than the one I offered yesterday. The amendment that I offered yesterday would have permitted the legislature to restrict the governor's power of reprieve, commutation or pardon in any crime. The amendment I offer today narrows the issue down to one single issue. That is whether or not you are going to permit the elected representatives of the people of the state of Louisiana to pass laws which will provide for a life imprisonment sentence that means more than whenever the Pardon Board or the governor thinks it should be. Act 111 of 1973 set forth that for the crime of second degree murder that a life imprisonment sentence would mean at least 20 years. Now, if you think that a life imprisonment sentence should mean what it means now which is that the person is eligible for parole in 10 years and 6 months, then go ahead and vote against my amendment. We know that the death penalty is a dead letter, and I submit to you that the law-abiding citizens of this state are entitled to know that somewhere in law for the crime of murder that there will be a life imprisonment sentence that means more than 10 years to 6 months. I heard a lot of horror stories yesterday about what might happen. I'd like to challenge the people that come up here with these horror stories, to give some names and dates and places. I can sit here and imagine all sorts of possibilities, but I want to point out to you that under this amendment you're not affecting any judicial process and that anyone at anytime can go into federal court, a writ of habeas corpus, and ask for the correction of any matter in a criminal case. No judicial process is affected by this. Now, we're grown men and women here. What am I talking about? In the history of this state, it's no secret that pardons and paroles have been sought and sold. There should be at one time or another we get out a certain price depending on the gravity of the offense. I'm not saying that's going to happen now, but people are people. Human nature doesn't change. I submit to you that you have voted today for a five member Pardon Board appointed by the governor. Now, who is the governor going to appoint to that Pardon Board? I don't know but I imagine it might be like the Parole Board. I only know one member of the present Parole Board. He's a fine man. He used to be a state senator and he got defeated for reelection. Now, did he all of a sudden by getting defeated for reelection become endowed with great presence and wisdom, whereas if he was still in the legislature he would have been a politician. That doesn't make sense. Is the governor a politician? I ask you that. Is he more or less of a politician than the members of the legislature? The members of the legislature have the right and the duty to define the criminal laws of this state and the only thing that we're asking you to do under this amendment is to permit them to do as they did in Act 111 of 1973 to provide for a life imprisonment sentence that means more than 10 years. Do you know that under the law of this state at the present time if you're convicted for armed robbery you can receive up to 99 years whereas if you're convicted of murder and you receive a life imprisonment sentence you're eligible for parole in 10 years and 6 months. Now, does that make sense? Does that sound rational to you? Or do you believe in the final analysis that a life imprisonment sentence, the length of a life imprisonment sentence should depend on how much political influence a man has, because don't kid yourself... as long as you've got an open season on pardon, parole and commutation, that is exactly what you're talking about and I challenge anyone to get up here and deny it. In the final analysis if you've got to decide whether you're going to be more concerned, and I don't question the motives of those who are very concerned for the individual whose rights may be abused. That is certainly valid. I would like to point out that those people yesterday who were talking about the fact that district attorneys were speaking for this, I think were injecting into the debate an element that doesn't belong there. I wouldn't get up here and tell you that all of the people who speak against

this are attorneys who have dealt in pardon and parole before, but I'm sure there may be a few who speak against it. District attorneys, after all, represent the people of the state of Louisiana in criminal prosecution and while you're feeling sympathetic I urge you to open your heart to some cases that I've suggested. I have my own idea where a man was convicted by a jury after grand jury indictment of murder at a church fair and was back on the street within six months. I can get you the record and show it to you. As long as you don't permit the legislature to place some limits on this power of commutation, pardon and relieve those things are going to continue to happen if someone has sufficient political influence. As I say, I don't question the motives of those that oppose me on this, but I want the issue to be clear-cut this morning. You know, you go to a cocktail party, or you talk with people in the barber shop and somebody's always saying "Oh, something ought to be done about this law and order situation". Well, I'm giving you a chance to do something about it. If you don't do something about it then don't go to your legislators in the future and blame them. Don't blame the judges; don't blame the district attorneys; blame the members of the Constitutional Convention of 1973, because unless we put in the constitution the proviso that the legislature can restrict or limit its power, it can pass laws until they're blue in the face, and those laws will be flatly unconstitutional on their face, because you have given this power this morning in a manner that is unrestricted by any ordinary law of the state and cannot be restricted by any ordinary law or the state. I urge, in the strongest possible terms, your support of this amendment.

Question

Mrs. Warren Mr. Burson, I notice you mentioned the Legislature having the power to curtail the power of the governor and I don't have any objection to that. This is what I would really like to know. I'm going to give you an example. If a child went to the penitentiary at the age of sixteen and he lived to be ninety years old would he or she have to stay in there the rest of his natural life or would there be a twenty or thirty or forty year sentence? Just an example.

Mr. Burson Mrs. Warren, I can't predict the future of what the legislature would do but I can tell you what the situation is under the present law. Under the present law, the life imprisonment sentence is for second degree murder. Not for manslaughter, not for any other crime, but for second degree murder. And, Act 111 of 1973 provided that anyone sentenced to life imprisonment for second degree murder would not be eligible for parole, suspension of sentence, until twenty years, not for the rest of his natural life. But you see, under the armed robbery statute today, that same boy you are talking about could receive a ninety-nine year sentence and not be eligible for parole until thirty-three years, but if he is sentenced to life imprisonment for murder he is eligible for parole in ten years and six months. Now, somewhere along the line that doesn't add up to me. It is not a rational system of law.

Mrs. Warren To me either.

Further Discussion

Mr. Avant Mr. Chairman and convention delegates, I rise to oppose this amendment and I am going to try to be factual, not emotional. I want to clarify one thing. For the benefit of anybody who might have any notions to the contrary, I am one hundred percent in favor of the sentence of ninety-nine years for the crime of armed robbery. I am not in favor of any other crime that I would like to see the legislature add to that. It should also carry a ninety-nine year sentence. And that is for the burglary of a residence while armed. I say that for this reason. I equate both of those crimes as to their heinousness with the crime of murder because any person who would arm himself with a dangerous weapon

and rob you or any person who would arm himself with a dangerous weapon and enter into a residence will kill you if the circumstances arise where he thinks that is what he ought to do. Now we could get into a big long discussion on the administration of the criminal laws. I have my own ideas on that, but the greatest thing we could do to stop crime in this country would be to expedite and make more efficient our judicial processes so that a man is charged and tried and sentenced and put in the penitentiary without a lot of monkey business and delay and once he is in the penitentiary and has been legally convicted that he is not let out on some technicality. But this has got absolutely nothing to do with that. This is what we went through for some two hours I believe yesterday. This amendment, if it is adopted, contains within it all of the objections and all of the fallacies that were contained in the amendment yesterday, that we voted down. I am not going to waste a lot of your time but I just want to point out to you that there is no restriction on the legislature as to what crimes it can provide will be punishable by life imprisonment. They can add to that list armed robbery, they can add to that list burglary, they can add to that list any crime that they want to. So this amendment puts us right back where we were yesterday and while I feel as I do towards crime and while I feel as I do towards the most heinous offenses, I recognize and I think any reasonable man must recognize, that whenever you establish a system that is administered by human beings that you leave room for human error, and people make mistakes. Judges make mistakes, juries make mistakes, we all make mistakes. The only thing I am asking you is to recognize that fact and to provide a check on us for the mistakes that may and will and undoubtedly are going to be made. Don't lock the door and throw away the key, because sometimes a mistake is made and if you leave this to the legislature there is no check on what will be done. The power of executive clemency is traditionally invested in the executive under our system of government.

Further Discussion

Mr. A. Jackson Mr. Chairman, fellow delegates, I rise against this amendment and I do so because we are writing a constitution for the people of this state that I hope will last for some time. I do not believe for the first time in the interest of the people of this state for us to put this sort of restrictive language in the constitution that will throw us back in what I consider the dark days of being able to reform our system of justice and our penal system in this state. Now I think that we need to address ourselves to the simple question. The question is how we are going to effectuate penal reform and how we are going to change the system of justice in this state. I do not believe that we need to put this kind of language in the constitution that would have the result of preventing us from making some of the changes that are so sorely needed. I think the past amendment that we have just adopted, the Jack Amendment, is a step in the right direction because they establish for the first time what I believe will be a board constituted of individuals who have some expertise, some knowledge in the whole area of penal reform, that will look at the sociological and environmental problems connected with the crimes committed and will make recommendations based on individuals growing out of their expertise and growing out of their knowledge and studies. I do believe that this will throw us in the dark days as it relates to penal reform. I have heard a lot of references being made to Act 111. Mr. Triche was right when he said that the legislature is a political body. I tell you delegates to this convention that all of the death penalty bills that are now acts in this state are political decisions that will be made by the legislature next year and the year after and ten years from today that relate to emotional issues growing out of the environmental conditions and the emotional conditions of that day will be political decisions. We are dealing with human lives. We are presuming that the human life is precious,

that we ought to believe in the ability of men to be rehabilitated. I do not believe that this is the interest of penal reform. I do not believe that this allows for the fact that men have their weaknesses, that men will make errors. Just last week, I talked to a man who served forty-five years in a Texas prison for a crime he never committed and nobody has ever given him any consideration. They admit that they made a mistake. I call upon you ladies and gentlemen, the delegates of this convention, not to restrict this constitution, not to throw us back in the dark days, but to recognize when we talk about serious crimes, when we talk about the heinous crimes of today that we need to look not only at the individual committing this crime but we need to look at all of the social and economic factors leading up to what is happening in this country today. We ought to be concerned about reforming the whole system of justice and the whole penal institution rather than place this kind of restrictive language in the constitution so I urge you to vote against this amendment because we have made a giant step forward by way of the Jack Amendment.

Further Discussion

Mr. Triche Mr. Speaker and ladies and gentlemen of the Convention, I rise in opposition to this amendment. It is essentially the same amendment as offered by Mr. Burson yesterday which this convention rejected and it seems to me that we would be a lot better off if these snakes would stay dead once we killed them, but they seem to have a way of coming back. This amendment provides that the legislature may restrict and limit by law the power of the governor to grant pardons for crimes punishable by life imprisonment. Now gentlemen for serious crimes we are in effect limiting the executive power to grant pardons by allowing the legislature to restrict the power to pardon. Of course we give the legislature—it has the inherent right to define crimes and prescribe penalties. I would suspect that if this passes and if the legislature acts in this manner as it has done in the past, we will see extreme emotion and reaction to immediate problems that arise at the time, we are going to have a great deal of crimes described by the legislature, prescribing penalties of life imprisonment without benefit of pardon and I don't think that is what we want to do. I don't think that's what we want to do because you must first remember and ask you to please consider that the right to pardon is an executive function, it has been historically and traditionally, it is founded on clemency. Pardon is clemency granted by the chief executive and it should not be embroiled in the legislative process and it should not be embroiled in the lawmaking process. The legislature ladies and gentlemen, yes, acts responsibly. Yes, it acts properly. It has a right to deal with that. The legislature also acts emotionally and reacts as people often do to circumstances of the present day. We just need to go back a few months ago to when the legislature was in session only this summer, in the fiscal session, to consider only fiscal matters. As a result of one or two heinous crimes committed in the city of New Orleans we spent most of the thirty-day fiscal session trying to revamp our juvenile laws. It wasn't until the legislature got home and the governor was able to consider these matters seriously and with due deliberation that he decided to...

Mr. Henry Wait just a minute, Mr. Triche, let me get you a little attention. Proceed, Mr. Triche.

Mr. Triche And if you recall, the main bill in that package to revamp our juvenile laws had to be vetoed by the governor because it was contrary to our constitution and because it infringed upon the jurisdiction of our court system. The only point I want to make here is that the legislature responds to emotion and responds to immediate circumstances as they exist and I don't think that is what we want to have the power of executive clemency subjected to. Executive clemency should always be

available to prevent miscarriages of justice and also to allow for clemency and mercy. Mr. Burson has suggested to us that nobody can recall circumstances and instances where miscarriages of justice have taken place and the benefit of pardon has relieved the miscarriage of justice. I would suspect that many, many lawyers sitting in this audience who have practiced criminal law have had experiences and I know I did. I recall when I was a young man just beginning to practice law, a family came to see me about a young black boy who was in prison in the state penitentiary for a sentence of twelve years. He was innocent? Do you know how he got to the penitentiary? After he had been incarcerated in the parish jail for about two months awaiting trial because he couldn't post bond, somebody in that jailhouse had talked him into pleading guilty to a crime he did not commit because he was going to get a thirty-day suspended sentence. Oh, just go into court and plead guilty. All we want to do is clean up our books and clean our docket, and the judge will give you a thirty-day suspended sentence and you will go home, young fellow. And your family won't have to hire a lawyer and you won't have to trouble the folks, and it will be all over and that is the easiest and quickest way to handle it. Four or five years later, his parents came to see me crying to get that boy out of the penitentiary. We were able to convince everybody involved that he hadn't committed the crime and we were able to get clemency for him and pardon that young man and put him on the street. Now that is one of the several instances that I am aware of and I know that all of you gentlemen who have had experience in the criminal courts are aware of similar circumstances. Gentlemen, innocent people don't get convicted. Innocent people do plead guilty. Innocent people do end up in the penitentiary. In addition to that, gentlemen, people who do commit crimes and who are justly sentenced after fair and impartial trials, do recant, are rehabilitated, and are entitled to executive clemency and mercy. All of us believe that, and we ought not to deny it. I suggest to you that the danger of this amendment is that it is a matter of passion in response to some heinous crime that the public and all of us abhor, the legislature is going to pass law after law after law providing life imprisonment without benefit of pardon and we ought not to do that.

Further Discussion

Mr. Burns Mr. Chairman, fellow delegates, I always enjoy Mr. Triche's speeches and I enjoyed this last one except that last dramatic incident that he so eloquently told you about but it just happens that that wouldn't be affected by this amendment. This amendment only refers to the life imprisonment and it is not very necessary in connection with the amendment that we just passed. We have it in mind ladies and gentlemen, we no longer have the death penalty in the state of Louisiana, so what we in effect are talking about is the life imprisonment sentence almost has to take the place of the death sentence. Now when you stop to consider, if you read the papers, you don't have to take my word for it, when you read of all these murders and rapes and armed robberies and mass murders and all of the extreme crimes, I would say the vast majority of them are committed by ex-convicts, by convicts out on parole, by convicts out on reprieve. They are the ones on the street because of the system we have and if we don't adopt this along with the one we just adopted it is going to be not only a continuation of it but it is going to be a growth and expansion of it, and I say that for this reason. It is accepted and has been accepted in criminal circles ever since I can remember that a criminal or potential criminal operates on three theories: that he is smarter than the other criminals, he has devised a way by where he can commit this aggravated robbery and he is not going to be caught, detected and picked up by the law. Two, if he is caught and apprehended, he has figured out a way where he is going to beat the rap, he is going to beat the case in court by the employment of a good lawyer, by

working up some good witnesses. Three, and this is where this amendment comes into the picture, if he is caught and if he is convicted and if he is sentenced, that he has good connections and he has every reason to believe that he is only going to stay in there for a few months no matter how serious the commission of the crime or how serious the penalty. Now all this does ladies and gentlemen is if a person is convicted, he ordinarily in some cases would have received the death penalty, of course in Louisiana he would never have been executed according to past records, but he could have received the death penalty. Well he can't do that any more so he receives the most serious penalty he can get under our present laws, life imprisonment. All this does is to give the legislature the right and the authority that in that one instance they can pass a law providing when a man has been sentenced for life that they can provide by act of the legislature that he has to serve twenty years, we will say. I just say twenty years, they could say fifteen. As one of the previous speakers told you under our present law he could get in ten, well, I thought he could get out in seven. All in the world this does is empower the legislature in that one case, not all these other cases such as the one my good friend, Mr. Triche, just told you about, is in that one case that they can pass an act of the legislature putting some teeth into it where the public, the aggrieved ones, the families of the one who has been murdered and the families of the daughter who has been raped will have the satisfaction of knowing that when that guilty person goes to the pen for life that he is going to have to stay there for at least twenty years and not be walking the streets within six months raping other people's daughters, breaking into other people's houses armed with pistols, and other things, and not only that, but they can properly to put some teeth into the law where it means something, but I think that you are going to find that the people are the ones who are either going to demand something like that or are going to be mighty, mighty unhappy if we don't provide it.

Further Discussion

Mrs. Warren Mr. Chairman and fellow delegates, when Mr. Burson was speaking I said, "Oh well, this might do". I was kind of caught between two opinions and then I began to think. Then I got a little more enlightened on what it was all about. Mr. Burson mentioned that he wished someone would give some facts. I think that Mr. Burson said, or one speaker said—I don't want to accuse anybody of anything they didn't say--that the newspaper gave accounts of what was going on. About two years ago there was an article appeared in the Times Picayune concerning a man who had been sent to prison for life and who had served fifteen years. When the attorney, and I think that Mr. Burson said, he could not live with his conscience so he called his son and another attorney who had worked along on this case and called in the proper authorities and said "We railroaded this man to jail and I've got to tell you before I die". if he had lived fifteen or thirty years longer, just imagine how long this man would have stayed in jail. There was an account in the Times Picayune concerning a judge's son who had run into difficulty with the law and he said he had sentenced many but he had come to face the same situation. I have been reading reports on juvenile crime since 1964. I could bring to this auditorium a stack of reports about this high and if you would like for me to bring along with me a copy from the National Council on Juvenile and Family Delinquency, the October issue of 1964, I would like to bring it along and read it to you. It is too long for me to tell you about it. But the second the legislature could have this power to limit or take away the power that you have already given him it is like saying you are going to give me a chance to live and then you are going to get me right in the middle of my hands again. I want you to think about it and I want you to pray about it because there is nothing that is hidden that is not coming to light and God is sitting up high and he is looking down low. I

would like to say to you I have not been in government, but I am not ashamed to say that I am a politician. I know where I came from and I know who sent me. I am going to say to you today many years ago we had cities which were destroyed because the government had become so rotten--destroyed. Today we are facing all sorts of famines, the flood waters, pollution and things like that. Let us not sink our state and our nation because we do not want to forgive others as God so forgives us each day. Thank you. I urge you to defeat this amendment.

Further Discussion

Mr. Jack I rise to oppose this amendment. We have discussed it backwards and forwards. Now, you have got to have trust in your machinery that you set up in your government. Different people say certain things can't happen but they can. The assumption under the Burson Amendment is that the legislature would pass the law where you were serving a life sentence you could never get out of the penitentiary. Now, if the legislature passed such a law and the Burson Amendment passed, then that is correct. It could be a seventeen year old boy or girl with a life sentence would stay down there eternally as far as the pardon board ever trying to give them any relief. It would be cutoff. That is correct and anybody says otherwise I wish they would talk to me before they make that statement. The next thing, do not see how the Supreme Court of the United States, right or wrong, under their decisions, they would uphold such a law. You would not have uniformity of the law. Just like in the death sentence. Now I repeat again I believe in the death sentence in the proper case but the Supreme Court held that unconstitutional because of it not being uniformly applied. If the legislature passed such a law that resulted in the life sentence not being uniformly applied that would be held unconstitutional by the Supreme Court of the United States. Now listen to this "if". If you had the Burson Amendment passed and the legislature passed a law under the Burson Amendment here saying that when a person had a life sentence the jury, or the judge even, could say that person could get out in ten years or ever get out. Then you would have the Supreme Court of the United States say that is unconstitutional for this reason; we looked at that and we find that if the person was allowed to plead guilty to life imprisonment by the consent of the district attorney with the stipulation that there would not be anything tacked on to that life sentence, like never subject to commutation or that it meant his natural life or it meant fifty years, then that would be discrimination from what a jury might say if that person took their day in court. The Supreme Court of the United States would say a person has their right to their day in court, and that person who took his right say showed up with a verdict of the jury, let's say with a life sentence, and he would stay until they are dead, dead, dead. Then the Supreme Court will have evidence in other cases where people pled guilty with the consent of the district attorney that the judge didn't tuck on anything, then they would say that the law is not uniformly being applied. Historically, executive clemency has been like this and that is the way we have done it properly. I think that if we pass this amendment we are just doing it emotionally. I want people punished as much as anybody when they are guilty but I don't want under the stress of emotion things being done that later would be regretted. Now here is a thing I talked to one of them about--you could do, you could increase the penalty for manslaughter. Just like we have a penalty now of strictly nine years for armed robbery, and I voted for that in the legislature and I voted that it wouldn't be subject to parole, but it is subject to commutation and in the proper case you can take a person convicted of armed robbery or attempted armed robbery which are not subject to parole but you could have them commuted. You've got to have a way to get someone out from a horrible wrongdoing and have a method of undoing it. I am not being for turning people loose

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here and there. I'm a citizen. I want to live. I don't want to be shot. I don't want to be robbed, but we are not going to take people out to Angola like they are rats and drown them, whether you think it is a good idea or not, we are restricted in things. So let's try to have laws that we think out and not emotional and that work. I have studied this thing for years. I have always been interested in criminal law and I think the amendment we just passed that is authored by five people who are familiar with this field covers this subject. The other amendments, and I have read them, I am going to be against them.

Further Discussion

Mr. Roy Mr. Chairman and ladies and gentlemen of the convention, I am going to move the previous question but in view of the fact that someone else will speak, I have something to say. In the book, *Love Story*, Erich Segal asks "What do you say about a twenty-five year old girl who died?" I ask what do you say about a thirteen year old boy who died in order to a group of honest, dedicated, well-meaning whites who may be headed in the wrong direction? I say whites because the blacks among us, long the recipients of this law and order paranoia, need not be reminded of its consequences. Do I repeat that Pappy Triche was eminently correct when he said that you are confusing parole and probation, a legitimate legislative function with commutation and pardon, a legitimate executive function that only the governor is equipped to handle because of those cases where it is needed? Could I call your attention to the fact that the common denominator of all the arguments supporting the Burson Amendment is some individual case history or some specific event resulting from the governor's conduct rather than a pardoned person's conduct? And I remind you that it was a crowd or the jury who erroneously said that Barabbas was freed and that Christ be crucified. Need I try to trace the history of parole reform by quoting Carl Menninger et al., and ask is it Dante's Inferno that we wish or enlightenment reform? I remind you Mr. Burson, whom I admire, that only twenty years ago an enlightened legislature of this state passed discriminatory laws with respect to certain groups because of emotional needs and the emotions that the people had about the matters. Let us older gentlemen forget, was it not the Reichstag in World War II and in Germany that allowed a madman to execute six million innocent men, women and children in the name of scapegoats. I must remind you, for we are now discussing that issue, namely, will the traditional constitutional concept of commutation and pardons be subverted to statutory status to be abused at the whim of a capricious legislature. I agree with Mr. Burson when he said that is the issue. And it is the issue. Are we going to take or a legitimate constitutional provision, traditionally in every constitution in the world, and remove it and make it nothing more than a statutory piece of legislation? You may choose to say so. So long as I am a delegate I will speak against such paranoia. I will oppose all attempts to make this sacred constitution nothing more than a bill of indictment or information to satisfaction, or a premeditated murder, but we may allow him for those people, who in the heat of passion kill their loved ones because of some conduct, i.e. being caught with someone else, the right to commute a sentence. I heartily oppose the amendment.

Further Discussion

Mr. Champagne Fellow delegates, I am going to be very brief, and direct to the point. I have very

few statements to make as a non-attorney. Those statements are that capital punishment is a thing of the past and perhaps, emotionally you are just making it a thing of the past, perhaps emotion and wisdom should direct us to a realistic life imprisonment. I feel that Mr. Burson's Amendment is not designed as a reprisal or a method of seeking revenge. I see it merely as one of the very small means of providing that you and I, and our families can again walk the streets and the byways of this state without fear of the criminal. I thank you.

Further Discussion

Mr. Weiss Fellow delegates, before moving the previous question since I believe no one follows me, I would like to attempt to summarize this very eloquent discussion in that we have met this matter headlong in the Bill of Rights Committee and have spent many hours discussing this. I would like to compare this discussion to the three blind men and the elephant who each described the tail, the trunk and the legs. I think each person up here is very sincere in what they had to say. Each one--the district attorneys have related a very important phase of their undertaking. Others who feel very strongly as a citizen on the street, insecure in their own person as they walk down the street day and night, in expressing the belief that criminals should be removed from the scene, either by life imprisonment or otherwise, I can vouch very definitely--pronouncing people dead who have been murdered by criminals in our community, the very famous [...] case. I had the misfortune of pronouncing this woman dead who was allegedly murdered by this individual. These are serious problems. Now we have had great minds tell us what they think and I think a lot of great minds are still in doubt and somewhat confused and of course those of lesser caliber are even more confused about these issues. It's been said I believe by other great men that when in doubt, serious doubt, you should act emotionally but where possible act by reason. I think there is no question in this particular floor amendment that reason should predominate. The predominant factor here I feel is one thing, that is executive clemency. I believe as we argued sovereign immunity, the issue here is executive clemency. If you are in favor of executive clemency, you will vote against this. If you do not believe that is the case and want the legislature to act along with the governor on these matters, of course you will vote for it. I think that the issue is a highly significant one and I at this time feel that executive clemency is the issue here and that we should allow our governor to make these decisions. The people have elected him to this responsible position, we desire to give him more authority, and sometimes in the most serious of cases and with a parole board to advise him, I think that a governor will act responsibly in such serious situations. Therefore, by reason, I must vote against this amendment.

[Previous Question ordered.]

Closing

Mr. Burson Ladies and gentlemen, I absolutely deny the proposition the law and order is a white paranoia. We have heard some cases about injustices against blacks, let me tell you about an injustice against a black in a case I prosecuted this spring where a black girl who on psychological examination had a lower I.Q. than a retarded person was a victim of a gang rape by ten men. Her mother and mother who could barely speak English were standing out in the courtroom waiting to appear as witnesses and being harassed by some of the codefendants in the hall. Those codefendants firmly believed that they could not be brought to justice under the law and they continued to harass the witnesses in the hall until after a three-day trial a jury composed of nine whites and three blacks found a verdict of guilty as charged. Do you think it is fun to see the husbands, the wives, the mothers and fathers

of criminal defendants crying after a jury finds them guilty? There is nothing funny about that, but somebody has got to do it because if nobody does it, we won't have any more law. We will have anarchy and you know what happens in the state of anarchy? The strong prey on the weak. Now, Thomas Hobbs said in the sixteenth century that without law the life of man is solitary, poor, brutish and short and that is just as true today as it was in the sixteenth century so don't come up here and make this a black versus white issue. I believe we have as many or more law-abiding black citizens in this state as we do whites. That is not the issue. The issue is what is the sanctity that you accord the process of law. Because don't kid yourself, without a meaningful life sentence and without the penalty of death, you are increasing beyond the point of human tolerance the temptation on the part of individuals to take the law into their own hands and to resort to self-help. They are going to start pulling those pistols out that we've got too many people walking around carrying right now and they are going to start taking personal satisfaction in retribution for murder and aggravated rape and that is the only thing that is involved in this amendment because under the present law of this state there are only two capital crimes, aggravated rape and premeditated murder. The rapes committed in connection with the commission of a felony. They got up here and talked about hot-blooded murders, catching somebody with your wife, that is manslaughter. That is a textbook definition of manslaughter. That is not affected by this amendment. This amendment is about premeditated murder and rape. Mr. Triche said that we ought to kill these snakes and once they are dead they shouldn't rise. Well, I can tell you one thing, the victims [victims] of the premeditated murderers are dead. They can't rise either, and I think that their survivors are entitled to a little bit of justice. Entitled to more justice than a political proceeding which is going to be a bonanza for some lawyers. Going to be a bonanza because I'm asking you that is what it has been in the past and that what it will be in the future. I'm not asking you in one sense of the word to infringe upon the judicial process or the process of the jury in criminal law because I believe deeply in it and if a jury says a man is not guilty and I am the prosecutor, I am the first one to go up and shake his hand because I believe in the jury system. But I do not believe in a political system of pardon and parole and don't kid yourself, that's what you are going to have. I don't care what kind of pardon board you put there because the governor makes the appointments. I am not talking about the present governor. I am talking about any governor. You talk about emotion in the legislature. What kind of emotion do you speak goes on at the present time in the lieutenant governor's office when the husbands or wives or the mothers and fathers of the people in the penitentiary come in with all the family and they may be good political supporters of that man? And he knows nothing at all about the facts of the case. In closing, do you think that it is more important to keep the gates of political influence open on the criminal system or are you going to rely on the jury system, the courts and the legislature to do justice?

[Record vote ordered. Amendment re-tabled.]

Amendment

Mr. Hardin Amendments proposed by Delegate Juneau to Committee Proposal No. 4 by Delegate Staggs et al.

Amendment No. 1, on page 4 line 6, in Delegate Floor Amendment No. 1, proposed by Delegate Jack et al., delete lines 12 and 13 and insert in lieu thereof the following: "2. There shall be a Board of Pardons which shall consist of five persons, one of which shall be the lieutenant governor and four electors appointed by the governor who shall be subject to confirmation by the".

Explanation

Mr. Juneau Mr. Chairman, fellow delegates, this is just a technical amendment I'll make on the second line, "which" should be "whom", "one of whom". Now gentlemen what this is, it's consistent and I think the amendment adopted by Mr. Jack is appropriate. I think that it lends for more expertise in the field of pardons and considerations but I think one significant thing has been left out, for this reason. In the previous system that we now have on the Board of Pardons, you do have an elected official or more than one elected official on the Board of Pardons which to me gives a degree of independence, and what I am trying to do in this amendment is mesh those two concepts together. More specifically, you have four appointees under my amendment. The fifth person on the board would be the lieutenant governor, and I feel very strongly to this extent about the Board of Pardons. If you don't have an elected statewide official who is accountable to the people who can voice objection and speak out if he thinks that something is wrong, you would then be left with five appointees of the governor. I think what this does would preclude the possibility of having sometime in the future a stacked deck. I have not changed the concept of four appointees to give expertise, and the only argument which I think can be logically placed against this is to say, "we can perform the past lieutenant governors didn't want to serve on a pardon board". I don't accept that as being a legitimate reason. Additionally, I submit to you that this is a logical, appropriate function for a statewide elected official to serve and secondly, if you don't assign in this constitution specific duties to this lieutenant governor, I think this is a legitimate function he can perform. I ask you to justify to yourself where in this constitution have you specifically provided for the lieutenant governor to do anything. I would move for its adoption, Mr. Chairman.

Further Discussion

Mr. Grave Mr. Chairman, ladies and gentlemen of the convention, I rise in opposition to the proposed amendment by Mr. Juneau although I concede that the motives behind his proposal are excellent motives. The present lieutenant governor, ladies and gentlemen, appeared before the Committee on the Executive Department and in addition to stating that he did not feel that the lieutenant governor should not serve on the Board of Pardons, said that it was absolutely impossible for him to effectively do so. He recommended in substance, as did almost everyone else who came before our committee, that any board of pardons should be a full-time operation. I don't know if any one of you have ever seen a pardon board docket or schedule. The Pardon Board is going to meet on Monday, Tuesday and Wednesday this coming week in New Orleans. There are several hundred cases that are going to be considered over a span of three days. Just as an illustration, one judge in New Orleans may be involved in some twenty-five cases and the pardon board consisting of the lieutenant governor, the attorney general and the particular judge is allocated fifteen minutes within which to consider those twenty or twenty-five cases. The point I wish to make is that no public official who has substantial duties and responsibilities, and we have accorded to the lieutenant governor such duties and responsibilities in our article, no such official should serve on the board because he's not going to have the time or inclination to do the massive amount of work that is going to be necessary to consider fully the cases that are going to be before him. Now for that reason I would urge that you reject this amendment because all, in my opinion, you will be doing is putting as one of the five members on the Board of Pardons someone who is either unwilling or unable to act effectively on the board. Thank you very much.

Further Discussion

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Mr. Jack Mr. Chairman, ladies and gentlemen, since 1940 no lieutenant governor has wanted to serve on this board, no attorney general, no trial judge I ever talked to. They don't have the time as I've said. Mr. Gravel showed well there's high as three hundred on the docket. They do not have the time to consider them. The time would not be there, the same thing applies. This belongs to a five man, full time board that won't have a docket with two hundred, three hundred. It will be a year round, day in, day out thing just like courts operate. Just like the parole board operates. Let's go along with the present amendment of a five man board. Thank you and let's vote this down.

[Previous Question ordered.]

Closing

Mr. Juneau Just a point, the statement was made that the Lieutenant governor at the time that he appeared before the committee said that he doesn't have time to perform this function. I might mention to you that at the time that statement was made, he was the presiding officer of the Senate. I indicate to you that the issue in here is whether you want to assert an independent voice on a statewide level in this board. I think it would be appropriate and I would ask your favorable consideration. Thank you.

[Amendment rejected; 28-69. Motion to reconsider tabled.]

Amendment

Mr. Hardin Amendment No. 1 [by Mr. De Blieux and Mr. Fayard], on page 4, line 6, in Delegate Floor Amendment No. 1 proposed by Delegate Jack, et al., delete lines 12 through 15 both inclusive in their entirety and insert in lieu thereof the following: "2. There shall be a Board of Pardons as provided by law."

Explanation

Mr. De Blieux Mr. Chairman, ladies and gentlemen of the convention, at the present provision that you have that you've adopted in the Jack amendment says, "there will be a pardon board composed of five electors appointed by the governor." It does not say anything about who they shall be or anything of that sort. The only thought that occurred in my mind is the fact that I think the pardon board and the Board of Parole should be one and the same group, if possible. My amendment does not say that they have to be but at least it will allow the legislature to look at it and see whether or not those two bodies could perform the same functions as a united body. I just would not like to see, you might say, a full paid pardon board and a full paid parole board reviewing and doing, you might say, practically the same thing when one body could do the same job. I feel like since the parole board is obligated to review all of the various inmates' records they would be in a better position to make recommendations to the governor for a commutation of sentence than any other group you would have rather than have a second board covering the same identical territory and it's for that particular reason that I ask you to adopt this and allow the legislature to take a good look at it and see whether or not we could have a united, you might say, board of pardons and parole. This will not do violence to the amendment which you previously adopted by Mr. Jack, et al. It will not change that. It only changes the methods by which the Board of Pardons will be set up and I ask your concurrence in the amendment.

Further Discussion

Mr. Gravel Mr. Chairman, ladies and gentlemen of the convention, I ask that you reject this amendment. The idea of a Board of Pardons constituted and created, as this convention almost unanimously

suggested that it should be done, is in order to permit the governor to get from appointments he will make, the most competent advice and assistance that he can in order to determine whether or not he is going to exercise a power and authority that is inherent in his office as the chief executive of the state. He is the man who has to ultimately make the determination and I say he should be given the authority in this constitution to set up a competent board of pardons. Now ladies and gentlemen of the convention, let us recognize that this is a necessity that we have needed for a long, long time in the state of Louisiana. I think the governor should have the flexibility to appoint people on the board who can make the right kind of determination so that he can act wisely and competently in all these matters. If we leave this concept of the Board of Pardons with the legislature, we are still committed to be attended by many of the problems that come up when emotional issues are being considered by the legislature, and I just suggest that this is an area that should be confined within the department of the executives and within the office of the chief executive, and I urge you to reject the amendments.

Questions

Mr. Fayard Mr. Gravel, under the proposed amendment would it not be possible for the legislature to provide that this board would be appointed by the governor and that this board would possess certain qualifications?

Mr. Gravel I don't know if I quite understand you, you mean under the proposal that we have adopted?

Mr. Fayard No, under the proposal that is before debate right now.

Mr. Gravel Under the proposal that we're debating right now, the legislature would determine what kind of board would be created, the size of the board...

Mr. Fayard But could it not delegate this responsibility to the governor is so chose.

Mr. Gravel It could possibly do so but I don't think that's a good concept Mr. Fayard.

Mr. Lanier Mr. Gravel, would you not agree that if the present proposal is not amended as proposed by Senator De Blieux and as previously suggested by Representative Casey, that if we had a governor who was politically oriented he could appoint a board of people that would just merely be his alter ego and that they would not necessarily have to be a professional board. Is that not correct?

Mr. Gravel I don't think there's any question in my mind but that the governor under this authority will be given a vehicle whereby he can act responsibly and will get the kind of board that is going to be helpful to him. There is no question but that I think every governor who has ever been elected to office has been politically oriented to some extent.

Further Discussion

Mr. Jack I'm against this amendment and I ask you to go along with the five man board. Thank you.

Further Discussion

Mr. Lanier Mr. Chairman, fellow delegates, I strongly support this amendment and I really think it's an answer to our problems. Under the present proposal, if it's not amended, the governor has an absolute right to appoint whomsoever he wishes on the board of pardons. Now I believe if you will review our past history in Louisiana, we must consider the fact that we have had governors elected in this state, and there is a possibility that in the future we could have governors elected who are politically oriented and who would appoint to such

a board not necessarily people who would be professionally trained and inclined to do this type of work but people to satisfy political debts, who would be politically oriented as the governor and who would do his bidding. Now, I would suggest that this could create a bad situation, because if someone came before the board and they are not politically right, then perhaps they would not be treated the same as someone who was. I believe that the amendment submitted by Senator De Blieux authorizes the legislature to create a board. Certainly the legislature can create a board, a professional board, that would not necessarily be responsive directly to the governor to review these matters. I believe that this amendment would be an equalizing thing. It would bring balance to the system to create a system, a balanced system, to provide for clemency and pardons in appropriate cases. I think this is an excellent amendment and I would strongly urge that you support it.

[Previous Question ordered.]

Closing

Mr. De Blieux Mr. Chairman, ladies and gentlemen, I'd like to say again that this amendment will not take any of the power away from the governor. The only difference is that if you use Mr. Gravel's arguments, then you don't need any Board of Parole or Board of Pardons. You don't need anybody but the governor. The legislature might do exactly what's provided in the present amendment. They might allow the governor to name just five people. I'll let him do that. I'm not saying that I will not do that. The only thing is that I just want to see that we can have a professional Board of Pardons with a Board of Parole, is we so desire. That's all in the world this amendment does. It's not going to take a thing away from the governor in his right to commutations of sentence or reprieves or anything of that sort. It just gives the legislature the right to determine whether or not this Board of Pardons can function the same as the Board of Parole, as to whether or not we can have professional people on it.

Questions

Mr. Gravel Senator De Blieux, I believe you made the point that the legislature, of course, should have some jurisdiction and authority over these appointments. That's the issue of your amendment. But isn't it a fact that under the proposal that we have adopted that the appointments that the governor makes would be subject to confirmation by the Senate?

Mr. De Blieux That's true. The legislature might adopt the same provision, but at least you will have a chance to look at the Board of Pardons and the Board of Parole at the same time.

Mr. Gravel But the Senate is going to look at whatever appointments that the governor makes and either reject or confirm. That would include you. Would it not?

Mr. De Blieux I feel quite certain...well, I might not be in the Senate when this...

Mr. Gravel Oh, that's right. I forgot about that possibility.

[Record vote ordered. Amendment rejected: 42-60. Motion to reconsider tabled.]

Reading of the Paragraph

Mr. Hardin "Section G. Signature of Bills; Veto The date and time when each bill passed by the legislature is delivered to the governor shall be entered thereon. He shall then have thirty calendar days within which to act on it. If he approves it, he will sign it. If he disapproves, he shall veto it, giving his reason therefor, and

if the legislature is in session, he shall return it to the house in which it originated within twenty-four hours. If he fails to veto within the time provided by this constitution, it shall become law."

Amendment

Mr. Hardin Amendment No. 1 [by Mr. Newton and Mr. De Blieux]. On page 4, delete lines 13 through 21 in their entirety and insert in lieu thereof the following:

"(c) Receipt of bills from the legislature. The date and hour when a bill passed by the legislature is delivered to the governor shall be endorsed thereon."

Explanation

Mr. Newton This is in the nature of a technical amendment to make this section conform to Section 19 which we have already adopted on the proposal on the legislature which provides for the time to consider a veto. However, in that article it does not provide that the time when the governor receives the bill shall be endorsed thereon. This is necessary that we have this in the constitution so that we know when the time begins to run within which the governor must act upon a bill. I ask your approval of the amendment and then we will either put the veto section in the legislative or executive, depending on how Style and Drafting wishes to do it. Thank you.

[Amendment adopted without objection.]

Reading of the Paragraph

Mr. Hardin "(H) Appropriation Bill. (1) The governor may veto any line item in an appropriation bill. The items vetoed shall be void unless the veto is overridden as prescribed in the appropriation bill." I'll cover a veto. (2) The governor shall veto line items, or use other means provided in the bill, in order that total appropriations for the year shall not exceed anticipated revenues for the year."

Mr. Henry It has already been explained, Mr. Arnette, but it would be appropriate, I think, so go ahead.

Explanation

Mr. Arnette Well, I'll just explain this very quickly. This is the same provision that we presently have...that the governor may veto line items in the appropriation bill. We did add some language that says, "use other means provided in the bill". What this means is when the appropriation bill as it now comes out, it has that the governor may reduce the entire appropriation bill by such a percentage and it's usually stated in the bill. We just wanted to permit the legislature to keep doing this, this particular thing. We thought it was a pretty good idea. The last sentence does provide, however, that the governor must veto or use the other means in order to keep a balanced budget. We thought a balanced budget is good state government and we thought he ought to be required to either veto or reduce the bill in some measure to keep a balanced budget.

Question

Mr. Roemer Greg, that other means provided in the bill, isn't that so that in case we have a recession or something, and the anticipated revenues don't match, the actual revenues don't match the anticipated revenues, the governor then has the right to reduce by five percent, or whatever percentage the legislature put in, items in the appropriation. Is that correct?

Mr. Arnette That's exactly right. Just to take care of continuous things that they don't really

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know what's going to happen. It gives the legislature the power to do this. I think the legislature needs a little bit of leeway and give the governor a little bit of leeway in these matters.

Amendments

Mr. Hardin The first set is sent up by Delegates Anzalone, Asseff, Deshotels and Kelly.

To amend Committee Proposal No. 4 by Delegate Stagg.

Amendment No. 1. On page 4, line 22, immediately after the period and before the word "The" delete the number "1".

Amendment No. 2. On page 4, delete lines 26 through 28 both inclusive in their entirety."

[Amendment withdrawn.]

Amendment

Mr. Hardin Amendment No. 1 [by Mr. Duval]. On page 4, line 22, after "(H)" and before "(I)" delete "Appropriations Bills", and insert in lieu thereof "Item Veto".

Explanation

Mr. Duval This is merely a technical amendment conforming the title to the thrust of the article, the section. "Appropriations Bills" is not a proper title. The proper title should be "Item Veto" in that this is the thrust of the section. I move its adoption, if there's no objection.

[Amendment adopted without objection.]

Reading of the Paragraph

Mr. Hardin "Paragraph 1. Appointments

(1) The governor shall appoint, subject to confirmation by the Senate, the heads of all departments in the executive branch whose election or appointment is not provided for by this constitution and all members of boards and commissions in the executive branch whose election or appointment is not otherwise provided for by this constitution or by statute. (2) Should the legislature be in session, the governor shall submit for confirmation by the Senate the names of those appointed within forty-eight hours after the appointment is made. Failure of the Senate to confirm, prior to the end of the session, shall constitute rejection of the appointment. (3) Should the legislature not be in session, the governor may make interim appointments, which shall expire at the end of the next session of the legislature, unless submitted to and confirmed by the Senate during that session."

Explanation

Mr. Arnette This particular paragraph has several sections in it. The first thing is that the governor when he makes his appointments, all with the confirmation of the Senate. We thought this was a good idea... just good government to have the legislature checking on the governor's appointments. The next thing is that if the governor makes an appointment when the legislature is in session, he must submit that name during the session within forty-eight hours of the appointment made. So that the legislature will have an opportunity to act on it during that particular session. If the legislature is not in session, then the governor will appoint, but this appointment shall only last until the end of the next regular session, which means that if the Senate fails to act on this particular appointment, this interim appointment, at the next session, then that person is considered to have been rejected. So if the legislature does not affirmatively confirm the appointment of that person, he is rejected and cannot serve in that particular position. Are there any questions?

Questions

Mr. Schmitt On page 4, you have "whose election or appointment is not provided for by this constitution". Does that mean that if there is a constitutional appointment allowed in here that this would not have to be approved by the Senate?

Mr. Arnette That's exactly right. If we decide that a certain position should be appointed in the constitution and not subject to confirmation by the Senate, then that's the way it ought to be. In other words we don't want this in conflict with any other provision of the constitution.

Mr. Schmitt So in any other section in which you want The Senate to have some type of say-so or the House, you'd have to specifically put it in there.

Mr. Arnette That's exactly right.

Amendment

Mr. Hardin Amendment No. 1 [by Mr. Brown]. On page 4, line 30, after "Senate", add "in open session".

Explanation

Mr. De Blieux Mr. Chairman, ladies and gentlemen of the convention, the only thing that this amendment does, at the present time, the Senate usually meets in Executive Sessions on appointments and they can take their vote in Executive Session, then report the results of the vote to the governor and to the public. What Senator Brown's amendment intends to do is, that the vote upon confirmation will be taken in open session. I don't think he will destroy the fact that we might have an executive session to discuss the merits of the particular appointee, but that the vote on whether we confirm them or we don't confirm them, will be taken in open session. I think that's the intent of his amendment.

Questions

Mr. Roemer J.D., is this the vote itself and/or the proceedings that lead up to the vote?

Mr. De Blieux No, I think this is just a vote.

Mr. Roemer J.D., again, you didn't write this amendment, did you?

Mr. De Blieux No, I'm just trying to explain what he intended doing in light of the proceedings that we presently have in the Senate for confirmation of appointees.

Mr. Roemer I see, but you don't know really what the intent of Senator Brown's amendment was. Do you mean you weren't with him when he wrote it. Do you?

Mr. De Blieux The only thing I can get out of it in reading it and comparing it to the present system and to the present wording of the provision is that he wants to vote to be taken for confirmation in open session of the Senate.

Mr. Roemer Well, my point is this and perhaps you could agree with me, that confirmation is a process, a process of discussion leading to an ultimate vote. You think that this language would just open the session to the vote. It reads open it to the confirmation which could very well be the process of confirmation, both the discussion and the vote. Could you concede that there is a chance of that?

Mr. De Blieux Well, let's read the verbiage that this particular amendment would actually apply here in just a minute, Mr. Roemer.

[Reading of the Paragraph with proposed amendment.]

Mr. Roemer I think that answers my question.

Mr. De Blieux It could be interpreted that way

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in my opinion, Mr. Roemer.

Further Discussion

Mr. Blair Ladies and gentlemen, I rise in opposition to the amendment. In the Senate we would think it would be very unusual if a gentleman in the Senate had an amendment and he didn't leave word for someone to handle it or someone else to present that amendment. As Senator De BLIEUX says, he thinks... Let me tell you a little about the procedure that we go through and for the reason why we have to have executive sessions sometimes on these confirmations. At the present time we have a committee that handles it. For instance the last time we had some doubts or had some information that some certain people had not paid their state income taxes over a period of years. They were called and given a chance to come before that committee and discuss it and some of it was corrected. Then it comes back to the Senate, there might be some personal things that you would not want to be published. It might be personal, they might do injury to that person and so that is the reason that we handle this type of thing in the executive session. But when we come out of that executive session you know that the person has been confirmed or not confirmed. So it is done in that manner at the present time. I am a little worried about this because I think it might spell us and put us a little too close. But the person is given a chance to be heard if there is something or some question that you have to ask a person about if he is up for confirmation. So I ask you to vote against it.

Questions

Mr. Singletary I am a little confused as to your explanation but couldn't you consider these people in executive session and then vote to confirm or not to confirm in open session?

Mr. Blair Well, when the gentleman that is handling the amendment, my good friend, Senator De Blieux, tells you he thinks it is going to do something, I don't think we should put things in the constitution that I think. I think we would be a lot safer by not placing this in the constitution.

Mr. Denney Senator Blair, I am in accord with your position but I would like to ask a question on the one thing you stated, and that is, that the results of Senate confirmations are immediately published, is that correct? Isn't there a separate Journal kept of that?

Mr. Blair We have as I recall, it's definitely the man either at the end of the session, he either continues in his job or else he doesn't have his job, he has been given that appointment and it's made public.

Mr. Denney That is what the theory of it is anyway, is that correct?

Mr. Blair Correct.

Mr. Jenkins Senator Blair, isn't it true that in the United States Senate these matters are handled in open public session and that they are not executive sessions for these purposes so that the public will have the benefit of the discussion regarding the individuals in question?

Mr. Blair I don't know how they handle it there... But as far as the way we have been handling it over a period of years... There might be some personal matters that you would not justify justice. Simply coming before that committee that you would not want to get in the press or what not, it might hurt the person particularly on these personal things, so that is the main reason for having executive sessions.

Further Discussion

Mr. Roemer Fellow delegates, I want to take a minute, I won't belabor this point but I would like to make a few points about the confusion surrounding this amendment. Unfortunately the author of the amendment is not here to defend... either defend or explain his amendment so I have to do the best I can from what the amendment reads to me and a brief discussion I had with the Senator before he wrote the amendment. I think we have to distinguish here and unfortunately it is not done in this amendment between confirmation processes and the vote for confirmation. I think we all agree that we would like to vote for confirmation to be in open session. But the whole process of confirmation, that is the discussion of a man's personal life which I think is valid in the Senate debate but perhaps would be more open and more to the point if they could do it among themselves without belaboring a man's life in public. I think that is one process here. But this amendment as written now, just says confirmation and as far as I am concerned, my interpretation of confirmation is both the process of confirmation, that is the discussion of a man's life or whatever and the vote for confirmation. I am opposed to this amendment. I think it is too loosely worded for what we want to do. I can see a danger both in terms of exposure of a man unnecessarily in confirmation processes and also inhibiting true discussion in the Senate, the counter questions that perhaps ought to be asked and need to be asked perhaps won't be asked if members of the press and there and the public is there listening to a man's personal life. And perhaps you disagree with me but that is the very reason I oppose this amendment.

Questions

Mr. Jenkins Mr. Roemer, don't you feel that if the governor and potential appointees knew that these things would be discussed in public, that it might lead to a better screening by the executive of his potential appointees and a better understanding of their qualifications before he submitted them?

Mr. Roemer Well, now necessarily, Woody, I feel that the... and I am placing my faith in the Senate now, that those thirty-nine men and women, if there are women eventually there; will be able to screen and ask the kind of questions that need to be asked about these people. Now, they don't need members of the press looking over their shoulder to ask those kind of questions that are going to be asked. And I think it would be awfully embarrassing to the governor whether in open session or closed session if he had a nomination for appointment and it wasn't confirmed by the Senate.

Mr. Jenkins Isn't it true that all of us who have to seek election, most of our offices being much smaller and less important than many of the appointed officials are subject to this same public airing and public discussion of our qualifications and backgrounds and shouldn't these appointees be subject to that same area?

Mr. Roemer Well, I want to point out something to you, Delegate Jenkins, those of us who have run and will run for public office are often unfairly subjected to personal criticism that has no weight on the issue at all. Now we take that chance I realize when we run for public office. I think though that it is overdone, when we run for public office. You, yourself, have probably been subjected to unfair, unwarranted, inappropriate consideration and criticism. I think we ought to elect... allow the Senate to intelligently discuss these people without the same thing happening. Inevitably it seems to me on controversial appointments there are going to be some people in the Senate, like in any body, who might want to take out personally after this appointment. And it has nothing whatsoever to do with his qualifications to do a job.

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Mr. Chatelain Delegate Roemer, isn't it a fact that the rules of this convention is the only time we can have an executive session is when we are hiring people or possibly firing people. Is that correct, sir?

Mr. Roemer Well, I don't know what the rule is, I'll buy it if you do.

Mr. Chatelain The rules of this convention are that we can go into executive session only for the purpose of hiring the staff, etc.

Mr. Roemer Yes, the Executive Committee. That is correct and for the same reason, Mr. Chatelain, I think, personal consideration.

Mr. Willis Well, that was my question, Mr. Chatelain asked it but what happened to the argument that this convention should be open when you put that vis-a-vis... whether or not the Senate's deliberation should be secretive.

Mr. Roemer O.K., I think it is a good point and I am not trying to close the Senate deliberations as to a vote, Burton. I am trying to insure that a man's right for appointment and valid consideration will be kept open. I have found and I think so have you, that when you open it to the political arena and people are attacked personally, that some good men just don't even come forth at all.

[Previous Question ordered. Record vote ordered. Amendment rejected: 19-81. Motion to reconsider tabled.]

Amendments

Mr. Hardin Amendment No. 1 [by Mr. Abraham]. On page 5, line 7 immediately after the word "Senate to" and before the word "prior" delete the word "confirm" and insert in lieu thereof the words "rejected the appointment".

Amendment No. 2. On page 5, line 8, immediately after the word "confirm" before the words "of the" delete the word "rejection" and insert in lieu thereof the word "confirmation".

Amendment No. 3. On page 5, line 10, after the word "appointments", delete the remainder of the line and delete lines 11 and 12, both inclusive, in their entirety and insert in lieu thereof the following:

"and shall submit for confirmation by the Senate the names of those so appointed within forty-eight hours after the convening of the next session of the legislature."

Explanation

Mr. Abraham The purpose of this amendment is to insure positive action by the Senate. The way the proposal reads now is that the governor would submit a name to the Senate and the Senate would then either sit on it or it could pass on it but if it sat on it and took no action whatsoever then the person would automatically be rejected. So you would have a situation there where the governor is sitting around waiting for the session to end in order to know whether or not he has got a department head. And if the Senate does not act, at the end of the session the governor has no department head so he has got to make an interim appointment, which will expire at the end of the next session. What my amendment does, it says that failure of the Senate to reject him amounts to confirmation. The Senate must act on it and if they refuse to reject well, then the person is automatically confirmed. And what amendment No. 3 says is that is just simply corrects the language of Paragraph 3 where the governor submits the names of his interim appointments to the Senate within forty-eight hours after the next session and then the same procedure would follow there. The Senate would have to act on it and if it did not reject the person then he would automatically be confirmed.

Questions

Mr. Denberry Mr. Abraham, don't you think in a matter of whether an appointment is confirmed or rejected that there should be due consideration given to it, rather than automatic confirmation if it has failed to be considered, don't you think that it is more preferable if no consideration is given that the appointment should be treated as rejected?

Mr. Abraham I think we are going to have to put language in here to try to force some action one way or the other because I don't think it is very good to have a system where I submit... if I were governor, I would submit a name to the Senate and then I wouldn't know until after the end of the eighty-five day period as to whether I am going to have a department head or not?

Mr. Denberry Do you know of instances where submissions of names to the Senate have not been acted upon by the Senate?

Mr. Abraham I, personally have no knowledge of that, no.

Mr. Denberry Thank you.

Mr. Flory Mr. Abraham, under the present procedure of confirmation by the Senate, when a name is submitted to the Senate for confirmation no one knows that except the governor and the members of the Senate. My question to you is, in the third amendment you have proposed, where you say "and shall submit for confirmation", my question is, do you intend that the public should be aware as to those names that he has submitted for confirmation or under the same procedure as now used by the Senate?

Mr. Abraham What the intent of this is, suppose he makes an interim appointment, then to officially make that person the department head for the remainder of the year or two years or three years, then he would have to go simply through the mechanics of submitting that name to the Senate. Or he may want to submit some other name to the Senate.

Mr. Flory What you are saying is that you don't require that he notify the public that that name has been submitted for confirmation.

Mr. Abraham No, sir. This is simply to make to make the mechanics the same as the original appointment.

Mr. Nunez Mr. Abraham, let's take the case of an eleven hour situation where a governor would probably have a bad nomination and knows it but still wants it and he waited until the eleven hour and because of the time involved and the other circumstances the Senate would not be able to act, that man would automatically become confirmed by an inaction on the part of the Senate, is that what you are trying....

Mr. Abraham No, by the same token if the governor wanted to have someone in there, he could wait until the Senate adjourned and then he could make an interim appointment.

Mr. Nunez Yes, but he would only be in until the time it came about that the Senate would either confirm or not confirm.

Mr. Abraham Well, he would be in for a full year and then the governor that wanted to keep that man he would have to submit that name at the next session of the legislature.

Mr. Nunez Yes, but if he submitted him, the submitting him out of session, my understanding of your amendment, it would be automatic confirmation once he submitted and the Senate didn't act on it. It wouldn't have a chance to act again, isn't that

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right? At the next session they wouldn't be able to act on a confirmation that was submitted at a previous session.

Mr. Abraham Well, if the Senate failed to act on a particular appointment then Paragraph 4 takes care of that.

[Previous Question ordered. Amendments rejected: 7-92. Motion to reconsider tabled.]

Reading of the Paragraph

Mr. Hardin J. Removal. The governor may remove from office those whom he appoints, except those appointed for a term fixed by this constitution or as may be fixed by statute.

Mr. Henry Are there any amendments to J?
Read Paragraph K.

Reading of the Paragraph

Mr. Hardin K. Commander-in-Chief. The governor shall be commander-in-chief of the armed forces of the state, except when they are called into the service of the federal government. He may call out the armed forces of the state to preserve law and order, to suppress insurrection, to repel invasion, or in other times of emergency.

Explanation

Mr. Arnette Well, this is a slight change from the way the present constitution reads. The present constitution provides that the governor may order out the militia in times of...to preserve law and order, to repel invasion or suppress insurrection. Well, the committee felt that certain other things ought to be included in this such as the situation we had lately with the floods. The national guard was called out to work on building up the levees and things like this. This is the other kinds of emergencies that the committee anticipated when they proposed this particular change. I think the change is a good one. Are there any questions?

Question

Mr. Bergeron Mr. Arnette, if you deleted this "in other times of emergency" the national guard couldn't be called out when we have such emergencies such as flooding, levee breakings and so forth.

Mr. Arnette Well, according to the constitution, he is not supposed to be able to and we felt that this would give him the power to do this and we thought it was a good power for him to have. In times of floods, tornados, hurricanes, anything of this nature, that the national guard traditionally has been used for, that we would allow the governor to call them out in this situation.

Amendment

Mr. Hardin Amendment No. 1 [by Mr. Toomy]. On page 5, delete lines 22 and 23 in their entirety and insert in lieu thereof the following: "to suppress insurrection or to repel invasion."

Explanation

Mr. Toomy Mr. Chairman, fellow delegates, the present provision of Article XVII, Section 2 provides that the governor shall have the power to call the militia into active service for the preservation of law and order, to repel invasion and to suppress insurrection. The amendment that I offer to you at this time simply deletes the words "in other times of emergency" in the committee proposal and this in effect simply restates the governor's powers...constitutional power in the present provisions of the constitution in regards to calling

out the armed forces of the state. It was mentioned that there has been various emergencies in the state of different types and as far as I know there hasn't been instances where the present powers of the governor to call out the armed services has been hindered by the present provision. I see no reason at this time to further broaden this provision if the present provision adequately provides for calling out the armed services in any case of emergency that we've had in any foreseeable cases that I see. Further, in regards to this, in the Legislative Article, we provided that the governor could call the legislature into special session in regards to emergency situations. And we enumerated the reasons, the emergencies, we did not leave it broadly open to any interpretation as this would do. And I simply believe that we should keep the present provision which seems to have worked in all instances and not leave an open door as to whatever this interpretation might be "or in other times of emergencies". I think we should enumerate in what cases the governor should be able to call out the armed forces. I ask the acceptance of this amendment.

Questions

Mr. Lanier Mr. Toomy, as I understand your amendment, you would delete from the committee proposal the terms "and other emergencies" which as I understand it was intended to include among other things the present provision that says that the governor may do this for the preservation of law and order, is that correct?

Mr. Toomy My amendment would not delete the words "to preserve law and order". My amendment only deals with lines 22 and 23 and I think the terms of law and order have been broadly enough interpreted to include all the emergencies that have been brought up.

Mr. Lanier Ok, so that if we were to have a hurricane in Lafourche and we like we have from time to time and had a serious situation it is your intention that this would not limit the right of the governor to call in the national guard if we need that type of help.

Mr. Toomy It is my understanding that under the present provision he has been able to do that in each instance you have had the armed forces.

Mr. Alexander What happens under the terms of your amendment however if some emergency arises that may not constitute the preservation of law and order, it may be some other unanticipated emergency. At this time can we anticipate everything that will happen, so we need some catchalls, don't we?

Mr. Toomy Reverend, as I tried to bring out to you before, that in the Legislative Article in regards to the governor calling the legislature into extraordinary session in terms of emergencies, we enumerated the cases. We did not leave it open to broad interpretation which you are suggesting. And I believe in the case of calling out the armed forces of the state, law and order is broad enough for the interpretation of what you are worried about.

Mr. Alexander But suppose something happens that requires immediate attention and the governor does not have the time to...may affect the government. For example it may be some kind of deal there to where the government cannot be mobilized, the legislature cannot be mobilized.

Mr. Toomy Well, I just think Reverend that as far as calling out the armed forces of the state the armed forces for the most part deal with preserving law and order and the call of the governor for the legislature into extraordinary session that we provided for...provides for immediate call of the legislature and not any time provisions, you wouldn't have to worry about the interval of time.

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Mr. Arnette Mr. Toomy, are you aware that the national guard was called out down in Morgan City to rebuild the levees down there to protect the town?

Mr. Toomy They were called out as I understand, under the present constitutional provisions and that is all I hope to maintain right here, is the present provisions.

Mr. Arnette Well, Mr. Toomy, it seems to me that there would be some question of this authority to do this because they weren't maintaining the law and order, they were not repelling any invasion and they weren't suppressing any insurrection and I would question his authority to do that. And I want him to continue to have the authority to do this, don't you think that would be a good idea that we would have national guardsmen protecting towns by rebuilding levees?

Mr. Toomy As I understand Mr. Arnette, in each instance the national guard has been there, and it has not been questioned.

Mr. Arnette Well, I would like for it to continue not to be questioned but I would like to make it perfectly clear.

Mr. Toomy Well, I just think that your intention of what is written here by the committee, leaves it to very broad interpretation, and I would be much satisfied with the present provision.

Mr. Arnette Thank you, Mr. Toomy.

Further Discussion

Mr. De Blieux Mr. Chairman, ladies and gentlemen of the convention, I rise in opposition to this amendment because I can recognize that if this amendment was enforced during this past year, the governor would not have been able to have the national guard repair the levees up near St. Francisville on the levee. That portion protecting Angola. He would not have been able to send the national guard down in Morgan City to help them in their flood situation. There are several instances which the national guard have been called out that under this particular amendment the governor could not have used them to a very good purpose in the case of emergency.

Questions

Mr. Nunez Senator De Blieux, your logic is confusing me, you are saying under this amendment the governor has utilized.... in utilizing the present constitution in this provision "in other times of emergency" is not in there so how has he called them out to take care of St. Francisville and Morgan City in the many, many times he has called them out in the event of hurricanes. Is he violating the law?

Mr. De Blieux Well, he has not been contested but I just wonder if he could have done that. Legally, I just don't think it would be possible under this particular amendment to do it.

Mr. Nunez No, under this particular amendment he can operate the same way he can now, under the present provisions of the constitution like they have been doing for fifty years. They have added this.... don't you agree that they have added the provision that Mr. Toomy is trying to take out?

Mr. De Blieux You know Senator Nunez, sometimes you only get hauled before the courts when you have violated the law and somebody catches you at it and brings you up there. There are those times that the law has been violated. Lots of times nothing has ever been said about it. How it so happens that I don't think anybody ever contested it but I am of the opinion that if it was contested he would not have been able to use it. Who is

going to contest him using it in an emergency? Can he use it in an emergency, why not have it in the constitution, he can use it in an emergency. I think this is a bad amendment.

Mr. Nunez Isn't it true that they are adding the provision that Mr. Toomy is trying to take out and the governor has successfully over the past fifty years been able to call out the guard whenever he saw fit in the case of the emergencies you just described?

Mr. De Blieux Well, if he has been doing that why not have just a couple of words in the constitution to do that?

[Previous question ordered. Amendment rejected: 18-82. Motion to reconsider tabled. Motion to waive reading of Paragraph L adopted without objection.]

Amendments

Mr. Hardin Amendment by Delegate Abraham on behalf of the Committee on the Executive Branch.
Amendment No. 1. On page 5, delete lines 24 through 32 both inclusive in their entirety.
Amendment No. 2. On page 6, delete lines 1 through 9 both inclusive in their entirety.
These amendments delete the entire paragraph.

Explanation

Mr. Abraham This is just a technical amendment, we have already covered the extraordinary session in the Legislative Article and all this does, it takes it out of the Executive Article.

[Amendment adopted without objection.]

Amendment

Mr. Hardin Amendment by Delegate Denny to Committee Proposal No. 4 by Delegate Staggs, et al.

Amendment No. 1. On page 6 between lines 9 and 10 insert the following: (M which is now changed to L)

"(L) Other Powers and Duties. The governor shall have such other powers and perform such other duties as may be authorized by this constitution or provided by statute."

Explanation

Mr. Denny I hate to use the old saw that this is a technical amendment but actually it is. We failed to put this in the Article on the Executive, we have a similar provision with regard to all of the other elected officials and there will be a provision similar to this on the new elected officials who have been added. In other words, this will permit the legislature or other portions of the constitution to give "additional powers and perform other duties" to the governor. I ask that it be adopted.

[Amendment adopted with one objection.
Previous question ordered in the Senate. Section passed: 20-8.
Motion to reconsider tabled.]

Reading of the Section

Mr. Hardin Section 6. Powers and Duties of the Lieutenant Governor

Section 6. The lieutenant governor shall serve ex officio as a member of each committee, board, and commission on which the governor serves, exercise the powers delegated to him by the governor, and have such other powers and perform such other duties in the executive branch as may be authorized by this constitution or provided by statute.

Explanation

Mr. Stovall Mr. Chairman, ladies and gentlemen of the convention, the 1921 Constitution provided that the lieutenant governor be ex officio president of the Senate. This provision is eliminated in this proposal concerning the lieutenant governor. The rationale of the committee in eliminating this provision is that the executive branch of government and the legislative branch should be separate and also they should be independent as much as possible, one of the other. The proposal as you just heard provides that the lieutenant governor shall serve on every statutory committee, board and commission on which the governor serves. I have before me a list of some twenty different boards and agencies on which the lieutenant governor will serve. In addition to this, the governor or the legislature may assign additional executive duties to the lieutenant governor. It should be said, in addition to this, that the lieutenant governor serves an important function in that he performs many ceremonial duties for the governor and for the state. Certainly these are important and significant. I would like to remind you that the Executive Branch Committee and this convention has rejected proposals that the lieutenant governor and the governor run on the same ticket. It seems to me that this means that a heavy burden rests upon the governor and lieutenant governor, to be persons who will cooperate and work together. There is no way that we could find to guarantee this kind of a good relationship, and still let each of them maintain their independence. But I think we can assume that this will be done and the additional thing that needs to be said is that the lieutenant governor does succeed to the office of governor in case there is a vacancy, and this means that this is a very important function and duty.

Question

Mr. O'Neill Reverend Stovall, did your committee discuss giving the lieutenant governor any other enumerated powers and duties? I'm just asking, I'd just like to know the benefit of some of your discussion.

Mr. Stovall Yes, Mr. O'Neill. We discussed a number of different possibilities. We decided that it would not be wise for there to be a constitutional provision assigning specific duties to the lieutenant governor such as head of industry and commerce or some other specific agency. A part of our hesitation is because lieutenant governors differ in their abilities and we felt this could be left to the governor or to the legislature to provide as the occasion might demand. Thank you.

Mr. Riecke I'd like to ask the chairman a question. Do I have time to introduce an amendment to put the lieutenant governor as the presiding officer of the Senate? I don't want to hold up the whole thing, but I think this is a very important thing that a lot of the members here want.

[Motion to pass over Section 6 retabled: 24-60. Previous Question ordered in the Section. Section passed: 91-10. Motion to reconsider tabled.]

Reading of the Section

Mr. Hardin Section 7. Powers and Duties of the Secretary of State.

Section 7. There shall be a department of state headed by the secretary of state who shall serve as chief election officer and administer the election laws. Administer the laws relative to voting machines or other voting devices, administer the state corporation and trademark laws. Serve as keeper of the Great Seal of the State of Louisiana and attest therewith all official laws, documents, promulgations, and commissions. Administer and preserve the official archives of the state. Promulgate, publish and retain the originals of all laws enacted by the legislature, and countersign all commissions and keep an official registry

of same. He may administer oaths, and shall have all other powers and perform such other duties as may be authorized by this constitution or provided by statute.

Explanation

Mr. Gravel Mr. Chairman, ladies and gentlemen of the convention, the Committee of the Executive Department, in preparing and submitting Section 7, sought to put into the provision here and under the office of the department of state all of the functions presently exercised by the secretary of state, as well as such additional functions as might be otherwise provided by the constitution or by statute. Now, as you will recall, this convention has now created the office of commissioner of elections. The question, of course now arises as to whether some parts of this provision are yet applicable to the office of secretary of state. I understand that there are amendments that are going to be proposed to the section. But insofar as the committee is concerned, the proposal here made is to maintain and give to the secretary of state all of the authority that he presently has.

[Motion to pass over Section 7.]

Point of Order

Mr. Kean It is my understanding that in order to pass over a section, it would have to be for a definite, stated time.

Mr. Henry I think your point is well taken, sir. Do you want to...

Mr. Gravel Yes. I want to amend the motion that we pass over it until Wednesday, of the coming week.

Substitute Motion

Mr. Kean I'd like to make a motion, a substitute motion, Mr. Chairman, that we recommit this Section to the Committee on Executive Powers.

[Substitute Motion to recommit the section to the Committee on Executive Powers ruled out of order.]

Substitute Motion

Mr. Kean Mr. Chairman, I withdraw my motion and offer substitute motion that we go into a Committee of the Whole for the purpose of considering this matter.

Mr. Henry For the purpose of considering Section 7, and for what period of time, sir?

Mr. Kean Section 7. For a period not to exceed one hour.

[Record vote ordered]. Substitute Motion to resolve into a Committee of the Whole adopted: 54-5..]

Motion

Mr. Triche Mr. Chairman, I move we adjourn until next Wednesday at 9:30.

Mr. Henry We're going to have to rise before we do that, Mr. Triche. I'm going to have to put somebody else in the chair, under the rules.

Mr. Roy, come up here and preside while we're in the Committee of the Whole, please sir.

Mr. Roy in the chair.

Vice Chairman Roy in the Chair

Committee of the Whole

[Motion to have Secretary of State. Substitute motion to show and report.]

Explanation

Mr. A. Jackson Mr. Chairman, the convention, having resolved itself into a Committee of the Whole, then the motion that I made simply would bring us out of the Committee of the Whole so that we could move to our regular order of business or consider a motion to adjourn. My reason for making the motion is that I do not believe that we can resolve the difficult problem that we have within an hour. I think that this is a rather complex situation that ought to be considered by the Executive Committee and make recommendations to this convention. This is why I made the motion.

Point of Information

Mr. Lanier If we vote to go back into convention, will this mean that we cannot hear the secretary of state of the state of Louisiana?

Mr. Roy Yes. We could hear him next week or at any other time, but today we would resolve and go into the regular order of business.

Point of Information

Mr. Flory Can't we rise and report progress at this point to allow the convention to, by amendment, delete this section and refer it then for a public hearing where all parties can be heard?

Mr. Roy Will you rephrase that, Mr. Flory? Or restate it?

Mr. Flory We can rise and report progress to allow the convention to delete the entire Section 7 which would then send it back to the Executive Committee with orders to have a public hearing to allow all persons to be heard on it.

Mr. Roy Yes, we could.

Point of Information

Mr. Burson You have stated the motion, as I understand it, in a fashion that we would report out a recommendation of a deletion of this section and a report back to the Executive Committee. There's been no vote held on that, and I think every delegate here ought to understand that before we vote.

Mr. Roy The Clerk will answer.

Mr. Hardin Mr. Burson, what has happened is that Mr. Flory, on a point of information, was recognized and in his point of information he asked about the possibility of deleting Section 7 if we rose, which would therefore give the Executive Committee an opportunity to hold hearings on this if they so desired. The two motions which are pending; the first motion was by Mr. O'Neill, in the Committee of the Whole, to hear the secretary of state in Committee of the Whole. Delegate Jackson's motion then was to rise, this was the substitute motion. The motion to go out of Committee of the Whole is to rise, and that was the motion that was made.

Mr. Burson I follow all of that quite well. I just wanted to make the point that we were not voting, at this time, on Mr. Flory's suggestion and that we had not voted while we were in the Committee of the Whole, therefore his suggestion would have nothing to do with what kind of report would be made.

Mr. Hardin That's right sir. All we're doing... This is a vote to rise.

Point of Information

Mr. Singletary When we're in the Committee of the Whole, are we subject to the ordinary rules of this convention?

Mr. Hardin Yes, sir, in as far as they are applicable.

Mr. Singletary Well, my question is would Representative Jackson's motion be debatable in a Committee of the Whole.

Mr. Hardin No sir, it would not.

Point of Information

Mr. Stinson Point of information, Mr. Chairman. The motion was to go into the Committee of the Whole to hear Mr. Wade Martin. But aren't there two gentlemen involved? Is Mr. Fowler present, and is he going to be heard too? I think in fairness to both gentlemen should be heard.

Mr. Roy We're not debating that at this time, and I don't know if Mr. Fowler is here. The motion simply is that we...by Mr. Jackson, that we rise and if you vote for Mr. Jackson's motion, obviously we won't hear Mr. Martin this morning.

Mr. Stinson But I think that a lot of people would know whether the committee is only just for Mr. Martin or...

[Substitute Motion to rise and report adopted: 61-44. Motion to adjourn to 9:30 o'clock a.m., Wednesday, August 8, 1973. Substitute motion to adjourn to 1:00 o'clock p.m., Wednesday, August 8, 1973.]

Announcements

[Journals: 27a]

Personal Privilege

Mr. Lowe Mr. Chairman, delegates to the convention, I'll just take a minute, but I feel I have to give you some information. We've heard some complaints about signing vouchers at committee meetings on days when the full convention is meeting. The reason why we were doing this, in case you had attended a committee meeting and would not attend the full convention, you'd be sure that you would be paid for that committee meeting. Now, in deference to those complaints, I'll say that you no longer have to sign a voucher when you attend a committee meeting on the same day that the full convention is meeting. I dictated a memorandum yesterday to Mrs. Duncan, and if that meets with the Chairman and Mrs. Duncan's approval, you will only sign a voucher when you know that you will not attend the full convention meeting that day if you attended a committee meeting. Now it's going to be left up to you to make sure that you get your voucher signed and in, in those particular circumstances. One other thing, we are only issuing checks once a month. This may be working an imposition on some of you. The treasurer's office has no objection to the issuing check weekly, bi-monthly, or monthly. The reason why we are issuing them monthly is that it cuts down the overhead and the expense of issuing checks. The other thing, I've been asked at times to issue a single check. We can't do this because in the interest of investing our money properly, we have no bank account. We leave all of our money with the Division of Administration. A lump sum of payments at one time, or issue one big voucher and the day we draw our money, we issue checks. So there is no lag at all in the funds that we are using. If this is working an imposition, I have no objection at all to opening a bank account, having all the flexibility that we need to give you what you would want. Now I don't know how far spread this is, but we're not trying to be arbitrary in the treasurer's office. Let me hear from you, if you think you want more flexibility. What we've done is tried to set up an arrangement that we would not be criticized from the standpoint of having our funds laying around idle.

Mr. Chairman, members of the convention, I'm promised by my office that you should have your

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checks Wednesday when you return here. It takes about three days for the Clerk to get his paperwork in, and it takes about three days for our office. Wednesday you should have your check when you come back.

[Substitute Motion adopted without objection. Adjournment to 1:00 o'clock p.m., Wednesday, August 8, 1973.]

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Wednesday, August 8, 1973

ROLL CALL

[Quorum Call: 102 delegates present and a quorum.]

PRAYER

Mr. De Blieux Our Heavenly Father, we thank Thee for the privilege of gathering here, being about Thy work. We ask You to give us the wisdom to think of our fellow men and to think of the way that You would have us do, that we may do this job to Your satisfaction. We ask this in Jesus' name. Amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

INTRODUCTION OF PROPOSALS

[I Journal 271]

Personal Privilege

Mr. Flory Mr. Chairman, delegates to the convention, I rise on a point of personal privilege this morning...this afternoon, to clarify something that I think an injustice has been done to one of the delegates, particularly at this convention. When this convention convened on July 5, I gave a letter to the desk asking that Mr. Jack Avant be excused from his duties as a delegate to this convention due to the fact that he was in the hospital incapacitated and, if it was not placed in the record and he was not given official leave then certainly it was an oversight and not placed in the record. For a man to be criticized by an organization outside of this convention for not attending to his work of the convention because he was in the hospital, I think, was an injustice to that delegate and certainly I would hope that the press would take cognizance of the fact that he did officially request an absence of leave from this convention due to his illness and I would certainly hope that the press would correct their errors in the reporting that they did in the recent days while we were in adjournment.

Mr. Henry Mr. Flory, in that connection, we do have the copy of Mr. Avant's letter in the files and if it was not inserted in the Journal that his absence was excused, it's my fault, and I express my apology to him for that.

Personal Privilege

Mr. Leithman I'm only capable of a short personal privilege, Mr. Chairman.

I also would like to take issue with PAR's analysis. I'm certainly not criticizing the press. They reported on the PAR bulletin. I'm here to speak on behalf of the sinful group and that's the group of legislators who perhaps have voted as a block, least of all in this convention. My only reason for being here and speaking on behalf of the legislators is to you members who are non-legislators and we don't want you to feel that we are not carrying our burden, but we want to say this and after reading this wonderful analysis I went to my appointment book and by way of appointments, I just wanted you to know and of course this differs not from the other legislators that are here...that on those votes that I missed during...since July 5, I had delegations appearing in Baton Rouge before the highway board, I had two retarded children who needed admission into various schools around the state, and I had a tax problem for one of my companies out of my district with Mr. Joe Traigle. There is no other time to take care of these things between the hours of 9 and 5. Gentlemen, your legislative duties continue while we're in the convention. This doesn't mean we're any more or less interested. It was your legislators here that voted for the conven-

tion and started this whole ball of wax flowing so I really feel that PAR did an injustice to a group that kicked-off this constitutional convention and that's your legislators. When you don't see us here, I would say for the most part we're involved with a legislative matter in the Capitol Building or at the Highway Department or where have you. Thank you for your time.

Personal Privilege

Mr. Guidry Mr. Chairman, delegates to the convention, I'm here not to apologize for missing the meetings that I missed, and pardon the expression, but as far as PAR is concerned they can go to hell. Because you delegates do not deserve the criticism that was thrown on the group because of me, but when I do something, I do it right. I miss a hundred percent, not just part of it. I want to tell you this, if you want to write a good constitution, don't follow PAR too closely, because you'll screw up the whole works. I want to apologize to the membership because I did not show up until the first votes came on the major issues. I've been in this legislature for a total of 16 years upon the completion of this session, of my present term of office. I was first elected in 1952, was re-elected in 1964 up to the present day. The committee meetings I have missed because I was in Europe most part of the time and at other times I did not feel it necessary because I had heard all of the arguments on just about every issue that you could possibly bring before this convention, and I said it from the beginning that I was not going to come until the final articles were ready for adoption which is the work that was started last week and the first article which you adopted, the legislative, now we're on the executive branch of government, but I do want to apologize to the delegates if I embarrassed you in any way by my absence, it certainly was not intended that way. I think from the article that I read, that I did not take part in, I think is an excellent job and I am going to push every way possible that I can that the new constitution be adopted by the general populace of the state of Louisiana, and I guess to tell you the truth I think that since I was elected to represent the public-at-large I was probably the best representative they had by missing 100 per cent, because the apathy the general public has is exactly what they deserve; somebody to come here and vote absolutely zero, not at all, because I honestly believe that the negative attitude of the general population of the state of Louisiana as it stands today, as it will keep on going for the next few years to come will be that of the negative attitude, and I pray to God that you are successful in writing a new constitution, because I think we deserve to have a new constitution and the hard work that has been put in certainly does not warrant the criticism to you people. I deserve everybody of criticism that I got and I accept it, and I don't apologize for it, but I accept it and I want to say this that an meeting with the governor tomorrow and I am going to submit my resignation that I do not want to embarrass the governor and I do not want to embarrass my colleagues here as a delegate to this convention. I assure you that I will be on my soap box next election when we are ready to get this constitution adopted. I will be there to help you. I'm doing a thing that I've got, financial and otherwise, unless PAR criticizes my financial contributions toward helping a political cause, if they might call it that. But anyway for the four days that I did spend with you, and the next two, today and tomorrow, and for, I'll vote at least all day today and half a day tomorrow, before I resign. I'm going to go home, take care of my wife, my kids, my business and my constituents in the 55th district, and I want to make an announcement right now, publicly. That anybody who wants to be representative the next four years in the 55th district, they can have at it, because they ain't going to have a chance to vote for or against me again. I'm going to finish representing my people

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as well as I can. I will give it my all and I want to go out like Gene Tunney. I'm going to go out as a champion, as a winner. They ain't going to defeat me at the polls, I assure you. I want to congratulate you for the fine work that you have done, even the people that were called as being absent which I know might have been in committee meetings or might have had more pressing things to do that the rest of the delegates did take care of the business at hand. Again, I want to say thank you for putting up with me for the last four days that I was here, and I'm going to sit in my seat and keep my mouth shut the rest of the day and half of tomorrow, and I'll come by and visit and I'll sit in the spectators section whenever I have time to come in. Thank you very much.

Personal Privilege

Mr. Chehardy Mr. Chairman, ladies and gentlemen, the only problem with answering the misrepresentation of this organization, this private organization, dedicated to pushing taxes on the backs of the poor, the only problem with answering them is when I show how much I've been here then they are going to say I've been absent out of my assessor's office. So, it is a problem. Now, in reality, during July I was here on the 5th, I was here on the 6th, the 11th, the 12th, the 13th, and the 14th I wanted to get permission to be away because I had to and it was my understanding that we did not have to ask and would not ask for permission to be absent. I was here on the 18th, the 19th, the 20th, the 25th, the 26th. On the 27th, which was a Friday, I took ill, asked Eddie D'Gerolamo would he help me, you know, drive me home which he did. I came back the next day and could not get in and left. Those are the 3 times that I was... actually absent 1 time, 2 times had to leave, and that accounts for July. During the month of August, this month, I missed one day. Now, it so happens that on the 27th and 28th, the two days that I had to leave, on those days alone, and the only way to compare it is to compare what's happened is the same as if you finally spends two weeks preparing for a Christmas Dinner and you preparing and cooking, then on the Christmas Day the wife gets ill, so the cook gets credit for the whole dinner. Now, what happened on Saturday and Friday, we had one, two, three, four, five, six, seven, twelve, seventeen, nineteen votes in those two days. The sum total of it is, I've been absent two days, had to leave on two occasions, and that is the sum total of my presence and of my operation as a member of this body, which I value very highly and which I honor and would do nothing to harm any of the work that we have to do. I thank you for your forbearance of course, I'm like Mr. Guidry, my suggestion is that Mr. Steinel leave the state and PAR leave the state, not that Mr. Guidry resign. Thank you.

Mr. Henry We might get Rev. Stovall, Rev. Landrum and Rev. Alexander over here in the corner and we can just have a little confessional booth. It might speed this thing up a little bit.

Personal Privilege

Mr. Asseff Mr. Chairman, delegates, I didn't come here to apologize, however, I have known Representative Guidry since he came to the legislature many years ago, much younger and much thinner. He's a very fine and able person. He owes us no apology and I sincerely hope that he will not resign from this convention. Thank you.

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Mr. Poynter Committee Proposal No. 4, introduced by Delegate Stagg, Chairman on Behalf of the Committee on the Executive Department, a proposal providing for the executive branch of government for the filling of vacancies in certain public

offices, and with respect to dual office holding, a code of ethics, and impeachment. Present status, is that the convention has adopted as amended the first six sections of the proposal and presently has under consideration Section 7, Powers and Duties of the Secretary of State.

Explanation

Mr. Stagg Mr. Chairman, there has been passed out to the delegates an amendment to the section relating to the powers and duties of the secretary of state proposed by Mr. Asseff, Abraham, Anzalone, Brien, Dennyry, Duval, Gravel, and myself. At the meeting of the Committee on the Executive Department this morning these groups, the delegates who are listed on this floor amendment adopted this language and it will be explained by Dr. Asseff on behalf of the co-sponsoring delegates.

Amendment

Mr. Poynter Amendment, submitted by Delegates Asseff, Abraham, and others, an amendment, No. 1 page 6, delete lines 19 through 21 both inclusive in their entirety and insert in lieu thereof the following: "the secretary of state, who shall promulgate all election laws, except for those relating to voter registration and voting machines; administer"

Explanation

Mr. Asseff Mr. Chairman, delegates, this floor amendment represents eight of the twelve members of the Committee on the Executive Department. It meets with the approval of the secretary of state and also of the Custodian of Voting Machines. The only change that we made is this, is you will note on lines 19, 20 and 21, we have struck... on page 6... we have struck those three lines and have added this language: "the secretary of state who shall promulgate all election returns, administer the election laws, except for those relating to voter registration and voting machines; administer". In other words, we have left the duties of the secretary of state as they now are. We have simply taken from our report voting machines which is currently operated by the Custodian of Voting Machines and have assigned that to him and we have given voter registration, which is now an independent board of registration, we have assigned that to the Commissioner of Elections. When we later present an amendment on... for the Commissioner of Elections, we will add those particular duties. At this time we are simply saying the secretary of state will have full control of elections except for those two specific provisions.

Questions

Mr. Tobias Dr. Asseff, in the fourth line of your recommended amendment, you use the words "voting machines". Who would print the ballots for the voting machines?

Mr. Asseff Beg your pardon?

Mr. Tobias Who would print the ballots for the voting machines? Would that continue with the secretary of state?

Mr. Asseff Voting machines, you're talking about? I'm sorry... I don't understand...

Mr. Tobias The printing of the ballots...

Mr. Asseff That is with the secretary of state.

Mr. Tobias That would be under this proposal?

Mr. Asseff The printing of the absentee ballots, yes, but putting the names on the machines would be with the Custodian, but it doesn't matter, Mr. Tobias; we are leaving unchanged the current duties of the secretary of state and we are simply

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giving to the Commissioner of Elections, his present duties as Custodian, plus voter registration. We are really making no change.

Mr. Tobias Then in other words, the secretary of state would continue to be the chief elections officer in this state.

Mr. Asseff He would continue to perform every duty he now performs, Mr. Tobias.

Mr. Kean Dr. Asseff, as I understand your amendment, you would delete the reference in the present proposed Section 7 to the secretary of state serving as the chief elections officer. Now, would there be any chief elections officer in the state under this proposal and the one related to the Commissioner of Elections?

Mr. Asseff Actually, the function is divided, I don't think it's of that particular importance, because we have assigned everything to the secretary of state, except what is now performed by the Custodian...the voting machine law and we have added voter registration duties. So, who is chief and who isn't is a matter of opinion, but I don't think it makes any change.

Mr. Kean You use the words "relating to voter registration and voting machines". As I understand your explanation, and the answer to Mr. Tobias' question, the secretary of state would continue to prepare the ballot. It would simply be a matter for the Commissioner of Elections, if he retained that name, and duty, to put it on the machine.

Mr. Asseff I might add this, Mr. Kean, that that is correct. We have made no change and it does meet with the approval of the secretary of state. There is no change in his duties, if that answers your question.

Mr. Juneau Dr. Asseff, as I appreciate it, we really haven't made any change in the present law other than change the word "Custodian of Voting Machines" to "Commissioner of Elections". Isn't that right?

Mr. Asseff And giving to him voter registration law, which he currently does not have, Mr. Juneau.

Mr. Juneau Well, did you discuss whether or not it would be a misnomer or a little bit misleading to say "Commissioner of Elections" when we in fact divided the functions with regard to elections?

Mr. Asseff I must abide by the decision of the convention, Mr. Juneau.

Mr. Juneau No, I just wanted to know, did y'all discuss that?

Mr. Asseff I meant the name was proposed and adopted by the convention, and whether I agree or not is immaterial. I'm not questioning what you're saying.

Mr. Lanier Dr. Asseff, when you say here that "excepted from the secretary of state are the powers related to voter registration" and as I understand the corollary amendment with reference to the Commissioner of Elections, he would have that authority which is presently with the board. For the sake of the record, you do not mean to imply that local units of government would lose their right to appoint the Registrar of Voters on the local level.

Mr. Asseff That, I assume will come from another committee, Mr. Lanier. It certainly does not come from us.

Mr. Jenkins Dr. Asseff, are you aware that the secretary of state, while I think he has no ob-

jection to the general concept expressed here, does not, in fact, agree with this particular language that's being proposed. Are you aware of that?

Mr. Asseff I'm only aware, Mr. Jenkins, of what he told me, in person. That's all I'm aware of, and I...if you've heard something else, I'm sorry.

Mr. Jenkins Do you know that really what, I think, the secretary of state would prefer to have said in this language is that he would serve as chief elections officer and administer the election laws and nothing more, and then let the duties of the Commissioner of Elections or whatever other name...

Mr. Asseff All I can tell you is what Wade O. Martin, Jr. told me in person. That is all I can tell you sir.

Mr. Jenkins I didn't finish that question. Did you know that the appropriate thing probably would be to simply mention the duties of the Commissioner of Elections under his particular function with regard to Custodian of Voting Machines and voter registration rather than mentioning them here?

Mr. Asseff So far as I'm concerned, it's perfectly clear. I discussed it personally with the secretary of state. That's all I can tell you and the secretary of state said it met with his approval. Now that's all I can tell you. Now if he said something else, I'm sorry. I can only give you what he told me.

Mr. Denney Dr. Asseff, in rereading this since our meeting this morning, it occurs to me that if we delimit voting machines to the custody of voting machines then no question can come up such as was suggested by Mr. Tobias and others. Would you agree that that is the only duty at present that the Custodian of Voting Machines has, namely the custody of the voting machines, not their preparation?

Mr. Asseff That was our understanding this morning that we were giving to the Custodian his present authority to continue to administer the law relative to voting machines.

Mr. Denney Well, as a matter of fact, the ballots which appear on the voting machines are presently prepared by the secretary of state, are they not?

Mr. Asseff Then that would continue to be. That's my understanding of it.

Mr. Denney Well, I understand that this is what was intended. All I am asking you, sir, do you not consider it possible that a court would interpret "except those relating to voting machines" conceivably to include the preparation of a ballot and would it not be safer to delimit that language?

Mr. Asseff Mr. Denney, from what I've seen of court decisions, nothing would surprise me, sir. But if you feel that something would better clarify it then I'd be willing to listen. But courts cannot be predicted. I'm sorry. But it does meet with the approval of the parties involved because they told me in person. Now that's all I can inform this convention.

Further Discussion

Mr. Fulco Mr. Chairman and fellow delegates, I rise to oppose the amendment. I may be the only one in this convention body that will vote against this amendment, but my reasons for doing so seem to me very much reasonably...to me. Elections today in our state, our cities, our nation are about the most important function of our national and state government. There are many restrictions, many regulations and many requirements. We, therefore, need one individual who would devote all of

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his time exclusively in matters dealing with elections. We cannot possibly risk the danger of allowing our election machinery, our elections, to be piece-meal by any means. We cannot allow a division of the functions of elections in our state government. I have at the present time in the world for Wade Martin and I have for Doug Fowler. I have known these two gentlemen for 40 years in politics. I don't believe that you and I want to write a constitution predicated on these two gentlemen. They will not be here forever and neither will we. It is therefore necessary that we write a constitution that will serve the future and future generations. We have at the present time the secretary of state handling part of the election machinery of our state government. We have the Board of Registration handling a portion of our election machinery. We have the Custodian of Voting Machines handling part of our election machinery. People don't know who to call when there are problems develop concerning the elections and even at the time of elections. It is absolutely necessary that we do get one individual since we have created the office of Commissioner of Elections that we do put all of the responsibilities under this one head. In order to get efficiently, economy and to simplify election laws and so forth, it's necessary to put all of the election machinery under one head. Now, we talk about economy or cost to the taxpayers. We have the experts in the departments, various departments already set up. All we have to do is transfer them into the department of the Commissioner of Elections. We don't have to have three different office facilities. We don't have to have three different locations, and we don't have to have three sets of utilities. We don't have to have three sets of expenses. All this can be done under one department. Now, in conclusion, if we pass this amendment, ladies and gentlemen, all we have done since last Saturday is we have lost an awful lot of precious and important time of this convention.

Further Discussion

Mr. Bollinger Mr. Chairman, fellow delegates, I rise in opposition to the amendment. I think we're reverting back to the same thing that we have at the present time. I voted at first to delete the Custodian of Voting Machines. I voted to create the officer of Commissioner of Elections for one reason: because I thought all of the election laws should be under one officer and not split. Again, we're trying to split them. I would rather this convention decide either to put all of the election laws under the secretary of state and do away with the Custodian of Voting Machines or else establish a Commissioner of Elections and give him all of this power. Therefore, I urge the defeat of this amendment.

Questions

Mr. Burns Mr. Bollinger, I've done a little inquiry around my area and do you know if there's been any overall dissatisfaction or criticism the way the election laws and machinery of our state has been administered over the past few years?

Mr. Bollinger Mr. Burns, the people in my district, and that's the only people that I can speak for, who voice their opinion to me, would rather not have a Commissioner of Voting Machines per se, however, if they had a Commissioner of Elections, I don't think that they would have any objection to this. But the splitting of the responsibilities is the big objection, and this is my objection.

Mr. Burns Well, isn't that...we're the cause of that split being created, are we not?

Mr. Bollinger No, sir, we're not. If this amendment passes, it will split. I would personally rather than see a split in the responsibilities of the executioner of election laws, I would rather revert back and give all of the power to the secre-

tary of state and delete the office of Commissioner of Elections.

Mr. Burns Well, that's just exactly the point that I'm trying to make. Would it not be better to leave it just like it is than for us to create a split in it because...

Mr. Bollinger Are you speaking about this amendment?

Mr. Burns I say, do you not think it would be better to leave it just like it is rather than for us, this convention, by our actions, to create this split and put half of the authority under one official and half under another one?

Mr. Bollinger If you're talking about the way it's presently set up in the constitution, no I don't...I think that's the problem that we have...that it is split, and this is my objection.

Mr. Burns Well, you and I agree on that...that's what I'm trying to bring out.

Point of Information

Mr. Fontenot Point of information, Mr. Chairman. If this amendment passes, it seems like we're creating a Commissioner of Elections and a secretary of state...will we have to go back, if we want to do away with the Commissioner of Elections? Would we have to go back and reconsider the vote upon which the Commissioner of Elections was created?

Mr. Henry We have already under the provisions of this proposal created the office of Commissioner of Elections and of course secretary of state. To undo that would take a two-thirds vote of the membership of this body to call from the table the motion to reconsider the vote on which or by which we adopted the Commissioner of Elections. In my opinion.

[Previous Question ordered. Motion to resolve into Committee of the Whole adopted: 81-29.]

Vice Chairman Casey in the Chair

Motion

Mr. Triche Mr. Committee Chairman, I move that the Committee of the Whole invite the Secretary of State, the Honorable Wade O. Martin, Jr. to appear before the committee and to present his views for ten minutes.

Mr. Casey Mr. Triche moves that the committee extend to the Secretary of State, permission to address the committee for ten minutes.

Mr. Stovall Would Mr. Triche include ten minutes for questioning? Is that a part of your consideration?

Mr. Triche Whatever the pleasure of the committee is, I have no objection.

[Motion adopted without objection.]

Mr. Martin Mr. Chairman, delegates to this important convention, ladies and gentlemen in the audience, I am most grateful for this opportunity to address you on what I consider to be unquestionably the most important issue in this entire convention. Louisiana, this nation and the free world must depend on this if we are to survive as a free world. The integrity of this balance and the entire workability of the election machinery of this state and nation is in great danger today. This matter is always of vital importance, but never in the history of this country has it been as important as it is today. The reason for it is because for many years, as many of these delegates know Mr. Landry here, Clerks of Court, all

who maintain an interest and a concern with elections know that for years Louisiana and every other state operated solely under state law. Today there are five different regulatory systems, all of which must be taken into consideration in order to timely meet election deadlines and satisfactorily conduct elections. I'm not here to say to you that my office and personnel and I are indispensable. I know better than that. But I say to you that there are some times in history when it is dangerous to start something anew that's working with perfection. Let me tell you a little bit about what I know and believe is smarter than anyone else, but because as a lawyer, as a citizen, as an elected official and one concerned with the safety of this country, I have made many years study of this election situation. Let me disabuse the mind of everyone here that I am here to plead for Wade Martin, Jr. We are here to draft a constitution. As someone said yesterday, perhaps for 50 years or more, but we will be long gone. We are drafting this constitution in the interest of the voters of Louisiana and the taxpayers of Louisiana today and for posterity in the years to come. I am not an issue individually, and when I speak of the secretary of state's office, I'm speaking of a system of government—one that has been tried and proven. I'm not going to labor the question. I would say to you that if the people of Louisiana have ever spoken on one single issue, they have said that they are satisfied with the election procedure administered by the secretary of state's office. Four out of the last five elections I had no opposition at all, and in one election the stamp of approval when I did have opposition was more than a half a million votes in favor of the present system and the secretary of state's office. Why do you want to attack it? Now let me tell you how important this is, very briefly. I'll stick to my 10 minutes and then I'll answer questions as long as you like. I have full confidence in the integrity and the sincerity of the members of this convention. I think the great overwhelming majority of them, when they know the full facts in this case, will not disturb the secretary of state's office. I think they will not disturb the Clerks of Court, or the Registrar of Voters in the sense of the local level. I can say to you without fear of contradiction that not only in Louisiana, in the nation as well, Louisiana is a model for other states to follow. The secretary of state's office in Louisiana has been the main spokesman for all the secretaries of state in the nation who handle elections, and most of them do. I've been chairman of the Elections Committee of the National Association of Secretaries of State for a long time. This means nothing to you, in a way. It means nothing to me, in a way. I'm concerned. It means a lot to you and to me and to the people of Louisiana because there you have experience in the matter of elections that is worth something. Sure you can change it if you want, and in time you'll have a good, efficient operation, I'm sure. But right at the moment this is almost the same thing as trying to be in midair with a 74 Jet with a proven good engine, and then try to change it in midair with unproven, unknown quantities. Insofar as the duties of the secretary of state are concerned as presently constituted, I'm sure you are conscientious and you read the 25 or 26 different functions now performed by the secretary of state's office. Everything but the actual custody of the machines, and the brain work, and let me tell you that when you look at this ballot you're not looking at something that was prepared simply, rapidly, for one precinct. There are 2,587 precincts in this state and with all the reapportionments by the federal courts, not by the legislature, but by the federal courts which has not given consideration, Mr. Cheardy, to any of the other districts, you have overlapping districts until it's unbelievable. I say it is the devoted employees that have the technique and the information that they have in conjunction with the election officials and their cooperation in every parish in the state that has made it possible

for us to even conduct elections. You know how many ballot changes there are for the 2,587 precincts? Six hundred ballot changes. Now that's where we are today. I say to you that if you change this and create a new department, you will be wasting a fantastic amount of taxpayer's money needlessly and uselessly. The office of secretary of state has been devised over a long period of time. Now I'm not talking about me. This is where we are. We use the same lawyers, we use the same accountants, the same bookkeepers, the same telephone operators, the same proofreaders, the same publishers in the secretary of state's office to do all of this work except having custody of the machines. By interchanging them, you want efficiency, there it is. Peak hours in 17 departments in the secretary of state's office arrive at different times. If you establish a separate department we'll need practically all the employees we now have to do the other work that they do periodically for everything else, and you start with a brand new crew trying to catch up with everything that's being done at the present time. No, we're not indispensable. No, we can be spared, but it so happens that in the most crucial period in the election history of this world, we've got a trained, efficient crew. It was my intention, and I thought in the beginning that the object and purpose of this constitutional convention was to economize in government. Make government more efficient and to consolidate. Does this proposal really undertake to consolidate when you start creating a new elective officer? I don't think the people of Louisiana ever envisioned the creation of another elective office. I won't go into question of whether they wanted less, or more of the existing ones, I very carefully left that to the wise discretion of this group. But I don't think the people of Louisiana want a new elective office to take three-fourths of the jurisdiction of the secretary of state's office away when it's one of the best ones in the whole nation. Now let me say this to you, the integrity of that ballot is important. The taxpayers' money counts. This would, again, splinter even more the different agencies of the state. I'm a little regretful that the procedure is such that these things have to move so rapidly because I'm going to use at least a few minutes to tell you what's wrong with this amendment you have before you. I did not appear until such a time as there was an effort to take this jurisdiction out of my office. If you want a separate custodian of voting machines and the people want it when they vote on this constitution, that is your prerogative. I'm not here to argue that. If you want to consolidate the custodian of voting machines with the registration laws, that is your prerogative and the people's to vote upon it eventually. I am not here to argue that. But I am here to argue this point. That is the amendment that is before you is not clear, it does not retain the secretary of state as the chief election officer, and it makes it very vague as to who prints the ballots for the voting machines. So if you want it differently, take enough time to word this amendment so that it does what you want and don't overlap into other areas. Thank you very much.

Questions

Mr. O'Neill Mr. Martin, you touched on this amendment just briefly at the end of your remarks. Would you go into a little more detail on what your specific objections are to this amendment, for the benefit of the convention?

Mr. Martin My primary concern is that you do not disturb the functions of the secretary of state's office, as now constituted. This amendment does not do that. I'd like to comment, if I may, if the division Mr. O'Neill asked the question. If you don't mind, I'd like to say something about what Dr. Asseff said. Dr. Asseff asked me if I was objecting to the maintenance of a custodian of voting machines or the combining of that office with the registrar of voters. I said that I was

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not arguing that point. My sole reason for appearing before the committee was to see to it that no functions were removed from the secretary of state's office and that that amendment apparently did so. So that's so much for that. Now, where I think this is vague is this: "The words in lines 19, 20, and 21 which were completely deleted, and do all of you have a copy of the original recommendation of the committee which recommended the inclusion of all functions in the secretary of state's office, it's on page 6, lines 19, 20 and 21. Now this amendment would delete all three of those lines, as I read it. The deleted words, "who shall serve as the chief elections officer." Now this is important in the light of what you're doing because when you delete the words "chief election officer" and create another statewide official under the title of commissioner of elections, you're certainly confusing the public as to what the situation really is. Commissioner of elections would imply that everything is in the commissioner of elections office. So if you want him to be custodian of voting machines, give him a title that's indicative of that, and if you want him to take over the registration laws, give him a title indicative of that. I'm not trying to rewrite the thing, do it any way you want to, but by whatever language you use, if this is what you do, it should be a commissioner of...custodian of voting machines and administrator of registration laws. Put back the words that the secretary of state shall be the "chief elections officer." That clarifies that part of it. Now let's take another situation, so you see, in the description of no functions and duties of any election officer, have you anywhere said affirmatively you shall do this, but you shall not do this. Nowhere has that been ever done, to my knowledge, in a constitution.

Mr. Casey Mr. Martin, I'd like to interrupt you and ask you to limit the answers to your questions.

Mr. Martin I'd like to answer this one first that they asked me to elaborate on just a little bit. I fear that when you exclude from the secretary of state the authority to administer voting machine laws, that some court could very naturally and logically conclude that the secretary of state cannot print ballots for the voting machines because that is a part of the administration of the voting machine laws. You're going to have a custodian of voting machines to do what he does now, say so. This is my only admonition. And that's my only explanation of that.

Mr. Chehardy Mr. Martin, would you continue to explain a little further on the subject so that I might be further enlightened? That's what I'd like to know, just a little more on the subject.

Mr. Martin I'll be happy to, sir.

If you want to continue the custodian of voting machines as he is now and add to his duties and functions those pertaining to registration, then it would be very simple to provide that language to do so. Under the amendment as it's now written, it specifically says that the secretary of state shall perform no function relative to voting machines. It doesn't say he shall perform any functions that are now performed by the custodian of voting machines, so if you're going to exclude me from doing something, at least put in there that the secretary of state shall administer the election laws now administered by him, including the printing of all ballots. Make it affirmative, and then when you get to the duties of custodian of voting machines, say that he shall be custodian of voting machines and shall perform the same duties now provided by law and in addition, he shall be the registrar of voters. Whatever you want to do with that, I'm not taking part in that. But this is bad the way it is.

Mr. Roemer Mr. Martin, the philosopher Haigle [Hege] said "that one thing you learn from history is you can't learn anything from history. But I would like to ask what is the history in the

United States among the other states of this chief election officer? You allude in your speech that some secretaries of state in other states administered, but therefore not all do. What happens in those states where the secretary of state does not administer the election laws?

Mr. Martin Practically all secretaries of state, almost all of them, have election functions. In some of the states the ballots are printed at the county level and the voting machines are handled at the county level and the state has nothing to do with it.

Mr. Roemer To your knowledge, what I'm trying to get at, to your knowledge, is there a commissioner of elections who is the chief election officer in any other state?

Mr. Martin No sir, I don't know of any. There's no custodian of voting machines either.

Mr. Asseff Mr. Martin, I do not want to argue the point with you and...a little confusion, but I think I did ask you specifically whether or not you preferred this, the one that I introduced to the alternative that our committee was considering, which was to leave out several words, "administer the laws relative to voting machines or other voting machine devices." Now I'm not disputing you, but I don't want to be placed in the position of misleading this convention. It was my understanding, and I agree I may have heard you wrong, it was my understanding that you said that this was preferred. So I'm sorry if I misunderstood you, but that was what I thought you said.

Mr. Martin I thought we were talking about the concept and not the language, sir.

Mr. Asseff Because we had these two reports.

Mr. Martin I had only ten minutes there and I couldn't begin to try to suggest language at that time.

Mr. Asseff Well, that's perfectly all right. It's just a misunderstanding.

Mr. Singletary Mr. Martin, I ask this question just purely for information, but I believe I really don't know the answer. What are the arguments, pro and con...Is there any logical reason for placing the administration of voter registration under a custodian of voting machines? Would you elaborate on that?

Mr. Martin Sir, I would like to repeat that I am speaking as secretary of state, concerned with the present duties of the secretary of state and I would prefer, if I may do so, to leave the question of the combination of the state registrar and the custodian of voting machines to the wise discretion, of the convention delegates and the voters at the polls when they're called upon to ratify or reject it. All of this has come up, I'm not trying to avoid your question, sir, but all of this came up on Thursday there was one provision, Friday there was another one, Saturday I stopped one that I thought was real bad, and today there is another one. I don't know what the theory is of those who are advocating the combination of those two. I'm not really in a position to express an intelligent view on it. I'm trying to be extremely careful and talk about just what I've studied and what I know.

Mr. Weiss Secretary Martin, you made reference in your talk to approximately seventy-five percent of the work now conducted in your office is related to elections. Would you comment on that? If it was to be removed from your office then that would be only one quarter of the amount of work remaining? Is that correct?

Mr. Martin I'm sorry, I probably didn't clarify it. I said more than fifty percent of the work,

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and because the people who were primarily concerned with full-time elections were the highest paid, it would be over fifty percent of the work and over seventy-five percent of the payroll. That is the situation. I want to make this final observation in answer to that question. I think the people of Louisiana want elective offices and I think you're all with that. But I also believe that the people of Louisiana want these elective offices to have substantial work loads that are meaningful to the people of Louisiana. If you remove over fifty percent of the work and over seventy-five percent of the payroll from the secretary of state's office, you almost leave it as a simple ministerial shell that does not really deserve the name of a constitutional office.

Mr. Casey Mr. Martin, I'm afraid we have to call time, and we appreciate your appearance before the Committee of the Whole of the constitutional convention, and what is a further pleasure of the committee.

Mr. Martin Thank you very much Mr. Speaker, and ladies and gentlemen of the convention.

Mr. Casey Thank you very much, Mr. Martin, we appreciate it.

Motion

Mr. Triche Mr. Chairman, I would move... I move that the committee invite the custodian of voting machines, the honorable Douglas Fowler, to appear before the committee and speak for ten minutes. I make that motion with full realization, however, that Mr. Fowler is ill and not in town and unable to speak. I've just learned that, but I wanted to make the motion anyway because when the motion to go into the Committee of the Whole was made, it was expressly for the purpose of hearing Mr. Fowler, also. So I so move.

[Custodian of voting machines was not available to testify.]

Point of Information

Mr. Roy I'm not sure of the technicality of this. Could we, today, allow the custodian of voting machines, Mr. Fowler, some time in the future when he's able to come here and talk, or would we have to do that at another time? In other words, could we resolve right now that we will, at a future date, automatically resolve into the Committee of the Whole to hear Mr. Fowler?

Mr. Casey Mr. Roy, I'm not positive, but I don't think that can be done. However, either the Committee of the Whole or if we rise and report progress on the convention at a later time, we could be fifteen minutes or three days, would certainly be in order to hear from the custodian of voting machines or his designee.

Personal Privilege

Mr. Triche Yes, sir. Mr. Chairman and ladies and gentlemen of the committee, now that we are in the Committee of the Whole, I think we now have an opportunity before us to review again the proposal on the makeup of the executive department and the executive offices as it stands now, after the amendments adopted by the convention. I say we have an opportunity now because I feel that possibly the convention acted in a later time, and possibly this convention has missed a tremendous opportunity to change the basic structure of our government for the betterment of the people of the state. I am told that there are some amendments being prepared now to submit to the Committee of the Whole, a decision as to whether or not it wishes to keep in the constitution as constitutional and elective offices, certain offices which the convention adopted on last week. I think it would be wise for the convention to address itself to that problem again. I think it would be wise for us in the

Committee of the Whole to debate those issues and to consider those amendments. We acted last week, I think, as a result of some rhetoric from people telling us that the holiest and purest form of government is by elective officials, and nobody quarrels with that. But that almost every elective office in the state capitol should be elected. I think we ought to reconsider the judgment we made as a result of that rhetoric. I think we should recognize that the governor, the chief executive of this state, is elected in open, free elections, that when the Supreme Court and the Court of Appeals and the district judges and district attorneys of this state are elected in open and free elections, now when the legislature and the lieutenant governor of this state are elected in open and free elections, that when our police juries and school boards and constables and justices of the peace are elected in open free elections, I think we can truthfully say if we stop there that the government of the state of Louisiana is a republic and the people govern themselves through responsible elected officials. I think we ought to consider at that time, efficiency, responsibility, division of authority more carefully. I can't see for the life of me, gentlemen, and let me remind you I have no quarrel with electing offices, but I can't see for the life of me why we should remove the responsibility for the administration of the laws of this state dealing with agriculture from the governor of this state and put it in the hands of an independent elected officer. I don't think that it enhances the voice of the people. I don't think it enhances their right to determine for themselves what the agricultural policy of this state is. That's in deference to all the pious rhetoric about elections. I think what it does, it divides the responsibility in the executive department so that with divided responsibility comes not efficiency...

Point of Information

Mr. Burns To ask a question. This convention didn't adjourn into the Committee of the Whole for the purpose of discussing the secretary of state's office or that particular amendment, and not other amendments that this convention had previously adopted?

Mr. Casey Mr. Burns, just as one who is Acting Chairman right now, and Chairman of the Committee of the Whole, I thought that we had resolved ourselves into a Committee of the Whole for the purpose of discussing this subject matter and of course, for the specific purpose of hearing from Mr. Martin. However, that's within the entire province of the Committee of the Whole as to whether I'm ruling correctly or not. But unless I stand corrected, Mr. Triche has twenty seconds within which to complete his comments.

Mr. Triche In those twenty seconds, gentlemen, I wish to urge, ladies and gentlemen, I wish to urge that you reconsider the decisions made last week. I wish to urge that you allow us to debate once again the question of the constitutional offices and the election of that matter again. In order that we will pass up a wonderful opportunity to streamline the government of this state.

Motion

Mr. Jenkins In view of Mr. Triche's remarks and apparent efforts to open up a can of worms and have us debate the whole subject matter again. In order to forestall such an effort, I want to move that the committee rise.

Mr. Guarisco I have floor amendments to the Committee of the Whole in Mr. Poynter's possession at this time. I'd like the floor to present that amendment.

Mr. Casey I think you're out of order with that question. The only question before the floor is whether we should rise and report progress.

The motion has been made by Mr. Jenkins that

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the Committee of the Whole rise and report progress.

Point of Information

Mr. Derbes Excuse me, Mr. Acting Chairman, but for those of us who are inexperienced with this technique, if we rise and report progress does that mean that we can no longer consider the line of discussion that Mr. Triche was alluding to?

Mr. Casey Mr. Derbes, that's entirely up to the convention itself. When and if the Committee of the Whole rises and reports progress and the delegates of the Committee of the Whole so vote that we rise and report progress then the convention is again back in session, and what the convention does is within the entire discretion of the convention.

Mr. Derbes So in other words, if we want to continue discussing this line, this topic, we vote no on this. Is that correct?

Mr. Casey We automatically go back into that order of business and I would assume if that's the wishes of the members of the convention, that we will continue with that order of business.

I've been advised that when we do rise and report progress, just to further clarify, Mr. Triche, that an amendment was under consideration and we automatically get back into that order of business and that is the consideration of that amendment that was before the convention.

Point of Order

Mr. Triche Let me see if I can understand the position that we're in. We're now considering the section having to do with the secretary of state. We have already considered that section and adopted that section which makes, to illustrate, the commissioner of agriculture an elective office. If we rise from the Committee of the Whole to reconsider the section which we've already adopted making the commissioner of agriculture an elective office, wouldn't it take a two-thirds vote of the membership of this convention?

Mr. Casey That is correct, sir.

Mr. Triche Whereas in the Committee of the Whole, and when we resolved ourselves in the Committee of the Whole it was for the purpose of considering Proposal No. 4. Can't we now amend Proposal No. 4 by a majority vote of the members of the convention?

Mr. Casey All that the committee can do in the Committee of the Whole is propose amendments and then rise and report progress. It's up to the convention, then as to whether those amendments would be adopted.

Mr. Triche I understand.

Point of Information

Mr. Avant Would I be correct that if by a majority vote the Committee of the Whole recommended that we undo something that we had done, we went back into the convention with that recommendation, still under the rules of the convention it took a two-thirds vote to do that, we would still have to have the two-thirds vote, would we not?

Mr. Casey Mr. Avant, whatever we do in the Committee of the Whole is still subject to a final determination by the convention itself. By the rules of the convention we can work here six hours and then rise and report progress and then the convention can completely undo or accept whatever the Committee of the Whole has done.

Mr. Avant By whatever vote the rules call for.

Mr. Casey Right sir.

Point of Information

Mr. Riecke If I want to vote to reconsider the action of the committee on those elective offices, then how do I vote? Green or red?

Mr. Casey Mr. Riecke, that point is not before us at all. The only point before us is whether the Committee of the Whole should rise and report progress. Once we return to the regular order of business as a convention then at that time you would have to then deal with the chairman of the convention to make whatever motion is deemed appropriate at that time. But the mechanics for doing what can be done is not available to you at this time in the Committee of the Whole but would have to be done when the convention reconvenes or when we rise and report progress. It would not be in order at this time.

Point of Information

Mr. Nunez Mr. Acting Chairman, wasn't the sole purpose for going to the Committee of the Whole was so that this convention could hear an outsider or individual who had a point to express who wasn't a member of the convention? Am I correct in that statement?

Mr. Casey Mr. Nunez, we have more generalized on that interpretation to say that the entire proposal was under consideration and specifically the section that we were working with. However, the primary purpose I am sure was to hear from a certain individual.

Mr. Nunez And that purpose has been accomplished unless Mr. Fowler is going to come before the committee.

Mr. Casey That is correct, Mr. Nunez.
Mr. Munson, why do you rise, sir?

Point of Information

Mr. Munson For the same reason that Mr. Avant did because I still don't believe I understood your answer.

Mr. Casey I am not sure that I did, Mr. Munson, but ask again.

Mr. Munson Anything that has been adopted by this convention, the only way that it can be changed at any time is by a two-thirds vote to reconsider. Is that correct? At any time.

Mr. Casey The reason for the two-thirds requirement is that we remove it from the table. That is the reason for the two-thirds.

Mr. Munson What I am driving at, Mr. Chairman, is that what this convention has already adopted cannot be undone by a majority vote.

Mr. Casey I would have to generalize and say that that is probably correct, but I would hate to eliminate any other possibility that might exist through a delegate proposal.

Mr. Munson I know, but isn't it a fact as you just stated that after you reconsider and lay it on the table the only way that can be reconsidered again is by a two-thirds vote? That is what I wanted to know.

Mr. Casey That's correct. It takes two-thirds to remove...

Point of Information

Mr. Chehardy I just want to make sure that I understand. In other words, right now, if we vote red, we are voting that we stay in a Committee of the Whole.

Mr. Casey That is correct. That is the only vote that will be taken at this time.

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Mr. Chehardy But that means we would revert back to the original situation which permitted Mr. Triche or Mr. Poynter or his representative to speak. Is that right?

Mr. Casey Mr. Chehardy, all we revert to is we stay in the Committee of the Whole. That is the only decision.

Mr. Jenkins has made a motion that the Committee of the Whole rise and report progress.

[Motion to rise and report progress rejected: 49-60.]

Mr. Guarisco I have amendments before the Committee of the Whole.

Mr. Poynter Mr. Guarisco, does this have to do with the commissioner of elections?

Mr. Chairman, I do have committee amendments at the desk at this time. A single proposed amendment proposed by the Committee of the Whole to the proposal. However, I understand we do not have yet available the distribution copies. If the convention wishes to insist that it needs those copies, I do not have them at the desk at this time.

Point of Information

Mr. Fulco Is it possible that we could hear the tape replayed on the motion made by Delegate Triche?

Mr. Poynter It is possible but no one has the floor to make that motion Mr. Fulco.

Mr. Guarisco has been recognized for the floor.

Point of Information

Mr. Jenkins What is before the committee at this time? Is it the entire Committee Proposal No. 4 or is it only the section dealing with the secretary of state?

Mr. Casey Mr. Poynter will answer that and read the motion by which we got into the Committee of the Whole.

Mr. Poynter Mr. Jenkins, the journal clerk and I have recorded that Mr. Triche's motion, and of course that can be changed by a vote of this committee if you feel that we are in error, was that the convention would resolve itself into the Committee of the Whole for one hour for the purpose of considering Committee Proposal No. 4 and also hearing the testimony of the secretary of the state and the present custodian of voting machines.

Amendment

Mr. Poynter Amendment proposed by the Committee of the Whole to Committee Proposal No. 4, by Delegate Staggs et al, amending the reprinted bill.

Amendment No. 1, delete Delegate Amendment No. 1 proposed by Delegate Kelly to page 1, line 18, which read "commissioner of elections" and which was adopted by the convention on August 2, 1973.

Explanation

Mr. Guarisco I bring this amendment before the Committee of the Whole for its consideration. I am not going to rehash what Delegate Triche has already told you about the commissioner of elections and the secretary of state and so forth, except that I think we should be very careful not to base our judgment on the deletion or the inclusion of this office on who happens to hold the usufruct of the office at the time. I think this particular office would not have even been created if someone---that we had no incumbent, i.e. the comptroller. I move for the adoption of the amendment by the Committee of the Whole.

Point of Information

Mr. Avant I've got to express it in my own way.

Point No. 1, the only thing the Committee of the Whole can do is just like any other committee. It can recommend to the convention that it take certain actions. Correct? So, by a majority vote then the Committee of the Whole could recommend to the convention that we adopt this amendment.

Mr. Casey That is all that the Committee of the Whole can do.

Mr. Avant All right. Now, assuming that that occurs, if by the rules of the convention it takes a two-thirds vote to adopt that amendment, it still takes a two-thirds vote to adopt it regardless of the recommendations of the Committee of the Whole. Is that correct?

Mr. Casey Mr. Avant, I can't make that ruling. I will ask our clerk to elaborate on that.

Mr. Poynter Mr. Avant, that point of order could be raised and certainly I think that this chairman might personally agree with your interpretation but the point I think is critical to make, you are asking him to rule on a potential point of order ahead of time when most likely he would not even be presiding at that time. He can not bind the chair, whoever the person might be in the chair, to that ruling if that question ultimately comes before the convention. Mr. Casey, you may want to personally agree with Mr. Avant's interpretation of what it would mean, I am only suggesting, Delegate Avant, that that point would be disposed at the time.

Mr. Avant Does the Committee of the Whole have a parliamentarian who can advise us because I would like to know before I vote on this particular amendment in the committee.

Mr. Poynter Under the rules the clerk is the parliamentarian, Mr. Avant.

Mr. Avant Would you advise me, sir, as to what the situation is with respect to the problem that I pose?

Mr. Poynter Mr. Avant, it is my opinion, and of course you are aware of the rules, I can recommend all I want to and make whatever comments, the chair rules. It would be my opinion first of all that amendments may be proposed in the Committee of the Whole. Mr. Triche's motion as we at the desk appreciate it was, among other things, to resolve in the Committee of the Whole for the purpose of considering Committee Proposal No. 4. In that light any proposed amendments during the period of time that you are in the Committee of the Whole would be in order. Those could be adopted by the Committee of the Whole by a simple majority vote. However, like any other committee, this committee may only propose to the full body, even though you are the same ladies and gentlemen, sitting as a Committee of the Whole all you may do is recommend to the full body that it adopt certain proposed amendments. It would be my further feeling that if proposed amendments were adopted to those sections heretofore adopted by this convention in full session at which on each of those the motion to reconsider was made and that motion subsequently laid on the table the only way the committee could take proposed action with respect to those amendments from Sections 1 through 6 would be to call the motion to reconsider from the table which would take a two-thirds vote of the total delegation to this convention, at which case if it does so by majority vote it could move to reconsider that section. That would be my opinion as parliamentarian under the rules. Again, I make the point, the chair at that time that such a point of order was raised would have to rule, the chair would make the ruling and not me, and ultimately any delegate has the right to appeal any ruling of the chair and have that decided in accordance with the rules.

Point of Information

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Mrs. Zervigon Mr. Acting Chairman, I was wondering how many minutes we had been in the Committee of the Whole.

Mr. Casey Mrs. Zervigon, we have approximately five minutes left before the Committee of the Whole automatically terminates.

Point of Information

Mr. Roemer Let's see if I understand it correctly. Actions of the Committee of the Whole; Final actions of the Committee of the Whole is not final action of the convention in full session. Is that correct?

Mr. Casey That is absolutely correct, sir.

Mr. Roemer Final action of the convention in full session as regard to provisions in Article 4 that we previously passed are going to take a two-thirds vote to get them off the table. Is that not correct?

Mr. Casey That is my feeling and that is all I can give you. I don't know what the chairman...

Mr. Roemer I submit we are wasting our time.

Mr. Casey Mr. Roemer, I don't disagree with you at all, sir.

Motion

Mr. Guarisco I move the previous question, to remove the commissioner of elections from the executive article of the constitution as a constitutional office.

Question

Mr. Stinson Mr. Guarisco, isn't it a fact that you have an error in your amendment? You say commissioner of elections and as I recall it was commissioner of elections. Isn't that correct?

Mr. Guarisco That's just a technical amendment. That's all.

Mr. Stinson It is very technical.

Mr. Guarisco You know what I am talking about.

Mr. Stinson No, I don't.

Point of Order

Mr. O'Neill Point of order, Mr. Chairman. Moving the previous question in the Committee of the Whole is out of order. Am I correct?

Mr. Casey I don't think so. A previous question can be moved in a committee meeting or...

Point of Order

Mr. Flory I call your attention to Rule 65 where it says a previous question cannot be ordered in a Committee of the Whole. It is on page 22.

Mr. Casey Mr. Flory, it sounds like you are correct, so the motion is out of order.

Mr. Chatelain Mr. Chairman and fellow delegates, I find myself in a pretty sad situation. We made several mistakes, in my opinion, last week and we are fixing to make another one here today. First of all, I can't even proceed with my own statement now because we don't have enough time left.

Mr. Chairman, I move that the Committee of the Whole would be extended by one hour, sir.

Mr. Casey Mr. Chatelain, I would suggest that you are out of order because the motion was made in the convention while the convention was in session and the Committee of the Whole is subject to the rules and motions of the convention. We

would automatically go out of the Committee of the Whole in another two minutes.

Mr. Chatelain Can we appeal to the chair, sir?

Mr. Poynter Mr. Chatelain, the convention has got to rise. The convention has got to put itself in the Committee of the Whole, but as soon as it rises, sir, I am sure that the chair would recognize you or any other delegate that wants to make the motion that you further resolve yourself for an extended period of time.

Mr. Chatelain Thank you very much. The only thing I can say in the last two minutes or minute and a half we have left is for goodness sakes, fellow delegates, let's not act too hastily. I think we acted very hastily last week in several very important areas and I plead to you please don't act hastily again. Thank you.

Further Discussion

Mr. O'Neill Mr. Chairman, members of the committee, I rise in opposition to this amendment. I think it is a great big waste of time that we are even discussing it at the present time. I am going to use up the minute that I have and just get out of the Committee of the Whole. I believe that it is automatic that we will resolve ourselves back into convention. I think that by bringing the subject back up again we are opening up the whole can of worms and that by discussing these things over and over and over again that we are simply obstructing the work of the convention. We should move on to the amendments that we have currently pending in the convention and I think that we should keep on and just keep getting our business straight.

Is the time up yet, Mr. Chairman?

Mr. Casey There are thirty seconds left in the Committee of the Whole.

Questions

Mr. Fayard Mr. O'Neill, I have heard the term "can of worms" used quite often here in the last two minutes but do you agree with me that the proponents of the amendment to establish an office of commissioner of elections did argue that the commissioner of elections would have more duties than just to be custodian of voting machines?

Mr. O'Neill I do not agree with you, Mr. Fayard. I read the transcript of the work of the convention that day and Mr. Kelly I believe said that he didn't particularly care one way or the other.

Mr. Fayard But there were other proponents who did put forth that proposal. Is not that true?

Mr. O'Neill Yes sir.

[The Committee Rose. Convention Business resumed.]

Chairman Henry in the Chair

Motion

Mr. Chatelain Mr. Chairman and fellow delegates, I move that we go into the Committee of the Whole for the purpose of discussing Proposal No. 4 again, for one hour.

Mr. Henry The gentleman has moved that the convention resolve itself into the Committee of the Whole for a period of one hour to discuss the section or the whole proposal? The proposal?

Substitute Motion

Mr. Jenkins Mr. Chairman and delegates to the convention, there is only one ultimate purpose that would be served by going back into the Committee of the Whole and that is to do away with these elected officials that we have already voted,

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after considerable debate and discussion over the last two weeks, to retain. The amendments are on their way right now to do just that. The commissioner of elections is first. All the rest will follow: agriculture, superintendent of education, commissioner of insurance. Now if we want to retain these elected officials as we have already decided to do, we need to continue in the regular order and not go back into the Committee of the Whole because that is just going to give the people who want to do away with these elected offices the opportunity that they need. So, let's go on in the regular order, deal with the duties of secretary of state, deal with duties of the other officials. If we want to change some of the duties of the commissioner of elections we can do that. If we want to go back by two-thirds vote and change his title, we can do that. But let's don't start reconsidering this basic decision we made to have these elected officials.

Mr. Chairman, as a substitute motion, I would like to move that we continue in the regular order.

Mr. Chatelain Mr. Chairman, is my motion debatable, sir?

Mr. Henry It is, but there is a substitute motion made by Mr. Jenkins that we proceed with the regular orders of the day, which motion is not debatable.

The motion is not debatable, gentlemen.

[Substitute motion to continue in the Regular Order of Business adopted: 70-40. Motion to suspend the rules to reconsider Section 1 of Committee Proposal No. 4.]

Mr. Henry The gentleman has moved for a suspension of the rules.

Now wait just a minute delegates, we are not going to start with all this debate on this thing because it is a nondebatable motion. If you've got a legitimate point of information or legitimate point of order, the chair will entertain the same, but we are not going to debate it like we were a while ago.

Point of Information

Mr. Flory If we suspend the rules, would we not then be in effect violating our rules requiring a two-third vote to reconsider?

Mr. Henry We are doing indirectly what we can't do directly. Yes, sir.

What we are doing now—let me explain this. Maybe this will resolve part of our problem. If we suspend the rules of this convention as had been suggested by the mover, we can do that with a lesser vote than we could by calling the motion to reconsider the vote from the table which would require 88 votes. That is, in effect, what we are doing.

Point of Information

Mr. Munson What vote does it take to suspend the rules?

Mr. Henry Sixty-seven or two-thirds of those present and voting, whichever is lesser.

Point of Information

Mr. Arnette Point of information, Mr. Chairman. If we accept this particular suspension of the rules, then we could consider some of the things brought out by Secretary of State Martin and possibly...

Mr. Henry You are debating the motion. No sir, we are not going to go that route.

[Record vote ordered. Motion to suspend the rules rejected: 57-51.]

Amendment

Mr. Poynter The pending amendment at the present time is offered by Delegates Asseff, Abraham, et al.

Amendment No. 1, on page 6, delete lines 19 through 21 both inclusive in their entirety and insert in lieu thereof the following: "the secretary of state who shall promulgate all election returns; administer the election laws except for those relating to voter registration and voting machines; administer".

[Previous question ordered.]

Closing

Mr. Stagg Mr. Chairman and fellow delegates, we have been on this same point in the convention's time schedule since last Saturday. When we adjourned we called a meeting of the Committee on the Executive Department which met from nine o'clock this morning until quarter to one today. The resolution by majority vote of the Committee on the Executive Department of the dilemma which we are faced with was the language that is contained in the amendment that is before you. In this amendment when we state very clearly that the secretary of state shall promulgate the election returns and administer the election laws except for those relating to voter registration and voting machines, it is an attempt to preserve within the office of the secretary of state those functions which his office had and faithfully performed for many years. It is unnecessary to repeat from this microphone again the importance with which our elections are guarded and how well they are guarded by the candidates and the voters of this state. This is as well as the committee would define the functions of the secretary of state and the same reasons which will follow on the job of the new commissioner of elections whose job it is in the amendment which will follow, that he will have in charge the voter registration laws and the administration of the voting machine laws. I urge the adoption of the amendment and in doing so I say quite frankly, I have grave doubts from this microphone at this time that the committee system in this convention is functioning as well as all of us would have hoped that it would. When the Committee on the Executive Department rendered its report I stated how proud I was of the job we have done. Well, the action of the convention shows that you were not as proud of it as we were. We have attempted by today's meeting to fill the gap and to repair the holes which were made in the committee report by the convention and there will be five or six more amendments like this one to vote on during the day and if we work at it we can finish the executive article today—not today, because the time is too short, but by tomorrow or by Friday if we cut down on the extraneous conversations and get at our business we can finish the executive article this week. I do hope that we will be able to do so. I urge you to vote yes on this amendment.

Questions

Mr. Roemer Delegate Stagg, would you answer the following question? If a man on the street came up here and said "What is the Commissioner of Elections?" Would you answer the way I would, "He is the Custodian of Voting Machines."

Mr. Stagg Well Buddy, I guess I could say that, but I wouldn't say that because we have added to his duties the voter registration laws of this state and he is to administer those laws. How you register to vote, the old board of registration, the various things that have to do with the registration of voters will now be carried on by the commissioner of elections. We have called him in our amendment which follows, Buddy, the state commissioner of elections because you and I both know there are thousands of regular commissioners

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of elections in the precincts at each election time.

Mr. Stovall Mr. Stagg, isn't this amendment basically a contradiction to that principle that the Executive Branch Committee decided upon in its original recommendation to this group?

Mr. Stagg Yes sir, Mr. Stovall, it certainly is, but that was settled by the convention by a vote of 82 to 26.

Mr. Stovall Wouldn't it be better to vote against this compromise and later hope to come up with something more in keeping with our principle?

Mr. Stagg Well, if the committee system is worth a darn I am going to follow what the committee did this morning.

Mr. Riecke Mr. Stagg, isn't your understanding that if we vote for this amendment we are voting against the recommendation of the secretary of state?

Mr. Stagg In some parts, Mr. Riecke, we are, but in great part we are not, because our provision here seeks to preserve in the office of the secretary of state, and this will be a part of the legislative history of this provision of our constitution, the preparation of the ballot and all of the other acts that he presently does except those with respect to management of the voting machines, and he does not now handle the voter registration laws, so that is not taking anything away from the office of the secretary of state.

Mr. Riecke But didn't the secretary of state recommend that we not approve this amendment?

Mr. Stagg The secretary of state made a recommendation of that nature at this convention this morning but we are faced with voting on the only amendment presently before the house.

[Record vote ordered. Amendment rejected; 50-59. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Kean]. On page 6 delete lines 19 through 21 both inclusive in their entirety and insert in lieu thereof the following: "the secretary of state, who shall be the chief election officer of the state and shall prepare and certify the ballots for all elections and promulgate all election returns; administer the election laws except for those relating to voter registration and custody of voting machines; administer."

Explanation

Mr. Kean Mr. Chairman, and fellow delegates, I would have initially supported the committee proposal that was first presented to the convention and that is to have consolidated in one office under the secretary of state all of the election functions. However, I think this convention has indicated by a substantial vote that it prefers to continue the present separation of election functions between the secretary of state's office and that which is under the custody of the voting machine. And I exceed to that will of the convention. I voted against the Asseff amendment because I felt it left it unclear. As to the proper separation of the functions between the secretary of state and some other office with respect to carrying out certain of the duties that were enumerated in that amendment. This proposed amendment I think makes it clear that the secretary of state would be the chief election officer of the state and responsible as such for the preparation and certification of ballots for all elections and required to promulgate all election

returns. Which is in keeping with the present functions of that office. The amendment would further make it clear that he is responsible for the administration of the election laws except for those relating to voter registration and custody of voting machines. Which would then be available to be allocated to some other constitutional officer, the commissioner of elections who would have the responsibility clearly spelled out for these particular areas of the voter registration and the handling of the voting machine. It seems to me under these circumstances that we have made it clear by the amendment that the secretary of state with respect to his present election functions would retain those functions.

We would make it equally clear that he would not have any responsibility with respect to laws relating to voter registration and custody of voting machines and leave it for the convention to then decide whether or not those particular functions would be allocated to another constitutional officer at the time we take up the duties of the officer. Under the circumstances, I think it fairly meets the problem, it doesn't completely solve the consolidation of the officers but I think in light of the separation of the duties that it is an adequate solution and I urge that you support the amendment which has been offered.

Questions

Mr. Juneau Mr. Kean, as I appreciate this amendment it has got us in a pretty good quandary. The secretary of state will be the chief election officer and we have a commissioner of elections, I have a hard time explaining that.

Mr. Kean Well, it would be my hope that when we get over into the duties of the commissioner of elections that we would make it clear that he was really the commissioner of voting machines and registration and under those circumstances perhaps the Committee on Style and Drafting could make the name and the title and the duties fit together.

Mr. Juneau Well, then Mr. Kean, if I follow you correctly, if we would vote for this amendment then we would have made no change substantially in what we have today other than taking the registration function and giving it to the custodian of voting machines.

Mr. Kean Leaving it available to be given to some other office.

Mr. Juneau And the suggestion would be that Style and Drafting would put back what we have in the present constitution, the archaic language of custodian of voting machines.

Mr. Kean No, my suggestion would be when we get to that, Mr. Juneau, that we give in the section dealing with the commissioner of elections or department of elections, I think it is proposed, that it would be headed by a commissioner of voting machines and registration. I think if we reach that conclusion in the convention that then the Committee on Style and Drafting would have the prerogative to make the name of the department coincide with the name of the commission.

Mr. Juneau In other words you would be clarifying the problem that appears now in Section 1 which calls commissioner of elections.

Mr. Kean That is correct.

Mr. Roemer Delegate Kean, is the registrar of voters in our local parishes an elective or an appointive one?

Mr. Kean The registrar of voters as I recall it, is an appointed office.

Mr. Roemer Thank you.

Mr. Burns Mr. Kean, did I understand you to say just now that the Committee on Style and Drafting would have the authority or the power to change the title of this office.

Mr. Kean No, sir. Only if we decided when we get over to designating the duties of the commissioner of elections or naming it as a department of elections that if we then said the head of that department would be a commissioner of voting machines and registration. Then I think the Committee on Style and Drafting would have the prerogative of making the titles coincide all the way through the proposal.

Mr. Burns One more question. Inasmuch as this amendment defines the...fixes the powers of the secretary of state with reference to elections and so forth and I understand another amendment will be introduced which does the same thing for the newly created office, commissioner of election, which has nothing to do with elections other than the custodian of voting machines and the registration laws. Do you not think that it would be much more acceptable to the voters or the people to give a title that was indicative of the duties rather than to have a commissioner of elections although he will have nothing to do with elections?

Mr. Kean That was my point, Mr. Burns, in trying when we got over to the consideration of the duties of this commissioner of elections trying to give a title to that which would be commissioner of voting machines and registration. I think if the convention then designated that as a title of the officer over in the section outlining his duties, this would be an instruction to the Style and Drafting Committee to make it consistent throughout the proposal.

Mr. Jenkins Delegate Kean, isn't the effect of your amendment really to keep the law with regard to the duties of the secretary of state on the one hand and the custodian of voting machines or commissioner of elections on the other essentially the same as they are now with the addition that the custodian of voting machines or commissioner of elections could be supervisor of registration?

Mr. Kean That's correct.

Mr. Jenkins So there would be no substantive change in all the checks and balances we have had in the past. The smooth operations that we have had in the past should continue under this.

Mr. Kean That is my intention under the amendment, yes sir.

Mr. Singletary Mr. Kean, what is the purpose for putting the voter registration department or administration under...or taking that away from the secretary of state, not taking it away from the secretary of state but not letting the secretary of state have it.

Mr. Kean The secretary of state does not presently have any responsibility with respect to voter registration and custody of voting machines and my endeavor was to simply make it clear that he would continue to have the duties and responsibilities that he presently carries out and if the convention in its wisdom wanted to assign voter registration and custody of voting machines to some other constitutional officer they would have a right to do it.

Mr. Singletary But what would be the purpose of that?

Mr. Kean The purpose of it, it is in my opinion it is working well the way it is now and I don't see any reason to change it. Besides that I wanted to make it clear that we were not attempting to put the secretary of state in some area in which he is not now presently exercising responsibility.

Further Discussion

Mr. A. Landry Mr. Chairman, ladies and gentlemen of this convention, I believe that I am the only person as a delegate to this convention who actually conducts elections. And I feel that the time has come for me to appear before you and tell you that by my experience of over twenty years conducting elections that we in the state of Louisiana have no doubt the best election system in the United States. I have just returned from the state where I left the office of president of the International Association of Clerks, Recorders, Election Officials and Treasurers. In that position I served for a period of two years. We, in Louisiana have a check and balance, with the present system that we now have. I have had the opportunity of working with the honorable Wade D. Martin, Jr., and I have had the opportunity of working with the Honorable Douglas Fowler.

Both of these men run efficient departments and you have what we call the check and balance. First the Executive Committees send into the secretary of state a list of the candidates. He then in turn prepares the ballots. The ballots are then turned over to Mr. Fowler. Mr. Fowler checks them to see if there are any errors. If there are, he might call it to the attention of the secretary of state. The secretary of state then sends the ballots to the Clerks of Court. Then in turn we check the ballots against the results of the Executive Committee and if we catch any errors we call it to his attention. And then when the machines are prepared by the custodian or commissioner of elections or whatever you call him. When he prepares them then the Clerk goes over to the voting machine warehouse and he seals these voting machines and he again checks the ballots to see whether or not they have been properly placed in the proper precinct and the proper ballots are on the proper machine. And ladies and gentlemen I can tell you this that in other states, there is a real goof-off and I can tell you that there is no other state that is as well fixed as far as election laws are concerned even though we need some revision in our election laws and I feel that this amendment is good, we ought to retain the duties of Mr. Wade D. Martin and we ought to retain the duties of Honorable Douglas Fowler and I ask you to vote for this amendment.

Mr. Henry Mr. Landry, what you are saying is that we have got the best election system that money can buy?

Mr. A. Landry I don't say that because that entirely depends on the candidates themselves, if they want to spend money that is up to them. I don't think that is correct Mr. Chairman, because I think I have been reelected for many, many years and it hasn't been the money.

Further Discussion

Mr. Ballinger Mr. Chairman, and fellow delegates, I think Mr. Kean brought up a point about what the delegates did in the past and how they are directing the proponents to this amendment to rise in favor of it. I disagree with Mr. Kean, he said the convention had decided they did not want to consolidate the offices of the secretary of state and the custodian of voting machines. If he would check the record, when the amendment first came up to retain the custodian of voting machines, it was defeated. And went along with the Committee on the Executive Department. This I feel was the reason for it, that the members of the convention thought that it would be better executed under one office. When the amendment came up to produce the commissioner of elections the delegates who changed their vote, who I am one of, thought that all elections laws would be executed under one office. Which is the way I think it should be and the way many delegates think it should be. At that time the convention decided that this would be fine, that the commissioner of elections should be an elected office and should be a member of the

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executive department. Today, we are trying to split up the duties of the elections officer, this I disagree with. Many delegates who have changed their vote...or maybe I had better not phrase it like changing their vote because they didn't really change their vote, they changed their idea. But people who voted against the custodian of voting machines and voted for the commissioner of elections voted for it because they thought that the convention would place all election responsibilities under one department. This is not what we are doing here with this amendment. And I urge its defeat.

Further Discussion

Mr. Conroy I join Mr. Bollinger in speaking against the proposed amendment. My reasoning is similar to Mr. Bollinger's but slightly different in results. I too feel as Mr. Bollinger feels that the convention has been misled and I think that this proposed amendment tends to perpetuate and further this misleading of the delegates. There is no doubt and the record shows it as Mr. Bollinger has pointed out that this convention voted against retaining the custodian of voting machines as an elective officer. This convention did vote favorably to have a commissioner of elections. Both the original committee proposal and this amendment strip what has been done before of any significance at all. They stripped the commissioner of elections of any power whatsoever and put it back into the secretary of state's office where I think it belongs. I think it belonged there all along. I urge you to reject this amendment. I think this is the only way that this convention can ultimately get back to what I think a majority of this convention has said it wanted and that was not to have an elected custodian of voting machines if that is to be his function. All that this amendment does now is to begin to grease the way to try to provide some window dressing to that what otherwise is rejected by this convention before and to mislead the convention delegates into believing that there is some sort of capability of commissioner of elections, and only by changing the title, by changing the name to mislead this convention into continuing the election of the custodian of voting machines.

Questions

Mr. Roy Delegate Conroy, when you say that you would like to see the majority go back to what you would like to see in the convention you really have to say two-thirds, don't you?

Mr. Conroy No, I don't believe so Mr. Roy because if we create within this article and this proposal an absolute conflict between two parts, I would think that at that point that at least two-thirds of the convention delegates would be willing to recognize that the majority have spoken and have changed their mind and would give us an opportunity to reconsider solely this question. And this is a procedural question that I hope we can get straightened out before too long. I am not interested in getting back into the commissioner of insurance, I am not interested in getting back into the commissioner of agriculture, but I think that if we proceed to retain in the secretary of state's office all of the election processes, all of them, that we will have created a conflict between two sections of this article and I think that at that point, yes, it would take two-thirds but I think at that point we could get the two-thirds to go back and correct the error that was made.

Mr. Anzalone Sir, if we were to reconsider this previous article that you are talking about, would we not be in effect reconsidering each and every elected official that this convention has set out.

Mr. Conroy I would think and the Chair would have to rule on it at the appropriate time, but I would think that a motion could be made to suspend the rules for the limited purpose of reconsidering that

one question.

Further Discussion

Mr. Juneau Mr. Chairman, fellow delegate, you know this argument we are having reminds me of when I was playing high school football of the statue of liberty play, and I was on defense on the opposite side of the ball, that is exactly what happened to me in this particular situation. We voted the only true time that the issue of the custodian of voting machines was ever before this floor it was voted down to take it out of the constitution as I recall the vote, and that is how I voted. I prepared an amendment to do that, subsequently it was changed. The language was changed by form of an amendment to say that we won't have a custodian of voting machines because that is too limited in scope but we are going to have a commissioner of elections and I took a look at that as I think many of you did and you decided, well now that is logical, we should put all of the functions with regard to elections in those particular...in that particular job. And it passed, by the support of the people who had negatively voted on custodian of voting machines. So now what has happened, we have gotten to the point where we are specifying what the duties are of the commissioner of elections. And what are his duties, his duties in substance gentlemen are the same as they are under the present constitution. I can't justify it, I think it is wrong. We either have to do one of two things, we have to consider the basic issue and that is do you want to retain a custodian of voting machines in the present constitution. And I say, if you want to do that, well then vote green, if you don't want to vote that way, vote red. And the only way we are going to get to that issue, and that is really the issue you are going to have vote on, is to vote down all of these amendments and to the point that Mr. Conroy talked about. That we are going to reconsider this vote and then vote whichever way you think is appropriate on custodian of voting machines. And I respectfully submit to you that I think that that is the only true vote that you can vote on and if we don't do it that way via parliamentary procedure we have avoided the complete issue, I have avoided it because I will not be afforded the opportunity to vote on whether or not we want to retain what we have today. I would have endorsed the concept of giving all of those functions to the custodian of voting machines but that is not going to come to pass, apparently. And since it is not, I want to go back and vote on whether or not we want to retain what we presently have in the constitution and for that reason, I respectfully submit and urge you strenuously that you vote against all of these amendments so we can get back and vote on the basic issue.

Questions

Mr. Tobias Mr. Juneau, is it not true that by this amendment we are giving what you would call the custodian of voting machines and what we have now termed the commissioner of elections another function and that is, the charge of voter registration throughout the state?

Mr. Juneau And that is what I call window dressing, Mr. Tobias, that's right. He're giving him that, and I call that window dressing.

Mr. Tobias You don't think that that could be an important function?

Mr. Juneau I think it is an important function but I think when we voted, Mr. Tobias, on a commissioner of elections, the overwhelming majority of the delegates at this convention were voting on the concept of giving him all elected responsibility.

Further Discussion

Mr. Roemer Mr. Chairman, and fellow delegates, I join the preceding speakers in asking you to reject this amendment. And all similar amendments which try to compromise to what seems to me an uncompromising situation. Now what I am going to talk about here and what I wish others would not talk about is people. Whether they be men or women, whether they be Doug Fowler or Wade Martin because unfortunately for those gentlemen perhaps in the discussion of a constitution for all the people, a person is not important, whoever that person is. Now we owe those two men only the respect and love that we give to all brothers that travel through life and that is it. What we are not talking about that now we are talking about a constitution. To me the issue is clear, we have as far as I am concerned two alternatives left and two alone. A commissioner of elections that has the duties of the commissioner of elections or no commissioner at all. One or the other. The third alternative has already been taken down by this convention, that is the custodian of voting machines. Now I will not at this time argue the merits of whether we should have a commissioner of elections which such duties or no commissioner at all, trying to address this amendment. What this amendment does, it gives us neither heaven nor hell. It gives us limbo, status quo. I refuse personal vote for an amendment like this and subsequent amendments. Which would force me when on the street and asked by one of my constituents to say "well, Buddy what is the commissioner of elections" and I would be forced to answer, well he is the custodian of voting machines. Nothing more. He is the house of voting machines with a window of voter registration and that's all. Pat is right, it is just window dressing, nothing more. Now someone would try to make this issue the cabinet form of government again. Mr. Triche tried to put the can opener to that can of worms. Well talk about the cabinet form of government all you want to, it works no better than the elected form. If you don't believe me, read the newspapers in Washington. Oh, we have got a fine president, we have got a fine cabinet, together they have circumvented law after law and I submit to you if there had been an elected official there among them it would have been his duty and it would have been his obligation and he would have taken it, chances are, to put a stop to it, to blow the whistle to it, to do something about it. But when appointed to a country or to a state, but to a man, all too often, when these people get together they can circumvent and hide and misuse and abuse and disguise their rightful powers. So to me the issue here is not a cabinet form of government, we have decided that one duck at a time, we have decided the commissioner of agriculture, we have decided the commissioner of insurance, now we are talking about the commissioner of elections, and I for one refuse, and I urge you too also, to put yourself and put this convention in a position to have to define the commissioner of elections as the custodian of voting machines. It is not right, it was not our intent, and let's do not do it.

Further Discussion

Mr. Stinson Mr. Chairman, and fellow delegates, I would like to attempt to clarify one thing that the preceding speakers have brought out. I am speaking for myself and I think for a few others. I was against taking the custody out of the constitution and we lost. But we did some politicking and as you know, you couldn't introduce the same amendment again so they just changed one word and called it commissioner of elections and I think that had a lot to do with the fact that the people still wanted the custodian or whatever you want to call him, in the constitution. That is the reason I voted for it, to give him any additional powers, but to keep it status quo as it has worked so well through the years. Now, some of the speakers have said that this amendment gives the voter registration and custody of voting machines to someone else. It doesn't do it. It just says that the secretary of state shall not do that.

The secretary of state wants to be left as he is at the present time. Now, a brief history, at one time as it has been brought out before, the secretary of state was in charge of certain other features and Governor Earl Long then took it away. I was against it at the time. I was a member of the legislature because it was discriminating against Wade Martin. But since then I think it has worked well and I am speaking with experience I have been president and secretary... chairman and secretary of the parish and city executive committees for thirty-seven years and I have gotten the best operation from both of these gentlemen. And I would tell you that the elections, as everyone recognizes, is our most important thing in our country. We have got to have good elections. And we have got to have checks and balances. I am not in favor now of giving all of this authority to any one person, one office. I still think that voting machines can be rigged and you have got to have checks and balances to be sure that that isn't done. Now as I say, this is not giving the voter registration duties or the custody of the voting machines to anyone. That will be left up to the wisdom of this group, when and if we get to that part of the constitution. Now, again as I say, I voted for the present statute because the custodian has been turned down and you couldn't introduce the same thing again you had to word it, you can't introduce the same amendment worded exactly as it was. And I got out and we said "well, let's change and I worked with a number of people over the floor and I think that was the reason it was because those stuck together and said "well we are not going to get rid of that and make it appointive by someone, the governor or someone it may be." And I think the way it is going now let us vote for this amendment and when it comes up on the custodian of the voting machines or whatever you want to call him, give him what duties you think. But we are not supposed to be here and rob one department and give it to another and abolish one and give it to another. We are doing an injustice to the people when we attempt to do that. I don't think in my part of the country that there has been no demand to take away the duties of the secretary of state, which he has performed and I think in a very wonderful manner. My people are happy. We on the local level we make mistakes and we want to tell you that the secretary of state's office has worked very well and might over the weekend and sometimes it seems to be impossible that we would get the things done on time and on the machines but not one failure that I know of has there been in thirty-seven years that I have been connected with it. Let's leave the secretary of state as it is and vote for this amendment and then let's decide about the commissioner of elections or custodian of voting machines or whatever you want to label him but don't bring that feature into this. By this amendment if you don't pass it and you leave it like it is you are taking away from the duties of the secretary of state. Let's don't do that, because that is an important function and it has been well performed and we would like to urge you to let's adopt this amendment and leave that feature of our state government as it has so well performed through the years. We certainly don't want to be labeled as the group to come down and throw everything out the window and start from scratch with experimenting. This is too important a matter to experiment with. Let's vote for this amendment and then take care of the others that come up. Thank you very much, Mr. Chairman.

Further Discussion

Mr. Drew Mr. Chairman, ladies and gentlemen of the convention, I feel like that I am obligated to take the floor on the issue of this amendment. The reason I say that is when Mr. Kelly, and I amendment to establish the constitutional office of commissioner of elections, I took the floor in support of that, which as you will recall, followed very closely behind the vote which did away with the custodian of voting machines. And

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if your memory serves you correctly this was one of the statements I made at that time and I have had quite a few of the delegates say that that is the reason they voted for the commissioner of elections to become a constitutional officer. The statement that I made to you at that time and I feel like that you understood what I was talking about, I know you did. I made this statement that "I hope you will adopt this amendment, create the office, a constitutional office of commissioner of elections because by doing so we are laying the groundwork to establish a department of elections to handle the entire election procedures." I have not changed my position on that. I think this convention today has made a tremendous error and mistake because we have been talking about personalities, incumbents in offices and the efficiency with which those offices are run, which has nothing to do with the adoption at this convention of any type of proposal. The incumbents were not considered by me. The manner in which they operate their office was not considered by me and I do not think it should be considered by this convention. The incumbents are totally immaterial because we do not know who their successors may be next week. And whether they operate a good or a bad office is totally immaterial to this thing. I don't see that there is anything sacred about the present procedure. We are down here to draft a constitution that we feel is in the best interest of the people. I firmly respect your right to change your mind and I would be the last to criticize you if you did. I reserve that prerogative myself. But I hope you will remember that I do think that there is one, if not the main reason, that after, almost immediately after abolishing the custodian of voting machines, I believe there were eighty some-odd votes cast to establish the constitutional office of commissioner of elections, because it was laying the groundwork for a department of elections to handle the procedures. And I am personally in favor of going along with that concept at this present time. I think that when this convention, and I don't say this meaning to reflect upon either incumbent of those two offices that we are talking about. I am happy to have their advice. But I think when this convention reaches a stage that we come to a compromise that is acceptable and we come to that compromise because it is the best of the present incumbents, we have given up our right to be the delegates to this convention. I think we are going to have to be individualists, ignore the incumbents and look to the future. That is the whole purpose of this thing, looking to the future. I am of the opinion that one department can do a better job and I ask that you defeat this amendment and give the commissioner of elections the duties that should be prescribed to that office, which is complete authority to handle all election procedures. Thank you.

Further Discussion

Mr. Weiss Fellow delegates, this vital issue is important to all of us and certainly to the electorate of the state. The issue seems to be confused at times, but I think rather than separate the ideal from the practical, which is the vital issue too, I believe, we should also consider something more important about the commissioner of elections. Certainly he will be, I hope, according to the Executive Committee be given more the custody of the voting machines. This window dressing of voter registration is no light matter however. We in the Bill of Rights Committee have discussed this and we have had testimony before us that anywhere from ten percent or more of the voters registered in the state of Louisiana are illegally registered. In the future we hope there will be computers to help check out immediately and momentarily those voters in the state, who with perhaps a card or some other means of identification can be readily identified. And hopefully the commissioner of election will be able to work in this direction in a very positive fashion. I do not see him as a window dressing whatsoever.

I consider it a check and balance and vital in our election process. I think it is important that we accept this apparent compromise and therefore I would urge you to vote green and yes for this amendment. It appears to be a compromise truly but on the other hand from the testimony we have had from the secretary of state and from the other information that I have it is also a practicality versus an idealism and the men that have come up here before you have been more idealistic and less practical. Let's vote in favor of this amendment and I urge you to vote green.

[Previous Question ordered.]

Closing

Mr. Kean Mr. Chairman, and fellow delegates, I will be very brief because I think this matter has been fully discussed and I am sure that the delegates have made up their minds as to how they feel about it. I do want to make a couple of comments in light of suggestions that were made by speakers that preceded me here on the podium. I agree with Mr. Drew that there is nothing sacred about the present procedure. But by the same token I have been given absolutely no reason for a change in present procedures other than that of some theory of consolidation to justify that change. And I am frank to admit that I have seen consolidations that work and consolidations that don't. And I don't believe the mere fact that we are striving for the ideal situation of placing all similar functions in one particular office or under one particular official without further evidence, is justification for making that change. I am not here concerned frankly in the final analysis with the commissioner of elections or the custodian of voting machines or the duties of whatever those offices might be. I am here concerned with the duties of the secretary of state and I have endeavored by this amendment to spell out those duties so that they will be understood and would not require any undue interpretation to determine the jurisdiction of that office. I feel that this amendment accomplishes that. With respect to Mr. Roemer's discussion, he lost me. Because he voted for the custodian of voting machines and I find it a little difficult to understand how having voted for a custodian of voting machines he now comes up and argues against this amendment because it might permit a continuation of that office under some other name. Under the circumstances I believe that the amendment does adequately take care of the problem before us and I ask your favorable consideration of it.

[Record vote ordered. **Quorum Call:** All delegates present and quorum. Amendment adopted: 7-39. Motion to reconsider tabled. Previous Question ordered in the Section. Section passed: 88-2. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter "Section 8. There shall be a department of justice headed by the attorney general who shall be the state's chief legal officer. As may be necessary for the assertion or protection of the rights and interests of the state, the attorney general shall have authority to 1) Institute and prosecute or intervene in any legal action or other proceeding, civil or criminal, 2) Exercise supervision over the several district attorneys throughout the state, and 3) for cause, supersede any attorney representing the state in any civil or criminal proceeding. He shall have such other powers and perform such other duties as may be authorized by this constitution or provided by statute."

Explanation

Mr. Gravel Mr. Chairman, ladies and gentlemen of the convention, consistent with the position

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previously taken with regard to this section and as authorized by the Committee on the Executive Department, we are going to propose, at least I'm going to propose, in lieu of Section 8 a short provision, that I think the clerk has at this time, that in effect will leave out of the consideration of the office of attorney general at this time, and until we get to the Article on the Judiciary Department, the powers, functions and duties of the attorney general. But the proposed amendment will of course simply create the department of justice and designate the attorney general as chief legal officer of that department and authorize that this constitution elsewhere or the statute may provide other functions and duties for him. I don't know if there are any other amendments, but I did want to make it clear to the convention that this is the position that is going to be adopted with respect to Section 8 and the recommendation of the Committee on the Executive Department.

Amendment

Mr. Poynter First amendment sent up by Delegate Gravel. Amendment No. 1, on page 7, delete lines 1 through 14, both inclusive in their entirety and insert in lieu thereof the following: "Section 8. There shall be a department of Justice, headed by the attorney general who shall be the state's chief legal officer," and Mr. Gravel has changed the amendment so as to delete that whole next sentence. The last sentence, the second sentence of the two, is deleted so simply the amendment would insert Section 8 and the first sentence contained in the language.

Explanation

Mr. Gravel Mr. Chairman, ladies and gentlemen of the convention, all that this does is to create the department of justice within the executive department and to constitutionally declare that the attorney general shall be the head of that department and the state's chief legal officer. All of the matters relating to the functions, powers and duties of the department and of the office of attorney general will be relegated to future consideration when we consider the judiciary article. Mr. Chairman, I move the adoption of the amendment.

Questions

Mr. Tobias I'm reading Section 2 B of our draft as amended and as it reads now it says "the attorney general shall be the state's chief legal officer, head the department of justice and shall have been admitted to the practice of law in this state for at least five years immediately preceding his election." In view of this, do you really think your amendment is necessary?

Mr. Gravel No, but I think... I think it's necessary but I do think we have caused a style and drafting problem that we'll have to consider later on.

Mr. Lanier Mr. Gravel, I don't believe your amendment does anything to that portion of this Section on page 6 and I believe we probably would have to change the title here because as it presently reads it says powers and duties of the attorney general.

Mr. Gravel I think that too would have to be changed by style and drafting. I agree.

Mr. Conroy Did you say the purpose of this was to provide that there would be a department of justice within the executive branch?

Mr. Gravel Yes sir.

Mr. Conroy But didn't we delete the attorney general from the executive branch in Section 1A when we finished amending that?

Mr. Gravel That's right. He was not included in 1A but subsequently there was a consideration by the convention of language in another section that I think does substantially put him in 1A. It was just read by Mr. Tobias and I don't think there is much question but as I've indicated we do have a style and drafting problem in relation to this office.

Mr. Denny Mr. Gravel, I don't understand the purpose of your deleting the second sentence as it was originally proposed.

Mr. Gravel Sir?

Mr. Denny Can you explain why you deleted the second sentence in the original amendment as you proposed it?

Mr. Gravel Yes. When we were in the Henry huddle a moment ago, some of the proponents of other amendments felt that there might be a broadening of the authority being granted to the legislature with respect to the powers, functions and duties of the attorney general that they did not want to permit by this language at this time.

Mr. Denny Now wouldn't that be true of all of the other offices in the executive branch?

Mr. Gravel Mr. Denny, I believe we are going to come to that issue with respect to other offices but this is one office that we know is going to be specifically and fully considered in another article that will be coming up in the very near future. But the point that you make, I think will be valid and should be considered in connection with the office of commissioner of agriculture, and commissioner of insurance and superintendent of education because they...well, except for superintendent of education, those other two will not be considered I don't think in any other article and I think we may very well have some discussion at that time about this precise problem.

Mr. Munson Camille, my question is more or less the same as Mr. Denny's only is specifically refers to the commissioner of agriculture because in the amendment that the Committee on the Executive Department has, they do have that last sentence. Would you agree then that the Committee on Agriculture should come up with a proposal as to the duties and functions of the commissioner of agriculture?

Mr. Gravel Well, we'll discuss that when we come to it. I don't think that the same deletion should be made with the respect to the commissioner of agriculture, Mr. Munson. I don't think that's before us.

Mr. Munson Why? It's a separate section, a separate Committee. You have a Committee on the Judiciary, you have a Committee on Agriculture.

Mr. Gravel What I'm saying is that the committee...we'll, that may be true. You're correct. I think that Natural Resources is giving consideration at that...

Mr. Munson It's Natural Resources and Agriculture.

Mr. Gravel You may be correct about that, yes sir. That's not before us now, though.

Mr. Guarisco Mr. Gravel, I don't know if Mr. Denny asked the question. I understand that we did remove the attorney general from the executive branch in 1A as a constitutional office under the executive department. Isn't that correct?

Mr. Gravel I think we may have removed him, but we put him back at least by implication in the language that was read by Mr. Tobias.

Mr. Guarisco My question is, Mr. Gravel, if

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we're going to remove him from the executive branch as a constitutional office in 1A, and I assume that he's going to Judiciary. Is that right?

Mr. Grave No sir. I think that most of us agree that the attorney general should be in the executive branch of government. In the previous discussion on that Mr. Guarisco, I believe the desire of this convention was to consider the functions of the attorney general's office under the judiciary article but generally with an understanding that probably those functions would then be placed back in the executive article where we will have created, if this amendment passes, the department of justice within the executive branch.

[Previous Question ordered. Amendment adopted: 93-12. Motion to reconsider tabled. Previous Question ordered on the Section. Section passed: 107-4. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter "Section 9. Powers and Duties of the Treasurer. Section 9. There shall be a department of treasury headed by the state treasurer who shall be responsible for the custody, investment, and disbursement of the public funds of the state. He shall report annually to the governor and the legislature one month in advance of the regular session on the financial condition of the state, and shall have such other powers and perform such other duties as may be authorized by this constitution or provided by statute."

Explanation

Mr. Stagg Mr. Chairman and fellow delegates, the Committee on the Executive Department has provided in this article that the state treasurer shall be the moneybags of the state. It has been recently shown in the press that considerable sums of money have been earned by the state from the wise investment of idle funds. The purpose of this article is to permit and encourage that this way of handling the state's money shall be continued. The requirement for an annual report to the governor on the financial condition of the state is a good one and we would hope that there would be a section of this article which would draw your approbation. If there was one it would be the one on the department of the treasury but I stand here to be corrected. Mr. Chairman, I move its adoption.

Questions

Mr. Triche I'm concerned about the last phrase of the section "provided by statutes". We give the treasurer certain duties spelled out in this section and then you provide he shall have other powers and duties that may be authorized by this constitution. I understand that to mean other duties provided in other sections and articles of the constitution and then you say or provided by statute." This language in other sections that we've previously adopted and I just would like to hear the committee's explanation about why that language is adopted. It seems to me if you create a constitutional officer and you give him certain duties and you say he'll have other duties as provided by statute, that you're deferring to the legislature the unlimited authority to grant this officer unlimited authority, powers and authority.

Mr. Stagg Not inconsistent with his constitutional duties but additional duties could be added. Let me say it this way Pappy, when we started off with the powers of the governor we added an amendment on him, we've had the same language on the lieutenant governor, on page 6, line 15, "be authorized by this constitution or provided by statute." We have the same thing in the secretary of state, in the original attorney general

article we had the same language and we have the same language in the treasury. These were the original five statewide officials presented to this convention by this committee. It was felt that as this constitution ages, as situations in this state change that we don't want to lack in flexibility for new circumstances and new conditions, that might cause the legislature in its wisdom to add functions to the officers that we had set out as being statewide elected officials and this kind of language we used quite faithfully in all of the statewide elected officers feeling that the legislature could if it saw fit give them additional duties beyond those prescribed in this constitution and gain flexibility thereby.

Mr. Shannon Mr. Stagg, who is the present treasurer?

Mr. Stagg Mrs. Parker.

Mr. Shannon Can Mrs. Parker, "he" shall report?

Mr. Stagg No sir, but you haven't read the style manual of the convention obviously, because it says where the masculine gender is used, the feminine gender can be interpreted.

Mr. Shannon Could we not use better language than that?

Mr. Stagg What do you want to say? He or she shall report, or it?

Mr. Shannon The treasurer shall report. Wouldn't that be better?

Mr. Flory Mr. Stagg, I call your attention to line 18, to the authority of the treasurer for the investment of public funds. My question to you is, in your committee's deliberations did you all take into consideration state employees' retirement fund, teacher retirement fund, these sort of funds and was it your intention that the treasurer invest these funds?

Mr. Stagg Mr. Flory, we deliberated upon that question for several hours. We called in additional expert witnesses to tell us about these funds, both from the teachers, from the state employee's retirement fund. We got a bundle of information about it and concluded that such funds were not in the treasury's domain nor were they public funds by definition and that therefore such retirement funds are not invested by the treasury.

Mr. Flory Would your committee consider an amendment to specifically exempt those funds?

Mr. Stagg If such an amendment was presented on the floor of this convention, it would be up to the convention to vote it up or down. It was not our intention that retirement funds be invested by the treasurer, they are invested by the boards of those retirement funds.

Mr. Henry I think there is such an amendment in existence right now, Mr. Flory.

Ms. Zervigon Mr. Stagg, the pronoun he recurs throughout this article. It wasn't the intention of the committee to limit statewide elected officials to men, was it?

Mr. Stagg No ma'am, and I'm waiting for the day you run.

Ms. Zervigon Well may I suggest that Style and Drafting might want to change that pronoun, he, that you had trouble with in the beginning of line 19 to say "the treasurer shall report."

Mr. Stagg I think that would be proper for the Style and Drafting division of this convention to do so.

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Mr. Rayburn Mr. Stagg, I'm just a little curious here as to why you spelled out that the treasurer shall report annually to the governor and the legislature one month in advance of regular sessions. I'm thinking that maybe if you had said at least one month. I'm wondering if you have any specific reason for spelling out just one month.

Mr. Stagg I think there was no specific reason, Senator Rayburn, and I think that would be a helpful amendment so that the time could be fixed perhaps by the legislature when it would like to receive such an annual report.

Mr. Rayburn Well, I have no question about the one month but maybe we want to get it five weeks before or something like that...if you're tired down here to one month that means I just...I'm wondering if you could...I don't know whether you could just amend your amendment and put the word at least or whether we have to do a whole new amendment. I guess we'll have to prepare a whole new amendment.

Mr. Henry I think you will. I'm not looking at the amendment that is up here but I think you would have to have a separate amendment, Senator.

Mr. Stagg I would request Senator, if you do prepare such an amendment, that you put my name on it with yours.

Amendments

Mr. Poynter I have a set of amendments by Mr. Anzalone. Amendment No. 1, page 7, line 17, after the word "shall" and before the word "the" strike out the words "be responsible for" and insert in lieu thereof the word "supervise".

Amendment No. 2, page 7, at the end of line 18, strike out the period and insert the following "as provided by law."

Explanation

Mr. Anzalone Ladies and gentlemen of the convention, when the executive department discussed the powers and duties of the treasurer it was agreed and thought by that particular committee that all funds that went into the government of the state of Louisiana should be routed through the office of the treasurer. Rather than give him or her supervisory control over these funds, they were given direct control over the custody of these funds. During the debate of the committee the question was brought up concerning the retirement funds and their investment by several of the retirement agencies across the state. On one hand the committee said "no these funds are not included." On the other hand a representative from the office of the treasurer said that they felt these funds were public funds and should go through the office of the treasurer. There are those of us who feel that while the treasurer should supervise the monies coming into the state he should not have the direct control over the custody of these funds without prior permission of the legislature. My amendment provides that the treasurer shall have supervisory powers over these funds and if there are certain areas such as your retirement funds of which the treasurer should not be allowed to interfere, then by law he can be prohibited from the supervision of these particular funds. It is an effort on my part to strengthen the retirement funds that we have in the state from the domination of the treasurer.

Questions

Mr. Gravel Mr. Anzalone, would you agree that the sentence beginning with the words "as far as is practical" really is meaningless and should be deleted?

Mr. Anzalone Mr. Camille, when we get to that one, I probably would agree with you.

Mr. Gravel I beg your pardon, I thought that was the one you were on.

Mr. Denery Mr. Anzalone, as I understand from your amendment now, the treasurer will have no supervision over any public funds unless provided specifically by statute. Is that correct?

Mr. Anzalone No sir, I don't view it as that Mr. Moise. What I'm looking at is that unless he is prohibited by law he will have supervisory powers over the funds coming into the state.

Mr. Denery But doesn't it say "as provided by law," it doesn't say "except as prohibited by law." I believe your amendment says "as provided by law."

Mr. Anzalone That's not the intent of it.

Mr. Denery Well now, you and I are going to differ on what everybody's intention is. I think we ought to be sure that the language reads the way your intention is and it seems to me it's very clear. It says the treasurer has absolutely no supervisory powers unless and until it is so provided by statute. I don't think that was your intention, that's why I raised the question. Do you agree?

Mr. Anzalone No.

Mr. Silverberg Will you explain what you mean by the language "supervisory custody?"

Mr. Anzalone Yes sir. Mr. Silverberg, what I am attempting to do here, is there are certain monies that come into what may or may not be state funds and these are classified as a retirement fund and there are several of these throughout the state at the present time. The actual custody of these funds is within the retirement system that are in force at the present time. I think certainly somebody should be responsible in state government on an elected level to say yes, we do have the money, yes, we have accounted for it. But I don't necessarily say that it should run through their office and for them to have the actual physical custody of it.

Mr. Arnette Joe, aren't the particular retirement funds appropriated before they are put in these retirement funds?

Mr. Anzalone Aren't they appropriated?

Mr. Arnette Aren't they appropriated before they go into this particular retirement fund or retirement system? In other words before the retirement fund gets the money, isn't it appropriated by the legislature?

Mr. Anzalone I think so.

Mr. Arnette Well, would that make these funds that have already been appropriated, still public funds? It seems like they have been appropriated by the legislature so therefore they have already been disbursed by the legislature out of the public funds and into this retirement fund. Isn't that correct?

Mr. Anzalone Are you saying you are taking it out of the realm of public funds and putting it into a private fund?

Mr. Arnette That's exactly what I'm saying...

Mr. Anzalone No, I could not disagree with you more because you're talking about, for instance, a Louisiana State employees' retirement system and this certainly is not private, this is public, this is state.

Mr. Arnette The legislature can appropriate funds out of that fund?

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Mr. Anzalone I wish they could appropriate some for private use. I'd like to get my hands on some.

Mr. Arnette What I'm saying though, the legislature has no power to appropriate those funds once they are in the retirement fund.

Mr. Anzalone But it's still within a state agency Greg, is what I'm trying to say, so therefore it is a public fund. It's not private.

Mr. Arnette Well you and I just disagree, Mr. Anzalone.

Mr. Anzalone I don't know whether we do or not.

Mr. Duval Mr. Anzalone, just to avoid a little confusion, I see two amendments with your name on it and the one you're talking about right now is the supervised one and as provided by law one, and you've got a more lengthy, unwieldy one after that. If this passes, you don't intend to introduce this other one, do you?

Mr. Anzalone Now Mr. Duval, you know I'm at the will of this convention.

Mr. Duval Thank you for your answer.

[Previous Question ordered. Amendments rejected: 31-70. Motion to reconsider tabled. Motion to take up other orders adopted without objection.]

Announcements
[I Journal 275]

[Rules Suspended to allow Committee on the Judiciary to meet. Adjournment to 9:30 o'clock a.m., Thursday, August 9, 1973.]

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Thursday, August 9, 1973

ROLL CALL

[94 delegates present and a quorum.]

PRAYER

Mr. Smith Let us pray. O gracious heavenly Father, we worship Thee as the giver of light and life and as a revealer of saving and uplifting truths. Gracious Father, be with us today as we deliberate as a convention. Guide what we do. Bless us and help us to walk in Thy ways, and may the words of our mouths and the meditations of our hearts be accepted in Thy sight. O Lord, our strength and our Redeemer. Amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

PROPOSALS ON SECOND READING AND REFERRAL [1 Journal 276]

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Mr. Poynter Committee Proposal No. 4, introduced by Delegate Stagg, Chairman on behalf of the Committee on the Executive Department, and other delegates, members of that committee.

A proposal providing for the executive branch of government, for the filling of vacancies in certain public offices and with respect to dual office holding, a code of ethics and impeachment.

Mr. Chairman, the status is that the convention has adopted as amended Sections 1 through 8 of the proposal. It presently has under consideration Section 9, Powers and duties of the treasurer.

Amendments

Mr. Poynter Amendment No. 1 [by Mr. Anzalone and Mr. Asselt], on page 7, at the end of line 18, change the period to a comma and add the following: "except those of the state retirement systems which shall remain in the custody of each system and shall be invested and disbursed as provided by statute."

Amendment No. 2, on page 7, at the beginning of line 19, delete the word "he" and insert in lieu thereof the words "the treasurer".

Explanation

Mr. Anzalone Ladies and gentlemen of the convention, in the deliberations by the Committee on the Executive Department it was more or less understood by that department that the treasurer was to receive and receipt for all monies that went into the state. We had more or less decided that this was going to be except for retirement funds which traditionally have been placed in the hands of these particular agencies. When the representative of the treasurer came before our department, his interpretation of the wording of the duties of the treasurer led some of us to believe these retirement funds were inclusive in the duties of the treasurer, that it could be interpreted that he would be responsible for the receipt, investment and management of these funds. The retirement funds of the state traditionally have been a composite of private and public funds, they have been placed in these several departments under their own management and this is merely an exception to rule out any possibility that the treasurer will have custody of these funds.

Questions

Mr. Bollinger Do you think that if there is a question and it has to be decided by the courts, that the courts would look at the transcript of this convention to establish what the convention's consensus was in this proposal?

Mr. Anzalone Mr. Bollinger, the courts' interpretations are not going to be bound by the deliberations of this convention. They can look to them when they want to.

Mr. Bollinger But, I am not an attorney and I am not really familiar with the judicial process in that respect. I am asking this as a serious question. Do they usually do this in the case of a deliberatory body as we are and in trying to decide what the feeling of the body was, go back and transcribe the minutes or the tapes and see what was the attitude of the convention?

Mr. Anzalone The answer to that question can only be yes and no, because sometimes they do and sometimes they don't.

Mr. Rayburn Delegate Anzalone, we now have in this state many retirement systems, school bus drivers, lunchroom workers, school employees, state employees. There is a committee that has done considerable study in trying to combine some of these systems. I am a little concerned about your language here where you say "except those of the state retirement systems which shall remain in the custody of each system." Now I wonder if you would know or not whether in the event that there is an effort later by the legislature to combine some of these systems whether this language will prevent that from being done or not, where you spell out here that shall remain in the custody of each system.

Mr. Anzalone No sir, Senator, it would not. What it would do is whatever system you have at the time is going to be governed by this particular article. It doesn't limit you to the number of systems that you have now.

Mr. Denny Mr. Anzalone, in connection with the question raised by Senator Rayburn, when this language says shall remain in the custody of each system, don't you agree that that is binding into the constitution or locking and freezing by means of the constitution, the very thing that he suggested might take place in the future?

Mr. Anzalone No sir, it does not. Mr. Moise because what this amendment does is whatever systems you have and we are not limiting it to that because if there is a new retirement system that were to come to pass sometime in the future certainly you could not argue that this is going to lock in the retirement systems that we have now. It is not going to lock them in from increasing them or decreasing them. What it does is simply state that there shall be no custody of these funds by the treasurer.

Mr. Denny Well, Mr. Anzalone, don't you agree that from a point of view of draftsmanship in the constitution we should put as little in the constitution as is—only what is necessary and not try to legislate.

Mr. Anzalone Yes sir, I agree with that too, but Mr. Denny, you will recall that in the deliberations of our committee when we attempted to specifically exclude retirement funds from the control of the treasurer that we did not come up with the language necessary to do it as per the interpretation of the treasurer's office themselves.

Mr. Denny Mr. Anzalone, would you agree then that if you put into the amendment only the first line up to the word "which", except those of the state retirement systems, that that would cover the problem that you are worried about?

Mr. Anzalone Mr. Moise, I am not concerned about the other line really.

Mr. Denny It just seems to me, Mr. Anzalone, that we are putting into the constitution something which properly should be left to the legislature.

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if the legislature feels that it would be proper to combine all of these funds...

Mr. Anzalone Yes sir, we tried that yesterday.

Mr. Denberry No I don't believe it was tried in that language yesterday, Mr. Anzalone. Thank you.

Mr. Stagg Joe, when you read the whole sentence and the whole thought that is being expressed, "that the treasurer shall be responsible for the custody, investment and disbursement of the public funds of this state except those in the state retirement systems," could not someone read into that that you are regarding state retirement funds as public funds because you state that he is going to be responsible for the public funds of the state except those in the retirement systems. I didn't think that retirement systems monies were public funds.

Mr. Anzalone Mr. Stagg, you and I have both heard testimony from many, many witnesses and half have said yes and half have said no. Now, if the court decides that it is public and I see no reason why they couldn't hang on the fact that this is a state retirement system that it would not be considered public money even though there are private contributions that come into this thing. I make a private contribution every year in the form of taxes. That is public money. The state appropriates money. That is public money. This is a state retirement system. That is public. I see no reason in the world why the court could not hang a decision and say it was public.

Mr. Stagg But you don't think that it is. You don't think that retirement funds are public monies do you?

Mr. Anzalone Personally I think they are.

Mr. Stagg We disagree.

Mr. Chatelain Delegate Anzalone, I too am confused in the language here. You say that except those of the state retirement system, then you go on to say and shall be invested and disbursed as provided by the statute. It looks like you are going to lock them in one place then who is going to disburse them and who is going to see that it be invested? The legislature?

Mr. Anzalone No sir, the several retirement systems operate under the will of the legislature. They do that at the present time. What I am mainly interested in is the custody and investment of these funds. Of course it's got to be done within state law. There is no question about that.

Mr. Duval Mr. Anzalone, Senator Rayburn has an amendment which in this area which provides except monies belonging to any state retirement fund or system which shall be handled as provided by law. I think that takes care of your problem. Would you consider withdrawing your amendment in lieu of this amendment?

Mr. Anzalone I didn't know he had one. Is that what it says?

Mr. Duval That is precisely what it says.

Mr. Anzalone Well, that is exactly what I want to say and if the language is more acceptable to this convention, I certainly would withdraw it.

Mr. Duval I think the amendment is drawn already.

[Amendments withdrawn.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Rayburn], on page 7, line 18, after the word "state" delete the period and add the following: ", except monies

belonging to any state retirement fund or system which shall be handled as provided by law."

Explanation

Mr. Rayburn Mr. Chairman and fellow delegates, my amendment really tracks the present law that created--the language in the present bill investment of idle funds, and I feel like that language should be included in this particular article and I move the adoption of the amendment.

Questions

Mr. Flory Senator Rayburn, isn't it true that your amendment would allow also in the event the legislature saw the wisdom of it, comingling of the retirement funds for the purpose of investment in order to get a better return on the money?

Mr. Rayburn That's true, Mr. Flory.

Mr. Jenkins Senator Rayburn, my concern with the amendment is that perhaps by the wording of this amendment we are defining these retirement funds as public funds. You see if you look on line 18 there it says "public funds of the state" and then your amendment says "except such funds" and then you mention your amendment.

Mr. Rayburn It says "except monies belonging to retirement systems," Mr. Jenkins which I think clearly defines that these cannot be classified as public funds. I think it excludes them from the provision of the language you just read.

Mr. Jenkins Don't you think that just the opposite is true that by putting that exception as to public funds you are actually making those public funds and saying that those types of public funds are not subject to the treasurer?

Mr. Rayburn Representative Jenkins, we have the same language in the present law that created the bill to provide for the investment of idle funds and the language there says it excludes laws dealing with the investment of any retirement system of the state. I was trying to track the present language because it has worked well in the past and I don't know--you've been in the legislature a pretty good while and you help get some of these people that belong to the various retirement systems stirred up, they are really sensitive about that retirement money because they feel like they have an investment in it, which they do. They contribute their part as well as the state has contributed their part. I am just trying to spell this out. That is the reason the language was put in the original bill. To satisfy the various people who belong to the various retirement systems and I am merely trying to clarify it in this particular language.

Mr. Jenkins What I am saying to you, I think your language is good and I'm glad it does track the present language but when you put it after that public funds of the state, except, it seems as though you are indicating that those are public funds and that this is one kind of public funds which cannot be invested by the treasurer. You don't think it is doing that?

Mr. Rayburn I don't believe so, Woody. I am just trying to make it clear that those funds will be exempt from the provisions of the schedule. That is what I am attempting to do. I move the adoption of the amendment.

Mr. Denberry Senator, was there any reason to change from the word "funds" in the printed document to the word "monies" in your amendment? It seems to me that retirement funds encompass more than just monies. You are going to invest these monies and then they become funds, as I understand it. Shouldn't that word really be funds belonging to any state retirement fund or system?

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Mr. Rayburn Well I state, Mr. Denney, to any state retirement fund or system which shall be handled as provided by law. Now I guess you could argue it either way.

Mr. Denney I suppose that could be taken care of by Style and Drafting. Would you agree?

Mr. Rayburn I am sure it could because I really wanted the word statute in conformity with the other language we have been using and they tell me that Style and Drafting can make that in the place of law say statute, which will do the same thing.

[Previous Question ordered. Amendment adopted; 98-5. Motion to reconsider tabled.]

Amendments

Mr. Poynter Some amendments proposed by Delegate Wall.

Amendment No. 1 on page 7, line 17, after the word "shall" delete the remainder of the line and delete lines 18 and 19 in their entirety and insert in lieu thereof the following: "supervise, invest, disburse and be responsible for the custody of all funds in the general fund of the state and such other funds as shall be provided for by law. The treasurer shall report annually to the governor and the legislature at least".

We need a technical amendment now to delete the Rayburn amendment, Mr. Wall.

Explanation

Mr. Wall Mr. Speaker, ladies and gentlemen of the convention, one thing we have to watch is tying things--you know you can have a good purpose in mind, you can have the right thoughts, you can be talking about the thing that everybody wants to hear and what is good, but when you tie things down too close in the convention you can cost the taxpayers more money than what you save. This same thing came up in the cash flow management of an investment of the funds of the state. You have over the state--let's just say the bookstores at the colleges and universities--you have so many small operations like that that the accounting procedures would be prohibitive if you would put this in the constitution. You give the treasurer a certain authority but leave some to the legislature. Now originally in the bill for the cash flow and investment of state funds it was similar to what this committee started off with. But in the wisdom of the legislature where there was time to consider all of the problems involved they so changed the law, even though it was a statute, so what I am trying to do here is to change back to the language that we have used and the cash flow management which brought about the proper investment of idle funds in this state.

Questions

Mr. Stagg Shady, I hesitate to ask a question to somebody so skilled at answering them but I've got to do it. In the committee proposal we have suggested that the treasurer be responsible for all of the public funds. You have made the treasurer responsible for all funds in the general fund. That is the biggest distinction between the committee proposal and your proposal. Can you tell me in dollar amounts is there a difference in what would be defined as "all of the public funds of the state" and the words "funds in the general fund"?

Mr. Wall Mr. Stagg, some of the funds today of these, like was telling you, the bookstore, some of the funds of the different agencies of the state that do not go into the general fund. Most of them are petty funds, some of them are a little larger than petty, they are retained by the agencies but they are still accountable to them and in most

instances they have to be appropriated. They do not go into the general fund yet they are what you would call public funds. The major funds go into the general fund and I think that is what we are trying to do.

Mr. Stagg Mr. Wall, do you know what dollar amount? If we have a state general fund--the appropriation bill that comes out of the legislature where it says we are going to appropriate and spend two billion dollars--how much money are you talking about outside of the general fund in dollars. That is the point I am trying to raise. I know what kind of establishments...

Mr. Wall Mr. Stagg I don't know the exact amount but it is not to that extent, but it still provides here that the legislature--it gives the legislature the latitude of taking care of these funds if it becomes necessary to put them under the treasurer for investments, if they get to that extent. You see, some of these funds that don't go into the general fund are so petty that the accounting procedures are just absolutely prohibitive to do what--for us to tie these down in the constitution.

Mr. Stagg Well, you understand of course that what the committee was trying to do was trying to maximize the amount of money that the state treasurer would have at its disposal for investments for achieving idle fund enhancement, and I didn't know whether your bill would diminish the amount of money in any significant degree that would be available for investment.

Mr. Wall It would be a minor amount but it would be of prohibitive cost and the legislature selected this exception in their cash flow management bill but yet under this it still leaves the power to the legislature if it becomes a necessity. If any time these funds get to the point that they need to be put into the general fund or any other way, if the legislature decides for them to go through the treasurer for investment whether it is general fund or not, it leaves that power to the legislature. I think in this instance that is for the benefit of the taxpayers of this state.

Mr. Abraham Mr. Wall, the Rayburn amendment states that all state retirement funds or systems would be excluded from the custody of the treasurer. If I understand your amendment correctly this does give the legislature the latitude that maybe--or is it conceivable that there might be a small retirement fund which might be so small that it might not be able to sustain its own overhead and investment crew and that this would allow the legislature in creating such a fund possibly to go ahead and use the treasurer's office for the investment of it. Am I correct in this assumption?

Mr. Wall Now come again with that, Mr. Abraham.

Mr. Abraham Is it conceivable that there might be a retirement fund created which might be so small that maybe it cannot carry the overhead required to do its own investing and so forth and that the legislature might desire to go ahead and put these funds under the state treasurer for investment. And your amendment would allow this to be done, would it not? It is not as restrictive as the Rayburn amendment.

Mr. Wall I think that the Rayburn amendment would permit that to be done because it makes an exception out of them, except as provided by law.

Mr. Abraham No, it says "except monies belonging to any state retirement system which shall be handled as provided by law." So the Rayburn amendment excludes all retirement systems, and you does give a little bit of latitude in that the legislature could decide how these should be handled in the future.

Mr. Wall I didn't pay real close attention but

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basically I was thinking that his amendment excluded the retirement systems except as provided by law. That is what I thought it did.

Mr. Abraham No, the Rayburn amendment excludes all of them.

Mr. Denney Mr. Wall, as I understand your amendment, unless the legislature so provides the treasurer would only have control over the general fund. Is that correct? Now what happens to highway funds and so forth? They would be under the control of the highway department and not under the control of the treasurer, unless the legislature so ruled?

Mr. Wall It depends on whether the highway funds go through the general fund or not. Some of the highway funds are dedicated by the constitution and they don't pass through the general fund. Any of them that pass through the general fund, they would be under the state treasurer. If they were not passed through the general fund then it would be left to the legislature.

Further Discussion

Mr. Roemer Fellow delegates, I rise to oppose Delegate Wall's amendment. I realize that the subject is somewhat dry and uninteresting but I wish you'd follow me for a few minutes [as to] why I think this is a poorly worded and ill-advised amendment. The executive section deals with the broad powers and broad concepts therein, and I personally feel it's good enough to say and what we want in this convention is central management of public funds. It helps the state in many ways. It helps it in terms of accountability. It helps it in terms of the interest investment that we get as a result of investment of those funds. Now, I agree with those who want to exclude the retirement system, and I supported the amendment that did that. I think the details, though, of central management ought to be left to the revenue and finance section. Let me read to you what we've done already in Revenue, Finance and Taxation that does both things. Number one calls for central management of our funds and number two lets the small boards and agencies off the hook. Let me read to you what we've done and I hope that you'll agree with us. It's Proposal No. 15, page 5, beginning at line 27: "All money received by the state or any state board, agency or commission immediately upon receipt shall be deposited in the state treasury except money received as grants or donations or other forms of assistance when the terms and conditions thereof require otherwise and except money received by trade or professional associations and then only if excluded by the affirmative vote of two-thirds of the members elected to each House of the legislature." Now, see what we've done. We have made the legislature exclude trade and professional associations. They are automatically included and the legislature can only exclude them by two-thirds vote. What Mr. Wall does, he lets these little boards out, and I think we want to let them out of central management, but his language is so broad that certain boards and agencies in this state that handle millions and millions and millions of dollars could also escape through the same crack. So, I urge you. Let's defeat the Wall amendment; however well-intentioned, it's too broad for what we want, and let's stick with the language that we worked out after weeks of debate in Revenue, Finance and Taxation which does what you really want to do. That is call for central cash management and yet allow these trade and these farm and these small professional associations out. That's what I hope you do. Let's vote the amendment down.

Questions

Mr. Munson Mr. Roemer, Mr. Wall's amendment, I believe, deals only with monies in the state general fund. My question is this: isn't the fact that we have monies, for instance, in the conservation

fund and in the Marsh Island fund, that under this amendment would be left uninvested, isn't that correct?

Mr. Roemer That's correct. It's just too broad.

Mr. Silverberg Buddy, would your proposal include the investment of levee board funds also?

Mr. Roemer Well...

Mr. Silverberg When you're talking about millions of dollars, say for example, the Lafourche Levee Board might have 3 or 4 million dollars available.

Mr. Roemer Well, you know, that many levee board funds are now under cash management right now in this state.

Mr. Silverberg And some of them aren't...

Mr. Roemer Yes, some of them aren't but the legislature has directed the three or four top officers in the administration to eventually include all the levee board funds now. So, we would follow in that spirit. Our committee recommendation, Joe, has done nothing more than what the legislature did this last year. We've just followed up on it and put it in the constitution.

Mr. De Blieux Mr. Roemer, in answer to a question by Mr. Munson, you stated that this would only deal with the funds in the general fund of the state.

Mr. Roemer That's not correct, I agree with you. It deals with more than that.

Mr. De Blieux Yes, because...now, even under the provision there following the funds...that is "such other funds as provided by law"...would not that allow the legislature to do exactly what you are speaking about in our proposal in Revenue and Taxation?

Mr. Roemer Exactly, what we do in trying to exclude the small bodies, we have opened up a crack; they can exclude every body.

Mr. De Blieux Well now, this would still allow the two-thirds vote for those funds and get them off if we adopt the provisions that are in the Revenue and Taxation, wouldn't it?

Mr. Roemer Exactly, but I'm talking about the Revenue and Taxation Provision now.

Mr. De Blieux Well, therefore, contrary to your argument, wouldn't this be a good proviso to have in our constitution insofar as the duties and responsibilities of the treasurer are concerned?

Mr. Roemer No, I don't follow that argument at all Senator. It's so broadly worded that what it does in effect is give the legislature one year to the next which is complete inimical to cash management to include or exclude. What we have done, and you were a member of that committee, you should know that...

Further Discussion

Mr. Flory Mr. Chairman and delegates, I rise, this morning, to discuss the amendment as proposed and I do so to bring to your attention a situation in this state that I think we ought to really be cautious about. At the present time, the employers of this state contribute to what is called the employment security fund based upon their taxable payroll for the purpose of providing unemployment benefits. Technically under the law, those are state funds. But you must remember that they have to meet certain federal standards under the Wagner-Pisner [Wagner-Peyser] Act of 1935, and in order to remain in compliance with that act, those funds have to be invested and the monies earned on that investment have to be returned to that fund. Otherwise, the entire unemployment system in this

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state would be out of compliance and the federal government could come in and take hold of those funds and administer the program from the federal level. Now, what's involved in these funds? At the present time, there is about...and I'm quoting from memory...about 150 million dollars in that fund. It earns annually approximately 6 to 7 million dollars on their investment. That 6 or 7 million dollars is fed by into the employment security fund for the purpose of paying unemployment benefits. The reason for that being is that the level of that fund determines in a fashion the amount of contribution that the employer makes on an annual basis. So, that if you take away from that fund the million dollars a year that it earns it automatically increases the contribution rate of the employer, plus the fact that you would be out of compliance with the Wagner-Peyser Act. Now, how does that apply to this amendment? I suggest to you that the amendment ought to be adopted and it ought to be adopted for this reason. That the legislature determine what goes into the general fund, what monies of the state go into the general fund so that I would suggest to you that instead of the word "public fund" as used in the committee's proposal, that we adopt the amendment and the language that is used there for the protection, particularly that my concern at this moment being the UI fund which stands at about 150 million dollars which I don't believe anybody in this state or this convention intends to use and have the proceeds of the earnings of that fund go into the general treasury, but I'm afraid under the language of the committee's proposal that that would happen. I would be glad to yield, Mr. Chairman.

Questions

Mr. Roemer Gordon, did "Sixty's" amendment satisfy you on your retirement situation?

Mr. Flory Yes, sir. Insofar as the retirement systems are concerned. Yes. But it does not address itself to the problem that I mentioned insofar as the UI fund which as a complete bearing on the contribution rate that the employer has made on an annual basis.

Mr. Roemer You heard the language as I read it out of Revenue, Finance and Taxation which dealt with any funds that had requirements as to its investment procedure could be excluded by the legislature. That is on Proposal 15, page 5, line 27. You might refer to that. I think we handle it explicitly there, Gordon.

Mr. Flory I can't recall that specific language, Mr. Roemer, but I don't believe that it takes care, particularly in light of the committee's language in this article. The problem that we have, I think if I understand you correctly, we would have two conflicting provisions in the constitution as it relates to this one fund.

Mr. Roemer I might ask one of these "do you agree questions" that maybe we could better address ourselves to the particulars of cash management in the cash management section of Revenue, Finance and Taxation.

Mr. Flory I would have no quarrel with that, Mr. Roemer, so long as you don't adopt something in this article which might later on conflict and really be disastrous to the UI fund in this state.

Further Discussion

Mr. De Blieux Mr. Chairman and ladies and gentlemen, I want to join Mr. Flory and Mr. Wall in supporting this amendment. I supported Senator Rayburn's amendment because I thought it was much better than the Anzalone amendment. By the same token, I think the Wall amendment is even much better than the Rayburn amendment. It allows the flexibility to the legislature which it needs insofar as the funds outside of the general funds are

concerned. There is no conflict whatsoever in this particular amendment...that Mr. Roemer read to you out of the Revenue and Taxation. It will still allow that to be done. I just think that this is a good way to say that the treasury shall handle the funds of the state. Also I might call your attention to a small amendment which takes care of the feminine gender with reference to the treasurer. I think it's a good amendment and I think we should adopt it.

Further Discussion

Mr. LeBlou Mr. Chairman and fellow delegates, I also urge the adoption of this amendment. Last year the legislature adopted a proposal pertaining to the conservation fund. In the past all the excess money at the end of the fiscal year in the conservation fund was returned to the general fund. The monies that go into making up the conservation fund comes from royalties, rents and so forth, from some of the various game refuges in the state as well as hunting license, fishing license, trapper's license, and so forth. We changed that to say that all this excess money at the end of the year would remain in the conservation fund but would have to be reallocated in the budget and through the appropriations bill each year to operate the Wildlife and Fisheries Commission. A similar instance was the Marsh Island Refuge which as I understand it, the Marsh Island Foundation...I believe Mr. Triche handled the bill in the last session...this foundation was reluctant to lease any of the properties on the Marsh Island Refuge because the excess money was going into the general fund...or the interest on the investment was going into the general fund rather than back into the Marsh Island Refuge fund. Mr. Triche was successful in changing this in order to allow the state and the foundation to lease this property for oil exploration. This amendment, as Mr. Flory stated, would also take care of the fund that he's interested in and I think if we go ahead and adopt this, which says that this pertains only to the general fund, we'll be satisfying a whole lot of people in the state of Louisiana.

Further Discussion

Mr. Conroy I urge you to reject this amendment that's proposed by Delegate Wall. The proposal by the Committee on the Executive Branch coincides with the concepts which are recommended by the Committee on Revenue, Finance and Taxation, and it is an important issue. This is not a mere technical amendment or change. It is a very significant, important issue before this convention, and that is the question of the responsibility for public funds...the accountability for public funds as to whether you will have centralized management of public funds or whether you will continue to have the wide dispersment of public funds that presently exists in this state. It is difficult to find any...we had to compile a chart ourselves in our committee or get the staff to do it, of where all public funds came from and where they all went, because it's that bad right now in this state. We urge you to reject this amendment, go along with the committee proposal on this. Then when we get to the proposal of the Committee on Revenue, Finance and Taxation we can better plan and present to you this entire detailed complex question of the administration of public funds...the handling of public funds. I cannot repeat it often enough, it is vitally important to this convention. Reject this amendment, adopt the committee proposal as it is, and then when we get to Revenue, Finance and Taxation we can discuss in detail the problems that exists in this area.

Questions

Mr. De Blieux Mr. Conroy, let me ask you, is there anything in this amendment that would be inconsistent with the provisions as proposed by Revenue and Taxation for investment of funds? If it is, it's already in the executive

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proposal.

Mr. Conroy The amendment, Senator De Blieux, is totally inconsistent with the proposal of the Revenue, Finance and Taxation Committee.

Mr. De Blieux Will you please explain that?

Mr. Conroy Because it deals only with the general fund. But entire concept there was to put in all public funds, except as could be excluded by the legislature. This leaves it up to the legislature to decide whether or not they will act and still leaves it outside of the scope of the treasurer.

Mr. De Blieux This amendment says "and such other funds as shall be provided by the legislature" which means that we'll take it and we have the present law on the investment of funds.

Mr. Conroy If the legislature acts, but they haven't acted in all these areas, Senator De Blieux. Not in all of these areas. This even gets into the question of dedication of funds, funds that don't come into the treasury; they presently go into different agencies, don't ever come through the state at all. It's totally inconsistent with the concepts that we've dealt with.

Mr. De Blieux At the present time, that's just not true, I just want to tell you.

Mr. Weiss Delegate Conroy, wouldn't you say that the federal funds are public funds?

Mr. Conroy Federal funds are another one of these areas that are specifically dealt with in the Revenue, Finance and Taxation Committee Proposal. It's one of the areas that we had difficulty with and had to specifically describe what would be done with it.

Mr. Weiss Since federal funds are public funds they sometimes do not come through the state and go directly to agencies. Therefore the general fund would not include that categorization. Therefore, the treasurer could not account to the public for public funds of all nature, both federal and state, to the people if he did not have that information available, is that correct?

Mr. Conroy This is another one of the big areas that potentially is not covered by the Wall amendment. That's correct.

Mr. Weiss Therefore, this is a bad floor amendment.

Mr. Conroy I think a terribly bad floor amendment.

Further Discussion

Mr. Triche Mr. Chairman and ladies and gentlemen of the convention, I can't decide whether I'm for the Wall amendment or against the Wall amendment. I rise to urge some members of the committee to explain to us the rationale and the reason and the policy behind Section 9 as it's presently drafted. As I appreciate Section 9 in the Wall amendment, they are just diametrically opposed. Section 9, which is a committee report says that "the treasurer shall be responsible for and invest all public funds". Now, that gives, in my judgment, the treasurer the obligatory duty to invest and handle all public funds of the state. It's a constitutional mandate. That's not what the law is today. The law today is that the constitution says we shall have a treasurer and the legislature sets out the treasurer's duties and since 1964 the legislature has been refining investment of idle funds law to where we have it in the situation...refined it to where it worked it well, and I think beneficial. But now, the Wall amendment puts us back, in my judgment, in the same situation that we have today, because the Wall amendment says the treasurer shall invest the general fund and such other funds as provided by law. Now, the general fund is not defined in

the constitution. There's no such constitutional animal as a general fund. That's defined by the legislature. So, essentially what the Wall amendment says is that we shall have a treasurer; the treasurer shall invest, disburse and be responsible for the custody of funds, the general fund which is to be defined by the legislature and such other funds as to be defined by the legislature. So what the Wall amendment says is the treasurer shall invest such funds and be responsible for such funds as the legislature directs. That's what the Wall amendment does and that's what we have today. I cannot be critical of the present system that we have today because the legislature has refined and adopted a comprehensive investment of idle funds law which apparently works to everybody's satisfaction and is producing money for the state. The committee, however, the committee proposal, Section 9, takes a different tact. It makes it the obligatory, constitutional duty of the treasurer. The treasurer has to invest all public funds, the legislature wishes notwithstanding. I think we ought to have and I would urge some members of the committee to explain to us the reason for the policy adopted by the committee as it contrasts with the Wall amendment and what we have today.

Further Discussion

Mr. Weiss Fellow delegates, I agree with Delegate Triche that a lot has been left up in the air here, and I think one of the vital issues is whether we want to continue with today's system or change it in accordance with the changing situation in our country and state, particularly with reference to revenue sharing. What is the answer, I ask again of the Revenue and Taxation Committee or of the Legislative Department Committee as to whether these public funds are going to be accounted for by a central agency? I have in mind one of the largest agencies at the present time...the new H.E.W., as it's called, in the state of Louisiana, which spends, according to my understanding, a half billion dollars a year, approximately 80% of which comes from the federal government. Now, who is to account for these funds other than the department head? It seems that some accounting should be made for these funds through a central agency such as the treasurer of the state of Louisiana. Now, if this is not going to be accounted for in some way then you can see why the governor is in a position to give raises with federal funds rather than state funds to certain department heads. As a matter of fact, he can not only give raises, but he can also...or someone, the department head or the governor...can begin to shift around federal funds in considerable amounts to the tune...at least in the new H.E.W. of Louisiana of 400 million dollars without any state accounting agency taking this or studying this in any way. So, I would like to have an answer to the question before we vote on this from one of the members from the Department of Revenue and Taxation or from the executive branch as to their consideration as to whether the state treasurer should be given the power and duty of accounting for all public funds both federal and state.

Further Discussion

Mr. Champagne I rise in opposition to the Wall amendment and I suggest that it's another attempt by merely a floor amendment to circumvent the work of committees which have been assigned this responsibility. I suggest that you further inform yourself with a committee proposal before...by floor amendment circumventing the whole actions of those committees.

Further Discussion

Mr. Stagg Mr. Chairman and fellow delegates, this is an attempt, in a short number of words, to respond to the question raised both by Mr. Triche and by Mr. Schmitt, why did the Committee on the Executive Department write the language that is in

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the article that is before us today? We sought accountability, responsibility and the maximum amount of monies available for investment for the income derived from those investments. I was pleased to read in the paper that the present scheme of such investments yield this state something in the nature of 14 million dollars a year, and that the state treasurer reported last week that the investments over a single weekend earns the funds equivalent to those granted to her department by the legislature for its operation. This is extremely good for our state. My memory goes back long enough to remember when bank deposits were a prime piece of political patronage. It redounded to the benefit of the banks and bankers and to those politicians who could influence the placements of those deposits and the state was the loser. Accountability, the committee felt that if all of the monies flowing into the state of Louisiana went first into the treasury and never left the treasury except over the signature of a responsible state official, I'll even say treasurer, then those funds available for income purposes would be maximized. We think the article as it appears in the Committee Proposal No. 4, is perfectly coordinating with the article which appears in the report of the Committee on Revenue, Finance and Taxation where they specifically state that all funds accruing to the state of Louisiana shall flow into the treasury. I think their language is excellent and I hope that it will meet with your approval when that report is before the convention. The accountability of the monies of this state, the responsibility for the monies of this state, and the hopeful increasing as years go by and income flows to the state, will be achieved by the article as presented by the Committee on the Executive Department. The most money, the biggest bang for a buck, is what we were after and we think the language proposed in this article will produce that for the people of this state. Mr. Triche, I don't know whether that answers your inquiry, but that's what motivated the committee to write the language as it appears before you this morning.

Questions

Mr. Flory Mr. Stagg, I appreciate what you have said, but was it the committee's intention to in-cumber the funds for the payment of unemployment benefits in this state?

Mr. Stagg Mr. Flory, I don't really remember that that question was ever raised in our committee's deliberations. I could stand to be corrected by a member of the committee with a better memory. But I don't remember...I know that several retirement systems' representatives came to see us, but I don't believe anybody testified in our committee concerning state unemployment benefit funds.

Mr. Flory My second question is, under the language in your proposal, it says on line 18, "and disbursement of the public funds of the state" What that means to me, and I ask you the question if you agree, that that would mean the issuance of some 30 or 40 thousand checks each week to the unemployed claimants in this state?

Mr. Stagg If the state unemployment funds are in an account other than that operated by the state treasury then, of course, the state treasurer would not write those checks.

Mr. Flory But Mr. Stagg, under your proposal wouldn't those funds be required to be under the state treasurer? That's my point.

Mr. Stagg Mr. Flory, they might be. I cannot truthfully answer it, as I told you, I don't believe anybody testified before our committee specifically about state unemployment funds and I'm glad you raised the question.

Mr. Weiss Couldn't the unemployment checks be dispensed by another department through allocation of the treasurer to another department?

Mr. Stagg The unemployment compensation funds could, by warrant, be withdrawn from the treasury in time for payment by some other organization charged with their payment. Certainly, that's how all our other funds get out of the treasury and into the hands of the recipient.

Further Discussion

Mr. Burns Mr. Chairman and fellow delegates, I'm speaking as a delegate that's not a member of the Committee on the Executive. I'm not a member of the Committee on Revenue and Taxation. Apparently at this point, there's such a difference of opinion, and I'm not speaking for the committee proposal nor am I speaking for or against the Wall amendment, but in view of the present situation and circumstances, I think the most sensible, practical approach to solving this problem as to the treasurer's duties and responsibilities particularly with reference to retirement funds and the general funds and the situation that Mr. Flory has referred to, would be to reject these amendments for the time being and then when this comes up under the Department of Revenue and Taxation, by that time we will have the whole picture before us and we can solve it once and for all under that committee proposal. Don't ask me any questions, because I'm not for or against either one of them.

Further Discussion

Mr. Abraham Fellow delegates, there has been some question and some talk about, this means that the treasurer would have to issue all the checks for unemployment or whatever it may be, and this does not mean that. It simply means that the treasury is accountable for these funds and as Mr. Stagg said these various agencies would draw warrants against the treasury to pay their bills, the same as the treasury may issue funds to the various school boards and so forth. So, I don't think that this language in the committee proposal is restrictive at all. It just furnishes accountability and I urge you to reject the Wall amendment and let's go along with the committee proposal.

[Record vote ordered. Previous Question ordered.]

Closing

Mr. Wall Mr. Speaker, fellow delegates, one of the big things that's going to determine on whether this convention is successful or not is to whether you write constitutional law or whether you try to enact legislation, statutes. This right here is a good example as to show whether you are going to write constitutional law or you're going to legislate here. I appreciate Representative Triche, what he said, because he hits the nail on the head. I appreciate his explanation. I appreciate his vote. You know the investment of the idle funds is a creature of the legislature. You know why the legislature responded and made it necessary that we start investing in the investment of idle funds to that extent is because this news media that you see starts pointing out the abuses of funds in financial institutions. So when they are pointing this out to the people, the people demanded that something be done. The legislature acted. The legislature acted. Now gentlemen, the legislature is what brought on the investment of idle funds by statute. These statutes have to vary and not all the statutes are correct and perfect to this extent. But if you pass this as the Executive Committee, you can't change it without amending the constitution. You'll have to amend and reamend. Now there's been examples of big funds and little funds, but that is the legislature's job to take care of these inequities or these injustices or correcting things that will bring more revenue to the people of this state. I was Chairman of the Tax Bond and State

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Indebtedness Committee that brought about the bond Commission to save us money, make it easier, get the best interest rate for investment of bonds. That was an act of the legislature and it should be. The Retirement Committee's study, and there's a lot of things that need to be corrected there, but you can't do it by a sweeping constitutional amendment here. It's too broad. All these things that have been pointed out here are creatures of the legislature. They are what the people want, is investment of these. But when you say public funds, that's so far-reaching, you're going to have so many lawsuits and so many constitutional amendments and so many "ifs" and "ands" brought up before this is presented to the people that you will not have a successful estimate what will be passed by the people because you will be trying to legislate. Ladies and gentlemen, the policy has been set by the statutes of the legislature. This amendment of mine puts it where the treasurer supervises, invests and disburses and be responsible for the custody of all funds in the general fund of the state, and such other funds as shall be provided for by law. What more could the people of this state, the state treasurer or anyone else ask than that. Now, as to the Committee on Taxation and Revenue. I'm not familiar with their proposal, but it was brought out and asked was there any conflict and no conflict was pointed out between this proposal and the proposal in taxation and revenue. But let me go one step further. This deals with exactly what the Executive Committee is dealing with. There are going to be a number of committees that's going to deal with the same subject matter. Those dealing with the same subject matter where there is no conflict or even where there is a slight conflict, Style and Drafting is going to have to recommend to this convention, later on in the convention, that we correct or coincide the language of these particular provisions and different sections of this constitution. Or they will recommend what section they should be in. But fellow delegates, we are dealing with the state treasurer, the investment of funds and the responsibilities here in this section and that's what this amendment does. It's a conflict with revenue and taxation and this is where it should be at this time. No one has pointed out any conflict. So I'm going to ask you to stop legislation and let's write some good constitutional law. Thank you.

[Amendments rejected: 31-61. Motion to reconsider tabled.]

Amendment

Mr. Poynter The next set of amendments offered by Delegates Rayburn and Stago.

Amendment No. 1. On page 7, line 20, at the beginning of the line before the word "one", insert the words "at least".

Explanation

Mr. Rayburn Mr. Chairman and fellow delegates, all this does in your present proposal it said that "an estimate of revenue shall be presented to the legislature one month prior to convening." This amendment just adds the words "at least" where if they wanted to send it a month and two days, four days or five days they wouldn't be tied down by the particular period or the particular language of one month. It just adds the words "at least" one month before the convening of the legislature. I move the adoption of the amendment.

[Amendment adopted without objection.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Jenkins]. On page 7, line 18, in floor Amendment No. 1 proposed by Delegate Rayburn and adopted by the convention on August 9, 1973, at the beginning of the amendment add the following: "and other funds as provided by law."

Explanation

Mr. Jenkins Mr. Chairman, delegates to the convention, the purpose of this amendment is to clarify a very important point. It's really a technical point, but I think it's quite important. With this amendment, the way the first sentence in this section would be as follows. It would read this way: "There shall be a department of treasury headed by the state treasurer who shall be responsible for the custody, investment and disbursement of the public funds of the state and other funds as provided by law except monies belonging to any state retirement system, fund or system, which shall be handled as provided by law." Now the difference that makes is this. It makes it clear that state retirement system funds are not public funds. That is an important thing we've got to point out. The reason that it's important is this. There are many limitations on the way that public funds can be handled and most of those limitations are excellent. If you take the provision on revenue and taxation in Committee Proposal No. 15, you look on page 7, as an example, you'll find that public funds cannot be used to purchase or subscribe to the capital stock or any other stock of a corporation. Public funds cannot be used in that way. They shouldn't be used in that way. But it may well be that for investment purposes we want state retirement funds to be used in that way. But if we say that state retirement funds are public funds, then they can't be used that way. So the only distinction this amendment makes is, that it makes it clear that state retirement funds are not public funds, they are other funds. So it would say that the state treasurer has charge of public funds and other funds that may be assigned to the state treasurer by law, but those other funds will not include state retirement system funds. That's the purpose of this amendment, and I'd like to urge its adoption.

Questions

Mr. Roemer Delegate Jenkins, if I understand it correctly, all you are doing is insuring constitutionally that retirement funds cannot be considered as public funds. Is that correct?

Mr. Jenkins That's correct.

Mr. Roemer Okay, I support that.

[Amendment adopted: 95-1. Motion to reconsider tabled.]

Mr. Henry If you'll give us your attention just a minute. This is the letter that Mr. Guidry has written so far as his resignation is concerned. It's dated August 10.

Dear Bubba,

Due to the fact that my personal business has recently expanded on an international basis, and due to the fact that my business demands my full-time supervision, it is impossible for me to continue my duties and obligations as a delegate to the Louisiana Constitutional Convention. I do not feel that I can adequately fulfill my business obligations, my obligation to my constituents as an elected Representative of the legislature, and my obligations as a delegate to the constitutional convention at the same time. I deeply regret having to make this request, but respectfully ask that you accept my resignation as a delegate to the Louisiana Constitutional Convention. With warm personal regards, I am very truly yours, Richard Guidry.

Dick, we will reluctantly accept your resignation. Go in peace, and don't start any wars wherever you're going. It's always good to have had you.

Personal Privilege

Mr. Nunez Mr. Chairman, fellow delegates, I rise in support of, not a friend's position, but in opposition to a friend's position. I've had the pleasure of working with Dick Guidry since 1964, when I first came in the legislature. I think it's

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a tragic loss that this convention is going to lose the talents and the abilities of a man like Dick Guidry. I don't know whether Dick's resigning because of the fact of the recent disclosure or the recent article in PAR about his absenteeism or else he just feels like his business does not allow him to continue on in this convention. I think we all can say the same thing about that. It's pretty difficult for us who are making a living and trying to rewrite this document. I don't think any of us envisioned, when we ran or we were appointed, that we would be working the hours and the days that we are working now. I want to say this while I'm on that subject. I think in appointing a man like Dick Guidry I want to congratulate Governor Edwards. He's probably one of the most independent men I've ever had the opportunity to work with. I've seen him be the floor leader for governors and vote against their proposal because he didn't believe in them. I think it's a tragic loss that this convention, even though he wasn't here, and I understand his reasons for not being here as well as any reason that you can have. Dick is a self-made, and I'll use the term millionaire because I've known Dick since '64, and watch him develop a business in a competitive world in the boat and tug business that he is. I know he has just ventured in the overseas aspect of it and I think it's taking some of his time. I think if he had envisioned that he would have to be here for five days a week or four days a week when the legislature passed the act that created this convention that he would not have accepted the appointment. But in lieu of that, and because of it he is here. I want to say something because he has, in his remarks yesterday, said that he would not run back for the legislature or any other office. I think this does happen simply because of the adverse publicity it is a real tragedy. Because I've watched Dick Guidry over the past eight to ten years represent his people in LaFourche Parish. I want to tell you delegates from LaFourche Parish and the people from LaFourche Parish there is no legislator that I know of that has gotten more and done more for his district. I don't want to be specific, but I've worked with him on such things as the Lafitte-Larose road which is about a fifty million dollar venture that's going to put a four lane highway straight across the marsh. This just did not happen. It happened because a man like Dick Guidry was behind it. If you look at the progressive legislation that was passed over the past eight years, I'll guarantee that Dick Guidry's name was on a lot of it. He's fiercely independent, he's a dedicated individual and I would certainly request, Mr. Chairman, and I hope that the governor and you do not accept his resignation. If you look at the number of votes that were cast in the first month, and if you look at some of the amendments that were called for record votes and they got beat by a hundred to one or some of them better than that. I don't think that that's a gauge of what Mr. Guidry should not have been voting on or what he should have been voting on and either of you who had records that were similar. I think he had put his request in for extended leave for business reasons. For business reasons beyond his control that have developed before he became a delegate. I think if we allow if we allow some delegates and as people who run for public offices, such organizations to dictate to the public the kind of pamphlet that was put out on these delegates, I think we're making a mistake. I'm sure they would like to appoint everyone they think that would vote the way they want to vote. I know you know, and I've seen Dick Guidry cast votes in the convention, and I know they can't control him and nobody can. What are we going to do? I don't believe there's many people here that do not have a business or is not a professional man that can allow his business to run down like we have to in this convention. I don't think it's that critical that we have 132 delegates voting on every issue, and I mean on every issue because the 61 issues they choose, some of them were about as superfluous to the outcome of this convention as you can get. There can be a lot more said about Dick Guidry and about

what he's contributed to this state and about his abilities but I think they all speak for themselves. I think you who know Dick, I wish you would join with me in requesting him not to resign and to stay in public office because he is the type of man that this state and this country need to keep the type of people in public office that he is. I would request you, Dick, as a friend and as a fellow delegate and as a fellow legislator not to resign from this convention. Please stay in public office. We need people like you with your fierce independence and your integrity and your business background. I urge you very sincerely not to consider your position and to stay in this convention. You can contribute a lot, just like you have contributed a lot to your constituents in the legislature, and you have in your public life. Certainly I don't want to take up any more of your time and I appreciate the opportunity to come before you. Thank you very much.

Personal Privilege

Mr. Landrum Mr. Chairman, I agree very much with Mr. Nunez, and I would like to say that if this gentleman is resigning because of that statement from PAR, then I would request PAR to don't send me any more material. Thank you.

Personal Privilege

Mr. Munson Mr. Chairman and fellow delegates, I don't really know of one thing that I could add to what Senator Nunez has said about our mutual friend Dick Guidry. I would just like to...I'm here simply because I want to go on record as concurring with everything that Sammy Nunez said about Representative Guidry. I've worked with Dick also in the legislature for quite a number of years. What Senator Nunez says is true about his integrity, his ability. I know that he and I together have worked together to pass many pieces of legislation that we thought was good legislation. We've also worked together to defeat legislation that we thought was not in the best interest of the state. I, like Reverend Landrum and Sam Nunez would like to ask Dick to reconsider if he has anything to do with the statement, the pamphlet put out by Public Affairs Research Council. I know, personally, that his business interests and interests at home have absolutely kept him from attending as many meetings of this convention as I know he would have liked to. I don't want us to lose a good delegate. Therefore I would like to add my words, Dick, and my request that you reconsider and not resign from this body if there is any way that you see that you can give the time to it that I know that you would like to give. Thank you.

Personal Privilege

Mr. Segura Mr. Chairman, fellow delegates, I rise to speak about the injustice that was done by the PAR report because I was impressed when I came here, and I've been impressed all along about how conscientious the delegates of this constitutional convention are. I don't know of one delegate that isn't trying to do a good job. Every delegate does his best, and I think he can do to serve his constituency best, the way he feels he can do it best. Whether it be sitting at your desk and voting on every issue or whether it's sitting in the drafting room drafting up an amendment or whether it's working on the outside and trying to prepare for this or studying what's in the present constitution and preparing for this constitution. I'm an architect and an engineer. I can take figures and I can give you any kind of percentage you want, if I can start where I want, stop where I want and consider what I want. That's exactly what PAR has done. I think if the PAR report, and I know that it's inaccurate because they impressed on the public that many of us at the constitutional convention did not care, and wasn't doing a good job. I know that if it's that inaccurate in this situation, I have my doubts about anything else they say. For example, everybody knows our treat-

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sure, "Monday" Lowe. No one has worked any harder than "Monday" Lowe in this constitution. His voting record in the percentages is one of the worst, along with mine and some others. That's what I'm trying to say. They've impressed on the people one thing. They've taken a little bit of the facts and twisted it around to mean something else. Coming to Dick Guidry. I've known Mr. Guidry for many years. I've seen him operate in the legislature. I've seen what he can do. He is one of the most effective legislators I have known. I too, would like to join with Mr. Munson and Delegate Nunez in asking Mr. Guidry to reconsider because I feel he has left his mark in this convention already. We need guidance of people with his experience. I'd like to ask you delegates to not accept his resignation and ask him to reconsider.

Personal Privilege

Mr. Chehardy Mr. Chairman, ladies and gentlemen of the convention, I believe we are witnessing something deadly serious and many of us are treating it very lightly, perhaps because the shoe is not squeezing the particular foot of everyone at this time, or your foot at this time. Now, here is what transparently plays with the truth. As Mr. Segura pointed out, it's not difficult when you take figures to distort them, particularly when you know that the big city press such as the Times-Picayune, now you have the morning Picayune available to you now, and you know that I stood up here yesterday and pointed out that I was absent one time in July, one time this month, twice I appeared last month and had to go home ill. Now I don't say the reporters didn't send that back home to the Picayune, but when it hit the "Ivory Towers" at the Picayune, the only thing the Picayune told the public is that Chehardy said PAR and Steimel, a self-serving interest group, they didn't say that part of it, should leave the state. That's all they said. They said the only thing reported. Now that isn't a distortion of what took place, then I don't know what is a distortion. And that is taking place every day. PAR can say what it wants and know with security, that its friends, the papers which it controls or controls it, will absolutely report only what they want reported. Now read your Picayune and see what they reported on what was said. They said to the public that the lies that were told by PAR and the misstatements and the mistruths, and if by any means what they have said would influence a man who has served the state as Richard Guidry in the past to leave our service, then we are the losers. So all I can say is, in closing, I spoke to Mr. Steimel and I brought you back a message from him. And this is what he has to say...can you all see it? Okay, now that's Mr. Steimel.

Personal Privilege

Mr. Reeves I'll make what I have to say very short. As a young delegate and as a native of north Louisiana, I guess it's obvious that I'm coming to defend my friend, Dick Guidry. But I do feel very strongly that we need men like Dick Guidry. I've spoken to Dick since this, since Saturday, in reference to resigning, and hoping that he would not resign. I talked with the governor in reference to not accepting the resignation in case he did resign. I hope that the governor, Hubba and the entire constitutional convention will not accept Dick's resignation. I think we all, as young politicians and older politicians and just politicians in general, and if you don't think you are one you're very mistaken, but I think that we all realize that in legislation there is more to politics and more to legislation than just simply a voting record. There is a tremendous amount of behind the scenes work that goes on to formulate legislation, to formulate constitutions. This is what we're doing. We're formulating a constitution for the entire state of Louisiana. For our children and their children's children. I would hope that we do not place Dick Guidry out of this constitutional convention. I hope that he won't

place himself out of the convention for we do need people that are behind the scenes and working for the betterment of the entire state of Louisiana. I think Dick Guidry has not only the people of LaFourche Parish, not only the people of south Louisiana at heart, but also the betterment of the entire state including the great crevices of north Louisiana at heart at the same time. I feel very very strongly that we should continue to support Mr. Guidry for the simple reason that this man has sacrificed already more than we could ever... than many of us could ever sacrifice. For he is a businessman. He's spending many thousands of dollars just wasting sitting here right now for the simple reason that when he is not in his business he's losing money. I feel that we should support him, and I do. I want to publically stand that I appreciate what Dick Guidry has done and any way in the future that I can help him or help the members of this convention to realize what Dick Guidry has meant to this convention and meant to me, as a young delegate, I'd like to say that now.

Personal Privilege

Mr. Chetelain Mr. Chairman and fellow delegates, what I'm about to say has not anything to do with the resignation of Delegate Guidry. I too will miss him. I think he's been a fine Representative and I think he is a very big man, a big man in business, a big legislator, a man who is capable of making his own judgments. I think in view of the story he's told us and the story that he's made public throughout this state is a sign of a big man. But why I stand before you today, my fellow delegates, is to speak up for a great organization, Public Affairs Research, who has done a great deal for this state. You can look back and make your own opinions on the good that CABL and PAR have done for this state. A little incident came out on publishing a few statistics that might not be to your liking. It shouldn't change your opinion about the directions of the state of Louisiana. We're here to write a constitution and if we are so small that we're going to let a little incident like this change our direction and cause a lot of personalities, I think that we are less than Mr. Guidry is. I think that we delegates ought to look at this thing straight in the face and make judgments based on what is right and not what is a little triviality that's come before us. I would suggest that we go on about our business, and let's act like grown people, like Mr. Guidry is. Thank you.

Personal Privilege

Mr. Guidry Mr. Chairman, fellow delegates, when I came to the convention last week, by the way Sam Nunez and Mr. Reeves and all you gentlemen that came, it's real nice to hear your eulogy while you're still living. Personally, when I accepted the appointment I thought that the legislative intent, that it was the legislative intent, that specialists in expertise committees and subcommittees were going to do most of the committee work and what have you. Then the convention and the delegates were going to meet for the final approval and the final drafting of the amendments to be presented to the general public for their approval or disapproval. Had I known at the time that the convention, that the delegates would have chosen to go this route and make a twelve month job, I certainly would not have accepted the appointment. Therefore, I don't apologize for accepting the appointment because of the unknown. At that time I did not know that this was going to happen. For those of you who know me best, if you think that for one minute that PAR is making up my decision, well you're wrong. I read PAR's reports. Some I agree, some I disagree, some is correct, some is hogwash. I take it with a grain of salt if it's hogwash and I use their facts and figures and statistics when I check them out and I agree that they are correct. I've used them at times and I think they do present a valuable service to the state. I do think they

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have been unfair with many of you delegates that are here. I can cite several of them. "Monday" Lowe, for one, and several others that they have been very unfair with. I think Stielmel has a habit of rubbing people the wrong way. It's not his fault, it's his personality. Forgive the man. Forgive the man because he does make irresponsible statements as often as I make statements that many people consider irresponsible. But when I say PAR can go to [...] gentlemen, I mean it, every word of it. I think Stielmel had a habit of resigning because of PAR. Last week when I came to the convention, I had a letter in my pocket to give to Governor Edwards and to Chairman Bubba Henry. I did not give it to Bubba Henry at the time because the governor was out of town and I did not think it was fair for him to pick up a newspaper and read where one of his appointees had resigned without first consulting with the governor. This past Tuesday I discussed this with the governor and I told him of my intentions of resigning. My decision was made before the PAR report came out and the real, true reasons are in the letter which Bubba Henry now has in his possession. For the record, for Mr. Steinel or PAR or whoever compiles the records before they come out with their pamphlets and their issues, I would like for them to check with David Poynter and see the corrected Journal and see where I did write, before leaving for Spain, where I did have an official leave of absence, an indefinite leave of absence, according to the rules where the Chairman has the option to either grant or not grant. Mr. Henry did grant me the leave of absence. So in that aspect, PAR was wrong in their [...] they did not say that I had a legal leave of absence. As far as I'm concerned PAR is definitely not the reason for my resignation. My business needs, my personal needs, my family needs, - I've spent something like twenty-one days at home since last December. I'm being unfair to my family. I'm definitely being unfair to my business. I'm being unfair to my customers that I do business with and I know of at least four to five trips that I have to make to Europe before, between now and December. It certainly would not be fair to the governor, to the delegates and to the people of the State of Louisiana for me to stay here as a delegate and not be present on important issues and important votes. As far as not showing up for the committee meetings, I have more went to Europe, I don't apologize for this. I made my statement very clear, I think, yesterday when I said that for twenty some-odd years in and out of the legislature I have heard all, or most all of the arguments that have been brought forth. I think it was quite an education for some of you new delegates that were elected. It was good for you that the delegation took upon itself to write from the beginning. It gave you more insight as to why things had been done for the past many generations in this state. Why the constitution had such articles which you thought might have been ridiculous at the time that they were written. And you know the reasons why things were done, I think you were enlightened a lot. Well I've been putting up with a lot of this garbage for some twenty some-odd years and I don't feel that I could have contributed that much attending the committee meetings and hearing testimony because I have sat as a chairman of a committee for most of the time that I've been in the legislature. I have listened to most of the arguments in any field that you can possibly think of that pertain to the state of Louisiana. Education, welfare, highways, wildlife and fisheries, the timber industry, you name it and I've heard it. I've sat through committee after committee after committee. Alimony problems, divorce problems, you name it and I feel that I did not, I could not contribute that much at the time because I feel that I had been through all of this and I'm ready for the final actina, because I know that you were going to tear up an article by article, item by item, as we have been doing ever since I first made my first meeting last Wednesday. The short six days that I've been here I'm familiar with what's been going on through past history through the time I've been in the legisla-

ture. So I am reluctantly leaving, but however I have to leave in all good conscience. I have to leave because I cannot do justice to you delegates and I cannot do justice to the people of the state of Louisiana and I cannot do justice to the state that's been instilled in me by Governor Edwin Edwards. I do not want to embarrass any members of this delegation or the governor or the people of the state of Louisiana by my staying on with an empty chair sitting there while I'm traveling around the world taking care of my business. I don't think it's fair to the people and for that reason I hope that Speaker Henry and the delegation do accept my resignation as I am sure that I am going to convince Governor Edwards at 12 o'clock when I meet with him. I'm sure that he will accept my resignation as well. I want to thank you very much for the friendship that's been offered me since I have met you gentlemen the first few weeks of January and since I've been back last Wednesday. I do regret not being here to spend more time with you delegates. Thank you very much for putting up with my absenteeism. Thank you very much.

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Flory], on page 7, line 18, in floor amendment No. 1 proposed by Delegate Rayburn and adopted by the convention on August 9th, at the end of the amendment, delete the period and insert in lieu thereof the following: "and except the employment security administration fund".

Explanation

Mr. Flory Mr. Chairman and delegates, what this does is takes away from the authority of the treasurer the investment and disbursement of those funds deposited in the employment security administration fund. That is the fund that I referred to earlier and let me just make one point clear. At the present time that fund is hovering at the trigger level built into the law and if those funds go below that trigger level every employer's contribution rate in this state will go automatically to 2.7% of their taxable payroll which means in effect that you would be collecting about, somewhere in the neighborhood above fifty million dollars a year in addition to what they're now collecting, which would go into this fund and I don't think that's the purpose of the committee's proposal. I will be happy to yield to any questions, Mr. Chairman.

Questions

Mr. Weiss Delegate Flory, why do you single out one particular fund such as the employment security administration, when there are funds like the old age survivors, the widow and widowers, the aid to dependent children, the aid to the elderly, aid to the blind, all the other funds that might be singled out?

Mr. Flory All those come out of the general funds now appropriated by the legislature. These funds are not appropriated by the legislature they are paid by the employers to the federal government which in turn returns it to the state and technically under the law are classified as state funds at that point. However, they are thereafter subject to federal regulations under the Wagner-Peysor passed in 1935.

Mr. Weiss The aid to the elderly comes from federal sources in great percentage and great part, doesn't it?

Mr. Flory But it comes to the state and is deposited in the general fund is my understanding, and appropriated by the legislature.

Mr. Weiss I don't think so.

Mr. Dennyery Mr. Flory, the employment security administration fund presently is a statutory fund?

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Mr. Flory A statutory fund by title under requirement of federal law.

Mr. Denney Suppose your federal law changes the name of that fund sometime in the future. What happens?

Mr. Flory Of course, I can't answer for what the Federal government might do, Mr. Denney. The only thing I can do at this point and time is to label the fund as it is by statute.

Mr. Denney Would you agree though, that if the name were changed then the purpose of your amendment would go down the drain?

Mr. Flory No sir, I do not because I think that any court would hold that a successor fund would still be covered by this.

Mr. Denney Thank you.

Mr. Roemer Delegate Flory, I'm in the usual position of really not understanding exactly what you're doing and why you have to do it this way. Could you enlighten me and other delegates who might be like me and don't understand what the employment security administration fund is, who funds it, is it really state funds at all?

Mr. Flory Let me try to briefly explain it to you. In 1935 the federal congress passed the Wagner-Peyser act which created the system of unemployment compensation throughout the country. The states then were required to pass legislation enacting state regulations in compliance with certain standards. The monies that are collected are paid, used to the employees and employers made a joint contribution, the legislature changed that. The employers now make the total contribution based upon the experience they have in their particular employment, their contribution rate is based upon an experience rating. However, there is a second provision of the law that says that if a fund falls below a hundred twelve million dollars, every employers contribution rate regardless of what it is at that time will automatically go to 2.7% of the taxable payroll and that is the first forty-two hundred dollars of each employees earnings per year. That money is paid along with three-tenths of one percent to the federal government for the administration of the funds. The total contribution collected then is returned to the state employment security administration fund for the administration of the agency which is technically a state agency, all of the funds which are paid by employers for that specific purpose of administration and the payment of unemployment benefits which are thereby set by the legislature.

Mr. Roemer I see. I just don't have the impression that this can be construed as state funds and that's my problem with the amendment.

Mr. Flory Well, I can only tell you, Mr. Roemer, that when the cash flow management bill was passed by the legislature they set up a three member commission or board composed of the legislative auditor, the state treasurer, and the commissioner of administration who would have the power to exempt from the cash flow management these types of funds. They were convinced by the federal regulations, by the federal government, that to put these funds into the general treasury would take Louisiana out of compliance with the federal law which would then let the feds come in and take over the entire program.

Mr. Roemer Well, I have one final question, Mr. Chairman and that is Delegate Flory, I know we all haven't had a chance to read the proposals from all

the committees, but the Revenue, Finance and Taxation Committee does have a section which would give the legislature the power to pass those laws to make administration of any agency or fund in accordance with federal regulation. This seems clearly federally regulated.

Mr. Flory Mr. Roemer, I've checked the language in that proposal, at your request, I'm convinced that that does not take care of this situation because it is not on a matching grant basis and is not as a federal program. I again stress to you that technically, under Louisiana law these are state funds. However, they are at no time expended or appropriated by the legislature in any way, shape, form or fashion.

Mr. Abraham Gordon, you made the statement a while ago that all these funds are paid to a federal government and I think you... I don't think you meant to say that because the funds are paid directly to the state, to the employment security office to the state. There also are some funds that are paid to the federal government but these...

Mr. Flory The three-tenths goes to the federal government and for administration of the agency and the other is paid directly to the state under the federal regulation.

Mr. Shannon Mr. Flory, at the present time aren't all employers paying the maximum 2.7 now?

Mr. Flory No, sir. There are many... I can't remember what the minimum is at the moment, but I believe it's at .9 percent, nine-tenths of one percent. So if you take an employer in this state with ten thousand employees who's enjoying the minimum rate of nine-tenths of one percent and jump him automatically to 2.7 you're talking about a real increase in contribution rates.

Mr. Lennox Mr. Flory, is it the intent of your amendment that all earnings from the employment security administration fund be credited to that fund and rather than the general fund of the State of Louisiana?

Mr. Flory Yes, indeed.

Mr. Lennox I support your amendment.

Further Discussion

Mr. Gravel Mr. Chairman and ladies and gentlemen of the convention, I oppose the amendment of Mr. Flory and wish to point out that I think we are getting ready to make a very, very serious mistake in the handling of this all important section of the proposed article that we may have great difficulty correcting. Whether this is exactly right or not I don't know but the staff tells me that the way the article now reads with the Rayburn amendment and the Jenkins amendment is as follows. Now please listen to me very carefully. "There shall be a department of the treasury headed by the state treasurer who shall be responsible for the custody, investment and disbursement of the public funds of the state and other funds, as provided by law, except monies belonging to any state retirement fund or system which shall be handled as provided by law." I think it is going to be very difficult for anybody to state exactly what that means. As I see it, analyzing it rather quickly, we have said that there shall be a state treasurer who shall be responsible for the disbursement and handling of public funds of the state and other funds. This has got to be clarified before we can adopt this section. Now beyond that in addressing myself particularly to the amend-

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ment, it is bad constitutional draftsmanship to put into a constitution such a statutory concept as a fund known as the employment security administration fund, not otherwise defined nor certainly otherwise provided for in the constitution. This would permit the legislature to completely delete this provision from the constitution simply by changing the name of the fund. Now let's don't be hasty. We've got a problem here that we've got to solve. The chairman is not going to like it. Nobody is going to like it but we had better have enough time to reanalyze this section before we act finally on it and to come up with some clear statement of the intent of this convention. I now oppose the proposed amendment and frankly feel that we should not adopt the section until there is clarification of the consequences of the Rayburn and the Jenkins amendments. Thank you, Mr. Chairman.

Vice Chairman Casey in the Chair

[Record vote ordered. Previous Question ordered.]

Recess

Chairman Henry in the Chair

[Quorum Call: 92 delegates present and a quorum. Amendment withdrawn.]

Amendments

Mr. Poynter Amendment No. 1 [by Mr. Rayburn, et al.], delete Floor Amendment No. 1 proposed by Mr. Jenkins and adopted by the convention on August 9, delete Floor Amendment No. 1 proposed by Mr. Rayburn which affected page 7, line 18 and adopted by the convention today.

Amendment No. 2, on page 7, at the end of line 18, change the period to a comma and insert the following: "except as otherwise provided by this constitution."

Explanation

Mr. Rayburn Mr. Chairman and fellow delegates, there seemed to be just before lunch quite a bit of confusion as to the language that we should place in this particular article. Several of us met and agreed that we add these words. Later on we will put in some of the exemptions or spell out some of the things that various members of the convention wanted to spell out. We just add these words "except as otherwise provided by this constitution." Then later on we plan at that time to define what we are talking about. I move the adoption of the amendments.

Questions

Mr. Abraham Mr. Rayburn, I understood the clerk to say that this would delete both of the amendments and you don't want that stipulation in there where you say the legislature reports at least one month in advance? You still want to leave in the language that the legislature shall report at least one month in advance?

Mr. Rayburn Yes, sir. We didn't delete that. That's still in there, Mr. Abraham.

Mr. Abraham Oh, I understood you to say it was taken out.

Mr. O'Neill Senator Rayburn, is this language being put in here right now so that later on when your committee comes in with your report, some of these things will be taken care of there?

Mr. Rayburn That is true, Mr. O'Neill, and we didn't figure that we should put all of the exemptions in here, all that language. Later on we would do it.

Mr. Burns Senator, you all finally decided what I got up there and recommended this morning.

Mr. Rayburn I guess so, Mr. Burns. Somebody gave us the idea. If it was you, thank you very much.

[Record vote ordered. Previous Question ordered. Amendments adopted: 100-0. Motion to reconsider tabled. Previous Question ordered on the Section. Section passed: 101-0. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Gravel, et al.], on page 7, between lines 23 and 24, insert the following: "Section 10. Powers and duties of the superintendent of education
Section 10. There shall be a department of education headed by the superintendent of education. The department shall exercise such functions and the two superintendents shall exercise such powers and perform such duties as may be provided by this constitution or by statute."

Explanation

Mr. Gravel Mr. Chairman, ladies and gentlemen of the convention, all this amendment does is to create in the executive branch of government the department of education and to provide that the head of that department shall be the superintendent of education. As was indicated yesterday by one of the questions put to me while we were talking about the department of justice, the other part of this amendment will permit the education article to treat specifically with respect to the functions of the department and the powers and duties of the superintendent. All this does is to help complete the superstructure of the executive branch.

Questions

Mr. Lanier Mr. Gravel, I am concerned about this language that says that the superintendent shall exercise such powers and perform such duties as may be provided by statute. By this would it be possible for the legislature to assign duties to the superintendent of education that might not necessarily deal with education?

Mr. Gravel Unless there was some specific limiting language, Mr. Lanier, it might be possible for the legislature to do that. It is my understanding however that with respect to the department and the office of superintendent that there will be some delineation in the education article. In fairness to you, I think we have this provision, the same provision with respect to other constitutional offices, and I think it is the kind of language that should be in the constitution. Of course it suggests that we are going to have responsibility in the legislative process. It is possible that the legislature, for example, could make the superintendent of education a member of some board or commission that has no relationship whatsoever to education. I think that power is going to exist in the legislature when we get through with the constitution anyway because, if I understand it correctly, most of us agree that what is not prohibited in the constitution will be permitted.

Mr. Lanier Well, since you have brought up that point, would you agree that under the division of powers as we presently have and as is proposed by the Bill of Rights Committee, dividing the three branches of government, that with reference to the executive provision that the legislature would not have power in the executive provision except as specifically provided therein?

Mr. Gravel I certainly hope that we do have a provision adopted in the bill of rights section that would make the three branches of government mutually exclusive and I think that would take care

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of a substantial number of possibilities.

Mr. Lanier So therefore would it be correct to say that by this language it is not intended that the legislature would have authority to delegate any power other than that which would be inherent or contained in the executive department?

Mr. Gravel That would certainly be my hope, that there would be a specific provision in the new constitution as there is in the present constitution that says there shall be three branches of government and I would hope that we would go a little bit further and say that except as otherwise provided in this constitution, the functions and the responsibilities in those three branches shall be mutually exclusive. I hope that concept is carried into the new constitution.

Mr. Lanier Right, but so that we will have it clear on the face of the record, if such a concept were adopted would it be the intention of your committee and yourself that the legislature would not have authority by this to say delegate powers of the legislative branch or the judicial branch to any of these executive offices where we have provided similar language?

Mr. Gravel Mr. Lanier, that certainly is my intention. I don't know whether that necessarily would be read into it this way. I think we need more than my intention or our belief in order to effectuate what you think should be done. I think we are in full accord as to that, you and I.

Mr. Bollinger Mr. Gravel, would this affect in any way the convention's decision to elect the superintendent or if they changed their decision and decided to appoint the superintendent, would your amendment affect this in any way?

Mr. Gravel As I understand it, the article that we have previously adopted provides for an elected superintendent of education.

Mr. Bollinger That is not my question. My question is, if we change that article to provide for-- in other words keep the superintendent of education in the executive department, however if we would go back and unelect him or appoint him so to speak, would this amendment affect that in any way? If he wasn't elected, but appointed.

Mr. Gravel I don't know if I understand your question. I think that when we consider the education article that it is possible there and perhaps in other places for this convention to undo what it has done, but I don't believe this particular provision as it stands now would have that effect. It will take some other action by this convention to have the consequence that you suggest.

Mr. Bollinger If the convention would change the elected superintendent to an appointed superintendent would we have to also change your amendment? This is my question. Maybe I didn't phrase it right.

Mr. Gravel It depends on whether we provide further with respect to whether we are going to have a department of education headed by the superintendent of education. It depends on what we do.

Mrs. Wisham Mr. Gravel, the title of the section is powers and duties of the superintendent.

Mr. Gravel Mrs. Wisham, I think that needs to be changed. I think we have to recast the title of the section because we are talking about the creation of the department. Right. I think that has to be recast but that is really not part of the constitution. I agree with you. Style and Drafting is going to have to recast the title.

Mrs. Wisham All right. Thank you.

Mr. Triche Mr. Gravel, I notice your amendment says "the department of education shall be headed

by the superintendent of education. Our constitution does not say that today, and I gather from the way the setup is now the department of education is actually headed now by the state board of education and the superintendent is an ex-officio member of the board. Are you consciously making that change with this amendment, and if you are, what is the purpose of it?

Mr. Gravel Frankly, the Committee on the Executive Department made this provision because it was consistent with what had been done with respect to other departments but with the full realization that the Committee on Education may very well change this concept. I think that is an open question, very much like the office of attorney general and the department of justice which are yet to be finally resolved I believe by this convention. This is not an effort on the part of the Executive Committee to lock in any concept here that might be in any conflict with what we may do later on on a particular and special basis with respect to the department or the superintendent.

Mrs. Zervigon Mr. Gravel, the longer you talk the more confused I become. We have already created a superintendent of education in the executive department. Exactly why do we need this section at this point?

Mr. Gravel Actually here we are really creating the department of education as one of the departments in the executive branch of government. That is the primary purpose of this amendment. To create the department itself.

Mrs. Zervigon And what we write in the article on education, if we didn't have this department created at this point, would remove that department from the executive branch of government?

Mr. Gravel If we decide to do that later on it is possible that that can be done, but what we are primarily trying to do here is to create in the executive branch of government a department of education. That is the most substantial governmental function that the state engages in and we wanted to create the department of education in the executive branch.

Mrs. Zervigon And it is your feeling that we must do that at this time in this section of the constitution?

Mr. Gravel Definitely.

Mr. Lanier Mr. Gravel, since we have designated the superintendent of education as an elected constitutional official and if we now create the department of education that he apparently now heads, would this mean that he would be in charge of all of our state universities?

Mr. Gravel Mr. Lanier, it means that he is going to have such powers, duties and functions as are allocated to him by this convention at the time that we consider the article on education. There has been no implementation here at all of this general, broad language. I don't know any other way to say it.

Further Discussion

Mr. Duval Mr. Chairman, fellow delegates that are present, I rise in opposition to this amendment for the following reasons: We necessarily hamstring the Committee on Education by right now saying that the superintendent of education is the head of the department. As you might recall if you have read the various proposals by the Education Department Committee the superintendent of education is relegated to grades one through twelve and they have other various and sundry boards to have auspices over the various other phases of education. We don't know what we are going to end up with but it is very possible that we could end up with a

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situation where the superintendent of education is the head of the department of education which would encompass in my opinion all facets of education and have him be only relegated to grades one through twelve which is a totally untenable situation. It is my opinion that what we should do is to defer this matter until such time as we do write the article on education, and we can determine who the head of the department will be after we see exactly what the structure is. This is a classic case of putting the cart before the horse when you say somebody is the head of a department and you don't even know what he is going to do yet. Maybe he is going to be head of the department, that necessarily relates to the structure of education. I move now, for those reasons, to table this amendment.

[Motion to table the Amendment adopted: 60-46.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Denney]. On page 7, between lines 23 and 24 add the following:

"Section 14. Powers and Duties of the Commissioner of Agriculture.

Section 14. There shall be a department of agriculture headed by the commissioner of agriculture who shall exercise all functions of the state in relation to the promotion, protections and advancement of agriculture, except such research in educational functions expressly allocated by this constitution or by statute to other state agencies. The department shall exercise such functions and the commissioner shall have such other powers and perform such other duties as may be authorized by this constitution or provided by statute."

Explanation

Mr. Denney The purpose of the amendment is to take care of the addition of the commissioner of agriculture as an elected official and to provide in the constitution for a department of agriculture headed by the elected commissioner of agriculture. You will notice the specific exception of research and educational functions expressly allocated by this constitution or by statute to other state agencies. The purpose of that is to assure the continuation of the agricultural research and educational functions carried on by L.S.U. and other universities in the state. The department will have the right, and the commissioner will have the right to perform other duties, powers and functions as are granted to the department or the commissioner in the constitution or as may be subsequently provided by statute. Since we have a Committee on Agriculture presumably that committee will come up with some specific duties and functions which the convention will decide on at a later date. I am very happy to say that the representatives of the farmers in this convention have agreed to this city boy's preparation of this amendment and I ask for its adoption.

Question

Mr. Tate Just wondered why it was numbered Section 14, that was all.

Mr. Denney Well, Judge Tate, we don't know where this section is going to go, it is going to be up to Style and Drafting to decide.

Further Discussion

Mr. Munson Mr. Chairman, and fellow delegates, we had about four or five different amendments presented here a few moments ago when we were discussing them. This is the one we agreed to go on. I see nothing whatsoever wrong with the amendment as far as I am personally concerned I would like to add other language to this amendment. The last sentence in this amendment which says the commissioner shall have such other powers and perform such other duties as may be authorized by this

constitution. Means to me that I, representing agriculture and others here who are interested in agriculture have an opportunity when the Agricultural Committee meets to attempt to add any other language that would be acceptable to the committee and of course present it to this convention. And if we can add other duties, we do have the right to add other duties and functions in that section dealing with agriculture not in the executive department. So since I do have that opportunity I would like to request that today, we go ahead at this time and adopt Mr. Denney's amendment. We support it. Thank you.

Further Discussion

Mr. Triche Mr. Chairman, ladies and gentlemen of the convention, I rise in opposition to the amendment. And I am going to be brief. I personally...and it is my personal view and of course I am sent here to represent the public at large and generally I think I am expected to contribute my feelings and experience in the field. And I generally feel that it would be in error to provide the constitutional office of commissioner of agriculture and to provide for his election. I think it is not a question of checks and balances because there need be no checks and balances in the executive department. Checks and balances ought to be against the legislative and the judicial branch. It is not a question of checks and balances at all but it is a question of division and dissolution of authority and makes for the confusion in the administration of laws. I think Mr. Roemer sounded it the other day when he said, we shoot these ducks one at a time and I guess that is what we are doing. We are tackling these birds one at a time and one at a time this convention puts back into the constitution those elected executive offices that I think we as a whole generally don't want to have as elected offices. And again I think we are going to miss a golden opportunity, an opportunity that comes once every fifty years for us to strengthen the executive department of government in Baton Rouge. And for us to foster efficiency and economy in personnel and in funds and in authority in the operation of state government. And it just makes no real sense in my judgment to have an elected commissioner who is going to promote, protect and advance. And I understand that personalities have gotten into these things and that is unfortunate. Now I voted the other day for an elected commissioner of elections and I truthfully have to stand the indictment, I did so out of respect and affection and admiration for my dear old friend, Douglas Fowler and I shouldn't do that. This constitution is bigger than the persons involved in the election and it is bigger than Dave Pearce and it is bigger than you and I and it is bigger than Douglas Fowler and it is bigger than the personalities involved. There is a principle involved here.

We might as well have an elected if we follow the argument advanced by the proponents who argue for an elected commissioner of agriculture. We might as well then have an elected director of highways. And then we ought to have...to carry to its extreme, to its conclusion we ought to have a director of blacktopped highways and a director of paved highways. And then we ought to have an elected commissioner of welfare. And then we ought to have an elected collector of revenue, and we ought to go on, and on, because elections provide us holy and dedicated and pious people who are going to handle these offices properly. That is not true. What we ought to assure to our people is that the executive officers of the state are elected and they are chosen by election. But these officers that have nothing to do but the administration of laws, they ought to be appointed and they ought to be responsible to the chief executive officer. Now am not in favor of any cabinet form of government because I believe the attorney general of this state ought to be elected. Because he performs certain judicial functions and certain discretionary matters. I believe the secretary of state ought to be elected

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because he has certain duties that are sacred and that ought to be inviolate and ought to be separated from the chief executive. Just to illustrate, he is the chief election officer. And the people ought to elect their chief election officer to assure them that they have a voice in whether or not the election laws are being administered. And we ought to have an elected lieutenant governor and state treasurer but when we get to these offices...

Point of Order

Mr. Munson The gentleman is not addressing his remarks to the amendment at all. He is talking about whether it should be elective or not. This merely pertains to the duties of the office whether he is elective or appointive.

Mr. Henry Your point is well taken but we have allowed a great deal of latitude in the debate on the amendments as well as the section so we will allow him to continue.

Mr. Triche His point is not well taken, Mr. Chairman, but I understand...

Mr. Henry Well, Mr. Triche, as long as I am deciding points of order, I'll make those decisions, proceed.

Further Discussion

Mr. Triche Mr. Munson is for an elected commissioner of agriculture and I am not, and that is the point. And I understand Mr. Munson's attitude and I would expect you to understand mine. And I ask you please ladies and gentlemen, let us not in haste pass up this opportunity to reform the executive branch of government, an opportunity that comes once every fifty years.

Question

Mr. Stovall Mr. Triche, if you feel that we are perpetuating one of our historic mistakes, how do you feel that we as a convention might correct this mistake which has been made?

Mr. Triche Reverend Stovall, I would suggest to you that we reject this amendment and that somehow or another we reject the entire article so that we can go back and rewrite Section 1 and Section 3, or we suspend the rules so that we can go back and rewrite Section 1 and Section 3. But in some fashion and somehow we ought not to perpetuate historical errors.

Further Discussion

Mr. Burson Ladies and gentlemen of the convention, I haven't spoken in two days and I didn't want you to think that I had got lockjaw over there so I thought I would get up and just make a few brief remarks. Mainly, to the effect that we have already made the decision on electing these officers and I don't see where we stayed here until doomsday about that. I personally voted to take everybody out except the custodian of voting machines, not the commissioner of elections. But that was not the majority view and I'm above all for majority rule. I would point out that this section does not deal with whether or not the commissioner is elected, it simply sets up a department of agriculture headed by a commissioner of agriculture. And I don't see how anyone who thinks about it for a minute can deny that agriculture is still and will remain probably for many, many years the number one industry, the number one factor in the economy of the state of Louisiana. And if you don't believe it, have one bad year in any major crop in this state and see the effect that it has on the economy of the state. So I would urge you to support and vote for this amendment. I think it is well drafted, it exempts from the department of agriculture the L.S.U. Extension Service and the other university technical services which have done

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so much for agriculture in this state and it sets up in my view a rational executive department... helps to set up a rational executive department. Thank you.

Further Discussion

Mrs. Zervigon Mr. Chairman, and fellow delegates, I rise in opposition to this amendment. Not because I was opposed to an elected commissioner of agriculture because we have lost that fight I think, and if we are going to reconsider it we should reconsider it in Section 1 and Section 3. I rise in opposition to this amendment because I think it's not needed in the constitution. We have already provided that there will be a commissioner of agriculture, we have already provided that there will be twenty departments. I don't think that the governor will make as the elected commissioner of agriculture responsible for the penal institutions or something like that, he will make him responsible for a department of agriculture. And I just think that it is needless verbiage in the constitution.

[Provisional Questionnaire Amendment adopted: 82-33. Motion to table: 82-33 tabled.]

Amendment

Mr. Poynter Mr. Denney, Gravel and Drien send up the following amendments.

Amendment No. 1. On page 7, between lines 23 and 24, add the following:
"Section 11. Powers and Duties of the Commissioner of Insurance

Section 11. There shall be a department of insurance headed by the commissioner of insurance, who shall administer the insurance code. The department shall exercise such functions and the commissioner shall have such other powers and perform such other duties as may be authorized by this constitution or provided by statute."

Explanation

Mr. Stagg Mr. Chairman, and delegates, you have on your tables and I hope you will refer to them as this debate proceeds a set of amendments entitled "the Denney, Gravel, Brien, Stovall, et al. amendments" that is now going to be explained. You have an amendment offered by Mr. O'Neill and you have an amendment offered by Dr. Asseff and Joe Anzalone.

The provisions of the amendment now under explanation are that there will be a department of insurance headed by the commissioner and he shall administer the insurance code. The legislature under this provision could authorize the insurance commissioner to undertake other duties as provided by statute. The difference between this proposal and the reason why there are three amendments before you instead of just one, is because there is a philosophical dispute going on among those who propose the amendments. The other sets of amendments gives to the insurance commissioner the responsibility for regulatory and other functions. A third one says that he shall administer the rate-making and regulatory functions related to insurance. This is the difference between or among the amendments. One of them permits the insurance commissioner simply to administer the insurance code and that the regulatory and rate-making matters are carried on like they are now by the casualty and surety rating bureau. This convention will have to decide how we shall administer the insurance because the proposers of these amendments have not agreed. Mr. Chairman on behalf of the drawers of this amendment I move its adoption.

Questions

Mr. Lanier Mr. Stagg, as I perceive what we are doing here is that we establish a department for each of these constitutionally elected offices, is that correct?

Mr. Stagg That is what the proposers of these

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amendments says you will be working on all afternoon do propose to do. Yes, sir.

Mr. Lanier Now as I recall an earlier provision that we approved we limited the number of departments to twenty, is that correct?

Mr. Stagg That is correct sir.

Mr. Lanier Now, if we have departments of agriculture, education, insurance, state, justice, elections and treasury that adds up to seven, doesn't it?

Mr. Stagg Yes, sir.

Mr. Lanier And seven from twenty would be thirteen, would that be correct?

Mr. Stagg That is right.

Mr. Lanier Now as I understand your proposal...

Mr. Stagg Your arithmetic is perfect.

Mr. Lanier As I understand your proposal, you have a committee proposal which provides for a schedule provision that requires a mandatory reorganization by the legislature within eighteen months after the adoption of the new constitution, is that correct?

Mr. Stagg You are correct, Mr. Lanier, you have been doing your homework.

Mr. Lanier And, is it not a fact that we have some hundred or two hundred agencies that will have to be brought up under all of these different departments?

Mr. Stagg That is correct, we have two hundred and three the last time I counted them, not counting the health and rehabilitation umbrella outfit.

Mr. Lanier Then would that mean that unless these agencies would be brought under these departments of agriculture, education, insurance, state, justice, elections and treasury that the legislature would then only have thirteen departments with which to put these two hundred and some-odd agencies?

Mr. Stagg Mr. Lanier, that is correct but I don't perceive it to be a problem.

Mr. Lanier Well, could the legislature also put some of these agencies under the departments of agriculture, education, insurance, state, justice, elections and treasury by using the clause that we have been tacking onto everyone of these provisions "or provided by statute"?

Mr. Stagg Yes, sir, that is entirely correct.

Mr. Lanier So therefore, conceivably under the department of insurance we could have things dealing with the licensing of beauty parlor people?

Mr. Stagg If the legislature made such a decision that could happen. I doubt however that they would take such an action on reorganization of state government.

Mr. Lanier Well, do you feel in your judgment that we should establish these departments now and thus limit the types of the departments that the legislature will be able to deal with when they do the mandatory reorganization as required by the Committee Proposal No. 19?

Mr. Stagg Mr. Lanier, let's make sure you and I understand each other. I propose and my committee proposed to this convention that there be only three department heads, treasury, attorney general and secretary of state. It is this convention which has added these other departments. Now, that gave us seventeen departments within which to

work... or as the original committee proposal came to this floor. This Action by the convention... the action of this convention has removed from the possible range of executive reorganization four additional areas of responsibility so instead of having seventeen departments freely to work with the legislature will now have thirteen. It is unquestionable in my mind that the legislature of Louisiana. There is no doubt that they could reorganize the state government... the other functions of the state government into no more than those thirteen. I doubt they will need the thirteen. So I really don't perceive that this has caused an insoluble problem.

Mr. O'Neill Mr. Stagg, for information on purposes, just so the convention will know. This amendment will allow the insurance rating commission to allow outside... or will allow it to exist outside the realm of the commissioner of insurance's office, right?

Mr. Stagg Exactly as it is now.

Mr. O'Neill Right.

Mr. Stagg The amendment that is before the floor Gary, doesn't change anything that we are undergoing in the insurance regulatory field in this state at this time. However, the further amendments which will come up after this amendment make a considerable change in that. And that is what the convention will have to address itself to.

Mr. Jenkins Along these same lines, Mr. Stagg, if we wanted to put all of the insurance regulatory functions under the department of insurance, this would not be the amendment to approve, would it?

Mr. Stagg If this amendment was approved and there became an insurance commissioner heading that department, it would be the prerogative of the legislature in reorganizing state government to put other insurance regulatory matters in this department. Yes, they could.

Mr. Jenkins But they would not be required to, is that correct?

Mr. Stagg No, sir, they would not be required to. There may be a department of regulatory affairs, Woody, that the legislature could put a lot of regulatory agencies under in the same umbrella fashion as they have done health and rehabilitation.

Mr. Anzalone Mr. Stagg, is it not true that what this amendment does is to create a constitutional office with only statutory authority?

Mr. Stagg Mr. Anzalone, it creates a constitutional office charging one man with administering the insurance code and it sets up a department of insurance. It does those three things.

Mr. Anzalone Mr. Stagg, is the insurance code a matter of constitutional or statutory law?

Mr. Stagg It is statutory law in two volumes of the West set and this provision states who shall administer it.

Mr. Anzalone If the insurance code were changed around at the will of the legislature, conceivably you could have a constitutional officer stripped of his powers and duties by the legislature.

Mr. Stagg That is what I tried to tell you when you proposed this office.

Mr. Anzalone Mr. Stagg, why did you not propose this same type of situation with the previous five that the committee was so desirous of having?

Mr. Stagg Well, the committee's recommendation on secretary of state, on the treasurer and on the attorney general came to this convention floor with a full set of powers and duties spelled out and

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now the convention has played hob with that beautiful setup and we are now trying...you know that biblical statement Joe, as ye sow, so shall ye reap...we are now reaping.

Mr. Anzalone We are going to try to reap something out of this...

Mr. Stagg You can tell it anyway you want to.

Mr. Anzalone Well, Mr. Stagg, since we do have these constitutionally authorized elected officials, wouldn't you agree that they should all be given some type of constitutional sanction?

Mr. Stagg Mr. Anzalone, I think that argument will do well when your amendment is before the floor because yours gives him something to do.

Mr. Anzalone Thank you, sir.
Do you agree that yours doesn't then?

Mr. Stagg Mine does just what it says, Joe, I didn't write it, I'm merely presenting it.

Mr. Champagne I have just one question, you may or may not be able to answer it. It worries me that apparently for seven times we will repeat "and perform such other duties as may be authorized by this constitution or provided by statute". Do you think as this is possibly something Style and Drafting may take care of? It worries me, we're talking about a short constitution and then seven times we repeat three lines.

Mr. Stagg Mr. Champagne, it is a very good question. It would seem to me that if this identical language is attached to the statewide elected officers in each instance when they are listed in the constitution. It well might be that the Style and Drafting Committee could take that language and in a following section after they have set up the statewide offices, say something to the effect that the statewide elected officials shall perform such other duties as authorized and put it all in one little grab bag and cut down on the excessive verbiage. This is something I think Style and Drafting might very well do.

Mr. Casey Mr. Stagg, is it not correct that in today's constitution the only constitutional reference to a commissioner of insurance is that his office is established as commissioner of insurance and that he is elected for four years and that the specification or any reference to duties and functions as established by statute and is in no way referred to in the constitution, is that not correct?

Mr. Stagg That is correct Mr. Casey. All of the duties of the insurance commissioner when we now have in this state, as a statewide elected officer is set out in I think Title 22. Or whatever the title of the Insurance Code is in the Revised Statutes.

Mr. Casey Then would it not be sufficient if in addition to establishing the position of commissioner of insurance that you wish to establish the department of insurance as headed by the commissioner of insurance that that is really all we need say, is the first two lines of this particular...

Mr. Stagg If those five words that follow it offend you, then I would recommend that you amend them out. The committee which proposed this amendment to the convention thought it was well to say something that he would have to do in the constitution. We knew full well that the legislature could take away the Insurance Code or do something else that would mean...that would put his job right back like it is now. But our job as a committee was to come back to the convention and attempt to put in some logical order the new statewide elected officers that the convention decided that it wanted. We did it on short notice and I am not again saying that you could not better prepare it. But if you can during the time we have left, if you would

prepare an amendment I would like to have a look at it too.

Mr. Casey I don't know the answer to this question, and I ask that in all seriousness is the insurance commissioner the one today who administers and this is the wording here, "administers the Insurance Code"?

Mr. Stagg Except that part of the Insurance Code which refers to the Casualty and Surety Board. The rating board, he does not administer those boards, he serves ex officio.

Mr. Casey And is it clear that the insurance rating board is not part of the Insurance Code, or could it be considered part of the Insurance Code?

Mr. Stagg I expect you will find it in the Insurance Code.

Further Discussion

Mr. LeBreton Mr. Chairman, fellow delegates, I rise to support these amendments. I think the amendment is good. The reason I think the amendment is good, it does pretty much what your present law does today. In 1954 or '56, in the wisdom of the legislature and the people, we made the insurance commissioner an elected position. We are one of sixteen states that elect our commissioner. The other thirty-four states regulate insurance in a different method. Now we've had...our Insurance Code is considered in the industry as one of the best codes in the United States and frequently Louisiana is cited for its code. The rating commission has also been with us long before the insurance commissioner was a constitutional office. In the past, insurance was regulated through the secretary of state's office, but we had an outside rating commission then. We have made the insurance commissioner a constitutional office. This body of delegates has seen fit to continue that basis. We voted last week to make it constitutional to elect our secretary of insurance and hopefully we'll still have the rating commission outside of the insurance commission. This has been a practice that this state has always had. It's never had any other method, that I know of, and I've been in the insurance business over thirty years. It's considered a very good and a well-balanced situation to have the rating commission, in which the insurance commissioner is one member of and has one vote of. Recently, the legislature did change the method of electing the different committees, casualty, fire, inland marine, because the insurance industry has changed. In the "olden" days, you bought a casualty policy, you bought a fire policy, you bought a marine policy, you buy only one policy and all the coverages are in one policy. So it was needless to go before three different rating commissions, we put them all together. I think that was a step in the right direction. The legislature saw fit and it was well accepted. As I appreciate this amendment along with what we did last week, would give us pretty much the same law which we've had for years, which makes us have a pretty good balanced insurance commissioner and rating commission. I therefore ask you that we stay with this amendment, stay with what we did last week and continue in the direction that we have, which in my experience and my estimation tell you is a pretty well proven method of handling insurance.

Question

Mr. Lambert Mr. LeBreton, let me ask you this question. Right quick, very briefly, would you explain to me, for example, just exactly why the, real briefly if you can, why the insurance rating commission and the commissioner of insurance can't seem to get along? Real quickly, if you can. What's the conflict? Let me finish my question, if I could. I think the meat of the problem here is that we have a situation where there is a direct conflict between the rating commission and the commissioner of insurance. It's very obvious. I

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recall when Dudley Guglielmo was running last time for reelection. He had an ad on TV "my hands are tied." I personally want to do something to correct this situation, to allow the insurance commissioner or the rating commission to have the authority, one way or the other. Do you disagree with that?

Mr. LeBreton Well you've asked me several questions. I'll try to answer them all. It's my opinion that at the moment there seems to be a personality clash between the rating commission and the commissioner. I've never seen that happen before in the history of this state. The previous commissioner, as far as I know, and the rating commission got along as you would expect them to. Prior to that, the previous insurance commissioner and the rating commission got along. At the moment, there seems to be a personality clash. I can personally tell you from my experience I see no other reason other than personality, because it's always worked in the past. I can give you thirty years of experience and you can go back fifty-two years. I can't vouch for the first twenty years, but I can vouch for the last thirty.

Further Discussion

Mr. Juneau Mr. Chairman and fellow delegates, Mr. LeBreton correctly stated the problem. If you vote for this amendment, you like it like it is. That's exactly what it does. I submit to you the situation which we now have in the state of Louisiana is bad. We're going to elect a statewide commissioner of insurance and we're going to have a regulatory body who controls the most important function of the commissioner of insurance's office. If you don't correct this problem right now, you're going to have... I say it's not a conflict of personality so much, that may be true to a large extent, but it is certainly a conflict of functions. I think that that's a ridiculous situation to have. I think that the people want to elect an individual responsible for insurance and if he doesn't do the job, vote him out every four years because what occurs today is, he runs for office, the insurance rates are not changed, the situation, the climate insurance rate wise is not conducive to public demand. What happens, the insurance commissioner says it's not me, it's the rating commission. The rating commission says we! I can't get along with the insurance commissioner. I would, and I think the people of this state would like to look to one individual and if he doesn't perform the job, let's throw him out. I submit to you that I'm not content to rely on what the past was. I think we have an opportunity to correct that problem in this convention. I strenuously urge that you defeat this amendment.

Question

Mr. DeBlieux Mr. Juneau, if this amendment is adopted, do you have any possible way that we can legislatively correct the situation as it exists now?

Mr. Juneau I think you could conceivably correct the problem, but the likelihood is not that great. I don't think it's a matter necessarily to be left to the legislature. I think if deemed in the wisdom of this convention that we want an elected statewide commissioner of insurance, I think it's incumbent upon us to put those functions in his office.

Further Discussion

Mr. Duval I rise in support of the amendment for the following reasons. It takes a great deal of study in order to determine exactly what the rating commission does, how the situation has worked in the past, what effect this will have upon insurance rates and I don't think any of us are familiar enough with the situation right now to specifically take the powers away from the rating commission. The way the article is presently drafted, the amendment is presently drafted, the legislature, at any

time, can abolish the rating commission and vest these powers in the commissioner of insurance. I think that the legislature would have the time and the facilities to study this problem to determine what is best for the people of Louisiana. I think right now, if we do it without proper study, without getting all the facts and the statistics we're making a grave mistake in acting hastily and that we should never do anything without really getting the facts, and we don't have the facts on this. There was no testimony, really, before the Executive Department Committee and I think the amendment as it presently stands allows the legislature to abolish the rating commission and put this rate-making power in the commissioner of insurance. But let them study it, and they, as the people's representatives, after due deliberation, can make a good, intelligent decision.

Questions

Mr. O'Neill Mr. Duval, why does Mr. Staggs say that my amendment and his amendment are diametrically opposed then, if under his amendment they can do all of this? Under the committee amendment?

Mr. Duval I don't know why anybody says what they do, and would never speak for anyone else. In my own opinion, yours specifically gives the insurance commissioner the rate-making function; Mr. Staggs leaves it up to the legislature.

Mr. Chatelain Would you tell me, sir, that... don't you think that we delegates got a mandate from our constituents that they wanted an elected commissioner of insurance? Would you say that, sir?

Mr. Duval No.

Mr. Chatelain All right. It seems to me that the people, in the last gubernatorial election or the last election for state officers, went overwhelming for a house mover because they wanted someone that had a voice in insurance. Would you say that, sir?

Mr. Duval No.

Further Discussion

Mr. Casey Mr. Chairman and delegates, I've tried to be as quiet as possible ever since we left the Legislative Article, but I think it's important to properly handle an office such as the insurance commissioner. Now I feel quite firmly, I feel very strongly that the insurance commissioner doesn't any more belong in the constitution than "Mother Hubbard's Cupboard." For that's neither here nor there, I guess right now, because we've probably lost that battle permanently. I think we are having a tendency to do too much legislating, which is not our function, and not enough constitution, which is our function. Today's constitution merely says that we're going to have an insurance commissioner and that his term of office is four years. That's all it does. Now, if the Committee on the Executive Department wishes to add the fact that there shall be a department of insurance headed by the commissioner of insurance, I think it could be done more properly. If we eliminate some of the wording of this particular amendment and other amendments which are presently on your desk, I would submit to you that if this has to be done, let's just do it very briefly and concisely and say that there can be a department of insurance headed by the commissioner of insurance. The functions will be established by the constitution or by statute. I have requested preparation of such an amendment. Frankly, I hate to submit such an amendment because I disagree with the idea entirely. But if we're going to do it, let's do it as simply and as properly as possible and not add, as far as I'm concerned, any more power to the insurance commissioner, to that position or that department than exists today.

Questions

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Mr. Asseff Mr. Casey, isn't it true that for several offices we have gone into great detail about their duties and responsibilities and suddenly, when we reach offices that some people oppose because they are now elective and not appointive, we want to add ten lines to say nothing?

Mr. Casey That may be absolutely correct, Dr. Asseff. That's true. I urge defeat of the amendment.

Mr. Nunez Representative Casey, wouldn't you say that as far as the public is concerned, the prime function or the only function of the insurance commissioner would be rate-making?

Mr. Casey Well, some of the public hopes that it would be rate-making but that is part of the contest that exists between the commissioner of insurance and the insurance rating commission.

Mr. Abraham Mr. Casey, wouldn't you think that the reason that you have some duties for the original five office which were recommended by the Executive Committee was that they had six months in which to study the duties and things like that and come up with some sound recommendations for it? The reason that you don't have much more is because they had about a half an hour in which to study these things and come up with recommendations.

Mr. Casey Well really, Mr. Abraham...

Mr. Abraham And that this is probably one reason why it's written so briefly?

Mr. Casey Most of their functions are really established by statute anyway and I really think that's adequate if we must have a commissioner of insurance and if we must have a department of insurance headed by the insurance commissioner. Let's just make it as simple as possible and establish his functions by statute. I think that would be completely adequate and that's the way the law is today.

Mr. Stovall Mr. Casey, do you feel that we should not have an elected insurance commissioner?

Mr. Casey My voting record indicates that I absolutely feel that we should not have an elected insurance commissioner, but that's a moot question. That's already been decided by the convention.

Mr. Stovall But you feel that if we do, that his responsibility should not be defined specifically?

Mr. Casey Absolutely, unequivocally no, because today we do have the constitutional office of insurance commissioner and his duties, functions and powers are established by statute.

Mr. Stovall Well if we vote this amendment down, don't you think that possibly Mr. Anzalone's amendment, which details his responsibilities and gives him overall control of the rating commission, might prevail?

Mr. Casey Well, all due respect to Mr. Anzalone, I would feel that his amendments are much worse than this particular amendment that we're talking about. I'm against all of them, personally, but...

Mr. Stovall What's your alternative, Mr. Casey? What's the alternative?

Mr. Casey The alternative is first of all, you don't even need any amendment, to be very honest with you because under the proposal as we have already adopted it you will have an elected insurance commissioner. By the authority given to the governor and to the legislature, a department of insurance can easily be established in the legislative process. However, if you wish to establish the department of insurance in the constitution that is all you need say. Today, the functions of that department and the insurance commissioner are

specifically set forth by statute only and not in the constitution. Part of the problem is what is the interpretation of the words "administer the insurance code." That's part of the conflict that exists today with that office and I don't believe, in all honesty, that this is the proper forum to decide that issue or that conflict. We should leave that to statute and to the legislature.

Mr. Lambert Mr. Casey, I want to address my question to that point, leaving it to the legislature and to the statutes. How many times can you recall since you've been in the legislature has that been attempted, for example to abolish the insurance and rating commission and put all of the authority under the commissioner of insurance?

Mr. Casey I would say a couple of times anyway that legislation has been introduced. I don't recall whether it's one, two, three or four, but I think it's been a couple of times.

Mr. Lambert What was the outcome, as you recall?

Mr. Casey The outcome is that whatever legislation was introduced was not successful and that today we do have the insurance rating commission.

Mr. Lambert And is it not true that in the 1972 regular session this was attempted and it was not successful?

Mr. Casey If you say 1972, I think that's probably correct because it's of very recent vintage I know that that was attempted.

Mr. Lambert In other words, at that particular time an attempt was made to put all of the responsibility under one man or one department and it was not done. Right?

Mr. Casey The legislation was not successful. That's absolutely correct.

Further Discussion

Mr. Alario Mr. Chairman and members of the convention, I never realized the significance of this amendment and just what it did until I heard my good friend from New Orleans, Representative LeBreton, say that we ought to adopt the amendment because the people in this state are well satisfied with the way things are going in insurance. Ask your constituents, ask the people that you represent if they are well satisfied with the high rates of insurance they are having to pay today. Ask them if they're well satisfied. I wonder just who is satisfied. If we're going to elect an insurance commissioner, and this body has decided that that's what we're going to do, let's give him some powers. Let's give him the power to regulate, to see over the rates of the insurance that are so sky-high in this state. I would ask that you would defeat this amendment and seriously look at the amendment that Delegate O'Neill has to offer.

Further Discussion

Mr. Asseff Mr. Chairman, delegates, I oppose the amendment. I am on the Committee on the Executive Department. It is not my fault if we were not given but two hours in which to do this. However, I do not believe that the statements made by the proponents are valid. We have gone into great detail on the responsibilities of the secretary of state and other offices. It seems to me that if we are going to list an office in the constitution as a constitutional office, we should give to that office its duties and responsibilities. If we are going to leave it to the legislature it seems useless, in my opinion, to put it into the constitution. It seems to me this is an effort, if I may say it, on the part of those who favor appointment to leave it to the legislature, which means we are right back where we started. I therefore urge you to defeat the amendment and to support one

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of the amendments which will follow. Thank you.

[Previous question ordered.]

Closing

Mr. Gravel Mr. Chairman, ladies and gentlemen of the convention, actually, this convention has before it a very simple choice to make. This amendment, as proposed by the committee, would provide that the commissioner of insurance shall administer the Insurance Code. The legislature has adopted an Insurance Code--it's two volumes thick. It's necessary, from session to session, for legal determinations to be made. For that reason, the committee thought that there should be flexibility in the office and that the authority with respect to the Insurance Code and the regulation of rates and so forth should rest with the representatives of the people. The choice that you're faced with is this provision or another proposed amendment that will tie into the constitution, irrevocably, in the person of the officer of insurance commissioner, the rate-making and regulatory powers that have to do with insurance. Now let's face it. It's just this simple. If you want to give, constitutionally complete and total authority over insurance rate-making and regulation of insurance rates and practices and procedures to one person, then you should defeat this amendment. If you want to leave that authority substantially in the hands of the legislature working through a statewide elected commissioner, then you should vote for this amendment.

Questions

Mr. O'Neill Mr. Gravel, in my amendment is there anywhere in there that says that it shall give the insurance commissioner rate-making power? I don't believe there is.

Mr. Gravel In my opinion, Mr. O'Neill, there certainly is when you say that he shall be responsible for all regulatory and other functions of the state relating to insurance. That he, individually, shall be responsible for all regulatory and other functions of the state relating to insurance encompasses rate-making and everything else I can conceive of that relates to insurance.

Mr. O'Neill Well Mr. Gravel, had I wanted to do that, I would have said solely responsible. But let me ask you the question in relation to that. I don't think there is a prohibition against the legislature, in my amendment establishing a rate-making commission and having it under the insurance commissioner.

Mr. Gravel I don't think there is any discretion left in the legislature because I believe your provision is a self-executing provision which would vest in the office of insurance commissioner all regulatory and other functions of the state relating to insurance. That's exactly the way it reads. That's the way I interpret it.

Mr. Arnett Mr. Gravel, if we adopt this amendment what we will have in effect is a situation we have now. We have an insurance commissioner who is elected statewide with virtually no power whatsoever, and a rating commission with all the power. Is that not what we will have if we accept this amendment?

Mr. Gravel If we adopt this amendment, it will permit the legislature to make the determination as to how all regulatory matters will be handled.

Mr. Asseff Mr. Gravel, have we not, in Section 7, done just exactly that for the secretary of state? So if we've done it for the secretary of state or the other offices, why shouldn't we do the same thing for the commissioner of insurance?

Mr. Gravel I think we have spelled out some specific functions for the secretary of state more so than we do here. No question about that.

That's a vast difference, I think, between the functions that the secretary of state performs, which are in the main official functions for the state, and giving the authority to handle the rate-making power with respect to insurance to one person. I'm not really all that uptight one way or the other. I want to make it clear as to the difference between the proposals that are before the convention so that the convention can make, what I consider to be, a clear choice one way or the other.

Mr. Asseff If we had done the same thing for all the offices, Mr. Gravel, my objection would be less.

[Amendment rejected: 37-79.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. O'Neill]. On page 7, between lines 23 and 24, add the following: "Section 12. Powers and Duties of the Commissioner of Insurance. Section 12. There shall be a department of insurance headed by the commissioner of insurance who shall administer the Insurance Code and shall be responsible for all regulatory and other functions of the state relating to insurance and all of its phases and have such other powers and perform such other duties as may be authorized by this constitution or by statute."

Explanation

Mr. O'Neill Ladies and gentlemen of the convention, I believe the question here is a very simple question, and that is whether you want the rate-making power and the regulation of insurance in a separate, autonomous body or if you favor my amendment, if you want that function under the insurance commissioner which you have voted to make an elected statewide official. Mr. Gravel and I disagree strenuously on whether or not my amendment would make the insurance commissioner solely responsible. I was extremely careful in drafting my amendment and I say to you that had I wanted the insurance commissioner to be responsible for this, in himself, in one person, I would have said that he shall be solely responsible. But I did not say that. I want it left up to the legislature who shall be in charge of regulating insurance and making rates. If they decide to establish a commission and put it under the insurance commissioner, so be it. If they decide that there shall be no rate-making power, so be it. My amendment does not specify that the insurance commissioner shall be responsible for rate-making. I do not believe that we should constitutionalize rate-making. Mr. Anzalone's amendment does this, and he knows my objections. I have a very personal belief that if insurance rates were set in the open and free market by supply and demand that they would be a lot lower. I don't agree with rate-making. But I believe that if there is going to be rate-making, that it should at least be under the insurance commissioner and he should supervise it and be responsible for it. I hope I can answer your questions. As I'll say again, I think the question is very clear. You voted down the last amendment because you don't believe that they should be separate entities. I believe they should be under one department and I think that this amendment is good. I think it accomplishes the purpose and it was drawn specifically to do what I told you it was to do.

Questions

Mr. Derbes Delegate O'Neill, by the way, are you a lawyer?

Mr. O'Neill No, Mr. Derbes, I'm not.

Mr. Derbes Okay. It's your intention, as I understand it, to accord latitude in this proposal for the legislature to further define the fixing of rates. That is to possibly provide that somebody other than the commissioner of insurance should fix insurance rates. Is that your intention?

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Mr. O'Neill If they so choose, Mr. Derbes.

Mr. Derbes It seems to me, Mr. O'Neill, that when you say "shall administer the Insurance Code and shall be responsible for all regulatory and other functions of the state relating to insurance in all of its phases," that you are delegating to the insurance commissioner certain powers which cannot be derogated by the legislature. Don't you agree?

Mr. O'Neill No, Mr. Derbes, I do not.

Mr. Anzalone Mr. O'Neill, you do understand that I have not withdrawn my amendment?

Mr. O'Neill Yes, Mr. Anzalone, I apologize. Dr. Asseff said to take it off and put his on and he was the lead author. I apologize to you.

Mr. Anzalone Mr. O'Neill, you said a few minutes ago that you are still leaving to the legislature the authorization to establish the insurance rating commission.

Mr. O'Neill I believe they can do that under this proposal.

Mr. Anzalone Under your proposal that you would still not vest the rate-making policy decisions within the insurance commissioner.

Mr. O'Neill No, I didn't say that. If they so choose to establish an insurance rating commission, it shall be under the insurance commissioner and he shall be responsible for it.

Mr. Anzalone If legislation stays as it is at the present time, then your amendment would not cure the problem of the insurance rating commission vs. the insurance commissioner at the present time.

Mr. O'Neill I think it would, Mr. Anzalone.

Mr. Anzalone Tell me how, please.

Mr. O'Neill Well, I think I've already explained that.

Vice Chairman Miller in the Chair

Mr. Roy Mr. O'Neill, if you really think that you haven't deprived the legislature of the power to do what you say it can, why don't you add "responsible for administering all regulatory and other matters." Then we would be safe. Don't you believe?

Mr. O'Neill I think we're safe right now, Mr. Roy.

Mr. Lanier Mr. O'Neill, do you understand the word "shall" as being a mandatory word as used in this type of construction?

Mr. O'Neill Yes, Mr. Lanier.

Mr. Lanier And if you say that the "commissioner shall be responsible for all regulatory and other functions of the state relating to insurance in all of its phases," would that mean that he would be responsible for the rate-making of insurance?

Mr. O'Neill Not he himself in his own person as commissioner, Mr. Lanier. I think the term that needs to be cleared up in your mind is what "responsible" means. I don't think, had I wanted it to do what you think it's doing, I would have said "shall be solely responsible."

Mr. Lanier Well, who else would be responsible if "he" shall be responsible?

Mr. O'Neill He shall be responsible for action taken by any legislation, Mr. Lanier.

Mr. Juneau Mr. O'Neill, I think I started off favoring your amendment and I think we're on the

same side but I'm afraid to vote for your amendment. Are you telling me that under your amendment you can have a legislatively created body who would have rate-making authority?

Mr. O'Neill Mr. Juneau, it would be under the insurance commissioner. If they decided to appoint a commission... if the legislature decided to appoint a commission to administer rates, it would be under the sphere of the insurance commissioner.

Mr. Juneau Well my question is could the legislature empower a board pursuant to a legislative act and say "board, you have the function to make rate-making responsibilities and rates." Could they do that?

Mr. O'Neill No, Mr. Juneau, I didn't mean to allude to that either. They can create a commission, I believe, that would be under the insurance commissioner, to do this function.

Further Discussion

Mr. Arnette Ladies and gentlemen of the convention, I rise in opposition to not only this amendment, but to all amendments regarding this section. I think we're on the horns of a dilemma here. I think we've got a very, very big problem. Our problem is this. On the one hand do we want to have a statewide elected official who has absolutely no power whatsoever to do anything that the people think he's elected to do. Like our past insurance commissioner, Mr. Guglielmo, said his hands were tied. He couldn't do anything at all. The rating commission had all the power. Do we want to elect a man statewide that has no power. But on the other hands, we've got the other horn of dilemma which is, do we want to elect a man who is just as powerful or probably more powerful, than the governor? Everyone's worried about the governor's power. Well if you elect a man who has the sole authority to make rates on insurance in this state, you have elected a czar. Every man, woman and child in this state is affected by insurance in some way, shape or form. Probably I'd say ninety percent of the people in this state have insurance policies that they pay the premiums on. If you put all this power in the hands of one man, you have made a very, very, very drastic mistake. I think we need to ponder these two things. I think we need to go back and possibly reconsider to see if we want this man elected statewide, because you've got a big problem. First of all, do you want him to do nothing? Second, do you want him to do everything? If you give him all this rate-making power the first thing you're going to do is not have the people electing somebody, you're going to have the insurance companies of the nation electing this person. You're not going to have "Joe Blow" down the street electing this man, you're going to have I.T.&I. or somebody else from out of state even, electing this man. Money elects public officials.

Questions

Mr. Burns Mr. Arnette, I've heard a lot of discussion and debate about the past conflict between the commissioner and the rating commission. I've always been led to believe that where two or more people or bodies have supervision or authority over the same subject matter that in many, many instances it's a healthy situation for the public because one will more or less watch the actions or activities of the other. What are your views with reference to that?

Mr. Arnette Well Mr. Burns, that's a find idea except that's not what we have, sir. What we have is an insurance rating commission with most of the members appointed by the governor, and one of them elected by the people. I think this is a very, very bad situation. You've got a statewide elected official who has absolutely no power. Now if you want to elect the entire commission, we might want to do that. But I see no reason in having this man

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with absolutely no power or all the power in the world.

Mr. Lanier Mr. Arnette, I believe you were on the committee that studied the executive department. Is that correct?

Mr. Arnette That's true.

Mr. Lanier During the work of your committee, did you have occasion to study the combination of the state insurance commissioner and the insurance rating commissions in other states?

Mr. Arnette Yes, we studied this. Yes.

Mr. Lanier How does this work in other states?

Mr. Arnette Well in almost...well I don't know why I almost said almost all, I'd say the great majority of the states do have a rating commission. They don't have an elected type insurance commissioner. In no other state that I know about was there the situation where you had one person on the commission elected statewide and all the rest of them appointed. So in other words, Louisiana has a very unique situation.

Mr. Lanier What I'm getting to is since the Executive Committee did not establish the position of commissioner of insurance as an elected officer, I'm wondering as to whether or not, in your opinion, you feel that this convention has enough information available to it through other sources to make a rational determination of whether or not these two positions should be merged or not?

Mr. Arnette Well I think you've brought a very valid point up and I'd like to say one thing that this affects all the committee proposals. I've noticed that we went through a legislative proposal, we chopped it to pieces. A lot of the chopping was done by people who were not on the committee who did not study the particular areas and they were the first ones to go against the committee proposal, the people who did not necessarily have enough information to propose certain things they proposed. The same thing is happening here with the Executive Article. There are many things being changed by people who were not on the committee who did not have the benefit of the testimony of the in-state experts, the out-of-state experts, the elected officials themselves...

Further Discussion

Mr. Burson Ladies and gentlemen of the convention, I speak in opposition to this amendment and to the other amendments that are pending. There is nothing that I can find in the present constitution that sets out anything about the duties of an insurance commissioner. The office is named in the constitution and the designation of his duties has been left entirely to the legislature. I submit to you that that's the way we ought to do it here. We all came here, most of us, pledged to shorten the constitution--to take out unnecessary legislative detail. If we go into detail about whether the insurance commissioner should or should not administer the rate-making and regulatory functions related to insurance in all of its phases as the Anzalone amendment would do, in my humble opinion, we are flatly legislating and we are doing something we were not sent here to do. I agree very much with Mr. Casey's remarks on that score. We came in here, most of us also, with the idea of strengthening the legislature. Now I ask you, will we be strengthening the legislature if we take away from the legislature the power which it has unquestionably had, historically, to make the decisions in this very important area of insurance? I submit to you we will not be strengthening the legislature, we will be weakening the legislature.

Mrs. Miller Will you yield to a question from Mr. Roy?

Mr. Burson I would rather finish my remarks first, then answer any questions. We will be creating, in my view, if we set out any detail about the duties of the commissioner of insurance, a czar of insurance who would die in office because the first one to get elected under this scheme would raise more campaign funds overnight, than any elected official in this state. I don't have to explain to you, I don't think, how that would happen. The trouble with government on the executive level in this state has been we've had too many theifdoms that operated semi-autonomously or autonomously from the governor or autonomously from the legislature. I ask you, let's not perpetuate this error. When popular sentiment becomes sufficiently strong to require a change in the insurance rate-making scheme in this state, I feel and am confident that that popular sentiment will be felt through the elected representatives of the people who are elected from single-member districts, the members of the legislature. The final point I would like to make is that there is no area of our law that is subject to more mercurial change, overnight, from year to year, than the subject of insurance. It's necessary for the legislature, at each and every session, to make significant amendments to the Insurance Code to meet changing conditions in this very changing industry. Let's not tie the hands of the legislature by setting out a lot of detail in the constitution. I urge you to vote against all of these amendments and let's leave the definition of the functions of the commissioner of insurance to the legislature.

Questions

Mr. Roy Mr. Burson, don't you agree that there has apparently not been nearly enough expertise developed in these amendments to entrust us with the idea that we should constitutionalize them so that if there ever needs to be a change, we have to go back to the people, and that the best thing is to let the legislature handle this matter?

Mr. Burson I would agree with that very much, Mr. Roy. This is an area that peculiarly calls for expertise.

Mr. Ullo Delegate Burson, this question about legislating seems to come up every now and then when it seems to be useful to certain individuals. Would you agree that when we restructured the board of pardons that that was legislation?

Mr. Burson Yes sir, and if you will recall, I had a little legislation of my own proposed in that. However, I think that a significant difference there would be, Dr. Ullo, that the matter of pardons and paroles was set out in our present constitution whereas the functions of the insurance commissioner are not. I think that's a meaningful distinction.

Mr. Ullo Would you agree that when we created the commissioner of elections, was that legislation?

Mr. Burson Not really, I think that the title change was just an attempt on the part of those who felt like I do that the custodian ought to stay in, to leave him in, really, in all honesty.

Mr. Ullo Well, all I can say is that I hope certain individuals in this convention, when they aspire to certain things that wouldn't change their positions from day to day.

Further Discussion

Mr. LeBreton Mrs. Chairman, fellow delegates, if you'll listen to me for a minute or two that's about all I'll take. The reason I'm opposed to this amendment and the reason I'm opposed to any amendment that will give one man, one person the power to make all the insurance rates in the state of Louisiana is a mistake. It's a mistake for the reason that you've seen fit not to give one man the power to rate gas, to rate oil, to rate electricity,

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to rate telephones, to rate water and I could go right on down the line. In every case we have a board or a commission council or a police jury or a functioning body that regulates the rates. I don't know of any case, and maybe you do, but I don't know of any case that a public rate for the whole state of Louisiana, one man has the power to make that rate. It's obvious why we don't give that power to any one person. If one person had that power, the legislature, in its wisdom, could see fit to pass laws that would indicate and have functional reasons as to why a rate may be lowered, but the one person who was in charge of rates could see fit not to lower the rates. Therefore somebody will be making an illegitimate profit or an excess profit. So it's obvious that there's many reasons why one person shouldn't have the power to rate. We've never given it to one person, that I know of, in this state. I ask you to be consistent and see that all rates of all utilities are the like type of rate is given and made by a board, by a group of people, but certainly not with one person. Obviously no reflection on the one person, but it's the fact that we've never given anybody the one rate. We've never given the commissioner the rating power in the 52 years or the 53 years that have gone by. So why should we do it for the next 50 years? I thank you. Let's be against all amendments that would give one person the power to rate. Thank you.

Questions

Mr. LeBreton Well, I'll listen to the question. I don't know whether I'll answer it or not.

Mr. Fulco Eddie, I just wanted to ask you, has the insurance commissioner a vote on the rating commission?

Mr. LeBreton Yes.

Mr. Fulco He does vote on the rating commission?

Mr. LeBreton Correct.

Mr. Fulco I think that point is important and ought to be brought out.

Mr. Lambert Mr. LeBreton, under the O'Neill amendment, would, in your opinion, the insurance commissioner have authority to set rates?

Mr. LeBreton Yes. Under my opinion, it does. I've realized that the word "shall" includes...if it not includes it seems to be debatable. I don't have the privilege of being an attorney, but the way the words are drawn it looks to me like he'll have the power and then you'll have to fight him for it.

Mr. Lambert Let me ask you one more question. Presently the insurance rating commission is in the statutes. Correct?

Mr. LeBreton Yes sir.

Mr. Lambert All right. Now if this amendment should pass and this is put into the constitution, then in your opinion would the insurance rating commission...suppose it's not legislated out of existence. Suppose the legislature would not legislate it out of existence. Would it not be unconstitutional, then, since it would be in conflict with this constitutional provision? Do you agree with that?

Mr. LeBreton In my opinion, I agree with you a hundred percent that the rating commission would have no more power, wouldn't even have advisory power. They would be absolutely without power if they stayed in existence.

Mr. Lambert In other words, what we would have then, if this amendment passed would be one primary office or officer who would be responsible to regulate the insurance industry in our state from rates all the way up and down on both sides. Is

that right?

Mr. LeBreton That's absolutely correct. There would be one man power to rate all insurance in the state of Louisiana.

Mr. Lambert Well that's just exactly what I wanted to know.

Further Discussion

Mr. Nunez Mrs. Acting Chairman and fellow delegates, There seems to be a certain strategy developing and it's this: vote against all amendments. Then when we can't decide on a way for the insurance commission to have its powers and functions and duties described, then abolish the elected office of insurance commissioner and allow it to be appointed. Allow it to be appointed, and that seems to be the strategy of this convention or certain delegates have adopted. It's good strategy if you don't want your insurance commissioner elected. If you don't want him elected then vote against all the amendments that describe his duties and then we'll have to come back and do something about it. That something is take him out of the elected position, reconsider the article and make him appointed. Now if you want him appointed, go ahead and do that. But if you want him elected and if you want him to give the full powers that he deserves as an elected official, then adopt one of these amendments. If you don't, that's where we are headed. I see no reason, Mr. LeBreton, why an elected official of this state should not have the powers and duties that that office calls for. It's not the individual, it's not the one person, it's the office. That office is controlled by the people and the people will determine whether he is fulfilling those duties and those responsibilities as preferred or as outlined in this constitution. We're not giving the one man the power, we're giving it to that office and that office should have the power. That office should have it if we're going to have the office. I agree with that principle. I agree with that philosophy. But, if you're not going to have it, or you're going to have the office elected and give it to an eight man appointed body, then I think we're really kidding the people then. I think we really are telling the people, "we're going to allow you to elect your insurance commissioner, we're going to allow you to vote for him, we're going to put it in the constitution, but then we're not going to let him perform his duties." Sort of ridiculous, but that's what we're going to do and that's what some people are trying to do in this particular maneuver to get us to vote against all amendments. I would submit to you or suggest to you that we adopt one of the amendments. I personally like the amendment that Mr. Anzalone has that allows him to be in charge of all functions of insurance, including rate-making. Because in the public's mind rate-making is his primary function because they are paying the rates. They could care less about allowing an insurance company to operate, about capitalization and the other administrative functions. They think that he's going to do that job. But in the public's mind, rate-making is his prime function because they pay for the insurance. So if we're going to make him elected we should give him the prerogative to make those rates, and make those rates according to certain prescribed principles. Not a six or seven or eight man appointed board. I just can't see how we can make a man elected and not give him the right and not give him the powers and not give him the duties to fulfill that office. I think it's very strong when you make an office elected and give that man the complete authority to fulfill that duty because we're selling the public short, we're selling the voting public short if we say "you're not capable of getting rid of an official that does not fulfill his constitutional office."

Questions

Mr. Ullo I agree with you, Senator Nunez.

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Would you also agree that if all of these amendments are voted down, this would be a good possible alternate to bring to the people so they can make the final decision, in lieu of their last decisiveness in the last election?

Mr. Nunez Doctor. I don't quite understand your question.

Mr. Ullo One of the alternate proposals, if this convention decides to have alternate proposals, would be that the commissioner of insurance would have sole power in insurance matters throughout the state. This would be brought to the people to make the final judgment.

Mr. Nunez Are you speaking about an alternative proposal?

Mr. Ullo Right.

Mr. Nunez I don't think we've gotten to the point that we have decided that we will have alternative proposals. I personally would be against them because once we have one, I think we're going to have ten, fifteen, twenty, fifty or a hundred. I would be against alternative proposals. I think we should write into this document what...one decision or one proposal and submit that to the people. I hope I am answering your question right.

Mr. Ullo Well, I think if this is so controversial and the convention can't come to a decision, possibly that's what we should do.

Mr. Nunez The controversy, naturally, is the same controversy that's stemming from the delegates who want not to elect the other officers, who want them all appointed except the five in the original article, Section 1. They are making a very successful stand that we defeat all, and each one has gotten up here and said defeat all of these amendments. How do they tell what amendments that I'm going to come up with. It might be an excellent amendment. It might be one this convention can live with or someone else proposes, but they say, "defeat all the amendments. Let's not adopt any of them." In essence what that is saying is, "let's go back after we can't adopt the functions and duties of the commissioner and let's appoint him." In my mind that's what is going on...

[Previous Question ordered.]

Closing

Mr. O'Neill Ladies and gentlemen of the convention, Senator Nunez was right when he said that we have had an insurance man up here and we've had all the other people come up here who were opposed to an elected insurance commissioner. They're opposed to all these amendments. They are opposed to them because they give an elected man the power and the duties that should be commensurate with his office. I think that my amendment does not specify rate-making. In all other aspects it's exactly like Mr. Anzalone's. I feel that it does allow the legislature some latitude in appointing an advisory body that could serve underneath the insurance commissioner. I think that it is a strategy to come back and get this man appointed because we've heard these people say, "Kill all the amendments. Don't give this man any power. Let's just make him a gutted hull." I don't think that's what we want to do. We voted to have an insurance commissioner and I think we should vote to give him some powers and duties.

Questions

Mr. Arnette Mr. O'Neill, wouldn't you say it takes a great deal of money to run statewide?

Mr. O'Neill No.

Mr. Arnette You wouldn't say it takes a great deal of money to run statewide? I suggest you try

it without a great deal of money sometime.

Mr. O'Neill Mr. Arnette, anybody can put their name on the ballot and run statewide, and not spend a penny except to qualify.

Mr. Arnette ...or excuse me, get elected. Another thing, Mr. O'Neill, who has the most money in the world? Are you aware of that? The most money in the world is insurance companies.

Mr. O'Neill There's some sheik in Arabia that has a lot of money, Mr. Arnette. I think he's the richest.

Mr. Arnette The biggest corporations in the world are the insurance companies, in case you didn't know.

[Amendment rejected: 34-78.

Motion to reconsider tabled. Motion to suspend the rules to reconsider the vote by which Sections 1 and 2 of Committee Proposal No. 4 were passed, but only insofar as these sections affect the Commissioner of Insurance. Substitute motion to continue in the Regular Order of Business adopted: 68-44.]

Point of information

Mr. Arnette So in other words what we've got now is a situation...we've got an elected official and he has no duties? Is that our present situation?

Chairman Henry in the Chair

Mr. Henry We're not through with the amendments yet, Sir.

Mr. Arnette We just voted on all the amendments and we passed the previous question on the entire subject matter.

Mr. Henry Mr. Arnette, there are other amendments up here that can be offered to the entire subject matter. As I appreciate it, all that was before this body was an amendment to add a section and that's what was acted upon, but there are other amendments. Aren't there, Mr. Clerk...adding a section insofar as commissioner of insurance is concerned?

Point of information

Mr. Derbes Mr. Chairman, there was some confusion while Mrs. Miller was in the chair. I heard Mr. Thompson very distinctly and he said very distinctly, I move the previous question on the subject matter. I don't know if that was understood by the Chair at the time.

Mr. Henry Inasmuch as I was not in the Chair, I will ask the Clerk to speak to that point.

Mr. Derbes I don't think the Clerk understood it that way either.

Mr. Henry We'll find out, Mr. Derbes.

Mr. Poynter Mr. Derbes, the point, one way or the other, and why the Chair didn't particularly comment...The point is rather moot in that there was no section to which an amendment was being proposed, where you normally have the situation of moving it on the entire section, because there's nothing that's been adopted. The motion, in that case, since there was just one motion pending, namely the amendment, and either way the motion was stated would have had exactly the same effect and that's to close debate and bring you to a vote on that pending amendment. But it would not have the effect in either case of cutting off further amendments proposing to add some new section.

Mr. Derbes Thank you.

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Point of Information

Mr. Burns Is there any way or any parliamentary procedure that will prevent every time some question comes up that's current and before the convention that this same old dead horse they're trying to resurrect every few minutes, it seems like, which as a tendency to keep this whole convention in more or less...tense, can be prevented?

Mr. Henry I would assume that after a while that folks will begin to realize that the convention apparently has made up its mind. But we have no mechanics, no procedural mechanics, prohibiting that at this point, Mr. Burns.

Mr. Burns Mr. Chairman, the only reason I asked it is in the spirit of expediency and to get along with the work of the convention and not have that come up every time you turn around.

Mr. Henry Your point is well taken, Mr. Burns. I certainly share your views but there's no mechanics to prohibit that.

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Casey]. On page 7 between lines 23 and 24 add the following: "Section 12. Powers and duties of the commissioner of insurance

Section 12. There shall be a department of insurance headed by the commissioner of insurance. The department shall exercise such functions and the commissioner shall have such powers and perform such duties as may be authorized by this constitution or provided by statute."

Explanation

Mr. Casey Mr. Chairman and delegates, I sometimes feel I'm between a rock and a hard place on some occasions and I think this happens to be one of them, where I feel it's difficult to be enthusiastic about a position that I originally did not feel belonged in the constitution. If we must submit to the will of the entire convention, I believe this submission should be as simply done as possible. I would submit to you that my amendment does that--that it merely states that there shall be a department of insurance headed by the commissioner of insurance and that his duties and functions and the duties and functions of that department will be enunciated by the constitution or provided by statute. Now, let's not leave anything on our imagination in this particular amendment. Let's lay it on the line that as this amendment is present right now, today, the legislature and the legislature alone, unless we put something else somewhere else in the constitution, will enunciate those duties and functions of the commissioner of insurance and will enunciate the functions of the department of insurance. That is what the law is today as has been previously and frequently mentioned, that really is all that today's constitution does is establish a commissioner of insurance and says he's elected for four years. The entire functions are set forth only by statute and by law. I submit to you that this is the simplest and I would hope the best method of accomplishing this end. If you wish, on the other hand, that the commissioner of insurance would have regulatory functions, let it be clearly understood that you don't vote for my amendment. I want to be completely honest about it, but I would certainly urge that if we have to do something in the constitution, I feel that this is the best and simplest possible method that we could follow. I urge adoption of the amendment.

Questions

Mr. Lambert Mr. Casey, does this not leave the law basically, as far as the structure of our insurance system in our state, basically as is?

Mr. Casey Absolutely, unequivocally--if I were [654]

a Supreme Court Justice and had to give you a written opinion and interpretation today, it leaves it absolutely as it is today. Whatsoever, no changes made as I understand it.

Mr. Anzalone Mr. Casey, conceptually speaking is not this the same identical thing that Mr. Denney, Gravel, Brien and Stovall previously proposed to this convention?

Mr. Casey Well, as you know, Mr. Anzalone, I argued against that amendment because of the reference to the fact that the commissioner of insurance was charged with the responsibility of administering the insurance code. I frankly am not sure what that meant and how far that concept went and how much more authority we gave to the insurance commissioner under that amendment--or any greater power than exists today under the present law. All we are saying right now is that there will be an insurance commissioner and an insurance department and those functions and duties will be set by the legislature. That is what the law is today.

Mr. Anzalone Which is the creation of a constitutional office with statutory responsibilities?

Mr. Casey The responsibility will be established statutorially.

Mrs. Warren Mr. Casey, where you said, "be authorized by this constitution" you don't envision any time where anything else will be written about his duties?

Mr. Casey Mrs. Warren, I don't envision it right now but it's certainly possible. In another article three months from now that we are leaving the door open that we will charge him with some responsibility. That's certainly always possible whether we said that or not.

Mrs. Warren Well, this amendment is just kind of like, he who tries to please everybody, pleases nobody, but we're going to try to please everybody.

Mr. Casey That might be said that we are hoping to please as many delegates as possible. I would certainly urge adoption of the amendment for that reason.

Mr. Lanier Mr. Casey, I believe in earlier statements you had indicated that as recently as 1972 the legislature of the State of Louisiana has refused to merge the functions of the insurance commissioner and the state regulatory body?

Mr. Casey I believe Mr. Lambert advanced the date of 1972 in a question that he asked me. I indicated to him it was of recent vintage and if he says 1972 that's probably correct.

Mr. Lanier In your judgment do you feel that sufficient information, data and studies compiled from other state and other jurisdictions where this has been attempted...do you think that sufficient of that type of data has been presented to this body for us to make an intelligent decision on whether or not this should be done?

Mr. Casey We, as a body and as individual delegates, I don't believe nearly any adequate information was advanced at all to determine whether the insurance commissioner should have the regulatory and rate-making functions.

Mr. Arnette So, if your amendment is adopted, what we've got is a situation of a statewide elected official with no power. Is that as it is now? Is that what we've got?

Mr. Casey Mr. Arnette, if this amendment is adopted, it merely says that the legislature by statute will establish the duties and functions of that officer and of that department. That is done in many, many other cases, that we are giving to the legislature the prerogative to establish the

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duties and functions of certain activities or agencies of the state.

Mr. Arnette But this will not change anything at all from the present system?

Mr. Casey This will not change the existing law.

Mr. Nunez Mr. Casey, how much change did we put into the other elected offices that we have already adopted in this convention?

Mr. Casey Mr. Nunez, I'd have to recall each one but I do not recall any great or particular change in the other functions of other offices.

Further Discussion

Mr. Juneau Mr. Chairman and fellow delegates, Mr. Casey was very honest with you and very forthright when he told you what this amendment does. I want to tell you what's the aftermath of this amendment. There will be amendments, if you reject this amendment, to put the issue squarely before you. More specifically, the issue is simply this. Do you want to elect a commissioner of insurance who really doesn't have the true responsibility with regard to insurance and that's rates? That's what it's really all about. What I'm telling you is this, if you vote for this amendment, I submit to you what you are doing is continuing in operation the ping pong match that's gone along in this state for years and years and years. If you adopt the amendment, you have in essence a commissioner of insurance who really doesn't have the authority. I submit to you that it is a misleading factor to tell the people that you have a commissioner of insurance and he can't fix rates. We might as well call him and call what we did to the commissioner of elections the commissioner of the vacuum, because that's what they are. We've got them hanging in space with no authority. I'm submitting to you that what the next amendment would do would put before you a proposition that you will elect on a statewide basis, which you voted for, to have a commissioner of insurance and that commissioner who is responsible and elected by the people, will be responsible for the rates. If you don't like it, you can change it. Now, what you have now is to vote for this amendment. Vote for the status quo. If that's what you want, vote green. If you want a commissioner to be responsible to the people that elected him on a statewide basis, I respectfully encourage you to vote red and vote for the subsequent amendment which will make it clear to put that responsibility in the department of insurance. Thank you. I'll yield to questions, Mr. Chairman.

Questions

Mr. D'Neill Mr. Juneau, we heard several people say they were going to vote against all amendments. Don't you think that to be consistent they should vote against this one too?

Mr. Juneau I would qualify that. I would definitely vote red on Mr. Casey's amendment and vote green on the next amendment.

Mr. Roy Mr. Juneau, how many states have insurance commissioners who fix rates arbitrarily at their own discretion?

Mr. Juneau That's a misleading question, Mr. Roy, because as you well know, a lot of states...

Mr. Roy Well, that's what you're trying to do, aren't you?

Mr. Juneau Do you want me to answer the question?

Mr. Roy It's not a misleading question in my book. How many fix rates by themselves?

Mr. Juneau I'm not sure, Mr. Roy. I do know this that we have in this state, as opposed to a

lot of states, determined that we want an elected commissioner of insurance.

Mr. Roy You didn't answer my question. Do you know anything?

Mr. Juneau I answered your question. I didn't know.

Mr. Roy Alright, all I want to know is how can you tell us that your solution then about a future rate fixing commissioner, a single individual, is the answer to all our problems?

Mr. Juneau My answer to the question is that experience has shown, Mr. Roy, that what you apparently favor, doesn't work. So I know that I've got a better chance going the other way.

Mr. Roy How do you know what I favor?

Mr. Juneau Is that a question? I would assume that you favor a statute quo with the rating commission.

Mr. Roy Do you know that I favor the legislature getting into this with enough time now that we've made them flexible enough so that the legislature should the next session get this insurance matter wound up and we ought to have the constitution flexible enough so that we don't constitutionalize a rate-fixing individual in the constitution and leave it up to the legislature?

Mr. Juneau Well, Mr. Roy, again I would look at history and dictate to you what's going to occur in the next session of the legislature in that regard. We have the experience of 1972 to look on. Any other questions?

Further Discussion

Mr. Jenkins Mr. Chairman, delegates, to the convention, earlier today when this discussion began I felt just as Mr. Juneau did. After listening to the debate and the discussion my mind has been changed on it. As I see a great danger in concentrating all of this power in the hands of a single man. The business of rate-making is a law making function, a legislative function which is delegated by the legislature. In almost every other instance to an administrative agency, an administrative board which will sit, can hold hearings, take testimony, comply with the administrative procedure act and make decisions. In almost no instance is such an administrative function of such magnitude given to a single individual. One example of a similar body is the Public Service Commission, an administrative agency which has regulatory functions which sits almost as a quasi-legislative body in the manner that it makes decisions. Well, our theory is if we give all of this power to one man, he will, as many people have said, be an absolute czar. He will be allowed to run on a plank promising to the people all sorts of things which he can deliver only by seriously injuring or curtailing the services of this occupation, this profession. You need in something with such tremendous power some system of checks and balances. Now I'm not a defender of the status quo. I think that until we start de-regulating the insurance industry, we're going to continue to have high rates. Until we put the industry as a whole on a more competitive basis, we're going to continue to have high rates. But as long as we have this tremendous regulatory function it's got to be a situation that allows for checks and balances. As far as the rating commission is concerned, I think it needs reform. Those functions can be done. That reform can be accomplished by the legislature. Let's have a commissioner of insurance elected by the people but let's give the legislature some authority to alter his functions and responsibilities as changing times and new information dictate, rather than once and for all setting him up as a czar over this industry. For that reason I have to urge the adoption of the Casey amendment.

Further Discussion

Mr. Gauthier Mr. Chairman, delegates to the convention, I rise in opposition to the Casey amendment. Mr. Casey was very honest with you and very clear in his explanation. I very much appreciate it. He made a statement, though, "submit to the will of the convention." I submit to you, why not submit to the will of the people of this state? The people clearly indicated they were ready for a change in this past election. It was not so much the man as it was the office. The man in office was not free to be able to do what he should have done as commissioner of insurance. I ask you these questions, do you want to create an elected officer and put an appointed board over him? Do you believe that it would be just a little bit misleading to do this? Again, the third question, do you think the past election indicated that the people of this state wanted a change in this industry? I believe it did. I believe the people of this state want to elect their officials, but they want to elect officials that will have a voice and not have an appointed board reigning over them. It's clear and simple. Woody Jenkins said you're going to set up a czar, a man with unlimited powers. I can't buy this. I don't buy that he'll run the industry out of business, either. I think that's what he's trying to do. I think the amendments that he sets up to get the advice he needs and make intelligent decisions and be responsive to the people of this state. How can you have a responsive elected official with an appointed board over him? To me the issue is very simple. I ask you to vote this amendment down and vote for the next amendment coming up. Thank you.

Further Discussion

Mrs. Warren Mr. Chairman and fellow delegates, a statement was made some time ago that we came here to strengthen the legislature. I did not come here to strengthen the legislature. I think that the only person who can strengthen the legislature is the legislature themselves. I came here to represent the people from district 102, and I hope that most of you came here to do the same thing. I am opposing this amendment for the simple reason, it does nothing. It tells you it is something then on the same strength it tells you it's nothing. I was in favor of Mr. O'Neill's amendment and I'll tell you why; because, the people from my district have expressed the fact that they wanted a Commissioner of Insurance. They realize how important it is to have someone that they can go to without having to pass the buck. So, I'm going to ask you to defeat this amendment and vote for something when it comes up. Thank you.

Further Discussion

Mr. Hayes Mr. Chairman, ladies and gentlemen of the convention, I don't know any subject that I'm more concerned about than the insurance problem. Some people are concerned about the power of the Insurance Commissioner. I'm not too much concerned about the power of the Insurance Commissioner as I am about some fair rates. I keep hearing them say we have a rating commission. The people in my district are not even familiar with the rating commission. They think that you get your ratings from the Department of Safety for two dollars. You go out there and the Insurance Commissioner raises your insurance based on your record out there from your traffic tickets. I don't believe that they are even performing their duties. For one thing for sure, I don't want to go back to what we have. I'm sure that the amendment that you have here now would be a good one. The only thing wrong with it, if that's what we have now, it's not working for sure. With two tickets... traffic tickets issued by a radar machine your insurance can be increased one and a... times the standard rate by simply calling out to a computer out here at the Department of Public Safety... that's who's doing the rating. I can get your driver's license now and go out there and rate you

and nobody would ever know I did it, and send down to your insurance company and they'll rate you based on that. The insurance people would let them do it. No one is concerned about it. Now, this is where the poor people get caught. People who can fix their tickets and never get caught in this... you get two traffic tickets and get them fixed, you don't have this problem, but poor people are victim of these circumstances and I know from the insurance people that this is what's happening. So, you're not being rated by a rating commission like we keep talking about. You're being rated by a computer, and the state is keeping this computer out at the police headquarters. All you have to do is go out there with two dollars and get a rating. That's the way you're being rated. This is what's wrong. Now, I would normally vote for what you have here. It sounds good. But, it's not good. Now, we elected an Insurance Commissioner for one reason. We thought he could do something about the insurance rates. I did. I guess I'm a victim of voting a man out of office for nothing. Found out he couldn't do anything about insurance rates. I would vote to give the Insurance Commissioner some power just simply because the rating commission as it is now constituted, is doing absolutely nothing. By buying some automatic insurance with two radar tickets and you had an accident in your life, and see what it will cost you. See who is doing the rating. Whether the rating commission, as you're talking about, that they're doing anything. Not a thing. The computer is doing it at the state's expense for the insurance companies, and the insurance companies are using it through the credit bureau and rating you there. Thank you, Mr. Chairman.

Further Discussion

Mr. Roy Mr. Chairman, ladies and gentlemen of the convention, I want to ditto everything that Woody Jenkins said. I don't know how many of you were present but what Woody said was pretty true, and his change of mind came as a result of realizing, as I kind of always thought, that an Insurance Commissioner who had the power to fix rates, could become a Czar, and not only that, but if you folks are worried about who's going to be electing him in the future, you're dealing with millions of dollars. It takes a lot of money to run for and be elected state wide and then he would become the pawn in my judgment of insurance companies. That's not the thing that really worries me about all this discussion. What worries me is when people get up, whom I know have good sense, and tell me they know nothing about any other state. They don't know of any other state that has one individual who may arbitrarily fix rates and then tells me not knowing any of this, though, they think that's a better deal than what we have now. I wouldn't argue too much about that if he were before the legislature and said let's try it. Let's try giving the Insurance Commissioner, under statutory law, the power to fix rates at his discretion. That would be fine, because you could change it the next year, but these people are asking you to constitutionalize, in a document that may last 25 years, a notion that has no support, no statistical data than can back it up. Now, Tom Casey answered honestly, and he answered correctly. This matter addresses itself to the legislature. We should let the legislature... now that we've given them the flexibility, the real sessions every year... the chance and the opportunity to address itself to the problem of insurance. The legislature should, in its wisdom, fix the duties and what have you of the commissioner. It may not provide for a rate fixing body. I don't know. It may do better than what we have. I don't know. But I do know one thing, that I can change it if necessary. But, if you put the power of a rate fixing authority in the hands of an individual in this state, contrary to every other conceivable notion of checks and balances, you're doing yourselves and this state a great injustice. I support the amendment. I think we ought to get on and vote for it. The people who have been opposing this amendment generally are thinking that down the road,

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if they can stir up enough trouble, they're going to have us reconsider this entire article. That may be, but let's not jeopardize the whole concept of constitutional dignity by putting something in this constitution that we can't take out. If there are no further speakers, I move the previous question.

[Previous Question ordered.]

Closing

Mr. Casey Mr. Chairman and delegates, I'll be very brief in my closing remarks. I would like to point out that in discussing the duties and functions of other elected officials, who are statewide elected officials, to my knowledge, there have been no great and powerful rights given to them that did not rightfully belong to them. Possibly one of the greatest rights that the governor has, for instance, is that of reprieve, in the case of a capital offense. But most of the duties and functions of these statewide elected officers are ministerial and are still subject to delineation and itemization and being set forth by the legislature, but if you do not adopt this amendment or an amendment of a similar type that is before you for consideration and in lieu of this, you go or you vote for an amendment which would give a Commissioner of Insurance regulatory and rate making functions over insurance rates, ladies and gentlemen, you have created a god, a Czar, the most powerful elected official in the state of Louisiana, who has life and death rights over the rates that you pay, over the insurance companies that do business in your state and can drastically affect the entire insurance industry in the state of Louisiana. I submit to you this function should not rest with one individual. I would say to you that the amendment that is before you afford the complete thorough flexibility that we should offer to our people in the constitution, and that is to permit the legislature at a future date, either to do what is being done today, to adopt what the law is today, or possibly in the future to change, to correct if you will, the rate making method that is in existence today. I do yield to a question.

Questions

Mr. Jenkins Delegate Casey, you know those of us who voted for a Commissioner of Insurance and certainly I was one of them, as an elected official; some of us had in mind the fact that the Commissioner of Insurance would retain his present position, his present level of authority, his present duties, and do you realize that many of us who voted for an elected commissioner will change our mind on that if he becomes a Czar, capable of setting all rates and completely controlling the insurance business? Are you aware of that?

Mr. Casey Woody, I'm absolutely aware of that and I would strongly urge adoption of this amendment to avoid that possibility.

Mr. Lambert Mr. Casey, I may have missed this, I assume you fell this way. I just want to make sure. Do you favor retaining the Insurance Rating Commission as it's presently set up in the statutes, because I don't? I was just wondering how you felt.

Mr. Casey Senator Lambert, I voted in the past to retain it, whenever we voted, whether it was 1972 or 1971, I did vote, as I recall, to retain the Rating Commission. That was my feeling at the time. Now, if further studies indicate to me that there's a better method than the rate making commission, I think I'm a very practical individual, and would certainly consider any intelligent approach to any situation, and if we can find a better method than the rate making commission, let's consider that possibility. I don't want to lock in the constitution, the power that might be vested in one individual if we adopt another amendment

which would follow this... would not want to vest and lock into one individual such a powerful right.

[Quorum Call: 115 delegates present and a quorum. Amendment adopted: 67-48. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Juneau], on page 7, between lines 23 and 24, add the following: "Section 11. Powers and Duties of the Commissioner of Insurance.

Section 11. There shall be a Department of Insurance headed by the Commissioner of Insurance who shall administer the insurance code and shall be responsible for all rate making, regulatory and other functions of the state relating to insurance and shall have such other powers and perform such other duties as may be authorized by this constitution or by statute." Now, Mr. Juneau, we need a technical amendment now deleting the previous Casey amendment. I've changed that 12 to 11.

Explanation

Mr. Juneau Mr. Chairman and fellow delegates, I won't take up much of your time. We've extensively discussed this subject, but I just want to put the issue before you.

Point of Order

Mr. Asseff Isn't it true, that no one may vote another member's machine, despite the fact that he has instructed the person to do so?

Mr. Henry Our rules require that a member must...

Mr. Asseff It is my request that you rule again, sir.

Mr. Henry The rules specifically state that no one should vote another delegate's machine. The delegate must be at his desk.

Mr. Asseff Yes, sir. That's why I raised the point, Mr. Chairman.

Mr. Henry Again, I'll state that if you know who didn't do what, let us know because there's no way ...

Motion

Mr. Tapper I move to reconsider the vote by which that amendment was adopted, Mr. Chairman.

Mr. Henry It's already been reconsidered and the motion laid on the table, sir.

Mr. Tapper I object to tabling it for the reason that Dr. Asseff brought up the question that somebody voted another person's machine, and I don't think this is the way we're supposed to do it.

Mr. Henry Just one minute. We've already tabled the motion to reconsider and all I can do is what's on this machine. I have said time in and time again, to not vote other people's machines. You were right down here earlier, Mr. Tapper, hollering at somebody to vote your machine back there. Now, unless you all are going to tell me who's doing what, there's not a thing I can do about it, Mr. Tapper. You know that.

Mr. Tapper But, Mr. Chairman, the motion was tabled before anybody could object.

Mr. Henry No it wasn't. I proceeded very deliberately just for that reason, Mr. Tapper. I'm not trying to... I was very, very, deliberate and Mr. Casey stood and made the motion to reconsider and I said without objection.

Explanation continued

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Mr. Juneau Thank you very much, Mr. Chairman.

Fellow delegates, as I said, I won't take up much of your time, but this is the issue that we've been talking about, and it's squarely put before you and without any equivocation whatsoever, what this does is put the rate making, the regulatory and all functions relating to insurance in the elected statewide official which is the Commissioner of Insurance. If you favor that, I ask your favorable adoption of this amendment.

Questions

Mr. Drew Pat, your statement is a little bit misleading. Actually, it authorizes and empowers the Commissioner of Insurance to administer these programs, is the way it reads, isn't it?

Mr. Juneau Well, it authorizes him to administer the insurance code and he shall be responsible for all rate making.

Mr. Drew It does not set him up as a Czar?

Mr. Juneau I don't see that word in this language at all, Mr. Drew.

Point of Order

Mr. Triche Haven't we already adopted Section 12 and reconsidered that motion and tabled the motion to reconsider Section 12. Isn't it out of order now to adopt other amendments to Section 12? Because, you see, Mr. Chairman, if we allow Mr. Juneau, by amendment, to reenact Section 12, then we've got some other amendments that are going to come to reenact Sections 1 and 3.

Mr. Henry It presents an interesting situation inasmuch as if we allow the amendment and we say this is an amendment to a section it can be adopted by less than a majority vote. Then if it is adopted we would have to turn around and adopt the section insofar as the Commissioner of Insurance is concerned. This is the first time it's come up and usually since I don't have an answer immediately we'll take a three minute recess.

Recess

[*Quorum Call: 109 delegates present and a quorum.*]

Ruling of the Chair

Mr. Henry Gentlemen and ladies, if you will, since Mr. Triche, as he is so capable of doing, has raised a very interesting point of procedure. As best I can, in my limited way, I will attempt to make a rational ruling. In the opinion of the Chair, what we did by the adoption of the Casey amendment was to adopt a new section. The motion was to adopt the amendment creating the new section. The amendment was adopted creating the new section and the motion to reconsider the vote by which that new section was adopted was then laid on the table. In the interest of, I think equity and fairness and because the rules are not explicit and don't provide for a situation like this, it's my ruling that we are going to have to allow people to offer amendments to this newly created section. I think if we don't do this then we're not going to be fair to some people who did not know we were going to have such a section and have not been afforded the opportunity of amending it or offering amendments at least. I so rule.

Point of Information

Mr. Flory Mr. Chairman, is that in conflict with the rules that you have interpreted in the past to the extent that when we have adopted a section and laid that motion on the table, that it would require a two-thirds vote to reconsider that section?

Mr. Henry No, sir, in my mind it is not in conflict

with that because when we have been proceeding in these proposals, Mr. Flory, we've proceeded section by section, but we find ourselves in a unique circumstance here in that a section has been amended, has been added to this proposal by an amendment. So, what we acted upon was whether or not we would create a new section, and we voted to create a new section and I think we should allow the delegates the opportunity, since that section has been added, to offer amendments.

Mr. Flory So, I take it from your statement, Mr. Chairman, that this does not alter your rulings of the past that it takes a two-thirds vote to reconsider a section that's been laid on the table.

Mr. Henry Not at all, no, sir. Now, let me further explain this. Suppose, now, under my ruling, if it survives, that the Juneau amendments are offered and are adopted 50 to 46 and they can be by a majority of those present and voting. Then, it's going to take a majority of the delegates to the convention, i.e. 67 votes, to adopt finally this section because the section is being proposed by the original Casey amendment.

Point of Order

Mr. Conroy Point of order, Mr. Chairman. In the event the Juneau amendment and other amendments to this new section should be defeated, would you still have to have a motion to adopt this section, which would be adopted by a majority vote of the delegates of this convention? 67 votes.

Mr. Henry I think, to remain consistent, and I wish y'all would quit raising all these questions, Mr. Conroy, I think to remain consistent you're a absolutely correct, that we would have to have a final vote if the amendments are offered and are rejected.

Mr. Conroy We would then have to have another vote where 67 delegates at least would have to vote in favor of this section?

Mr. Henry I would so rule, yes sir.

Point of Information

Mr. Jack I agree with the ruling, but I want to be sure of this. I think it should apply to all of these situations in the future, and I'm not sure whether you're applying it just to this one instance or will it apply in the future where there's amendment adopted and no others to a section? It should.

Mr. Henry Well, Mr. Jack, I will attempt to remain as consistent as is possible under the circumstances and I'm sort of locking myself in by my ruling, I would suppose.

Mr. Jack Well, I don't think you quite understand me. Let's say this is disposed of and we have another section and it's just going to be one thing like this, the duty of one of these officials, and there are five amendments. Now, if you're not going to apply this same law, I'm going to have to pick ahead of time without listening to argument maybe that if I want to vote and support the first one, knowing if we pass it, then the other four go out the window. That's the reason I want to know.

Mr. Henry My ruling will remain consistent, sir.

Mr. Jack Thank you.

Point of Information

Mr. O'Neill I had the same question, Mr. Chairman, that Mr. Jack did. Perhaps, if you explain it once more then every delegate will be able to understand how you will probably further rule on these questions.

Mr. Henry All right, let me get rid of these other

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questions and then I'll do that, Mr. O'Neill.

Point of Information

Mr. Nunez Mr. Chairman, should not there be two motions, one to adopt the amendment regardless if section and after that amendment is passed, another motion moving the previous question, no further amendments on the section, and then a 67 vote majority to pass the entire section. I think...

Mr. Henry In view of how I have just ruled, we are about going to have to do that. It would appear to me, Senator Nunez, henceforth.

Mr. Nunez That way, you would be leaving the door open for additional amendments on the section before you announce the vote shall be on the entire section.

Mr. Henry Yes, sir, you're right.

Point of Information

Mr. Avant I want to make sure I understand this. This is a point of information. If we adopt an amendment to this section and then after that we readopt the section as amended, that's going to take 67 votes. Then if we lay that motion on the table that's the end of this equitable ruling, we go back to our regular rule, is that right?

Mr. Henry Well, yes sir, unless we get locked in this situation again.

Mr. Avant I mean, I'm talking about as far as this section is concerned.

Mr. Henry For right now, you're right.

Mr. Avant In other words, if we adopt an amendment, then we readopt the section by a majority vote of all the delegates and lay it on the table, the equitable ruling is gone. We go back under the rule. We won't come back and amend it again...

Mr. Henry Well, we'll proceed under the rules as long as the rules are not silent, yes sir.

Point of Information

Mr. Burson A point of information, I guess, for lack of a better name. Mr. Chairman, couldn't this problem be solved by requiring, as I'd suggested early in the game, that any amendment that proposes a new section would have to go to committee first and come out as part of a committee proposal, even though albeit at the end of the committee proposal.

Mr. Henry I don't think it would necessarily resolve this problem, no sir, Mr. Burson.

Point of Information

Mr. Rayburn Point of information, Mr. Chairman. Did we have a prior agreement that we would just straighten these section numbers out as we went along later after we'd finished?

Mr. Henry Well, I thought...

Mr. Rayburn We do have Section 12 in the present proposal. It's up for consideration...Mr. Casey's amendment is relative to Section 12.

Mr. Henry I think the Clerk has changed that insofar as to make it conform to what we've already done insofar as the desk copy of the amendment is concerned.

Mr. Rayburn Is that correct, it has been changed according...

Mr. Dwyer Yes, senator, I've tried the first one, and I don't know if you heard me, I made the comment that it would make it Section 11 if everyone was agreeable and try to keep them in order to

reduce the problems of Style and Drafting, so when the agricultural provision was added, I think the way it was typed up, it was 14 and we made it, I announced, 10, and then made this one 11, and if you add any more we'll keep going that way. Perhaps at the end as we go along we can add some amendments to change the present 10, 11, and 12 to consecutive numbers whatever they may be.

Mr. Rayburn Well, Mr. Chairman, straighten me out once again, because I'm really confused now. Certainly, I understand that any section that is in this committee proposal, we could amend it... add to or take from. In the present proposal that is now for consideration there was no section 12, under our agreement, or there was no section relative to the duties and powers of an Insurance Commissioner, am I correct?

Mr. Henry You're correct, sir.

Mr. Rayburn So, really and truly, the language contained in Mr. Casey's amendment was a complete, new section. Am I correct?

Mr. Henry Absolutely, sir.

Mr. Rayburn That section did receive 67 votes.

Mr. Henry Yes, sir.

Mr. Rayburn And was laid on the table.

Mr. Henry Yes, sir.

Mr. Rayburn I'm still confused.

Point of Information

Mr. Gravel Just to ask one question, Mr. Chairman, and hopefully that the Chair might want to reconsider its ruling. I would certainly agree with the Chair as to the ruling, if as Senator Rayburn has pointed out this particular amendment had not received 67 votes, because then the section would not have been adopted, but it seems to me, Mr. Chairman, that you should reconsider your ruling in view of the fact that this was a new section, that it did receive 67 votes, and it would occur to me that, therefore, the section has been adopted properly and within the rules.

Mr. Henry All right, I'm going to take 30 seconds and reconsider it.

Don't leave.

Mr. Gravel, I have reconsidered my decision and after thoughtful deliberation, I'm convinced that I'm right.

Mr. Gravel I knew that you would reconsider it, and I knew that after you're real thoughtful about it you would still remain in error in my judgment.

Mr. Henry Well, we're sort of locked in for time, so I'll comment on that to you later, and explain it to you at the same time, but it's just as if, in my judgment, we had added a new section at the end of this proposal. Where you put that does not make any difference. It's a question of whether you're going to call it 12 or 24 and so what we did with the Casey amendment was to determine that we did in fact want a new section to this proposal which required 67 votes to make such a determination. The Chair has further ruled that amendments can be offered to this section at this time and if they are adopted they can be adopted by less than a 67 vote majority. But then at such time as we are through debating this section, we're going to have to take a final vote on the adoption of the section which will require 67 votes.

Point of Information

Mr. Robinson Mr. Chairman, could this possibly be resolved by allowing Mr. Juneau to introduce his amendment under another number and see if he

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can get his 67 or whatever it is?

Mr. Henry Well, it appears to me that we've resolved the problem inasmuch as he can offer his amendments, and it's up to the disposition of the convention as to what they'll do with those amendments.

Point of Information

Mr. Burson Mr. Chairman, without being difficult, if we continue with this procedure here, what is to prevent someone who feels strongly enough about a particular issue, later on as we proceed, from giving a new number to a section and coming up with a section which is diametrically opposed to one we've already adopted and offering it as a new section. That's the problem that worries me.

Mr. Henry 67 votes.

Mr. Burson But, it can be done, can't it?

Mr. Henry Certainly, it can be done, yes sir, and we can call from the table a motion to reconsider if a man could get 88 votes, Mr. Burson.

Point of Information

Mr. Stovall Mr. Chairman, you did not review the interpretation that you gave to Senator Nunez's question. Are you making that a part of your procedure also?

Mr. Henry I'm not sure that I follow you, sir.

Mr. Stovall Senator Nunez, restate your...that he agreed with you and I simply want a restatement of it, if it is a part of the interpretation.

Mr. Nunez I think he agreed with me. I thought we had been using the procedure that I had suggested except on that particular vote that we cast on the amendment where we said we needed 67, and I thought that the procedure that you had established before that, Mr. Chairman, was on a new section. It was treated just as an amendment, and the amendment required a simple majority of the delegates to pass. If there were other amendments, you call for the other amendments. Then, if there were no other amendments you call for final passage on the section. Someone moves the previous question and you announce that it would take a two-thirds vote to pass the section, because you were voting on the section and not on amending the section. That's the way I understood it and I think that's what Rev. Stovall...

Mr. Henry We haven't found ourselves, to my recollection, in the convention at this particular point in procedure, senator, because there have been amendments adding sections, all of which were adopted by 67 votes. Now, there was one or two occasions where people offered amendments to add a section that didn't get a majority vote, that got perhaps a majority of those present and voting but not the necessary 67 so they didn't pass. I think Rev. Landrum had such an amendment at one time.

Mr. Nunez One point further, Mr. Chairman, don't you think we should consider what you are suggesting and from a procedural standpoint we should adopt something on a section whereby if an amendment is passed and it encompasses the entire section, we would still have the latitude to amend the amendment before we vote on the entire section.

Mr. Henry That's exactly what we're going to do in the future. We just haven't come to that. This is the first time we've come up to that, senator. Why do you rise, Mr. O'Neill?

Point of Order

Mr. O'Neill Mr. Chairman, I'm a little concerned about if we've done this in the past and I'd like to suggest that between you and the Clerk, we perhaps review this procedure and if something has

been adopted in the past for an abundance of caution so it won't be challenged later on that you and the Clerk review and make sure that we haven't done something wrong, so that we won't be challenged from now on.

Mr. Henry Thank you, sir. We'll look into that, but if the circumstance does not come up...

Point of Information

Mr. De Blieux Mr. Chairman, I just want to be sure that I understand the procedure. As I understand it, if there is no new section, a vote taken on a new section requires 67 votes to start with. After that vote, and the amendment may be passed to that particular section, with a majority of those voting, but before the final clincher, you might say, is put on that particular section, whether it's amended or not amended, it must also receive another 67 votes.

Mr. Henry Yes, sir. You're correct.

Point of Information

Mr. Tobias Then, have we properly adopted the section on the powers and duties of the Commissioner of Agriculture under your ruling that you just made?

Mr. Henry Have we properly adopted them? Yes, sir, I believe we have.

Mr. Tobias In my judgment, we have properly adopted it, because we added that section by better than 67 votes. There was no offer of an amendment after that. There was no question as to whether or not we wanted to attempt to amend it.

Mr. Tobias But couldn't someone at this time come up with another amendment to that section?

Mr. Henry I think you're correct, yes, sir. We can straighten that out momentarily, sir.

Point of Information

Mr. Shannon Mr. Chairman, I'm a little perplexed. By your ruling, where a new section is added it attains the same status as if it were in the committee recommendation and then can be amended in the same way.

Mr. Henry That's it. What's wrong with you, Mr. Roy?

Personal Privilege

Mr. Roy I think we are wasting a lot of time. You have already ruled and you shouldn't argue with them any more. Let's get going. I want to talk against Juneau's subterfuge.

Mr. Henry Thank you for your kind and patient attention, Mr. Roy. Proceed with the Juneau amendment.

Mr. Poynter The amendments have been read, Mr. Chairman, and I have again made the corrections to the copy on your desk to change it to Section 11 so that we can keep our numbers straight and in Amendment No. 2 to strike out the previous amendment.

Explanation

Mr. Juneau Fellow delegates, I think I made the presentation before we got to the point of order. As I said, the issue is clearly before you. I want to put the rate-making, the responsibilities of insurance, on the insurance commissioner. That is what this amendment does and that is what you are voting on. I move for its favorable adoption.

Further Discussion

Mr. Roy Mr. Chairman, ladies and gentlemen of

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the convention, I thought we just beat this exact notion with 67 votes and I thought we beat it pretty badly when Mr. O'Neill proposed essentially the identical language. O'Neill's was "and the commissioner of insurance shall be responsible for all regulatory" etc., etc. We beat that. Now this amendment comes up and it says he will be responsible for all rate-making which just makes it more emphatic. I don't believe that you are doing anything else but authorizing the commissioner of insurance to fix rates. This is not saying that he will be responsible for administering rate-making rules that the House of Representatives and the Senate may have passed. It is actually in my opinion very arguable that if the legislature attempted to have some type of rate-making provision after a lot of study and it went to court, the commissioner of insurance could say the legislature was unauthorized and without power to conjure up any type of rate-making law and would be unconstitutional because you can delegate authority but you can't delegate responsibility. And that's exactly what this thing is trying to say. It is a very, very shaky amendment in that, in my judgment, it will allow the court to say that only the insurance commissioner may fix rates and we just beat that at it. It is a dangerous thing. There is no precedent for it. Mr. Juneau nor any of his sponsors in the last fifteen minutes were able to give us any information about any background which would compel me to vote to constitutionalize such a radical departure from what we have had in the past.

Point of Information

Mr. Chatelain Would you please explain, sir, some of us are not familiar with what we are voting on now. The previous question means we are voting what?

Mr. Henry The motion is for the previous question on the entire subject matter.

Mr. Chatelain We cut off debate, sir?

Mr. Henry Mr. Chatelain, let me answer the question please. It has been a rather long day, especially in the last fifteen minutes. The motion is to move the previous question on the entire subject matter which if adopted will shut off debate on the amendment as well as the entire section. What we would do if the motion on the previous question on the entire subject matter is adopted then the author of the amendment, Mr. Juneau, would have the opportunity to close on the amendment. We would then vote to either accept or reject that amendment. Then the author of the section, or whoever is going to handle it for the Executive Committee, would have the right to close insofar as that section is concerned and we would vote for its final adoption.

[Previous question ordered on the entire subject matter: 61-52. Record vote ordered. Amendment reread and rejected: 37-77. Section failed to pass: 59-56. Motion to table reconsideration.]

Point of Information

Mr. Nunez I rise for a point of information, Mr. Chairman. If we vote to table the motion, where does that leave the convention in regards to the powers and duties and functions of the insurance commissioner?

Mr. Henry Well, if this motion to reconsider is tabled, someone could come up in the morning, and I imagine they would, with a different amendment adding a new section. But we could not reconsider the vote by which this section failed to be adopted without a two-thirds vote calling from the table.

the motion to reconsider.

Mr. Nunez And if we vote not to table it we can still consider it today?

Mr. Henry We could reconsider it today, or tomorrow or Saturday morning or just any other time. Sunday afternoon. Labor Day.

[Motion to table reconsideration rejected: 38-74.]

Point of Information

Mr. Arnette Point of information, Mr. Chairman. What is our parliamentary situation right now in regards to the duties of the commissioner of insurance?

Mr. Henry Our parliamentary procedure at this point is that Mr. Jenkins wants to reconsider the vote by which the delegates to the convention failed to adopt the section insofar as the duties of the commissioner are concerned.

Mr. Arnette So we have no duties for him right now?

Mr. Henry Right now we don't, no sir.

Point of Information

Mr. O'Neill To clarify exactly what the status of Mr. Casey's original motion is. My interpretation is that it has been adopted by 67 votes and it was laid on the table then.

Mr. Henry No sir, you are wrong, Mr. O'Neill. What we did was agree that we wanted a new section. We just haven't been able to decide what we want in it yet. That's sort of where we are. I mean, everybody likes it a little bit, but nobody likes it a lot. So what we are going to have to do is decide whether we like it a lot or don't like it at all.

All right. We are fixing to vote on whether or not we want to reconsider the Casey proposition. That is, whether we want to vote on it again. When we vote here, after we get through discussing it, that doesn't mean it is going to be adopted, it means that we will get another shot at it, one way or the other.

Explanation

Mr. Jenkins Mr. Chairman, delegates to the convention, as the chairman has said the only thing my motion would do would be to allow us to consider once again the question of whether we are going to have a section defining the powers of the insurance commissioner. Now if we have created such an office as an elected official, we certainly want to spell out in this executive article somewhere what his duties are. Now, some who don't want an elected insurance commissioner would like us to leave out this section altogether. I suggest to you that the most important point here is that we do have an elected insurance commissioner. We may disagree a little bit about what his functions may be but if we want an elected insurance commissioner we need to put in here what his duties and powers are so that's why I'm moving that we reconsider the vote so we can try to get 67 votes to go ahead and include this section defining the powers and duties of the insurance commissioner into this article. We have already tentatively agreed that Mr. Casey's amendment would comprise that section, but we need 67 votes to make it a part of the article so that is why I move that we reconsider the vote by which we failed to get 67 votes a while ago.

Point of Information

Mr. Tapper Mr. Chairman, I believe that Mr. Jenkins maybe unintentionally misstated our position at this particular time. It is a point of order,

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Mr. Chairman. Is it not a fact that we did not table this proposition and therefore we do not have to pass Mr. Jenkins' motion in order to keep this matter before the convention? Isn't that a fact?

Mr. Henry. What he wants to do is reconsider the vote by which it failed to be adopted and he is insisting that we do it at this time. We have already taken a vote on it but under the rules you can reconsider the vote. That is what he is trying to get this group to do right now.

Mr. Tapper. What he wants to do is revoke on the Casey amendment but if we vote not to revoke on the Casey amendment we still have the proposal or the section before the convention. We haven't tabled it so we can come back later on today or tomorrow and give some duties to the insurance commissioner. Isn't that a fact?

Mr. Henry. Well, if we decide that we don't want to reconsider it, then it is not necessarily dead, but it is pretty sick. I'm not trying to be cute with you, but it's just sort of like it is.

Mr. Tapper. But only the Casey amendment is pretty sick, not the whole proposition.

Mr. Henry. That is right.

Further Discussion

Mr. Stagg. Mr. Chairman--Mr. Arnette would you all sit down and listen because I am not going to do this too much. We are doing what a man or the television said the other day, that they decided to let the fellow who was in a bit of trouble turn in the wind. Boygie Bollinger asked me a while ago, "What direction are we headed in?" And I answered him "Circular." I don't care for an elected commissioner of insurance nor an elected commissioner of agriculture nor an elected commissioner of education nor an elected commissioner of elections. But the convention has not agreed with that view expressed by the Committee on the Executive Department. We got our ears pretty well boxed down on a number of votes. I think the convention erred. I think we made a mistake, but what I think doesn't hold any water when sixty and seventy and eighty people in this convention vote otherwise. The Casey amendment assumed the constitutional duties to the commissioner of insurance. They weren't much but at least it did what the job set out to do. You created an elected commissioner of insurance. It now seems to me that our duties are to vote on his duties and then go on to the next job. We are moving circular and we have to stop it. I am as much in with parliamentary procedure as some of the rest of you are but there comes a point where we've got to stop and vote. I think we are at that point now. I shall urge the convention, Mr. Chairman, therefore, to vote favorably on the motion to reconsider and then thereafter if there are 67 of you who think that Mr. Casey did as much as needed to be done for the elected commissioner of insurance they picked Tuesday then vote, 67 of you, to establish this section and let's go to the next section so that come Labor Day or Thanksgiving we won't still be moving circular.

Further Discussion

Mr. Burns. Mr. Chairman and fellow delegates, let me first say that I have the highest regard and respect for each and every delegate to this convention. I have told people back home on every occasion the same thing. I look on each and every one of you as an independent and self-thinking individual, but as I sat there, it seemed like hour after hour, hearing the same thing debated back and forth, the same question, I just was glad that the voters of the state of Louisiana who have to approve or vote on this constitution weren't sitting back in those chairs and listening to us

waste all of this valuable time. I don't mean by that that we shouldn't give every subject matter that comes before us thorough discussion and deliberation and vote as we see fit, but after all, there comes a time when we should proceed with the other business of this convention and not spend all our time in legislative and parliamentary jockeying back and forth such as we've done all afternoon. So, I appeal to you, not in the sense of criticism but as a friend and a brother delegate, or sister delegate, to let's decide this issue once and for all. We have debated it--there couldn't be one possible thing more that could be said pro or con on this matter. So I appeal to you, let's settle this once and for all and get on with the business, or better yet, adjourn. Thank you.

Further Discussion

Mr. Weiss. Fellow delegates, I hope to crystallize the problem before us. It has been said that we have had the failure of the committee system. We have seen this. Frankly, had the original proposal by Denney, Gravel, Brien and Stovall been accepted, I feel certain that would have been the most acceptable, as a matter of fact, it is the current situation in the state of Louisiana. This was rejected. We have said that we have been beaten by procedure, other delegates have said this here, and it certainly seems to be the case now. It is without question that we have abused the privilege of parliamentary procedure, but thanks to our Chairman we have been held in check. I would like to call to your attention, all of us, that we have amongst us men with the tenacity of wildcats. That we have men who cannot accept defeat and gamblers, simply thinking by voting down certain floor amendments that they themselves are going to perpetuate their feelings upon the group. I am ashamed of us as a group for having these types of individuals in the group and I hope that we will now, as a result of this experience, become professional constitutionalists. I speak now with authority because none of us have ever had this experience and I feel myself your equal. At the same time we have outstanding legislators before us and I have consulted with them. They have said that at least in the legislature when a man is beat or a group is beat they do not bring up and try to resuscitate a dead horse or bring matters before us that are going to be beat again and again. In summarizing what has happened, and I believe I know this fairly well as it has been a hobby of mine and particularly since the chairman has said that we've not some sick amendments, I think I am qualified in that respect to treat the sick, this is what has happened. The insurance code amendment which said "only insurance code," put the foot in the door for the insurance commissioner to abide by the insurance code which happened in a statement to the effect concerning rate-making and regulatory agencies. It does not however allow him the privilege of applying this rate making or regulatory function at his own will. Therefore this was the best amendment. It was defeated by people who thought by defeating it they could push on the door for the other two or three amendments which were basically the same and define the rate-making function and the regulatory function specifically in the hands of the insurance commissioner. This is questionable. At the present time we have a much watered-down version which has been accepted by sixty-seven votes, the Casey amendment. The majority of the convention voted for an elected commissioner. We must now make his rules known. Since it has been watered down, let's vote on this. I think we should accept it and go on with the business at hand. We have too many much more important functions, although I consider this highly significant and vital, to be wasting time arguing with men who are gamblers, with men who are acting like wildcats and with men who cannot accept defeat. Let us vote by sixty-seven to pass this simple, watered-down version of Mr. Casey's.

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[Previous Question ordered.]

Point of Information

Mr. Burns I want to know what I am voting on.

Mr. Henry Mr. Burns, if you will wait just a minute please, I am going to explain it.

What you are voting on now is whether or not you want to discuss the Casey amendment, that Section which he got put in. Now if you vote yes and we re-consider it, this means that if you want to offer amendments or do whatever you want to do to that proposition then that will be appropriate at that time. You are not voting right now for or against Mr. Casey's proposition, but you are voting as to whether or not you want to talk about it and discuss it and think about it some more.

[Motion to reconsider adopted: 87-24.]

Reconsideration Explanation

Mr. Casey Mr. Chairman and delegates, my remarks are extremely brief. By this proposal submitted to you we would establish the fact that the legislature will set forth the duties and functions of the commissioner of insurance and establish the department of insurance and the legislature will establish those duties and functions. This seems to be, I would hope, the most simple solution to the dilemma that we have been smothered by for the past two hours. I would urge adoption of this new section.

Personal Privilege

Mr. Schmitt You know one thing I don't understand. Every time a group of people seems to disagree with another group of people, it depends upon which side you are on. If you are on the Rayburn's side, it seems to be o.k. to come forward and to do certain actions. If you are on certain members' sides it is o.k. to come forward and to claim that the other side is made up of wildcats, the other side can't accept defeat, yet we were in the issue with reference to the split session, it was o.k. for Senator Rayburn and his group to continue to bring that issue forward time and time again. That was o.k. The next thing was with reference to the custodian of voting machines. I opposed the election of the custodian of voting machines, yet when someone else brought this up under a different name and under a different title, this was o.k. Each time it seems as if those who represent certain types of interest groups and sit forth, when they come forward it is some type of magic, yet when those who oppose them attempt to make a stand against them there is something wrong with what they did. They are given all sorts of unusual names, they are condemned for this. I don't see anything wrong with standing up for what you believe. Sometimes the will of the minority becomes the will of the majority. I have seen instances in my past life when I was a member of Pelican Boys State, when people stuck to their beliefs who originally had thirteen or fourteen votes out of a couple of hundred votes, and pressed forward, after a period of time became the majority, and were elected to a position of power. I don't think that there is anything wrong with standing up for what you believe. I don't believe that we should be steam-rolled into doing something which we feel is wrong. I am tired of people telling me that I don't have the right to step forward and say what I believe. I am tired of people stepping forward and saying that I am a wildcat, that I can't accept defeat. If there is something which I believe in, I am going to stick with it and stay with it until I get it passed. This is the democratic process. Sometimes in democracy the will of the minority becomes the will of the majority and this is what it is all about. Thank you.

Further Discussion

Mr. Arnette Ladies and gentlemen of the conven-

tion, I made this statement before. I am going to make it very short now. I would like to make it very clear that we have a dilemma here and none of these amendments afford any solution. The dilemma is we are either going to have a statewide elected official with no power whatsoever, which is what the Casey amendment does, or we are going to have an all powerful statewide elected official. And I don't think either solution is a good one. I think we ought to go back and decide whether we want to have this particular person elected or not. And I think this is the only solution we have. If you want to have an elected board to do this, fine. That is much more reasonable than having a single individual be all powerful or elected statewide and do nothing. And I think this is clearly the issue before us. And I think some of the delegates have realized we have made a mistake when we made this particular office elective statewide. And I wish that we would defeat these amendments, go back and correct our mistakes. Thank you.

[Previous Question ordered.]

Closing

Mr. Casey Mr. Chairman, and delegates, I would like just to clarify one point. We have a lot of statewide elected offices that we have said some very flowery and nice things about in the constitution, and they frankly don't mean a thing. Because we wind up every paragraph on every state official by saying that "he shall perform the duties and functions as set forth in the constitution or by statute." And that is really, really all we are doing with the insurance commissioner, is we are saying that he is going to perform the duties and functions as set forth in the constitution and we can do that three months from now in another section. And he shall perform the duties and functions as set forth by statute. And really all we are doing is we are recognizing the fact that we will have an insurance commissioner and the end result will be that unless the legislature decides otherwise that he will perform the duties and functions as existing today under the present constitution and laws of the state of Louisiana.

[Amendment adopted: 77-36. Motion to reconsider tabled. Motion to adopt new Section 10.]

Point of Information

Mr. O'Neill Point of information, Mr. Chairman, everyone seems to be confused. At first we adopted this whole section as an amendment, correct?

Mr. Henry Correct.

Mr. O'Neill And now it is necessary to adopt it as a section, correct?

Mr. Henry Correct.

[Previous Question ordered. Section passed: 87-26. Motion to reconsider tabled. Motion to take up other orders adopted without objection.]

Reports of Committees

[I Journal 284]

Introduction of Proposals

[I Journal 284]

Petitions, Memorials and Communications

[I Journal 284 - 285]

Announcements

[I Journal 285]

[Adjournment to 9:30 o'clock a.m., Friday, August 10, 1973.]

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Friday, August 10, 1973

ROLL CALL

[89 delegates present and a quorum.]

PRAYER

Mrs. Brien Let us pray. Dear God, Our Heavenly Father, that the light of thy divine wisdom direct the deliberation of this convention. And shine forth on all the proceedings and laws framed for our rule on government. Give us security to accept what cannot be changed. Courage to chance what should be changed, and wisdom to distinguish the one from the other. Amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

Personal Privilege

Mr. Asseff Mr. Chairman, delegates, this will be very brief. I apologize to the Chair relative to voting someone else's machine for the Chair stated correctly that we should either give the names or keep our mouths shut. I should have kept my big mouth shut, since I had no intentions of giving any names. However, I urge the delegates to vote their own machines and I said it only because the press is aware of what is going on and I was worried that it would destroy our image and hurt the constitution. I apologize Mr. Chairman.

INTRODUCTION OF PROPOSALS

[1 Journal 286]

PROPOSALS ON SECOND READING AND REFERRAL

[2 Journal 286]

REPORTS OF COMMITTEES

[1 Journal 286]

RESOLUTIONS ON THIRD READING AND FINAL PASSAGE

[2 Journal 286-287]

Reading of the Resolution

Mr. Poynter Delegate Resolution No. 33 by Delegate Leithman.

A resolution to provide for the numbering sequence in Rule No. 66 of the Rules of Order of Procedure.

Comes in the committee reported with amendments which were adopted by this convention on August 3, 1973.

Explanation

Mr. Leithman Mr. Chairman, members of the committee, this was requested by the Clerk in just merely renumbering our system of doing business. You notice your blotter in front of you has a continuous numbered system, which is wrong, it is error and all that this resolution does, is it provides for Morning Hours 1 through 12. With the completion of Morning Hour we go into a Regular Order of the Day and we begin with 1 for Unfinished Business, so is merely...and we will go in the Regular Hours 1, 2, 3, 4, through 5 and this is just to correct our numbering procedure. Because in fact we have two orders of business, one the Morning Hour and the other, the Regular Order of the day. If there is no opposition, I ask adoption.

Question

Mr. Alario Delegate Leithman, if we adopt this resolution, will it be necessary for us to change each blotter, or can we just change the numbers on our blotters?

Mr. Leithman Mr. Alario, I wish you would come in in better shape in the mornings.

[Previous Question ordered. Resolution adopted; 92-3. Motion to reconsider tabled.]

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Mr. Poynter Committee Proposal No. 4, introduced by Delegate Stagg.

A proposal providing for the executive branch of government, for the filling of vacancies in certain public offices and with respect to dual officeholding, a code of ethics and impeachment. The status of course of the proposal is that the convention has adopted as amended the first nine sections of this proposal, Sections 1 through 9 has added to date between the present and the reprinted bill...between the present 9 and present 10 two new Sections 10 and 11, dealing with powers of elected officials.

Amendment

Mr. Poynter Mr. Chairman, this amendment is offered by Delegate Kelly, it is one of the two amendments with Delegate Kelly's name on it. Other persons have added their names as coauthors, Asseff, Abraham, Anzalone, Brien and Gravel.

To distinguish between the two, the easiest way I can tell you which of the two Kelly amendments is, it is the one that ends up with the last line reading simply by statute.

The last line of the amendment reads by statute. The other one has about five or six words at the last line.

Amendment No. 1. On page 7 between lines 23 and 24 add the following:

"Section 13. Department of Elections and Registration

Section 13. There shall be a department of elections and registration headed by the state commissioner of elections who shall administer the laws relative to custody of voting machines and voter registration. The commissioner shall have such powers and perform such duties as may be authorized by this constitution or provided by statute.

It needs to be Section 12, Mr. Kelly.

Explanation

Mr. Kelly This amendment is just in conformance with the furtherance of what this convention has already done as far as creating the office of commissioner of elections. I think the amendment or the proposal for the section itself is self-explanatory. I think the convention more or less decided this issue the other day at which time we decided the powers, functions and duties of the secretary of state. I don't think it bears a great deal of discussion, it simply says that the...there shall be a department of elections and registration, the commissioner of elections will administer the laws relative to voting machines and voter registration. These powers and duties would be as described in this constitution as provided by statute. And that is all I have to say.

Questions

Mr. Lanier Mr. Kelly, is it the intent of your amendment that the commissioner...state commissioner of elections would have the powers and have to perform the duties that are presently assigned to the state board of registration?

Mr. Kelly That is correct.

Mr. Lanier Are you aware that under Article 8, Section 10 of our present constitution in Louisiana Revised Statute 10:3 that the board of registration has the power to remove at will, each and every registrar of voters in the state of Louisiana?

Mr. Kelly I am familiar with Article 8, Section 10, now as far as their ability to remove, my understanding that that article...the primary thing that I read into that article was that there would be a registrar of voters...elected or appointed by the City Council of Orleans and that

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there would be a registrar of voters in other parishes which would be appointed by the Police Jury. Now, quite frankly, I think that is a statutory matter or might possibly be handled by local government, it might be handled by the Bill of Rights because that section is under the election article. The article dealing with elections. I do not think that this is the point to concern ourselves with whether or not and how the registrars of voters are going to be handled. I think we have explained that by just simply saying that he will head the department and that his powers and duties will be set forth in this constitution or will be set forth by statute. And I don't know what local government, I don't know what the Bill of Rights may have done with this particular section, but I think that is a legislative matter as to... concerning those duties and powers.

Mr. Lanier The point I am getting at, as I understand the law, under our present constitution and in more particular, Revised Statute 18:3; it provides that a majority of the board of registration may remove at will any registrar. Now if we are going to take the powers of the board of registration and give it to this one man, the commissioner of elections, is it the intent of your amendment to give this power of removal at will to the commissioner of elections?

Mr. Kelly No, that is not my intentions, but at the same time I mean I don't think that we should clutter up this section of the constitution spelling out all those little exact duties. I think that that can be handled and I am sure will be handled in local government. I feel confident that it will be handled there and I would say this, I would have no objection to reversing a statute which would set up some type of a system where this man would not have this absolute power to reach down and just say you're no longer the registrar of voters in Lafourche Parish.

Mr. Lanier Now secondly, as I understand, the provision that we passed the other day on the secretary of state, we have tabbed him as the chief election officer with the power to prepare and certify ballots for all elections and promulgate all election returns. Administer the election laws and to administer the election laws except for voting machines and registration. By your amendment in establishing a department of elections, will this put us in the position where our chief election officer is not a part of the department of elections?

Mr. Kelly No, I do not think so, because even though we describe the secretary of state as the chief election officer, I think you will even concede Mr. Lanier that all of the duties that really relate to the secretary of state pertain at this time relating to elections are official duties. I meant the preparation and the certifying of a ballot. That is an official duty. The certification of candidates, is an official duty. I meant... the secretary of state is so to speak putting the great seal... in saying now this is right and this is the way it is going to be done. And he is going to also promulgate all the returns, that is make them official records of the state of Louisiana. But as far as actually running the election itself, he does not do that, the former custodian of voting machines has always done that. As far as the actual perfunctory matters of an election day, and so therefore when the talk about the commissioner of elections I think... I do not think that we are in conflict there at all.

Mr. Lanier Well, let me ask you this, isn't the Clerk of Court in each parish the chief election officer for the parish?

Mr. Kelly It is my understanding that that is correct and that he is also the custodian of the voting machines in his respective parish, it is my understanding that is designated by statute.

Mr. Lanier Ok. Now in running the election on the parish level will the clerk of court be doing it under the chief election officer, the secretary of state or will he be doing it under the custodian of voting machines?

Mr. Kelly I think that he would be concerning the official duties of the clerk of court of a respective parish when he is performing his functions relating to the chief election officer of that parish. I think that he would be under the auspices of Mr. Martin's office. At the same time, it is my understanding that under statute he is also the custodian of the voting machines in each respective parish and accordingly he would therefore be under the auspices of the commissioner of elections regarding his duties in that particular area.

Mr. Jenkins Mr. Kelly, are you aware that your proposal fits in very nicely with the proposed Article on Elections drafted by the Committee on Bill of Rights and Elections. Because under that proposal the board of registration has been removed as a constitutional board and the authority of the board of registration to arbitrarily remove any registrar has also been removed from the constitution?

Mr. Kelly Which in effect would answer one of Mr. Lanier's questions. I agree with you.

[Previous Question ordered. Quorum Call: 109 delegates present and a quorum. Amendment adopted: 86-23. Motion to reconsider tabled. Previous Question ordered on the Section. Section passed: 91-19. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter Section 10. First Assistants.

Section 10. Each statewide elected official except the governor and lieutenant governor shall appoint a first assistant subject to confirmation by the Senate and may remove him at his pleasure. The official shall submit such appointment to the Senate in the same manner in which the governor submits appointments and shall be subject to the same procedures and limitations in connections therewith as are imposed upon the governor. The first assistant shall possess the same qualifications as those required for election to that office.

Explanation

Mr. Arnette Well, this is somewhat similar to our present constitutional provision having to do with the attorney general. The attorney general appoints a first assistant subject to confirmation by the Senate and in his absence, the first assistant takes over. We will take care of this in a later section and explain if a vacancy develops that this particular first assistant will take over. This is...well, I can't find the particular section right now but it is provided for later on.

Are there any questions on what the first assistant is, or what he does?

Mr. Henry Don't believe there are, Mr. Arnette.

Amendment

Mr. Poynter Amendment No. 1 [By Mr. Drew]. On page 7, delete lines 23 through 32 both inclusive in their entirety.

Amendment No. 2. On page 8, delete line 1 in its entirety.

Explanation

Mr. Drew Mr. Chairman, ladies and gentlemen of the Convention, I may be allowed to make a technical correction here. It should read on page 7, delete lines 24 through 32 instead of 23. 23 pertains to a previous section there.

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In order to explain this amendment I will have to ask you to also at the same time read Section 13. As was explained in presenting this section to the convention this is a procedure that is prescribed at this time as I understand it for the office of the attorney general. And under the provisions of Section 10 it makes a constitutional to all elected state officers other than governor and lieutenant governor. I am sure there is good reason that the committee put this provision in the constitution but let me call your attention to what we are asking the electorate of this state if this provision is adopted and made a part of our constitution. We are creating as a constitutional office of office of first assistant for every elected... statewide elected official other than governor and lieutenant governor. At the present time they all have an assistant. That in itself is not so bad but I see no reason to make a first assistant a constitutional officer. Of course the purpose of making this first assistant a constitutional officer is as written is up to Section 13. And I don't mean to be skeptical, I don't mean to cast reflections on any incumbents now or in the future. But let me call your attention to what could easily happen. I have seen similar things happen on local levels under a little different procedure. If this provision in Section 13, the present Section 13 as written is adopted, you would be asking the electorate of this state to elect these state officials blindfolded. Because all any incumbent would have to do and in particular a very popular incumbent who had served as long as he desired to serve would be to run for reelection, name his first assistant, have him confirmed by the Senate and resign. And then the electorate as that officer of statewide office of this state to serve out practically an entire four year term without ever having anything to say about it. Now with my vigorous stand that I have maintained for quite sometime about putting the three branches of government on an equal level, this may sound a little bit out of line with my usual stand but I do have an amendment to Section 13 which would do away with the possibility and I say it is a very definite possibility of asking the electorate to vote blindfolded and in this future amendment which I have to talk to because you have to consider it in connection with the present amendment before the convention. In that amendment instead of having the first assistant who is named by the official elected to public office I will suggest at that time by amendment that that office be filled by the governor with the advice and consent of the Senate. I think that that would do away with the possibility of setting up a succession in office that may be very detrimental to this state. I am not casting reflections. I am stating to you what the possibility is but personally I do not see fit to go home and ask my people to adopt a constitution with elected state officials that could very easily resign within thirty days after they are elected and name their successor.

Questions

Mr. Rayburn Delegate Drew, am I correct in assuming that any statewide officer other than the governor if he would vacate the office say within six months or one year after he had taken the oath of office then his first successor would serve out the remainder of his term if it was three years and eight months?

Mr. Drew If you go over to Section 13 as I read it. The order of succession in any other statewide elective office in the event of a vacancy in such office shall be the appointed first assistant. Such successors to such officer shall serve for the remainder of the term for which the official was elected.

Mr. Rayburn Well, do you interpret that to mean Mr. Drew, that if a state official would pass away or resign or make his office vacant after the first four months he is in there, his first assistant

would serve the remainder of the three years and eight months?

Mr. Drew I see no other interpretation, Senator.

Mr. Rayburn No other elected or public official has that prerogative do they?

Mr. Drew Not that I know of, no sir.

Mr. Tobias Harmon, I have one small problem. If you delete Section 10 in its entirety as written, there is nothing to say that the first assistant would possess the same qualifications as the statewide elective office. In that event how could... do you think it is proper that he should succeed to that office in any event, would you not want to require that he also have the same qualifications as the statewide elected official?

Mr. Drew That is the reason I said Mack, that you have to consider your vote on Section 10 in the light of Section 13. Every state official has a first assistant but it is not provided necessarily by the constitution. And if he does not require him to have the qualifications the purpose of that I am sure the committee put that in, in order to make Section 13 workable. You could not have a man who is not qualified serving. So I think we are having to consider Sections 10 and 13 at the same time.

Mr. Brown Could you tell me Mr. Drew, if your amendment passes, well then... you might have explained this and I didn't hear it, but how do you appoint the successor? If your amendment passes and the section is deleted then how does the successor appointed, do we go into Section 14?

Mr. Drew I have one that would provide it either by 14 or spell it out that it would be appointed by the governor with the advice and consent of the Senate. Let me go a little further Jim, I would have preferred because of the possibility of a three year and ten month unexpired term of having an election. But I think a statewide election for one official is rather an expensive matter and I will suggest that he would be filled by the governor with the consent of the Senate.

Mr. Brown I would agree with you and I have an amendment prepared to that effect. The only question I would raise in this section is that if you delete this section and possibly a month goes by there is no one really running the office... do you think we could consider the possibility of not deleting the entire section allowing a first assistant to be appointed with the example of say... something happening in the state treasurer, the first assistant would carry on the job for a couple of weeks until the appointive process would take place and any confirmation that might be necessary would also take place.

Mr. Drew Well, I think that the governor in any case as I appreciate the law, Jim, has the right to appoint if the legislature is not in session and it is confirmed at the next session. So I don't think you would have any break in the office so to speak.

Mr. Brown Well, that... you are saying if the governor is allowed to appoint someone without any kind of a confirmation process, is that...

Mr. Drew I don't know of any state office that can be appointed by the governor that has to be immediately confirmed. I think it is confirmed...

Mr. Brown Not now, that is right.

Mr. Drew Right.

Mr. Roy Mr. Drew, I like what you're trying to do, but I'm like Senator Brown, I don't see the need in taking out Section 10. I think it's good to have that in there. The only problem I see is

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in Section 13. If we deleted Section 13 wouldn't that obviate the danger you're talking about and simply provide that there shall be first assistants who can take over in an emergency without being appointed, necessarily?

Mr. Drew If your first assistant, and my objection there, Chris, is that we are, in effect, making a first assistant a constitutional officer which I don't think is necessary. If your first assistant is qualified, which I'd rather doubt that one who is not qualified would serve...

Mr. Henry Mr. Drew, you've exceeded your time, sir.

Mr. Drew I ask the adoption of the amendment.

Further Discussion

Mr. Jack I'll be brief on this. I'm with Mr. Drew on this matter. I don't believe in the elected official appointing his successor and if you adopt this amendment, that's what you're doing. Further over, there's another section for removal of statewide elected officials. That takes place where a majority of statewide elected officials find that they're not able to discharge their powers and duties of office. Now suppose you adopted this amendment and you had an elected statewide official that comes under it and he appoints his first assistant. Suppose at the time that elected official has an illness that is affecting him mentally and he appoints a person incompetent, then he dies. Now there you've got that incompetent first assistant. Of course I know he has to be appointed by the Senate. I mean confirmed by the Senate and all that, but up until that time I just believe when we pass the constitutional provision that we elect statewide, certain officials that that official, when he's elected, he shouldn't be able to turn around and appoint his successor. It's not consistent. I believe in electing these people, certain of you believe in the governor appointing them. But certainly this type of thing is ridiculous. It's neither one of those two. So I say let's defeat this amendment.

Questions

Mr. Stinson Mr. Jack, don't you think the head of that elective office is better qualified to say who could continue his policy in office than letting the governor make a purely political appointment to a job of that type? Someone that's never been in there and might go in and disrupt the entire procedure of that office?

Mr. Jack No I just said I didn't because you might as well, Mr. Stinson, as far as I'm concerned, if you're going to let that elected official name his successor, why not let that one name his successor and on down and make the thing inherited? The next thing, you don't have to let the governor appoint the person for the rest of the term. You can make, appoint him for a year and at the next election, elect the successor.

Mr. Stinson Well Mr. Jack, isn't it a fact under this it wouldn't be a question of inheritance of two centuries, it's just until the next election wouldn't it?

Mr. Jack I didn't understand you.

Mr. Stinson You said that they'd hand it on down by inheritance. It would only be until the next election, wouldn't it?

Mr. Jack Well yes, but that could be, under this material here, could be three and a half years or something out of a four year term depending on when the elected official dropped dead after appointing his successor.

Mr. Stinson Well, but isn't it a fact that most of those first assistants would be people that

had been in the department and knew the procedure and knew everything. There wouldn't be any disruption whatsoever during the two or three years. Why should the governor, who knows possibly nothing about it come in and appoint an entire stranger to that setup?

Mr. Jack Mr. Stinson, I don't know who they'd appoint. They might appoint, I don't want to step on any feet, members of the family, this that or the other. But you're arguing with me, you're not asking me a question.

Mr. Stinson No sir I wasn't. I asked a question.

Mr. Jack I don't know who they'd appoint.

Mr. Stinson Pardon me, Mr. Speaker, I respect age. I won't argue with Mr. Jack.

Further Discussion

Mr. Abraham Mr. Chairman, ladies and gentlemen, I must most emphatically disagree with the line or the tact that this argument is taking. This section has nothing to do with who succeeds to the office. I must disagree with Mr. Drew. We're arguing about who is going to succeed to the office and this section has nothing to say about that. This section simply sets the requirements and the qualifications for the first assistant. The present constitution provides that the various statewide elected officials shall appoint a first assistant but does not determine the qualifications. This section does that. We have placed limitations on the governor that in appointing his department heads they must be subject to confirmation by the Senate. We're doing the same thing here. We're saying that the statewide elected officials, in appointing their first assistant must have confirmation of the Senate and we're saying that he must possess the same qualifications as the elected official. Now, if we're going to talk about who is going to succeed to the office, let's talk about that when we get to Section 13. Mr. Drew has said that this makes constitutional the office of the first assistant. Well it already is constitutional. We have made constitutional the offices of the department heads that are appointed by the governor. If we're going to restrict the governor in his appointments of department heads, then we should do the same thing with the other elected officials. So I would beg of you to don't try to tie this in with Section 13 at all. Let's wait and talk about the successor to the office when we get to Section 13. I think that this section is necessary. If we don't, well then the elected official can appoint anyone that he wants. There are no restrictions as to who it may be, and what we're after is to getting good people for the office so that he can act in the absence of the elected official without any problem. So all we're doing here is placing the same limitations on the other statewide elected officials as we are on the governor in appointing his department heads.

Questions

Mr. Staag Mr. Abraham, isn't it true that it was in this section when there were only three statewide elected officials in the bill, i.e. treasurer, attorney general and secretary of state, that we were trying to place a limitation on those statewide elected officials which is the same kind of limitation that would affect agriculture, insurance and the others? Those limitations were one, that they had to be confirmed by the Senate so there would be some absolute control in the legislative branch that some nincompoop would not be appointed as a first assistant. Second, that that first assistant ought to have the same qualifications as that were applied to the elected state official. Now with these two limitations, do you not agree that this section has value and ought to be left in this bill?

Mr. Abraham Absolutely.

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Mr. Flory Mr. Abraham, why did your committee feel it necessary to give constitutional status to an assistant? As I appreciate it at the present time, those officials now have the authority to appoint assistants without limitation.

Mr. Abraham They have constitutional status right now. These assistants had it in the present constitution, Article 5, Section 18.

Mr. Flory What's the purpose though of the continuation?

Mr. Abraham Because we are giving constitutional status to the department heads that the governor appoints. We have placed limitations on the governor in that these appointments must be approved by the Senate and we want to do the same thing with these elected officials to be sure that they do get qualified assistants and that the Senate does have some control over them. That we do get the best people we can for the job.

Mr. Flory Couldn't the legislature prescribe the qualifications for assistants?

Mr. Abraham Certainly they can prescribe them.

Mr. Nunez Mr. Abraham, we keep speaking about qualifications. What type of qualifications are we talking about? Age and being an electorate?

Mr. Abraham We're not writing actual qualifications in the article. What we're saying is that he must possess the same qualifications as the official elected to the office so that if the attorney general appoints an assistant, that person must be qualified to serve as the assistant. Now, we're leaving up to the discretion of the Senate, then, to determine whether this man has the ability to handle the job. Now those are the qualifications we are really talking about.

Mr. Nunez Well other than the attorney general, generally speaking, the qualifications for an elected official on a statewide basis is being a certain age and being an electorate.

Mr. Abraham That's correct.

Mr. Nunez But we're basing a lot of our argument on the same qualifications on the person who was elected. Is that right?

Mr. Abraham The real meat of this thing is here is that the appointment must be approved by the Senate. We're doing the same thing with these people that we're doing with the governor. We're requiring the appointments to be confirmed.

Mr. Nunez And you believe that's protection enough to give the public the...the right to say not...

Mr. Abraham I hope the Senate protects the public.

Further Discussion

Mr. Denberry I rise to speak in opposition of Mr. Drew's amendment. Although I have the greatest respect for Mr. Drew, I think he is misreading this particular section. As I understand this section, and as I think the Committee on the Executive Department drafted it, it wanted to place the same restrictions on all statewide elected officials as it placed upon the governor when it came to making appointments. The governor, under our original draft, was to appoint certain of these offices which the convention has now determined to be statewide elected officials and required that the Senate confirm these people. Under the present constitution, the secretary of state, the comptroller, the treasurer, the commissioner of insurance and the custodian of voting machines each has the authority to appoint and remove at pleasure,

an assistant, who in the absence of his chief or in case of his inability to act, or under his direction shall have authority to perform all the acts and duties of the office. So the first assistant really is already a constitutional officer. Although Mr. Flory asked why we had to make him such, he already is. What we have added here, though, is that this first assistant must be approved and confirmed by the Senate, which we believe would make the officer who made the appointment a little more careful in his appointment. As Senator Nunez says, the specific qualifications are merely those which are the right age and the fact that he was an elector and so forth, but nevertheless, we would assume that the Senate, in our broad picture of balancing the powers of the legislative and the executive, would pay much more attention to the appointment of an assistant in this case because that assistant, not so much in connection with Section 13 which Mr. Drew has referred to, but in those instances where the elected official is out of the state or absent for the time being. There is no real vacancy in the office and yet someone has to run that office. We felt that the best person to run that office would be the man who was appointed by the elected official because the elected official may have been elected on a particular platform. I would permit the governor to appoint someone to act in his absence, the governor may have run on a different platform and yet the people elected a man who ran on a particular platform and therefore his appointee would be best suited to carry out these duties. Now if we get to the question of whether or not in the event of inability, permanent inability or disability to serve or death or resignation, the convention ultimately by election if there is enough time left. That's a different question. That doesn't come up now. As far as the Committee on the Executive is concerned, and as far as I am concerned, I believe that the proper person to make the appointment of a first assistant is the elected official. I further believe that the Senate should confirm that person. Now, when we get to Section 13, if Mr. Drew wants to introduce another amendment, that's all right. But I don't think we should delete present Section 10 in its entirety merely in order to take care of the possibility that vacancies in statewide elected offices should be filled in another way. I urge you to vote against the amendment. Thank you.

Further Discussion

Mr. Arnette Members of the convention, I must apologize. I don't guess I explained this section fully. The purpose of this section, as Mr. Denberry and others have said, is to make sure that the present situation of appointing a first assistant as it is in the present constitution is also subject to confirmation by the Senate. This is not to be confused with Section 13. If you don't like Section 13, let's talk about Section 13 when we get to it. But I think we need some safeguard on the appointment of a first assistant of each of these elected officials. I think the way we can do this is have a check on it by the Senate confirming these people the same way that the department heads appointed by the governor are confirmed. I don't think we ought to have an elected official who has more power to appoint his assistants than the governor has. This is the mere reason for having this particular section in here. Thank you.

Questions

Mr. Rayburn Mr. Arnette, I wish you would tell me, in the present constitution, where it provides for a first assistant for anyone other than the attorney general of the state of Louisiana?

Mr. Arnette It's in Article 5, Section 18, I think sir.

Mr. Rayburn It's in there pertaining to the

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first assistant and second assistant to the attorney general, but I don't think you'll find it for no other statewide officer. If it is, I can't find it.

Mr. Arnette Sir, if I could borrow someone's constitution, I could...

Article 5, Section 18 states in the second paragraph, "the secretary of state, the comptroller, the treasurer, the commissioner of insurance and the custodian of voting machines shall each have authority to appoint and remove at pleasure, an assistant, who in the absence of his chief or in the case of his inability to act or under his direction shall have authority to perform all the acts and duties of the office." This is exactly what we have presently proposed except, we in addition, put a safeguard on this particular thing and say he must be confirmed by the Senate. But this is our present constitution, Article 5, Section 18. We do have first assistants in there.

Mr. Rayburn Mr. Arnette, the present constitution says he shall have the "authority." This language says he "shall" appoint. That was my question. It says he "shall" have the authority to appoint if he so desires. The language here says "shall", which in my opinion is mandatory, which the other constitution is not mandatory.

Mr. Arnette Well don't you think that a man should have an assistant to his position?

Mr. Rayburn Well I think if he wants one and needs one he should, and that's what the present constitution provides. But if he thinks he can get by without one, I don't think we should force him to.

Mr. Arnette Well, Senator, I think all these people that we have presently elected ought to have at least one other person in the office with them.

Mr. Burns Mr. Arnette, inasmuch as we're discussing Mr. Drew's amendment in connection with Section 13, may I ask you, in Section 13 it provides that successors to such offices shall serve for the remainder of the term for which the official was elected. Down in Section 14 referring to such vacancies, it says the vacancy shall be filled at an election within six months as may be provided by statute...

Mr. Arnette Mr. Burns, I'm sorry, we're discussing Section 10, I thought, sir. We're not on Section 13 or Section 14.

Mr. Burns Well it was brought into the discussion so...

Mr. Arnette Well it was brought in by Mr. Drew, but I don't feel it had any place here.

Mr. Burns Well let me ask you this question then. Do you think that no matter how the first assistant is appointed or confirmed, do you think that if a vacancy occurs within four months, say at the beginning of the top official's term, that the first assistant should serve for three years and ten months or three years and eight months, or do you think that if it's for over a year that we should have an election?

Mr. Arnette Mr. Burns, I would like to point out to you, sir, we are not discussing Section 13. We are discussing Section 10.

Mr. Burns This is going to lead up to it.

Mr. Arnette Well, we'll discuss Section 13 when we get to it. I thought that was the orderly procedure we were pursuing.

Mr. O'Neill Mr. Arnette, under this provision, the person would have to be at least 25 years old

before he could be a first assistant. Correct?

Mr. Arnette That is correct.

Mr. O'Neill Well, you mean a man can serve in the House or the Senate at 18, but he couldn't be a first assistant unless he were 25?

Mr. Arnette I think if a man is second in order to the elected official, he should have the same qualifications. That's what we so stated, and that was the feelings of the committee.

Mr. O'Neill Well I'm waiting for you all to come back now, that everyone who serves in the department has to be at least 25.

Mr. Arnette Well you can wait, but we're not going to come back with it.

Further Discussion

Mr. Aseff Mr. Chairman, delegates, I too am a member of the Committee on the Executive Department. I cannot agree that we can consider 10, without considering 13. It is my opinion... I think in our discussion that we agreed, or I didn't agree, to subject the official to Senate confirmation because of Section 13. In other words, that he would succeed to the office... It is my opinion that Section 10 is not of constitutional status and should not be there unless you intend voting for Section 13 which provides that he shall succeed to the office in the event of a vacancy. In my opinion, the department head is responsible for his department and his first assistant should serve at his pleasure. He should have complete confidence in him. He certainly should not be sent to the Senate for confirmation. So I feel the decision is yours. If you're going to vote for Section 13, I suggest you vote for 10. If not, I suggest you support the Drew amendment.

Further Discussion

Mr. Burns Mr. Chairman and fellow delegates, I first want to say I'm in fair accord with the Chairman's suggestion just now that we try to be as brief as possible with reference to the rest of this article. The only point I would like to suggest to you, I tried to bring it out in a question just now, but I couldn't. That in considering Mr. Drew's amendment in connection with Section 10 and Section 13 referring to Section 14 which provides that a vacancy, if it's over... the vacancy shall be filled at an election within six months if it's over a year to run. I think that we should take that into consideration in voting on the Drew amendment and also when we get to Section 13. If you're in favor of not having the first assistant serve three years and ten months or three years and eight months or three years and a half of the principle office holder's term. Now whether you're in favor of it or whether you're not in favor of it, I think we should keep that in mind in voting on this amendment and on Section 13 as compared to the provisions of Section 14.

Question

Mr. Arnette I just have a very short yes or no answer, Mr. Burns. Are we on Section 10 right now?

Mr. Burns Yes, I think we are, yes. On Mr. Drew's amendment. All I'm suggesting, Mr. Arnette, and this is done many, many times. I'm not setting any precedent. I'm just suggesting that you look forward to the provisions of other sections of this same article in being able to arrive at an intelligent vote.

Further Discussion

Mr. Womack Mr. Chairman, fellow delegates, I'm

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going to go with the Drew amendment for the simple reason that I don't think that belongs in there. I think these first assistants probably would be better off statutory. But looking at the confirmation of the Senate as something that's really worthwhile, it's absolutely nothing. Even though it's confirmed by the Senate, the department head can turn around at will, if he's going to resign at 10:30 this morning, he can completely revamp. He can kick out his first assistant at 10:25, at 27, appoint an 85 year old uncle if he wants to, it doesn't make any difference, and there's no qualification really tied to it. He comes right back and he walks in the office. So I think, possibly, we'd be better off to go with this amendment, delete the whole thing and try to clean it up in Section 13 and 14.

Questions

Mr. Abraham But Mr. Womack, don't you agree that the language that we have in here which makes these appointments subject to the same procedures and limitations as the governor's appointments, ties this down? Because we place these people under the same limitations as the governor in making his appointments, and his appointments have to be confirmed by the Senate.

Mr. Womack Well, you don't say in here "that subject to the same limitations of the governor."

Mr. Abraham Yes it does. On line 30, it says "subject to the same procedures and limitations in connection therewith as are imposed upon the governor."

Mr. Womack Doesn't it say in there that he can, even though it's confirmed by the Senate, they are subject to removal at his will?

Mr. Abraham Subject to removal at his pleasure, but under the same limitations as the governor has. The governor may remove at pleasure certain officers.

[Previous Question ordered.]

Closing

Mr. Drew Ladies and gentlemen, just one more time let me tell you what we're doing. If we adopt this section, and we can't disengage and ignore Section 13 because that is tied in completely with it; we are establishing constitutional offices of first assistants. We are violating the separation of powers between the executive department and the legislative department and we are creating offices that could easily be as far as the Interim period of time in case the elected official is out of state, can be handled by statute. We are putting into this constitution matters that do not belong here. I do not see how you can go home and ask for your constituents to vote blindfolded for a state officer. I ask adoption of the amendment.

Questions

Mr. O'Neill Mr. Drew, do you foresee the possibility of the first assistant being a relative, perhaps, of the top man, and then being escalated up in case this person resigned or left?

Mr. Drew I think Mr. Womack came up with the answer there. I mean if the Senate did confirm, the next day that official could remove him at his pleasure, and appoint, if the legislature was not in session, he would serve until the next regular session and therefore would succeed up until that time. It is a matter that can be handled by statute. It's not a constitutional provision that should be in here.

Mr. Willis Mr. Drew, do you think...we've been talking about the wisdom of the legislature. Now let's apply that argument. Don't you think that

in its wisdom the legislature would not appoint pliant minion of power of that official?

Mr. Drew I didn't understand you, Burt.

Mr. Willis Don't you think that the legislature, in its great wisdom we've been talking about, would not appoint a pliant minion of power of the superior seeking confirmation? Did you all understand my question?

Mr. Drew I still don't understand you, what you're saying.

Mr. Willis Let us assume that the official would have the subterfuge of confirming somebody that the Senate would confirm. Then he has the right to withdraw him. Now when he reappoints another one, you still have to have that great wisdom of the legislature to approve him before he can supplant his superior. Isn't that correct?

Mr. Drew I don't know that it would be necessary. If so, then it's totally inoperative because if he removes his first assistant the day the legislature adjourns, then there would be no first assistant until the next session of the legislature.

Mr. Willis Well then if he removes him, he cannot engage in a subterfuge that was suggested a while ago from this podium.

Mr. Drew I say but there would be no first assistant, then. It's totally unworkable.

[Amendment rejected; 53-18. Motion to reconsider tabled.]

Amendment

Mr. Poynter The next set of amendments are offered by Delegate Asseff.

Amendment No. 1. On page 7, delete lines 27 through 32 in their entirety and insert in lieu thereof the following: "portion of the word 'tant' who shall serve at his pleasure. The first assistant shall possess the same portion of the word 'qualifications'."

Mr. Asseff In view of the fact that the convention has rejected the deletion and the possibility that we may succeed to the office, I withdraw my amendment.

[Amendment withdrawn.]

Amendments

Mr. Poynter Amendment No. 1 [By Mr. Brown]. Page 7, line 26, immediately after the word "governor" and before the comma, delete the words "and lieutenant governor."

Amendment No. 2. Page 7, line 27, immediately after the word "to" and before the word "confirmation" insert the word "public."

Explanation

Mr. Brown Mr. Chairman and fellow delegates, what I'm trying to do in this amendment, if you go on to the next section in line with the lieutenant governor, this is one of several amendments I'd like to offer to try to put in perspective how to appoint the successor. When we go on to Section 13, I have an amendment ready which will basically allow the governor to appoint the successor with the confirmation of the legislature and only until the next regular statewide election. Until the next regular statewide election, which would be the next congressional statewide election. So this is part of the package to try to clean all of this up, the first amendment. The first amendment merely says that if you're going to have an assistant that the lieutenant governor will also have one and this will fall in line right down the line. Let everyone have their appointed

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assistant. That's what Amendment No. 1 does. Amendment No. 2 does this. Since we're going to have the first assistant, and since he has to be confirmed by the legislature, I'm asking the convention to do it in public session. Now I want to apologize to the convention because I wasn't here last Saturday when a similar amendment came up for public confirmation. Apparently there was some misunderstanding about it. My wife had a party the night before, and I was a little tied down at the time. But it was brought up and it was defeated very strongly by the convention. From the discussion that I read about, there seemed to be some concern about going over public confirmations and whether or not you could hash this around in an executive session. This does not prohibit this whatsoever. It merely says that when the final vote comes down, you've got to do it in public session. In the legislature right now, in the Senate on some of these confirmations, I've voted on confirmations of appointments of the governor and I can't tell you how the vote came out because in the Senate we vote in the executive session and the vote was never announced. I don't know to this day how the vote came out. I don't think that's right. I think the public has a right to know how the final vote came out. If the Senate or the legislature wants to go into executive session, if a committee wants to hear testimony in executive session, this doesn't limit them whatsoever. It generally says, or it says in effect that when the final vote comes up, it's got to be done in public session. So that's the extent of the first two amendments and I also call your attention to the fact that I'll be coming up with the third amendment on Section 13.

Questions

Mr. Abraham: If I understand your amendment correctly, the first part of it allows the lieutenant governor to appoint an assistant. Is that correct?

Mr. Brown: That's right. In line with what we've done for everybody else. In other words, we rejected Mr. Drew's amendment, and therefore each statewide elected official will have...

Mr. Abraham: Well wouldn't you agree that we did this because these people will have departments to run whereas the governor and lieutenant governor are more or less overall. The question is, should you have a first assistant for the lieutenant governor?

Mr. Brown: Well, here's the reasoning behind this. Here's the reason I did it. In Amendment 13 that you have coming up next, I said that the governor shall appoint a successor, but he's got to be confirmed. This might be a several month process until he's confirmed. So to stay consistent, the thought behind this amendment is that the office is covered for the several month period until there is an appointment made and until someone is confirmed. We haven't, so far, given a lot of duties to the lieutenant governor in this constitution. But if by statute a number of duties are created, there will be someone to carry on. This is just staying consistent with everything else we've done.

Mr. Alario: Senator Brown, under the amendment you're proposing here if you allow the lieutenant governor to have a first assistant and under the way this article is written let's say he appointed the first assistant, had it confirmed by the Senate, then the lieutenant governor died, and this first assistant would now become lieutenant governor?

Mr. Brown: No, not at all. Mr. Alario, he would merely fill the roll and carry on the duties of the office. The office would continually keep going, he would carry on the normal functions-- he wouldn't be named lieutenant governor, he would carry on the functions of the office.

Mr. Alario: Senator, let me tell you what I'm worried about here and then maybe you can clear it up for me. I'm worried that he would be appointed into that position, hold that job and have all the responsibilities and duties that go along with it. Then let's say the governor died, then we have an appointed person who then moves up to governor without ever having to go before the people.

Mr. Brown: Well we haven't come to succession yet and I would be very much against that. Mr. Alario, I think it would be wrong and I think our line of succession will clear that up. I certainly hope so, because that's not my intention and I wouldn't want that to happen at all.

[Division of the Question ordered.]

Mr. Nunez: Senator Brown, on the Senate confirmation, doesn't the Senate now have a committee that holds hearings and thoroughly investigates the individual who has been submitted for confirmation and aren't these hearings public hearings?

Mr. Brown: They have that right to do so Senator, but I have gone to a number of these hearings that have been in executive session and I could go as a member of the Senate, but the public couldn't attend these meetings. It's up to the committee themselves, up to the committee chairman as to whether or not to allow public hearings or not. So they have that discretion but they also have the discretion to stay in executive session and I don't have any quarrel with that, that's fine. I'm just saying when the final vote comes, when it comes to the floor of the Senate and when the final vote comes it's by open public vote and not done in executive session. As I said to you, Senator, we voted a couple of times and I think you will remember back on some of the votes we voted on where the vote was never announced. I can't tell you 'til this day what the vote was that confirmed some of the appointees of the present governor.

Mr. Nunez: Would you say the basic reason for that is I recall a year or so ago there was an appointment made of a certain judge that evidently the governor had no knowledge of some of the background that he should have. When it came to light the Senate in their wisdom voted not to confirm him. To save further embarrassment, evidently to the family and to the man, he didn't get the job he had been serving, but I'll always assume that there was a reason for that. The public hearing gives the public an opportunity to be heard in the event they object or to bring anything in that should be brought up about the appointment. And then the final confirmation is done in the other manner simply to protect the individual who would be confirmed or not confirmed.

Mr. Brown: Well your point is well taken, and that's why I said this has no limit whatsoever on executive sessions. The committee can have an executive session, the Senate as a whole can have an executive session. And if the governor appoints someone to fill a position and that man's in trouble, I'm sure the governor would consider doing exactly what the President did when Mr. Gray was up for confirmation before the United States Senate. He saw he was in trouble and he just withdrew the appointment, told the man to step down. So if the guy is about to get embarrassed I think he will know that and if he is not going to get confirmed and that's a problem to him he can step on down. But in the final analysis, I think the public ought to know how it went in terms of the vote on the man being confirmed.

[Division of the Question ordered. Record
reopened. Amendment No. 1 read
and reported. 12-27. Motion to re-
open the roll. Amendment No. 2

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re-read. Record vote ordered. Amendment No. 2 adopted: 88-24. Motion to reconsider tabled.]

Amendments

Mr. Poynter The next set of amendments are sent up by Delegate Stagg. These are technical amendments that haven't been passed out, Mr. Chairman, that have the effect of correcting the section number. On page 7, line 24, change "Section 10" to "Section 13".

Amendment No. 2, page 7, line 25, change "Section 10" to "Section 13".

[Amendments adopted without objection.]

Recess

[Quorum call: 108 delegates present and a quorum.]

Amendments

Mr. Poynter Amendment No. 1 [By Mr. Landrum], on page 7, line 27, delete the comma after the word "Senate" and insert the following: "and House of Representatives, acting jointly."

Amendment No. 2, on page 7, line 29, immediately after "Senate" and before "in the", insert "and House".

Explanation

Mr. Landrum Mr. Chairman and fellow delegates, a few weeks ago we decided that the House of Representatives and the Senate, members to be elected to both Houses, we have the age dropped to 18. In other words that they were standing on equal footing. I'm of the opinion that all confirmation should be made up of both Houses, a committee of both Houses. Since they are two equal bodies then they should act in such a manner. This amendment is designed to do that purpose. To give the people a chance to express their opinions through the House of Representatives as well as the Senate. The House of Representatives is a larger body, means that it represents a smaller number of people. We will say that it is somewhat even closer to the people, and therefore the voices of the people should be heard. We would ask your support of the amendment.

Question

Mr. Abraham Reverend, following this line of reasoning then would you recommend that we would have the go back to page 4 where we deal with the appointments of the governor to all boards and commissions and agencies and have that changed to where all those people would have to be approved by the House also?

Mr. Landrum At this time, Mr. Abraham, we are dealing with this particular Section, I believe it's 10 or 11. But even on those appointments as well, I state that all appointments where you must have confirmation, then it should require both Houses to make such a confirmation.

[Previous question ordered. Amendments rejected: 24-82. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [By Mr. O'Neill], page 7, line 26, immediately after "governor" and before the word "appoint", delete the word "shall" and insert in lieu thereof the word "may".

Explanation

Mr. O'Neill Ladies and gentlemen of the convention, the language in Section 10 you currently have before you mandates these people to appoint

a first assistant. I believe the effect of this is to constitutionalize nine people and have an additional nine constitutional officers. I don't believe we should have that in this constitution. I believe this can be taken care of statutorily. "Shall" is a mandate word. I'm substituting the word "may." He may appoint a first assistant. And I think this would be more in line. Fifty-three of us voted in line with Mr. Drew to take the whole section out, but the majority didn't concur. I think the majority might concur to let it be permissive rather than mandatory.

Questions

Mr. Denney Aren't you assuming by virtue of your amendment, if you merely have a permissive appointment, that the section on succession in office is going to be completely changed? In other words, if there is no assistant appointed by the elected official then under Section 13 there will be nobody to serve during his absence from the... I think its Section 18, during his absence from the state and there won't be any method of appointing his successor in office should he die, under Section 13. Therefore, you are giving the Governor another appointment. It seems to me you have to consider the effect of your proposal on the balance of the committee proposal and I ask, have you done so?

Mr. O'Neill Yes sir, I have. And I'm still in favor of him having the permissive power to appoint a first assistant if he so chooses.

Mr. Denney So you don't see any problem of an absence from the state?

Mr. O'Neill No, I really don't.

Mr. Denney Thank you.

Mr. Roy Mr. O'Neill, doesn't the office holder without any constitutional mandate have the power to appoint if he chooses?

Mr. O'Neill Well, I believe if we insert the word "may", Chris, he would.

Mr. Roy Well, doesn't he have it without that... aren't you really now trying to just take out what we just passed awhile ago where the whole body said... "he shall appoint somebody." Isn't this just an in the back door type of amendment? To do away with what we have just done, because he's got the power now to appoint.

Mr. O'Neill Chris, I don't know what you are talking about. I don't believe we have passed on this section yet.

Mr. Roy We passed... we just beat down an amendment prior to this that you argued for... doing away with the appointment because you said it was allowing a state official to impose somebody on us that we didn't like. Now you have come back and you are saying "he may appoint", which any elected official may do now anyway. So what you are doing is deconstitutionalizing. In my opinion, what we have just done, aren't you?

Mr. O'Neill That's exactly what I'm trying to do, Chris. I'm trying to deconstitutionalize these people. I went for the amendment to take it all out and I still agree with that.

Point of Information

Mr. Leigh Mr. Chairman, I think my question is directed to you rather than to the speaker. But I would like to inquire, is it possible to move to defer final consideration of this section until consideration has been given to Section 13, the succession article?

Mr. Henry Inasmuch as we have the amendment up

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right now, it would not be in order, but once we dispose of the amendment such a motion to defer action on this or to pass over it would be in order, Mr. Leigh.

Mr. Leigh Mr. Chairman, the reason I ask that at this point is because as the speaker noted 53 members of the convention voted to do away with the section altogether. And this deconstitutionalizes the assistant as a constitutional officer and the voting on this can be influenced very largely by what happens in Section 13. If we are going to delete Section 13...

Mr. Henry Mr. Leigh, I understand what you are talking about, but you are sort of debating your proposition and it's not before the body right now. It makes sense, but it's just not appropriate to bring it up at this time. It's out of order.

Mr. Leigh Unless he should withdraw his amendment and let us bring...

Mr. Henry Well, he will have to withdraw his amendment before we can take care of what you want us to do.

Closing

Mr. O'Neill Ladies and gentlemen I want to point out that the current constitution has a provision very similar, if this one is amended to what I am trying to do. That it allows these people to appoint assistants, permissive rather than mandatory. I urge you to accept this amendment and please don't create ten new constitutional officers in this constitution.

[Motion for the Previous Question on the entire subject matter.]

Point of Information

Mr. Leigh If the vote is affirmative here and the whole subject matter is considered, will that prevent my moving to defer consideration of this subject?

Mr. Henry Yes it will. Yes, sir. Now, gentlemen, wait just a minute, before we start all of this point of information and all of this business. I have been about as patient as I know how to be on these motions, but for goodness sakes listen to what's going on so that we won't have to go through the rigors of all this...

[Record vote ordered. Previous Question ordered on the entire subject matter: 59-54. Amendment rejected: 40-7.]
Motion to reconsider tabled. Section passed: 75-38. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter "Section 11. Vacancy in Office of Governor.—Section 11. The order of succession in the office of governor in the event of vacancy shall be: (1) the elected governor, (2) the elected secretary of state, (3) the elected attorney general, (4) the elected treasurer, (5) the presiding officer of the Senate, (6) the presiding officer of the House of Representatives and then as may be provided by statute. Successors shall serve the remaining term for which the governor was elected.

Point of Information

Mr. Thompson We changed some sections yesterday to 10 and 11 or something. Isn't this going to make these automatically be changed to some other section?

Mr. Poynter We have been adopting the previous section. We adopted a technical amendment to

change that one, I believe, the correct number was 13. We changed the present Section 10 to 13 because we added three new sections in there and Mr. Stagg will have technical amendments to change Section 11 to Section 14 here on this section.

Mr. Henry It won't be reflected of course on your copies, but we are taking care of it, Mr. Thompson. The point is well taken.

Explanation

Mr. Duval I'm sure this is a very uncontroversial section. It's quite self-explanatory. I might point out that it provides that the order of succession shall be the elected lieutenant governor, secretary of state, the elected attorney general, elected treasurer, the presiding officer of the Senate, the presiding officer of the House of Representatives, and then as may be provided by statute. The word "elected" is used merely to obviate the problem in the event there was a vacancy in the office of say lieutenant governor, and then one was appointed by the governor or however else he would get there. He would not succeed in that he was not elected. Then the elected secretary of state would succeed. I think it's basically self-explanatory and I move its adoption.

Question

Mr. Munson Mr. Duval, I wonder if you would tell us the reasoning behind this section in putting the elected attorney general and the elected treasurer in this order, high order of succession.

Mr. Duval In that they are elected statewide to very crucial positions. I might point out that the present constitution Article V, Section 6, provides the order of succession in the event of a gubernatorial vacancy as follows: lieutenant governor, president pro tempore of the Senate, and secretary of state as interim successor, when the president pro tempore is yet to be selected, and the rest provided by statute. We merely felt that since these other officials are elected statewide and the president pro tempore of the Senate is not, that perhaps these crucial statewide elected officials should be higher in the line of succession.

Amendments

Mr. Poynter Amendment No. 1 [by Mr. Stagg], on page 8, line 2, change Section 11 to Section 14. Amendment No. 2, on page 8, line 3, change Section 11 to Section 14.

[Amendments adopted without objection. Previous Question ordered on the Section. Section passed: 105-9. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter "Section 12. Vacancy in Office of Lieutenant Governor.

Section 12. Whenever there is a vacancy in the office of lieutenant governor, the governor shall nominate a lieutenant governor, who shall take office upon confirmation by a majority vote of the elected members of each House of the Legislature."

Explanation

Mr. Stovall Mr. Chairman, fellow delegates, the 1921 Constitution provides that in the event of a vacancy in the office of the lieutenant governor, the president pro tem of the Senate shall discharge the duties of the office. Your Committee on the Executive Department felt that this does not properly maintain the separation of the different branches of state government. The 25th Amendment to the United States Constitution provides that

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whenever there is a vacancy in the office of the vice-president, the president shall nominate a vice-president who shall take office upon confirmation by a majority vote of both Houses of Congress. We of your Committee for the Executive Branch felt that this was a more reasonable pattern for us to follow and to recommend to you for your consideration. So this is what we are saying, that the governor shall nominate a lieutenant governor who shall take office upon confirmation by a majority vote of the elected members of each House of the legislature. One of the obvious reasons for this is that it saves the cost of a statewide election. I've been advised that the cost of a statewide election would be in the neighborhood of \$800,000. Now, obviously this is a large amount of money and we feel that this is an alternate proposal which will be very satisfactory. Let me remind you that the lieutenant governor may be given specific duties by this constitution or by statute. And the appointed person could continue these duties. And also let me remind you that he will be appointed by an elected governor and confirmed by both houses of the elected legislature. Which assures that the people will have input into the appointment and the confirmation. I encourage your adoption of this section.

Question

Mr. Burns Reverend Stovall, as I understand your statement your objection to an election if it's for a long term for which the successor would be appointed, was the cost of a statewide election, of approximately \$800,000. Would you object to an amendment that it would be until the next... until the next general congressional election? At which there would be no additional cost to fill this unexpired term?

Mr. Stovall Mr. Burns, the cost of the election is one of the reasons why we followed this procedure. Another reason was the uninterrupted continuation of programs by the governor and the lieutenant governor. Your committee feels that this is the best approach. It would assure compatibility between the governor and lieutenant governor for the remainder of the governor's term. And it would not inject a political issue into the term of an elected governor.

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Brown and Mr. Juneau]. On page 8, delete lines 11 through 15 both inclusive in their entirety and insert in lieu thereof the following: "Section 11 through 21. Delete lines 11 and 15. Make that through 21 both inclusive... in their entirety and insert in lieu thereof the following: "Section 15. (with the renumbering process) Vacancy in Office of Statewide Elected Officials.

Section 15. Whenever there is a vacancy in the office of any statewide elected official, other than the governor, the governor shall nominate a person to fill such vacancy who shall take office upon confirmation by a majority vote of the elected members of each house of the legislature during a legislative session. However, temporary approval may be obtained by the written consent of a majority of the elected members of each house of the legislature during an interim period. Until such time as the appointee to the vacancy is confirmed by the legislature, the first assistant to the vacant office shall serve in such office except in the office of the lieutenant governor. Once the appointee has been confirmed he shall serve until the office is filled by election. Such election shall take place at the time of the next regular congressional election.

Explanation

Mr. Brown In looking over this amendment I was concerned, as were other delegates, in the process of letting the first assistants fill out the term,

fill out the term for what might be three or four years, for a number of reasons. It seems like this might be open to a lot of abuse. You might have someone run for reelection and then step down after a very short period of time and hand it to his successor. You might have the statewide elected official indicted and maybe his number one assistant might also be indicted too, and maybe the third one might be too. So to balance the thing out, this amendment says that, basically, when there is a vacancy in the office that the governor shall make an appointment to fill the office. The legislature would have to confirm this appointment by a majority vote and it would take both houses of the legislature. Now a number of people have asked why can't just the Senate do it? We did allow the Senate to confirm the first assistant but in this case we are talking about a major statewide official and in a case like this it is my feeling that we should let the entire legislature confirm such an individual. There is a provision for the temporary approval. This is in for this reason. Say that the vacancy comes about in September. There are six or seven months until the legislature meets again. Therefore in a case like that the governor by a written ballot could obtain the majority approval for the temporary time until the legislature comes in session. But it is the intent of this amendment that the legislature would then again have to confirm when they come back into session to make the appointment final. You will notice also that there is also an exception of the office of lieutenant governor in allowing his assistant to serve because we beat down the amendment giving a first assistant to the lieutenant governor and that is why it says what it does. The final provision says that the man will not serve out the entire term. He will only serve until the next regular statewide election and if you think it out, the next regular statewide election that we have other than our four-year election where we elect our governor is the congressional election and that is why it is worded in that way.

Questions

Mr. Duval Delegate Brown, one thing that concerns me about this amendment you require temporary approval by the written consent of the majority of both houses. In the event that this consent was not approved through this, I assume it would be by a mail ballot or something like that, you could have no attorney general. Since the governor cannot make a straight flat interim appointment, am I correct in assuming you would just would plain have no attorney general?

Mr. Brown Not at all. What would happen, we would revert back to what the committee originally proposed. The first assistant would be operating the office. That is what the committee proposal wants to do for the entire term and so that is our safety valve. If the legislature by written ballot doesn't approve the appointment of the governor, the first assistant keeps right on serving just as was the intention of the original committee proposal.

Mr. Duval Well, I may be incorrect, but is it your impression that Section 10 that was adopted provides that the first assistant shall succeed to the office in the event that no ballot is approved by the legislature?

Mr. Brown It is my impression that that Section 10 says that the first assistant shall run the office and shall take over the duties. I don't think you would call him, in the example you used, the attorney general, but I think he is the acting attorney general who is running the office. That was the intent of the committee proposal. I just didn't think we should leave it up to the first assistant to sit there for what might be more than three years. I think that if you have a vacancy the people should pick their successor. It is

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just too important on a statewide level.

Mr. Duval I don't take any exception to that, sir, it is just that I am wondering if temporary mail ballot would be too unwieldy?

Mr. Brown I think the only other possibility would be to call a special session of the legislature. Of course that is very, very expensive and it is a question of whether this convention wants to state that we call a special session of the legislature merely for the purpose of confirmation.

Mr. Duval Do you know how it is presently done, under the present law when there is a vacancy in the statewide...?

Mr. Brown As it is right now, the governor can appoint anybody he wants to. There is no confirmation, there is no approval, there is nothing of this kind right now.

Point of Order

Mr. Denney The point of order is that under Rule 10-45 when a proposal is up for third reading, etc., it shall be read, debated and acted upon separately by sections.

Mr. Henry Your point is well-taken and I was going to raise it myself. The amendment is out of order because it addresses itself to the section that we are to be considering, to the section that will come up next. Since we are not considering section, well it would be Section 13 so far as you and I are concerned number wise, we can't amend that section. Technically we can correct that insofar as your amendment is concerned, Senator Brown, if you so desire. Otherwise your amendment is going to be out of order.

Point of Information

Mr. Brown Mr. Chairman, the old Section 12 as I understand it deals with...it talks about the lieutenant governor replacing the lieutenant governor. Isn't that correct?

Mr. Henry Yes, sir, but you are taking old Section 12 and old Section 13 out with the same amendment. We are not considering Section 13.

Mr. Brown Right. Well I am just putting a lot more in Section 12 than is already there.

Mr. Henry You are also eliminating what is in Section 13 now, and the amendment is out of order.

Mr. Brown What would the chair suggest I do then?

Mr. Henry I propose that you withdraw your amendment and let us correct it for you sir.

Mr. Brown What is involved in the correction?

Mr. Henry Making it right. Go ahead and explain it to him, Mr. Clerk.

Mr. Poynter I think what you could do is go back to the way you had it drafted. Just delete lines 11 through 15, let the convention determine whether it wishes to accept your language, and then if it does accept your language you could propose an amendment when we take up the section just to delete that section in its entirety. In fact I understand some amendments to that effect are already drafted anyway so I think we would be in real good shape that way.

Point of Information

Mr. Abraham He is covering in here...and he has made an exception to the office of the lieutenant governor and so really this is not germane

(S) 12 at all

Mr. Henry Well, we are fixing to get it straightened out, I think. Senator Brown, do you want to withdraw your amendment and resubmit it?

Mr. Brown I would like to do so, Mr. Chairman.

[Amendment withdrawn and resubmitted with correction.]

Questions

Mr. Alexander Senator Brown, there is a law which stipulates that if an office becomes vacant it is mandatory on the part of the governor to call an election if the term has more than a year to run. Would your amendment more or less do away with that? With the spirit of that law?

Mr. Brown Reverend, the law that you are referring to does not apply to statewide officials. The law that you are referring to refers to officials other than statewide officials. At least it is my understanding that would be the case. The way it is right now as I appreciate it is that the governor has the right to make the appointments for the remaining period of the term and not until the next regular election. The reference you're making to would be other elected officials in the state.

Mr. Alexander I see. Now under your stipulation here where you say next regular congressional election. Could that not be nearly two years?

Mr. Brown Well, Reverend, it possibly could. The only alternative I can see to overcome that is to let the governor call a special election. However, what you would be getting into would be not one election but three elections; the first primary, the second primary and a general election. We would be talking about millions of dollars to carry on three elections. So out of deference to saving that kind of expenditure, it was the feeling that by letting both Houses of the legislature approve the appointment that you were getting a good feedback and feel from the entire people in picking the guy in the first place. Then when the next congressional election came up, which would be the first time an election would come up when it wouldn't cost the people anything, then you would have the election. Instead of going ahead and paying for three statewide elections for just one post.

Mr. Roy Jim, I agree with what you are trying to do and I have a question that relates to what Stan Duval raised. As I understand it, when there is a vacancy, the first assistant would serve in the interim during which either the governor would appoint with confirmation of the House and Senate, and/or then your other section provides until such time that the appointee to the vacancy is confirmed...no, you do allow for a temporary approval by written consent of the majority of the elected members of each House and I am worried as to whether we are not getting into a conflict. You see it appears to me that if the first assistant starts serving and there is no confirmation by both houses yet with a letter, a written consent, somebody is going to have to supercede somebody. The temporary appointment by letter may do away with the first assistant who is serving but it doesn't really say that because it later says until such are approved. It seems to me that there is a problem there that we may get into. I don't know if I have made myself clear, but your provision says "however temporary approval may be obtained by the written consent of a majority of the elected members of each house of the legislature during the interim period." Then it goes on to say though "until such are approved the appointee is confirmed" not temporarily agreed on, that first assistant serves. So I don't know what's happening here and I am a little concerned about it.

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Mr. Brown Well, the only...I'll try to answer your question the best I can. It is the intent of the amendment to allow the first assistant to serve up until the time a vote is taken by the legislature either by a written ballot, if they are not in session or, if they are in session. Once that vote is tabulated and confirmation is given, then it is the intention of the amendment that the person so voted on and confirmed will then take over the office.

Mr. Roy I know what you are saying, but it doesn't say that to me right now.

Mr. Tate Senator Brown, wouldn't your intent be more clearer if you said until such time as the appointee to the vacancy is confirmed or approved, the first assistant shall serve. In other words, it is internally inconsistent in that it seems to say you can have a formal confirmation and until that formal confirmation the first assistant shall serve and then it has an interim approval, a temporary approval, and if your intent is that the temporary approval by the majority of the legislators' written consent supercedes the first assistant, it seems to me you would need the two words "or approved", the technical amendment until the vacancy "is confirmed or approved."

Mr. Brown Judge Tate, I would see nothing wrong with doing something like that and I don't know whether the chair would require us to go prepare a written amendment to add the words "or approved" or not. I would certainly have no objection and think the point is well-taken. If we could find some way to do it here real quick, I would be happy to go along with it. If the chairman will allow me...Judge, if you could just ask them to put that together real quick over there, maybe we could do it here real quick and put that in. I have no objection to that.

Mr. Stinson Senator Brown, I am for your amendment. I am concerned about the last sentence you said that the election would be at the next regular congressional election. That could extend the term past the statewide election. Don't you think it should be the next statewide election? I foresee that the end of the four year term, he would wait until the next congressional election to run instead of running at the statewide election for that office.

Mr. Brown Mr. Stinson, here is what I am trying to get around. With your background and wisdom and you have been over these things a lot more than I have and I'll certainly defer to your suggestion in something like this. How do you define statewide election? We have a period once every two years when we have a congressional election in eight congressional districts yet we do not elect a U.S. Senator and no other statewide official. It is really eight different elections which are in effect a statewide election, and the only problem you would have would be in the case where possibly a congressman was unopposed and therefore they didn't have an election in that race. We haven't had that in some time but that could be the possibility. But I didn't want to say statewide election because there is often a four year gap from one time to another when we have statewide elections. I didn't want us to go more than two years...

Mr. Stinson Couldn't you say the next regular congressional or statewide election?

Mr. Brown Your point is well-taken and I would agree to that.

Mr. Stinson I am afraid this is going to extend it even beyond the regular term.

Mr. Brown Your point is well-taken, Mr. Stinson. If you could in some way help me to prepare a quick amendment to add those two words I would

greatly appreciate it.

Point of Order

Mr. Stinson Mr. Chairman, a point of order. Could we make that amendment? You made one other amendment for him.

Mr. Henry You will have to withdraw it again.

Further Discussion

Mr. Brown To save some time, Mr. Chairman, we have two little two word parts we would like to add and I will go by the suggestion of the chair.

Mr. Henry You can do it on this amendment. Where and what are the two words, Senator Brown?

Mr. Brown On the second to last line, Mr. Stinson, if I understand correctly you wanted to say "shall take place at the time of the next regular ..." and then add "or statewide" the two words "or statewide." Is that correct?

Mr. Stinson No, "the next regular congressional or statewide election."

Mr. Brown Regular congressional or statewide, after the word "Congressional."

Mr. Stinson Mr. Chairman, if I am in order, I would like to move that we recess until one-thirty for lunch.

Recess

[Quorum Call: 103 delegates present and a quorum. Oath of Office administered to Robert Pugh. I Journal 7-8.]

Personal Privilege

Mr. Blair Mr. Chairman, ladies and gentlemen of the convention, I regret to announce the death of the late Trent L. James, assessor of Rapides Parish for fifty-four years. This gentleman was elected fourteen consecutive times. As you know, his first assistant, Mr. Charlie Slay, is a delegate here in the constitutional convention. Mr. Trent helped organized the Assessors Association and has been very active in this state for many, many years. Funeral arrangements, tomorrow at Alexandria, Louisiana at the Hixon Brothers' Funeral Home at ten o'clock a.m.. May we, with your permission Mr. Chairman, have just a few moments of silent prayer in memory of this great gentleman.

[Amendment withdrawn.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Brown], on page 8, delete lines 11 through 15, both inclusive in their entirety, and insert in lieu thereof the following: "Section 15. Vacancy in office of statewide elected officials:

Section 15. Whenever there is a vacancy in the office of any statewide elected official other than the governor, the governor shall nominate a person to fill such vacancy who shall take office upon confirmation by a majority vote of the elected members of the each House of the legislature during a legislative session. However, temporary confirmation may be obtained by the written consent of a majority of the elected members of each house of the legislature during an interim period. Until such time as the appointee to the vacancy is confirmed by the legislature, the first assistant to the vacant office shall serve in such office except in the office of lieutenant governor. Once the appointee has been confirmed, he shall serve until the office is filled by election. Such election shall take place at the time of the next regular congressional or state-

wide election.

Explanation

Mr. Brown Mr. Chairman, fellow delegates, the amendment that we have is similar to the amendment before. It merely makes two minor changes. It changes the words "temporary confirmation" to "temporary approval," which was the suggestion made by Judge Tate. It also adds the words "statewide election" on the end of the amendment which Mr. Stinson suggested to cover the possibility of a statewide election coming before the congressional election. I have had a number of questions asked and I've explained the amendment to a certain degree. I will certainly entertain any further questions of explanation if there are any at this time.

Further Discussion

Mr. De Blieux Mr. Chairman, ladies and gentlemen of the convention, I certainly dislike having to oppose my good colleague in the Senate, Senator Brown, on this particular amendment, but I do think that it is of sufficient import that we should discuss it a little bit so that we can understand exactly what we are doing here. First, let me say this, that even though it is applied only to one particular section that we are studying now, it really involves two sections because if we pass this particular provision then certainly the section which is presently number 13 we would have to delete. Now, at the present time this takes in both the lieutenant governor and the other statewide offices. We have previously passed a section which would give each statewide officer the right to name a first assistant. I feel reasonably certain that anyone winning a statewide election would have some sort of a platform as to how he intended to operate that particular office. If he didn't have such a program as that, I don't see how he would stand much chance of winning on that basis. If he has set up his office, even in spite of what they say about somebody resigning right away after being elected and letting his first assistant take the office or something of that sort, in spite of all of that argument he certainly would have set it up so that the office could operate in the manner which he had run on in his platform. He certainly is not going to have a first assistant who is going to be opposed to his policies and going to disrupt the office. If there is a vacancy in the office for any reason, death, resignation or whatever, to allow a complete newcomer to be picked out of thin air by the governor and put into that particular office is going to cause a disruption in the operation of that particular office. I have no objection to the election of a new person to that particular office at the next statewide election. I certainly feel like the first assistant, if he wanted to continue in that office, should have to submit himself to the electorate at the next statewide election, but to say that that first assistant cannot take over and operate that office until the next statewide election I think is going to do a disservice to the taxpayers and to the program and operation of the particular office with which he would be dealing. I just ask you to consider that before you decide to approve an amendment of this sort with this great a magnitude. Therefore, I am opposed to the particular amendment.

Further Discussion

Mr. Duval Mr. Chairman, fellow delegates, I rise in opposition to the amendment for the primary reason of the clause "however temporary confirmation may be obtained by the written consent of a majority of the elected members of each house of the legislature during an interim period." In my opinion, with all of the legislators scattered over the state, they could not intelligently decide whether to confirm or not without a hearing,

a way of looking into the background of this person to determine if it is a good appointment or not. If they give the written confirmation without such a hearing, I think it is tantamount to actual confirmation because I seriously doubt if once he has been confirmed in that manner that he would not be officially confirmed when the legislature is in session. I object to that language. I don't think it is workable, and I urge your defeat of the amendment on that basis. Also, it doesn't say when it's going to be done, what is the time limit for the written ballot, the mechanics of it are not set out, it is totally unworkable as I see it. I urge your rejection of the amendment.

Further Discussion

Mr. Stovall Mr. Chairman, fellow delegates, let me remind you that the section with which we are dealing at this time is the section which deals with the successor to the lieutenant governor and it states that the governor shall nominate a lieutenant governor who shall take office upon confirmation by a majority vote of the elected members of each house. It seems to me that we should deal with this section and then we can deal with the other matters relating to successors in other offices. I would remind you that the lieutenant governor is one who stands in a peculiar position to the governor and it is important that there should be continuity and compatibility in this office. And the provision which is set forth for us in the section from the Executive Branch Committee provides for that kind of continuity and compatibility. Now when you get to the next section if you want to deal with some changes in successors in other offices, you may be permitted to do so. Delegate Denney here advises me that he has an amendment which will bring about some of the things which are provided in the amendment submitted by Senator Brown at this time. Let me remind you that this constitutional provision provides for the legislature to share in the selection through the process of confirmation and this process should be a very careful process whereby the legislators have a hearing and have an opportunity to look into the person who is being proposed. The amendments presented by Senator Brown simply says that a mail ballot could give temporary confirmation. As Delegate Duval has so well stated, this is relinquishing the responsibility which should be the legislatures when they deal in a meaningful way with confirmation. And I would remind you that we are presently dealing with the section that deals with the powers of the executive department. It seems to me that the governor should have some authority here in saying who this is going to be. Last week we dealt with the legislative branch. We gave increased powers to the legislature. Here we want to maintain a proper separation of powers by giving adequate power to the governor to deal with an emergency of this kind. I encourage you to defeat the amendment that has been presented by Senator Brown and then let us proceed.

[Previous Question ordered.]

Closing

Mr. Brown Mr. Chairman, fellow delegates, I want to make two brief points. First of all, there are some questions raised to me about the fact that Section 13 we stopped at line 15 rather than line 21. The purpose of doing that is that I will have another set of amendments coming back up after this to delete what is your Section 13 in your yellow copy. That's the procedural method we are doing this and that's why there is a confusion. Now Reverend Stovall and Delegate Duval both raised some questions about the temporary confirmation method. Let me just tell you briefly that the purpose of this is that there could be up to a year's period of time when there wouldn't be anybody in the office and that first assistant would serve during that year's period of time.

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I think Mr. Dennery has an amendment coming up possibly that says that the first assistant should serve up until the time that an election takes place. Here is why I would object to that. I think that whoever is elected to this statewide office is not going to pick his first assistant thinking in terms of this is going to be the man who is going to succeed me. He is going to pick a man who is going to probably be the nuts and bolts, behind the scenes working horse of the office. Not particularly a person who is people oriented in terms of dealing with the people and fulfilling the overall perspective of the job. I think in an instance like that we need a man who ideally is elected statewide but until that time comes this provision at least gives the entire legislature a chance to confirm the man, giving some type of protection to give a people oriented type man for the position. That is the purpose of the temporary confirmation. We would have to wait an entire year in some instances for the legislature to be in session to actually confirm the man and to keep some assistant from sitting there a whole year with the office, this was the idea of the temporary confirmation. So this is a compromise we have tried to work out amongst a lot of suggestions and I would ask your favorable approval.

Questions

Mr. Willis Senator Brown, I have four questions to be frank with you. Who receives the written consent that you talk about? Let me ask you all the questions.

Mr. Brown I'll take one at a time. We have an election process to do this right now in terms of mail ballots in a number of things we do. This would be part of the secretary of state's function.

Mr. Willis But that's not set out in the constitution.

Mr. Brown Granted, I guess we could set out every single detail like that, but no, it is not laid out in great detail.

Mr. Willis So that you would agree that it has no bottom.

Mr. Brown Has no what?

Mr. Willis It has no bottom. It contains nothing. When and where are these consents received constitutionally? If you put it in the constitution, you should put the mechanics. Then, where are they filed as public records? Who tallies these consents?

Mr. Brown I think you are asking a number of questions all dealing with procedure that can be taken care of by statute and that does not have to be itemized out in the constitution. I don't think it is necessary.

Mr. Willis But the constitution doesn't say that the statutes shall provide for these mechanics. That is the problem.

Mr. Brown If you want to prepare an amendment to come back on that I would have no objection.

Mr. Willis No sir. All I want to do...

Mr. Dennery Mr. Brown, do you recognize that the fabric of the executive article as it was originally drawn was to attempt to dilute power so that all the statewide elected officials would have their appointments and the governor would have his appointments?

Mr. Brown What is your question, Mr. Dennery?

Mr. Dennery I say do you recognize that the fabric of the way we drew this article provides for a distribution of this power within the

executive branch and not the concentration of the power within one office?

Mr. Brown Well I think we are trying to reach a balance of distribution along with competency and I think the point you are trying to make, Mr. Dennery, is that this puts a little bit more power in the governor. I would agree with you except that we do have the check that the entire legislature would have to confirm the person involved, and I follow up the point I made earlier about who the assistant must be. We are looking at the national level right now of the two top executive assistants to the president of the United States, the two top people who run his office. I for one wouldn't want one of those two men to be president of the United States. So what I am saying is there is a problem in terms of the kind of people you pick as your assistant. That is why I mentioned the people orientated type approach to the thing.

Mr. Dennery Do you recognize that if a statewide elected official has this knowledge and knows that the possibility would exist that his assistant would succeed him, would he...?

Mr. Brown I don't think there is a man who is elected statewide in the state right now who thinks that in the next three years before the election comes up that something is going to happen to him and that he is going to be removed from office. I don't think that would enter into the consideration of anyone picking their assistant.

[Amendments rejected: 43-70. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendments sent up by Delegate Juneau.

Amendment No. 1, page 8, line 13, immediately after the word "the" delete the remainder of the line and lines 14 and 15 in their entirety and insert in lieu thereof the following: "presiding officer of the Senate shall discharge the duties of lieutenant governor and receive the emoluments of that office".

Explanation

Mr. Juneau Mr. Chairman and fellow delegates, what I have done with this amendment is substantially track the language of the present constitution with regard to what occurs in the event of a vacancy in the position of lieutenant governor. I have not gone into the other sections and have not done violence to Sections 13 and 14 which you will take up in due order. What I have provided by this amendment is to say that in the event there is a vacancy in the office of lieutenant governor that that vacancy will be filled by the presiding officer of the Senate. As it is in the present constitution that official is filled by the President Pro Tempore of the Senate, but as you are well aware, when we adopted the legislative article, that the procedure we now have or will have will be that the Senate itself will elect its own presiding officer. The reason I did this is because I thought that if we're going to put someone in the position of lieutenant governor that he ought to be an official who has subjected himself to the elective process of this state. For that reason, that's why I have and retain the concept that it be the presiding officer of the Senate.

Questions

Mr. Bollinger Pat, would the presiding officer of the Senate resign to fill the vacancy or would he remain as the presiding officer of the Senate?

Mr. Juneau It is my understanding that he would

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perform in the capacity of the lieutenant governor and it would necessitate that they elect another presiding officer during that vacancy period.

Mr. Bollinger Would he remain as a member of the Senate?

Mr. Juneau No, sir. I might add in further answer, Mr. Bollinger, that would be the same case today if the President Pro Tempore were to assume the position of the lieutenant governor.

Mr. Bollinger Is not the situation different today in that we are considered to have an overlapping or an intertwining of powers between the executive department and the legislative department, and we are trying to diversify that, in fact, we did in the legislative article, so that... you can't say the problem would be the same in the present constitution as in the 1921 constitution. Is that correct?

Mr. Juneau Well, I'm trying to answer the question this way, Bossie. The question was "what would happen to him in the Senate position?" My position would be he would be removed in that event.

Mr. Arnette Mr. Juneau, according to the previous section, Section 11, that we just adopted, the lieutenant governor who is not elected would not succeed to the office of governor. Isn't that the case?

Mr. Juneau That's correct.

Mr. Arnette O.K. So, is there a point in particular of having this man subject to an elective process since he's not going to become the governor of the state?

Mr. Juneau Well, your point is well taken, Mr. Arnette. It's just a matter of philosophy of whether you want someone possibly to serve in the position of lieutenant governor who has never been an elected official and has never gone through an elective process. I just happen to personally feel that in that degree of importance in this state, he should have been an elected official.

Mr. Arnette But you would agree that he could not become governor in any case?

Mr. Juneau I agree with that. That's right.

Mr. Lambert Mr. Juneau, how long...this may be answered in another section; if it is tell me about it...how long would, say if a presiding officer of the Senate would fulfill a lieutenant governor's vacancy say, right after the lieutenant governor were elected; how long does he serve? Does he have to run at the next general election, at a special election, or does he serve for four years, or what?

Mr. Juneau Well, it's my understanding that, of course, the vacancy provision with regard to lieutenant governor would be the same as to duration as it would to all other provisions. That's 13, 14, and 15. It's my appreciation that they serve out, as I recall, the term of that office, and I could be corrected on that.

Mr. Lambert In other words, the answer would be, would serve for four years. It wouldn't run at the next general election or...

Mr. Juneau That's my appreciation, Mr. Lambert.

Mr. Burns Let me see if I understood your answer to the previous question correctly. Under your amendment would the presiding officer of the Senate for instance be able to serve three years and 6 months? Because as I see it this section is separate and distinct from Section 13 and wouldn't be affected by the provisions of Section

13. It says "in all other offices other than the lieutenant governor".

Mr. Juneau That's my understanding, Mr. Burns.

Mr. Denney When the presiding officer of the Senate takes over as lieutenant governor does he remain presiding officer of the Senate?

Mr. Juneau It is my understanding that he would not, Mr. Denney, as I wouldn't think he would under the current law.

Ms. Zervigon Mr. Juneau, is it conceivable to you that a person might want to be presiding officer of the Senate, might want to serve in a legislative body, but might have no interest in serving as lieutenant governor?

Mr. Juneau That, of course, is conceivable, Ms. Zervigon. My only answer to that is that I think we're charged with the responsibility of providing the succession provisions in this constitution and I'm not looking necessarily to personalities, but maybe what's best from a concept point of view. That's why I favor the amendment. But, you're correct.

Ms. Zervigon The only option of this person at that time would be to resign as presiding officer of the Senate even though the person may be very competent in that job, in order to avoid being made lieutenant governor against his or her will.

Mr. Juneau That's conceivable, yes ma'am.

Mr. De Blieux Mr. Juneau, the thought that occurred to my mind is this, under the provision we previously adopted that the lieutenant governor would really be the, you might say, the backup man to the governor. Now, if you had somebody who was aspiring to be governor in the... as presiding officer of the Senate and he was automatically advanced to the position a lieutenant governor because of a death or resignation of the lieutenant governor, don't you think that it might cause a little bit of friction there and the government would not run quite as smooth as it would if the governor could select his own lieutenant governor? Now, we must remember this that the lieutenant governor that's selected by the governor could not ever become governor anyway because he has to be an elected official to go to that particular position.

Mr. Juneau Well, I started with the concept in this convention, Senator De Blieux, that he wouldn't be the backup man. I favored initially that they would run on a ticket, but that wasn't the will of this convention. They wanted the lieutenant governor to stand on his own right and run on his own interests. For that reason, I think that the convention apparently thought that a great deal of attention and focus should be placed upon the lieutenant governor and I think that he should be viewed in that status.

Mr. De Blieux Well, I just asked that question, but do you want to put them in a position where there could really be conflict of interests in the job? I know that we are changing the system from what it is right now, that we must disregard the personalities and look at what might happen.

Mrs. Warren Mr. Juneau, if the presiding officer of the Senate takes the lieutenant governor's place, who takes the place of the Senator? Isn't somebody from some parish going to be minus a Senator? When would this Senator be elected?

Mr. Juneau I didn't hear the last part Mrs. Warren. What would happen to his position...

Mrs. Warren You're going to take a Senator which is the presiding officer and make him lieutenant governor. He's going to be from some parish.

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Who is going to take the place of this Senator?

Mr. Juneau That would activate your provisions with regard to a vacancy in the legislative branch which is covered by the legislative article.

Mr. Cowen Pat, your presiding officer of the Senate will be the lieutenant governor. Suppose the governor dies, but the succession to the governor coming from the secretary of state, then you're going to have the secretary of state pass over the lieutenant governor to assume the governorship. Is that correct? Your succession to the governor does not tie in here.

Mr. Juneau Well, the only point is, this particular problem, the way we adopted Section 11, that's going to occur in any event, Mr. Cowen. I can't change what was done in Section 11.

[Amendment rejected: 47-66. Motion to reconsider tabled.]

Amendments

Mr. Poynter Amendment No. 1 [by Mr. Stagg], on page 11, line 11, change Section 12 to Section 15. Amendment No. 2, page 11, line 12 change Section 12 to Section 15.

[Amendments adopted without objection. Previous question ordered on the Section. Section passed: 104-9. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter Section 13, of course it needs to be amended to keep in sequence.

Vacancies in Other Statewide Elected Offices. Section 13. The order of succession in any other statewide elective office in the event of a vacancy in such office shall be the appointed first assistant in such office. Successors to such office shall serve for the remainder of the term for which the official was elected.

Explanation

Mr. Denney Mr. Chairman, delegates to the convention, this section is to provide for filling the vacancies in statewide elected offices. As it presently reads, the appointed assistant shall succeed to the elected official for the balance of the elected official's term. I can't speak for all of the committee, but inasmuch as the number of elected officials has now been increased I have signed along with a number of other delegates an amendment to this section which will provide that if the vacancy is for more than one year then there shall be an election. In the meantime the appointed assistant will fill the vacancy. Mr. Chairman, I suggest that we bring forth those amendments.

Amendment

Mr. Poynter The first set of amendments is offered up by Delegates Avant, Rayburn, Burns, Kean, Nunez, Drew, Zervigov, and Munson.

Amendment NO. 1, page 8, delete lines 17 through 21 both inclusive in their entirety and insert in lieu thereof the following:

"Section 13. A vacancy in any statewide elective office other than that of the governor or lieutenant governor shall be filled by the first assistant of such official. However, if the unexpired term remaining is more than one year, the office shall be filled by election held at the next regularly scheduled congressional election or statewide election and the first assistant shall serve only until the person then elected takes office."

Explanation

Mr. Avant Mr. Chairman, fellow delegates, I'll be very brief. As you know, we have provided heretofore that each statewide elected official will have a first assistant who will have to be confirmed by the Senate. Now, the only difference between this proposal and the proposal that is in the committee recommendation is that under the committee recommendation in case of a vacancy the first assistant would succeed to the office for the balance of the term, no matter how long that might be. This simply changes that to provide that if the unexpired term remaining is more than one year the office shall be filled by election held at the next regularly scheduled congressional election or statewide election and the first assistant shall serve only until the person who is elected in that election takes office. It's very simple. I ask your favorable vote for this amendment.

Question

Mr. Toomy Mr. Avant, this last sentence, "the first assistant shall serve only until the person then elected takes office." That does not eliminate the first assistant from being this elected person, does it? From succeeding to the office through election?

Mr. Avant Well, I don't think so. If he chose to run and happened to be the one elected he would serve until he took office for a new term.

Mr. Toomy I just wanted to clarify that. Thank you.

Further Discussion

Mr. De Blieux Mr. Chairman, ladies and gentlemen of the convention, I don't know whether you realize it or not but at the present day's cost, it cost us anywhere from 800 to a million dollars to hold a statewide election. The part of this particular amendment which I fear for is the fact that if there is more than a year of the office left you will have to call a statewide election to elect this individual, which means that there will be that cost. In fact of the business, I was told during my term in the legislature that the secretary of state's office was required to fulfill the requirements of calling so many elections that the legislature adopted a provision to where these particular individuals... that is the office would be filled by appointment until the next election held within their respective district, in order to eliminate a large number of these offices that had to be filled because of a year or more to serve during that term. That's the present law. We don't have all of these elections when you have more than one year or something of that sort to serve. You only serve until the next election covering the district in which that person is elected from or the parish or the state as it may be. I have an amendment that would continue that particular provision in our laws. I think it is good. We have at least three elections every four years. There's no way you can keep from holding those three elections. Therefore, in answer to a question that was brought up a while ago in the conference by Senator Rayburn, the governor cannot call off the general election for congressmen. He cannot call off the general election for governor. Those three elections will always take place during a four-year period. It means that there will never, never be, more than a two-year period of time between elections before the office will have to be filled by an election. I certainly feel like that that is sufficient time to allow the appointed individual which will be the first assistant to serve until the next election can be held. I therefore ask you to defeat this particular amendment so that we can vote for an amendment and continue the practice as we presently have, which has worked very well over the past four or five years.

Questions

Mr. Sutherland Senator, as I read this language, it says that if the unexpired term remaining is more than one year the office shall be filled by election held at the next regularly scheduled congressional election or statewide election. That doesn't seem to call for a special election.

Mr. De Blieux Well, what would be the need of this then if we passed this amendment? If we can do it just by saying it would be a statewide election as presently provided in the article. That's all we need to change in it.

Mr. Sutherland As I see it, Senator, it calls for the vacancy to be filled by the assistant until the next regular election can be held.

Mr. De Blieux That's not the way that I read it **Mr. Sutherland**; maybe I'm reading it wrong.

Mr. Rayburn Senator De Blieux, would you show me in this amendment where any special election would be called or where any added expense for calling an election will occur? It plainly says here "to be held at the next regularly scheduled congressional election or statewide election". Show me, if you will, where that will cause any special election to be called at any time or any added expense.

Mr. De Blieux Well, I misread that, because I understood in our discussion in conference that the election would be called if there was more than one year to serve.

Mr. Rayburn I'm asking you to read it right, Senator De Blieux.

Mr. De Blieux Well, the thing is, it's not necessary that you change, under the last portion of the present provision that we have then and allow it to... that the person will serve on until the next statewide election.

Mr. Nunez Senator De Blieux, I know you always concern yourself with costs, and you seem to be overly concerned about the cost of elections. Wouldn't you agree that as long as we are in the democratic form of government that we have that elections are absolutely necessary unless you just want to change that form of government.

Mr. De Blieux The elections are necessary and I agree, but they ought to be held in a systematic system.

[Previous Question ordered. Amendment adopted: 106-J. Motion to reconsider tabled.]

Amendment

Mr. Hardin [Assistant Clerk] This is a technical amendment by Mr. Stagg changing the section number from 13 to 16.

[Amendment adopted without objection. Previous Question ordered on the Section. Section passed: 109-0. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter Section 14, as it presently is prior to amendment.

Other Vacancies.

Section 14.

Paragraph A. Should no other provision therefore be made by this constitution by statute, by local government charter or by ordinance, the governor shall have the power to fill any vacancy occurring in any elected office. If, at the time a vacancy occurs in such office, and the unexpired portion of the term of office is more than one

year the vacancy shall be filled at an election within six months as may be provided by statute. The appointment provided for herein shall be effective only until a successor is duly elected and qualified.

Paragraph B. Nothing contained in this section shall be construed as changing the qualifications for the various offices involved and all appointments must be of persons who otherwise would be eligible to hold offices to which appointed.

Explanation

Mr. Anzalone Ladies and gentlemen of the convention, I've learned since I've come here that the word "merely" is a terrible word to get up and say that this merely does something. In the feeling of the Executive Department Committee, the committee felt that there should be some provision for the appointment of an official whereby there was no other provision made by this constitution, by local government charter, by statute, by ordinance or any other type of law that would set out who is to be appointed and by whom. We felt that this is more or less a catchall phrase to allow somebody to appoint somebody where you might have the possibility of it not being provided for.

Questions

Mr. Rayburn Mr. Anzalone, I'm so confused on my sections; are you discussing Section 14 as in the committee's proposal?

Mr. Anzalone Yes, sir.

Mr. Rayburn I'm a little concerned there where you say the vacancy shall be filled at an election within six months. The present constitution provides that it shall be filled with an election at the next scheduled election, and what I'm afraid you're going to do and I thought I had some amendments, I don't see them yet. You're going to call for a lot of extra special elections with this language in there. It says that "the vacancy shall be filled at an election within the next six months" which means that if it was a seven month period before the congressional race, Mr. Anzalone, you would have to have a special election to fill this vacancy, when you would have a regular scheduled election coming up within 30 days.

Mr. Anzalone Senator Rayburn, it was the feeling of the committee that this particular article in all probability is going to be one of the most useless articles in the constitution, because everywhere else you will note here, "should no other provision therefore be made by this constitution, by statute, by local government charter or by ordinance", now if by any one of those things a provision is made for that, then of course, this would not apply.

Mr. Rayburn I carefully read that provision, Mr. Anzalone, and it does say "should no other provisions therefore be made by this constitution or statute"... that is dealing with the appointment procedure... I have been told by some good legal minds, and it does not deal with the elections, so to speak in every case. That's the point that I was trying to make. Certainly, you may have a statute or the constitution may provide for filling the vacancy, but if it doesn't go on and provide for the length of that vacancy and when the next election will be scheduled or be held. It might be null and void. Then, you come on down further and say that the vacancy shall be filled at an election within six months. Now, if I thought that the top part of this provision applied to filling vacancies... I mean to calling elections, certainly I would agree with you that maybe once in a lifetime you'll find some provisions not covered by some type of law, either a city ordinance or a special charter, Lawrason Act, or

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statute or constitution.

Mr. Anzalone Well, Senator Rayburn, of course, you do have many differences in legal interpretations but I can assure you that it was not the intent of the committee to apply one separate from the other.

Vice Chairman Alexander in the Chair

Amendments

Mr. Poynter Set of amendments passed out to this section are proposed by Delegate Gravel to be considered first. Amendment No. 1:

On page 8, line 27, after the word and punctuation, "office," and before the word, "the" delete the word, "and".

Amendment No. 2:

On page 8, line 29, after the word, "election" and before the word, "as" delete the words, "within six months".

Explanation

Mr. De Blieux Mr. Chairman and ladies and gentlemen of the convention, this particular amendment just takes out the words, "six months" so that the election can be held at the next scheduled election as provided by statute and eliminate the necessity of calling special elections to fill vacancies. That's all the effect it has of doing and I think it is a good amendment if this particular section is ever called into action.

Questions

Mr. Shannon Senator De Blieux, are you using the Gravel amendment?

Mr. De Blieux Yes, this is the Gravel amendment.

Mr. Shannon All right.

Amendment No. 2 says on page 8, line 29 after the word, "election" and before the word "as".

Mr. De Blieux Mr. Shannon, if I might explain to you...it just takes out the six months requiring the necessity of calling an election within six months.

[Amendments adopted without objection.]

Amendments

Mr. Poynter Next set of amendments offered up in the name of Delegate Stagg by Delegate Abraham. Amendment No. 1, page 8, line 22, change Section 14 to Section 17.

Amendment No. 2, page 8, line 23, change Section 14 to Section 17.

Technical amendments to change the section number to conform in the order of the sections which have been adopted.

[Amendments adopted without objection.]

Amendment

Mr. Poynter Amendments are being xeroxed for your distribution right now. It's a relative short amendment.

If the convention wishes to listen to the explanation of it while they are being xeroxed, offered up by Delegate Toomy.

Amendment No. 1, on page 8, line 24 at the end of the line, add the following:

"By home rule charter or plan of government,"
"By home rule charter or plan of government,"
page 8, line 24 at the end of the line.

Explanation

Mr. Toomy Mr. Acting Chairman and fellow delegates, this amendment simply inserts the words, "by home rule charter or plan of government," in

compliance with the terminology used by a local government committee. We have provisions which take care of the vacancy for all local officials, and we have an exception in the area of home rule charter or plan of government. And it's our interpretation that it wouldn't...this terminology in the committee proposal, "local government charter," might not clearly be interpreted to include home rule charter or plan of government and we just wanted to insert this wording to make sure that we catch all...catch the home rule charter, the plan of governments, and the legislative charters in this provision.

Question

Mr. Duval Delegate Toomy, as I understand your amendment, you don't intend...do you intend to delete the words, "by local government charter or by ordinance" and substitute in lieu thereof, "home rule charter or plan of government" is that correct?

Mr. Toomy Mr. Duval, the amendment has been changed and is being printed and hasn't been distributed.

My amendment now would not delete anything. It would only insert the wordage, "home rule charter or plan of government" at the end of line 24. No deletion at all from the committee proposal.

Mr. Duval I understand.

Chairman Henry in the Chair

Explanation continued

Mr. Toomy Fellow delegates, this amendment, as I said previously, simply inserts the wordage at the end of line 24 "by home rule charter or plan of government."

It doesn't delete anything from the committee proposal. We had some misunderstanding as to the wordage, "local government charter." And it was not the intention of this amendment to take anything away from legislative charters. It was our understanding that they would be covered, but on line 24 where it accepts by statute.

But I believe it's in agreement with everybody that we leave all the wordage in and as it would read with the amendment, "by local government charter, by home rule charter or plan of government," that would take into being all the home rule charters, plans of government, like Baton Rouge, and also legislative charters.

I yield to any questions, Mr. Chairman.

Questions

Mr. Shannon Joe, will you define for me the difference between local government charters and home rule charters? Isn't home rule a local government charter? Isn't this superfluous?

Mr. Toomy You may very well be right, Mr. Shannon, but it is not very clear to many delegates, and particularly some of them that you know on local government committee as to whether this terminology, "local government charter" includes home rule charters or specifically whether it covers plans of government which is the term used in Baton Rouge. They don't use the term "home rule charter" but "plan of government".

Mr. Duval Well that is local government, is it not?

Mr. Toomy It is, but there was some misunderstanding as to whether that terminology would include all of what we had hoped it would.

Further Discussion

Mr. Hayes Mr. Chairman, ladies and gentlemen of the convention, this is just another easy way of leaving out certain parts of the state and again

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start easing in on the home rule charters now. By home rule charter or plan of government.

We have 105 districts in the state, and we start right now talking about certain ones that we are going to represent. I would urge you to defeat this amendment.

I have an amendment that would give us a fair representation throughout the state where appointments are concerned that's on its way around now, because as it appears that the governor will be appointing people to about sixty something parishes and the four or five with home rule charters will be able to do their own. And now it has gotten down to specifics here. It is down to the home rule charters. They have a method of doing this.

But when you go on out to these other parishes where they don't have the facilities for doing the appointment, then the governor is going to it anyway.

So I would urge you to defeat this amendment and let's wipe out this Section that deals with twenty-four and twenty-five where it even permits it in the first place. I have an amendment to that effect that I am going to pass around as soon as they can run it off.

[Previous Question ordered. Amendment adopted: 89-19. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Hayes] on page 8, line 24, after the word "constitution" strike out the remainder of the line and on the beginning of line 25 strike out the words, "or by ordinance, .."

Explanation

Mr. Chairman, ladies and gentlemen of the convention. This is... what I am trying to avoid is what I know we will eventually get into. We are going to wind up with four or five separate states within the State of Louisiana if we continue like we are going now. And that's just exactly what you are going to have. You are going to have one state and for every home rule charter, there will be another state. This is the starting of it.

Now this Section has no need in here except for somebody is trying to figure out a way that he can operate different from the rest of the state under a so-called home rule charter. I don't see where home rule charter is any different from any other form of government.

I'm asking that we delete "by statute, by local government charter and by ordinance" and whenever there is a vacancy, there are not that many vacancies going to occur. Every once in a while you will have someone who will die or you will remove from office. But you don't have that many that you need to have all these many different provisions and all these long lines of garbage in the constitution to make all these provisions.

It's very simple, the governor can make these appointments. You don't have that many. So I urge you to look at fourteen, twenty-four and twenty-five, read it and see can you cut out this entire line, twenty-four and twenty-five, "by statute, by local government charter or by ordinance". It was just put there for selfish reasons. Now we have... all your big cities have the home rule charter, the small cities don't. Naturally you would have more people who would be for retaining this home rule charter provision in here. But it's all against the small people.

So I would encourage you to support this amendment and let's delete the portion of twenty-four and twenty-five that we have in here. Let the governor do the appointments when we have a vacancy... he's not going to have that many vacancies, anyway.

I yield to any questions.

Further Discussion

Mr. Anzalone Ladies and gentlemen of the convention, I rise in opposition to the amendment. The present article says that "should no other provision therefore be made by this constitution by statute" in particular.

What Mr. Hayes has done is to provide that "should no other provision therefore be made by this constitution" only. And what you are doing is that if you create something of a purely local nature that is created by the legislature conceivably, it would have to be a constitutional amendment before anybody other than the governor would be able to make the appointment.

I don't think this is the intent of the language. I don't think this is his intent and I urge your rejection.

[Previous Question ordered. Amendment rejected: 13-96. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Schmitt], page 8, line 31.

Change the period after the word "qualify" to a comma and add the following. This is page 8, line 31.

Change that period after the word "qualify" to a comma, add the following, "and the person so appointed shall be ineligible to be a candidate in the election to fill the unexpired term".

Again "and the person so appointed shall be ineligible to be a candidate in the election to fill the unexpired term".

Explanation

Mr. Schmitt The reason that I am putting this in is that in one other Section we had attempted to limit the power of the governor to appoint persons in certain positions.

By the adoption of this amendment, it would prevent the governor's appointee from being eligible to run for whatever position there might be.

The big problem is that by allowing the governor this power, he has the essential right to make an individual an incumbent in a particular position. By making him the incumbent, it is very hard to defeat this person.

Essentially what this would do would be simply to say to the governor "You can appoint somebody, but he will not have the right to have the title of incumbent when he runs for office. I think that this is something which is necessary in order to restrict the appointive power of the governor. I believe that it is something which could prevent the governor from having in his discretion the right to create an incumbent in any particular position.

I know that in the City of New Orleans that many of our present judges were those who were appointed by governors and ran subsequent to that period of time.

I have no problems with those who are elected in a situation, but I believe it gives them an unfair advantage over other people. And I certainly do feel that everyone should have an equal shot when these positions become available for an election.

I do not feel that one person should be christened by the governor with the right to be called an incumbent. This puts them at an unfavorable advantage over any other person who might desire to run for this particular office. This creates a lot of power in the office of the governor; this gives him an unfair advantage. I have no problems with Governor Edwards, and it's not in fear of him. But I just do not believe that we should set ourselves up in a situation where we can be caught in the quagmire of the problems which we have suffered in the past.

And I really do feel that this would protect the interest of the people so that the people might be the ones who can choose the person to

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represent them and not have the governor appoint someone to a position and allow that man to run as an incumbent. By allowing him to run as an incumbent, it gives him an unfair advantage, and it prevents other people from having an equal chance, and it prevents the electorate from having an equal choice amongst those people whom they might feel are better qualified.

Once any individual is in office, no matter what you say, the practicalities of politics are that he has an advantage. He is already in a position of power, he's got the people underneath him, and he's the one who can run and claim he is presently in that position and that gives him a great weight when he runs for election. And that is the reason I am attempting to have this amendment passed.

Questions

Mr. Fontenot Earl, I am no constitutional expert, but don't you see no problem, possibly, of a violation of the constitutional rights or equal protection clause?

Mr. Schmitt I believe we have adopted it in one other section. And I don't think it's a violation. We haven't adopted it, but it is proposed in another section.

Mr. Fontenot You are telling a person that just because he is appointed that he can't run as a candidate in the next election.

Mr. Schmitt Well, what about a man who is in the Civil Service? Is that a denial of equal protection for that person because he can't participate in politics?

Mr. Fontenot Well, two wrongs don't make a right.

[Previous question ordered on the entire subject matter: 79-10.]

Closing

Mr. Schmitt I feel that by the adoption of this amendment, you give the people the right to choose whom is going to be their elected official and you are removing from the governor the right to brand the person as an incumbent and to grant him the power to run from this particular position of strength.

I think by the passage of this amendment, you will dilute the governor's power and you will do much to create a much more favorable climate in the state for individuals who want to run for office but are not blessed with the kindness of the governor.

Questions

Mr. Conroy Mr. Schmitt, regardless of my feelings about your proposal, I am concerned about the language that you used. Did you mean to say that he would not be a candidate in the election to fill the unexpired term? Is that all you are concerned about, or did you mean to say that he couldn't be a candidate for election for the next term because we already...

Mr. Schmitt The unexpired term refers to the previous section. This is all this refers to. The entire section is called "Other Vacancies".

Mr. Conroy But as I understand this, if the term is longer than a year, the unexpired portion is more than a year, you have to have an election anyway...

Mr. Schmitt I don't want him to run for that, either.

Mr. Conroy I'm sorry, I didn't hear you.

Mr. Schmitt I don't want him to run for that.

In other words, I am trying to prevent him from running after being placed in that position by the governor.

Mr. Conroy But what I am saying is, I don't think your amendment does that, Mr. Schmitt.

Mr. Stinson My question is about the same. What I am concerned is, if it's a period in which there would not be an election, then he would finish serving and the regular election come up under yours, he could run at that time. So I am afraid you have it worded wrong.

Mr. Schmitt It's a lot better situation than what you have without having that section in there.

Mr. Stinson I think it would be worse for him to be eligible to run for the full term than for the unexpired term.

Mr. Schmitt But if you defeat the amendment, he can run for either one.

Mr. Alexander Mr. Schmitt, I served on the Committee on the Executive Function and we had a little research done on this question and we found that definitely it would be discrimination against the appointee and since that is a known fact, don't you think it would be creating a constitution crisis if your amendment were to pass, and don't you think it would be better to withdraw it...

Mr. Schmitt What type of discrimination do you feel that there would be for the appointee? I don't understand that.

Mr. Alexander Well, it means that all other electors would be eligible to run and he only would not be eligible. And the courts have ruled on this question previously.

Mr. Schmitt I don't know what decisions...any particular decision in that area, but I don't know of any such decisions. Do you have any cases that support that or...

Mr. Henry The gentleman has exceeded his time. I'm sorry.

[Amendment rejected: 16-95. Motion to reconsider tabled. Previous question ordered on the Section. Section passed: 108-4. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter Section 15. Definition of a Vacancy. Section 15. A vacancy as used in this constitution shall occur in the event of death, resignation, removal by means or the failure to take office for any reason.

Explanation

Mr. Anzalone Mr. Chairman, I think that the proposal is self-explanatory and I ask the adoption of the same.

[Previous question ordered on the Section. Section passed: 114-0. Motion to reconsider tabled.]

Mr. Henry Ladies and gentlemen of the convention, because the voting machine had everybody not voting three times on that last vote we took, we are going to have to revote on that section which we adopted and which was so excellently explained by Mr. Anzalone. That is on vacancies, the definition of a vacancy.

Point of Information

Mr. Tapper Could this also have been the reason

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that PAR came up with the wrong figures on the voting records of the members of the convention?

Mr. Henry Anything is possible with this bunch.

[Question revoted. Section passed:
112-0. Motion to reconsider tabled.
Motion to revert to Reports of Committees adopted without objection.]

Reports of Committees [1 Journal 296]

[Motion to revert to Unfinished Business adopted without objection.]

UNFINISHED BUSINESS

Point of Information

Mr. Weiss A point of information. Aren't we obliged to continue the sections before additional sections are added?

Mr. Henry If a gentleman offers an amendment to the proposal to add a section at a particular place we have to consider it just like we have been doing, Dr. Weiss.

Mr. Weiss But you can introduce any subject matter at any point between sections. Is that correct?

Mr. Henry Yes sir, that is the way we have been operating.

Mr. Weiss Don't you think that's a little out of order. In other words if I want to introduce a silk stocking section, we could put it right in here. Is that correct?

Mr. Henry Do you have an amendment drawn to do that?

Mr. Weiss Not right now.

Mr. Henry I'm not being facetious, but this is the same procedure under which we have been operating, Dr. Weiss.

Amendment

Mr. Poynter Two sets of amendments have been passed out offered by Delegates Gravel, Burson, Derbes, Duval, Lanier, Newton, et al.

The best way to tell you which one it is, it is the one of the two Gravel amendments that is single spaced, about seven lines long. The other Gravel amendment is double spaced.

Amendment No. 1 on page 9, between lines 7 and 8, add the following: "Section [and this would become] 19. Appointment of designated Offices

Section 19. After the election of statewide elective officials [the word general has been taken out] in 1976 the legislature may prescribe the qualifications and provide for appointment in lieu of elections of the offices of the commissioner of agriculture, state commissioner of elections and commissioner of insurance. No action of the legislature pursuant hereto shall reduce the term of any such elected official."

Point of Order

Mr. Munson Since this convention has already made these offices that are mentioned in this amendment constitutional offices and offices that are elective and reconsidered the vote by which this was done and laid that motion on the table, isn't this proposal out of order?

Mr. Henry Mr. Munson, I don't believe that it is because it is an entirely different provision than what we have already considered heretofore in this proposal.

Point of Order

Mr. Weiss I would like to make a motion to object to consideration of this question. That is a parliamentary procedure.

Mr. Henry You can move to table it. You can move to postpone it.

Mr. Weiss If it would be simpler to understand, I move to table the proposal at this time. I so move.

Point of Order

Mr. Gravel Mr. Chairman, don't I have the right to have the amendment read and to state the purpose of the amendment to the convention as a whole before any such action would be taken?

Mr. Henry Mr. Gravel, we haven't let anybody do anything to you yet. Now, we recognized Mr. Munson for a point of order, and Dr. Weiss was recognized for a point of order consequently his motion was out of order. You do have the floor and you may proceed to...
Why do you rise, Mr. Munson?

Mr. Munson To make a motion.

Mr. Henry What is your motion, Mr. Munson.

Motion

Mr. Munson That this proposal be referred to committee, since it is a new proposal.

Mr. Henry Mr. Munson, your motion is out of order because it is an amendment and we have already waltzed through that one two or three times.

Explanation

Mr. Gravel Mr. Chairman, ladies and gentlemen of the convention, I don't think that there is anything particularly mysterious... Dr. Weiss, please let me explain the amendment. Mr. Chairman, I would like to do so without being interrupted if I can.

Mr. Henry Mr. Gravel, just go ahead talking. I haven't recognized anybody.

Mr. Gravel Mr. Chairman and ladies and gentlemen of the convention, the purpose of this amendment is to provide that after the coming statewide elections for statewide elective offices the legislature will have the power, if in its wisdom it sees fit to do so, to provide that the commissioner of elections, the commissioner of insurance and the commissioner of agriculture shall be appointive rather than statewide elective offices. Now I believe that all of us recognize the fact that because of the individuals and personalities and positions that are involved at this time that this convention did adopt provisions that would seek to maintain certain statewide elected offices whereas, upon reconsideration by many of the delegates, it is felt that really the appointment of these particular officials would best serve the public interest. This amendment is a vehicle whereby this reconsideration, so to speak, in part, by this convention, can be realized. I urge the adoption of the proposed amendment.

Point of Order

Mr. Weiss Mr. Chairman, I object to consideration of the question presented by Mr. Gravel. Shall the question be considered?

Mr. Henry Yes, sir, the question will be considered.

Mr. Weiss I propose that it be subjected to the entire convention for decision.

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Mr. Henry You've sort of got me confused now.

Mr. Weiss I'm just going by Mason's and reading it right out of this book.

Mr. Henry Well, maybe that is what's got me confused.

Mr. Weiss I'll bring it up to you, sir.

Mr. Henry Read it out of Mason.

Mr. Weiss Mason says "A member desiring to object to the consideration of a question should rise before the debate of the question..."

Mr. Henry Start all over. I am getting interrupted from all sides. Start all over. What page are you reading from?

Mr. Weiss Page 219, Section 297. "A member desiring to object to the consideration of a question should rise before the debate of the question has begun and without waiting to be recognized say, 'Mr. Chairman, I object to the consideration of the question' and further identify the question," Mr. Gravel's proposal. On page 230 it continues, "The form of the question on objection to consideration may be 'Will the house consider the question,' or 'Shall the question be considered.'" I would like the convention to make that decision, sir.

Ruling of the Chair

Mr. Henry We don't want to start all this point of order business just for a few minutes.

Your motion is out of order, Dr. Weiss. Where you are reading from here, the purpose of the objection to consideration is to "bar from discussion or consideration any matter which is considered irrelevant, contentious or unprofitable, or for which any reason is not though advisable to discuss." Now of course maybe this motion could have been made on a lot of the discussion we have had so far, but according to the rules of procedure which we have adopted by the convention we have a process for amending proposals and this is the manner in which these gentlemen with these amendments are proceeding, and consequently it is the opinion of the chair....

Mr. Weiss Mr. Chairman, I appeal to you that this is irrelevant and immaterial and is wasting the time of the convention. I would like for the convention to make that decision if you cannot.

Mr. Henry My ruling is that under the rules, there is a right to amend proposals in the manner that is being followed here.

Mr. Weiss My question is, "shall this be considered by the convention?" Would you rule on that please, sir?

Mr. Henry I have ruled you out of order. In my judgment your motion would be to appeal the ruling of the chair, Dr. Weiss.

Appeal from Ruling of the Chair

Explanation

Mr. Weiss Fellow delegates, I do not mean to appeal the ruling of the chair in a sense of insubordination, but rather or consideration for this entire convention. Chairman Henry has been overly generous with us. As a chairman, we could hope and wish for no one better. As a matter of fact, if I could vote again, I would vote twice for him. The success of this convention depends upon a man of his caliber. I think at this moment however, we have been faced with the tenacity of wildcats and now we are being faced with the shrewdness of some individuals to work through the back door. We have debated and debated this

issue and I would like to try and complete this. I think this matter is one not to be considered at this time since it has been considered upon more than one occasion in the past several days and many hours. Therefore I do appeal the decision of the chair and ask that we decide here and now not to hear Mr. Gravel's argument in regards to another matter which is simply a restatement of the elected versus the appointed commissioners.

Point of Order

Mr. Duval It is my understanding that appeals to the ruling of the chair is not debatable under Rule 32 of the rules of the convention.

Mr. Henry You are correct, Mr. Duval.

Point of Information

Mr. Alexander I am under the impression that to successfully appeal from the ruling of the chair a two-thirds vote is required.

Mr. Henry I believe it takes 67 votes or two-thirds, whichever is less. The same that it does to suspend the rules, Reverend Alexander. Let me look at the rule here.

Mr. Duval, I am going to have to correct my ruling because Rule 32 says, "Every question of order shall be decided by the chairman without debate subject to an appeal. The chairman may call for the sense of the convention on any question of order but when an appeal has been taken from the decision of the chair in a subsequent question of order which may arise from the decision of such appeal by the convention shall be decided by the chairman without debate." So this is susceptible to debate, sir. It is sort of hard to even remain calm in the midst of the confusion at times.

[Previous Question ordered on the Appeal from the Ruling of the Chair. Chair sustained: 89-18.]

Explanation continued

Mr. Gravel Mr. Chairman, I will respond to any questions. I believe I had stated all that I wanted to say at this time with respect to the proposed amendment. I don't want to give up the floor but I will respond to any questions that any of the delegates may have.

Questions

Mr. Munson Mr. Gravel, can you tell me why you did not include the superintendent of education in this amendment. Was it an attempt to pick up a few votes perhaps?

Mr. Gravel Mr. Munson, the only way that I know of that I could have picked up a few votes was to leave out the commissioner of agriculture, but that was not the purpose of it. The purpose of not putting in the superintendent of education was because of the fact that we still have a full consideration of the superintendent of education, as I understand it, under the education article.

Mr. Munson Mr. Gravel, would you agree to an amendment instead of making it effective in 1976 to make it effective in the year 2000?

Mr. Gravel No sir, I would not.

Mr. Munson Can you tell me this? If this convention thinks an office should be an elective office, which we have already voted, all three of these that it should be a constitutional office and should be an elective office, in 1976, what has happened to make it so horrible in 1980?

Mr. Gravel Mr. Munson, nobody is saying anything

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is horrible at all. This does not detract from the fact that these offices will continue to remain constitutional offices. The only provision that is contained in this proposed amendment is that after the next statewide elections that the legislature may permit these three offices to be appointive rather than elective. I think this is a very simple amendment insofar as understanding it is concerned. I don't believe that anybody is trying to hide anything or to mislead anybody. This simply is to authorize the legislature after the next statewide election to designate these offices as appointive offices rather than elective offices.

Mr. Munson Well then we are giving the people of this state the right to elect these offices in 1976 but we are denying them that right in 1980.

Mr. Gravel That is not correct, sir. We are authorizing the legislature to determine whether or not they will be statewide elective offices in 1980 or appointive offices in 1980.

Mr. Rayburn Mr. Gravel, if I understand your amendment correctly you just said at the next statewide election. I think you meant at the statewide election after 1976, the legislature at that time could adopt a law providing that the offices should be appointive in the place of elective.

Mr. Gravel Yes, except with this modification, that those that were elected in 1976 would continue to serve out their term.

Mr. Rayburn Until 1980?

Mr. Gravel That is correct, sir.

Mr. Rayburn Would you have any objection then, saying that in the event that the legislature decided to make these offices appointive that it would only become active after the people of the state had had an opportunity to vote on it in 1980, to see whether they wanted it or not? After all, I've got a little mandate too from the people.

Mr. Gravel I understand that, but this would be a provision in the constitution that the people would be voting on when the constitution is submitted to them and I understand your position, sir, but I would not be willing to make that change.

Mr. Rayburn You wouldn't be willing to let the people vote on this at the statewide election in 1980 as to whether they want them...assuming that the legislature says we will pass a law making it appointive, I would like to know would you agree or not to provide that it would be appointive if the people of the state so desired for it to be?

Mr. Gravel I would not agree to an amendment to that effect but as you know Senator Rayburn, a proposed constitutional amendment could be submitted to the people for that particular purpose. That possibility could exist, but I wouldn't want to put it in this amendment.

Mr. Rayburn Thank you very much. I think I do and I think I will have one prepared.

Mr. Burns Mr. Gravel, let's not try to kid ourselves and kid this convention. What you are doing in effect is trying to pick up some of the scraps or leftovers or what was left after about three days of debate and argument and vote and prove. In which the convention went definitely on record as providing that these offices would be constitutional offices and would be elected by the people. Isn't this just another effort to take one more shot at it through another means or another process even though it might delay it for a few years?

Mr. Gravel No sir, it isn't. First of all, Mr. Burns—we are not deconstitutionalizing these offices. Number two, I frankly state that this is an effort to afford this convention the opportunity to correct what many of us believe was an error in actions that have been heretofore taken. I must confess too that I voted for one of the offices as being a statewide elective office, but I don't think I am fooling anybody. I don't think we are trying to do anything other than come to what I think may be the fair middle ground that might be to some extent unsatisfactory to all, but probably more satisfactory to everybody than what we are going to end up with if we don't make this amendment.

Point of Information

Mr. Munson How many votes does it take to add a new section?

Mr. Henry Mr. Munson, that is a real good question, it would appear to me. It is going to take 67 votes to adopt this proposal or this amendment to create this new section and you know we are going to debate it and debate it and debate it and if you don't get 67 votes then we have just wasted that amount of time. It looks like to me that some good parliamentarian could move the previous question and this body could go ahead and determine whether or not it wanted to add...

[Previous Question ordered: 57-54.]

Point of Information

Mr. Tapper I believe I heard you say that it would take 67 votes and I call the Chair's attention to the Casey amendment on yesterday which the chair said that it would not take 67 votes in order to get the section attached to this particular section but that it would take 67 votes to finally adopt the section.

Mr. Henry You misunderstood the ruling of the chair yesterday. I ruled yesterday it would take 67 votes to adopt the amendment creating the new section and then after that amendment proposing the new section was adopted it would take a majority of those present and voting then to change that, but for final adoption it would take 67 votes.

Mr. Tapper I stand corrected.

Closing

Mr. Burson Ladies and gentlemen of the convention, the amendment that is proposed here is a sensible compromise at this stage of our deliberation. Now we have a governor in this state who was elected on a platform of consolidation of agencies and elimination of unnecessary executive positions. Now maybe the people didn't vote for him for that reason, but maybe they did. At any rate, he certainly got a majority vote. He got a lot more than that in the district that I represent. I want to point out to you, and this is very important, please look at Article V, Section 1 of the present constitution which is on your desk. It provides and has provided for many, many years that the legislature could, if it wanted to, take the commissioner of agriculture and consolidate his function and his office with other statewide elected offices. So as far as the commissioner of agriculture is concerned, our proposal -- this proposed amendment -- is weaker than the present constitution. All this proposed amendment would allow the legislature to do, would be to change the method of selection of the agriculture commissioner from election to appointment. Read that last sentence of Article V, Section 1. It says "the legislature shall have the authority to consolidate any of the above offices except that of governor, lieutenant governor, treasurer, secretary of state, commissioner of insurance and

custodian of voting machines." Now with regard to custodian of voting machines and commissioner of insurance, this would represent a change. It would represent only a weakening of the present constitution, however, insofar as it deals with the secretary of agriculture—commissioner of agriculture—and I assume that the people must have approved this language in the present constitution or it wouldn't be in there, so let's not get too carried away about what the people want and don't want. The people voted and approved Article V, Section 1. Now, the second thing I want to point out about this proposed amendment, is it would leave the constitutional departments that we have previously established as constitutional departments. The only thing that this amendment could possibly affect would be the method of selection. I would also point out it says "may" it does not say "shall," and the legislature had had the power under Article V, Section 1, to eliminate the commissioner of agriculture department for twenty years and has never done it. It might be fifty years and they would never do it under this amendment, but at least you would be opening the way for adaptation to changing times. You would be making it possible for the legislature to act in this area. I would point out to you that we should leave the gate open on this matter and allow the legislature some flexibility here. I personally do not intend to vote to stalemate the article that we are now considering but I am sure it is no secret to the delegates at this convention that there are some people who feel strongly enough about this not to vote to finally approve the article. Now I ask you to stop and think what situation that will put us in. The vote on that last motion was 52 to 54. If forty people, with the numbers that we have had here, were to decide to vote against approval of that section, you would come real close to defeating it and certainly if forty-five or fifty vote in favor of it, you may defeat it. This was my motivation in proposing this section because it seemed to me it was a compromise between those individuals who felt that some of these offices should be elected and those that felt that some of them should be appointed. I voted to keep the custodian of voting machines and then when we changed his name to the commissioner of elections I voted to keep him an elected official. I say that I join in sponsoring this amendment because it seems to me to be a reasonable compromise and it does not finally make the decision on that matter but leaves it to the legislature, whereas I would point out and emphasize again, it has remained on the commissioner of agriculture under the present constitution. I will answer any questions.

Questions

Mr. O'Neill Mr. Burson, I had a quick series of questions. Were you present on the first day of the convention? January 5th.

Mr. Burson Yes, sir.

Mr. O'Neill Were you present when the governor said that there would be no interference from the executive department in the writing of this constitution?

Mr. Burson Yes, sir.

Mr. O'Neill Would you agree that the presence of the Executive Counsel, Mr. Beychok here at the convention lobbying various delegates on this proposal, is interference?

Mr. Burson No, sir, I certainly would not, no more...

Mr. O'Neill Are you telling us that...

Mr. Burson Let me answer the question... I don't think this is any more interference than I

Secretary of State and the Attorney General being in the audience yesterday.

Point of Information

Mr. Munson How many votes is it going to take right now?

Mr. Henry 67.

The gentlemen has offered an amendment which would add a new section.

Point of Information

Mr. Bollinger I think I'm misunderstanding the Chair. It'll take 67 votes and if 67 votes are received then there's no final debate. I was under the impression that this was just to put the amendment before the convention. It took a majority vote then it took 67 for final passage.

Mr. Henry Mr. Bollinger, it'll take 67 votes to adopt this amendment because it would in effect create a new section. If this amendment is adopted by 67 votes then you or any other delegate to this convention will have the opportunity to amend the same by a lesser amount.

[Quorum Call: 114 delegates present and a quorum. Amendment rejected: 58-55. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Guarisco], page 9, between lines 7 and 8, add the following: "Section 19. Appointment of Commissioner of Elections.

Section 19. After the general election for statewide elective offices in 1976 the office of State Commissioner of Elections shall cease to be elective and the legislature shall prescribe the qualifications and provide for the appointment. No action of the legislature pursuant hereto shall reduce the term of office of Commissioner of Elections."

Explanation

Mr. Guarisco I'm offering this amendment... I thought that the Gravel amendment was good. I think it had two problems with it. One is that it had all three offices in it, agriculture, insurance, and commissioner of elections. I think that the convention might want to have the opportunity to vote on those areas separately. Secondly, in that amendment, the legislature had the responsibility to remove those offices from elective status to an appointive status. I don't think that that is their responsibility. I think that is the responsibility of this convention. This convention can vote to allow this office to cease to exist by operation of law, that is at the next election in 1976 the Commissioner of Elections would be elected and then after he's elected his office would cease to exist as an elective office. It would be a constitutional office. The legislature could prescribe his duties and responsibilities. That would rule out the problem we may have with the personages involved or who may or may not be an incumbent in office. That would give the present incumbent if he should be successful or should decide to run again and win six more years in that office. I think that the convention initially spoke that they did not want a custodian of voting machines. Later on it was changed to Commissioner of Elections and I think it was probably as to not affect the present incumbent. I believe that this is a workable compromise. I think it's the fair thing to do. We were sent here to write the constitution; not the legislature. Also, as many speakers have said, that it would implement the cabinet form of government. This is like the "Mission Impossible". This is a self-destruct type thing. Once the 1976 Elections are over his job would cease.

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Questions

Mr. Burns Mr. Guarisco, don't you think if we persist in using the word compromise everytime we vote on one of these amendments that we're going to finally give the public the impression that instead of passing this constitution on the basis of merit, that we're passing everything on the basis of compromise?

Mr. Guarisco Mr. Burns, I feel that whatever I have to say is meritorious, but I also realize that compromise is settling for second best on each side.

Mr. Burns What I had in mind, it's been used so continuously and so persistently in the last few days that I'm about of that impression that we're trying to do everything instead of merit because of compromise. We're not compromising anything; this has already been decided.

Mr. Grier Mr. Guarisco, are you a farmer?

Mr. Guarisco No, sir, and this is not a farming amendment.

Mr. Grier Did you know that this constitution won't get ten votes in Clairborne and Union Parishes if this amendment is adopted?

Mr. Guarisco This has nothing to do with farmers, Mr. Grier.

Point of Information

Mr. Thompson Is he discussing this amendment or is it open for a motion?

Mr. Henry He's answering questions on the amendment that he's got before the group at this time, Mr. Thompson.

Mr. Thompson Would I be in order to move the previous question on this amendment? ...then make a motion to table it.

Mr. Henry Mr. Thompson, I didn't recognize you for a motion. I thought you wanted to ask the gentleman a question.

Mr. Thompson Well, I'm asking you a question then. Whenever I would be in order would you give me that permission?

Mr. Henry It would be a pleasure.

Further Discussion

Mr. Bollinger Mr. Chairman, fellow delegates, I rise in opposition to this and the other amendments like it, because I think it's a sloppy way to handle the constitution. I don't agree that we did the best thing when we voted yesterday and Saturday, but I'll go with the will of the convention. Now, if we want to take these people out of the elective section...Section 3...we can vote 67 votes, can suspend the rules. 67 votes can take them out, and it takes 67 votes to adopt this amendment. So, why go about it sloppily. If we're going to take them out, let's suspend the rules, let's reconsider Section 3, and let's take them out. For this reason I oppose it and I hope everybody else opposes this amendment.

Further Discussion

Mr. Kelly Ladies and gentlemen of the convention, we have fought this battle and fought it and fought it. We just fought it on the previous amendment that was up here before us, and now they're coming back with one time, one at the shot. They're going to come with the Commissioner of Elections and next is going to be Commissioner of Agriculture, possibly the next, the Commissioner of Insurance. We have defeated this soundly over and over. The

people of this state, I think, have spoken through us and I suggest that we go on, let's vote this amendment down. Let's vote all of these amendments down and go ahead and complete the business of this convention and complete this particular proposal that we're dealing with.

Further Discussion

Mr. Lowe Mr. Chairman, delegates to the convention, it's unfortunate that we do have some surplus funds. It's unfortunate we don't have the funds to buy T.V. equipment for instant replays. I think all of us are just fed up with all of the instant replays of these elected officials. Along those lines, Mr. Chairman, I would like to move the previous question and at the same time ask you if it would be in order to move the previous question on the entire subject matter of elected officials since that's the matter we're discussing at this time.

Mr. Henry Mr. Lowe, your motion was to move the previous question?

Mr. Lowe My motion was to move the previous question on the entire subject matter of elected officials if that motion is in order. If it's not in order I merely move...

Mr. Henry That's not in order. The previous question would be in order.

[Previous Question ordered: 61-44.]

Closing

Mr. Guarisco The only thing I wanted to say is that the Gravel amendment was not soundly defeated. It was 58 to 54 and I'm giving the convention a chance to vote...that might have been the reason for because maybe they had three offices in there. I'll let you single in on each office.

Questions

Mr. Kelly Mr. Guarisco, do you believe in discrimination?

Mr. Guarisco In some instances, yes. All discrimination is...

Mr. Kelly Apparently, you do.

Mr. Conroy Mr. Guarisco, isn't this the first time we will have an opportunity to vote on whether the Commissioner of Elections will be elected subsequent to the time we decided what his function would be.

Mr. Guarisco That's correct, and it's the first time we've been able to vote on him individually.

Mr. Drew Mr. Guarisco, you are not giving any prerogatives to the legislature. According to your amendment, as I read it, the Commissioner of Elections ceases to exist to be an elective office.

Mr. Guarisco That's correct, because we were elected and appointed here. That's our responsibility. It's not...we are rewriting the constitution; not the legislature.

Mr. Lowe Mr. Guarisco, you said you'd come back with each official one at a time. If we defeat this one soundly, do you promise not to come back with the others?

[Amendment rejected: 35-77. Motion to reconsider tabled.]

Personal Privilege

Mr. Rayburn Mr. Chairman and fellow delegates, I think it's high time that we attempt to do what

we were elected to do. We've been here day in and day out trying to revise, trying to resurrect and trying to pump a little life into something that has been killed time and time and time again. The people of our great state have their eyes focused on us, and tonight when I say my prayer, I'm going to ask the good Lord to give the people more wisdom than we seem like we're having right now when they go to decide our final product if we ever reach an agreement to send one to them. These propositions have been here, someone just said this is the first time we've ever had a chance to vote on it individually, well I voted on them individually when we placed them in the constitution. That was an individual vote. It just looks like that somewhere down the line, some people could see where we've tried and we've tried and we've tried but we're not going to muddy the water any more. Let's go ahead and make a little progress and do some of the things that the people expect us to do. The legislature at any time can submit these propositions, if they so desire to the people, and let them decide whether they want them elective offices or whether they want them appointed offices. I think we're just spinning our wheels over and over and over, and I wish that we would have so adopted some rules in the beginning of this and we spent about a week trying to adopt some where once a subject matter had been acted upon it could not be reconsidered. I think maybe the Rules Committee could give that a little suggestion. We've got an awful lot of work to do. My committee has got a tremendous amount of work to do, and I think we've met about as much as anybody. I know I have. But my committee is about like we are now. We just can't reach an agreement. I would like to suggest that once or twice or maybe three times we have had a proposition up and the proposition has been defeated, that we move on. Go on and try to continue our work and do the things we're supposed to do. If we don't, we won't be finished our work by January. We'll have to get an extension if we continue as the pace that we're now going back and forth, back and forth, back and forth. It just looks like that somewhere down the line some of us could see a little light. I'm not critical of anyone. Certainly you've got a right to do what you want here. You've got just as much right as I have or anyone else. But I would like to suggest that when you've had two or three opportunities on the same proposition and you've been soundly defeated, that you go ahead and let's move on and try to make a little progress and finish our work.

Questions

Mr. Segura Senator Rayburn, when this question was first brought up, was it to vote to take all of these offices all together out of the constitution?

Mr. Rayburn No, sir. The committee's recommendation left about 4 or 5 of them out.

Mr. Segura If I recall, the very first vote was to... someone put in an amendment to put all of these back as elective offices and we voted it down then your side came up with these one at a time and then some of them were added at that time. Is that not right?

Mr. Rayburn Mr. Segura, we've done so much on this that I really can't remember. If you can, I just bow to you and I'll accept what you say because I doubt if you'd have it correct.

Mr. Segura Well, the point I'm making is that you're telling us now that we're coming back time and time again because we're not getting it the way we want. Well, I think that's the way they got in here to begin with.

Mr. Rayburn I wouldn't know, and as far as my side, Mr. Segura, I have no side. I vote my

convictions and I'm going to continue to do that, and I'm not always right, don't get me wrong.

Personal Privilege

Mr. Jack Mr. Chairman, if this keeps up they can just [add] a new amendment increasing 1977, 1978, 1979, just keep on for two thousand years. There's bound to be some motion to put a stop to this foolishness. Whatever it is, I'd like to make it, and if there's no such motion I want the floor on personal privilege for less than two minutes. Is there such a motion?

Mr. Chairman and members, this keeps coming up and it's utterly ridiculous and it's going to look very silly to the public to get up and repeatedly have to kill this type of legislation that you have here. We have decided individually which of these offices shall be elected. We've passed on it. These things keep coming up. Like I said, under the rules, and I've just asked the Chairman, you could have another one all you'd have to do is change the thing one year each time. Now, here is the reason for it back here again, I'm sure. It's the same old story of having it... having a cabinet. Now, the convention has shown that they do not want a cabinet. I say this in concluding, let's quit putting these amendments in. We've decided this question numerous times, that we want those four offices elected. Now, I'm telling you, let's decide for once and for all who's going to be a cabinetmaker and who's going to be a statesman, and let's leave it alone. I choose to be a statesman. Thank you.

[Motion to take up Section 19 adopted without objection.]

Reading of the Section

Mr. Poynter Section 16, which, of course, would need an amendment to make it Section 19... Declaration of Inability.

Section 16. Whenever a statewide elected official transmits to the presiding officer of the Senate and the presiding officer of the House of Representatives a written declaration that he is unable to discharge the powers and duties of the office and until he transmits to them a written declaration to the contrary, the person succeeding to the office in the event of a vacancy shall assume the powers and duties of the office as acting official.

Explanation

Mr. Dennerly This section and the next section deal with inability to serve when someone has been elected. The first section is when the elected official himself determines that he is unable to discharge the powers and duties of the office. In this instance he will transmit to the presiding officer of the Senate and of the House a written declaration to this effect and until he subsequently transmits to the same two officials a written declaration to the contrary then the person who succeeds to the office in the event of a vacancy shall assume the powers and duties of the office as an acting official. In other words, if someone got into an accident, was laid up for any length of time or suffered illness or something of that effect where the individual himself could transmit a declaration of inability to discharge the powers and duties of the office, he would be relieved for the time being and his successor under the previous provisions would serve as acting official.

Questions

Mr. Bollinger Delegate Dennerly, what would be the effect of the absence of this section in the article, if you understand my question?

Mr. Dennerly Well, we have provided for two situations; one, when the official was able to make a

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declaration that he was unable to discharge his duties, and the other, when he was unable to make such a statement, but he actually was. The purpose of it, actually, is merely to permit this without having to go through any lengthy proceedings. In the following section you have to go through a lengthy series of proceedings in order to assure that you're not getting someone out of office when actually he is able to discharge his duties.

Mr. Champagne Does the present constitution have any such provision?

Mr. Denney I don't believe it does. Mr. Champagne, exactly of this nature.

Mr. Champagne My question is, is it really necessary in the constitution?

Mr. Denney Well, the Committee on the Executive Department felt that it was very desirable to have a provision to take care of those situations where an elected official was unable to discharge the functions of his office.

Mr. Champagne He could do that though without this in the constitution.

Mr. Denney I don't know that it would have the same effect, Mr. Champagne. If he were actually in Baton Rouge, for example, but ill, he would not be considered absent. It is conceivable that there would be some question as to the efficacy of his assistant's or successor's actions at that time. This was put in to avoid any such question.

Mr. Champagne He did have authority to name his first assistant, however?

Mr. Denney Well, in some instances, of course, the governor; his succession is set out in the constitution itself, but the ones who have the right to appoint assistants would do so, yes sir.

Vice Chairman Roy in the Chair

Mr. Rayburn Mr. Denney, assuming that you were a state office holder, or myself, when we wanted to take about a three, four or five-month vacation, but we wanted to do it under the guise that we weren't feeling good and we'd write a little note to the Speaker and to the President of the Senate and say I'm not feeling well, and I'll let you know when I start feeling better, and we take off. After we'd been on our vacation about six months we come back and we'd have to write them another note and say I've now decided I'm feeling better and I'll be at work tomorrow morning. Could that happen under this provision? Then the public official would be acting within his constitutional rights.

Mr. Denney Senator, if you look at Section 18, which talks about absences, I think that covers the situation to which you have reference. In the event of a temporary absence of the governor, the lieutenant governor acts as governor. In the event of a temporary absence of a statewide elected official from the state, the appointed first assistant shall act in his absence.

Mr. Rayburn Oh, I'm not talking about leaving the state; I like to fish around home. I'm talking about staying within the state.

Mr. Denney Well, Senator, I suppose that could happen with or without this section.

Mr. Abraham Mr. Denney, isn't this similar to the present provision in the federal constitution?

Mr. Denney Yes, I think the two sections taken together are somewhat similar to the federal

constitutional amendment.

Amendment

Mr. Poynter The first set of amendments is offered by Delegate Drew.

Amendment No. 1, on page 9, delete lines 8 through 16 both inclusive in their entirety.

Explanation

Mr. Drew Mr. Acting Chairman, ladies and gentlemen of the convention, this amendment does one thing; it deletes the printed Section 16. I have additional amendments which I will offer which will delete Section 17, and a third amendment which will provide that the legislature shall make provisions to cover this situation. I frankly do not think that the details set out in Section 16 and 17 are a matter that should be in the constitution. They can and will be handled by statute, and I see no reason to clutter up the constitution with such detailed matters. That's the whole thing. I will attempt to delete 16 and 17 and provide that the legislature shall make provisions therefor. If there are any questions, I'll answer them.

Further Discussion

Mr. Tapper Mr. Acting Chairman and fellow delegates, I rise in opposition to this amendment and I will also rise in opposition to the following amendments that Mr. Drew will submit as stated by him. The sole purpose for my objection is that I do not believe that this matter of inability which is...can become so vital to the people of the state should be left to the discretion of the legislature. I have an amendment to Section 17 which will go a little bit further than Section 17, but I think that we should attempt as much as possible to get this question out of the political realm if we can. I believe that if we leave it to the discretion of the legislature that we're not getting it as far away from the political realm as we would if we put it in the constitution and spelled it out. For that reason, I urge that you defeat this amendment.

Questions

Mr. Derbes Mr. Tapper, I think that it's an important question and an important consideration. Basically I'm interested, and perhaps you can answer this question, can the legislature provide for determinations of inability of statewide constitutional elective officials without constitutional sanction?

Mr. Tapper Well, I don't think so now, but I don't know what the final draft of this document will be, and it may well be that all those things not prohibited by the constitution may be delegated to the legislature. Under those conditions possibly the legislature could do it. I do not believe though that it should be left to the legislature. I think that inability should be spelled out in the constitution, I think I'm speaking on behalf of not only myself but of the Executive Committee.

Mr. Derbes I agree with you. I just make the basic constitutional point that if you elect a person to serve for a term in office and you provide that term in the constitution and you call him a statewide elective official then in order, it seems to me, to disqualify him, you must make provisions for that disqualification in the constitution, otherwise they may be unconstitutional.

Mr. Tapper I think you're correct, and I believe that if we don't make that provision here...put it in the constitution...that we will very well run into that problem and the legislature will not be in a position to declare an inability or to set up the procedure for declaring an inability.

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Mr. Drew Mr. Tapper, did you and Mr. Derbes hear me when I said that the third amendment which I have in this package will provide that the legislature shall take actions to provide for the inability of public officials to serve which I think would answer Mr. Derbes' question.

Mr. Tapper I heard you very well, Representative Drew, and I'm opposed to that procedure. I do not believe that it should be left to the determination of the legislature to set up the procedure for disability, but it should be set forth in this constitution that will be voted on by the people of the state. I urge rejection of the amendment.

[Previous Question ordered. Amendment rejected: 48-56. Motion to reconsider tabled.]

Amendment

Mr. Poynter Mr. Stagg and Mr. Abraham sent up technical amendments at this time. Amendment No. 1. Page 9, line 8, change Section 16 to Section 19. Page 9, line 9, change Section 16 to Section 19.

[Amendment adopted without objection. Previous Question ordered on the Section. Section passed: 87-19. Motion to reconsider tabled.]

Personal Privilege

Mr. Fontenot Mr. Acting Chairman, fellow delegates--we heard a couple of points of personal privileges a few minutes ago concerning the proposition of elected versus appointed officials. I don't want to start a lot of trouble but I feel I have to get up here and defend my position on this particular topic. As it was stated, this convention took all the present constitutional offices and there was an amendment to put them all in as elected officials and we voted it down. Then we took them one by one. We took the comptroller and we said should he be elected or appointed, and we said appointed. We took the register of state lands, and we asked the same question--he came out not a statewide elected official. When it came down to the custodian of voting machines, we voted not to have him elected statewide. Then when we got to the commissioner of agriculture it was decided by this convention that he be elected statewide. The same went for the commissioner of insurance and the superintendent of education. Then we had a political maneuver here to change the name of the custodian of voting machines and call him the commissioner of elections. Well, I'm going to have to try to justify why I voted for this. People came around and lobbied and asked me, can you go with the commissioner of elections? I think this is what a lot of delegates said. Well, I'll vote for the commissioner of elections if we can increase his duties. Perhaps take away some of the secretary of state's duties and give it to the commissioner of elections. I voted for it under this agreement. Now, whenever we came to the section of powers and duties we got to the secretary of state and we gave him the same powers and duties as he has now. Which in effect, limited the job of the commissioner of elections to the same job he has now. Of course we window dressed it a little bit. I think we added on something about registration of voters. I think this is a political maneuver. It was coming in the back door and I don't think that this convention can stand for it and I think if we will reconsider just the commissioner of elections we might have a different turn out on the vote. I may be wrong, I'm not in favor of an elected custodian of voting machines, which is exactly what we did. I am in favor of an elected commissioner of agriculture. I'm in favor of an elected commissioner of insurance and I'm in favor of a superintendent. I'm one of these guys that happens to be in the middle. Some people want all elected officials, some people

want just the five elected officials that were recommended by the committee, I'm one of those in the middle. I'm really concerned with what the public thinks about what we did, especially about the commissioner of elections. People around the state are going to laugh at us and say well all you did was change the name and you gave him the same job he had. That's exactly what we did. Now I'm going to abide by the wishes of this convention. If you think we should leave it like it is, I'll go for it but I just feel I have to move to suspend the rules to reconsider Section 3 as far as the commissioner of elections is concerned.

Motion

Mr. J. Jackson Mr. Chairman, I move that we suspend the rules to reconsider Section 1 and 3 only in regard to the commissioner of elections.

[Quorum Call: 103 delegates present and a quorum.]

Substitute Motion

Mr. Kelly I would like to offer a substitute motion; that being to proceed with the order of business of today.

Mr. Roy The motion is in order. The motion is not debatable. Mr. Kelly has moved that we proceed with the order of the day as a substitute motion to the motion by Mr. Fontenot that we reconsider Sections 1 and 3.

Point of Information

Mr. Kean Question of the chair. Is Mr. Kelly's motion that we revert to the regular order of the day or we simply go on with the consideration of the remaining section?

Mr. Roy I understood that we continue with the remaining section. Am I right, Mr. Kelly?

Mr. Kelly Just to the order of the business we had going.

Mr. Roy The clerk will state the motion as it stands.

Mr. Poynter Delegate Fontenot moved for a suspension of the rules for the purpose of reconsidering Sections 1 and 3 of Committee Proposal No. 4 insofar as they relate to the commissioner of elections only. To which motion a substitute was made by Delegate Kelly which has higher priority than the convention take up its regular order and proceed with the next proposed section.

[Substitute Motion adopted: 80-20.]

Reading of the Section

Mr. Poynter Next section, Section 17, needs a technical amendment to change it to "Section 20. Determination of inability.

Section 17.

A. Whenever a majority of the statewide elected officials determine that any other such official is unable to discharge the powers and duties of his office, they shall transmit to the presiding officer of each house of the legislature and to such official and shall file in the office of the secretary of state their written declaration that such official is unable to exercise the powers and perform the duties of his office. Thereafter, the constitutional successor shall assume the office as acting official. Unless within 48 hours after such filing in the office of the secretary of state, such official files in said office and transmits to said presiding officers his written counterdeclaration that he is unable to exercise such powers and perform such duties.

B. The legislature shall convene at noon on

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the third calendar day after the filing of any counterdeclaration which may be filed by such official at any time. Should two-thirds of the elected members of each house in the legislature fail to adopt a resolution within 72 hours declaring that probable justification for the determination that inability exists, such officers shall continue or resume in office.

C. Should two-thirds of the elected members of each house so adopt a resolution declaring that probable justification exists for the declaration of inability, the constitutional successor shall assume the powers and duties of the office and such resolution shall be transmitted forthwith to the Supreme Court of Louisiana.

D. By preference and priority over all other matters, the Supreme Court shall determine the issue of inability after due notice and hearing by a majority vote of the members elected to said court under such rules as it may adopt.

E. A judgment of the Supreme Court affirming inability may be reconsidered by the court after due notice and hearing, either upon its own motion or upon the application of said official. Upon proper showing and by majority vote of its elected members, the court may upon such reconsideration determine that no inability then exists, whereupon such officer shall immediately resume the powers and duties of his office.

Explanation

Mr. Denery Mr. Acting Chairman and delegates to the convention, the present constitution contains one paragraph which says, "In case of the inability of the governor to act, as such, by reason of his absence from the state or for other cause, all the powers and duties of his office shall devolve within the offices in the order named above and such officers shall act as governor at interim until the inability be removed." The purpose of this section, which is really a new section because we have never had such a section in the present constitution. No, I'm on "Section 17, Determination of Inability." The only thing, I was just reading what was in the constitution now. This is really a new section. It is similar to the disability provision to the federal constitution which was the 25th amendment, adopted some years ago by the United States. It provides a procedure whereby the disability of statewide elected officials can be determined. This section deals not only with the governor but with all other elected officials. The procedure is initiated by the elected officials. Now originally of course, there were only going to be a total of five statewide elected officials and now there will be nine. Whenever the majority of these statewide elected officials determine that any other official, statewide elected official, is unable they will transmit a statement to this effect to the presiding officer of each house. Now the elected official has an opportunity to contest this. Unless he does so within 48 hours his successor will take over as acting official in the place, instead of the officer who is unable to act. If he does this, and he can do this later as well, as soon as he does transmit to the presiding officer a counterdeclaration that he is able to exercise the powers and perform the duties. Then the legislature must convene and determine by two-thirds vote of the elected members of each house whether or not probable justification for this determination of inability exists. If they do not do so, then the elected officer shall either continue or resume in office. But if two-thirds of the elected members do adopt such a resolution, declaring probable justification for the declaration of inability then the constitutional successor assumes the powers and duties of the office as acting official and the resolution is transmitted immediately to the Supreme Court. Then by preference and priority the Supreme Court determines the issue of inability after due notice and hearing. In other words, the final determination by the court is only made after the elected

official has an opportunity if he chooses to do so, to prove he is able to act. He can do this of course by any evidentiary process or procedure he desires. A majority of the members elected to that court incidentally must agree in order to declare inability. And subsequently, at any time the court may reconsider its judgment, either on its own motion or by application of the official. And when the Supreme Court ultimately determines that the individual is able to resume his duties he will then resume the duties of his office.

Questions

Mr. Denery Let me first tell you that we tried to make this shorter but we were unable to do so.

Mr. Rayburn Mr. Denery, does this section or later sections make any provision of notifying this office, this particular officer of any action that the other state elected officers might have taken against him or against her?

Mr. Denery Yes sir, the original notification and declaration which is transmitted to the presiding officers of each house must also be transmitted to the elected officer and also to the secretary of state. So ample notice will be given them. And furthermore, the trial before the Supreme Court must be after notice.

Mr. Blair Mr. Denery, I believe we ended as of now with eight statewide elected officials.

Mr. Denery No, I think nine--including the governor.

Mr. Blair Well let's go nine then. What would prevent five making four go through this embarrassing situation?

Mr. Denery Well, Senator there is really nothing that would prevent it except. I assume when we elect our public officials we will elect relatively decent people. This has always been my assumption in proceeding under this constitution. Of course, it is possible on a political move to do something like this. But the man, within 24 hours if this happens to him, all he has to do is write to the same two officers and then the two-thirds majority of both the House and the Senate have to concur before he is declared unable, or unable to perform his duties.

Mr. Blair Well, do you see that it could happen that we could have a political situation in Louisiana you might have eight that would want to cause one official some embarrassment and send them through all of this.

Mr. Denery Senator Blair, I don't think there is any question but that could happen. I think it's quite obvious it could and furthermore, it could happen constantly. Just as we have had the same thing brought before us several times in this convention. It could be brought up several times.

Mr. Pugh Who would be representing the legislature before the Supreme Court?

Mr. Denery I beg your pardon?

Mr. Pugh Who will represent the legislature before the Supreme Court?

Mr. Denery Well, I don't know who would represent them necessarily. Mr. Pugh, we didn't provide specifically who would. In other words, the legislature merely sends this over to the Supreme Court and the Supreme Court then holds a hearing at which the elected official who is "being tried"...

Mr. Pugh I understand the procedure, what concerns me...

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Mr. Dennergy Presumably the attorney general if he is not the elected official involved would represent the state.

Mr. Pugh That's the reason why I asked the question. Attorney general would have voted perhaps on the same question.

Mr. Dennergy Quite possible, sir.

Mr. Pugh It seemed to me to be appropriate to provide the method by which counsel for the legislature is determined in this particular instance.

Mr. Dennergy I would take it in any event, Mr. Pugh, that the legislature would have the right to retain its own counsel even if the attorney general also appeared.

Amendment

Mr. Poynter Amendment dealing here with the Asseff amendment that was passed out to you with certain changes added first of all Messrs. Drew, Rayburn and Blair added as coauthors.

Amendment No. 1 on page 9, strike out lines 18 through 32 in their entirety and on page 10, strike out lines 1 through 22 in their entirety and insert in lieu thereof the following: Section and that should not be a 16, it should be in fact now a 20. Section 20. The legislature shall provide and the gentlemen have made some changes, the gentlemen shall provide, strike out the word "four" in that amendment and put "shall provide by statute a procedure by which the inability or disability of any statewide elected official to discharge the powers and duties of his office" and add "shall be determined". Read it one more time, "the legislature shall provide by statute a procedure by which the inability or disability of any statewide elected official to discharge the powers and duties of his office shall be determined."

Explanation

Mr. Drew Mr. Acting Chairman, ladies and gentlemen of the convention I had hoped possibly to delete in your printed proposal Section 16 and this convention has seen fit to keep that portion in. However, if you will add up the total number of lines we are talking about some 36 lines that are provided in Section 17 which this should read, what this will do is what I explained before, and I feel strongly that this is a legislative function which will be taken care of by the legislature. According to the discussion and the questions that were asked in explanation of Section 17 you see there are a lot of possibilities that should be determined and taken care of. As this section will now read, "the legislature shall provide by statute a procedure by which the inability or disability of any statewide elected official to discharge the powers and duties of the office shall be determined." I think this is a legislative function, it should be in the statutes to go into the minute detail that this Section 17 goes into. I think it's totally unnecessary and I move for the adoption of the amendment.

Questions

Mr. Arnette Just a short one, Mr. Drew. In your amendment you have Section 16, should that be...

Mr. Drew That's 17 it should be, Mr. Arnette.

Mr. Poynter 20, Mr. Drew.

Mr. Drew 20 I mean, it's been changed now to 20.

Mr. Arnette And my next question is, do you realize a provision for disability and inability is presently in the United States Constitution and was just recently adopted by the people and they thought it was important enough to be in the U.S.

Constitution.

Mr. Drew I realize that, Mr. Arnette, and possibly we do need it on a federal level but I think it can adequately be handled and should be handled by the legislature.

Mr. Conroy Mr. Drew, you fail in your amendment to state what the effect would be once inability or disability was determined. Because Section 15 dealing with vacancies does not describe this as a vacancy, is there a further amendment you propose to supply us to what the effect would be once inability or disability had been determined?

Mr. Drew We will have to provide that, I was probably erroneously under the impression that it was determined in the other articles. Then if not, we will provide an amendment to that effect, Mr. Conroy, if it's necessary. I move adoption of the amendment.

Further Discussion

Mr. Conroy I rise in opposition to the proposed amendment, not in concept insofar as the effort is made to try to shorten the length of the constitution. But, I rise in opposition for two reasons—one is that I don't think the amendment as proposed is sufficient in scope as far as accomplishing what needs to be accomplished. In addition, I have some concern to which I would hope that some members of the committee that worked on this would respond as to whether we can in this constitution constitutionally delegate an authority to remove from office by this procedure, this declaration of inability procedure, a constitutionally elected official. But thoroughly, I think most importantly, although I disagreed with some of the things that were said earlier with regard to who should be elected and who should not be elected. That this amendment as presently proposed really opens wide the door for the legislature to establish rather loose procedures if they so chose. To remove from office any elected statewide elected official and that's what we are dealing with within this amendment. I would hope, as I said before, that some way could be found to shorten the long procedure which the committee has come up with but I think the amendment as proposed is a dangerous one and I hope it will be rejected.

Question

Mr. Dennergy Are you aware, Mr. Conroy, that our committee did look into the very question that you raised and we concluded that it should be in the constitution and should not be left to the legislature?

Mr. Conroy Well, I assumed that to be the case. But I hoped that somebody in the committee would take the floor to respond to that. Thank you.

Further Discussion

Mr. Tapper Mr. Acting Chairman and fellow delegates, I rise in opposition to this amendment as I did the previous one by Mr. Drew. I don't think this is something that should be left to the discretion of the legislature, I believe the people would prefer that the inability procedure be set forth in the constitution. And in answer to the question put by the previous speaker, I don't know we may be able to delegate this authority to the legislature. I do not believe it will be in derivation of the rights we have as delegates of the convention as long as it does not violate the United States Constitution. So I don't want to try to make you believe that we cannot do this. However, I believe that it should be in the constitution and should not be delegated to the legislature and I'll ask that you defeat this amendment.

Further Discussion

Mr. Gravel Mr. Acting Chairman, ladies and gentlemen of the convention I just would like to state more or less in support of the position taken by the Committee on the Executive Department. This Section 17 was modeled after the 25th amendment of the United States Constitution and frankly we felt that there was some improvement made with respect to the inability concept insofar as the state of Louisiana is concerned. I would like for you to give consideration to this fact which I think is very important. And that is that there is still into this section an interplace of the statewide elected officials in the state of Louisiana, the elected members of the Louisiana legislature and the justices of the Supreme Court. All of which is to say that before a final definitive determination of inability can be made, that you have the interplay of each branch of government--the Executive, the Legislative and the Judiciary. Now I think if you will read this proposal you will see that an effort has been made to try to do all that could possibly be done to protect the integrity of public office and yet to give to the people who are at the highest level in state government an opportunity to make a determination as important as the termination of inability has to be. I urge that you reject any amendment and support the provision recommended by the Committee on the Executive Department.

Questions

Mr. Avant Mr. Gravel, the only thing I would like to have answered is simply this, you go through this procedure as I understand it, and then the Supreme Court finally concurs in it. Then the provision says that the Supreme Court may later reconsider and as I read the provision there is no time limit on when they may later reconsider. In other words, the man could have been declared disabled for maybe two and a half years out of a four year term and then they could come back and reinstate him. Is that the...there is no time limit?

Mr. Gravel That's correct, and let me tell you the reasoning behind that, Mr. Avant. It was felt that if a person was declared disabled or unable to perform the duties of his office for some specific reason by the Supreme Court that the Court then would be the proper place to give reconsideration if new facts came to light that would justify a reconsideration. Suppose for example, getting away from the question of physical or mental disability, that a declaration of inability was made for some reason, because of some temporary reason, then the Court could give reconsideration to the situation in the event that particular reason did not any further exist. We didn't feel there should be a finality of the action by the Supreme Court even though the entire process would have been completed if something came up that the Court felt justified reconsideration of the position.

Mr. Avant For an unlimited period of time?

Mr. Gravel That's correct, yes sir.

Mr. Willis Mr. Gravel, do you now think that this Section now No. 20 by the committee gives you from the standpoint of due process an eternity of due process? That is to say by all three branches of government, noticeably if you have to run the gamut of the majority of the executive statewide elected officials, two-thirds of the legislature, and a majority of the Supreme Court which can reconsider it. So that there is no chance that these elected officials statewide in the Executive Branch would take the chance of so called embarrassing anybody because they would only embarrass themselves.

Mr. Gravel That's correct, Mr. Willis. We

thought that really, ladies and gentlemen of the convention, really I think this is a very fine proposal in that it does bring all of the top level forces of each branch of government into play into making the consideration and the determination before a statewide elected official in effect is declared removed, not removed from his office, but unable to perform the functions of his office, for whatever reason, physical, mental, absence and so forth.

Mr. Flory Mr. Gravel, do you think that the 48 nouns necessary for the person who has to file the statement in answer is sufficient in view of the fact that he might be out of the country and not have knowledge of the fact that the statement had been filed?

Mr. Gravel Well yes I do because I think we are not talking about simple absence. We are talking about cases probably of either serious physical or mental disability or emergency, Hale Boggs type situation, where some action needs to be taken.

Further Discussion

Mr. Abraham Fellow delegates I think many of you are taking this in the wrong light and that you are thinking along the lines of some elected officials trying to get rid of another one. But the real intent of this and the real purpose of it is to take care of situations that brought on the 25th amendment to the Federal Constitution that was the case where Eisenhower had his heart attack and there was a question as to whether the Vice President should succeed to the office or not. You had the same thing happen in the case of Governor Wallace of Alabama when he was incapacitated. You had the same problem when Congressman Boggs was lost. What this does is sets the mechanics in motion in the event that you do have an accident. If the governor gets in an automobile wreck, or an airplane crash or whatever it may be, this simply sets the mechanics in action for someone to succeed to the office and this is the real thing that we need to be concerned with in this amendment and I would urge you then to reject the proposed amendment and go along with the committee proposal.

Questions

Mr. Tobias Mr. Abraham, are you aware that under the proposal that your Committee has adopted that it would take 105 elected officials of this state to successfully declare a person unable to perform his duties?

Mr. Abraham I haven't added up the exact amount, but that sounds like it would probably be in line.

Mr. Vick You didn't mean to suggest that this proposal would affect the Congress of the United States did you?

Mr. Abraham No, I was just using that as an example. But persons can be incapacitated physically and unable to handle their office.

[Previous Question ordered.]

Closing

Mr. Rayburn Mr. Acting Chairman, fellow delegates I have no particular quarrel with some means or some method from removing a public official when he is not able to carry out the duties of his office. I do think this provision is too lengthy. I know of no provision as to how long the legislature could consider a matter of this nature and I can see where if you wanted to maybe embarrass a particular public official you could have him before various hearings throughout the major part of any year you so desired, if you wanted to play a little politics. Regardless of what the out-

come might be, this only deals with inability, and unable to perform your duty. I further see in here where if the court ruled that a public official is unable to perform his duties that later they can come back and say he had recovered and can perform his duties. I'm wondering what would happen if a successor has been named during that interim period to take his place and maybe he still had a considerable amount of his term left to serve. I do think the legislature could handle this better, I don't think we need to clutter up the present constitution with something this long. And that's my only reason for asking for you to adopt the amendment and let the legislature place some type of language in the statute that wouldn't be certainly cluttering up the present constitution.

Questions

Mr. Dennerly Senator Rayburn, I believe you said you saw nothing in the provision which would indicate how long the legislature had to act. If you will refer, sir, to page 10, lines 2 and 3 you will see that the legislature must act within 72 hours, so there is a limitation.

Mr. Rayburn Well I don't know if that means they will have to reach a final decision within 72 hours and if they hadn't I'm no medical doctor. Supposing they come before me and say to me that this man is unable, he is incapacitated. I'm no doctor, I don't know. I don't know if we could have time in 72 hours, Mr. Dennerly, to get the information we would want before we would take a crucial vote on whether to say a man should give up the powers and duties of his office or not, 72 hours is not very long, Mr. Dennerly.

Mr. Dennerly Senator Rayburn, do you realize that all the House and Senate would have to do in a case like this is to adopt a resolution declaring that probable justification for determination of inability exists?

Mr. Rayburn If we are going to have to do that, Mr. Dennerly, just let the legislature do it all, that's my only point. And certainly we are going to have to do something to even comply with this because it makes no mention here, no medical examination, no one that's qualified to give the legislature information, there is no mention of that, we are certainly going to have to do something else to this article to ever make it active and if we are going to have to amend it or doctor it up, I say just let us go all the way, that's my only point. I have no quarrel with adopting some method but I do have a quarrel with the way this language is placed in the constitution.

Mr. Dennerly One final question, Senator. Has the legislature ever adopted such a provision?

Mr. Rayburn I don't know if we have ever had a problem of that nature, Mr. Dennerly. We might have had one one time but it didn't cause a problem because the lieutenant governor and other people in line of promotion took over and I don't know of any, I think if it had caused a serious problem in this state that the legislature would have adopted the necessary laws, or the necessary remedies to correct it. But Mr. Dennerly, in all fairness to me as a legislator, and I may not be when this provision is in effect. As I qualified, or does the language in here make any provisions or give me the information that I need or allow me the time to get it? I don't know of a doctor that could analyze some people in a period of say the legislature was called and we come in session then we got to have a medical report and act and do what we are going to do within 72 hours. It might take the medical examination longer than 72 hours to make a final determination. I know it does now when they are trying to determine a person's capabilities or incapacibilities. They have to make various tests and they don't

come up with an answer within 72 hours. I don't know of any court that's ordering an examination where an answer was forthcoming from the Medical Association within 72 hours.

Mr. Dennerly Senator Rayburn, do you realize that the provision of this does not require the legislature to determine inability but only to determine if probable justification exists and if the Supreme Court determines the disability after the hearing at which both the legislature and the individual elected official have an opportunity to present medical evidence? The legislature is not asked to pass on the medical evidence in this provision.

Mr. Rayburn I'm asked to pass on a resolution or adopting the procedure, Mr. Dennerly, and if I'm going to have to go that far, I say just let the legislature go all the way.

[Amendment rejected: 46-62. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendments sent up by Delegate Tapper. Amendment No. 1. On page 10, line 11 after the period add the following: "However, no action shall be taken by the legislature until after a report has been filed by a medical examination board composed of three physicians qualified to practice in the area of the alleged inability, one to be named by the official, or his representative, whose ability is in question, one to be named by the president of the Louisiana State Medical Society and one to be named by the chief justice of the state supreme court."

Explanation

Mr. Tapper Mr. Acting Chairman, fellow delegates, this amendment is in section 4 a section which hits upon some of the objection that Senator Rayburn brought up and that is, about the decision being made without, possibly without any medical examination. We labored long and hard in the Committee on the Executive Department to arrive at the proper wording of this particular inability section and I am still not completely wedded to all of the words as they are in the section. However, I attempted in the committee as long as I could to require that some type of medical examination and report be given before any statewide elected official could be removed from office because of inability. And I also am not wedded to the exact language of my amendment as far as how we arrive at the composition of the board of physicians that will assist the legislature, and the supreme court in making that determination. However, I do not believe that we should if we are going to have in this constitution a section on inability allow the possibility that this determination could be made without a medical examination and report if the inability is determined on the basis of physical or mental disability. And I will ask for your support of this amendment.

Questions

Mr. Derbes Delegate Tapper, I refer you to the language in the fourth line of your amendment specifically in the area of the alleged inability. Does this mean that if the inability occurs in Baton Rouge, you can't have a doctor from New Orleans?

Mr. Tapper That was not the purpose of that particular word. The intent of it is to have the physicians qualified in that particular field of medicine.

Mr. Derbes Perhaps you should say medical specialty of field of medicine.

Mr. Tapper That was my intention, yes.

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Mr. Stovall Representative Tapper, don't you think the legislature can do this without this provision being in the constitution?

Mr. Tapper Yes, I would imagine so, Reverend, I think they could. I do not believe that it should be left to the discretion of the legislature, this is what I said before about my position on the inability section in the constitution. I believe that if we are going to have it here that we should try to stop all of the possible loopholes that we may have and I think this is one of them. Where an elected official is being challenged because of disability on the basis of physical or mental condition without provision for a medical examination.

Mr. Willis Mr. Tapper, in Subsection D, it directs the Supreme Court to give preferential consideration when the matter reaches it and to give due notice and hearing. Now my understanding of hearing which I hope does not...which I hope coincides with yours is that you can hear any medical evidence in the Supreme Court that it would have by rule, which would include all of those doctors plus others, isn't that correct?

Mr. Tapper That is correct.

Mr. Willis Wouldn't that be a just as good a hearing as if the legislature would hear doctors and isn't the Supreme Court more fit to make a judicial determination in the matter than the legislature?

Mr. Tapper Well, I don't know what you mean by the word fit but I agree...

Mr. Willis Isn't that the purpose of a court to make an adjudication...under the division of powers it interprets, isn't that correct?

Mr. Tapper Yes, that is correct. And they certainly could hear and call upon medical experts in the field if they so chose.

Mr. Willis Including those you suggest and more.

Mr. Tapper Yes, and more, yes they could.

Mr. Willis At anybody's request?

Mr. Tapper Right.

Mr. Willis Even the legislators.

Mr. Tapper They could if they want to but under this provision they do not have to and I just want to make sure that...somewhere along the line in this procedure that there is a medical examination and a report from a board or physician before an elected official, statewide elected by the people is removed from office.

Mr. Willis Your statement that they do not have to prompts this next question.

Don't you think that if the Supreme Court is requested to, it will hear?

Mr. Tapper I think you are probably right but I am not sure they will. And that is why I want it in here. I urge your adoption of the amendment.

[Previous Question ordered. Amendment rejected: 26-77. Motion to reconsider tabled.]

Amendment

Mr. Poynter Next set of amendments just technical amendments. Changing the section from Section 17 to Section 20, sent up by Delegates Stagg and Abraham.

[Previous Question ordered. Amendment adopted without objection. Previous

Question ordered on the Section. Section passed: 82-25. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter Section 18, you need a technical amendment changing it to become 21.

Absence:

Section 18. In the event of a temporary absence of the governor from the state, the lieutenant governor shall act as governor. In the event of a temporary absence of a statewide elected official from the state, the appointed first assistant shall act in his absence.

Explanation

Mr. Tapper Well the section I think is very clear. I believe it says the same now except for the...same as the present constitution except for the appointed first assistant assuming the duties of the officer in his absence from the state. If there are any questions or any explanation that you would like to have I would be glad to try to give it, otherwise I move the adoption of this section.

Amendment

Mr. Poynter Mr. Stagg sends up technical amendments changing the section number on lines 23 and 24 of the page from 18 to 21.

[Amendment adopted without objection.]

Point of Information

Mr. Pugh It is one of style but it would seem to me that the second sentence of this section should read "any other statewide official" you have already declared what is going to happen if the governor is out. I recognize that the governor does not have a first assistant, still from a pure systematic standpoint I think he should have any other official.

Mr. Roy Style and Drafting, Delegate Pugh, will probably take care of that and your suggestion is well taken.

[Previous Question ordered on the Section. Section passed: 107-0. Motion to reconsider tabled.]

Chairman Henry in the Chair

Reading of the Section

Mr. Poynter Reorganization

Section 19. The governor may propose to the legislature, on or before the first day of any session, a plan of reallocation of the functions, powers and duties, and responsibilities of all departments, offices, agencies, and other instrumentalities of the executive branch, except those functions, powers, duties, and responsibilities allocated by this constitution, among and within not more than twenty departments. The legislature, by a majority vote of the elected members of each house, may disapprove such plan, but may not substantively amend it.

Explanation

Mr. Denney Mr. Chairman, delegates to the convention, the 1921 Constitution vested the power of reorganization in the legislature. This section as proposed, would give the governor the constitutional authority to reallocate non-constitutional executive functions, powers, duties and responsibilities into not more than the twenty departments which we have already determined as the maximum. The legislature has the right to disapprove the governor's plan by a majority vote but it could not substantively amend it. The governor's plan

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would have to be submitted on the first day of a legislative session. Now, I call your attention to the fact that this article on reorganization should be read in conjunction with Committee Proposal No. 19 which is a proposal to be added to the schedule entitled "Mandatory Reorganization of State Government". And in the Mandatory Reorganization Article the legislature is required to make this allocation within eighteen months after the effective date of the constitution. The re-allocation made by the legislature within the eighteen months period will not be subject to the governor's veto. And if the legislature fails to make such an allocation, the governor within six months thereafter shall affect the allocation by executive order. In the discussions and the witnesses that we heard before the Committee on the Executive Department much was said about whether this power to reorganize if you will, should be left entirely with the legislature, entirely with the executive or split between the two. It was the conclusion of our committee, after much debate, that the mandatory reorganization should be left into the hands of the legislature so that within eighteen months after the effective date of this constitution, the legislature would reorganize the executive branch of the state government. And such reorganization would not be subject to a veto. Thereafter the governor could come in with a new plan of reorganization at intervals. We felt that the executive branch at that time, after the first reorganization would be in a better position to make suggestions as to methods of reorganization than would the legislature. But we do provide the legislature with the veto power over any suggestions made by the governor. In other words, the first reorganization, which is a required one is up to the legislature. If the legislature fails to act, the governor within six months shall act by executive order. Thereafter, as times change and it becomes desirable for the governor, whoever he may be at the time to suggest further reorganizations, he suggests them to the legislature and the legislature approves but may not amend. It can veto or approve but it may not amend. You should also note of course, that those powers and duties which are set forth in the constitution to any of the constitutional offices cannot be reallocated to any other department. I will be pleased to answer any questions, Mr. Chairman.

Chairman

Mr. Munson Mr. Dennerly, I am certainly not opposed to any effective reorganization but I am concerned here about some elected officials. Where it says the governor may propose and so forth a plan of reallocation of the functions, powers, and duties and responsibilities of all departments, offices, agencies and other instrumentalities of the executive branch except those functions, powers and duties and responsibilities allocated by this constitution. Now the amendment we adopted for instance to use the commissioner of insurance simply says there shall be a department of insurance headed by the commissioner of insurance. The department shall exercise such functions and the commissioner shall have such powers and perform such duties as may be authorized by this constitution. Couldn't this as it is written, strip an elected state official of all of his powers and duties and still leave him in office with nothing just the head of a department with no powers and duties whatsoever?

Mr. Dennerly I think that is conceivable Mr. Munson, you must remember when this article was drafted, it was drafted on the assumption that there would only be three other offices and those duties and functions were set forth. Now as I appreciate it the Agriculture Committee is going to set forth duties and functions of the commissioner of agriculture.

Mr. Munson But it is not in the constitution now.

Mr. Dennerly Yes, but it will be presumably.

Mr. Munson I hope so.

Mr. Dennerly Presumably the same will be true of the superintendent of education, whether it will be true of the commissioner of insurance and it is also true of the commissioner of elections. The only one we would really be worried about is the commissioner of insurance.

Mr. Munson But at this point Mr. Dennerly there are no real powers and duties set out in the article as we have adopted these different sections. Except that a department head shall be head of that department and his responsibilities and duties shall be as set forth in this constitution are by statute. So at the point we are at right now there are none, isn't that correct?

Mr. Dennerly That is absolutely correct.

Mr. Derbes Mr. Dennerly, I have been trying to pay attention here and discuss this matter with a couple of other delegates but as I recall, we amended Section 1-A to include additional officers. Section B stands as it was originally proposed in Section 1 which says that all offices, agencies and other instrumentalities... shall be allocated within not more than twenty departments, isn't that correct?

Mr. Dennerly That is correct.

Mr. Derbes And now you come along and say that the governor may offer a plan for reallocation of those agencies except those provided for in this constitution within not more than twenty departments. That seems...where are our constitutional agencies, are they within the twenty departments?

Mr. Dennerly Yes, sir. Under the way we have drafted this, if I read it correctly, there will be twenty departments in the executive branch of government. Originally there were three of these particular departments which were specified. There are now at least seven departments specified. There may be one other department specified in another portion of the constitution. That would leave an additional twelve departments and according to all of the information we had, all of the other functions of state government could probably be put within fewer than those twelve. So we would have a little leeway, possibly two or three departments which would not be necessary in the inception.

Mr. Derbes So all that Section 19 does is that it accepts the fact under the original proposal as we have adopted it, the constitutional offices that we have sanctioned are within the twenty departments and the governor can't tamper with them.

Mr. Dennerly That is correct, sir. That is exactly what it is suppose to mean.

Mr. Derbes Thank you.

Mr. O'Neill Mr. Dennerly, this isn't a hostile question, it is sincere. I wanted to ask you, what would the effect be of deleting this provision and relying on the language adopted in Section 1 where we say "it shall be allocated to no more than twenty departments"?

Mr. Dennerly Well, there is no provision elsewhere in the constitution as to who makes this allocation, Mr. O'Neill. And we put it in our Schedule Article we say that the first allocation shall be made by the legislature. Subsequent allocations which are not...those are purely discretionary, they are not mandatory, would be suggestions and proposed by the governor.

[Quorum Call: 105 delegates present and a quorum.]

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Amendments

Mr. Boynter Amendment No. 1 [By Mr. Casey, et al.]. On page 10, delete lines 29 through 32, both inclusive in their entirety.

Amendment No. 2. On page 11, delete lines 1 through 6, both inclusive in their entirety.

Amendment No. 3. On page 10, line 29, add the following:

"Section 22. Reallocation of the functions, powers and duties of all departments, offices, agencies, and other instrumentalities of the executive branch except those functions, powers and duties, and departments allocated by this constitution shall be as provided by statute."

Explanation

Mr. Duval Mr. Chairman, and fellow delegates, please excuse the delay in our seance up here I think we ultimately came up with a provision that is a good provision. As the committee proposal presently reads, it limits future reorganization to the executive, that the governor, and it does not allow the legislature to amend the plan. Therefore, the governor in essence by executive order could repeal statutes. The duties of most agencies... of all agencies are presently in the statutes and will remain in the statutes and it is our feeling that the legislature as in any other law, should initiate the proceedings and of course it would be subject to gubernatorial veto. But these reallocations would have the effect of law and therefore it should go through the process as any other bill. And the thrust of this amendment is to allow reorganization by the legislature as in any other bill. We think it has to be affirmatively stated because of the division of powers. It allows the legislature in essence to reorganize the executive branch subject to gubernatorial veto. And because of the division of powers section we think it should be affirmatively stated that the legislature does have this right. Therefore, in the future after mandatory reorganization which is in our schedule provision, all future reorganizations will be initiated in the legislature as in any other bill and go through the regular process of law. The committee amendment limits it to the governor and I think this is definitely bad, it should be like any other process. And I move the adoption of the amendment.

Questions

Mr. Stovall Mr. Duval, isn't this essentially what is in the present constitution?

Mr. Duval Essentially, yes.

Mr. Stovall And isn't it true that we have had some two hundred and fifty or three hundred state agencies, and there has not been any reorganization or consolidation?

Mr. Duval No, that is not true, Reverend Stovall, if you will look at the umbrella of health and welfare there has been a very substantial reorganization by the legislature. The office of comptroller.

Mr. Stovall This is the first example of such consolidation though of any significance, right?

Mr. Duval Yes, I think it is the first example of many that is to come with our new and enlightened legislature.

Mr. Denney Mr. Duval, was there a reason for you deleting the word "responsibilities" which was in the original proposal?

Mr. Duval Excuse me, go ahead.

Mr. Denney ...functions, powers, duties and responsibilities...

Mr. Duval No specific reason, except I think it is redundant.

Mr. Denney You say you think it is redundant.

Mr. Duval Yes.

Mr. Denney Now is there any provision in Section 22 as you now have it which provides when such a reallocation may occur?

Mr. Duval It would occur at any time that the legislature so deems.

We have our mandatory as you know, Mr. Denney, our mandatory plan which will implement the reorganization set forth in the constitution which has not yet been considered by this body. This of course as you know, deals with all subsequent reorganization procedures.

Mr. Denney Right, and it can be done at any time.

Mr. Duval Yes, sir.

Mr. Denney Thank you.

Mr. O'Neill Mr. Duval, will you explain how this keeps the sanctity between... or a separation of powers complete, for the convention's benefit?

Mr. Duval Well, under the committee proposal the executive, the governor, could in essence, reorganize ex parte in that the legislature could not amend his reorganization proposal. Which would have the effect of repealing statutes setting forth responsibilities, powers and duties without legislative enactment. And this is certainly a disruption of the separation of powers concept. And I think this particular amendment sets forth the basic idea of separation of powers.

Mr. Derbes Mr. Duval, referring to the Committee Proposal Section 19. As I understand it there is nothing in that proposal which prevents the legislature from effecting a reorganization at their own instance.

Mr. Duval Yes, I think there is. It was certainly the intent...

Mr. Derbes What is it?

Mr. Duval Sir.

Mr. Derbes What language in there prohibits the legislature from effecting a reorganization at their own instance?

Mr. Duval Well, there are several reasons. One, in your division of powers problem, the legislature might be prohibited from reallocating executive functions. Two, it was certainly the intent of the committee members who propounded this language to specifically preclude the legislature from doing it. Three, when you affirmatively give this power to the executive and affirmatively state that the legislature cannot alter or amend it, I think you have a very serious problem in that regard of the legislature being able to do it on its own. And I think this is much clearer and I think that it shows that a reorganization would be done just as any other law is passed, initiated in the legislature going through the process and having the governor with the right to veto it.

Further Discussion

Mr. Stovall Mr. Chairman, fellow delegates, I think we have to keep in mind that in recent years we have had extensive duplication overlapping resulting in a multiplicity of many agencies. The number has been set at two hundred and fifty. Now, we are here to provide a new basic structure for the state. And who is the best person to recommend the kind of administrative structure that we should

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have. Is it legislators who are here for a month or two out of each year or is it the chief executive with his recommendations that come to him from his chief of administration and from other people who are on his staff? It simply seems to me that the person who is best qualified to make recommendations is the governor. Now please note that we have provided already in the constitution that the original reorganization will be by the legislature. But after that date this kind of provision in the original recommendation by the committee provides the kind of flexibility that is necessary on the part of the chief executive of the state to reorganize and to respond to emerging situations. It seems to me that it frees the governor to give meaningful leadership and to administer the affairs of the state. The provision which is recommended by the committee does not try to define the administrative structure but it makes provision for it to be done, and for the state to respond to changes and emerging situations. And also let us keep in mind that the governor will be restrained in what he does through provisions in civil service, this constitution and other legislative provisions. And therefore, I encourage you to reject the amendment and to return to the original provision submitted by the Committee on the Executive Department.

Further Discussion

Mr. Abraham Ladies and gentlemen I will have to oppose this amendment. The original committee proposal foots the responsibility for the reorganization with the person who has the responsibility for working with the organization. If you take the reorganization or the reallocation out of the hands of the chief executive officer and you are giving it to someone else outside of that area then it would be just like anyone who has a business having someone else tell him how to organize his business. And I have to agree with Reverend Stovall that the person who best knows where these various agencies can work is the one who has to work with them all year long, all the time. And it is not a part-time job that you can turn over to someone else. So I strongly urge that you reject this amendment and adopt the proposal as presented by the committee.

[Previous Question ordered. Amendments adopted: 66-43. Motion to reconsider tabled. Previous Question ordered on the Section. Section passed: 91-18. Motion to reconsider tabled. Motion to take up other orders of business. Substitute motion to continue in the Regular Order of Business. Record vote ordered. Substitute motion adopted: 57-51.]

Reading of the Section

Mr. Poynter Section 20. Impeachment. Section 20, Paragraph A. Any state and district official, whether elected or appointed shall be liable to impeachment for a commission or conviction of felonies or malfeasance...

[Motion to waive reading of the Section adopted without objection.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Abraham]. Page 11, delete lines 7 through 22, both inclusive in their entirety.

[Previous Question ordered. Amendment adopted: 102-0. Motion to reconsider tabled. Motion to take up other orders of business.]

Point of Information

Mr. Alexander To pass this motion, would it mean we come back tomorrow? Sir?

Mr. Henry Well I just don't know. We'll have to see.

Mr. Alexander If we adjourn now, we come back tomorrow?

Mr. Henry Well, it's whatever this body decides to do, Reverend Alexander. I've never tried to influence at this point in time and...

Point of Information

Mr. Rayburn Mr. Chairman, have we now completed Committee Proposal No. 4? Is it ready for final action?

Mr. Henry No sir.

Mr. Rayburn We have other amendments or...

Mr. Henry Yes sir.

Point of Information

Mr. Chatelain Don't we have amendments for two more sections, Mr. Chairman?

Mr. Henry Mr. Chatelain, I just said that we have amendments up here.

[Substitute motion to continue in the Regular Order of Business adopted: 57-49.]

Amendment

Mr. Poynter Amendment No. 1 [by Mrs. Brien]. On page 11, line 23, add the following: "Section 23. Office of Consumer Protection, Director. Section 23. There shall be a State Office of Consumer Protection headed by a Director of Consumer Protection. The director may establish an office of consumer protection in each parish of the state. He shall represent consumer interests in hearings before any board, commission, department or agency of the state or any political subdivision thereof and shall exercise such other powers and duties as shall be fixed by law."

Explanation

Mrs. Brien I don't think it takes too much explanation, this proposal. This is a proposal to put consumer protection in the constitution, and this should be close to all our hearts. I'm sure all the people, this means consumer, want protection in this constitution. We should have a consumer protection office in every parish. Under my provision, this would be made possible. So I ask you please, do something real good for your people. Vote for my proposal and you can be sure that's what all the people want.

Questions

Mr. Weiss Delegate Brien, isn't it the intention of the Executive Branch Committee to reduce the number of elected positions and appointed positions so that the governor can make these appointments?

Mrs. Brien It was, yes.

Mr. Weiss It was.

Mrs. Brien Yes.

Mr. Weiss Why did you think that it was necessary to do this particularly when so many other agencies assume this responsibility?

Mrs. Brien I think it is very important and we have added on all the elected officials and I think this is just as important to the people.

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Mr. Weiss You think you want to further encumber the governor, then?

Mr. Brien Yes. In that way.

Mr. Stovall Mrs. Brien, were you appointed to this convention to represent the consumers of the state?

Mrs. Brien Yes, Reverend Stovall.

Mr. Stovall And this recommendation comes out of your concern for the consumer?

Mrs. Brien Yes it does. That's why I said it is very close to my heart, and I think if you read it good, it should be to you the same way because it is for your people, for all the people. We are all consumers.

Miss Perkins Mrs. Brien, are you aware that there is a statute which establishes such a consumer protection division currently existing in law?

Mrs. Brien Yes.

Miss Perkins Are you attempting strictly to put this particular department within the executive department along with all the other agencies that have been established?

Mrs. Brien Yes.

Miss Perkins Thank you.

[Previous Question ordered. Amendment rejected: 45-62. Motion to reconsider tabled.]

Amendment

Mr. Poynter The next one is sent up by Delegate Arnette, Lambert, Fayard and Brown.

Amendment No. 1. Page 11, line 23, add the following: "Section 23. Adjutant General. Section 23. An adjutant general shall be appointed by the governor by and with the advice and consent of the Senate from active or retired officers of the Louisiana National Guard who have had at least five years of federally recognized commissioned service therein and who are federally qualified for promotion to the rank of colonel or higher."

Explanation

Mr. Arnette This particular amendment does several things. The first of which, it puts back into the constitution, the adjutant general which was taken out. The adjutant general is presently in the constitution and we think he belongs there for several definite reasons. First, I think we ought to have some limitation on the governor's ability to appoint this particular individual. If we leave him out of the constitution, he's going to be appointed and possibly serve at the pleasure of the governor or not be subject to confirmation by the Senate or any of these protective measures. It is a very important post in this state. It is responsible for over ten thousand national guardsmen. He is the absolute leader of these national guardsmen and I think that this particular person ought to be well qualified and subject to some safeguard such as confirmation by the Senate. It also sets up some very definite requirements for this particular individual, such as obtaining the rank of colonel before he is appointed. As it stands right now, the governor could appoint anyone. He could appoint his son, who might be a private at the time, to become adjutant general of the state. There is no prohibition against it. Also, it makes sure that this person would have been out of the ranks of the national guard itself. In the past, we've had problems with governors appointing people who came out of regular federal service, did not understand how the national

guard operated and practically wrecked the entire system in the state. I think as it is right now, we have a good adjutant general. He was considered well, and I think we need to have these considerations on our adjutant general like the adjutant general we have now.

Questions

Mr. Kean Mr. Arnette, it says that in order to be qualified, it has to be someone who is "federally qualified for promotion to the rank of colonel or higher." What does that mean?

Mr. Arnette Well, there are certain qualifications in the federal armed forces that to attain a certain rank, you have to have gone to certain schools, attended the War College, and things of this sort. So that you have had a very high military education. What this is, is that we wanted to make sure that the person who was holding the rank of adjutant general, which is major general in this state, that he be at least qualified to be a colonel in the regular army. We thought instead of having the possibility of a private coming in and doing this, that we thought the man ought to be very well qualified for this position.

Mr. Rayburn I notice you refer to a colonel here and I've been told that President Eisenhower couldn't qualify unless he joined the guard. I'm wondering if a colonel on the governor's staff would qualify you?

Mr. Arnette If he's also federally qualified to be a colonel in the U.S. armed forces, yes sir.

Mr. Silverberg Delegate Arnette, do you think the office of adjutant general is more important than the office of consumer protection?

Mr. Arnette I don't think that's a very pertinent question to this particular article.

Mr. Silverberg Well I think it is.

Mr. Arnette My personal opinion has absolutely nothing to do with that, Mr. Silverberg.

Mr. Silverberg Well I think it does. I just asked you for an opinion. Yes or no.

Mr. Arnette I think this ought to be...

Mr. Silverberg Well aren't we cluttering up the constitution with another office?

Mr. Arnette I think this ought to be in the constitution because it is important. It is the leader of the entire military force of the state of Louisiana.

Mr. Anzalone Mr. Arnette, would generals Eisenhower, MacArthur or Westmoreland qualify under this particular provision?

Mr. Arnette No they would not.

Mr. Anzalone Do you think they would be qualified?

Mr. Arnette Well if you could raise them from the dead, yes we'll bring them in here...

Mr. Denny Mr. Arnette, I believe you said something about placing safeguards about the appointment of an adjutant general. Did you not, sir?

Mr. Arnette That is exactly correct.

Mr. Denny As I understand the way the Executive Department Article now reads, however, even after the adjutant general has been confirmed by the Senate, he could still be removed by the governor at the governor's pleasure. Is that correct?

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Mr. Arnette That is true.

Mr. Dennyery The final question I have to ask you is that you wouldn't want someone who had the ability of an admiral, who may have also served in the national guard to qualify because the promotion to the rank of colonel or higher excludes the Coast Guard and the Navy. Is that correct?

Mr. Arnette No it does not. When you say qualified to the rank of colonel or higher, it's colonel in the equivalent services. They aren't called all exactly the same thing. They aren't called colonel. As a matter of fact, he's called a captain in the Navy.

Mr. Dennyery But do you think with the language of "rank of colonel or higher" would exclude someone of that nature?

Mr. Arnette The requirements for the rank of colonel and the rank of captain are exactly the same thing and I think this would be interpreted in that manner.

Mr. Henry Yield to a question of Colonel Kean?

Mr. Arnette Excuse me. Let me finish answering the question. The reason it was phrased this way is we presently don't have a navy national guard.

Mr. Kean Mr. Arnette, do you know how many people there are who are active or retired officers of the Louisiana National Guard who have had at least five years of federally recognized commissioned service therein and who are federally qualified for promotion to the rank of colonel or higher?

Mr. Arnette No, I couldn't give you that figure, but it's not very many, no.

Mr. Kean It would be a rather limited number, would it not?

Mr. Arnette It would be a very limited number and the reason for this is we figured we needed qualified persons who were used to the national guard and who had operated and had been high ranking officers in the guard. This was the purpose of limiting it in this manner.

Mr. Henry I think the people that are qualified, there are four in the state, Mr. Kean. Arnette, Lambert, Fayard and Brown.

Mr. Avant Mr. Arnette, I'm not going to ask you about General Eisenhower or MacArthur, but Louisiana had two very distinguished general officers. One of them was General Lejeune who I believe was commandant of the marine corps during World War I, and who Camp Lejeune was named after. The other was General Claire Chennault who I believe was from Waterproof, Louisiana. Under this provision, would either one of those officers have been qualified to be adjutant general of this state?

Mr. Arnette As I answered before, I said no sir, they would not because they were not members of the Louisiana National Guard, and that is the entire purpose of this proposal. To limit it to the Louisiana National Guard because the people in the guard know how it operates and the federal officers do not.

[Previous Question ordered. Amendment rejected: 38-70. Motion to reconsider tabled.]

Amendment

Mr. Poynter This amendment, Mr. Chairman, is offered by Delegate Abraham on behalf of the Executive Department Committee...and we've retained for a long time. It would amend the title of the

proposal.

Amendment No. 1. On page 1, delete lines 6 through 11, both inclusive in their entirety and insert in lieu thereof the following: "Providing for the executive branch of government, for the declaration and determination of inability of statewide elective officers and related matters."

[Amendment adopted without objection.]

Amendment

Mr. Poynter Amendment No. 1. On page 11, line 23, add the following: "Section 23. Office of Consumer Protection; Director. Section 23. There shall be a State Office of Consumer Protection headed by a Director of Consumer Protection. He shall represent consumer interests in hearings before any board, commission, department or agency of the state or any political subdivision thereof and shall exercise such other powers and duties as shall be fixed by law."

Explanation

Mrs. Brien My proposal failed by eight votes so this time I want a record vote. I took out "it should be an office in every parish." I think the legislature, later on, could establish this. So I ask you one more time to do something good for your people, and vote yes for this proposal. I want a record vote, please.

Question

Mr. Tapper Mrs. Brien, the difference between this amendment and the previous amendment you had is that you are not now specifying that these particular branches offices have to be in any parish. Isn't that correct?

Mrs. Brien Yes, Mr. Tapper.

Point of Information

Mr. Kean A question, Mr. Chairman. Isn't this the same amendment that was just defeated a moment ago?

Mr. Henry It's a different amendment, Mr. Kean.

[Previous Question ordered. Amendment rejected: 53-52. Motion to take up other orders of business. Substitute motion for the previous question on the entire subject matter.]

Point of Order

Mr. Tobias Under the rules of this convention, that motion is not privileged. It is not a privileged motion. The motion to call for the orders of the day is privileged over the motion for the previous question on the entire subject matter.

Mr. Henry This is not to take up orders of the day. It is to return to other orders of business, Mr. Tobias.

[Substitute motion rejected: 52-50.]

Point of Order

Mr. Stinson I don't believe that it was laid on the table, and I'd like to reconsider the vote by which that failed. If you did lay it on the table, I object to it at this time.

Mr. Henry The vote on the previous question on the entire subject matter. No sir, it was not reconsidered.

Do you move now to reconsider the vote? We're going to vote whether we're going to take up other orders one way or the other, sir.

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Mr. Stinson I think it's in order so I insist on it. Let's vote again and see.

[Motion to reconsider the vote by which the substitute motion failed.]

Point of Information

Mr. Nunez We're in the position now that if we do not move the previous question on the entire subject matter, which means Committee Proposal No. 4, we return back to the order of the day.

Mr. Henry Well, that motion is pending, Senator Nunez— If that is adopted, then we would return to other business, which is announcements, so far as I know, is all.

Mr. Nunez My point of information is, we have completed Committee Proposal No. 4. There are no more amendments and it's just hanging there.

Mr. Henry That's right, and it could...You are absolutely correct, sir.

Point of Information

Mr. Segura I'm just confused, and I'd like for you to explain to me just what we're voting on and what does a red vote mean and a green vote mean.

Mr. Henry Mr. Newton had moved to...had made a motion to which motion of substitute was made by Mr. O'Neill, to move the previous question on the entire subject matter, which if it had been adopted, we would have voted then on the Executive Proposal. The motion for the previous question on the entire subject matter was defeated. Mr. Stinson, now, has moved to reconsider the vote by which it was defeated. So if we vote to reconsider the vote, if you vote yes now, that means we'll vote on the motion for the previous question on the entire subject matter again.

What it boils down to, it appears to me, and it's getting so late I'm not even sure what I understand anymore, but it appears to me that if you want to go ahead and vote on the proposal today, you will vote yes, now. If you don't want to do it, you will vote no, now.

[Motion to reconsider adopted: 56-5.]

Point of Information

Mr. Tapper If we vote for the previous question, then we will be voting on the section and will it not take a 67 vote in order to pass that section?

Mr. Henry Yes sir, we hadn't changed that rule since the last time I explained it.

Point of Information

Mr. Stovall Point of information. Will there be closing speeches on this entire article if we vote to...the previous question?

Mr. Henry There can be five minutes of closing.

[Previous Question ordered on the entire subject matter: 54-52. Motion to adjourn to 9:30 o'clock p. m., Wednesday, August 15, 1973. Substitute motion to adjourn to 9:30 o'clock a. m., Saturday, August 18, 1973.]

Point of Information

Mr. De Blieux I thought we had ordered the previous question on this, and I didn't think we could make a motion to adjourn while...the previous question.

Mr. Henry You've got the highest privilege motion that there is, and that's to adjourn, sir.

Point of Information

Mr. Rayburn I understood that you had recognized Mr. Stagg to close and he waived that right.

Mr. Henry That is correct, sir.

Mr. Rayburn Well then was the motion to adjourn...I mean could anyone get recognized after a previous question to make a motion?

Mr. Henry I did not know for what purpose Mr. Newton rose, Senator, and he stood and raised his hand just like you did and he made a motion.

Mr. Rayburn I know, but Mr. Chairman, you usually ask what purpose and then you maybe make a ruling on whether they are out of order or not. The only point I'm trying to get straight in my mind is, if I'm correct, you had recognized the previous question had been ordered. You had recognized Mr. Stagg to close. Mr. Stagg had declined.

Mr. Henry You are correct sir.

Mr. Rayburn Am I correct?

Mr. Henry You are absolutely correct.

Mr. Rayburn Well under our rules, is a motion in order after all that's been done?

Mr. Henry A motion to adjourn is always in order, Senator Rayburn.

Mr. Rayburn Well is anyone in order to get recognized to make a motion after previous question and after the man that had the right to close...

Mr. Henry Senator, the manner in which this convention has operated, and particularly today, just about anything could happen because every time there is a motion made, there are about forty hands go up. I did not know that the gentleman was going to make the motion.

Mr. Rayburn Mr. Chairman, I certainly agree with you there's a lot of confusion, but I'm just trying to get it straight for the record and for future reference. Is that procedure in accordance with our rules?

Mr. Henry Yes, sir, it very definitely is.

Point of Information

Mr. Kean Mr. Chairman, if we considered this Proposal No. 4, assuming that the motion to adjourn failed, and Proposal No. 4 did not receive the necessary vote, 67, would that mean then that the convention would have to start all over again with the reconsideration of the entire proposal?

Mr. Henry Mr. Kean, if we voted on the entire proposal and it did not get 67 votes, it would not have passed. However, had it gotten a majority of votes, that is not 67, but say 60 to 50, someone could move to reconsider. Under the rules, it would lie over and be subject to reconsideration on the next day. If it didn't get more yes than nays, then it would automatically be dead, sir.

Mr. Newton, do you insist on your original motion?

Mr. Newton Do I insist on my original motion?

Mr. Henry Yes sir, the motion to adjourn.

Mr. Newton Well I'd like to adjourn. If somebody might want to substitute the time, that's all right with me.

Mr. Henry All right, we've got a motion and a substitute. The vote will occur...

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Personal Privilege

Mr. Arnette I'd like to address the convention on a point of personal privilege.

Mr. Henry No sir, that's out of order, Mr. Arnette.

[Record vote ordered.]

Point of Information

Mr. Alario Mr. Chairman, just to help clarify this matter and let me know what I'm voting on at this point, if I wanted to vote to...whether to vote for or against adoption...

Mr. Henry You are debating this now, Mr. Alario.

Mr. Alario I'm not debating it, Mr. Chairman, I'm asking you a direct question. If I wanted to vote on that particular proposal, wouldn't I vote against all of these adjournments and then we'd be right at that point?

Mr. Henry I would assume that you would, sir.

Point of Information

Mr. Leithman The motion is strictly right now that we adjourn until Wednesday. We're not discussing proposals at all. It's to adjourn until Wednesday. Am I right?

Mr. Henry That's right, to whether we adjourn or whether we don't.

Point of Information

Mr. Jack Well I want to be sure that I'm given a choice on this vote...

Mr. Henry Well the choice is whether we adjourn or we don't adjourn.

Mr. Jack All right. If I vote against both of them we're still here, then.

Mr. Henry I would imagine it was so, yes sir.

Point of Information

Mr. Weiss Sorry to waste your time, but a point of information. If it fails on the Wednesday adjournment, do we go then to the Saturday adjournment?

Mr. Henry We would vote on the next one, yes sir.

[Motion rejected: 38-71.]

Point of Information

Mr. Kelly Is a substitute motion in order at this time?

Mr. Henry It depends on what the substitute motion is.

Mr. Kelly A substitute motion to continue with the business that we're dealing with at this time.

Mr. Henry No sir, because a motion to adjourn is of higher priority than that.

[Record vote ordered on the substitute motion.]

Mr. Henry Gentlemen, why don't we just go ahead and vote on this thing one way or the other without all this nonsense?

Personal Privilege

Mr. Jack Mine isn't nonsense. I want to keep

working here and get through with it. I don't think that's nonsense.

Mr. Henry Mr. Jack, we're not going to debate this thing, just vote against the motion if you want to keep working.

Mr. Jack All right, if that will do it.

[Substitute motion rejected: 45-64. Proposal No. 4 rejected: 59-50. Notice given for reconsideration on the next convention day. Motion to revert to introduction of Resolutions adopted without objection.]

INTRODUCTION OF RESOLUTIONS

[I Journal 305-306]

INTRODUCTION OF PROPOSALS

[I Journal 306]

Report of the Secretary

[I Journal 306]

Announcements

[I Journal 306-307]

[Notice to adjourn to 8:30 o'clock a.m., Saturday, August 11, 1973. Substitute motion to adjourn to 9:00 o'clock a.m., Saturday, August 11, 1973. Record vote ordered.]

Point of Information

Mr. Jenkins Will the Judiciary Article be ready for consideration tomorrow?

Mr. Poynter Mr. Jenkins, of course it's up, would be up for third reading and final passage tomorrow as long...I believe two other proposals, and it will be reprinted, and I expect, barring something that I don't know about, it will be reprinted by tomorrow morning.

Mr. Jenkins And would it be possible under our rules to consider it?

Mr. Henry Yes, sir.

Point of Information

Mr. Stagg Mr. Chairman, if the motions to adjourn until tomorrow morning pass, I don't want anything.

Mr. Henry You don't want what?

Mr. Stagg I don't want anything.

But if the motions to adjourn extend beyond tomorrow, I'd like to get a suspension of the rules for a meeting of the Committee on the Executive Department tomorrow morning.

Point of Information

Mr. Rayburn When will Committee Proposal No. 4 be up for reconsideration...at the next meeting day?

Mr. Henry The next day that we meet, yes, sir.

Mr. Rayburn Will it be the first order of business?

Mr. Henry No, sir.

[Substitute motion rejected: 58-81. Substitute motion to adjourn to 9:00 o'clock a.m., Wednesday, August 15, 1973 adopted: 62-48. Adjournment to 9:00 o'clock a.m., Wednesday, August 15, 1973.]

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Wednesday, August 15, 1973

ROLL CALL

[107 delegates present and a quorum.]

PRAYER

Mr. Landrum Our Father, in the name of Jesus, we think Thee this morning for all Thy many blessings, for once again to be able to gather in Thy name and pray that Thou wilt look upon these, Thy people.

Bless each of us with a mind to do the things that are right for all people. We pray, Lord Jesus, upon the families of each and every delegate, news friends and all these young people that are working with this convention. Give us all the courage to do the things that are right in Thy sight.

These blessings we pray and ask in the name of Thy Son, Jesus, and for His sake. Amen.

PLEDGE OF ALLEGIANCE

[Oath of Office administered to Paula S. Kilpatrick. I Journal 308.]

READING AND ADOPTION OF THE JOURNAL

Personal Privilege

Mr. Roy Mr. Chairman, ladies and gentlemen of the convention, last week Louisiana lost one, probably its oldest assessor and certainly probably one of its officials, who was in office for fifty-two years, and I'm sure that's a record when Mr. Trent L. James died. His chief deputy, a long and faithful and very competent assistant, Mr. Charlie Slay, who had been there for twenty-eight years, was yesterday sworn in as the Assessor for the Parish of Rapides.

I figure that Charlie, being just forty years old, must have been only twelve years old when he was appointed and I want to congratulate him personally.

RESOLUTIONS ON SECOND READING AND REFERRAL

[I Journal 308-309]

PROPOSALS ON SECOND READING AND REFERRAL

[I Journal 309]

RECONSIDERATION

[I Journal 309]

PROPOSALS ON THIRD READING AND FINAL PASSAGE

[Rules suspended to take Committee Proposal No. 21 out of its regular order adopted without objection.]

Reading of the Proposal

Mr. Poynter Committee Proposal No. 21 introduced by Delegate Dennis, chairman on behalf of the Committee on the Judiciary, Delegates Avant, Bel, Bergeron, Burns and many other delegates, members of that committee.

A proposal making provisions for the judiciary branch of government and necessary provisions with respect thereto.

Explanation

Judge Dennis Mr. Chairman, fellow delegates, I would like to begin the presentation of the Judiciary Article by addressing to you some brief, general remarks. It is my hope to give you an overview of the entire article so that you may better understand each section as it comes up.

First, let me say that in line with what many of the delegates have told me that they don't want good government, they want pretty good government, I'd like to say that we are pleased to present a pretty darned good Judiciary Article. It is not a model article, but yet it represents, I think, a substantial improvement over the Judiciary Article in the present constitution.

We have reduced it in length from approximately sixty pages to about fourteen. We have, I think, clarified some of the areas that gave trouble in the past.

In short, this article that we are presenting to you today represents what I believe to be a very good blend of professional and political principles.

Our committee, which was an extremely hard-working committee of eighteen members, some of the most talented people I have ever been privileged to serve with, and certainly the hardest working, I think did an excellent job. Over the period between June and July, we met some twenty times and these eighteen members had an absence rate of only about one per meeting. I think that is an excellent record. Of course, some of... they didn't know exactly when we were going to start voting and that may have had something to do with it. But all in all, it is a fine record.

As I said before, we, I think, were guided by two principles, that of the ideal judiciary system and that of the political facts of life in the State of Louisiana as they are today. We proceeded with the thought in mind that it is absolutely essential to government under law that there be effective judicial review by a detached and independent judiciary. We are now making the basic law of our state and what we don't make here will be left to the legislature. And in the future, if a citizen feels that someone has not followed the law, whether it be a government official, a policeman, a private citizen, the governor or even the legislature, his recourse will be to go to court and have the court say whether or not the law was followed.

Now in order for that citizen to get a fair shake, it is absolutely essential to our form of government that the court he goes to be a neutral, detached, independent body, not subject to the same political pressures as the other branches of government.

And that is the reason why you will find in the Judiciary Article such things as the grant to the Supreme Court of the power to make its own rules governing the internal affairs of the court; things such as giving judges a little bit longer term than some other elected officials. I frankly think that by making judges elective and giving them only six-year terms, we are making them political animals, but to shorten that term would make us even more political.

Such things as establishing a retirement system for the judiciary which makes it an independent system, induces good men to come into the ranks of the judiciary and assures a judge that he will not be stripped of his retirement benefits because of a decision involving political repercussions.

It is also for this reason in order to make the judiciary independent and allow it to be a truly neutral party in deciding disputes, that we are establishing in this article, as we have in the past, the top three levels of the judiciary system in the constitution: the district courts, the court of appeals and the supreme courts are made constitutional courts just as they are now in the 1921 constitution.

Below the district court levels, though, we have clarified in this article what is substantially the present law and that is that the legislature is given the power to merge, abolish and reorganize the courts below the district court level. You will find the provisions pertaining to this power of the legislature in Section 15 of this article. And reading it closely, you will see that the legislature is given the power to abolish or merge city courts and in another article also mayors and J. P. Courts, but that in doing so, they must establish any new courts below the district court level on a parish-wide basis with uniform jurisdiction over subject matter throughout the state. It is our hope and our aim in authorizing the legislature in this manner, that they will move toward either a two-tiered, three-tiered or a four-tiered court system that will be uniform and consistent throughout the state.

However, we have recognized, I think, the political realities in the State of Louisiana by not

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requiring that that be done overnight or not even requiring that it ever be done, but leaving the Legislature free to deal with the problem. We have, I think, recognized the political facts of life in Louisiana by continuing to provide that judges shall be elected rather than appointed. We found in our committee that this was the overwhelming sentiment among the committee, the convention and, we think, the people.

We have continued the tradition which is based on long-standing custom of providing for separate treatment for the courts in New Orleans and you will find that this has been done in Section 35 of this proposed article. But I want you to be aware that the compromises that we have reached in some of these areas in recognizing these political realities have not been easy compromises. They were fought long and hard through many meetings, we took positions on some of these matters and changed them once or twice; we adopted this article only after listening to some seventy-four persons come before our committee, judges, lawyers, law professors, sheriffs, mayors, average citizens, you name it. We had them all come before our committee and we listened to them all and I think we had some excellent hearing.

In essence, I think that this article represents a very good compromise between an ideal model judiciary system, the aim of which is to set forth an independent, neutral judiciary and the political facts of life as they are here in the State of Louisiana.

We hope that you will find in considering our article that we have expressed the sentiment of the convention as I hope that in all of these articles we are attempting to express the sentiment of the people of our state.

So we present this article to you and ask for your favorable consideration. And Mr. Chairman, if I am in order, I would attempt to answer any general questions at this time about the general structure of this Judiciary Article before we begin to take it up section by section.

Let me say before the questions begin, Mr. Chairman, I might also point out that the first seven sections deal generally with the Supreme Court, Sections 8 through 17 deal generally with the court of appeals, Sections 18 through 21 deal generally with the district courts and the courts below the district court level, Sections 22 through 25 deal generally with judges' qualifications, election, retirement and the judiciary commission which is a vehicle for removing and disciplining judges. The remaining sections in this article deal with other offices which are related to the judiciary by tradition and custom: the attorney general's office, the district attorney, the sheriff's, the clerks of court, the coroner, and I may be leaving some out, but these offices were contained in the 1921 Constitution and they were assigned to us for consideration, and they are related, their functions do relate to the court system although they are not judicial offices. And for this reason, they are contained in the Judiciary Article.

Questions

Mr. Stagg Judge Dennis, in reading your article, let me preface my question by saying that in a number of the smaller parishes of the state that have a sparse lawyer population with some increasing numbers of cases involving the defense of indigent defendants and the necessity of the court to appoint lawyers to represent these defendants under the new supreme court system, a lot of these lawyers have complained that they are vexed about the number of criminal cases to which they must be assigned within their parishes because there are so few lawyers.

My question is, did the Committee on the Judiciary consider the institution of a public defender system either on a home-rule basis or on any other basis for inclusion within the constitution?

Mr. Dennis Mr. Stagg, we did discuss this matter and we invited several people involved in the in-

igent defender program in New Orleans and Baton Rouge and other places to come and appear before our committee. I believe that only one of them did. We discovered that this problem has quite a few financial problems involved with it. We feel that by not saying anything in the article we are leaving this matter entirely to the legislature and I believe I am speaking for the committee, although we didn't take a vote on it, that this matter should be left to the legislature because of the difficulty in funding this matter, either at the state level or at the local level or with federal grants. But it is my opinion that there is nothing in the article to prevent the legislature from establishing a state-wide or a regional defender program, and I believe that there have been bills in the past and there will probably be many additional attempts in the future to establish such a program.

Mr. Stagg In effect then the answer is that you not mentioning it in the constitution was to leave it to the legislature to adopt, should it choose to do so and that there is no prohibition against it in this article.

Mr. Dennis Yes.

Mr. Stagg All right, sir, thank you.

Mr. Womack Judge Dennis, what area, if you know offhand, in this specifically deal with the judicial retirement system? What section? I'd like to be checking some of it out.

Mr. Dennis It's all in 23, Mr. Womack.

Mr. Womack All in 23? Thank you.

Mr. Dennis I'd like to say very briefly on that that we have provided an additional retirement system to the one that is presently contained in the 1921 Constitution. The reason we have done this is to, first of all, try to help the judiciary be what it should be, an independent branch of government. By having judges contribute a portion of their salary to a retirement system which they do not do now under the present constitution, and also giving them the right to accrued credits in a retirement system which they can withdraw should they be defeated before they get enough time in to retire.

The present retirement system of judges is an all or nothing sort of thing. You either serve your twenty years and get your retirement benefits without contributing anything out of your salary, or, if you get defeated before you have the twenty years in, you go out with nothing, at which time you may be fifty or sixty years old and haven't practiced law in fifteen years.

So, in order to be fair to the state and fair to the judges, we have attempted to establish what we think is a better retirement system which they do not do now under the present constitution, and also giving them the right to accrued credits in a retirement system which they can withdraw should they be defeated before they get enough time in to retire.

Mr. Anzalone Judge Dennis, recently this convention has seen fit to remove the sovereign immunity of this state insofar as tort actions are concerned. Have you included anything in your Judiciary Article which would render the judges immune from any suit in tort for actions taken while they are administering to the affairs of the court.

Mr. Dennis No, sir, we have not.

Mr. Anzalone Do you think we should include

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something of the nature in this constitution?

Mr. Dennis I think, perhaps there should be a general provision, perhaps, granting some type of qualified immunity to public officials while performing the functions of their office in a proper manner, but I don't know that it should be placed in the judiciary article.

Mr. Roy Judge Dennis, in response to Mr. Anzalone's question, are you familiar that in the Bill of Rights there is a provision that no one is immune from suit, no private person is immune from suit, thereby implying that public officials administering their duties are? That may be what you are talking about.

Mr. Dennis I knew you had considered it. I'm happy to hear you have it in your proposal.

Amendment

Mr. Poynter This amendment is sent up by Delegate Dennis. Amendment No. 1 on page 1, line 13, delete the words "JUDICIARY DEPARTMENT" inserting in lieu thereof "JUDICIAL BRANCH".

Point of Information

Mr. Kean Mr. Chairman, before we begin the detailed discussion of this article, I have a point of information of the Chair.

We have voted to reconsider, as I understand it, Committee Proposal No. 4 and it's apparently somewhere out in the wings out here. My question is, what is the status of Committee Proposal No. 4. It now stands and what will it take to bring it back on the floor of the convention?

Mr. Henry Committee Proposal No. 4 will be tomorrow on matters subject to call on Regular Order of Business No. 4, Proposals on Third Reading and Final Passage. At such time as someone feels called upon to do so, that matter can be called from the calendar.

Mr. Kean That can be called from the calendar by any Delegate?

Mr. Henry Yes, sir.

Mr. Kean All right. Thank you.

Mr. Henry We have traditionally, well we have a rule against it in the House, we haven't had much tradition in this convention. We haven't been here long enough.

Mr. Kean, there is no rule which says that the author or the owner of a proposition has the right. It would probably be frowned on, I would assume, by a majority of the members of the convention, I don't know, to pull somebody else's proposition from the calendar. But of course, it's debatable.

Normally, when someone has a bill or resolution or what have you on the calendar, it is sort of an unwritten rule that you don't call another man's legislation from the calendar. But it would be up to this body to decide because we have no rule to prohibit it.

Mr. Kean Well, I couldn't find any rule with respect to a calendar and that's the reason I asked the question.

Mr. Henry Well, insofar as orders of business, order of business calendar, it's six of one and half a dozen of the other, sir.

Explanation

Mr. Dennis Ladies and gentlemen, this simply changes the name of this article from Judiciary Department to Judiciary Branch. Delegate Walter Lanier pointed out to me just before we started this morning that the Executive Article is called the Executive Branch and in that article it provides for the, some twenty departments of state

government.

So in order to distinguish this, which is a main branch of state government from a department, I think that we should change the name to Judiciary Branch and so I am offering that amendment.

[Amendment adopted without objection.]

Reading of the Section

Mr. Poynter First section is Section 1. Judiciary Department, Section 1.

"The judicial powers shall be vested in a supreme court, courts of appeal, district courts and other courts authorized by this constitution."

Explanation

Mr. Dennis Fellow delegates, this represents no real change from the present constitution. It simply vests the judicial power in the Supreme Court, Courts of Appeal, District Courts and other courts authorized by this constitution. You will see in the following sections that we have retained the present court system that there are other courts authorized but the main judicial power is established and vested in the first three levels of the judiciary system. I ask for your favorable consideration.

Questions

Mr. Abraham Judge Dennis, you mentioned a while ago in your talk that there were provisions in here for the legislature to authorize courts, mergers or what have you. I assume that that is covered so that where you say your "other courts authorized by this constitution" still leaves the legislature free to do as you had stated a while ago.

Mr. Dennis Yes, free subject only to some qualifications in Section 15 which I mentioned earlier providing that future courts below the district level must be parishwide and have uniform jurisdiction throughout the state.

Mr. Abraham Well, I just wanted to be sure that these words "as authorized by this constitution" were not restricted to where it would restrict what you were trying to do elsewhere in the article.

Mr. Dennis No, sir.

[Previous Question ordered on the Section.
Section passed: 104-2. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter Section 2. Habeas Corpus, Needful Writs, Orders and Processes

Section 2. A judge may issue writs of habeas corpus and all other needful writs, orders and process in the aid of the jurisdiction of his court. Exercise of this authority by a judge of the Supreme Court or Court of Appeal is subject to review by the whole court. The power to punish for contempt of court shall be limited by law.

Explanation

Mr. Dennis Fellow delegates, this represents no essential change from the present constitutional provisions which are contained in Section 2 and Section 17 of Article VII, of the 1921 Constitution. We have simplified the language somewhat but have not changed the substance of the law.

Questions

Mr. Denney Judge Dennis, in the last word... "may be limited by law", do you refer that to statute law or would that include a rule of court or something of that sort?

Mr. Dennis It relates primarily to statute law.

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We have proceeded upon the traditional theory that the power to punish is, for contempt of court, is inherent in the court but that the reasonable limitations may be placed upon it by legislative act.

Mr. Fayard Judge Dennis, reading the present section of the constitution regarding to the issuance of habeas corpus, I noticed that it enumerates and lists the judges of the various courts which have this power. In your article, Section 2 says, merely, a judge may issue writs of habeas corpus. Now, my question is, is it contemplated that judges of city courts or justices of the peace would also have this power? Would they be classified as judges under Section 2 or not?

Mr. Dennis Judges of city courts would and you will notice the second sentence continues the qualifications that a judge of the Supreme Court or court of appeal that he may act, but that his act in this regard is subject to review by the whole court.

Mr. Fayard But a city court judge would then have the authority to issue a writ of habeas corpus then, is that correct?

Mr. Dennis I may have missed part of your question but I believe the answer is that the J.P.'s and Mayors are not classified as judges anywhere in this article so this would refer only to judges of city courts, special courts, district and on up.

Mr. Fayard I see, thank you.

[Previous question ordered on the Section. Section passed: 111-0. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter Section 3. Supreme Court Composition, Judgments, Terms

Section 3. The Supreme Court shall be composed of a chief justice and six associate justices, four of whom must concur to render judgment. The term of a judge of a Supreme Court shall be fourteen years.

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, this continues the present provisions in substance, there has been some simplification of the language but there has been no essential change from the present constitution.

Questions

Mr. Abraham Judge Dennis, I noticed there is no mention in here as to when the term of office begins, should there be a provision as to when this term of office begins or how is that handled?

Mr. Dennis We didn't think it was necessary since these terms are presently staggered they will remain so under this provision and there would be no need to provide specifically when they begin or end. They will continue to be staggered as they are at present.

Mr. Abraham Are the terms fixed by statute now or what?

Mr. Dennis They are fixed by the constitution at the present time.

Miss Wisham Judge Dennis, I am sure you gave the greatest consideration to each of these sections, but don't you think that fourteen years is too long for a judge to serve in the Supreme Court?

Mr. Dennis No, ma'am, we did not. We considered the lengths of judges terms at length. And we considered many arguments pro and con and I would only attempt at this point to express to you the central theme of this entire Judiciary Article is

to provide for a neutral, detached and independent judiciary. Not subject to political pressure, to rule upon whether or not other government officials and private citizens are proceeding or have proceeded according to law. And if judges are subject to political pressure then they cannot perform this essential function in the American tradition that we have established our government upon.

Mr. Roemer Judge, did your committee consider the appointment of Supreme Court Judges so they could work as a team?

Mr. Dennis We considered the general idea of merit selection of judges. And although I would not say this is totally without support in our state we found little real sentiment for it. On our committee we found that most of the delegates believe that the people of this state want their judges to come back before them for election at regular intervals. And so that is why we continued the elected judiciary.

Mr. Kean Judge Dennis, there may be another provision in the article or proposal, but in the present constitution in dealing with the composition of the Supreme Court, it provides that except when judges of other courts are called in this is the composition of the Supreme Court, is that taken care of in other provisions?

Mr. Dennis We have provided in Section 5A that the Supreme Court may assign a sitting or retired judge to any court. Since it has this broad power we felt it unnecessary to state here that district judges could be called in.

Mr. Abraham Why did the committee leave out any mention of the qualifications for a justice? The present constitution of the past does have some qualifications but I noticed you had left it out.

Mr. Dennis Section 24 sets forth the qualifications for all judges. They are all the same and we attempted by this manner to simplify and condense the article.

Further Discussion

Mr. Womack Mr. Chairman, and members of the convention, I would hope that those individuals who are preparing amendments would take serious listen to the statements I am going to make. I have heard that one amendment was being prepared that would limit the judiciary in certain categories to nine years. I think you should take a second look at that even, because the judicial retirement that is proposed here, while I cannot accept many of the provisions of it, I can accept the twenty year basis for retirement. A nine year term would require a judge to be elected for two years of another term before he would be eligible to reach that retirement benefit. I think there should be some consistency in the relationship of the term of office and their retirement. Not necessarily what you have in the legislature, but we have it in other elected officials which ties into the term of their elected office. The retirement provision of this article is certainly going to be up for a good bit of grabs and I know that the judiciary as such is expecting those who will deal with the retirement systems over the number of years to come up with what we think that the public can buy, what we think that the other hundred or hundred and twenty-five thousand people we have in retirement systems of this state can accept, at least reasonably gracefully. And I would hope that while we are considering amendments that we would consider these amendments that would do it, the term of office in keeping or in some degree of recognition of the standard retirement procedure that we have for other elected officials. Thank you.

Amendment

Mr. Poynter Amendments offered up by Lanier,

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Alario, Reeves and Deshotels.

Amendment No. 1. Page 1, line 31, immediately after the word "the" and before the word "years" delete "14" and insert in lieu thereof "10".

Explanation

Mr. Lanier Mr. Chairman, fellow delegates, the question that we have to decide here is one of degree. The provision, Section 3, as drafted, provides for a fourteen year term for Louisiana Supreme Court judges. This is the present law which was drawn up in 1921. The question here for your determination is with what degree of regularity do you think that an elected official of this state in this capacity should come up for review by the people who have elected him. Now my personal opinion is that no elected official of the State of Louisiana in no matter what capacity he serves should have a fourteen year term. This is just too long. So, if you determine that this is correct, that this is too long of a term, the question becomes what is an appropriate length of time? The proposal of the Judiciary Committee provides right now for a six-year term for district court judges. And quite frankly, I am in agreement with this. So, where between six and fourteen do we draw the line? And this brings up a question of judgment. There is no right or wrong in this as to whether it should be eight, or nine or ten or eleven. It is a question of degree. Where in your judgment is the proper point to draw the line as to the length of term of service of a Louisiana Supreme Court judge? How often should this man who must sit in judgment of your life, liberty and property, come up for review by the people that put him there? I believe the amendment as proposed sets a reasonable period of time. It is longer than a district court judge by four years. If set up properly, it could authorize a twenty year retirement after two terms. I think it is a reasonable proposal, it sets up a reasonable period of time for this man to be responsive to the people that elect him and I would ask your support for the amendment. Thank you, Mr. Chairman. I would be happy to yield for questions, Mr. Chairman.

Questions

Mr. Bollinger Friendly question Walter. If this amendment passes, will you still introduce the eight year amendment?

Mr. Lanier I don't think so, Boysis, after discussing the matter up here at Henry's huddle, I think that the ten year proposal is a reasonable proposal and would be something that everybody can live with.

Mr. Champagne My question, is how does a ten year fit in the elective process, would this require a special election, a ten...looks to me like you know, every four, or every six years they run. How would ten fit in?

Mr. Lanier Well, this would have to be set up by the legislature as to the point in time...when these folks would run and sure it would be staggered as much as possible. Although you have a certain amount of automatic staggering as it is with people who resign, or retire or die in office and things like that. But I am sure this can be set up another way. The question here is, with what degree of regularity should this man who is a publicly elected official come up for review by those who elect him?

Mr. Bergeron Walter, you said that the ten year term would be longer than the district court term at six years. Wouldn't it be longer than the Court of Appeal term?

Mr. Lanier As I contemplate it, it would be either equal to or the Court of Appeal would be less than at eight.

Mr. Bergeron As it presently stands, it is

twelve years.

Mr. Lanier Yes, present recommendation of the committee is twelve, which quite frankly, I think is too long.

Mr. Bergeron What is his present term now, for Court of Appeal?

Mr. Lanier Twelve years. Thank you, Mr. Chairman.

Further Discussion

Mr. Smith Mr. Chairman, fellow delegates, I am an attorney, and it is not proper for me to get up here, but I am in favor of this amendment. I think twelve years is a little long for any judge to be in office. I think ten years is a good term. Now if you read that in connection with on page 8, on line 7. If you will read that it is "a judge with sixteen years may retire at any age, a judge with twelve years may retire with benefits commencing at the age fifty-five". And it goes on down on line 13, looks like if a judge gets elected he is physically or mentally incapacitated, he shall be retired on two-thirds pay. In other words, it looks like when a judge gets one term, for twelve years, or fourteen years, he can retire after that term. I just feel like that fourteen years is a little long to be even though...I think we should change it. I think ten is a good term and I say as a lawyer, I recommend that you vote for this amendment.

Further Discussion

Mr. Dennis Mr. Chairman, fellow delegates. I rise to oppose the amendment for both philosophical and practical reasons.

First of all, ladies and gentlemen I think that there is no doubt but what we are going to continue electing judges in this state. And the reason that we will never escape judges being involved in politics completely. And may be that is as it should be. But ladies and gentlemen we are now about to make a decision of just how political you want your judges to be. Because the more you make them run and subject themselves to elections, I can assure you the more they are going to be forced to be subject to considering political fact in making decisions. Now we have had fourteen years for our highest court in the state, fourteen year terms since 1921. In 1913 in that constitution, the state gave the Supreme Court justices twelve year terms so in 1921 they decided to lengthen the terms not shorten them. And ladies and gentlemen this gets back to what I said earlier, the judiciary should not be a political instrument of government. You have heard Mr. Triche say time and again that the legislature is a political body, as it should be. It should express the political desires of the people, but once the people have decided upon a basic law in their constitution and decided upon statutory law through their legislature, then politics should not enter the decision of whether or not a private citizen or a government official is following the law. That decision should be made by someone who is neutral and detached and independent of the politic process. And as I said before, by making someone run for office you can't avoid some political considerations. But if you make them run, they have to start thinking about the next election. And I am afraid ladies and gentlemen that if we reduce the terms of Supreme Court justices to ten from fourteen, by the time we get down to the district court and the city court we are going to have judges running every two years, they are not

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even going to be able to get their cases out. Because of thinking of politics. Also, I think that this would destroy the orderly process that we now follow in electing our Supreme Court justices. We have seven justices and one comes up for election every two years. If you establish a ten year term, I don't know.... I can't even foresee the effect of that. You may go for years without an election of a Supreme Court justice or you may face the prospect of having two or more running the same year. And if that begins to happen, we may start trying to have balanced tickets for the Supreme Court. You may have a liberal judge and a conservative judge and Republican and Democrat, I don't think it would be good for us to decide the election of our highest court on this basis. So in the interest of continuing the present tradition which had worked well since 1921. In the interest of an independent judiciary and an orderly procedure for electing them, if we are going to have an elected judiciary, let's have one that is not in the thicket of politics all the time. Please preserve this term which has worked well since 1921.

Question

Mr. Wall Judge, you were talking about judges and political issues. Now you have served in the legislature and the judiciary, you mean to say that judges are too weak, and not as strong as a legislator, there is a difference between a legislator voting on issues that are going to happen, you have got voters on each side and that he has to stand up to that and judges are not strong enough to stand up and do the right thing because there are voters that believe both ways?

Mr. Dennis No, Mr. Wall, all I am saying is that judges are after all human beings. They are really just lawyers that may put their hats on a little differently I think. But you take a man and you tell him first of all, you can't engage in any other economic enterprise other than being a judge. You must depend solely on that for your living. Second, we will give you a retirement but if you get beat before you get your twenty years in, you go out with nothing, no law practice, no assets, nothing. And then you make him run..... I am afraid if we start here we are going to end up having district judges run every year. You make him run all of the time. I think that even of the strongest men will be subject to political pressure, more so than they would be if they had longer terms. And I have not heard any real flaw in the present system. I think it has worked well since 1921.

Further Discussion

Mr. De Blieux Mr. Chairman, ladies and gentlemen, I... Judge Dennis made most of my talk for me because I am opposed to this amendment. The reason that I am opposed to it for the practical reason is that the... we have seven Supreme Court districts you might say with one being elected every two years. And if you don't continue that practice you are just going to mess up the elections. If we only had five justices elected from five districts, the ten-year term would make sense and I think in accord with what you don't think we ought to try to change the procedure now in view of the overall picture and the practical matter of it. We have the seven judges, we have seven districts, one coming up every two years makes a lot of sense and for that particular reason, I think it takes the Supreme Court out of politics as much as we possibly can and it is a lot different.... I might as well say that for the record, he made his reference to the decision of the judges. I think they should be removed from politics. I think the legislature should be involved in politics because whenever I cast a vote in that legislature, I am thinking about the people I represent. I am not thinking about the question of next generation or something like that, or the effect of my decision with reference to a particular case that is decided before me as a judge, I am thinking

about solving the immediate problems and how the people that I represent is going to think about that solution and that problem. That is what we should be, so we should divorce our court as far from politics as we possibly can and let the politics remain in the legislature where it should be. I ask you to vote down the amendment.

Further Discussion

Mr. Rayburn Mr. Chairman, and fellow delegates, I rise in support of this amendment and I can't necessarily agree with what Senator De Blieux and the distinguished Judge Dennis had to say about injecting a judge in politics. I think ten years is a pretty long time for the people to have a chance to look at you, or to look at your record. Fourteen I know, is a real long time. And I see no reason why the judiciary of this state should have to be accountable to the people of this state in a little shorter period than once every fourteen years. And I ask you to support this amendment and I want to call on all you attorneys, you were so helpful in telling us how we should operate the legislature, under the leadership particularly of my friend, Mr. Roy, now, I ask you for your advice and your wisdom, as to how I should vote on this particular amendment.

Further Discussion

Mr. Kean Mr. Chairman, and fellow delegates, I doubt that I can help the distinguished Senator in his decision on this matter, but I do want to say that I oppose the amendment by my friend, Mr. Lanier. And it is not because of my concern about involvement in the political process, but my concern about the stability in the highest court of this state and in the decision making process which that court has assigned to it as its responsibility. It seems to me that it is terribly important to the interest of the people of this state and to their life and property, as Mr. Lanier has put it, that we have a Supreme Court with final authority with respect to judicial matters in this state, which has a stabilized base. And which has a stabilized system of dealing with the decision making process. And in the past ten years, this court has presented out with seven Supreme Court justices we have an opportunity every two years to consider an addition to that court. And that brings before the people of this state in my opinion, judges with an opportunity to vote upon their records in the decision making process. I think we make a mistake if we tamper with this traditional fourteen year term of the Supreme Court justices. It has been in the constitution from 1921, it has worked well, and I urge your defeat of the amendment by Mr. Lanier.

Further Discussion

Mr. Roy Mr. Chairman, ladies and gentlemen of the convention, I rise in support of this amendment. Let me point out one thing that I think has been not intentionally misstated, but I think you should know. When Senator De Blieux and Mr. Kean talked about running every two years, you really get to vote every fourteen years because one justice presently under the present system runs every two years in a district on your own. You elect justices on a district basis. Justice Tate, for instance, is the Supreme Court Justice from District 3 of the Supreme Court District. If there'd be some way that Justice Tate could be there in perpetuity, I'd be for it, but that's not the issue. I want to point out another thing, that the present incumbent, other than any way be affected by what we do here today and I just feel like everyone else, that a fourteen year term is too long. Now they talk about, Judge Dennis does, about earning your pay and making it political. Who is under the gun more? Who has to put up more with people everyday, coming in his office, acting as a godfather, acting as a father, as a brother, as an administrator and as a judge than a poor district judge?

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There are many in this state, and we elect them only for six years. If anybody is under the gun politically, it's the district judge because he's got only a six year term and generally he makes about twenty-five thousand dollars a year on the average. Some police juries give more to their district judges. You can't compare that with a man who is elected for a fourteen year term. What flak does he have thrown at him, really? He's immune, almost, from what the people have to say or want and that's maybe as it should be. There's no way that you can go on up to the Supreme Court of Louisiana, rap on the door and go in there and start talking to one of the justices. I'm not saying that that should be, and it shouldn't. But the fact of the matter is that, really, the guy who really is toiling, like a district judge with the Supreme Court justice and say not only do we allow the Supreme Court justice to be elected for twice as long plus two years, which gives him retirement a lot sooner, if he happens to be elected; but they make about thirty-eight thousand dollars a year, as I understand it. There is nothing wrong with paying that much. I'm for it. I'm for justices and district judges and courts of appeal judges being paid what is really fair and I don't think the salaries are high enough, really. But that's not the issue here. The issue is whether we are going to stand and allow a man to be elected for a fourteen year period. I'll tell you what it does a lot of times. It makes a politician rusty. The guy who is elected for a fourteen year term, the first thing you know, tends not to be coming back home and seeing his people. I like this amendment. I ask you to support it. Thank you.

Further Discussion

Mr. Wall Mr. Speaker, fellow delegates, it's necessary that we have a judicial system. It's necessary that we have a good judicial system. But the more you cushion people in, the weaker system you get. I hesitate to say this, but you know, let's just stop and analyze the situation. You have the executive, judiciary and legislative. You have to be a lawyer in the judiciary. There is a much greater number of the legislative branch that are lawyers. Most of your governors and presidents have been lawyers. Now I don't mean this disrespectful, but I just have to point this out to show you how the judiciary works and what it takes, a stronger delegate, to stand up to this type of position to the judiciary department than any other. The judiciary system has more protection in the constitution than any other system, any other branch of government. Why should it be? The judiciary system should not have anything in the constitution except the things that's necessary and should not have the legislative matters. Now it's been said up here about judges under pressures. We ladies and gentlemen, if we have the type of judges, if we have any of them in there that can't stand up to the pressure of what people are thinking, we sure as the devil don't want them staying there because if they are that kind of weak, moral fiber, if they get cushioned in, you know where they are going to be where that heavy stuff is, if they are that kind of weak, moral fiber. So that's no argument if that's the kind of standards they have. You talk about the judges' retirement. The judges' retirement, it's been mentioned by Judge Dennis. I don't mean any reflection against Judge Dennis, any lawyer or anyone else because Judge Dennis has served in the legislative and the judiciary, and from my experiences I know him to be an honorable man in both branches of government. But why should the judges have their retirement and not contribute to it? Why should they have it in the constitution? If you go put the judges' retirement in the constitution and take care of them, let's put the school teachers and the highway workers, the firefighters and everyone else in the constitution. If you are going to legislate in the constitution for the judges, let's do it for everybody. You get

down to the real old thing, the judges never lose. I say never lose, almost never lose when it comes to the legislature because they have the strongest lobby of anyone. I got baptized to that judge lobby in 1948 when they were trying to extend the terms of district judges from six to twelve years. I was a freshman in the legislature on Judiciary A, and I was able to defeat that in the committee in 1948. They have been trying to get their terms extended ever since. This is a great opportunity. Judges, as individuals, most of them are very honorable men. As a group and an organization, they ask and request too much of this convention and too much of the legislature.

Thank you very much, Mr. Chairman. Fellow delegates, I'm going to ask for a record vote on every amendment that comes up. I don't know where I'll get it now, but every amendment that comes up in this judicial section from here on in, I want a record vote. I'll request from the Chairman, and we're going to see who wants to legislate for the judges in the constitution and who wants to represent the people. Thank you, Mr. Chairman.

[Quorum Call: 111 delegates present and a quorum.]

Further Discussion

Mr. Fulco Mr. Chairman and fellow delegates, I'm going to use Hellborn Jack's phrase and mean it. I will be brief. I think fourteen years, for any office, Supreme Court judge, or a city court judge, legislator or otherwise is absolutely too long. It's absurd and ridiculous. People are not having the free expression with such a lengthy term as fourteen years. If you were a Supreme Court judge and you were elected for fourteen years, certainly you would agree with me that there would certainly be politics involved. You would be naturally free to politic on that bench. I can verify that fact because in the legislature for sixteen years, we had salary raises for judges and the judges came down. They didn't hesitate to get involved in politics. They lobbied the legislature to get their salary raises. So naturally, they are human beings. They are going to play politics. So if they are going to play politics in fourteen years, let's make it possible for them to play politics in ten years. Let's vote for this amendment.

Further Discussion

Mr. Kilbourne Mr. Chairman, fellow delegates, I rise to oppose the amendment. I have been an obscure country lawyer for almost forty years. At one time and at the present time I don't have much occasion to go before the Supreme Court. But when I was a prosecuting attorney, I went before the Supreme Court many times and I got a ears pinned a lot of times. In fact, sometimes I would tell people, I said, "I think they are trying me and the district judge and I get confused about who the criminal is." But on reflection, I knew that I had nearly always had what I thought was a fair shake. I want to be fair to the Supreme Court. I ask you to remember this, when a man is elected to the Supreme Court, from whatever part of the state he comes from, he has to spend nearly all of his time in New Orleans, where the Supreme Court is. He has to get out of touch with the people, to a large extent. With the workload that the Supreme Court has now, he doesn't have time to go out and spend a lot of time politicking. I don't hold any office now and don't expect to, but I want to be fair about this thing. It has been in the constitution since 1921 and in my long experience, though it has been as an obscure country lawyer, I think it has worked well. I would like to see the terms of the Supreme Court and the other judges that we have in this article stay as they are in the article. I am on the Judiciary Committee and we worked long and hard and we discussed all of these matters at great length. This is what the majority of us, and I believe it was a substantial majority, felt ought to stay in the

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constitution. I ask you to defeat this amendment.

Questions

Mr. Anzalone Mr. Kilbourne, if we approve the fourteen year term for a justice of the Supreme Court, is it not very likely that with this sixteen year provision in Section 23, that he will be elected to the Supreme Court, be eligible for retirement and never be accountable to the people?

Mr. Kilbourne Well, we are not on the retirement provision at this time. Mr. Anzalone, and I'm sure that's going to come in for a lot of flak. But without any retirement or with retirement just like it is now, if we leave the retirement system for judges as it is in the present constitution or no retirement, I still feel that a judge on the Supreme Court ought to have at least the protection of a fourteen year term whether he has anything else or not.

Mr. Stinson Mr. Kilbourne, isn't it a fact that especially those justices from north Louisiana, that they have to make their home in New Orleans? If they have children, they have to put them in school there because they cannot commute and hold down the job on the Supreme Court.

Mr. Kilbourne That is absolutely correct, Mr. Stinson.

Mr. Stinson Isn't it a fact that the size of the districts is certainly different from a district judge and it would take, if they came up for election more often, it would take quite a bit of their time to be out politicking when a district judge doesn't have the problem?

Mr. Kilbourne That is certainly correct. I would say this, it ought to be said and I meant to mention it. You can't really compare district judges with Supreme Court judges because they are in their home town and they are with their people all of the time, where they should be.

Mr. Stinson Isn't it a fact that a district judge, they can go to church at home. They can go to every kind of religious meeting, belong to different clubs and such and attend weekly. These judges in New Orleans, if they are down there, it's impossible for them to commute and take care. . . engage in local affairs like a district judge, isn't it? Also a court of appeal judge.

Mr. Kilbourne That's correct, Mr. Stinson. Like I said, I want to, if you want to say the Supreme Court is a devil, I want to give the devil his dues. I hope we can be fair on this thing. Thank you very much.

Further Discussion

Mr. Jack Mr. Chairman, ladies and gentlemen, as Mr. Fulco says, I'm old brevity Jack. I won't take but a minute. I'm against this amendment and very simply here are the reasons. I live in Shreveport. I'm well aware, after forty-one years of practicing law, the distance from Shreveport to New Orleans and back, the difference in duties of a district judge and a Supreme Court judge. For a Supreme Court judge to do his work properly, he practically lives in New Orleans. I'm interested in a judge not being politically minded to get elected. I'm interested in him being a good lawyer, a good judge and deciding cases properly. For that reason I approve of his fourteen year term. I do not approve of a district judge in New Orleans having twelve years. I want all district judges to have twelve years. The nature, in closing, of the work a district judge does, most of his work is on the bench. He can't go make a talk in politics until he gets off, finishes a case or during a recess at noon. An appellate judge, whether it be Supreme Court or court of appeals, most of his is paperwork. It's briefs and big the records. Now I don't want that Supreme Court judge or court

of appeals judge to be placed in a position with a short term of six years, eight or ten, where he or she, and we'll be having lady judges on there and they will make good ones. I don't want those appellate judges placed in the position that to keep up a political fence they are going to have to, when they ought to be reading that transcript and have unbroken continuity, have to drop it to go make a talk. They are entirely different from district judges, so I say defeat this amendment. Thank you.

Questions

Mr. Alario Mr. Jack, could you tell me when was the last time a Supreme Court Justice had any opposition in this state?

Mr. Jack I just wouldn't know, but there are bound to be better records to answer your question than I am. I couldn't tell you when the last time certain city judges or other people, I couldn't tell you who had opposition when they ran as delegates here. That's not within my knowledge.

Mr. Alario Mr. Jack, would you believe that since 1921 only one Supreme Court Justice has had opposition, and I believe that was Justice Fournet.

Mr. Jack Well, let's put it this way. I've got a good answer, I think, for you. What my talk was talking about, I want them, the appellate ones to have the time for those lengthy briefs that lawyers write, including myself, for the transcripts and all that. Whether they have opposition or not, you're missing the point. I never saw a judge yet that wasn't afraid he was going to have opposition. Like any other office-holder, they are going to be out as much as they can to keep the political fences up. I don't want them to have to be out using that time.

Mr. Alario Mr. Jack, don't you think on the past track record, though, once a justice has been elected for fourteen years, he will probably, more than likely, be elected for twenty-eight and the people won't really have a shot at him?

Mr. Jack Say that again. I didn't hear you, there was noise.

Mr. Alario Mr. Jack, would you believe I'm over to your right?

Mr. Jack Well, there's somebody standing up over there. I didn't know where you were.

Mr. Sutherland Mr. Jack, isn't it a fact that the federal judiciary is appointed for life?

Mr. Jack I don't like it!

Mr. Sutherland All right. Isn't it a fact that you have to have an independent judiciary if you are going to have a separation of powers?

Mr. Jack That's right.

Mr. Sutherland So the longer the term, the more independent the judiciary will be.

Mr. Jack Well, it would be under certain circumstances and certain it wouldn't. I wouldn't want a district judge for fourteen years. He's right there, but I want the Supreme Court.

Mr. Stinson Mr. Jack, isn't it a fact that most of the members of the Supreme Court, that is a career. Do you know of any member of the Supreme Court, that after he's got off, of course a lot of them die when...that has gone back into private practice? You don't know of a one, do you? It's been their career and their dedication and their purpose. Isn't that right?

Mr. Jack That's right. That is correct, every-one. I even heard of one Supreme Court justice of

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the United States that ran for and was elected justice of the peace once. He really loved that kind of work.

Mr. Stinson Did he make a better justice of the peace than he did a United States Supreme Court Justice?

Mr. Jack I don't know.

[Previous Question ordered.]

Closing

Mr. Reeves First of all, I would like to say that this amendment that Mr. Lanier and a number of other of us brought together is not biased against the Supreme Court justices nor the organization of the supreme court. We feel simply that fourteen years is too long for an individual to be separated from the people whence he came. He came from the people he was elected by the people and there he should go back to the people whence he came and be elected again. My personal opinion, backed up by statistics, that there has been only one supreme court justice that faced opposition. That was a political decision and it was based on politics.

I think you realize the situation with Judge Fourmet. This amendment does not discriminate against the justices of the Supreme Court that are presently in at the present time for it simply states that the Supreme Court justices shall have ten year terms rather than fourteen. We cannot remove an individual from his fourteen year term or his term that he is presently serving now. I take exception with Judge Dennis when he says that the judges should be political. I feel that it is not a method of politics but it is in touch with the people. I feel that an individual should, if it is called politics, okay, well and good. But I think that he should be in touch with the people and in line with their beliefs.

It's completely erroneous to believe that we amended that the district was to go down to less than six year terms. This is not our intention at all. My personal intention, and I'm sure that it's Mr. Lanier's, is to let the district court remain at six years. But we feel that the ten years for the Supreme Court justices would be better than fourteen years. Let's be fair, Mr. Kibourne said, to the Supreme Court. I say yes. Let us be fair to the Supreme Court, but let's be fair to the people, for the people are those individuals that we must be concerned with. Who do I mean when I say the people? I mean all the people throughout the entire state of Louisiana.

The people within the districts the Supreme Court justices are elected from do not elect Supreme Court justices every two years but elect Supreme Court justices every fourteen years. This is too long. My people do not even know who their Supreme Court justice is for the simple reason that they have been so far removed from that justice. He does live in New Orleans. He is away from the people.

I know, and I know also that this Supreme Court justice when he was running, put on his running and afterward, just immediately after he was elected, he toured the entire district and talked to a number of civic organizations. He also talked to school groups. We find that these individuals that are brought closer to the people realize that there are people problems as well as lawyer problems. I'm not saying this that I'm against attorneys. I'm for them. But there are also people problems. Problems that are everyday common problems that are just not taken care of in the text book that the attorney takes with him.

In closing, let me say this. How in America, in the state of Louisiana, can we be against a more responsible Judiciary? How in America can we be against the people having a bigger, but there who will be their judge and on their Supreme Court? I feel, as I'm sure that you feel, that if you're for democracy, if you're for a belief that all men are created equal, and above and beyond that, that they should have a voice in their government, in all aspects of their government, that you will vote

with me to have a ten year term for the Supreme Court justice. For the question is coming up here and there, when you reduce it down to ten years you are removing from the Supreme Court justice, his independence. My statement to that is simply this. Ten years is not very far removed from fourteen. We're only asking for a pittance for the people. Just a simple pittance. We're not asking to go down to six or seven or five, but up to ten. I'm giving him more than I would give anyone else in the state of Louisiana for I agree that the Supreme Court is the greatest court in the land as for as the state of Louisiana is concerned. It should be and I'm for that.

Please vote with me and the people of the state of Louisiana in voting for this amendment.

[Record vote ordered. Amendment adopted: 59-52. Motion to reconsider tabled: 59-52. Previous Question ordered on the Section.]

Closing

Mr. Dennis Ladies and gentlemen, I think we had full debate on the matter and I believe that we may have reached a consensus. I ask for favorable adoption of the amendment as amended.

[Section passed: 76-32. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter Section 4. Supreme Court Districts Section 4. The state shall be divided into at least six Supreme Court districts with at least one judge elected from each. The present districts and the number of judges assigned to each are retained, subject to change by a two-thirds vote of the elected members of each House of the Legislature.

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, this section omits the listing of the parishes in each district. However, it does allow for the continuation of the present districts but further provides that these districts may be changed by the legislature by a two-thirds vote of each House. This would allow for change in the future, but retain at the present time, the same districts for the seven justices, two of which run in the same district.

Questions

Mr. Flory Judge Dennis, in reading Section 4, you state that the state shall be divided into at least six Supreme Court districts with at least one judge elected from each. As I interpret that, that means possibly one of the judges could be appointed. Is that your understanding of the . . .

Mr. Dennis No sir. That is not my understanding. My understanding is that presently two of the judges on the Supreme Court are elected from the same district, and there are presently six districts.

Mr. Flory Yes, but doesn't it also say that "at least one judge elected from each". It doesn't say anything about both of them being elected from that district. It just said at least one of them has to be elected.

Mr. Dennis You may be correct. There may possibly need a clarifying word in another section to make certain that everyone understands that all of these judges are going to be elected. But it is certainly the intention of the committee, throughout this article, that all judges be elected. We have not provided for any judges to be appointed. I believe Section 24 does just that. It says that "the judge of the Supreme Court, and other judges, shall have been admitted to practice in this state

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five years prior to his election." So I think that that. . .

Mr. Flory I beg your pardon, but that only says about those that are to be elected. It doesn't require that they all be elected.

Mr. Dennis Well Mr. Flory, I think if not explicit, it is implicit in the article. However, if you would like to offer an amendment to clarify that, I wouldn't oppose it because that is the intention of the committee, that they all be elected. Not only Supreme Court justices, but that all judges be elected.

Mr. Tobias Judge Dennis, in reading Section 4, is it not possible that the legislature could provide a smaller district for a Supreme Court. . . a smaller Supreme Court district in which two people run in that district? For example, could they not say that Ouachita Parish shall compose one district and that two justices will be elected from that district?

Mr. Dennis I think that's highly improbable. I suppose it is possible. However, I think that with the safeguard of a two-thirds vote in the legislature, which I believe is already a reasonable body, that it would be almost impossible that that would happen. I don't believe that two-thirds of the legislature would do something that extreme. We must give flexibility for the future. You will notice that the requirement of six districts is a minimum requirement. The legislature could go to seven districts by a two-thirds vote and it would spell out different districts from what we have now by a two-thirds vote. I ask your favorable vote on this section.

Mr. Shannon Judge Dennis, from the questions that have been asked here, I'm being presumptuous, I guess, in believing that there is one Supreme Court district that we have two judges elected from?

Mr. Dennis Yes sir.

Mr. Shannon But don't we have seven Supreme Court justices and only six districts?

Mr. Dennis At the present time, we have six districts and seven judges. Two of them are elected from the New Orleans district.

Mr. Shannon Is that Orleans Parish?

Mr. Dennis Yes sir, because of the density of population there is just one district there with two judges being elected. There is more than Orleans Parish--it's the New Orleans area.

Mr. Shannon The metropolitan area?

Mr. Dennis Yes sir. "The first district is composed of the parishes of Orleans, St. Bernard, Plaquemines and Jefferson, from which two justices shall be elected." That's Section 9, of Article 7 of the present constitution.

Mr. Abraham Judge, maybe I missed the conversation and how this would work, but where would the seventh judge be elected from? This I'm not clear on according to this right here.

Mr. Dennis Section 15, as I said earlier, retains all courts just like they are. This provision would say, and the way it is right now is there are six districts in the state. Two of the Supreme Court justices are elected from one of those districts. Now this would be the way that we continue until the legislature decided to rearrange those districts. It could just leave it like it is, but it could decide to have seven districts and spell them out. If you got two-thirds vote in the legislature to do that, that could be done under this section.

Mr. Abraham Then the language of the present

districts and the number of judges assigned to each are retained. It takes care of the provisions in the present constitution which tells where the judges come from. So there is no problem there.

Mr. Dennis Yes sir.

Mr. Abraham All right. Well this is where I wasn't clear, whether this would handle that provision all right.

Mr. Dennis Without further action of the legislature, the provisions that are now in Article 7, Section 9, of the 1921 Constitution would continue.

Mr. Abraham Okay. I just wanted to be sure that this took care of that.

[Quorum Call: 101 delegates present and a quorum.]

Recess

[Quorum Call: 95 delegates present and a quorum.]

Amendments

Mr. Poynter Amendments are offered by Delegate Alario and other persons adding their names at the desk as coauthors.

Amendment No. 1. On page 2, line 1, immediately after the word "into" delete the words "at least six" and insert in lieu thereof the word "seven". Amendment No. 2. Page 2, line 2, immediately after the word "with" and before the word "one" delete the words "at least".

Amendment No. 3. Page 2, line 3, immediately after the period delete the remainder of the line and delete lines 4, 5 and 6 in their entirety.

Explanation

Mr. Alario Mr. Chairman, members of the convention, with the effect of this amendment Section 4 will now read "the state shall be divided into seven Supreme Court districts with one judge elected from each." Now when we started in the first few days of debating this convention, this body overwhelmingly approved a single member districts for the legislature and there were many, many who got up to this mike and said they believed that one man, one vote rule was so good that it belonged in the constitution. Well, I personally believe this same rule, this same concept ought to apply to every public office in this state. And in particular, also, to the Supreme Court in order that all the people of this state might be equally represented, and I ask that you would support this amendment.

Questions

Mr. Tobias Mr. Alario, are you aware that your proposal does not provide for one man, one vote? All it does is say there shall be seven districts.

Mr. Alario Well, there will be amendments following right after this that will set up the mechanics for that. The main thing was to make sure that we had one per our district.

Mr. Tobias Are you aware of the amendment that we have pending, the other amendment that. . .

Mr. Alario I'm aware of the amendment you have pending, Max. It sets a date in the constitution rather than providing that that particular date be set in the schedule, provides for a date of 1975. I personally believe we ought to begin immediately, as soon as this constitution is approved with reapportioning the Supreme Court.

Mr. Tobias But don't you think that although there is a date provided in that particular amendment that that could be handled by Style and Drafting to be put in a schedule, rather than in

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this section?

Mr. Alario That may very well be, but personally I'm not in favor of the date, regardless.

Mr. Velazquez Do you realize that this particular amendment of yours in conjunction with the one man vote, one vote amendment, coming next would in effect destroy the existing Supreme Courts district in North Louisiana?

Mr. Alario That's very possible, Mr. Velazquez. The Supreme Court has not been reapportioned since 1921.

Mr. Velazquez Didn't the United States Supreme Court say there was no necessary reason for Supreme Court districts to also be apportioned on one man, one vote?

Mr. Alario That's true and I think it was a ridiculous ruling and I think this will give them some reason to want to make it one man, one vote.

Mr. Velazquez Then your desire is to destroy the representation that the North Louisiana people and the Central Louisiana people presently have in the Supreme Court of the state of Louisiana?

Mr. Alario No sir, that's not my intention. My intention is that all the people of this state would be treated equally.

Mr. Velazquez Then don't you think the only way the people will be treated equally, are to keep the districts as they presently are. Because any change in districts will have to [...] against those areas which are decreasing in population, principally the North Louisiana and the Central Louisiana areas?

Mr. Alario Well, under that concept, of course, we would never have any reapportionment then in this state. Then the legislature ought to stay the way it is for fifty years or one hundred years also under what you are telling me here.

Mr. Velazquez Don't you believe the legislative, executive and judicial are separate branches of government and must be kept independent?

Mr. Alario Yes.

Mr. Velazquez Then how can you give that idea, with the idea of changing these districts and cheating these poor people up there in North Louisiana out of their present Supreme Court districts?

Mr. Alario Well, Mr. Velazquez, of course you being from the city of New Orleans I understand what your basis of what you are trying to argue here for, and you are really not trying to protect the people of North Louisiana. You are trying to protect in that one district as this amendment says "at least six Supreme Court districts," and in the sixth district where you have two? So let's not kid ourselves, and let's lay the cards on the table. What are you trying to protect?

Mr. Velazquez Districts that are...apportioned at the present time according to one man, one vote or the New Orleans districts or the other districts are malapportioned at the present time?

Mr. Alario The New Orleans district is a multi-member district at this time. You have two members from that one district. I'm trying to set up seven equal districts.

Mr. Velazquez Seven equal districts then it's going to have to mean that the North Louisiana districts will have to be lost.

Mr. Alario I don't think so, I think they will be well represented.

Mr. Nunez Mr. Alario, I agree with what you are trying to do. I think we should have the seven districts equally proportioned in population regardless of whether they should or not. All of the other offices are like that. My only question to you is that we just had an election now in that particular area that you are trying to divide up. There were two justices that were elected, one of them for a two year term and I think one for a four or five year term. What this would do, would take one justice that is coming up for reelection next year, I think it's in '74, the summer of '74. And he would be in a position, I think it's Justice Calogero, he would be out of the district, therefore, either one of them would have to run against each other or either move into the other district if it's divided as such. Wouldn't you say if we could make it that he would have the opportunity to run from the district that he now represents that would be acting in sort of fairness to him and I think it's Walter Marcus. Both of these are from Orleans and I'm from the surrounding area and I'm for your plan, but I just think out of fairness we should give those two justices an opportunity to run from the area they were elected from without reapportioning them before their term comes up which is next year. Don't you think that?

Mr. Alario Senator, let me answer your question and I think it was in two parts. I personally have the highest and greatest respect for Mr. Calogero. However, the seat he now holds on the Supreme Court doesn't necessarily belong to Pascal Calogero. It belongs to the people of this state and of that particular district. They loaned him that seat, they should have a right to take it back. It's not something that belongs to him. It's just like any other office holder in this state. You belong to the Senate, that seat doesn't belong to you in the Senate, the people only loaned it to you for a while.

Mr. Nunez Don't you think the people usually loan those seats for more than one year? What you're doing, he has only been in one year. He has to run this year. We just cut the term from fourteen to ten years. He wouldn't be in a position to run under this new reapportionment.

Mr. Alario Senator, he took over that particular seat after someone vacated the Supreme Court. You didn't reduce that term of office. It just so happens that the same thing could be true in any office in this state where when an officer that died or resigned for some reason had vacated his seat, then he would only serve for one year. Are you saying then that that person maybe should hold the office for five or six years just because he took it only for one year?

Mr. Nunez No, I just think he should have an opportunity to run and don't you think he should have....

Mr. Alario Alright, let me answer your question on that part of it also. Possibly, we may be able to write into, and I understand there may be some amendments prepared that will allow to be run in either of the districts, something similar to what has been done with the legislative section. I have no objection to that.

Mr. Nunez That was what my point is. He ran from a geographic district. What we are doing now is taking that geographic district and dividing it in half, very possibly he won't be in the half or live in the half and be allowed to run back for the same seat in the same geographic district. That's my point. I don't disagree with what you are trying to do. I think we should do it. But I'm just trying to find a way to make a provision whereby an individual or two individuals who were just elected and are coming up for reelection would have that opportunity.

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Mr. Alario I have no quarrel with that with allowing him to run in either district. At the same time, I don't think we ought to be writing a constitution to protect any particular individual. It's much bigger than that.

Mr. Poynter Your intent, Mr. Alario, and the other coauthors, was just to have the first sentence with the two changes, six to seven and strike out the words "at least". Right? We need to change that Amendment No. 3 to strike out "lines 3, 4, 5 and 6" and then insert back the word "each". As it would be drafted you would have the portion of the sentence dangling. Amendment No. 3 read as follows: on page 2, line 3, immediately after the period delete the remainder of the line. Oh, I see you've got it covered there, Mr. Alario, with the remainder of the line problem. You don't have a problem.

Further Discussion

Mr. Tate Mr. Chairman, sister and brother delegates, I rise in support of the committee proposal and against Mr. John Alario's amendment. The committee proposal was designed to maintain the present division of districts, which includes Orleans and Jefferson, Plaquemines, St. Bernard as one district with two judges until the legislature has a chance to act reasonably and responsibly on it. The provision for change by two-thirds vote of the legislature would appear to allow a reasonable adjustment protecting the interests of the various parishes concerned. I'm particularly concerned with the amendment as proposed because it throws into confusion the government provisions regulating the selection of the Supreme Court. Next year we have an election coming, next year. You are all particularly familiar, I think, in Orleans parish with the fact that with court litigation, with the necessity of obtaining Washington approval for a change of districts, that the possibility of indefinite prolongation of how the state should be subdivided within a very short period of time...because there is no provision except immediately when the constitution comes into effect, leads us to the prospect of confusion, federal litigation, state litigation and so on. Now I think that the committee proposal treats Orleans, Jefferson, St. Bernard and Plaquemines as a contiguous more or less metropolitan area that has quite similar interests until such time as two-thirds of the legislature wishes to subdivide it. I am, therefore, particularly concerned that a general provision requiring immediate division into seven of the state without guideline, lends itself to confusion and the inability of the government to provide for the election of the Supreme Court Judge next summer...a man elected just two years ago without indefinite litigation and indefinite confusion. I rise to oppose the Alario amendment, Mr. Speaker.

Questions

Mr. Stovall Justice Tate, what kind of rationale can you give not to support the one man, one vote? What kind of rationality did the Supreme Court have in not providing that....Supreme Court districts would have to be reapportioned along the line of the single member district as other districts in our society?

Mr. Tate Reverend Stovall, that's a good question. In the first place though, the Alario amendment as I read it, should reread it maybe, doesn't it provide for seven districts?

Mr. Stovall Yes, it does.

Mr. Tate Period. One man from each. It doesn't provide that they should be of equal population.

Mr. Stovall This will come in a later amendment, according to my understanding, Judge Tate.

Mr. Tate Well, Reverend Stovall, I suggest that

the amendment is not before us. Now if you want an intellectual justification for it for which I don't necessarily agree, the Supreme Court of the United States in an opinion by Chief Justice Burger, subscribed by more than a majority, held that since the courts do not exercise legislative powers, since they have an interpretive function the same one man, one vote principle does not necessarily apply to selection of judges as it does to legislators who are supposed to enforce not the law of the legislators but the policies of the people.

Mr. Stovall Judge Tate, you are a man of integrity, I believe in you. Yet you are purporting something you said you don't believe in personally here.

Mr. Tate I'm telling you the justification for it, and I didn't say I didn't agree with it. I'm just telling you the justification.

Mr. Weiss You made reference to the federal courts, on what basis do the federal courts have the right to determine the makeup and distribution of state courts?

Mr. Tate Well, it's a good question. But many people would have thought that first of all because there is a federal statute right now that says in states such as ours where any change of voting precincts has to be submitted to Washington for approval. I read now and then one of those rags called Picayune or the States....and I understand they have some confusion down there in New Orleans because of that provision.

Mr. Weiss Isn't the federal constitution established as a result of what the states have allowed the federal government to do? So what authority do they have constitutionally to do this?

Mr. Tate Go tell Tom Casey and the lawyers for the City of New Orleans. I think it's an interesting point of view that may be valid but they haven't upheld it quite recently.

Further Discussion

Mr. Tobias Mr. Chairman, fellow delegates, I rise in opposition to this particular amendment and for one basic reason. All it says is that there will be seven districts, seven Supreme Court districts. It doesn't say that these districts will be equally apportioned. True, they may be coming with another amendment, but I haven't seen that amendment yet. I would urge you to defeat this amendment and back the amendment which will follow this one which will create seven districts that will be apportioned on a population basis throughout the state. So that each person in the state can point to a judge and say that that's my justice or representative on the Supreme Court. For any of you that have any doubt whatsoever, let me inform you that judges do represent their constituency. And they aren't as impartial as some would have us believe.

Questions

Mr. Toomy Mr. Tobias, does the committee proposal provide that the Supreme Court districts would be equally proportioned?

Mr. Tobias Does the present one?

Mr. Toomy The committee proposal.

Mr. Tobias No, it does not. I'm opposed to it, too.

Mr. Leithman Mr. Tobias, certainly the verbiage on the amendment says we will have one judge from each district. But do you know that when we passed going to the single member concept for the House of Representatives and the Senate that the verbiage in this amendment is that one member is to

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represent each legislative district? And I think the natural assumption there is that each district will be apportioned equally. I think even in the absence of an amendment, I would think that when we passed this legislative amendment and I'm reading just from the amendment here, that we would go to single member districts and I think we would accept. Do you agree that we did in fact agree that we would equally reapportion each district?

Mr. Tobias I disagree with you for this reason. Judge Tate just referred to the opinion of the United States Supreme Court which said that the Louisiana Supreme Court did not have to apportion itself on a population basis. We were to just say that there shall be seven districts, there is nothing that would prevent for the districts to be apportioned differently. Presently, the districts are so malapportioned, it's ridiculous. You have one district, the district that Justice Mack Barham sits in, which has approximately 385,000 people in it. Yet you have the districts and I think we are presently sitting in, in which Chief Justice Joe Sanders sits in, and it has well over 600,000. So this seems to me inherently unfair, and to think we would change this, I think we ought to spell it out, make sure that the legislature or the Supreme Court districts are equally apportioned, that each person who runs for office will only have to face that number of representatives. I only have to have that number of people in their district so they can campaign on the same basis as all others in that district.

Further Discussion

Mr. Roy Mr. Chairman, ladies and gentlemen of the convention, I rise in opposition to these amendments, and I'll tell you why. Not only for the reasons that Justice Tate pointed out that the U. S. Supreme Court has said that one man, one vote does not apply to the interpretation of laws which I think makes sense. I think that's a good argument. But I'm a French Catholic and I just don't think it's inherent in our system for this state to have a Supreme Court which is supposed to be made up of disinterested judges who could conceivably come from one segment of the state. Presently under the Supreme Court districts, North Louisiana has two justices on the Supreme Court... that is, the Monroe area is one, I think the fourth Supreme Court district and the fifth Supreme Court district is the Shreveport area. Alexandria on southwest is Judge Tate's Supreme Court district and it's the third. The first Supreme Court district in Orleans, Jefferson what have you, have two that are elected at large and of course Baton Rouge has one and Abbeville and those places have another. But the point of this whole thing is that Mr. Alario's amendment does nothing more than if you have seven Supreme Court districts. Presumably, if the legislature gets caught on buying this one vote, one.... Supreme Court justice idea, you could have as many as four elected from Baton Rouge or East Baton Rouge Parish on to and through Orleans Parish. You would maybe have one which is the present third Supreme Court district to be Justice Tate's and you may not have any or just one from North Louisiana. Now that to me is not fair, a Supreme Court should reflect as much as possible the divergent views of a state like Louisiana and we are not allowing for that with Mr. Alario's amendment. I don't know if Mr. Gauthier intends to introduce his amendment that was passed out, which simply allows the legislature after 1975 by majority vote to split the first Supreme Court district. I would favor such an amendment. But as you can see, that does nothing more than just divides up the first Supreme Court district which presently elects two Supreme Court justices. I urge you in the name of fairness to this rest of this state to not do this amendment and to pass the Gauthier amendment if you want to divide the first Supreme Court district into two districts.

Mr. Bollinger Chris, if in the schedule when those provisions were stated with John's amendment if John's amendment was in the constitution saying that there shall be seven districts with one member from each district and then in the schedule we would provide after January 1, 1975 the first district would be split to make two districts. Would this in essence be saying the same thing without cluttering up the constitution with dates?

Mr. Roy Boysis, I do agree but don't forget that John Alario's amendment from line 3 on destroys the present Supreme Court districts and that's what I don't want to do. I want to keep the present Supreme Court districts and I do. I want the first Supreme Court district to be divided by two, or be divided into two districts which would make the seventh. Wendell Gauthier amendment, not the one with Mrs. Miller, because I'm against that but his, a separate amendment, will allow the legislature by a mere majority vote in 1975 to do that and I think certainly they will go ahead and do it. But don't forget Mr. Alario's amendment destroys the total concept of six Supreme Court districts as we now have which to me is the essence of a well balanced Supreme Court.

Mr. Weiss Delegate Roy, you seem to imply that there must be different districts created throughout the state. Are you implying, therefore, that there is different types of justice in different parts of the state?

Mr. Roy No, I'm not implying different justice or different types of justice. I'm saying that the total concept of the greatest amount of justice that one could imagine, I would believe, would be where you have the input of different minds, intellectual minds from different parts of the state which would allow for the best justice possible.

Mr. Weiss You feel then that justice is better represented by different people throughout the state, rather than one person who's concerned with justice no matter what part of the state they are from.

Mr. Roy Well, justice of course depends a lot on your environment and people who are from one segment of the state may have a different notion of justice than others. I, for instance, am much more liberal about drinking views than North Louisianians are. But they have a right to be represented in their viewing, and I wouldn't represent them properly.

Mr. Weiss What about the urban versus rural distributions then, don't you think that's significant?

Mr. Roy That's significant, and it's provided for. North Louisiana only has two Supreme Court justices out of seven right now. They at least ought to keep that, is all I'm saying.

Mr. Bollinger Chris, line 3 of the committee's proposal says "the present districts and the number of judges assigned to each are retained". Would not Wendell's amendment contradict that statement?

Mr. Roy No, Boysis, because that only says up until 1975. Then Wendell's says after January 1, 1975 the legislature by majority vote shall divide the first Supreme Court district.

Mr. Bollinger So doesn't this make a pretty sloppy constitution because in 1999 when the people are studying the constitution and saying, "Well, these guys were pretty silly back then, because they say the present districts are retained, but then after January 1, 1975 they are going to change them again."

Mr. Roy No, let me just answer this, Mr. Chairman. You see the present provision of the committee provides that before 1975 the legislature by two-

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thirds vote could change the districts if it chose. But by 1975 you must have a mandatory separation of District One. I agree with you it could be better worded, but Mr. Alario's just negates the whole concept of that type of representation.

Further Discussion

Mr. Casey Mr. Chairman, and delegates, I rise to oppose this amendment. It's certainly difficult to intelligently argue against the proper appointment of anything where representation is involved, and representation of the people is what I am referring to. But as the law is written today, or at least as my understanding of the law as written today, the legislature could have accomplished the same results that Mr. Alario is attempting to accomplish. Unless somebody shows me something different to the contrary, they could have done it and there has been no proposal that I have seen that may have been submitted from any delegation in the legislature to make any change in the Supreme Court districts. Let's face it. Any delegate who is aware of the problem in the large district which exists between the City of New Orleans and Jefferson Parish, realizes that this is a political problem, which now exists between Jefferson and Orleans Parish. It's difficult to resolve this problem with this amendment because injustice is going to be done, Gerrymandering will occur and a Justice who is serving at this time regardless of who he may be if this is passed, he will be gerrymandered out of office in some way, manner, shape or form. I would submit to you that the amendment that has been submitted by Mrs. Miller would appropriately resolve not only Mr. Alario's problem, but also the political problem which does exist. And I must be very frank with you that it is a political problem, a political problem that could have been resolved by the legislature but the legislature apparently did not see fit to attempt to resolve this either through a statute or through a constitutional amendment which could have been submitted by the individuals or by the delegation which is submitting this amendment. I would suggest to you if you want a more reasonable, practical and intelligent approach to the solution of the problem, I would suggest that you reject this amendment and in lieu of this amendment then accept Mrs. Miller's amendment.

Further Discussion

Mr. Conroy I rise in support of the Alario amendment. I believe the amendment is important. I believe it preserves the concept which we established when we first started dealing with the substantive parts of this constitution. And that is the concept of single member districts. Make no mistake, that is the issue and the only issue presented by the Alario amendment. It is whether you have single member districts for the Supreme Court in the same fashion that you have single member districts for the House of Representatives and single member districts for the state Senate. The other questions that are raised relate to other problems and do not relate to that basic issue. When we took up the legislative article we did not try to solve the problems of reapportionment in Section One. We discussed those in Section Five. We did not try to solve the problems of election in Section One of the legislative article. We tried to solve that in Section Four. The questions which people like Mr. Roy or Delegate Casey have raised relate to other problems in the basic concept of the single member district. If you believe in the single member district, you should vote for the Alario amendment. Then as these other amendments are proposed you can decide what is the proper way to move from what we have now into the single member district. But I warn you that if you reject the Alario amendment, then you will be faced with the problem that in the subsequent amendment the people will pick at the minor technicalities that may exist in such other amendments and will urge you to reject those amendments because there is some technical deficiency in the way the longer amend-

ments are drawn. I say again, if you believe in the basic concept of the single member district, adopt the Alario amendment. Then make the refinements that are necessary later. The Miller, Gauthier amendment which is proposed on the floor has a Section (A) which is substantially the same as Mr. Alario's proposed amendment. There is no inconsistency between that and the amendment being proposed by Mr. Alario. So adopt the Alario amendment then deal with the other amendments and define what the best way is to move into the single member districts for Supreme Court Justices. Thank you.

Further Discussion

Mr. Dennis Mr. Chairman and fellow delegates, I rise in opposition to the amendments on behalf of the committee. The committee debated all of these issues and the committee does not disagree with the principle of one man, one vote or single member districts. But the committee is interested in drafting a constitution and passing a constitution and we took a position that when we take material out of the constitution that we are doing here, that is spelling out the district, that we should not attempt to change them at the same time we are taking them out. This is a job that should be left to the legislature. I recognize that the Supreme Court may be malapportioned and I recognize that Jefferson Parish may have a legitimate grievance. But that is a problem that should be dealt with in the legislature. This proposal will not prevent the legislature dividing the state into seven districts. It will not prevent the legislature from reapportioning the Supreme Court on the one man, one vote principle. This section will simply allow that job, those two jobs, to be done by the legislature and they should be done by the legislature. So I ask you to vote on these amendments because the section will allow the accomplishment of everything that the authors of the amendments want to do in the proper form in the legislature.

[Previous question ordered.]

Closing

Mr. Alario Mr. Chairman, members of the convention, I don't want you to misunderstand anything that I've tried to propose in offering these amendments to you. Yes, it is a political problem, but so is all reapportionment a political problem. When you don't face up to the issue sooner or later it's got to be, and it has been that way throughout this state. They just don't face up to the issue of reapportionment. They just don't face up to that responsibility of doing what is right and just and fair, for all the people of this state. I don't see anything wrong with having a one man, one vote rule apply to the Supreme Court districts of this state. Only because it would allow every citizen to be equally treated, that's all this amendment does. I ask that you would support it.

[Reward vote ordered. Amendments rejected: 27-85. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [By Mrs. Miller, et al.] On page 2, strike out lines 1 through 6 in their entirety and insert in lieu thereof the following: Section 4. A. The state shall be divided into seven Supreme Court districts apportioned as equally as practicable by population according to each official decennial federal census. One judge shall be elected from each district.

B. After January 1, 1975 and before January 1, 1976 the Supreme Court district shall be reapportioned as equally as practicable by population in accordance with the 1970 office of the federal decennial census into seven districts. Judges then serving terms to which elected shall be assigned by a vote of a majority of the Supreme Court justices to a

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district for the remainder of the term to which then elected. Thereafter, a judge shall be domiciled in the district from which elected for at least one year prior to qualifying as a candidate for the position. However, at the first election for each office of the Supreme Court following reapportionment, an elector may qualify as a candidate from any district created in whole or in part from the district existing prior to reapportionment if he was domiciled in that prior district for at least one year preceding his qualification.

C. Subsequent decennial reapportionments of the Supreme Court districts and the assignment of judges to the Supreme Court districts for the remainder of the terms to which elected shall be made by a board for judicial reapportionment composed of the presiding judge of the Supreme Court, who shall be the presiding judge of the board, the presiding judge of each circuit court of appeal, the speaker of the House of Representatives and the presiding officer of the Senate."

Explanation

Mr. Tobias Mr. Chairman, fellow delegates, this particular amendment does basically three things. First of all it establishes seven Supreme Court districts throughout the state. Secondly, it provides that each district shall be apportioned every ten years on a one man, one vote principle. You will know who your Justice is on the Supreme Court. Third, it creates a judicial reapportionment board which will reapportion the districts each ten years. The purpose of this board is in keeping with the legislative proposals allowing the legislature to reapportion itself and here we are allowing basically the Supreme Court to reapportion itself. The provision to provide that a person shall be able to move into another district in the event that his reapportionment gerrymanders him out. The whole purpose of this is to allow that individual judge the opportunity to move into that district. And also to assure that not only those judges in office on January 1, 1975 would not be gerrymandered out of office but those judges in office in 1980 and 1990 and the year 2000, etc. would not be gerrymandered out of office. This provision will accomplish, I believe, everything that we want to accomplish and I would urge its adoption.

Questions

Mr. Duval Mr. Tobias, I'm looking at Paragraph C, in reference to subsequent decennial reapportionments. Now when the legislature reapportions itself, isn't it subject to gubernatorial veto?

Mr. Tobias As we adopted it?

Mr. Duval No, I mean when the legislature passes an act of reapportionment in the future. Wouldn't it be subject to veto?

Mr. Tobias As a legislative act, I would assume it would be

Mr. Duval All right, therefore, here the board that you composed could do an ex porté subject to no review by any other branch of government. Is that right?

Mr. Tobias As a practical matter, I think that you do have review. For the simple reason that when we enact a one man, one vote principle into our constitution we in effect are saying that somebody is looking over your shoulder.

Mr. Duval But, the court itself would be reviewing it's own decision wouldn't it?

Mr. Tobias Well, it's not entirely the Supreme Court. You got to remember that you have one member of that and then you got the Courts of appeal, and they are a little bit different. And you also have the members...President of the Senate, and Speaker of the House, who also look over the shoulder.

Mr. Duval You don't think it would be better to have the representatives of the people do the reapportionment rather than this board?

Mr. Tobias No, sir.

Mr. O'Neill Mr. Tobias, Mr. Duval touched on my first question and my second question is, do you feel that it's absolutely necessary to mention these dates in the new constitution?

Mr. Tobias As I have said this particular provision after January 1, 1975 and before January 1, 1976, could be handled by Style and Drafting placed in the schedule to such an extent where it would just make it clear in that sense.

Mr. O'Neill Good.

Mr. Roy Mr. Tobias, isn't this present amendment the same as Alario's only it's a lot more complicated and longer?

Mr. Tobias No, it's substantially different. First of all, it does not...Mr. Alario's amendment did not say that there should be one man, one vote. This does, too. And if you were opposed to this, in effect, you're saying, "I am opposed to one man, one vote." Even the Gauthier amendment, which is, I believe, coming up after this one does not provide for one man, one vote.

Mr. Roy Mr. Tobias, isn't it possible under this amendment, since you allow "an elector may qualify as a candidate from any district created in whole or in part" for any elector in this state, any kid eighteen years of age who is registered and who is an elector, to run as a candidate, but under Section 24 of the committee work, of course he couldn't be the judge until he became of age.

Mr. Tobias That conflict could be resolved in the report by the Style and Drafting Committee to coordinate the two.

Mr. Roy Oh, no. I am on Style and Drafting. I didn't know we were to resolve obvious substantive conflicts.

Mr. Tobias What it means is an elector who would be qualified under our...proposal.

Mr. Roy But does it say that?

Mr. Tobias That's implied, Mr. Roy.

Mr. Bergeron Max, some of my questions have been touched on. I'm looking at Paragraph 8, line 5, that sentence beginning with the word, "judges", could you explain to me exactly what that means?

Mr. Tobias As I understand this particular sentence, it means that in the event of gerrymandering out, this person...the Supreme Court would say that this person would serve until the qualified term...this person would...stay in that office until such person is reelected.

Mr. Bergeron I may be having problems with the language. I...o.k. Thank you.

Mr. Ginn Mr. Tobias, it says you have reapportionment every ten years?

Mr. Tobias Correct.

Mr. Ginn Well, don't you think in the long run that's definitely going to hurt North Louisiana and perhaps some of the Cajun Country, due to the rise in population in New Orleans and the New Orleans Area?

Mr. Tobias You've got to make up your mind whether you want one man, one vote, with judges...I still insist that judges do represent their constituency, and I think it's just as fair to have each person

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know who his judge is. And it's a question whether you want one man, one vote, or do you want the present system where you have three hundred and eighty four thousand people. I believe it is in Judge Mack Barham's district, or six hundred and something thousand in Joe Sanders' district.

Mr. Ginn In that same regard, North Louisiana in fifteen years might have one judge or half a judge.

Mr. Tobias Theoretically it is possible.

Mr. Perez Mr. Tobias, I call your attention to the provision in Paragraph B which states, "Judges then serving terms to which elected shall be assigned by vote of a majority of the Supreme Court justices to a district for the remainder of a term to which then elected." I ask you whether it is not possible that four members of the court could assign the other three judges to districts and thereby shorten their terms or affect their terms of office.

Mr. Tobias Not at all.

Mr. Perez Would you show me where in this particular proposal that that...that the present judges are protected?

Mr. Tobias Logic would dictate it because first of all Act 2 of 1972 would prohibit us from doing that, and I don't think that a court would ever interpret that we intended to do that.

Second of all, I believe that what this provision is doing is solely guaranteeing that should a gerrymandering, a gerrymander occur, that the judge who has been gerrymandered out of office will be able to serve out his term and give him ample time to move into the district so that he will be a representative of that district.

Mr. Perez I am not asking you about logic, I am asking you with respect to this proposal, can you point to any provision which would protect the elected judges for their terms of office?

Mr. Tobias We have a general provision in our Article which states that all judges...the term of any judge shall not be decreased for the term for which he is elected. That would cut across this.

Mr. Perez Would you point out to me how that would affect and would protect the judges in this particular situation?

Mr. Tobias Well, if you read the two Sections together, the obvious interpretation is that a judge's term cannot be reduced.

Mr. Perez Well, apparently we have a difference of opinion on interpretation.

[Previous Question ordered. Record vote ordered. Amendment rejected; 47-67. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment proposed by Delegate Gauthier as follows:

Amendment No. 1, on page 2, line 6, at the end of the line add the following: "After January 1, 1975 the legislature by a majority vote of the elected members of each house shall divide the first Supreme Court district into two districts with one judge to be elected from each district."

Explanation

Mr. Gauthier Mr. Chairman, delegates to the convention, this amendment simply establishes a concept that we established earlier in this convention; one member representing one district, single member districts. Now there has been some question as to why I put the wording "after January 1, 1975,"

and the fact is this. We presently have a justice serving on the Supreme Court who ran for an unexpired term of office. He has been in office for a little over a year. He has to run again next summer. If we did not put this date in the constitution, it would effectively gerrymander this man out of district. I don't believe it is fair. I don't believe we as delegates want to do this. I have heard the argument that this constitution is not being written for one man or to protect one man's interests and I agree with this. But, also, the constitution is the law of the land, laws made by men for men. I don't think it is meant to gerrymander any man out of district. I don't believe that this man would have wanted to run for office had he known that in a short period of time he would be forced out of that district. It's unfair to gerrymander this man out of district, plus, I might bring to your attention that this document is due to go to the governor on January 4, 1974. Qualification date for the particular justice that we have in mind is June, 1974. The election is in November, 1974. Now, the constitution can be presented to the people in a special election or at the next general election. No one is certain yet when it will be. I can see legal problems arising and the possibility of a suit according to when the constitution is adopted and when the justice runs. By providing that "after January 1, 1975" we will then have single member districts and we will, in effect, preserve the right of this man to run for his office. As I said earlier, I don't believe in protecting any one individual's interests and by the same token I don't believe we, as delegates, want to gerrymander any one person out of office. I urge your support of the amendment.

Questions

Mr. Dennis You are not saying that the committee proposal would have the effect of gerrymandering anyone out of office, are you?

Mr. Gauthier No, not at all, Mr. Dennis, but the committee proposal retains the districts as we presently have them. We have seven Supreme Court justices, yet we have six districts, two being elected from one. If I follow the feeling of this constitution right, we argued single member districts. Why should we make an exception here, why here? Why provide that district one is going to have two justices and the rest of the districts are going to have one? Why not have seven districts?

Mr. Ginn Wendell, I see that you are asking for a majority vote of the legislature and the committee asked for a two-thirds vote. Why the distinction on your part?

Mr. Gauthier This is just for district one, David. My amendment is concerned with district one only. It preserves the other districts as is.

Mr. Sandoz The committee proposal provides for further changes as far as---in the future, other than the one change you made. Would not you limit us to this one change that you are proposing?

Mr. Gauthier That is not the intent of the amendment. I don't believe it does. I think they can still turn by two-thirds vote.

Further Discussion

Mr. Dennis Mr. Chairman, fellow delegates, I rise in opposition to the amendment solely on the ground, as I stated earlier, that the committee feels that what Mr. Gauthier is seeking can be done by the legislature under the committee proposal by a two-thirds vote of the legislature. If we attempt to change too much of the material that we are taking out of the constitution I think that we are not doing what we are here for. We should simply take this matter over at the convention, take the districts out, and allow the legislature

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to reapportion it in the future. So, I ask on that basis only that you vote against the amendment.

Questions

Mr. Kilbourne Judge Dennis, wouldn't this have the effect of allowing a change by the legislature by a simple majority as to the first district but all the other districts would have to have a two-thirds majority under the present committee proposal?

Mr. Dennis Mr. Kilbourne, I don't know whether it changes all of the votes to a simple majority or just this one vote. It does at least make a change there and the committee felt that a two-thirds vote should be required to change these districts.

Mr. Gravel Judge Dennis, do you have a copy of Delegate Gauthier's proposed amendment before you?

Mr. Dennis I believe so.

Mr. Gravel Isn't it a fact that that proposed amendment mandates the legislature to act and to vote by a majority vote that this particular district will be divided? Isn't this amendment mandating the legislature not only to vote, but telling them how they must vote?

Mr. Dennis Yes, it tells them that they shall divide the first Supreme Court district.

Mr. Gravel And by a majority vote.

Mr. Dennis You are correct.

Mr. Gravel What would happen, Judge Dennis, if you didn't have a majority vote? What worries me about this amendment is it tells the legislature, if I read it correctly, that you have got to by a majority vote do this, and there is no way that I know of that this constitution or any other force can compel the legislature to vote by a majority vote.

Mr. Dennis I believe you are correct, Mr. Gravel. I guess the only relief would be to try to amend the constitution if that should happen.

[Previous Question ordered.]

Closing

Mr. Gauthier Mr. Chairman and members of the delegation, I want to reemphasize the fact that presently we elect seven justices. We have six districts. All this amendment does is divide district one into two districts after January 1, 1975, and it goes back to the original concept that this convention established a single member districts. I urge your support of this amendment. Thank you.

[Record vote ordered. Amendment rejected: 50-63. Motion to reconsider tabled. Previous Question ordered on the Section. Section passed: 103-9. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter Section 5. Supreme Court; Supervisory, original and appellate jurisdiction, Rule-making power, Assignment of judges

Section 5. (A) The Supreme Court has general supervisory jurisdiction over all other courts. It may establish procedural and administrative rules not in conflict with law. It may assign a sitting or retired judge to any court.

(B) The Supreme Court has exclusive original jurisdiction of disciplinary proceedings against members of the bar.

(C) Except as otherwise provided in this constitution, the Supreme Court's jurisdiction in civil cases extends to both the law and the facts. In criminal matters, its appellate jurisdiction ex-

tends only to questions of law.

(D) In addition to appeal provided for elsewhere in this constitution the following cases shall be appealable to the Supreme Court:

(1) A case in which a law or ordinance has been declared unconstitutional.

(2) A criminal case in which the death penalty or imprisonment at hard labor may be imposed or in which a fine exceeding five hundred dollars or a term of imprisonment exceeding six months has been actually imposed. In other criminal cases an accused shall have a right of appeal or review as provided by law or by rule of the Supreme Court not inconsistent therewith.

(E) Subject to the provisions of Subsection C, the Supreme Court has appellate jurisdiction over all issues involving any civil action properly before it.

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, this section sets forth the powers and duties of the Supreme Court. This section represents no great change from the present constitutional provisions. Subparagraph (A) grants the Supreme Court general supervisory jurisdiction over all courts. This is no change in substance from the present law. It also grants the court the power to establish procedural and administrative rules not in conflict with law. This means that the Supreme Court may establish procedural or administrative rules but that they might be changed by the legislature if the legislature so desires. This is a clarification of the Supreme Court's present rule-making powers. It also specifically states that the legislature, by enacting a law in conflict with a rule adopted by the Supreme Court, could change it. The third sentence allowing the Supreme Court to assign a sitting or retired judge to any court is not a change in the law either. This power is granted the Supreme Court in the present constitution. Subparagraph (B) continues without change in substance the Supreme Court's exclusive original jurisdiction of disciplinary proceedings against members of the bar. This is traditional in our State and in almost all other states. The Supreme Court is the forum in which disbarment proceedings must be decided. Subparagraph (C) provides that the Supreme Court, except as otherwise provided in the constitution, in civil cases has jurisdiction to review both the law and the facts. This is a continuation of our present law which is based on the French civilian tradition of appellate review of the facts. In criminal matters however the appellate jurisdiction is restricted to questions of law. This also is the present law in our constitution and is continued without substance. Subparagraph (D) provides for cases which are appealable of right to the Supreme Court. The Supreme Court by virtue of its supervisory jurisdiction can hear any case that it chooses that arises in the Louisiana court system. Subparagraph (D) says that it must hear these kind of cases. It has no discretion. It must grant the appeal and hear the case described in Subparagraph (D) and that is two kinds of cases. First is a case in which a law or ordinance has been declared unconstitutional by a lower court. The second kind of case is a criminal case in which the death penalty or imprisonment at hard labor, which means the state penitentiary, may be imposed or a less serious criminal case in which a fine of five hundred dollars or imprisonment of six months has actually been imposed. In other criminal cases where the fine is under five hundred dollars or the sentence under six months the article directs the Supreme Court to establish rules for review, either to the Supreme Court or to some other court in the court system, but also provides here again that the legislature may change those rules or make rules on its own for the appeal of these cases. These are largely misdemeanor cases we are talking about here. Paragraph (E) provides that the Supreme Court has appellate jurisdiction over all issues involved in any civil action properly before it. This simply means that once the

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Supreme Court grants a writ and agrees to review a case or once a case is appealed to it, that it may review all of the issues in that case. It may look at the case as a whole and review all of the issues, subject to the exception in Paragraph (C) where in criminal cases it can only review questions of law.

Questions

Mr. Derbes Judge Dennis, just a technical question. On page 3, line 2, the term "civil action" seems foreign to our jurisdiction. It seems to me to be a matter of federal court.

Mr. Dennis I am sorry. I'm not with you.

Mr. Derbes I say on page 3, line 2, from where does the term "civil action" derive?

Mr. Dennis It was only intended to relate to non-criminal cases. It is synonymous with civil cases that we used earlier. It was not intended to create a new kind of action in Louisiana if that is what you are concerned about, Mr. Derbes. We simply used the word "action" instead of "cases".

Mr. Duval Judge Dennis, I notice in your proposal you deleted reference to direct appeal to the Supreme Court from public service commission type rulings, election contests and I think under the present law, some civil service commission rulings are directly appealable from the district court to the Supreme Court. My question is, was it the intention of the committee that these appeals do not lie to the Supreme Court or should they be provided for elsewhere in the constitution.

Mr. Dennis It was our intention that they should be provided for elsewhere. We understood that the executive department was debating whether to put the entire public service commission machinery in the constitution or not. If they did they would probably provide for judicial review in the same section. That is why in beginning Paragraph (D) we said in addition to appeals provided for elsewhere in this constitution. We don't intend to limit the mandatory appeals to these two types of cases.

Mr. Duval Thank you.

Mr. Abraham Judge Dennis, in the present constitution it provides that the jurisdiction applies for suits for removal from office of the judges of courts of record and you have left that out in this particular section. I realize that over on page 10 the judiciary commission recommends to the Supreme Court this type of thing but leaving out the language here. Is the situation going to be covered by not specifying that the Supreme Court has jurisdiction over suits for removal from office of judges?

Mr. Dennis Yes sir, we felt that it was adequately covered in Section 25 which establishes again the judiciary commission.

Mr. Abraham Is there any other means by which though, other than the judiciary commission, that a suit might be brought to remove a judge from office?

Mr. Dennis No sir. Judges could be impeached under the provisions of the legislative article that we have already adopted, but you will recall that suits against judges was not thought to be a proper vehicle, an adequate vehicle, in the legislative article and so it was left out there. We have two routes for removing judges though. We have the impeachment and the judiciary commission.

Mr. Anzalone Judge Dennis, in line 12, "it may assign a sitting or retired judge to any court." I know that this does not represent a change in the law. My question to you, sir, is that in the debate by your committee, was any other possibility

besides the reassignment of a sitting judge discussed?

Mr. Dennis Would you clarify your question? Or you mean for what purpose, in order to equalize the work load or....

Mr. Anzalone Judge, a little bit more specific, what I am talking about is that when we've got a sitting judge back home it is hard enough to get orders signed, but when the Supreme Court decides that they are going to take him away from us and give him to somebody else for six or seven months at a time, and then it makes it a little bit harder to get orders signed, that there are some people who just disagree with this policy. My question to you is did your committee consider the possibility of seeking interim appointments from other than sitting judges?

Mr. Dennis We did consider the fact that it would be nice to have a pool of supernumerary judges. Some states have this. I don't know whether that's the proper word for it, but they have extra judges, so to speak, in a pool that can be drawn upon in cases of death, heart attacks, illness and so forth, but we didn't feel that our article would act to prevent the legislature from doing that if it thought it had enough money to do it. Just to answer your question, we did consider it briefly but felt like it was so embroiled in fiscal matters that we would leave this up to the legislature, that until the legislature acted we would continue to let the Supreme Court fill in the gap with assigning sitting or retired judges.

Mr. Anzalone I know that you are chairman of this committee. Would you consider supporting an amendment which would remove sitting judges from your provision?

Mr. Dennis Well, I would like to and I would if we had some extra judges, but we don't and I think we are going to have to rely upon our sitting judges to help one another out in their district....

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Conino] on page 2, line 11, after the period on the remainder of the line and delete lines 12 and 13 in their entirety and insert in lieu thereof the following: "It may assign a sitting or retired judge to any court with his consent and with the consent of a majority of the members of the court in which the judge is assigned."

Explanation

Mr. Conino Mr. Chairman, ladies and gentlemen of the delegation, fellow delegates, my amendment basically takes care of the administrative procedures which the local courts and the Supreme Court must abide by. Basically in the state of Louisiana the procedure for criminal and civil are set out in our statutes called the Code of Civil Procedure and the Code of Criminal Procedure. These are the state laws which our courts must abide by. If you will notice in the committee proposal it states supervisory jurisdiction. We feel that the supervisory jurisdiction given the Supreme Court is adequate enough and we can delete from that the second sentence which reads, "it may establish procedural and administrative rules not in conflict with law." Then we will tackle the other sentence a little later on. We feel that the local courts deserve the flexibility that they must have to administer their own problems that come within their jurisdiction. Presently existing rules of the Supreme Court give the Supreme Court adequate supervisory jurisdiction. Each district court, juvenile court, parish court, city court has different problems depending upon the area which it is in. It has finance problems, personnel problems and what have you. These are all local problems which should be dealt with at a local level. We do not feel that the Supreme Court should

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administer to the local courts and should tell the court how to operate the administrative part of is court. The committee proposal gives absolute and total power to the Supreme Court. The judicial administrator of the Supreme Court could become a Tsar and go down and snoop in the records of the local courts and thereby create problems on a local level. This Tsar could possibly succeed in many respects some of the local courts. We wish to give independence to the local courts to handle their administrative duties. They were elected on a local level, their obligations are statewide. However in many instances it belongs to the local people and their obligation is to the local people. So each district and local court presently establishes its own administrative duties. Each court has its own set of rules. If you practice in one district court and you go over to another district court, you can learn what those rules are in the other court. So recently a meeting of the district and court of appeals and several of the Supreme Court justices stated that they do not want this additional administrative duties. They prefer to leave this to the local courts and this is what we are doing in this amendment. The other part we are dealing with in this amendment is the transfer of a judge. In the committee proposal there is a mandatory transfer of the judge from one district, or one court, to the other. Our committee says that the sitting judge or retired judge may assign, and the court, with the consent of that particular judge. It says the consent of the judge being transferred and also the consent of the district court where the judge is being transferred also would have to give its consent. You might have a local judge in the parish of Orleans or Jefferson who is compelled to serve in the northern part of the state. He does not want to be transferred up there and that is what this particular amendment does. I urge your adoption of this amendment.

Questions

Mr. Tobias Mr. Conino, are you well aware of the fact that your proposal or your amendment would strike out the phrase "It may establish procedural and administrative rules not in conflict with law?"

Mr. Conino That is correct.

Mr. Tobias In other words, you are gutting the right of the ability of the Louisiana Supreme Court to be the general supervisor of the entire judiciary system in the state.

Mr. Conino No, Mr. Tobias, if you will refer to the first sentence, it says, "general supervisory jurisdiction," and we are leaving it there as it presently is. The only thing that we are removing is the day-to-day administrative details which ought to be left to the local and district courts, the juvenile courts and what have you.

Mr. Tobias I would suggest to you that by striking that sentence that this particular phrase "general supervisory jurisdiction" would be without any meaning whatsoever. Do you not agree?

Mr. Conino No, I don't agree.

Mr. Chatelain Mr. Conino, I would like a little information please on how old is he usually when a judge retires? How old is the judge usually?

Mr. Conino How old is he? I think one of the proposals here says seventy years of age.

Mr. Chatelain Is this just a courtesy or a normal procedure...how often does the retired judge come back into play, to be reassigned?

Mr. Conino To be reassigned, a retired judge? Normally, as they are needed. He is transferred from one district to another.

Mr. Chatelain Is that procedure followed pretty

much? Is it pretty often done?

Mr. Conino Yes, it is used quite frequently.

Mr. Chatelain You think that it's necessary to put that in the constitution?

Mr. Conino Not necessarily, no, but since....

Mrs. Brien Mr. Conino, would your amendment take away the extra power given to the Supreme Court in the original proposal?

Mr. Conino Do you mean the administrative powers?

Mrs. Brien Yes, by writing out that one sentence, doesn't it reduce the power again to the Supreme Court and put it back like it was?

Mr. Conino That's right. It would reduce the Supreme Court's powers as far as the administration of the local courts.

Further Discussion

Mr. Tate Mr. Chairman and fellow delegates, I rise in opposition to the amendment and in favor of the committee report. One word in explanation of the second sentence which was deleted, which says, "it may establish procedural and administrative rules not in conflict with law." This was added at the suggestion of Chief Justice Sanders. In the view of myself, him and almost anybody who has studied the matter, it adds nothing and detracts nothing from our present powers. It clarifies the fact that our procedural and administrative rules are subject to the legislature. I don't think really, if anybody thinks about it, that is controversial. I rise particularly in opposition to the requirement that we may assign sitting judges, only with the consent of that judge and of the court itself. The responsibility of the Supreme Court to help administer an efficient statewide system extends to the possibility that there may be no judge in a given district and it is necessary to ask a sitting judge to serve there. As a matter of fact no judge has been asked to serve unless he consented to it, as a matter of fact. However, if, for instance, you had an ugly case up in East and West Feliciana where Judge Bill Bennett is (he was back there a minute ago) and nobody wanted to go, I think certainly the interest of the people of the state demand that a judge in a district which is not busy should accept the assignment and go and serve the people of the state because otherwise the system as a whole...there is no way to get a judge to decide a case in a district where somebody is recused, sick or something else. Now, we have to look at the administration of the state judicial system as an entity. The Supreme Court has never and would never in my opinion, and you have got to trust somebody, would never take a judge from an overbusy district and send him somewhere else. The power is when there is a judge whose docket is more than under control, possibly because some districts have a very, very heavy case load and there should be that available manpower to serve over in another district. Now for instance, the judges in the district over there have to consent to the assignment. Now in many cases there is no more than one judge, one sick judge. I personally don't think that the mechanics should require, for example, if in Orleans one of the ten judges in that district court, or one of the ten or eleven judges of the criminal district court, needed temporary help, I personally don't think that it is feasible, wise administration or anything else, to require the Supreme Court both to find a judge willing to serve, although they always do, then submit him to a meeting over there where they vote on whether or not to accept him. It is cumbersome enough as it is to find judges to go serve. We are short of judges over the state. Thank goodness we have a few retired judges in good health, two or three, who have been able to plug in when we needed them.

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We have one, my good friend from Jefferson who sponsored this amendment, Judge Bel. I haven't heard any complaint from this very fine judge. I'm sure you all would have accepted him. Incidentally you have a very good judicial system in Jefferson. Your judges are up on their work and there is no problem there. But there are problems in other places where the judges are falling behind, where you need people to come in to help. For instance, in Orleans Parish in 1954 the criminal district court was way behind. The Supreme Court was able to send in Judge Fruge and I believe Judge Holcomb to help there and they sat with those judges as extra divisions and helped them clean up the docket. That is the sort of thing that you just have to be able to do, when the people demand the statewide system operate efficiently for all of the people. As a judge, I am a servant of all of the people, not just in my district. A judge who is elected from a given district, his primary responsibility is to the law, his secondary responsibility might be to the people of the district, but certainly he also has a responsibility to the people of the entire state and to help the judicial system serve the people efficiently. Mr. Chairman, that's all. I yield to any questions.

Questions

Mr. Flory Judge Tate, along the lines of assigning judges, isn't it possible under the proposed section that the Supreme Court could select a judge that had been defeated, a judge that had chosen not to run because he couldn't be elected, or a judge that had retired at twelve years? Now, if that is possible, isn't this subverting the will of the people in creating new judgeships to take care of workloads where they are peaked and it can be justified, which in that case the people would have the right to choose their own judge?

Mr. Tate Mr. Flory, the assignment power is used in temporary situations. Now it is true, and I suspect this opposition in Jefferson comes from the fact that when a certain criminal district judge in Orleans had been defeated (who many people think, despite the rough ways, is one of the finest minds in criminal law the judiciary produced) he was assigned to help Jefferson and Jefferson didn't like it, and the Supreme Court has the policy now that it will not assign a defeated judge to a place even on a temporary basis without being sure it is acceptable. However, I don't think you should tie the hands of the court or the people to permit temporary assignment without the expense of creating a permanent new position, when it is only a temporary situation needing temporary help, or a sick judge for instance.

Mr. Flory I am not familiar thoroughly with the Jefferson situation, but if you have got a lot of judges who have been assigned that have been retired for years and are still sitting and there is no way you can rid of them?

Mr. Tate If you are talking about a situation in Baton Rouge, there is a judge over seventy-five who at the unanimous request of the judges of Baton Rouge and the consent of the Baton Rouge Bar was asked to come over here and serve as motion judge to handle confirmation of defaults and noncontroversial matters to free the full-time judges from that detail so they could try more cases. The Baton Rouge district, incidentally, is one of the most efficient....

Further Discussion

Mr. Schmitt I am in favor of this amendment and I would like to give you my main reasons for being in favor of it. I had the unpleasant experience of being an attorney in a court of law in Orleans Parish when we had these retired judges sitting. This was an elderly man and I didn't hold that against him but apparently he was from a different part of the state and he had a different philosophy than we had in Orleans Parish. In his

part of the state apparently police told no lies, so when he made his decision from the stand, and he stated it from the stand, that he would believe the policeman's word. He gave them greater credibility than any other judge in our court system would have given them. In Orleans Parish generally the police feel that the district attorney's office is going to be involved in plea-bargaining in different types of cases. Therefore what they do is they charge the man with the highest possible offense. As an example if you get involved with a fight with someone the police might charge you with attempted murder, knowing that the district attorney's office is going to reduce this to aggravated battery or simple battery or some other related offense. In these same cases were brought before this judge and he saw that the district attorney's office brought these charges forward, he felt in his heart that these people must have been guilty. As a result of that many people were found guilty. I don't know whether or not they had committed the crimes, but his philosophy differed to such an extent that probably a lot of innocent people were found guilty in these cases. His concept of a person being guilty and not guilty was different from any other one I had heard in the state of Louisiana. I actually saw him go off the record, which is also unheard of. He said, "I do not want this made part of the record," the court reporter stopped making it a part of the record, then he proceeded to tell this black man why he was not guilty. After doing this he said "are you ready," and the man went up and talked to the judge and talked to the district attorney so he pled guilty. I'm sorry, he never pled guilty, but he was ready for his sentencing. The judge turned around and found him guilty. The attorney went to object, saying, "but you just said you were not guilty," he found guilty. He almost held the man in contempt of court. Going on and off the record is something which to me is unheard of because of the fact that when you go up on appeal the only thing that the judges on appeal will see will be this written record. They are not going to see this other action which took place in the court and was not made a part of the record. When objections or in criminal matters what are known as exceptions, were raised in these proceedings, this judge considered it as a personal insult and he often threatened attorneys to put them in contempt of court because they objected to his rulings. He cursed me out personally and he did many other things from the bench which horrified me as being a representative of defendants. Now who was the victim under the present system that we have right now. Were the criminals the victims? I daresay that if any one of those people who were found guilty under that judge had filed a writ of habeas corpus and had that brought before a court of appeals or the Supreme Court, they would have been let loose because of this judge's antics and tactics on the bench. The people are the victims, you and I, the innocent people. Many guilty people could possibly have gone free. This man also had another philosophy. He believed that prostitution was a wonderful way of life and that it was o.k. because of the fact that it kept people off the welfare rolls. These are just some of the inane things that just shocked me because I just didn't think these people existed in the twentieth century which had the concepts that this man had. I went and complained to some of the justices and they had felt the same way and they had stated that some of the judges from Orleans had complained about this man and many attorneys had complained about him, yet the judge could sit on that bench. I favor this amendment because I feel that it will help prevent such abuses of the civil process and the criminal process in the future.

Further Discussion

Mr. Derbes Ladies and gentlemen, if I can get your attention for a couple of minutes, I would like to tell you why I am opposed to this amendment. Mr. Schmitt is an example of the old legal maxim that "a judge is a good judge when he agrees with

you and a bad judge when he disagrees with you". Unfortunately, the example here is, in my opinion, not the real question at hand. The real question at hand is whether or not we are to have some centralized authority to supervise our judicial system or will our judicial system be fragmented into a series of minor fiefdoms where one judge perhaps is not one to accede to certain demands or necessities in another section of court. What I am referring to is the old rule of judicial abstention. I am using the term loosely to refer to what I regard as the basic policy on the part of most judges not to take cases when other sections of court have matters pending in them. I get involved in anything that is not ordinarily allotted to them. The principle operates unfortunately to the detriment of a policy of centralized management. That is, if the demands of one particular court require that additional personnel be assigned to that court then in order to better serve the interests of justice and the public, that assignment in my view should occur. The question is, do you leave that assignment solely to the discretion of the individual judge and to the individual... various members of the bench to which the assignment will occur. I believe that if you leave that final decision to them alone and provide no alternate authority in any supervisory body that you may unfortunately have, then the result here in my opinion the most efficient allocation of judicial resources will not occur. So, I briefly urge you to defeat the amendment and to preserve in the Louisiana Supreme Court the ultimate authority for adoptions of standards and rules of procedure and for ultimately the final say-so in what additional judicial personnel should be assigned where needed to any given court. Thank you.

Further Discussion

Mr. Dennis Well then, Mr. Chairman and fellow delegates, I must oppose the entire amendment because this amendment does two things. First of all, it takes out of the sentence which grants the Supreme Court the ability to establish procedural and administrative rules not in conflict with law of the legislature.

And the second part of it deals with assigning sitting judges. I think that both sentences, both parts of the amendment, will detract from the Supreme Court's ability to administer the system. But the first sentence is fatal because if it is taken out, this would mean that every district judge live myself can establish his own little fiefdom and run his court the way he wants to, take as much time to decide his cases as he wants to. And I don't believe this is what our people want. Our people want, I believe, speedy justice, stable justice and they want it consistent throughout the state. And the only way we are going to get that is to give the Supreme Court the authority to establish some reasonable rules about how long a judge can take to decide a case and about a judge helping other districts out when they get in trouble. So, ladies and gentlemen, I must ask you to defeat the entire amendment.

Questions

Mr. Lanier Judge Dennis, this language that it may establish procedural and administrative rules not in conflict with law, is this intended to mean that the Supreme Court could make the local court rules of each judicial district?

Mr. Dennis No, sir, it's not. The way this language came about in the committee, the present Constitution says that the Supreme Court has control of and general supervisory jurisdiction over all courts. Some of the members of the committee objected to the words, "control of," and they were taken out. Now just to be sure that that didn't completely take away the Supreme Court's right to make reasonable rules as to the administration of justice in the state about things such as how long you can take to decide a case and reporting to the Supreme Court about case loads and things

of this nature which are essential to efficient management of the entire court system. Just to make sure those were not done away with by deleting the words, "control of," we put in the second sentence which clearly states that the Supreme Court can make procedural, administrative rules.

Mr. Lanier So, what we have here, this does not authorize the Supreme Court to tell each judicial district how to make its local court rules. It merely is to give the court authority to control the general administration of justice throughout the whole system.

Mr. Dennis That's correct, Mr. Lanier, and I believe that under this even if something like that should be attempted, the legislature could, by its authority in this sentence, come in and write another rule and say you can't make local court rules. But it is not the intention of the... to grant the Supreme Court that much pervasive power.

Mr. Roy Judge Dennis, what this provision would do, the second sentence of Section 5, is to mandate district judges to decide their cases in a sense. And if a district judge decides he is not going to decide his cases, the Supreme Court would have the authority to make him to so. Isn't that correct? It would prevent judges from sitting on cases for two and three years and not deciding them. Isn't that what it allows the Supreme Court to do?

Mr. Dennis Yes, sir. That's the kind of power that I think is legitimate and good and directed for... to bring about justice throughout the state. I think that's needed.

Mr. Roy I agree. And if we adopt this amendment, it takes away that particular power, doesn't it?

Mr. Dennis You're right, Mr. Roy.

Mr. Roy So that you could have some district judges sitting on his haunches for six or seven years even and not deciding a case, couldn't he.

Mr. Dennis I think it might, as I said, set up little fiefdoms. Each judge would run his court the way he wanted to.

Mr. Roy And wasn't that a problem in the past until the Supreme Court started getting the judicial administrator to get on some of these judges. And isn't it still a problem with some district judges.

Mr. Dennis As I said earlier, I think this is one of the biggest complaints that the public has about the court system throughout the country.

Mr. Stinson Judge Dennis, if they want to get action instead of letting a man sit... someone take over and to his work, why don't they just... why didn't you provide they would hold up his salary, I'll bet you'd get some action, wouldn't you?

What are you going to do, give the judge a vacation and send a man in to do his work and pay him a paid vacation?

Mr. Dennis Well I believe that could be provided for by a rule, too, possibly. I believe we have a statute to that effect now but it's rarely used because it requires that an attorney must initiate, and attorneys are reluctant to initiate these things against judges. That's why the authority should be in the Supreme Court, not... you shouldn't leave it up to individual attorneys to have the courage to attack a judge to get something done.

[Previous Question ordered. Record vote ordered. Amendment rejected: 21-93. Motion to reconsider tabled.]

Amendment

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Mr. Poynter The amendment [by Mr. Roy] as drafted reads: "on page 2, line 17, after the word, 'civil', delete the remainder of the line and on line 18, delete 'both the law and the facts' and insert in lieu thereof, 'and criminal cases extends only to questions of law'."

That would make the paragraph read, "except as otherwise provided in this constitution, the Supreme Court's jurisdiction in civil and criminal cases extends only to questions of law", but leaves the last sentence, "in criminal matters its appellate jurisdiction extends to only questions of law".

You didn't want that redundancy...make a slight change, then, Mr. Roy, page 2, line 17 after the word "civil" delete the remainder of the line and delete lines 18 and 19 in their entirety and insert in lieu thereof the following: "and criminal cases extends only to question of law".

Explanation

Mr. Roy Mr. Chairman, ladies and gentlemen of the Convention, there are some other co-sponsors on here. Senator De Blieux asked to be co-sponsor and Delegate Guarisco and a few others.

Let me tell you what I'm doing here and what we are trying to do and to meet the issue head-on.

Presently, the law of this state is that the Supreme Court may review only errors of law in cases going before it of a criminal nature. However, in civil type cases, that is those that don't deal with anybody going to jail or being fined, the Supreme Court may review questions of fact. Now what does this mean for the ordinary layman?

It means that if you are convicted of a crime and they question a fact as to whether there was enough evidence to convict you or not, the Supreme Court may not review that conviction. However, there was a technical error of law committed in the trial of the case. And if so, then he may grant you a leave.

But if the Supreme Court, even if it was satisfied, a majority of the Court, that there was not enough evidence to convict you, it could not reverse the conviction because the Supreme Court may only review errors of law in criminal cases. Mind you, we are talking about a man's life or liberty...not being able to be reviewed by the Supreme Court on fact matters.

However, if, after a trial on the merits a district judge or jury finds as a matter of fact in a case that you are entitled to so much money for the loss of an arm and that your particular case you should get so much money, since that is a civil case, when it gets up to the Supreme Court, it may review the questions of fact and if the majority of the Supreme Court decides that your arm is not worth what the jury or judge thought it was worth, it may reduce it or it may, in certain cases reverse the whole award to you.

Now I don't understand the logic there. I have never understood the logic of an appellate court being able to review questions of fact but not... in civil cases but not in criminal cases. In fact, I don't think it belongs at all in either case. The U. S. Constitution by the seventh amendment provides that the appellate courts may not review findings of fact by the district, or judges or juries and there is a good reason for it. You hear or see me talking right now. You make an opinion or a judgment about the way I am conducting myself. I may make a facetious comment about something that you may interpret it as just that, a facetious comment.

But if you read the newspaper tomorrow and you haven't been here today and somebody has then got to determine what manner of speech I used in making the comment, he may get confused. And that's exactly what happens in a lot of cases on appeal. Because you know on appeal the only thing that goes up is a record. And the judges in the court of appeal read this record and they try to decide and second guess the district judge or jury as to how the witnesses presented themselves; were they telling the truth or not? Was their demeanor good? These are only things that the person at the district court level can appreciate whether he be

judge or jury.

What I am trying to do by this is to say that in questions of fact, the Supreme Court may not tamper with the local judges' ruling or the local juries' ruling.

Now it may, on a question of law, always review. And it may reverse. But when it comes to a fact matter, it is not allowed to do so. I think it's a good amendment. I think we need to meet that issue head on.

Louisiana, incidentally, is one of the few states in the union that allow the appellate courts to review questions of fact. The Federal System in this state does not allow the review of fact questions. That's why I said earlier that a Louisiana has to try to put on a federal cap a lot of times to get what he thinks should be the best justice.

If he can put on a federal cap and get in the federal court and a decision is rendered in his favor on a question of fact, the Fifth Circuit will not touch it.

But even if, after a trial on the merits, a jury of twelve men comes back and says, "We believe Mr. Roy's client," or, "We don't believe Mr. Roy's client," when it goes up on appeal, some judge reading a court record can say, "Well, five witnesses said the light was red, four said it was green, so we can reverse what the people who heard the witnesses say believe. I don't think it's right. And that's all this amendment does, it restricts the appellate review of the Supreme Court to questions of law alone.

Questions

Mr. Lanier Mr. Roy, do you believe that juries are able to make mistakes on questions of facts?

Mr. Roy Yes, but I believe that appellate courts reading a court record make a lot more mistakes than juries do.

Mr. Lanier Do you believe that a trial judge in a district court can make an error on facts?

Mr. Roy Yes, I believe that, too, but I believe that an appellate judge reading a cold record, not having heard or seen the witnesses, not having seen the testimony presented makes a lot more mistakes than that judge does.

Mr. Lanier Do you believe that justice is done when an error on facts is perpetuated in an appellate record?

Mr. Roy No, I don't believe that. But I believe that more miscarriages of justice occur when appellate judges take into their own hands their own interpretation of facts when they've not heard or seen the witnesses and reverse juries and judges who have rendered correct judgments.

Mr. Derbes Mr. Roy, it would seem appropriate to me to try to indicate to this convention what effect this will have on the ordinary civil dockets in the court throughout the state.

I don't think it correct that so long as the Supreme Court has no ultimate power to review facts, that there would of consequence be a substantial increase in the number of jury trials?

Mr. Roy No, I don't believe that, and I'll tell you another thing I don't believe. I think that if the appellate courts cannot review facts, you'd have fewer appeals and cases would be decided by the district court or jury and finalized at that level instead of the defendant or the aggrieved party or somebody not liking the verdict trying to get two bites at the apple.

Mr. Derbes So you answer my basic question in the negative?

Mr. Roy That's correct. Louisiana has had jury trials now for years and there's just not a great influx. That is a false issue...the notion of an

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increase in the number of cases litigated.

Mr. Derbes It's not a matter of the increase in the number of cases litigated, Mr. Roy, it's an increase in the number of jury trials.

Mr. Roy That doesn't necessary follow because the judge...the court of appeal or Supreme Court cannot review the judge's opinion as well as the jury's. So that doesn't bother that jury trial issue.

In fact, let me just point out in other states, in the common law states where you have jury trials that are prevalent, the defendant asked for jury trials in most of the cases. You try filing a suit in another state and ask the judge to decide it. Most of the times the defendants come in and ask for a jury trial himself.

But that's not the issue. The issue is not whether we can increase....

Do you have a question Mr. Sandoz? I'll stop.

Mr. Sandoz Mr. Roy, don't you agree that in other states that permit no review of fact by the appellate court, that there is a substantial backlog in their cases where in some states three, four and five years in getting a case to trial?

Mr. Roy I don't think that that's the reason for that, Mr. Sandoz. In our Northeastern states where there has been an influx of cases it has just been that way for many years because they don't provide for an adequate judiciary.

We have a great judicial system here. We've got enough judges, they don't provide enough.

Mr. Sandoz But, don't you think, Mr. Roy, that the reason we have a great judicial system is the fact that we have this review of facts?

Mr. Roy No, in fact it works just the opposite. The fact that an appellate court in this state may take a second bite at the apple causes more appeals to be taken because either party who's aggrieved or figures he's lost decides to appeal. So it just continues the case on up through the appellate structure when it need not be appealed.

Mr. Sandoz Mr. Roy, what about the cost of the parish government by encouraging jury trials in every little case. We don't have the system in the federal courts where we've got a minimum of ten thousand dollars on a case. In other words, you can ask for jury trials on five hundred dollar and thousand dollar cases which would cost [.....], which would cost your parish governments untold thousands of dollars.

Mr. Roy There's nothing in this Section that deals with jury trials at all, and you all are making a false issue of then a matter of fact to ask for a jury trial in Louisiana under present Louisiana law you have to have a minimum of a thousand dollars. So that's a...just don't be misled by all this jury trial conversation, ladies and gentlemen. It's not the issue.

The issue is simply whether you believe an appellate judge, reading the record, is in a better position to determine the veracity of a witness and his demeanor and his conscientiousness as the judge or jury who saw that person testify.

Mr. Stinson Mr. Roy, don't you think that if a district judge knows that he can do no error, no one's going to review him, that it's likely to make him play politics about his decision than if he realizes that his decision would be reviewed by the higher court?

Mr. Roy No, I don't believe that. Maybe some would do it, but the fact of the matter is, that you are still trying to argue the substitute, some person's reading of a cold record or that of a district judge. And let's talk about the cases where the district judge is correct....

Further Discussion

Mr. Burson Mr. Chairman, ladies and gentlemen of the association, I rise in opposition to this amendment. Now this amendment is a favorite project of an association of which I am a member, The Trial Lawyers Association. And as most of the members of that association in my legal career, I have primarily represented injured persons, whether in workmen's compensation cases or personal injury cases.

However, I disagree with the position taken by my fellow members of the association who seem to assume that denying appellate review of facts would redound always to the benefit of the injured party or the workmen's compensation claimant.

I have not found this to be the case in my experience as a trial lawyer in eight years of practice. I have rather found that on many occasions I was very happy to have recourse to appellate review of facts and I have participated in cases where I am convinced that the power of the appellate court to review facts in a personal injury or a compensation case has prevented, has prevented, rather, great injustice.

Now our courts have used this power of appellate review with discretion. What I have found is called the manifest error rule which simply stated means that an appellate court will not reverse a trial court on a question of fact unless there is what is called manifest error, or error apparent on the face of the record. In my experience, it is very seldom that you will find an appellate court in the State of Louisiana reversing a trial court on a question of fact. I don't represent from time again that the finding of the trial court on the question of fact is entitled to great weight.

My position on this issue would be that this system has worked well in what a judicial system is after all supposed to do, that is justice for all the parties, and that includes both the parties I represent and those I don't represent because the object of the judicial system is certainly not to favor those classes of persons that I happen, as a lawyer, to represent.

Now it has been pointed out that in federal court that the courts, there, of appeal do not have the power to review facts. I have found this to be a disadvantage in appellate review in federal courts. To give you one example, in a personal injury case, recently, where the personal injury awards were monstrously low in relation to the injuries involved. But I was not able to obtain appellate review of the findings with regard to injuries because it was a factual finding.

Only in a limited case where no damages at all were found for pain and suffering was I able to get a review. I am convinced that in this same case in state court, I could have got justice for the parties involved.

I would agree, definitely with the tenor of the question by Mr. Sandoz that taking away the power of appellate courts to review facts will increase your backlog many fold. You have only to look at the examples of the States of Illinois, New York, California and so on where they do not have appellate review of facts, and they have backlogs of four or five years because everybody wants a jury trial.

I submit to you that our system has worked well and that my own personal experience would indicate to me that the greatest protection for an individual against a hometown decision or any other miscarriage of justice is to permit that appellate court to review that cold record that Mr. Roy was talking about where the appellate court does not have its emotions involved and I feel that justice will be more readily done.

If I've not exhausted my time I'll answer any questions....

Further Discussion

Mr. De Blieux Mr. Chairman and ladies and gentlemen, I support this amendment. At the present time in our law, we have a double standard. We have a standard that involves money or property. You can get an appeal on the facts and the law. If it involves your personal rights as charged in a crime, regardless of what mistakes that may be

made in evaluation of the evidence below, it can only be corrected if there is an error in law. That's not right. We should have one standard. If we are going to use it, it should be the same in criminal cases as in civil cases. There is no reason to have a double standard in our law.

And I say if you are not going to review the facts in criminal cases, why should you have the right to review the facts in civil cases? It is just as simple as that.

In contrary to the arguments that have been used here, I do not see where the appellate judges are any better able to decide whether or not a witness is telling the truth or not telling the truth, looking at a cold record than they can as a judge or a jury, listening to that witness in his own manner, his own mannerisms, his own voice, his own reflections tell his story.

If they can review it in a civil case, they ought to be able to review it in a criminal case. And if they can't do it in a criminal case, they ought not to be able to do it in a civil case.

I think this is a good amendment and I ask you to support it because I think it will eliminate the double standard and give us a whole lot more security and we'd have better facts decided by the lower court than we have at the present time.

I ask your support.

[Quorum Call: 110 delegates present and a quorum.]

Further Discussion

Mr. Derbes Thank you, Mr. Chairman, I'll be brief.

I rise in opposition to the amendment for primarily reasons of efficiency and the speed with which I believe justice should be granted. There is an old legal axiom that justice delayed is justice denied.

I personally feel that if this particular amendment were adopted that jury trials would become the rule rather than the exception and would slow down the machinery of justice perhaps even to the point where additional sections of court would be required to do the job now performed by those sections in existence in other areas.

I think there is one important consideration to bear in mind, and that is that we have, this convention has adopted the principle of elected judges. That, to me, means that the judge is responsible to the people.

If this provision, if this amendment were suggested as a complement to an appointment system for the judiciary, I think I might be in favor of it because it would insulate the people, the actual petitioners and claimants, from manifest errors by interposing a jury where appointed judges may, in my opinion, occasionally render judgments more in keeping with certain preconceived social notions.

For example, if the judiciary were selected by the Bar Association and were oriented toward insurance companies rather than plaintiffs, this, I believe, would be a good provision.

To the contrary, we have not seen fit to establish an appointment system for the judiciary. Rather, we have chosen an elected mechanism for selection of judges and in my opinion that creates a substantial responsibility and likelihood that the judges will follow the will of the people and will, in my opinion, render judgments for the individual rather than for the firm or the company where permitted by law.

So I urge you in the interest of providing speedy trials, and in the interest of dispensing justice swiftly and efficiently, that this amendment be defeated.

Thank you.

Further Discussion

Mr. Tate Mr. Chairman and fellow delegates, I hesitate to trespass once more on your time, but at the request of a few I rise in opposition to Mr. Roy's amendment. Mr. Roy's amendment has a lot of emotional appeal. The reason I am against it is

I think could be summarized for three reasons:

One. Under the present review in civil matters, the review of both law and facts puts on the clerk the duty of reviewing for justice in the truth of the matter. As a matter of fact, a properly rephrased...the manifest error doctrine prevents an appellate court from disturbing evaluations of credibility and overturning factual findings on the mere whim of the appellate court. But the ultimate aim when you review for presence of fact, is fairness, truth and the just result according to law. Now if our review is limited to questions of law as it is in criminal cases, the sole matter before the court is this technicality or that technicality. This rule of evidence, this instruction to the jury, this procedural step being put instead of that procedural step first, and what can the court do if it finds an error? It can do nothing more....I'll answer the question....than remand for retrial like in criminal cases. The Louisiana philosophy since 1812 has been in accordance with review of facts and law, and one trial wherever possible, and one appeal in civil cases to end the matter for the plaintiff.

Now, when your review is limited to questions of law, what does a trial lawyer do? Naturally, he tries to raise, and I don't blame him, just as many technical traps as he can for the trial court. Why? In order to...in case he loses, preserve some ground to have another shot at the apple on a retrial. So what happens? Instead of a case being tried in one day it'll be three days. And instead of being finally over....if there are some technical errors there, it's sent back and it occupies the trial judge again three days.

Now, I respectfully submit to you that the custom, tradition and law of this state since 1812 requiring appellate courts to review facts in law in civil cases has worked well. I would say that probably ninety-eight percent of the cases, the trial judge and jury and appellate judge are going to reach the same results. Two percent....may differ. And those two percent, maybe they should differ.

But by and large the end result is one fast trial, one faster trial, one trial in one court. One, directed that to technicalities but to the merits. Who should win? And then the final conclusion of the matter. As a result, I may say, the Institute of Judicial Administration which collects statistics on delay in Metropolitan and other areas doesn't even list our state because as bad as we think the delays are, they are nominal compared to other states. Chicago five years to wait for a trial in an automobile accident case. New York the same and so on.

So I respectfully suggest that we should reject the Roy amendment as much as I like the author and appreciate his willingness for me to serve in perpetuity except limited to ten years.

Questions

Ms. Zervigon Judge Tate, you were on this committee. Did you all consider extending review of the facts to criminal cases?

Mr. Tate That is another question. I don't think we seriously did. I think someone proposed it. I don't think it carried with a second. But that's another question. I understand there is another amendment coming up on it.

Ms. Zervigon Do you have any idea why serious consideration wasn't given to review the facts on criminal cases?

Mr. Tate Well, that requires an awful long answer. The reason possibly is, tradition, the fact that we inherited that law from the Anglo-Saxon which traditionally limits review in criminal cases to law. The fact that as a matter of administration of justice, many times people were afraid that, for instance, an appeal on facts in criminal cases might involve, although I don't think it would, the district attorney being able to appeal, the

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question of acquittal and things like that. I'm not giving you a completely square answer because it's very complicated the question you asked why there shouldn't be a review of facts in criminal cases. But for the administration of criminal justice, it's generally felt that....that has just not been extended.

Mr. Perez Judge, isn't it a fact that one of the reasons that you do not review the facts in criminal cases because a criminal case is always tried before a jury whereas most civil cases are tried before a judge without a jury.

Mr. Tate That is a very good partial answer. Of course I think in misdemeanor cases, we only review law. But in the vast majority of cases that is true.

Further Discussion

Mr. Guarisco Mr. Chairman, members of the convention, I rise in support of the Roy amendment. Here we go again. Louisiana is bringing up the rear. The federal system doesn't do this, the other forty-nine states do not review the facts. In fact, not jurisdiction in the Western world reviews the facts, not even France from whence we supposedly get our civil code. It's unheard of in South America. Nobody reviews the facts on appeal except Louisiana.

Now is it because our district judges are stupid? Is it because our juries are uninformed and not able to listen to a factual situation and make a determination? I don't think we are unique there.

What happens is that someone makes what I call, you've heard of hearsay testimony? Well, this is what I call seesay testimony, in that, a judge reading a cold record as Mr. Roy said, is able to reverse the factual findings of a judge who saw the witness, heard the reflection in his voice, witnessed his demeanor and his whole attitude.

Or if they are better, in a better position to determine whether or not a person is telling the truth. For an example, and we see this in the press all the time. A man makes a statement and the press repeats his statement. The press is correct, but they didn't print his inflection or not in the way he said it. For an example, someone says, "Are you a liar?" And I said, "Yea, I'm a liar." Well you put it in a cold record, he said, "Look what he said. He said he was a liar."

Also, we talk about manifest error. Well, manifest error is just a cute little phrase. It's not applied. And it certainly isn't applied in criminal cases as Judge Tate already told you because we don't review the facts in criminal cases. As far as backlogs are concerned, this is just an assumption on somebody's part that somewhere in Chicago they have a backlog of five years, which I don't know if that's true. And if it's true, I don't know the reason. I sure don't know that the reason is....is because they don't review the facts.

So I ask that you vote for this amendment.

Questions

Mr. Weiss Mr. Guarisco, what percent of cases are reviewed by the appellate courts by fact alone?

Mr. Guarisco I think 90 percent or more. Almost every case they look at they look at the facts because....

Mr. Weiss Isn't this in contrast to what Judge Tate just said, that 98 percent are not in controversy? Now you say 90 percent are.

Mr. Guarisco Judge Tate only reviews the cases that go up on writ. Let me say this, if Judge Tate was the only type judge that was reviewing my facts, I wouldn't mind it.

Mr. Weiss Well Judge Tate has been a district

Judge too, hasn't he?

Mr. Guarisco No. Judge Tate has always been either on court of appeals or on the Supreme Court.

Mr. Weiss An appellate judge then, so he should know.

Further Discussion

Mr. Avant Mr. Chairman and fellow delegates, I rise to speak against this amendment. This has been a problem that has concerned me for nearly twenty-five years. I have devoted a lot of thought to it ever since I began practicing law nearly twenty-five years ago. I have practiced law and I have represented, almost exclusively, plaintiffs, injured people, for that period of time. I have practiced law under the federal system. I have practiced law under the state system that we have in Louisiana. I have been involved in cases in Mississippi and Texas where you have jury trials. Under any system that I have been under, there have been times when I was dissatisfied with the results that I got. There have been times when I was ecstatic with the results that I got. I think that's going to happen and continue to happen no matter what system we operate under. But I do know this, and this is what is the compelling and turning and dominating factor in my mind. I do know that in Louisiana if you have a lawyer who is tending to his business and pushing his cases and doing what he is supposed to do, in most of the courts of this state and in practically all of the court of appeals circuits, you can push your case to a conclusion and wind it up and get it over with in a reasonable period of time. I do know that in the states where you have the system that this amendment would impose upon you, particularly in the metropolitan areas in those states, that it is five and six and seven and eight years from the time that you file a case, before you can get to a trial before a jury. I think that that is what is going to happen in this state if you go to this system. You are going to go into a proliferation of jury trials in all cases. You are going to have additional expense and much, much, much more delay. Now that is just as absolutely certain as the sun rises and sets. I'm not impressed at all, based on my experience, that if you go to this system that you are going to an absolutely in all cases better system because I know from experience the times I have gone to the courts of appeal in this state, I have been seeking relief from the decision of a lower court or the decision of a jury which I felt was wrong. In just as many times as I feel that I have been aggrieved or my clients have been aggrieved by that system, I have also felt that the system has corrected an injustice that they have sustained at the hands of a local district judge or at the hands of a jury.

Further Discussion

Mr. Kilbourne Mr. Chairman, ladies and gentlemen, I rise to oppose this amendment. Now I do want to mention this matter of appeal in criminal cases and civil cases. Really, it's been used, I think, inaccurately to compare a civil case with a criminal case. A lady asked a question about a while ago. But there really isn't any comparison between a civil case and a criminal case. I'll try to explain why. In a criminal case, when a man is tried and found guilty or found not guilty by a jury or by a judge. That ends the case. There is no appeal by the other side, by the prosecution. That absolutely ends the case once and for all. On the other hand, if the defendant is found guilty, he has a right to appeal and if there is an error in the proceedings, a legal error, the Supreme Court can reverse it and give him a new trial. Now that doesn't happen in a civil case. In a civil case, both sides have an appeal and it goes up on the record and the appellate court can read the record and study the record and if they think the judge is right, they

affirm it, if they think he's wrong, they can render judgment. The two things are entirely different and I hope that you won't be confused by the argument that since there is only an appeal of law on the criminal case, it should be in the civil case. It isn't true at all because the two procedures are completely different. Now I've tried cases a long time and I've tried them in unfriendly courts. I've gotten cases reversed. I've had them reversed that I won, and I've had them reversed that I lost. I think that's a good system. If you will pardon me for bringing in a little interjection or a little personal experience. For the first eighteen years I practiced law, my father was judge. Now he was an imminently fair man, but he was so zealous to be so fair, he would bend over backwards, I thought, to favor my opponent, though I knew he wanted me to win. It often happened that I appealed his decisions and they were reversed by the appellate court. I think that's the way it ought to be. I sincerely hope that you will vote down this amendment.

Question

Mr. Stinson Mr. Kilbourne, don't you know that it's a fact that this issue has been presented to the legislature year after year after year, and the legislature, in its great wisdom, has always turned it down.

Mr. Kilbourne That is my understanding and I want to make this point too. I believe it was Ms. Zervigon, asked Judge Tate if this matter of appeals on the facts in criminal cases was considered in the committee, Judicial Committee, of which I am a member. It was discussed briefly but actually it would be such a burden on the courts . . . In other words, it's just a possibility if you wanted to give the accused person in a criminal case the right to appeal on the facts, then you would have to give the state the right to appeal, also, which nobody wants.

Further Discussion

Mr. Dennis Mr. Chairman, fellow delegates, I rise in opposition to the amendment. I believe very little new could be said, but I would like to point out to you that our most recent and reliable statistics show that in Louisiana, we are presently disposing of about 70 percent of our cases in six months or less. That in the parish where the most cases have been appealed, their rate of appeal has only been 14 percent. So I'm guessing that the average is much less than that throughout the state. Also, I don't agree that we are all by ourselves or that we are behind in this area. It is true that we are the only state that has appellate review of the fact, but we are not the only country or the people of the world who do. In fact, many more people live under the French Civilian tradition of appellate review of facts. More of the countries of Europe have it than live under the anglo-saxon view of appeal of the questions of the law only. I'm informed that Great Britain itself is having second thoughts about this rule. It would seem strange to me that here in 1973, right after the advent of "cajun power" in its full blossom, that we should discard this French Civilian tradition which has stood us in great stead and made our courts, I think, the envy of the country. So I ask you to vote down this amendment.

Questions

Mr. Guarisco Judge Dennis, did you actually check to see if France reviews the facts on appeal?

Mr. Dennis Did I actually check it?

Mr. Guarisco Yes.

Mr. Dennis I didn't go to France, but I've read law review articles by legal scholars that say that this is a French Civilian tradition that we

have adopted the civilian tradition in Civil cases and the anglo-saxon traditions in criminal cases.

Mr. Guarisco Would you believe it if I told you that no European country, including France, today, reviews the facts on appeal? That they have, in fact, abandoned it, if they once had it.

Mr. Dennis No sir, I wouldn't. That's contrary to everything I've read.

[Previous Question ordered.]

Closing

Mr. Roy Mr. Chairman and ladies and gentlemen of the convention, I know when I've had it, but I'm going to say my piece anyway. I just feel that it is time that we quit playing dirty pool with respect to what issues are relevant and which ones are not. The issue of jury trials is not before you at this time. Whoever tries to tell you that it is, is erroneous. The issue of jury trials will come up in the future. The legislator and you may, in your wisdom, decide that jury trials will be limited to certain type cases. What I can't understand, though, is how Justice Tate can talk against the notion that he should not be able to review facts in a civil case and presumably reduce an award and/or reverse a judgment in favor of someone. Yet in his wisdom believe that if he knows that a criminal has been convicted on no evidence, be bound and shackled and say that I cannot vote to reverse you because the constitution does not allow us to, and allow a man to go to prison and lose his life or liberty for that reason. Now that's the sole issue here in a sense about comparing review of facts in criminal cases and civil cases. The issue of jury trials issue arose in the early days of this state when the landed aristocracy allowed itself to say that when it comes to criminal cases, we don't want our appellate courts tampering with jury verdicts. After all, if a jury is honest and decent enough to convict a man and sentence him to the "pen", what makes it different in civil cases? Will it shrink its responsibility? Will it not do what's right just because it's a civil case? There is no argument that can be made with respect to jury trials in civil and criminal cases. The point is this. If you allow a case to be appealed and an appellate court may review the facts, then you're going to increase the number of appeals notwithstanding what all these people have told you. The other states that have a congested docket, there is no evidence that points out to the fact that it's because the states allow the facts not to be reviewed. I cannot understand how we can allow, in the final analysis, a set of seven judges or a three panel judge and a court of appeal to read a cold record and say that an honest district judge and an honest jury made errors of fact, misinterpreted the evidence, didn't realize that so and so was lying, when all they are reading is a cold record. If you are going to vote on this amendment, and I understand the notion that the way it's going because of what has been said, everybody has got his little pet case where he got some judication in the appellate court that was better than he got in the district court. That's not the issue, in my judgment. But if you're going to vote on this, vote on it on the merits. Vote on it as to whether you believe that a person reading a book is better able to tell you what's in the book than the participants or the characters who actually lived out the book itself. That's all I ask you to do.

[Record vote ordered. Amendment rejected; 18-95. Motion to reconsider tabled.]

Recess

Amendment

Mr. Poynter Sent up by Mr. Conino, Toomy, Gauthier and others.

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Amendment No. 1. On page 2, (this goes to 5A) line 12, after the period, delete the remainder of the line and delete line 13 in its entirety and insert in lieu thereof the following: "It may assign a sitting or retired judge to any court with his consent and with the consent of a majority of the members of the court in which the judge is assigned."

Now this is not the same amendment that was heretofore prepared because it deletes one line less of the language, if you will.

Explanation

Mr. Toomy Mr. Chairman, fellow delegates, this amendment was previously inadvertently overlooked by the Clerk, and with your leave we'll go back to Subsection 5A. The original Conino amendment that was offered, I believe, eliminated more of the committee proposal than the convention had hoped to. This amendment simply concerns itself with the last sentence of Subsection 5A which reads: "The Supreme Court may assign a sitting or retired judge to any court." Under the committee proposal, the Supreme Court at its own discretion could place any judge, whether sitting or retired, without his consent, to any court in any part of the state. It has been said previously by Justice Tate and some others that there has been a rule in the past that the Supreme Court would not assign judges. . . give judges such assignments without their consent. What I'm simply trying to do here is to make it the rule without further exceptions. There would be no exceptions in the future to this rule. Some of the retired judges, it seems, may want to return to the practice of law. As you notice in the committee proposal, judges can retire after 12 or 16 years with pension benefits. They may want to retire after that time and go back to the practice of law and not have this hanging over their heads, that the constitution it provides that the Supreme Court could assign them to sit at a court. I'd like to bring to your attention that the present provision in the law provides that retired judges would require their consent for such assignments. In that regard, this only follows the present provisions of the law. I think that it should further provide that any judges, whether sitting or retired, should have their consent to sit in another court. I'll answer any question there may be. Any questions?

Questions

Mr. Dennis Mr. Toomy, the way this is written, wouldn't this mean that one of two judge districts that the Supreme Court could not assign a judge to that district without the consent of the one or the two judges in that district? You say you have to get a majority of the members of the court to agree to the assignment.

Mr. Toomy You are speaking just in that case of one or two. . .

Mr. Dennis Yes sir. I believe we have some one and two judge districts in the state. My question now is directed specifically to those districts.

Mr. Toomy Well I don't see where there would be any problem at all where one judge was sitting. I just think it's a matter of interpretation what the majority would be. I don't really see that as a problem, Judge Dennis.

Mr. Velazquez Isn't this in many ways, the same amendment that lost 18 to 8?

Mr. Toomy No sir. May I bring to your attention that the arguments against the amendment when it was previously offered, was to delete the second sentence of Subsection 5A, which in regards to procedure and administrative rules assigned by the court. This has nothing to do with that whatsoever. It only concerns itself with the last sentence in regards to the Supreme Court assigning judges to another court.

Mr. Velazquez Don't you think that if some judge wants to practice law full-time after he finishes being a judge the Supreme Court in its wisdom will not force him to go somewhere if he doesn't want to go and preside over a court?

Mr. Toomy I would agree with your assumption, but under this amendment, that would be the rule and there would be no exceptions to that case. I think exactly what you are saying would prevail with no exception at all.

Mr. Velazquez Are you going to make us spend another hour discussing this thing and then defeating it 18 to 80 again?

Mr. Toomy Mr. Velazquez, I don't think there was any discussion on this at all, previously. The argument that was made and rejected just shortly wanted to eliminate, the second sentence. This has nothing to do with procedural and administrative rules of the court. Simply with the Supreme Court assigning judges. May I remind you again that the present provision in the law is that in the case of retired judges, you must have their. . . the Supreme Court must have their consent to assign them to a court.

Further Discussion

Mr. Tate Mr. Chairman, fellow delegates, without repeating the debate of an hour that occupied us before, I think essentially this is the same argument that was made and rejected just shortly before, principally to the effect that a judge should be able to be assigned to a district which needs his help when he, himself has a light case load and is completely in control of the situation. I think that the adoption of this amendment would destroy efficient judicial administration of the Supreme Court's most efficient use of the manpower. I don't want to trespass, as I said a minute ago, on your time, but I just think. . . Mr. Chairman, if there is no other speaker, I move the previous. . .

[Previous Question ordered. Record vote ordered. Amendment rejected: 26-83.]

Point of Information

Mr. Dennis Yes. Mr. Chairman and fellow delegates, it's my understanding that both of these amendments are directed toward taking out of Section 5D (2), the words "death penalty" because the authors are opposed to the death penalty. The committee did not consider this specifically. However, I believe that a majority of the committee would not object to deleting these words. If there are any members, I will ask them to come and speak for themselves. I personally do not object to either amendment taking out the words "death penalty" as long as it's made clear that if there is a death penalty in the future, that this case will be appealable outright to the Supreme Court. I think if we substituted whatever Dr. Weiss has or whatever the other amendment has, it would probably accomplish that purpose. Unless there is another member of the committee who would like to object to this amendment, I, on behalf of the committee do not plan to object to either amendment.

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Weiss]. On page 2, line 25, after the word "which" and before the word "penalty", delete the words "the death" and insert in lieu thereof the words "a capital crime deterrent".

Explanation

Mr. Weiss Fellow delegates, the time has come for discussing a "out" issue. This has been before the Bill of Rights Committee and I would appreciate your attention because this is an amendment which I believe is more than a political compromise, but rather a just development in the course of civil-

zation as we now stand here in Louisiana at this time. I therefore call upon you to use more than emotion, but reason, and if you will give me the courtesy, Mr. Roemer, Mr. Brown, and others to listen to what I have to say. . . . The purpose of this amendment. . . . If I have to summarize this before you lose interest, may I say that this is a technical amendment, in my mind, that includes anything in the spectrum from, and all inclusive of, the death penalty to imprisonment with pardon. This particular statement is, to me, an updating of an antiquated concept, and that is the death penalty. Certainly, the decision of the Supreme Court was intended to illustrate that cruel and unusual punishment is not now to be accepted in the courts of the United States. On the other hand, on a 5 to 4 decision, four justices disagreed with the majority of five, and felt that there was value to the death penalty. However, all justices agreed that if the death penalty is to be abolished, it should be abolished by legislative act and not by the courts. It is therefore the intent, of the use of the term "a capital crime deterrent," to remove the antiquated concept of death penalty which is now equated with capital punishment. Rather, it is intended to be used as it states, as capital crime deterrents. There are certain heinous crimes that we have read about in the paper, and many people are inclined to illustrate that cruel and grief of those who have suffered the loss of a loved one are equally important as those of the tears and the grief suffered by those in death row--the murderers. I will not try and make an issue over this because the most enlightened men of the land, the Supreme Court, have come to a 5 to 4 decision in which the majority of the justices feel that capital punishment is no longer a creditable deterrent from crime. Many people, however, and the last vote of our legislature I believe indicated 75 percent in favor of capital punishment, feel otherwise. So, therefore I feel that we should update the wording of our new constitution and to avoid the words "capital punishment," use instead a criminal case in which a capital crime deterrent penalty or imprisonment at hard labor" may be imposed or in which a fine exceeding \$500 and so on, should now be read into this section. It blends very well with the Bill of Rights Committee concepts, by some of us, also in the minority, that there is still room for capital crime deterrent punishment, which may include in some instances, the death sentence. But I think it's time to eliminate the concept of capital punishment and equate it with the death sentence. Certainly, that is outmoded. Perhaps man, some day, shall reach the stage where it will be unnecessary to eliminate one of our own race, one of our own creed and color, one of our own human beings because of some heinous crime which was perpetrated upon society. In any event, I believe that as the Supreme Court split 5 to 4, perhaps in the minds of the most enlightened psychologists and penologists and other specialists in the penalty field, there is still a difference of opinion as to whether there should be a sentence of death in any case of a capital crime. Therefore, I present to you the convention an opportunity to update this convention, allowing them to decide through a judicial act or decision supplemented by a legislative act, which is necessary in the Bill of Rights Committee Article to follow through in a capital crime deterrent concept. I therefore urge the members of the convention to accept this amendment, a capital crime deterrent, to be inserted before the word penalty. Now, if I may answer questions.

Questions

Mr. Burns I'm in favor of your objective but I just can't see the word "deterrent" used to supply what you want to do in other words I've always understood in the practice of criminal law in argument before juries that it was argued that the capital verdict of ten years in the penitentiary or life imprisonment was a deterrent to crime. In other words, to use the words "capital crime deterrent" I just don't think that will accomplish

what you have in mind.

Mr. Weiss I think that the legislature, in accordance with the Supreme Court decision the courts may not impose the death penalty on anyone, or death sentence is the word I want to use, death sentence on anyone, unless there is a legislative act to support it. Therefore, the legislature could pass an act that anyone, for example, who murders the governor would himself be subjected to a death sentence. The court then, if finding this man guilty, would with a judicial sentence, of necessity have this man executed.

Mr. Burns But what I'm trying to tell you, Doctor any sentence, a sentence of five hours in jail under the theory of enforcement of criminal law is referred to as a deterrent. In other words on the theory that imposition of sentence and the prosecution of a criminal is not so much directed against that individual as it is to be a deterrent to future crime on the parts of other people.

Mr. Weiss Then why use the term "death penalty", Delegate Burns?

Mr. Burns I don't object to eliminating the words "death penalty".

Mr. Weiss That's the only point, that we update our constitution.

Mr. Burns I just don't think the word "deterrent" would do it.

Mr. Weiss I think it's far better than the word "penalty", however.

Ms. Zervigon Dr. Weiss, what you're aiming at is abolition of the death penalty or paying the way for abolition of the death penalty?

Mr. Weiss It states neither in this type of crime deterrent. In other words, if some legislative act feels that the penalty should be death, then it opens the way and allows for this type of execution of a sentence and a crime deterrence. The particular point that I have in mind is that we should not punish an individual but rather set him up as an example to prevent others from conducting the same type of behavior.

Ms. Zervigon Well, I'm kind of at a disadvantage on discussing this article because I'm not an attorney, but tell me what a capital crime is. I thought it was one that was punishable by death.

Mr. Weiss That's correct. However, today the term "capital crime" is obliterated by the Supreme Court decision that no unusual punishment is allowed and therefore the Supreme Court has removed most cases of the death penalty. However, the Supreme Court has allowed the use of the death penalty according to the Furman vs. Georgia decision of 1972 by the courts in which there was a five to four split of the justices to allow the death sentence, providing the court does not act upon this decision, but rather a legislative act must accompany their decision.

Ms. Zervigon Should the legislature abolish the death penalty, what would be the meaning of the phrase "capital crime deterrent"?

Mr. Weiss The capital crime has become imbedded in our law and as I understand it, it's time to eliminate the term "death penalty". Now as far as capital crimes, we'll leave that to the attorneys to argue out. It's still being used extensively in the law.

Mr. Kelly Dr. Weiss, I think I understand what you're trying to do here but, is your interpretation of a capital crime or what used to be a capital crime or what may be a capital crime in the future, the same thing as a felony?

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Mr. Weiss A felony is a serious crime. Is that right, Delegate Kelly?

Mr. Kelly Well, I'm asking you.

Mr. Weiss Well, isn't that true?

Mr. Kelly My opinion of it is.

Mr. Weiss That's my opinion too, so it may also be included in here but it does not leave the way open for capital crime deterrent sentences, such as death.

Mr. Kelly As I understand it here, we're not dealing, and see if we are thinking along the same lines. Is it your interpretation that what you've placing into this article is going to make way for capital crime deterrence in the future. It is my understanding that in D2 here, we're talking about appeals. Is that correct?

Mr. Kelly Appeals?

Mr. Weiss Yes sir. Those cases which are appealable to the Supreme Court.

Mr. Kelly Right. For example, suppose the death sentence has been imposed by a judge and it is the desire of the defendant attorney to alter this to life imprisonment.

Further Discussion

Mr. A. Jackson Mr. Chairman, ladies and gentlemen of the convention, I rise in opposition to this amendment. Contrary to what Dr. Weiss has said to the delegates to this convention that his proposition would update our constitution, I take serious issue with it because I believe that it would antiquate the constitution of this great state. My reason for saying that is that I believe that we would be constitutionalizing a concept that is not only uncivilized but would be contrary to what I believe to be in the interest of good prison reform and our ability to rehabilitate individuals incarcerated in the institutions of this state. Secondly, I oppose the amendment because I do not believe that we want to put this kind of ambiguous language in the constitution. I sat back there struggling, trying to fathom what Dr. Weiss means by the phrase of "capital crime deterrent." The only thing that I could glean from this phrase is that he is trying to suggest to us that capital punishment is a means to deter crime. I take serious issue with this because there is not one shred of evidence to support the notion that capital punishment is a deterrent to crime. I point out to the delegates to this convention that there was a period in which we had some two hundred thirty-one capital crimes for which we assessed the death penalty and during this period we had public executions. Individuals would gather in the squares to witness the public execution. One of the capital crimes was pickpocketing and during the time when they would hang people, other individuals would go about picking the pockets of the individuals who came to watch the public execution. I think this only illustrates that capital punishment is not a deterrent to crime and is contrary to what I believe to be a civilized method for dealing with the problems that we have in this country. So I would urge you to vote against this amendment because it is ambiguous, because it would antiquate our constitution and because the language is not clear and would be subject to all kinds of interpretations. Therefore, I do not believe that it is good organic law.

Further Discussion

Mr. Jack Mr. Chairman, ladies and gentlemen, I'm against this amendment. Incidentally, I've never heard anything called a capital crime deterrent any more than I have a woolly ant out in Texas. Now, while I'm speaking against the amendment, I want to mention one thing, Mr. Chairman. You all

listen. You might learn something here. Now, Mr. Chairman, this is for you because I think the amendment is dead. I've practiced law for forty-one years and the thing reads, "clear criminal case which death penalty or imprisonment at hard labor may impose," etc. Is appealable to that Supreme Court. Now, it has nothing to do with whether the law or the Supreme Court says you still have a death penalty or not. That's just saying the type of case once the appeal is there. It's very simple, Doctor. I suggest you look at it again. Now, I want to mention this, Mr. Chairman. I want to hurry this constitution along as fast as you do, but at times when I do ask for the floor you look like you can talk me out of it. But let me tell you, the only people who are going to have the privilege of seeing me when I'm not talking are those that attend my funeral....

It's a bad amendment. Let's kill it. Thank you.

[Previous Question ordered.]

Closing

Mr. Weiss No, I'd like to make my point a little clearer for those that have tender consciences. This to me still is a more modern concept which allows flexibility from one extreme to the other to what some people recognize as a death penalty to complete pardon. The concept being that the age of penalty is passed. The age of prevention is here. Some people, and by a five to four vote of the Supreme Court, feel that capital punishment as the law has recognized it is still an effective means of deterrence and this is simply stating what some people feel, that there are means of creating deterrents, to heinous crimes by the sacrifice of an individual through an execution as an example. I grant you that this is not palatable to any of us. On the other hand, as I pointed out famous penologists, psychiatrists, psychologists, Supreme Courts Justices, attorneys and individuals who profess to be specialists in all fields who have read up on the subject and find that they think that crime cannot be corrected by execution of individuals are still in their infancy in the recognition of what the disorder is all about. I, for one, was in British Honduras several years and saw only three years before they removed capital punishment in the form of hanging in the town square just three years before. The incidents of crime had increased, murder had increased and other instances in which we find ourselves in this society in a serious situation. This I believe can be remedied by simply correcting the term "death penalty" to read a capital crime deterrent penalty and I recommend that this be accepted by you, the delegates.

[Record vote ordered. Amendment rejected: 7-105. Motion to reconsider tabled.]

Amendment

Mr. Poynter Alright, fine. Amendments offered up by Delegates Taylor, Johnny Jackson, Brown, Stovall and others. This is not the first set of amendments but a second set of amendments which the pages, it looks like, just have completed passing out.

Amendment No. 1, on page 2, line 25, immediately after the word and punctuation "(2)" delete the remainder of the line and on line 26 delete "punishment at hard labor may be imposed" and insert in lieu thereof "cases in which the defendant has been convicted of a felony".

Explanation

Mr. J. Jackson Mr. Chairman, ladies and gentlemen of the convention, let me first say that the difference between this amendment and the first amendment is that we did not include the phrase "imprisonment at hard labor". As you would appreciate the wording of the first amendment we made reference to the words "conviction of a felony" and it is my appreciation in talking with members of the conven-

tion and Judge Tate that it would be somewhat redundant if we left the phrase in there "imprisonment at hard labor". Now to the meat of this amendment. I think that Dr. Weiss and Representative Alphonse Jackson have expounded pros and cons of the words "death penalty" and the merits of "death penalty". My position to make it very clear to the convention is that I don't believe that we ought to at this point constitutionalize the words "death penalty". If in the future, and I would hope not, but if in the future that the federal courts or the Supreme Court reverses its decision then the wording of this language would provide, it would seem to me, for any imposition for those who may want. I do not. In fact if someone is charged and been convicted of murdering somebody, let's say, then he is in effect, has caused, has violated...been convicted of a felony. I am not as a delegate to this convention, as a citizen of the State of Louisiana want to at any point constitutionalize the words "death penalty". I would suggest that the manner in which this amendment is phrased offers the possibility for, as Representative Jackson said, positive organic constitutional law and with that intention I would ask that you adopt this amendment.

[Previous Question ordered. Amendment adopted; 63-52. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendments proposed by Justice Tate. Amendment No. 1, on page 2, line 23, immediately after the word "law" and before the word "has" delete the words "or ordinance".

Explanation

Mr. Tate Mr. Chairman and fellow delegates, the Chief Justice asked me to bring this to your attention and I thoroughly agree with him and I'm pleased to do so. We're talking about the mandatory appellate jurisdiction of the Supreme Court, being when a case is decided by a trial court and automatically goes to the Supreme Court without going through the Court of Appeal first. The present committee proposal retains immediate Supreme Court review of statutes which is appropriate because the effect is statewide but it also retained after first taking it out immediate review when an ordinance of a drainage board, a city or town, any of the numerous boards we have that have the power to adopt ordinances. The Chief Justice suggested that, and I agree with him as I say, that the appropriate way to review those when they are declared unconstitutional is right in the court of appeal. If the court of appeal, the Supreme Court, doesn't agree with it, they've got thirty judges in the court of appeal to handle these five hundred towns and those numerous boards. If the Supreme Court doesn't agree with it, the Supreme Court will be able to review. For instance, last month we had four ordinances that we reviewed, in two of them, the court of appeal had declared an ordinance unconstitutional, we granted a writ of right because we have to review it under the present constitution, when ordinances are declared under the constitution and reaffirm the court of appeal. It was a waste in my opinion of time and judicial manpower. The reason they went to the court of appeal in the first place is that the trial court had declared them constitutional. Mr. Denery.

Questions

Mr. Denery Justice Tate, don't you think although there may be some burden on the judicial manpower of the court, don't you think it...the declaration of an ordinance by a lower court as being unconstitutional and then requiring the municipality or the parish or the district to go through two appeals to finally determine whether that ordinance is constitutional might put a terrible burden on the municipality or local government?

Mr. Tate Are you serious?

Mr. Denery Very serious.

Mr. Tate Alright. If the trial court declares it constitutional...

Mr. Denery No...I said unconstitutional.

Mr. Tate I know. But if the trial court declares it constitutional, it goes to the court of appeal which may or may not declare it unconstitutional and it can still go to the Supreme Court. The... in fact, you're still having only one review as of right. The Supreme Court would not have to take a writ as we had last time when the court of appeal was clearly right. It would only be one appeal... one review as of right as it is in all cases but it would...

Mr. Denery Well are you suggesting then that the court feels that municipal ordinances are not worthy of being decided by the Supreme Court? The constitutional question is it? It just seems to me Justice Tate that the wrong attitude has been taken here. It seems to me that municipal ordinances and district ordinances and parish ordinances are equally as important as a statute would be.

Mr. Tate Well I would answer that...Are you seeming to say that the courts of appeal, which are very fine courts, which have the facilities to attend to the parishes within their jurisdiction immediately shouldn't also...

Mr. Denery No sir. What I'm driving at is when an ordinance is adopted by one municipality, the declaration of that ordinance as being unconstitutional could very well affect every municipality in the State of Louisiana and it seems to me it's a matter of statewide importance and interest and therefore should be determined ultimately, not by the grace of the court, but by right by the Supreme Court. That's my point.

Mr. Tate Well I think it's a good point and you may well differ with me. I differ because generally speaking the ordinances are not of statewide interest. Generally speaking they're not and there are an awful lot of ordinances being adopted that could be reviewable.

Mr. Tobias Justice Tate, is it not true that the present constitution provides for direct appeals to the Louisiana Supreme Court for ordinances?

Mr. Tate Ordinances. Yes sir.

Mr. Tobias Now you addressed yourself to the civil case but let us suppose that we had a criminal penalty, for example, a state statute said that no cajun can be on the streets of Shreveport after 8:00 p.m. Clearly unconstitutional on its face. Do you not see any reason why that should not directly...it's of statewide concern. I would dispute with you. Do you not agree it's of statewide concern?

Mr. Tate Well, I think it's of universal worldwide concern if they try to keep cajuns off the streets of Shreveport, but why would they want to do there?

Mr. Kean Mr. Justice Tate, the constitution presently permits the direct appeal from the district court to the Supreme Court with respect to an issue involving the constitutionality of an ordinance. Does it not?

Mr. Tate No. When an ordinance has been declared unconstitutional it also does whenever the legality or constitutionality of any exercise or tax is at issue whether or not it was declared unconstitutional. The committee in its wisdom took that part out of the recommendation of Chief Justice Sanders because we have an awful lot of frivolous attacks on taxes, you know.

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Mr. Kean But your amendment would further reduce the appellate jurisdiction of the Supreme Court, would it not?

Mr. Tate Yes sir.

Mr. Kean And it's your opinion that that could be done simply because ordinances do not have the statewide significance as state laws.

Mr. Tate That in many instances, and probably most instances that come before us, they do not. In the exceptional case, of course it would go all the way I suppose.

Mr. Kean Well isn't it a fact though that many ordinances can deal quite directly with the rights in property and as a matter of fact with respect to life and liberty, and you still feel that there is a distinction under those circumstances between state laws and ordinances so far as action by the Supreme Court is concerned?

Mr. Tate Now we must incidentally, we must separate the civil side from the criminal side. If anybody is convicted under an ordinance whether it's declared constitutional or not, they have their right of review to the Supreme Court. You must leave at the side life and liberty and we're just talking about regulatory ordinances and so on.

Mr. Kean Your objection against the present practice is that it's not of statewide significance, not that it imposes any great burden on the court.

Mr. Tate My ultimate objection and my heart's not... I won't die in the ditch like I did when five-sevenths of me was cut off recently, but my ultimate objection is you have a Supreme Court with an ever-expanding case load. I think you should try to look to the future and provide some stopgap on the mandatory appeals that come there. We're willing to take whatever the convention tells us to, but we didn't even try, on criminal cases which compose seventy percent of our load not to take it...not to continue to do that, but somewhere along the line we may be taxed beyond what we can do and this would just give possibly a chance of some relief. You know there are a lot of these organizations that attack city governmental actions now. You know there are a lot more than there used to be and it's nothing wrong with that.

Further Discussion

Mr. Tobias Mr. Chairman and fellow delegates, I rise in opposition to this amendment. Presently the Louisiana constitution, the 1921 Constitution, provides for immediate appellate review of an ordinance which has been declared unconstitutional. This should be continued. Just take for example this...suppose, and I'm not speaking on the merits of it, let's suppose that New Orleans adopted a metropolitan's earnings tax by ordinance. This would affect a million people at least. Do you not think that this particular type of ordinance should go immediately to the Louisiana Supreme Court for determination? Suppose, for example they were to enact, I use for example Shreveport enacting a criminal statute which made it criminal to...let's say perhaps Shreveport enacted an ordinance which said that you will be not permitted to parade upon the streets under any circumstances whatsoever. Immediately constitutional. Should not...that statute affects a lot of people. It's of statewide concern. I urge you...let's kill this amendment right now and continue the present procedure that was provided by the constitution of 1921.

Questions

Mr. Stinson What do you think if Ville Platte would pass an ordinance that no cajun could walk on the streets of Ville Platte?

Mr. Tobias Well, not being a resident of Ville

Platte, I don't know whether I could support that or not.

Mr. Avant Mr. Tobias, isn't it a fact that if an ordinance was declared unconstitutional, if this amendment was adopted it would add approximately at least nine months to maybe a year to the time that ordinance would be in limbo before we ever got a final decision as to whether it was or was not constitutional?

Mr. Tobias Not necessarily. As a practical matter the Louisiana Supreme Court presently gets very very few appeals on ordinance cases. Very very few and it's minimal and the delay is not that long. They're almost down I believe to six months at this point.

[Previous Question ordered. Amendment rejected: 27-82. Motion to reconsider tabled.]

Amendments

Mr. Poynter Amendment No. 1 [by Mr. Drew], on page 2, line 28, immediately after the period, delete the remainder of the line and delete lines 29, 30, and 31 in their entirety.

Amendment No. 2, page 3, between lines 2 and 3, insert the following: "(F) In all criminal cases not provided for in subsection(D)(2) of this Section, an accused shall have a right of appeal or review, as provided by law."

Explanation

Mr. Drew Mr. Chairman, ladies and gentlemen of the convention, this is partially technical and partially a substantive change. The reason I am moving a portion of the part that is being deleted into a separate section and it probably still is not in the proper order but I think Style and Drafting will be able to handle it by making it a separate section. As it is now located here in Section D2 you will notice that it is under Section 5 Supreme Court including appellate jurisdiction. The purpose of putting this sentence, "In other criminal cases an accused shall have a right of appeal or review as provided by law or by rule of the Supreme Court not inconsistent therewith", was to provide a vehicle for appeals from courts of limited jurisdiction. That was the entire purpose of this. I was afraid by leaving it into Subsection 2 here that it might be inferred that those appeals would have to go to the Supreme Court. That is the reason for making a separate section and as I said that is more of a technical matter there. Now the substantive change is the deletion of the delegation of legislative authority to the Supreme Court. The legislature is the proper body to legislate rights of appeal or review as provided in the first clause. But the way this reads it can be done by rule of the Supreme Court and I don't think the Supreme Court has any right to encroach upon the legislative powers of the legislature anymore than I think the legislature should encroach upon a judiciary. I think that the legislature will take care of it. They are the proper party to take care of it and I ask for the adoption of the amendment.

Questions

Mr. Tapper Mr. Drew, in other words if I understand your amendment, if our amendment is not adopted the words on line 30 "or by rule of the Supreme Court not inconsistent therewith" would remain in the article and the Supreme Court could set forth certain rules by which an accused would have the right to appeal. Is that correct?

Mr. Drew That is correct and I think that is a violation of the separation of branches.

Mr. Tapper Without your amendment they would have that right to make those rules instead of it

having to go to the legislature.

Mr. Drew It would give the Supreme Court that right. Yes sir. If there are no other questions I ask your favorable consideration of the amendment.

Mr. Sandoz Mr. Drew, the way the proposal is presented the legislature would have the right to adopt any rule it so thought was fair and the purpose of permitting the rule by the Supreme Court is to fill in any gaps that may occur. Isn't that true, sir?

Mr. Drew It could be interpreted that way, Mr. Sandoz, but I think it's a delegation of legislative authority to the judiciary which I'm opposed to.

Mr. Sandoz Doesn't the proposal provide that the rules of the Supreme Court shall not be effective if the legislature acts on that point?

Mr. Drew I don't argue with you one minute, Mr. Sandoz, but I don't think the Supreme Court is a legislative body. I ask favorable adoption.

Further Discussion

Mr. Dennis Mr. Chairman, fellow delegates, I rise in opposition to the substantive change. I don't object to the moving of the sentence into a new section. I think that probably is in order. However, the substantive change I think is going to limit the ability of the Supreme Court to work out a pretty knotty problem that brought this provision about in the first place. The main problem we were dealing with here was what to do about trials and J. P. courts where the J. P. doesn't make a record. Under the present law you have a trial de novo. If you appealed with that the J. P. rules then you can ask for a new trial all over again in the district court which is inefficient and it really means you try the case twice instead of once so here we provided for the Supreme Court to have the authority to make some rules as to how these J. P.'s were going to proceed to record the testimony and the evidence from these J. P. courts into the other court system. Now this is going to require some working out financially and we don't even know exactly where these appeals ought to go. Whether they ought to go to the district court, the court of appeal, or directly to the Supreme Court and we felt that the Supreme Court would be in a better position by its rule-making power to work out the details for appealing these misdemeanor cases and as Mr. Sandoz pointed out in his question, we have not taken anything away from the legislature because if the legislature doesn't like the rule that the Supreme Court comes up with it can come right back and pass a law and delete that rule. The provision that is in the committee proposal clearly states that the Supreme Court can only make rules consistent with law passed by the legislature and we felt, as Mr. Sandoz said, we ought to give the legislature the authority to fill in the gaps and try to work out a situation that nobody has really been faced with before because in the past we've always had trial de novo's and now we're going to have trial de novo's. We've got to figure out a way to appeal from that tribunal up to a district court, court of appeal or Supreme Court.

Questions

Mr. Stinson Then for an appeal from a city court to a district court will not be de novo... under this or any other provision in this section.

Mr. Dennis No sir, that's correct. There is another provision that is going to require evidence be preserved in all courts in all trials. That's another section that is coming up later, but it is related to this because the scheme behind both of these amendments is the justices of the peace and mayors and everybody else are probably going to have to go out and buy a cassette recorder or something and record all of the testimony and then

an appeal will be provided by court rule or by law from that court to a district court or maybe a court of appeal or the Supreme Court.

Mr. Stinson But that's another provision later on?

Mr. Dennis Yes, the preservation of evidence provision that I mentioned is in Section 32, I believe.

Mr. Stinson If that is the thought of your committee, and we have always said we are trying to protect the people, isn't it a fact from your past experience as a district judge and practicing attorney, that when they go into city court most people, or a great number of them, do not hire an attorney. They don't know how to present their case, and then when they decide to appeal they hire a lawyer and it is too late for him to help them, it is not de novo, and are we going to be denying the people some protection that they should have?

Mr. Dennis I don't believe so, Mr. Stinson. It has been my experience that layman, with the help of the court, sometimes do a better job without an attorney in these misdemeanor cases because the court usually leans over backwards to be sure they get a fair shake.

Mr. Stinson Well, I have been in court where the court will lean over backwards to see that a private citizen with a hired prosecuting attorney and in most cases the judge trying to send him up too, and you are going to take away his right to appeal de novo?

Mr. Dennis Well, let me say this, Mr. Stinson. This provision doesn't prevent a trial de novo. It simply says that the Supreme Court can work out a rule for appeal and that could be by trial de novo and the legislature could supercede that by law.

Mr. Kelly Judge, I think you just answered the question. The last sentence in two here does not prevent the legislature from rule of the Supreme Court from establishing the de novo appeal again. Is that correct?

Mr. Dennis That is correct. I believe I probably made some misleading statements. This is my hope that we will get away from the trial de novo but it doesn't have to be that way. It could be provided for again just like it is now by the Supreme Court, or by the legislature, that this is the type of appeal that you would have. You are very correct.

Mr. Hayes Judge, are you saying then that all courts then will be a court of record of some kind, upon request or what?

Mr. Dennis Yes sir, you could put it that way. The provision that requires that a recording be made or that evidence be preserved in all trials is Section 20, so reading that in connection with the provision that we are now on, I believe we will assure that all trials in all courts, even down to J. P. courts, all evidence will be preserved and that either the Supreme Court or the legislature is going to provide a method of appeal, whether it is trial de novo or a review of the record.

[Previous Question Considered.]

Closing

Mr. Drew I just want to make a couple of statements. I hate to oppose the chairman of my own committee but I made this point in committee. Judge Dennis stated that it was such a knotty problem that it possibly the Supreme Court should work it out. I take issue with that statement. I think the legislature has knotty problems every time they meet. I think this is a purely legislative problem. I think to permit the Supreme Court to pass a rule of the court which has the effect

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of law in prescribing the manner of appeals violates our entire system of three branches of government. I am opposed to Judge Dennis as far as his position on trial de novo and I think that very possibly the legislature will adopt statutes to create or recreate a procedure of trial de novo from the courts of limited jurisdiction to the district court. It has worked satisfactorily. It has not been a burden on the district courts and it has been a means of review for the limited courts. He also mentioned the fact about there would be finances involved. Well I can assure you this, the Supreme Court cannot provide the finances for taking care of the cost of these appeals. If there is any provision there that is another matter that is going to fall on the back of the legislature that has to be financed. I seriously urge that you adopt this amendment. Leave legislation with the legislature and the courts with the judiciary.

[Amendment adopted: 60-50. Motion to reconsider tabled.]

Amendment

Mr. Poynter It is a technical amendment sent up by Delegate Dennis on behalf of the Committee on the Judiciary. It hasn't been distributed. Amendment No. 1 on page 2, line 32, immediately after the word "of" and before the letter "C" delete the word "Subsection" and insert in lieu thereof the word "Paragraph".

[Amendment adopted without objection. Previous Question ordered on the Section. Section passed: 110-0. Motion to reconsider tabled. Motion to revert to other orders of the day adopted without objection.]

INTRODUCTION OF RESOLUTIONS

[I Journal 317]

INTRODUCTION OF PROPOSALS

[I Journal 317]

Mr. Poynter Announce that Style and Drafting, Justice Tate, will meet as announced after adjournment on today.

Mr. Rayburn, chairman on behalf of Committee on Revenue, Finance and Taxation, sends up notice that his committee will meet Thursday, tomorrow, after adjournment in Committee Room 4 to continue consideration of the committee proposal, respectfully submitted, "Sixty" Rayburn, chairman of the committee.

[Adjournment to 9:00 o'clock a.m., Thursday, August 16, 1973.]

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Thursday, August 16, 1973

ROLL CALL

[90 delegates present and a quorum.]

PRAYER

Mr. De Blieux Our heavenly Father, we thank Thee for the privilege given here once more in Thy service. We ask that You give us the wisdom that the actions to date be all in accord with Your desires and wishes. We ask this in Christ name. Amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

RESOLUTIONS ON SECOND READING AND REFERRAL
[*J Journal 318*]

PROPOSALS ON SECOND READING AND REFERRAL
[*J Journal 318*]

[*Quorum Call: 90 delegates present and a quorum.*]

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Reading of the Proposal
Reading of the Section

Mr. Poynter Section 6. Supreme Court. The Chief Justice.

Section 6. Paragraph A. When a vacancy in the office of chief justice occurs the judge oldest in point of service on the court below the age of 65 years shall succeed to the office.

Paragraph B. The chief justice is the chief administrative officer of the judicial system of the state subject to rules adopted by the court.

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, this section represents some change in the law regarding the selection of chief justice. The 1968 Constitution provides for the selection of chief justice to be based solely upon seniority. We debated this matter rather completely in our committee. We found several faults with the present system of selecting the chief justice on seniority alone. Although we have had some great chief justices selected in this manner, we had a ten-month period recently in which we had three persons assume the office of chief justice within that short period of time. This occurred because when the former chief justice retired, the next three in line were very close to retirement themselves. So, the court may have been without consistent leadership for almost a year. Also, we considered that in many other states the chief justice is elected by the members of the court, on the theory that if a chief justice is to provide any leadership rather than just be a voting member of the court then he should be a person that the court selects as their leader. Our first proposal on our committee, was to elect the chief justice by the Supreme Court itself for five-year terms. However, this was reconsidered later on, and we came up with a compromise which we think adopts some of the best features of both the seniority and the elective plan. Under the committee proposal that we are giving to you today, the chief justice will be selected on seniority provided that he must be under 65 years of age in order to assume the office. This would discourage a Supreme Court justice from retiring at the age beyond 65 just so he could rise to the office of chief justice for a year or two in order to have an honorific title. It would also prevent a man who might be in his older years and not be up to the physical tasks of being a justice, and in addition, assuming the administrative duties of the chief justice from being placed in that position. We think that this is a good compromise and we've spent many hours of debate in arriving at it. We ask for your favorable consideration. The second

paragraph simply clarifies what are the actual facts today...that the chief justice is the chief administrative officer of the judicial system subject to rules adopted by the court. Now, there are two checks and controls here. I don't want you to get the idea that the chief justice is being given complete control of everything. First of all, these rules adopted by the court are subject to legislative regulation in Section 5, you will recall that we have already adopted. The chief justice in turn is subject to the control and regulation of the rules adopted by the Supreme Court which are subject to the legislative acts. So, what he is given is a delegation of authority from the legislature to the court to him to take care of the day-to-day management and administrative chores of running an efficient and effective judiciary system. Ladies and gentlemen, I ask for your favorable vote on this section.

Questions

Mr. Alario Judge Dennis, when you state in here that no one can serve as chief justice below the age of 65 could you conceivably see a situation where we might have the remaining six justices all over 65, between 65 and 70, and if that would happen who then would serve as chief justice?

Mr. Dennis I can conceive of a situation. I think it's very unlikely. However, if that should occur, then I think that the legislature could provide for such a situation. I do not think that there is anything in this article that would take away the legislature's authority to provide for such an eventuality should it occur, and I think it's highly unlikely that it would occur.

Mr. Lanier Judge Dennis, with reference to the power being given here to the chief justice to be the chief administrative officer of the judicial system of the entire state, is this not a tremendous expansion of the present law?

Mr. Dennis No sir. As I said before, he, I believe, is performing...the present chief justice and the past chief justices...have in fact, performed his function of the surferance of the court. The authority is in the court subject to limitation by the legislature, I believe, if the court should adopt a rule, an administrative rule, that the legislature considers to be unreasonable, then under Section 5A that we have adopted, the legislature could change it. The authority that the chief justice is exercising now is, I think, granted by the Supreme Court to him and this is...we're spelling this out in the constitution now in that same manner. We're saying that first of all the court can't make a rule that the legislature disagrees with and secondly the chief justice can't exercise any authority as administrative officer that is not delegated to him by court rule. I do not think we're expanding his power. I think, in fact, we may be clarifying it, putting some restrictions on him that he may not have at the moment.

Mr. Lanier Is it not a fact that the present constituency of the Louisiana Supreme Court is divided on this issue of whether or not the chief justice should have this authority?

Mr. Dennis I am not aware of such a division. I'm not privy to everything that goes on in the Supreme Court, but I have not been made aware as Chairman of the Judiciary Committee of any such division. We have had every, I believe, correct me if I'm wrong, Justice Tate, we've had just about everyone on the Supreme Court appear before our committee individually and they discussed their problems and the problems of the judiciary of the state at length and at no time did this disagreement crop up or come to light, so I must assume that it does not exist.

Mr. Lanier Well, if you would look back to your right to Justice Tate, I think he might clarify that point.

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Mr. Hayes Judge Dennis, do you have the retirement age set at 70 for Supreme Court justices?

Mr. Dennis Yes, sir, we are in a later article, going to establish the retirement age for all judges at age 70.

Mr. Hayes What is the reason then for having 65 as the age at which you must step in as Supreme Court justice?

Mr. Dennis Well, as I attempted to explain earlier, this was a compromise between electing the Supreme Court judge and having him serve strictly on the basis of seniority. The defects in having him be selected solely on the basis of seniority are first of all, you encourage people who might have retired at 65 to stay on the court just for the hope of getting that honorable title. Second, you run the danger of the situation that we had recently of a rapid turnover of three chief justices in a ten-month period. Third, you might have someone who is physically and mentally able to be a justice, but not physically up to the task of being the chief administrative officer in addition to being a voting and writing justice of the Supreme Court.

Mr. Hayes Couldn't you solve that problem by having the maximum age be 65? Couldn't we solve this by stopping it at 65 instead of going to 70?

Mr. Dennis Well, not completely, Mr. Hayes, because then, I think, you would still have persons stay on the court who would have retired simply to get this honorable title. It would solve some of the problems, perhaps, but not all of them.

Mr. Hayes One more question, Judge Dennis. What particular problem that we...did we run into that we couldn't solve the last time? Were we able to solve the problem when we had these three justices retiring all at once? Were we able to solve it then? I understand you had Judge Hamilton or somebody retired...

Mr. Dennis I suppose, Mr. Hayes, we could get along without a chief justice if we had to. We could muddle through, but I believe you would have a better run, more efficient, more just judiciary system if you have an able chief justice, who is able to serve for a substantial period of time and to provide leadership for the court.

Mr. Hayes And you believe that this would be best done with the chief justice being 65 years old and not 70?

Mr. Dennis Well, there's nothing magic about the age 65; as I said before this is a compromise figure that the committee came up with. It would give anyone who assumed the role of chief justice at least five years more to be a justice and chief justice of the Supreme Court and to provide leadership for the judiciary system.

Mr. Pugh Judge Dennis, I noticed that you made the statement in this provision that he would succeed to the office if he was under 65. Do you contemplate that once he reaches 65 that he'll lose the office or do you contemplate that he'll stay in the office?

Mr. Dennis No, sir. We contemplate that this does not require that the chief justice vacate the position when he's 65. It requires only that he be less than 65 when he takes the position.

Mr. Pugh Is not the basic premise that you need leadership of one under 65? If that's the basic premise why wouldn't he lose the office when he gets to be 65?

Mr. Dennis The basic premise is that he should have a substantial period of time left on the court when he assumes the role of chief justice. The basic premise is not that he would be too old to be chief justice after he reaches 65.

Mr. Pugh You're just trying to provide for substantial period of time in which the Supreme Court would be under one specific chief justice, is that it?

Mr. Dennis That's correct, sir. We're trying to avoid the situation where a man assumes the role of chief justice when he is 69 years old and has only a few months left on the court to be chief justice.

Mr. Pugh As I understand, the present posture of the court is such that this...the use of this amendment could not be for many years to come, is that not correct? Will not Justice Sanders serve until almost the end of the century?

Mr. Dennis Yes, sir. I believe that if he serves his full time out that this will not benefit any member of the present Supreme Court.

Mr. Pugh Nor will it affect any of them?

Mr. Dennis Sir?

Mr. Pugh It will neither benefit nor affect any of them.

Mr. Dennis Well, I guess it would affect them if Chief Justice Sanders should retire early or should pass away before his time on the court is up, but it is not geared to any particular member on the court.

Mr. Fayard Judge Dennis, did your committee...I'm sure it did...study the constitution, is that not correct? Will not Justice Sanders serve until almost the end of the century?

Mr. Dennis Yes, sir, we did.

Mr. Fayard How many other constitutions provide for such a provision in their constitution? How many other states provide for such a provision?

Mr. Dennis How many provide for what now?

Mr. Fayard Provision of such as what we have in Section 6.

Mr. Dennis I don't have the figures at hand. Some of them provide for the chief justice to be elected, some provide for him to be appointed by the governor, others provide for him to be selected on straight seniority, and there may be some other variations on the theme, but those are the basic methods of selecting the chief justice that I know of. I can't give you the number of how many do which.

Mr. Fayard Nearly every other state has a provision for the selection of a chief justice and the replacement of the chief justice in the case of vacancy in the constitution?

Mr. Dennis I would say substantially all have a provision for the selection of the chief justice. They don't all do it the same way.

Mr. Fayard Well, what would be the effects of deleting this provision in its entirety. Do you have any thoughts on that?

Mr. Dennis I think the effect of it would be a less efficient judiciary system because there would be no vesting of authority in any one person to be the head of it. I think that if you deleted it then the Supreme Court itself would be the administrative head of the judiciary system and you would have...it would be run by a committee. I guess from time to time they might select an ad hoc leader but there would be no stability there. There would be no constitutional vesting of authority in one man.

Mr. Fayard Well, then it would be left up to the court itself to provide for a chief justice if it so desired. Is that correct?

Mr. Dennis Yes, sir, it would, and I would hate

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to see that happen because as I said this might change from day to day. You might have one man be chief justice and then four of them get mad at him and next year somebody else would be chief justice. You might not have a consistent leadership or administration of the judiciary system.

Mr. Burns Judge Dennis, isn't another reason we decided on 65 because the chief justice, by the very nature of his office had so many more detailed administrative functions than the other justices that we thought a man of that age limitation was much more capable in the active stage than to rather let it go on to 70?

Mr. Dennis Yes, that's right, Mr. Burns. I believe that you were one of the advocates of this compromise on our committee, were you not, sir?

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Bollinger], on page 3, line 6, after the word and punctuation "court," and before the word "shall" delete the words "below the age of 65 years."

Explanation

Mr. Bollinger Mr. Chairman, fellow delegates, the amendment simply deletes the age limitation on the chief justice. We adopted Section 3 of the Judiciary Article which says that the state Supreme Court shall be composed of a chief justice and six associate justices. Conceivably, we could have a situation with the present proposal on Section 6 that every justice would be between the age of 65 and 70 and you could have no chief justice and if this was the case I don't see any way that the legislature could provide for a chief justice. Also, you could have a situation where you would have the six associate justices between the ages of 65 and 70 and a new justice elected about 30 years old and he would be the chief justice. I don't think this would be right. The argument has been presented, I don't think validly but it has been presented, that often in the last few years it's happened that a chief justice has just served a few months and this made for discontinuity in the court. I think that if a judge has devoted his lifetime to serving as a chief justice he should not be deprived the honor... as a justice... he should not be deprived the honor of serving as chief justice. I'd like to hear other debate on this.

Questions

Mr. Champagne Mr. Bollinger, that isn't exactly right because it says "in line of service below the age of 65", so if that 30 year old judge had just been elected, he wouldn't get it, because it would be in line of service.

Mr. Bollinger If the other six justices are over 65 he would get it.

Mr. Champagne That's correct. And I think that's a good way.

Mr. Silverberg Mr. Bollinger, isn't it true that the same argument that was offered as defense of the 65 year old chief justice as far as the vacuum that was created over a period of ten months could exist at the age 65 as well as 70?

Mr. Bollinger It most certainly could, Mr. Silverberg?

Mr. Silverberg And have you talked to anybody between the ages of 65 and 70 to find out if there's very much difference between 65 and 70 in age?

Mr. Bollinger I find very little.

Further Discussion

Mr. Dennis Mr. Chairman, fellow delegates, I must

rise in opposition to this amendment. This is going to continue the prospect of the merry-go-round that we recently had of three justices proceeding through the office of chief justice within a ten-month period. During that year I don't believe you could say that we had a consistent program on the Supreme Court because we had three different men heading the Supreme Court within one year period. I don't believe that this situation is as likely to occur under the committee proposal as it is under straight seniority, contrary to what Mr. Silverberg said, because the retirement age is set at age 70 and most of the judges will, if past history prevails, in the future serve until they are 70 years old. All this provision does is make certain that we have a substantial period of time left in a man's office... in his term of office... when he takes this tremendous job of heading up the Supreme Court, being the chief administrative officer, in addition to being an elected justice to the state's highest court. I ask you to vote down this amendment and please support the committee proposal because this was something that was hammered out after hearing all of these diverse views and comments, hearing from all of the justices, and I think the committee gave this very careful consideration. As I said before, we debated this almost two full days and this, I believe, is a good compromise and will help our judiciary system.

Questions

Mr. Bollinger Judge Dennis, under the proposal of the committee, a justice who has exactly five years left to serve cannot be chief justice, is that correct?

Mr. Dennis Well, if he is over 65 when the vacancy occurs.

Mr. Bollinger If he's 65.

Mr. Dennis I say, if he is over... 65 or over when the vacancy occurs, he could not be chief justice.

Mr. Bollinger So, thus, if he had five years left to serve he could not be chief justice?

Mr. Dennis That's correct, sir and that may seem harsh but we have to draw the line somewhere. It's just like if I get defeated for office in my 19th year and I don't get any retirement that's tough, but you have to draw the line somewhere I guess.

Mr. Bollinger Of course, the committee is going to alter your arguments there. If a judge has five years and one day, he could serve as chief justice. Do you think it's fair or honest or sincere or a good law that one day could make the difference between the chief justice... do you think it's good reasoning?

Mr. Dennis I think that it is inevitable that we have to draw these lines. We have to draw the line on seeking public office. If your birthday happens to fall one day short of the cutoff, you can't run that year. That's life, Mr. Bollinger. I don't see any way around establishing some firm rules of law to govern these matters.

Mr. Bergeron Judge Dennis, in the last, let's say five years, how many chief justices have we had?

Mr. Dennis Three, I believe.

Mr. Bergeron Three chief justices in the last five years.

Mr. Dennis Yes, sir.

Mr. Bergeron Thank you.

Mr. Dennis Excuse me, we've had four. We had three in a ten-month period after the... after Justice Fournet retired, so we've had, actually, four in the last five years.

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Mr. Alexander Judge Dennis, suppose we put this back into perspective. Prior to the last three, during the time in Judge Fournet's...how long did he serve? That is from the...

Mr. Dennis He served a long time and he was a good chief justice and I'm not saying that you cannot get lucky and get some good chief justices on a straight seniority basis, but this shouldn't prevent us from trying to improve our constitution and our method of selection as we go into the future.

Mr. Alexander You would admit however, that experience is a primary ingredient in developing a good chief justice?

Mr. Dennis Yes, sir, and this is based on both consideration, on seniority, experience and also, the ability to serve a substantial period of time after you get to be chief justice and not just hold the role for an honor for a few months.

Mr. Silverberg Jim, my mathematics might be a little different from yours, but what's the difference between this ten-month period at age 65 and age 70?

Mr. Dennis This difference is that the retirement age is going to be established, we think, at 70 years old, and so most justices when they reach 65 will have five more years that they can serve on the court. But presently...

Further Discussion

Mr. Leigh Ladies and gentlemen of the convention, this is the first time that I've risen to speak to you, but I feel very strongly about this particular amendment and I rise in support of it. Let me point out that while this may not affect the present court as it is presently constituted, our constitution is being drafted for many years in the future and there could well be changes which would make this affect the terms of the court as it will be constituted. The amendment would permit a judge at 64 1/2 years of age to take office as chief justice. It would prevent a man 65 years and one day from taking the same office, and I submit that there is no justifiable reason for putting a cutoff date at all for the office of chief justice. Traditionally, the oldest justice, in point of service has served as the chief justice when his time came and while it may be true that we've had four chief justices in the last ten or twelve months, before that time I would say for a period of thirty years or better maybe 40 years, we only had two. We don't know what the court will be and I submit that there is no occasion or no justification for a cutoff date for service as chief justice. I strongly ask you to support the amendment and vote favorably on the amendment.

Question

Mr. Womack My question, Mr. Leigh, whether he served one day, one week, one month, or ten years, would he be taking anything away from his qualifications, would it?

Mr. Leigh Not a thing in the world, Mr. Womack. I think that he would be amply qualified and should be amply qualified at 65 just as much so at an earlier age. There's no requirement, actually, in the committee's recommendation that he come off at 65. He'll be serving after 65 if he takes office below that age. Was there any other question? Thank you and I again ask that you support the amendment.

Further Discussion

Mr. Jack Mr. Chairman, and members, I am in favor of the amendment to take out the age limit. To me, the thing that counts is the condition a person is in and not his age. Some people at thirty are through. Some people at a much older age of sixty-five are going strong, numerous. Look at old Strom

Thurmond up in the United States Senate. Look at Sam Ervin. Remember, Bernarr Macfadden, a strong man, health man, numerous ones. And if we are going to start, just running the country by age alone, you are going to lose the services of many good people... Oliver Wendell Holmes was on the Supreme Court of the United States until he was ninety-two. And he was in good shape up until his ninety-second birthday. I could go on and on, and on. But personally, I wish this amendment went further to not only take out the age but let the members of the court select their own chief justice. Now, another reason for taking out the age, if a person is on the Supreme Court and not able to perform his duties, he shouldn't even be there. Now, the additional duties of being chief justice are not the kind of duties that are a lot of hard work. On top of it, you can always have another person help you. Not only because you might not know how, you might not like it, or this, that or the other. But I think we are making a serious mistake to start putting in a limitation on age. Next thing, somebody will want to do, is be changing everybody over a certain age. So, I say it is a good amendment.

Further Discussion

Mr. Kilbourne Mr. Chairman, and fellow delegates, I support the amendment. I opposed this arbitrary sixty-five limitation on the committee. I oppose it now. I have always opposed it. At the present...under the present constitution, the mandatory retirement age of the judges is seventy-five. We are proposing in the new article to reduce that to seventy, and I presume that that is going to pass, but in all events whatever the retirement age is, I say if a man...and I have said it all along, if a man is qualified to serve on the Supreme Court he is qualified to be chief justice, if he reaches the age and stays on there long enough. And it just doesn't seem to me to make sense to say a man can stay on the Supreme Court and serve as a justice until he is seventy years of age, but he can't be chief justice when he gets sixty-five years or older. And I hope that you will vote for the amendment.

Further Discussion

Ms. Zervigon Mr. Chairman, I will be brief. I just wanted to say that I don't think the committee proposal does what they want it to do. You could still have a chief justice who serves for ten months and is then replaced in the case his term ended and he either chose not to run for reelection or was defeated at the polls. I would very much oppose any upper age limit in the constitution at all unless there is a very strong reason for it. I don't see a strong one and I don't think it accomplishes what the committee wants and I urge your adoption of the Bollinger amendment.

Closing

Mr. Rayburn Mr. Chairman, and fellow delegates, I rise in support of this amendment for many, many reasons. And I am a little shocked and a little surprised to think that we might have someone on the highest court of our land that could make decisions that govern you, your family, your children, your friends, your relatives and neighbors, but yet they were not qualified to be the chief justice. Have you thought of that? You might have a person that had spent his entire life on the Supreme Court and one day would keep him from having that little honor in his few remaining days or months to serve on the Supreme Court. Do you want to deprive him of that? I don't believe you do. I think this is a good amendment. If they are qualified to make decisions that govern this state, they are certainly qualified in my opinion to carry their little honor and the great name of being the chief justice. Don't take that away from somebody that might have looked forward for it for fifteen or twenty years. It has worked all right in the past, you might have

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had a few conflicts or you might have had a few people that wasn't...I heard they had some that really wasn't qualified to be the chief but yet he is qualified to pass on me, and you and the welfare of this community. That is ridiculous. And I think this is a good amendment and I hope you will adopt it.

Questions

Mr. Dennis Senator, do you realize that the committee did not propose this because we believed that someone over sixty-five was unqualified, and that I at no time represented this to the convention. The basis for this proposal is simply to make sure that the man who assumes the office of chief justice has a substantial period of time left in his term. Do you realize that Senator?

Mr. Rayburn No, I don't really agree with why it was proposed. I think I know why it was proposed and I don't agree with what you just said, that we have got a difference of opinion there. And I respect yours, I hope you respect mine. I think this was proposed to cut some of us old folks out. And I am asking all you old folks to join me, and it is time we are sticking together.

Mr. De Blieux Senator Rayburn, in view of your worrying about the old folks, of course, that doesn't include me.

Mr. Rayburn Well, I know I got you though because you have been worried about them about as long as I have.

Mr. De Blieux Isn't it possible that under this procedure that we could have three or four chief justices in a short period of time that where they reach retirement age, one right after the other, they are forced to retire, and the other fellow coming right along behind them that we might have the situation where you would have about four or five that would have a birthday within a month of each other. Isn't that the situation that we are trying to avoid now?

Mr. Rayburn I don't think so. I think this, if a person is there and he has been there, and he is entitled to be chief justice, if that honor is not bestowed upon him but he should have that honor, Senator De Blieux, if he wants it.

Mr. De Blieux Now, I want to ask you this question. Shouldn't we think a whole lot more about the service of this state than the honor that might come to an individual? Aren't we putting individuals ahead of the service to the state in this particular resolution?

Mr. Rayburn I wouldn't think so. I think if he is qualified to be a member of that high body, he is qualified to be the chief. That is my opinion. If he is not qualified to be the chief, he is not qualified to be on the court.

Mr. Alexander Senator Rayburn, isn't that true that the age range of the present Supreme Court is from about forty or forty-two to about sixty-five or sixty-seven, I think the oldest, the youngest, the last two only about forty or forty-two years of age, isn't that right? Which means for the next twenty-five years some of these questions that have been raised, it is impossible to ever happen, isn't that true?

Mr. Rayburn That is true, Reverend Alexander.

Mr. Schmitt If you are really worried about the honor of being called chief justice for an individual, wouldn't it be possible to have an amendment such that this title could be granted to any retired justice rather than just limiting it to these few? I think this would be much more respectful, for these individuals than just because one person happens to be at the magic age at the right time.

I think this would effectively accomplish what you want, but I am against this amendment which we have before us at the present time.

Mr. Rayburn Certainly you have a right to be against it, sir.

[Amendment adopted: 66-40. Motion to re-consider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [By Mr. Brown]. On page 3, delete lines 4 through 7 both inclusive in their entirety and insert in lieu thereof the following:
"Section 6, Paragraph A. The Supreme Court shall elect from its members a chief justice."

Explanation

Mr. Brown Mr. Chairman, fellow delegates, I think the amendment is self-explanatory. I think we are talking about competency when we look at a new constitution. And I can't see why that someone just automatically becomes chief justice because he has hung around long enough. He has waited out his time and all of a sudden he takes on one of the most prestigious positions in this state. I think that in a case like this, that the court itself should elect who they feel is the most competent man to serve as their chief justice. There has been some argument against this. I understood it was hotly debated in the committee because there would be politics involved. Because the justices would be politicking one another. Well, gentlemen and ladies, I would like to suggest that these gentlemen are elected to begin with. They got elected through politics and this is a onetime affair and I think the evils involved of a little politicking for the chief justice far outweigh what would happen if we appoint a man, merely because he has hung around long enough. I think the elective process is something we have stuck with throughout this whole convention. I think it certainly ought to apply to the chief justice, for the justices of the Supreme Court to elect a man that they feel is most competent.

Question

Mr. Womack Senator Brown, under this proposal, how long would he serve as chief justice when he was elected, until they called the next election, the next meeting, the next week, the next year, or until he died?

Mr. Brown Representative Womack, it phrases exactly the way the present committee proposal does, he serves as long as he is a member of the court.

Further Discussion

Mr. Champagne Mr. Chairman, fellow delegates, I am for this amendment. I was for the committee proposal, but this is by far a better amendment than what we have facing us now. I see no reason why, if we happen to have a member of the Supreme Court who is sitting on, and every day has to be massaged into life, to make him the chief justice simply because he has been around a while. Simply because he has been waiting for that honor and I suggest to you that there are other people to consider besides one individual who might be there for two weeks, three weeks, four weeks, or five years. I think that it is time that we start considering the people of the state of Louisiana. I thought we had a good deal, but now we have, and I suggest that Senator Brown's amendment is good. And all of you who suggest that you are going to have an election every six months, that is not so, and you know it. It simply says, that he shall be elected by the members and then once elected, he is the chief justice until he retires or he reaches the age of seventy or he dies. And just because a man has been serving for a long time, and sitting around and just

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holding on is no reason why he should be chief justice of this state of Louisiana and making those decisions.

Questions

Mr. Avant Mr. Champagne, are you aware of the fact that there is another provision in this article on the judiciary commission that if a justice of the Supreme Court, is as you put it, "just hanging on", that if he is not able to perform the duties of that office because of a disability that interferes with the performance of his duties and is, or is likely to become, permanent that he can be involuntarily retired from the office by the Supreme Court on the recommendation of the judiciary commission, are you aware of that provision?

Mr. Champagne I am aware of that provision, but before this thing...it may be amended out of this constitution too, Mr. Avant, and I think that we had better consider it one thing at a time.

Ms. Zervigon Mr. Champagne, doesn't Senator Brown's amendment have the additional benefits that a justice who wanted to serve on the court but didn't particularly want to take on the administrative duties of chief justice, wouldn't be forced into the position of chief justice solely because he has been on the court longer than any other justice?

Mr. Champagne That is correct. And it reminds me of many good examples, for instance, in the national congress. We had Congressman Taft, who made a wonderful congressman, but I personally felt would have never made a president.

Mr. Duval Mr. Champagne, don't you think it is possible when you get into the election process of the Supreme Court that it would create divisiveness among the court and perhaps taint the objectivity of their decisions?

Mr. Champagne That is very likely...it is likely, and it is possible. The only thing I feel, that when you do this, at least you are going to have honorable people who are members of the Supreme Court who are at one time were politicians. We have provided means by which they are not quite as political as they once were and I hope, and I resort to their judgment. I think we would end up with a much better and much more agreeable individual, in their mind, than we would by simply saying, the one who has been around the longest will take office.

Mr. Nunez Mr. Champagne, to begin with, wouldn't you...couldn't you envision a man running or being on the Supreme Court and not having an ambition to be the chief justice? And number 2, don't you think that by doing this, you are putting the Supreme Court just where we don't want it, involved in a political arena where you have some younger justices that would like to be chief justice and there is a couple of vacancies like recently occurred and you can get the other justices involved in the political arena, that what they would want to elect, who would vote for them to be the chief justice?

Mr. Champagne That is of course, the possibility. I say that frankly the committee had a wonderful proposal. We have amended that out of existence and this is the next best thing.

Mr. Nunez Then couldn't you see every time a new chief justice came on there or any time three of them got together, who wanted to elect another one, they could do...just keep it involved in controversy at all times.

Mr. Champagne I don't think that that is at all the provision that Senator Brown has. It is clear to me that this man would serve until he retired or died, or so forth.

Mr. Chatelain Mr. Champagne, don't you agree that this is the way the business community follows, this is the procedure they follow, they select the best man at that age and time?

Mr. Champagne This is the way we do it on our board at the bank. This is the way we do it in all practices, and I think it is a wonderful way to do it.

Mr. Chatelain Well, thank you.

Further Discussion

Mr. Kilbourne Mr. Chairman, fellow delegates, I am obliged to oppose this amendment. I think the committee proposal which I was opposed to is much better than this. I can see where an amendment... I mean a provision of this kind, for the justices to elect a chief justice and apparently he would stay on then until he retired, would cause all kinds of turmoil on the court. I am aware that there is a great deal of bickering going on in the court now. It always has been, it always will be. But this is one thing that I thought we had removed when we said that the man who is oldest in point of service would succeed to the office of chief justice. And that doesn't give anybody anything to politick about or bicker about. Not only that, I can see where the possibility of the justices would just simply, to give everybody who might have ambition to be the chief justice, they might say, well we will elect the fellow that is nearest retirement and then that will give the rest of us a chance. Certainly, with the way this amendment is, the man that they elect will stay on there until he retires. I judge to foresee, I can't imagine that the youngest judge on there would be elected, in point of service. That is just hard to imagine under any circumstances. And I think this is really a terrible amendment and I sincerely hope that you will vote it down.

Questions

Mr. Stinson Mr. Kilbourne, can't you foresee that five justices, and when I am saying that, I am not reflecting against any that are on there, but five could get together and say well, now we are going to elect one of our number. At the end of one year he is going to resign as chief justice and they could rotate that, five among themselves from then on, couldn't they?

Mr. Kilbourne It is certainly a possibility, Mr. Stinson, that you could have that kind of a clique on the Supreme Court and after all it should be remembered that justices of the Supreme Court are just like anybody else, when it comes to politics. They are politicians. And I really think that we ought to try to keep as much of that kind of thing out of the court as possible.

Mr. Stinson And also don't you think that there is some question about this amendment when they don't say how long he is elected for? Suppose for example, a justice that is in his forties is elected. Can you foresee that he would serve as chief justice for thirty years, until he gets retirement?

Mr. Kilbourne The author of this amendment stated that was the way it would work, Mr. Stinson, that whoever was elected, once he was elected he would stay on there from then on until he was forced to retire.

Mr. Stinson There is no term for the office under this, and therefore he could...he could foresee for thirty or thirty-five years and no one could question.

Mr. Kilbourne That is the way the author explained it.

Mr. Burns Mr. Kilbourne, couldn't this situation very likely and most likely would happen or occur under this amendment? We have been talking about

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seniority and the experience you gain by the length of time that the judges serve on the court. Couldn't this happen, that a chief justice would be elected and he might have served fifteen years and die or have to retire because of illness, or something, and then in a popularity contest the remaining members that they could elect the youngest and the newest member on the court to succeed him, and pass up all the others that had had much more years of seniority, isn't that right?

Mr. Kilbourne That certainly is a possibility,
Mr. Burns.

Further Discussion

Mr. Chehardy Mr. Chairman, members of the convention, the prime error that I see in this particular amendment is that I believe the very political atmosphere that you are trying to avoid, you will create. And you will create it within almost a family unit, seven people. But that is not the prime reason that I am up here to talk to you. Delegate Champagne made several statements which I really feel cannot remain unanswered because I for one, do not share the feeling that he expressed in relation to our senior citizens. And I am talking about such statements as "why keep a man on the court who has to be massaged into life, just waiting around in effect to reach seventy or die". As far as I am concerned, there has been productivity at the age of seventy. I, for one, do not think because he reaches the age seventy or the age of eighty, or the age ninety he should be torn away from life. I have witnessed him sit on the board of a bank and I have witnessed men dealing in finance, in business seventy and older. And I have yet to find their equal in a man of thirty-five or forty. And I believe the whole attitude that we have toward the aged today, more and more rest homes to take them away from the family. And I believe on that whole subject, I want no part of it. And I don't want it to reflect on myself. I don't want any sharing of any thought that detracts from old age. I am fifty-two. I hope I live to the age of seventy. If I do, I hope I am productive at that age. But I believe the best expression I have seen about old age, whether it comes from the children or from anyone else, was said by a judge in a trial where a parent, the age of seventy-five, had to bring in seven children to give him a little support and he asked for two dollars a week from each child. And it all goes back to what the judge said there in this case referring children to a parent and in our case, human beings, fellow human beings... and what he said in that case was, "one parent or two parents can raise seven or twenty children. But seven or twenty children cannot take care of or show respect to that one parent." And we as a group of human beings are neglectful in our respect to the elder citizens of this state if we accept a remark like this unchallenged.

Further Discussion

Mr. Landry, A. Mr. Chairman, ladies and gentlemen of the convention, I rise in opposition to this amendment, just like I rose in opposition to it in committee. This was our original proposal... was to have the judges elected. Then we removed that from the article and proposed the seniority system. And of course, then it was amended to sixty-five. And of course, you abide by a majority vote when you work in your committee. I have personally opposed, not only have I opposed it, but the Louisiana Clerks of Court Association has opposed it, the Board of Directors of the District Attorney's Association opposes the election system of Supreme Court justices. In the proposed amendment as it stands, the "Supreme Court shall elect from its members a chief justice." That is all it says. It doesn't say how long he is going to be elected for. In other words... it is at the will of three members of the court... of Supreme Court. If three members decide that they don't like their chief justice, they can contact another justice and say now, we don't like this man anymore, he is not voting right, so all we

have got to do, is to hold another election and appoint a new chief justice. And I think it would only occur in chaos in the Supreme Court and certainly we don't want that in our Supreme Court. I think we have good Supreme Court justices, I don't think we will have any problem with the ones who are here now, but we are not writing a constitution for the present, we are writing a constitution for the future, and I urge you to defeat this amendment.

[Previous Question ordered.]

Closing

Mr. Brown Mr. Chairman, fellow delegates, let me briefly point out just a couple of things in closing. First of all, there are twenty-four states in this country. Twenty-four states in this country that elect their chief justice. This is nothing radical that we are just going into. Twenty-four states do this very thing. Mr. Stinson raised the question, he was very concerned about one judge going and buying off all the other judges and then making a deal. Well, let me say this, if we get to the stage where that is happening on the Supreme Court, the men who are supposed to be the best caliber level minds in this state, then I think we have a lot more to worry about than who is going to be our chief justice. This merely is an amendment to bring about competency. To let who the justices think is the best man in the administrative end. Let me make that point clear. You know a man might want to be a college professor all his life, and not particularly want to be president of the university. I think the very same thing applies, the man might want to be a good working judge, but not take on all the administrative affairs of being chief justice. There are a number of additional burdens. And I think it only fair to let the justices pick the man who wants to take on these additional burdens. I ask your support of this amendment.

Questions

Mr. Shannon Senator Brown, by a previous amendment, we have taken off the limit of age, have we not?

Mr. Brown That is correct.

Mr. Shannon And under your amendment, why, the Supreme Court justices themselves would be able to vote intelligently on the senility or inadequacy of any justice, is that not right?

Mr. Brown Quite true, Mr. Shannon, I agree with you.

Mr. Roemer Senator Brown, isn't the thrust of your amendment is that the Supreme Court justices themselves know who should best serve and who can best serve as their chief justice?

Mr. Brown Well, very much so, Mr. Roemer. I would agree with you and that is why I made the statement about administrative affairs. There is a lot of administration involved, it is not just practicing law. I don't think it is fair to ask a judge to turn it down. Maybe a judge just wants to be a judge, but it is awfully difficult for him once he reaches the age that he is the chief justice to say, well, I guess I don't want to be chief justice, it is almost a reflection on the man. This allows the man who wants the administrative tasks to take them on and let the court decide who is best qualified to take on these additional burdens.

Mr. Weiss Delegate Brown, isn't your amendment redundant in that Section B says the same thing as what you are proposing in Section A?

Mr. Brown What does Section B say, Dr. Weiss?

Mr. Weiss Well, Section B says "the chief justice is to be selected subject to the rules adopted by the court".

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Mr. Brown Well, Section B before me, says "the chief justice is the chief administrative officer of the judicial system of the state. Is the chief administrative officer of the judicial system of the state, subject to the rules adopted by the court."

Doctor, I think what that refers to, it refers to his duties as chief administrative officer. I think he possible is still the chief justice.

Mr. Weiss He is still the chief.

[Record vote ordered. Amendment rejected: 44-71. Motion to reconsider tabled.]

Amendment

Mr. Poynter These amendments are sent up by Delegates Landry, Lanier and others. Amendment No. 1. On page 3, line 9, immediately after the word "the" and before the words "of the" delete the words "judicial system" and insert in lieu thereof "Supreme Court".

Explanation

Mr. Landry, A. Members of the convention, all that this amendment would do, would be to make Paragraph B read as follows: "the chief justice is the chief administrative officer of the Supreme Court of this state subject to rules adopted by the court." I, ...my district judges in my area...I don't know about your district judges, but my district judges oppose this Paragraph B with the fear that many years to come that by saying that the chief administrative officer of the judicial system is not limited to the Supreme Court, but could be so far-reaching to where the chief justice could come into a local parish and tell the district judges how they will administer their affairs. Such as hiring minute clerks, court reporters, and in the methods of financing their courts. And they feel that this is objectionable and I urge you to adopt the amendment.

Questions

Mr. Kelly Mr. Landry, did I understand you to say that your district judges objected to the way this is written in the proposal?

Mr. Landry, A. That is correct. That is right.

Mr. Kelly And that is your reason for introducing this amendment?

Mr. Landry, A. That is correct.

Further Discussion

Mr. Tate Fellow delegates, I rise briefly to oppose the amendment. The suggestion for its inclusion to clarify the status of the chief justice was made by Chief Justice Sanders. I thoroughly agree with the concept that as Senator Rayburn said when we first started to organize, every ship needs a captain. You need someone who is kind of the man who starts things. Who has the responsibility you can look to, for him particularly to administer and to administer efficiently. As I view it, it's part of the same argument we had yesterday about the administration of the state as an entire system. And I respectfully urge that you may see fit to reject it because after all I think the chief justice at the present serves in that same capacity. There is no radical change made except that recognizes his importance as the man to whom the people can look for primary responsibility in carrying out the administrative rules of the Supreme Court. I yield to any questions, Mr. Chairman.

Questions

Mr. Sandoz Justice Tate, don't you believe that the proposal that the committee has made would enable the chief justice to supervise some district

judge who might not be performing his duties properly? And maybe that's the reason why they may be opposing that, or rather supporting this amendment.

Mr. Tate I take the fifth.

Mr. Avant Justice Tate, isn't it a fact that under this provision the chief justice does not just operate on his own and tell the people what to do? He is subject to the rules of the Supreme Court and has to operate within the guidelines laid down by the entire court or at least the majority of the court, does he not?

Mr. Tate Yes, in words of one syllable, yes.

Mr. Abraham Justice Tate, just for my information isn't the chief justice now the chief administrative officer of the judicial system of the state, as such in practicality?

Mr. Tate De facto, ...I believe he is. Now the difference between...that means in fact he is although it's not called that. The difference between being the chief justice of the entire judicial system and chief justice of a court is maybe illustrated by my function when I was presiding judge of the court in Lake Charles for ten years. All I worried for was getting the money for that court, with the assistance of my colleagues, of course...making sure our dockets were current; worrying about hiring and firing and things like that. The chief justice...under the rule-making power I think has a greater responsibility to take the leadership and worrying about the efficient operating of the judicial system over the entire state. If in one district, for some reason in order that delays are incurring, somebody should have the primary responsibility to go look and see, see if they need help, see what's the reason, that sort of thing.

Mr. Abraham Then all this really does is just puts into words what he is actually doing now?

Mr. Tate In my opinion, yes sir.

Mr. O'Neill Judge Tate, is the provision as it currently is written, is this to facilitate the so-called unified court system?

Mr. Tate Mr. O'Neill, I really can't answer that question because I don't think we adopted a unified court system in the sense that they use it in other states. I'm not trying to dodge your question but I think it's apples and lemons.

Further Discussion

Mr. Tobias Mr. Chairman, fellow delegates, I rise in opposition to this amendment. We have already passed upon this issue in one way or another. In Section 5A, if you will look back, we defeated an amendment which sought to delete the language it may establish procedural and administrative rules not in conflict with law" with respect to the Supreme Court. This provision simply continues this same language in effect, just saying that the chief justice of state will administer it, subject to the rules adopted by the court, shall administer this system. Simply stated, we have already passed upon this issue, and I would urge that you reject this amendment.

Further Discussion

Mr. Fulco Mr. Chairman and fellow delegates, I rise in favor of the amendment. I think that every level of the court system should be separate and independent of the other. I don't believe that the administrative affairs of the administrative officer of the Supreme Court should be the administrative officer of all the other courts on the different levels. I feel it's putting us at the mercy everybody, everyone of us, every legal matter that comes before the people in the hands of the Supreme Court. I think the way the system that we have now of

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appealing is very proper. But I still feel that the administrative functions of the courts should be left up to the separate and respective level of each court system. I have discussed this matter with the judges back home in Caddo, and they all oppose this idea. And I can agree with them and for that reason I ask you to vote for the amendment.

Questions

Mr. Lanier Delegate Fulco, as you read this provision as proposed by the committee, would it not give all of the administrative power in the state to the chief justice to control each and every court in the state of Louisiana administratively?

Mr. Fulco It's the same as setting up a dictatorial system, power in one man...

Mr. Lanier Under this power could he not order certain administrative procedures and rules in a district court, which would be contrary to the wishes of the people who elected the judges in that district?

Mr. Fulco I feel that you are exactly right, Delegate Lanier.

Mr. Lanier And if all of this power was concentrated in the chief justice would it probably not be better to be chief justice of the state of Louisiana than to be the governor?

Mr. Fulco Well, I can go along with that, too.

Further Discussion

Mr. Velazquez Mr. Chairman, fellow delegates, I rise in opposition to this amendment. I think that no matter what you have from a Boy Scout troop, to a bank to a statewide judicial system, somebody has got to be in charge. And whoever is in charge is going to be accused by somebody of being a dictator. But either you are going to have an organized court system or you are going to have a set of individual little kingdoms all over the state with separate judicial rules. And you are going to find bendings in the law in one place, and shading to the law in the other place. And the person who is ultimately going to be hurt is the ordinary citizen at the bottom who doesn't have the funds to retain the top flight lawyers or who doesn't have the political connections necessary. I think you have to have organization and that the only mechanism that's been offered in this entire convention for organization of the judicial system is through the Supreme Courts. Now these judges are very busy themselves. They don't have time to go around spying on every individual judge. But the gross problems that come up can be solved in this way because the ordinary citizen will know where the responsibility lies. And I think the point must be made that the Supreme Court justices are elected from various districts over the entire state. So that every area will have protection, there will be little or no chance for a dictator to arise on the state Supreme Court itself even in the office of chief justice.

Questions

Mr. Duval Delegate Velazquez, do you know that the judiciary article further on provides for a judiciary commission and it's the purpose of this commission to serve as a watchdog over the judiciary, and all of the power isn't vested in one person and the commission makes recommendations to the Supreme Court as a whole? Do you know that that provision is in here?

Mr. Velazquez Yes, but I also see that the two are complimentary bodies in many ways. That they work together, they don't work in opposition.

Mr. Duval But, don't you think it's best to vest the power as it has been in the judiciary commission, to make recommendations to the court as a whole rather than the chief justice serving as a sole

arbiter of this function?

Mr. Velazquez I think that the committee proposal as written, has the necessary balance between the chief justice and between the judiciary board. And I think it ought to be retained in that general manner. I think that this is too significant and too abrupt of a change. It would destroy what is basically a very balanced program. I think that this committee proposal is one of the best that I have seen. If we hit this one point, we destroy too much at one time.

Mr. Duval Do you also realize that the provision as it reads, allows the Supreme Court to adopt rules affecting all different areas of the state and actually legislate? And don't you think that's a violation of the basic separation of powers theory?

Mr. Velazquez I think as long as the chief justice operates in the judicial, I can't see a distinct difference in a change over from branch to branch. I think a fair rule is a fair rule no matter where they are.

Further Discussion

Mr. Avant Mr. Chairman and fellow delegates, I oppose this amendment. But the reason that I got up here is correct some erroneous impressions that you may have gotten from the question and answer session between Mr. Lanier and Mr. Fulco. Now, I don't by that mean to imply that that was intentional. The gentlemen are simply in error. If you look at the provisions of Section 5A, you will see very clearly that whatever procedural and administrative rules the Supreme Court would adopt, that they must not be in conflict with law. That simply means, that if they adopt a rule, which the legislature feels is not a good rule. That the legislature may change that rule. And secondly, I want to point out that, in addition, to that check by the legislature that the functions of the chief justice or the chief administrative officer of the judicial system are subject to the rules of the Supreme Court itself. It specifically so states. So you do not have any possibility whatsoever of any kind of a dictatorship or tyranny by the chief justice of the Supreme Court. We considered these matters in the judiciary committee and these points were made. There were certain people who did advocate that the chief justice be the chief administrative officer, period. But we couldn't buy that, a majority of the committee. And we specifically put these safeguards in there in Section 5A, with respect to the power of the Supreme Court...make rules that they shouldn't be in conflict with law and couldn't be. And that the chief justice while he was the chief administrative officer, he was subject to the rules adopted by the whole court, which in turn is subject to law enacted by the legislature. So, far from creating any type of a tyranny or dictatorship or making it possible on the part of the chief justice, it's just the opposite. And as Justice Tate said, any system such as the judicial system, there is a need for one individual to administer the system to whom you can point and where responsibility rests. And that's all this does, and it has plenty of safeguards that would deliberately put in, intentionally, to avoid the possibilities that Mr. Lanier and Mr. Fulco feel might occur. I simply want to point that out to you.

Question

Mr. Burns Mr. Avant, what you're saying in effect is it not, that even if they adopted this amendment, Section 5A would still prevail and the Supreme Court would still have supervisory administration?

Mr. Avant That's right... The Supreme Court would still have their power under 5A to make the rules, but you wouldn't have a single individual that you could look to, to pinpoint the responsibility for saying that the system is administered. And that the rules...

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Further Discussion

Mr. Burson I want to speak in opposition to this amendment. Because I do not construe the language of the committee proposal in any sinister terms. If you will look at Section 10 of the present Article VII of the constitution, it says that the Supreme Court has control of and general supervisory jurisdiction over all inferior courts. It seems to me that that language is much stronger than what is in the committee proposal here, which simply necessitates administrative supervision. And certainly the Supreme Court has never exercised any sort of tyranny over lower courts. And make no mistake about it, we need someone in the judicial system with administrative supervisory power. It is well-known that we have had occasions in this state where district court judges simply were not doing their work. And you need someone in the judicial system with the authority to bring them to toe and require them to do their work. And I submit to you that you should vote down this amendment and maintain the concept of the committee proposal.

Question

Mr. Nunez Mr. Burson, Section 10 in the present constitution you are quite right it reads almost exactly like Section 5. But aren't we in this particular section giving the Supreme Court chief justice additional powers by making him the chief administrator. Which to me, reads quite different than saying there shall have supervisory jurisdiction over all the courts and coming back and making the chief justice the chief administrator over all lower courts.

Mr. Burson Except Senator, that you also have the language in the present Section 10 where you say that the Supreme Court had administrative control, would certainly include administrative control.

Further Discussion

Mr. Dennis Mr. Chairman, fellow delegates, I will be very brief because I believe Mr. Avant and Mr. Burson have covered very thoroughly the reasons we should defeat this amendment. I would like to point out to you though, that we need the power to be able to have some check on a judge who is not fulfilling his duties because the impeachment and recall have, by experience, proven an inadequate remedy except for gross misconduct. The judiciary commission is designed only to remove judges for gross misconduct. We need something in the administrative arm of the court to bring about some discipline short of removing somebody from office. And I would like to point out to you that the chief justice of the Supreme Court is exercising these functions at the present time under the present constitution. If this amendment passes, we will have, in effect, stripped one of the three main branches of our state government of its head officer. The executive branch has a head officer in the governor, both houses of the legislature have their top officer and I believe it would unduly weaken the third branch of government to take away from it, its chief officer and put in place of it a rule by committee. So I ask you to vote against this amendment.

Question

Mr. O'Neill Judge Dennis, would this administrative duty include setting some forms of compensation for different members of the judiciary?

Mr. Dennis No, sir.

[Previous Question ordered.]

Closing

Mr. Perez Mr. Chairman and delegates to the convention, I submit to you that the proposal before us now, unless we adopt this amendment, will create one of the most radical departures from the

present court system which we now have in this state. Realize that the funds for the operation of our local courts come from local funds, from the various court costs which are paid by the various litigants from the fines and so forth. And here we would be making the Supreme Court, the chief justice of the Supreme Court the czar over the administration of every district court in the state. He could order that more employees be hired, even though the funds might not be available locally for the employment of those particular employees. He could order the judges when they must sit, in spite of the fact, that according to local custom they may want to sit at different times. There are so many things which can be done and which are included in the term "administrative officer," which has never been employed by the Supreme Court over local courts before. I submit to you that what we have done in Section 5A, in which we gave the Supreme Court the general supervisory jurisdiction over all other courts, authorized that court to establish procedural and administrative rules not in conflict with law. We have given to the Supreme Court all authority that is needed with respect to the supervision of the lower courts. But we go so far as to give the chief justice of the Supreme Court the administrative functions over all local courts, then I say to you we will be going so much further, so much further, than we have ever gone before. I therefore urge that you adopt the amendment.

Questions

Mr. Stovall Mr. Perez, I don't see anything in here that sets the Supreme Court out as some kind of czar?

Mr. Perez When the Supreme Court would be put in a position as administrative officer of the lower courts, it would then put the chief justice of the Supreme Court in a position where he could dictate all of the terms and conditions under which those local courts would be operated and I use the term "czar" advisedly.

Mr. Stovall Mr. Perez, don't you believe in a proper administration of justice?

Mr. Perez Yes, sir, I do and I have great faith in the electorate of this state and the electorate of this state elect their district judges and it's up to the electorate to determine whether that judge is doing a good job. The chief justice of the state represents only one section of the state, does not represent the entire state or is not elected from the entire state. Therefore, I say to you sir, I believe that the electorate, the local people, who elect those judges should be the ones to determine whether or not the judge is doing a good job and whether he is administering his court properly.

Mr. Stovall Mr. Perez, should we make our decision on the basis of what a few district judges might wish or should we make it on the basis of a properly administered judicial system for the state of Louisiana?

Mr. Perez I say to you, sir, we have a well administered system now. And generally it has worked extremely well and I don't see any reason for the radical departure that is proposed by the committee proposal. And unless we adopt this amendment we will have a radical departure in our court system.

Mr. Avant Mr. Perez, are you aware of the fact that the fizz that you just expressed was specifically considered by the Judiciary Committee and that the reason in dealing with the powers of the clerk of court in Section 31, we included this language: "The clerk may appoint deputies with such powers and duties that may be prescribed by law and he may appoint with the approval of the district judges, minute clerks with such powers and duties as may be prescribed by law." Do you know that the fizz that you expressed was the reason that this was written the way it was written?

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Mr. Perez No, I did not attend the particular committee hearing to which you refer. But I say to you sir, that the permissive proposal which you just read to me with respect to the clerks would not in any way stop the total administration of the court by the chief justice.

Mr. Avant I must respectfully disagree with you, sir.

[Amendment rejected: 54-60. Motion to reconsider tabled. Previous Question ordered on the Section. Section passed: 100-15. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter "Section 7. Supreme Court, Judicial Administrator, Clerks and Staff.

Section 7. The Supreme Court has authority to select the judicial administrator, its clerks and other personnel and prescribe their duties and compensation."

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, this section continues the present offices of judicial administrator, and clerks and staff of the Supreme Court. And grants the Supreme Court the authority to select them, prescribe their duties and compensation. This will not change the method in which the Supreme Court is now operating. I ask for your adoption of the section.

Questions

Mr. Anzalone Judge Dennis, in the previous article we talked about the chief justice as the chief administrative officer of the judicial system. Section 7, we say the Supreme Court has authority to select a judicial administrator. Sir, my question to you is why do we have two judicial administrators and would you not agree that we should take judicial administrator out of Section 7?

Mr. Dennis First of all, I do not agree that we should take it out. Kindly, I don't believe that they are the same things. The chief justice is the chief administrative officer, he is an elected state official. He has been vested with this authority by the people who elected him and now we have decided that if he is the senior member of the court, he is vested with this role. The judicial administrator is not elected. He is selected by the court and he performs the clerical duties that are related to administering the court system. It's really the office of judicial administrator, and could be called by another name. But it's actually, if you want to call it that, it would be similar to the role of an executive assistant of the president of a big corporation or something of this nature. This man is not elected, he has no authority on his own, he acts only upon the authority given him by the chief justice. And of course, we have just debated the fact that the chief justice's authority comes from the Supreme Court itself.

Mr. Bollinger One short question, Judge. Who sets the compensation now for these duties under the present law?

Mr. Dennis The legislature has passed a statute, which allows the court to set the compensation. However, the legislature has not given complete control because it must still appropriate the money. And we are not giving the court complete control here because even under this provision the legislature would still have to appropriate the money which would be an effective check, should there be an attempt to overcompensate this office.

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Gravel and Mr. Fyburn] Page 3, line 15, after the word "duties" and before the word "and" insert a period and delete the remainder of the line.

[748]

Explanation

Mr. Gravel Mr. Chairman, ladies and gentlemen, the purpose of this amendment is to delete from the proposed Section 7, the authority given to the Supreme Court to fix the compensation of the judicial administrator and its other employees. I don't anticipate that they would do so, but this provision as it presently stands, could permit the Supreme Court, for example, to fix the salary of the judicial administrator at \$50,000 a year. Could we make any provision whatsoever with respect to other employees regarding compensation. If this amendment passes, and we delete the words "and compensation" from line 15, then the legislature of course, may authorize the court to fix salaries in some instances. And if there is an abuse of that authorization then the legislature could change it. But this is a very dangerous provision to put into a constitution because we are then constitutionalizing the authority of the Supreme Court to fix salaries without any right to limit such authority at all by the legislature. I don't believe that the authors of this proposal had that in mind as the intention of the section, but certainly that's the way it would have to be fairly interpreted. I urge the passage of the amendment.

Questions

Mr. Dennis Mr. Gravel, are you aware that Section 12.1 of Article 7 of the 1921 Constitution already authorizes the Supreme Court to provide for the salary of the judicial administrator, and that there has been no abuse since this was adopted in 1966?

Mr. Gravel I am aware of that, and I think it's a bad provision to have in the constitution because it does permit abuse. Now I think there is no question but that the Supreme Court under that particular authorization can fix the salary of the judicial administrator at \$50,000 a year, if it wants to. And the legislature in my judgement would be powerless to do anything about it because a court would be acting under the mandate, under the authority of the constitution. I think that ought to be out of the constitution completely.

Mr. Dennis Do you agree, sir, that the legislature would still, even if what you say would happen, have an effective check by refusing to appropriate the money?

Mr. Gravel I think that's possible. But, I'm not too sure but that the judicial administrator would have a valid, legal claim under the constitution to recover that money from the state and get a judgement. This is a dangerous, dangerous provision. Here it would be a dangerous provision anywhere else when any authorization is given to anybody but the legislature to provide for compensation for public employees.

Mr. Kilbourne Mr. Gravel, under this provision is it in the realm of possibility that the Supreme Court could mandamus the legislature to provide this money? I'm not saying that would happen, but is it possible? I was told by a so-called expert that it could be done.

Mr. Gravel Mr. Kilbourne, I believe this. I believe this provision takes all discretionary power away from the legislature with respect to the compensation for the particular officials referred to in the section and rest the exclusive unbridled power to fix salaries in the Supreme Court. This accords to the Supreme Court a constitutional right to fix compensation and the level of salary payments that are to be made to these employees. That's just not the kind of thing that belongs in the constitution.

Mrs. Zervigon Mr. Gravel, you just made a very sweeping statement that no one but the legislature should set the salaries of public officials. You mean public officials paid from state funds don't

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you?

Mr. Gravel Yes, I surely did.

Mrs. Zervigon You would have no objection to local government to raise their own revenues setting the salaries of their own employees would you?

Mr. Gravel Well, I'll have to give that consideration in the light of maybe some other factors. I wouldn't want to make such a sweeping statement at this point.

Mr. Stinson Mr. Gravel, the only mention has been in the judicial administrator and saying that under the constitution they can fix the salary. But, at the present time, isn't it a fact that the legislature fixes the salary of the clerk?

Mr. Gravel Well, there was an amendment to the law just passed at this last session of the legislature that did authorize the Supreme Court to fix the salaries of the clerks of the Supreme Court. But if that authority is abused, then the legislature can revoke the authority. There's the difference between what the legislature can do and what this constitutional provision sets forth.

Mr. Gravel It doesn't apply to the commissioner of agriculture.

Mr. Munson I was going to ask you that did you know that I wished you had asked me to coauthor this amendment?

Mr. Gravel No, but I'll be glad to do it right now, sir. Thank you, Mr. Chairman.

Further Discussion

Mr. Dennis Mr. Chairman, fellow delegates, I rise in opposition to the amendment. As has already been brought out, this same provision was added to our present constitution in a statewide election of our people. It gives a measure of independence to the judiciary branch of government. The committee considered this, considered the argument and decided to continue this provision and this measure of independence. It took into consideration, in doing this, that the legislature still would have an effective check upon any abuse because it could refuse to appropriate the money for an excessive salary. Even if a judgment could be gotten against the state, which I do not believe it could, as Mr. Gravel suggested, it could refuse to appropriate the money to pay the judgment. So there is no possibility, no real possibility, of an abuse of this. I think that we should continue it in order to accord this measure of independence to the judiciary branch.

Questions

Mr. Womack Judge Dennis, wouldn't this lock into the constitution a privilege and right to the judge to employ his secretary and an assistant secretary at twenty-five thousand a year, if he so wanted to?

Mr. Dennis As I said, I don't believe the legislature would have to appropriate such a salary. If they thought...

Mr. Womack It's very questionable whether you'd have to appropriate it or not. Doesn't the judge ...

Mr. Dennis Well, I respectfully disagree that the judge...I respectfully disagree with the other attorneys who have expressed a contrary view, but I believe that our legislative article grants to the legislature the exclusive right to appropriate the state's money. I believe this is clear that they have the discretion in this matter and that if they refuse to appropriate the money, it's not going to be appropriated.

Mr. Womack Judge Dennis, one other question.

Doesn't that judiciary level draft on the state treasurer's office for their salary and expenses of their office?

Mr. Dennis All of the judges?

Mr. Womack They draw a warrant on the state treasury. Not on the local level, but on this level. They draw a warrant...

Mr. Dennis Yes, the Supreme Court and court of appeal judges are paid exclusively with state funds. The district...

Mr. Womack They draw a warrant. What I'm trying to establish is, though, that the legislature doesn't have that appropriation right in their salary and that expense. They draw a warrant on the state treasury for their compensation in this field. Isn't that right?

Mr. Dennis That's correct, but that's money that has already been appropriated, Mr. Womack. If it hadn't been appropriated, they couldn't draw it.

[Previous Question ordered. Amendment adopted: 94-21. Motion to reconsider tabled. Previous Question ordered on the Section. Section passed: 114-1. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter Section B. Courts of Appeal. Panels. Number Necessary to Decide Term.

Section B. The state shall be divided into at least four circuits with one court of appeal in each circuit. Each court shall sit in panels of at least three judges, selected according to rules adopted by the court. A majority of the judges sitting in a case must concur to render judgment. The term of a court of appeal judge shall be twelve years.

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, this is the first section that we will take up pertaining to the courts of appeal of our state which are the intermediate appellate courts between the Supreme Court and the district court. In the present constitution, the state is divided into four circuits and there is one court of appeal in each circuit. We have continued that same division in this proposal. The next section will say that these circuits can be changed by two-thirds vote of the legislature and that until they are changed, the present circuits are retained. Section 8 will provide that the judges sitting on these courts shall sit and hear appeals in panels of at least three judges. That means in every case, three judges will hear the oral arguments and consider the written briefs, and will render a decision. However, you will have noticed the words "at least three." By saying that at least three must sit on each case, this sets forth a minimum requirement and does not set forth a maximum requirement so that if the judges on these courts want to hear a very important case en banc we call it in legalistic language, it means all of the members of the court sitting on one case, there is no stopping that to prevent that, or to prevent a court, if its workload so demands, from sitting in panels of more than three. But they must have at least three upon each case. Of course the rule that a majority must concur is retained also. The term of court of appeal judge shall be twelve years. This is the same term that has been in our law for many, many years, in our constitution since 1971, and I believe before that. We have continued that also.

Question

Mr. Abraham Judge Dennis, I notice that the present constitution provides that the court shall sit in their respective domiciles only, and it's left out of this proposal. Is there any particular

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reason for that? Was it the intent of the committee that they should travel or that they should sit at their respective domiciles?

Mr. Dennis It is the intent of the committee to leave this up to whatever the litigation and the population of the state demands in the next fifty or a hundred years. It was for that reason, to provide this flexibility, that we did not designate a domicile for these courts or require that they sit at those domiciles.

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Lanier, et al.]. On page 3, line 23, after the words "shall be" and before the word "years", delete the word "twelve" and insert in lieu thereof the word "ten".

Explanation

Mr. Lanier Mr. Chairman, fellow delegates, yesterday the majority of this convention, in its judgment, determined that it was in the best interest of the people of the state of Louisiana, that the judges of the Supreme Court of Louisiana should be reviewed by the electorate in their districts on a ten-year basis. I now propose to you, along with several fellow coauthors, that this policy consideration and judgment that you made yesterday is applicable in the same way to the court of appeal of the state of Louisiana. At the present time, the judges of the courts of appeal have terms of twelve years, and this is the committee proposal. Since we have established the term for the Supreme Court of Louisiana at ten, I am sure that all of you will agree that we should not set more than that amount for the courts of appeal. In view of an amendment that is coming up very shortly by my good friend, Burton Willis, I think it is clear that the vast majority of the people in this convention feel that the judges in the district courts should have terms of six years. Therefore, we are in the position of making a judgment determination of whether or not we feel the courts of appeal should have terms of ten years, not more than ten years or less than six years. I feel that a term of ten years is a reasonable term to give courts of appeal judges. I think that this is a reasonable time within which the people can review these judges on a ten-year basis. I think, in my judgment, it would be in the best interest of the state that they be reviewed every ten years. I would ask you to support this amendment. I might further add that one of the most recent states in the United States to adopt a new constitution is the state of Illinois. In Article X of the Judiciary Section in the state of Illinois, they adopted ten-year terms for their judges of the court of appeal and their Supreme Court. Now I don't mean to suggest to you that what is in the best interest of the people of Illinois, is necessarily in the best interest of the people of Louisiana. Only you, the delegates, can make that determination. But I do suggest to you that at least in Illinois they felt that this was a reasonable amount of time for the terms of their appellate judges. And accordingly, fellow delegates, I would ask your adoption of this amendment. At this time I will be happy to yield to any questions, Mr. Chairman.

Further Discussion

Mr. Tate Mr. Chairman, fellow delegates, yesterday when the issue of the terms for the Supreme Court came up, I was unable to speak under my own view that I should not speak on something that personally concerns me. This is the first time I've had a chance to express my view on this. I rise to oppose the amendment and to be in favor of the twelve-year terms for the court of appeal judges that we have had consistently since 1921 when those courts were started, increased. Now, the reasons are obvious. As some of you are in the short House, in a close vote, and first, Louisiana may not have had a chance to consider them. They are: (1) When you put a man on an appellate court,

his work involves him staying at the domicile of that court as much as possible and carrying out the burden. His work further involves his certain amount of insulation, if you will, from the active political world. We know when a salary raise is at issue and so on, sometimes we forget that. But nevertheless, in the previous portions of the constitution, for instance, where did you put the power to make difficult questions like reapportionment? You put it in the courts because you had some confidence that these courts were beyond the immediate reaches of immediate political interests. Now, I rise to support this, first, on its merits. I think court of appeal judges are entitled to twelve years whether or not the Supreme Court has only ten. Second, I have to admit to being devious. If you keep the twelve years for the court of appeal, it will give those of you who wish to reconsider the fourteen year term for Supreme Court judges an opportunity to do so. I rise in opposition to the amendment. Now I'll answer questions.

Question

Mr. Roy Judge Tate, isn't it a fact that the court of appeal judges generally live in their home areas, such as Judge Culpepper lives in Alexandria and just commutes to Lake Charles whenever they have hearings and doesn't have to move down there like Supreme Court justices?

Mr. Tate That is generally true, although, as you may know, when I was working in Lake Charles, I spent more than half the week down there.

Mr. Roy I understand, Judge, but you are an exception to the rule.

Mr. Tate And Judge Fruge too, and so on, and the Second Circuit, I believe they are all in Shreveport. I understand.

Further Discussion

Mr. Smith Mr. Chairman, fellow delegates, I'm in favor of this amendment. The other day when the Supreme Court came up I voted for it. In fact, if the amendment comes up for eight years, I'll vote for that. I think they ought to have a little longer in the district courts and if this is on the amendment, I'm going to vote for it. I'm an attorney. I've been practicing over 43 years. I'm familiar with the court system. I feel like the judges have too long a term. Right now they gave the argument for the Supreme Court, they weren't staying at home, but the court of appeal lives around their district. They can get around it. So I think we should go ahead with this amendment. It's a political office. You talk about appointive office, this is political. They have to get elected and they go around to see the people and I think it's better for them to get elected because they can keep next to the people. So let's go along and make it ten years and if this other one comes up for eight, I'd vote for it.

Further Discussion

Mr. Kean Mr. Chairman, fellow delegates, I rise in opposition to this amendment. In my opinion, we made a serious mistake yesterday in reducing the term of the Supreme Court justices to ten years. In my opinion, we did it on the basis of rhetoric rather than reason. I think to now reduce the terms of the court of appeal judges simply compounds the error that was made by this convention yesterday in dealing with the terms of the Supreme Court justices. I came to this convention with no mandate to change the terms of appellate judges. I've had no constituent of mine suggest any abuse that arises out of the present terms of office that the constitution provides for the appellate judges. They have been traditionally twelve years for the court of appeal. The present term of the Supreme Court appeal ran for terms of offices that extended for twelve years. I know of no instance in this convention to this date, until we dealt with the

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question of the term of the Supreme Court justices, where in the present system and in fact, change the term of office, the length of the term of office, of any elected officer. In my opinion, we've got a good appellate judicial system. I think that when we make these kind of changes based solely on the rhetoric of returning the judges to the people whence they came, without any demonstration of abuse in the present system and in fact, in face of demonstrated responsibility in the present system, then I think we make a serious mistake, as I have indicated. I hope that you will vote down this amendment. I'm even more hopeful that when that takes place that we can go back and correct the error that occurred yesterday in reducing the term of the Supreme Court justices.

Further Discussion

Mr. Burns Mr. Chairman and fellow delegates, yesterday I voted to retain the term of the Supreme Court justices at fourteen years. I would be inclined to, if I had my wish, to retain the court of appeal judges at ten years and I don't think I can reconcile in my own mind giving the Supreme Court judges ten years and the court of appeal twelve years. It just doesn't make sense. So rather than risk the chance of winding up with the court of appeal having eight years, I ask that you support this amendment.

Further Discussion

Mr. Burson I'd just like to say, briefly, and speaking really neither particularly for nor against the amendment, but on the general proposition that I think it's a grave error on the part of delegates to this convention to consider an appellate court judge much as if he were a judge of the peace. The function of an appellate court judge is quite different from that of a trial court judge. A trial court judge, basically, hears the evidence and decides on the facts before him. The role of the appellate court judge, although to be sure under our system he can review the facts, is much more detached and more in fact concerned with the law as an ongoing institution. I feel it would be extremely regrettable if we were to make the decision here in this convention to reduce the term of an appellate court judge in this state to say, eight years. We've got to consider that when a man undertakes such an office, for instance in the circuit that I come from, the Third Circuit Court of Appeal, he's got to get elected to that office by campaigning over twenty-five parishes. He's got to spend most of his time, if he comes from Alexandria, let's say, he's got to spend most of his working time in Lake Charles. He probably will wind up moving over there. I think it would be very unfortunate if we were to ask people to have to run three times for such a high judicial office to even be eligible for a twenty-year retirement. I urge you to at least maintain ten-year terms for these judges and personally, I would prefer to leave them alone at twelve. I'm basically conservative, I guess, when something is working well I believe in leaving it alone. My experience with the courts of appeal in this state has been uniformly good. I say when something is working well, let's not disturb it. As Mr. Kean pointed out, we haven't gone in here and changed the terms of office of any other officials in our state. I really see no justification, especially in the realm of appellate court judges for such a change.

Further Discussion

Mr. Casey Mr. Chairman and delegates, the Chairman in giving some advice on making comments at the Speaker's stand indicated that if you can't say it in a minute and a half, you probably have missed the point all together. So I'll try to be as brief as possible. For such gentlemen, we committed a serious mistake yesterday. I think we, in some manner, shape or form should try to rectify it. I think this may be the first step by refusing to accept this amendment. All judges, as far as I

am concerned, that's only my opinion, ought to have terms of at least twelve years, if that be possible. It's easy for individual delegates, and I've seen this in the legislature also, where judges, at times, are subjected to some difficulties in their relationship with individual legislators. I think this could easily be prevented if we would give them a reasonable length of time to serve a term of office, which is awfully important to our individual citizens. These judges, when they accept these positions, give up a law practice. They give up their means of support on a permanent basis and they go into a completely new field, although it's still working with law, they give up something, they take a risk and they should have some sort of stability that a position of this type should be able to offer them. Judges on an appellate level, whether it be the Supreme Court or the court of appeal are not in contact with people. Their contact is merely with members of the bar—with attorneys. A person who may be popular in a certain appellate district, because of his popularity and because of a well financed campaign, can easily defeat an incumbent and then he can easily detract from the stability that should be offered to a judge in an appellate position. These gentlemen who seek the appellate level of our judicial system are dedicated people. We have to realize that the average age, and I'm picking a figure out of the sky, these gentlemen are in their late thirties or early forties or even later at this time, and they are taking a great risk. If these gentlemen are voted out of office, and a person who is doing a good job on the appellate level easily could be, from an opponent who is popular and well financed, but these gentlemen are taking a very serious risk in seeking these higher offices because if they are voted out and they have only served, let's say, four years, or six years, or eight years, or ten years, they will probably go back into the practice of law and establishing a practice that will assist them in sustaining themselves to live and assisting their families, also. This is a very serious problem. It's easy to pick on judges on the appellate level. I think we should be awfully considerate and cautious in making these decisions. We must have a stable judiciary and a particularly stable appellate judiciary. I think we were just nitpicking yesterday when you really think about it. When you go back to the fact that here we reduced a period of time for the Supreme Court from fourteen years to ten years, now what's so good and what's so important about that? Did we really do a service to the people of Louisiana, and in particular, did we really, honestly, when you think about it, do a service to our judicial system? I think it was absolutely ridiculous and uncalled for yesterday when we did something of that type. If you really think about it, the judges should have a proper length of time to perform their duties on the appellate level. These are honorable, intelligent men. They should be removed from politics. They should have stability in their position. I realize that some of the difficulty that we had yesterday and some of the discussion came from the fact that the U. S. judges, whether they be in the Supreme Court or district level or circuit level are appointive and do not run for office. Gentlemen, our judges on the appellate level have to run sometime or other whether it be when they are initially elected or when they run for reelection. They are subjected to a vote of the people. I think we are just being nit-pickers about it. I think we have to get out of this rut that we're in and approach this on an intelligent basis. I concur with what Justice Tate said. Let's stick to the facts that are here and I think those of you that regret and made a mistake yesterday, we can go back to a longer term for the Supreme Court. Thank you.

[Cullum called 12 delegates present and a quorum.]

Further Discussion

Mrs. Miller I think we made a serious mistake yesterday in limiting the Supreme Court judges' term.

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I think this would be a second serious mistake. I do not see that we should compound the error. I think we should vote this amendment down and that we should seriously consider going back and looking again at what we did yesterday. I urge you to defeat this amendment right now.

Further Discussion

Mr. Alario Mr. Chairman, members of the convention. The last couple of speakers pointed out to you just what the intent of defeating this amendment would do. It's going to give them a chance to come back and say well since you got twelve years now for these Judges, then we ought to come back and reconsider the Supreme Court and put them back at fourteen years. They're fixing to bog down this convention again. To bog us down like we've been in the last few weeks. To reconsider, reconsider, reconsider. The average man on the street doesn't know from one day to the next how this convention is going to turn. One day we say we're going to do this and the very next day we're going to do just the opposite. We come back a third day and we're doing something altogether different. He doesn't know what to expect when he reads the proposal from one day to the next. We voted to cut the Supreme Court justices down to ten years and we ought to now proceed to be consistent. I, personally, am in favor of eight years for these Judges and six years for the district judges. I'm going to ask that you, however, would support this ten year term and I'm going to come right back with another amendment to bring it to eight years and let's be consistent and make them eight, ten and six.

Further Discussion

Mr. Dennis Mr. Chairman, fellow delegates, Justice Tate, Mr. Casey and Mrs. Miller and others have already given you reasons for rejecting this amendment far beyond my capacity to add to, but I would like to remind you that our committee considered these terms very carefully and I believe that there is good reason to reconsider this matter. There were quite a few people absent yesterday. I believe there may have been some people who have changed their mind. There is no lobbying with changing your mind. If we have acted rashly on something in this convention, I think we should go back and reconsider it. So for that reason, I ask you to vote this amendment down and to reconsider the blow that was dealt to our Supreme Court yesterday.

Further Discussion

Mrs. Warren Mr. Chairman and fellow delegates, I'm going back to a phrase that was quoted many years ago and some of you might know where it came from. It says "a wise man will change, but a foolish man never does." There was a mistake, I believe, made yesterday. We have been lobbied from anybody. I came to this convention with my mind made up on this issue. This is one issue, along with some others, that my mind was completely made up. I didn't need anybody to tell me anything that was in the law books on it before, or what you planned to put in it. I had my mind already made up. I had said I was going to vote against this amendment, but I really wanted the twelve and I think I stated that very clearly this morning. That I wanted twelve years and I really wish that the Supreme Court judges could have maintained their fourteen. I hope they will. So I'm going to ask you to let your conscience be your judge.

Further Discussion

Mr. Wall Mr. Speaker, fellow delegates, I don't say anyone made a mistake yesterday. No matter which way they voted on the issue. But I think the majority that voted to reduce the Supreme Court were correct for the good of the people of this state. There's nothing like making people responsive to the people and their needs. How can a man know, how can a man respond unless he has to get

out to the people? You know one of the biggest problems we have, these hollers than thou judges that say "take us out of politics." Those are the biggest bunch of politicians in this state and if you keep them coming before the people, you will make better politicians out of them. You can't take politics out of politics, but you can improve the politics of the judiciary if you'll keep them coming before the electorate. There's not a bigger politician in this room now than the judges sitting around in here. Not a bigger politician than they are all politicians. They politic with that judiciary and that position they hold all the time. I don't say that's bad, but let's keep them to where if it is bad that the people can vote them out of office. Why did they have those long terms? Why do they have longer terms than anyone else? It's because they've got the hammer. They have that last word many times. There are so many people that are part of the judiciary that serve in public bodies that it's only natural for them to feel inclined to go along with the judges. That's why they have those long terms. Because they are politicians. That's why they don't have to respond to the people, because they are politicians. We want to keep them politicians but we want to improve the politics of the judiciary. I ask you to vote for this amendment. We did not make a mistake. When I say this, I don't mean any discredit to anyone, but I wish that this was one issue that the lawyers didn't vote on. There'd be no question then, if the man making a living didn't have to go before these judges, there'd be no question. The politicians foot them to run, not every ten years, but every time they made a bad decision. That would be pretty often. Ladies and gentlemen, we want to have a good compromise here. Let's adopt this ten-year amendment. Thank you.

Questions

Mr. Drew Mr. Wall, from what you've said, am I correct in interpreting your argument that decision should be based on political expediency and not on the law? Is that your argument?

Mr. Wall No. You are incorrect. I was jesting when I said after every bad decision, Mr. Drew, and I think everyone knew I was jesting when I said that. But I wasn't jesting in those other remarks.

Mr. Drew One more question, Mr. Wall, and I hesitate to bring up a division of attorneys and those who are not attorneys, but would you not have to agree that possibly we attorneys might know a little more about the courts because that's where we are day after day than those who are not in the courts?

Mr. Wall Mr. Drew, I welcome that question because I'm going to tell you how these attorneys know more about it. You know how the attorneys know more about it, is because the judges call them in their chambers. They call them in there without their clients. Now that's justice! Now look, there's not but one thing that could be worse than the judiciary, that's the legislature. But the judiciary, they don't give the people justice, they cover up their mistakes and they don't let it out. They call the opposing attorneys in without their clients and they hammer them and beat them over the head. That lawyer has got other cases coming up in that court and they tell them "now look, this is what I think you ought to do" and that's what the attorney has to do. Many times he has to let his client down because he is put in closed quarters with the judges. I'll tell you what. I'd like to see them opened all up and I'd like to see an investigation of these "behind doors" of the judges and these lawyers. Yes, they know more, Mr. Drew, because they get them in there behind closed doors.

Further Discussion

Mr. Drew Mr. Chairman, ladies and gentlemen of the convention, I have heard a lot of harangue from this podium since we've been here, but I don't believe I've ever heard anything that reached the depths of this last harangue that you just heard.

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I've been practicing law for 31 or 32 years now and never on any occasion has a judge gotten me in the office, or any other lawyer that I know of, to put any pressure on me to do anything. The only reason I brought up the fact that I did bring up about the attorneys, and I think if you will check the vote on the amendment to reduce the Supreme Court term to ten years, you will find that the vote among the attorneys was about five to one against that amendment. I do know this, I know that we have a system of courts in this state that has worked exceedingly well. Let me point this out to you, the judiciary has the audacity to say that a judge can't get out and feel the pulse of the public so they could render the proper decisions. That could in no manner be interpreted in any manner except to say that the judge should ignore the law and decide a case on political expediency. I have, on occasion, had to practice before judges who did just that, ladies and gentlemen, and it is an intolerable situation. Our judges do not fix policy. Our judges interpret law. There should be some insulation. I certainly would not favor anything along the lines of the federal judiciary. That is also intolerable. But I think we need to give these judges sufficient insulation to where they can still be some responsive, not to public feelings, but to where there is an opportunity to put them and the best attorneys on these courts. Let's not disrupt a system that has worked so well. I'm not one to say that we should continue to do something just because we've done it that way for fifty years. But I am one who says that if you have something good, do not change for the sake of change. I notice that the majority of those who are insisting on reducing terms of the appellate judges, the Supreme Court and on the court of appeal are not those who have to deal with them everyday in representing you before those courts. I don't know what to do on this amendment, ladies and gentlemen. I think we made a serious mistake yesterday. I was inclined to vote for this amendment only in order not to let this amendment reduce it further to eight years come before this convention. It is a serious decision that we are going to have to make. If we have to leave the Supreme Court at ten years, I cannot see the merit of where you could justify the court of appeal for a longer term. I don't know if we can go back and change the Supreme Court to fourteen years where they should be. It is a difficult decision to make. But I ask you, let's not disrupt something that has worked well. Don't you ever follow anyone who tells you that a decision in any case should be decided on political expediency rather than the law and the constitution of this state. When you do that, you have resorted to anarchy. I'll yield, Mr. Stinson.

Question

Mr. Stinson Mr. Drew, isn't it a fact that the lower you reduce the terms, the less likelihood that we will have the better qualified lawyers to offer for a judgeship race... to give up their practice. Isn't it a fact that we are going to have the people that Mr. Wall apparently wants, the politicians who run who can't make a living practicing law and want to get out and go around like he says and shake everybody hand and promise them everything if they elect him instead of saying I'm going to interpret the law as the lower court sends it to me.

Mr. Drew That is my deep concern, Mr. Stinson about reducing the term of the Supreme Court from fourteen to ten years.

Further Discussion

Mr. Gravel Mr. Chairman, ladies and gentlemen of the convention, I too oppose this amendment because I would like to see retained in the proposal a twelve-year term for court of appeal judges, and I would hope that we would correct what I believe was an error in reducing the terms of the members of the Supreme Court from fourteen years to ten years. Now, Mr. Wall has suggested that the lawyers,

you know, who are going to be for this kind of a proposition to give long terms to the court because they are afraid of what the court might do to them if they don't support that. I want to tell all of you now that I am going to vote against the retirement program that the judges have in this constitution because I don't think it belongs in the constitution and that's the only area of the proposed article where I have been seriously contacted.

Now, we made a mistake. We have provided for the election of seven judges to the Supreme Court and reduced their terms to ten years which, as Mr. Stinson pointed out, is going to cause a lack of effort or desire on the part of the best qualified people to seek the office. The same thing would be true if we reduced the terms of the courts of appeal. The Supreme Court and the court of appeal judges in most instances, after they are elected, have to maintain two homes and two places from which they operate. It's almost necessary to insure a high quality and top calibre judge that we afford to him some reasonable length in his tenure in order to get him to undergo the expense, the inconvenience and the displacement that occurs when a man serves on the court of appeal and the Supreme Court. I hope that we defeat this amendment so that we can retain the proposal of the committee for court of appeal judges and then when we do that, I hope, we will later on at some appropriate time reconsider what I believe to be a fundamental error that we have fallen into.

Vice Chairman Alexander in the Chair

Questions

Ms. Zervigon Mr. Gravel, we've heard arguments that the judges ought to be responsive to the people. I'm not an attorney so I have to ask you a question on that subject.

The legislature and the governor are policy-making people that should be responsive to the people. Do judges set policy or are they more in the nature of technicians?

Mr. Gravel I don't know that I understand your question. I don't think the judges set policy. They make judgments and adjudications that finalize a dispute between the litigants that are before them. Their judgments become precedents. But I certainly don't think that they are technicians in the sense that you suggest or policymaking. Their decisions do, of course, set precedents.

Ms. Zervigon Well, in the line with the duties you describe, why should they be sent home to the people for reconstruction on policy matters after a very few years?

Mr. Gravel Mrs. Zervigon, I just don't think we are talking about policy matters. I think the judiciary determinations that are adjudications and not matters of policy.

Ms. Zervigon Well, that was my point, Mr. Gravel.

Mr. Burns Mr. Gravel, I too think we made a mistake on yesterday on the Supreme Court judges, but inasmuch as we have, temporarily, at least, and if they should generate enough votes to reconsider that vote of yesterday, would there be anything to prevent in the event that this amendment passes for ten years, then to come back and readjust this in line with the Supreme Court. If it came back to fourteen and...

Mr. Gravel I think, frankly, Mr. Burns, that if we adopt this particular amendment, there will be less likelihood that we would reconsider the error that we made. And personally, I feel that a twelve year term for appellate court judges is also a reasonable term.

Mr. Burns Well, I agree with you. But at the same time I don't think it's realistic to have twelve years for the court of appeals and ten years for the Supreme Court.

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Mr. Gravel I think upon an understanding of that unrealistic situation if we defeat this amendment that we would have more chance of reconsidering the Supreme Court decision we made which I think was wrong.

Thank you very much.

Mr. Wall Mr. Gravel, you made a statement about your more qualified. I think we've said forth, the ones that run for the judiciary. I presume that you never made it for the judiciary because you didn't feel like you were qualified?

Mr. Gravel No, because No. 1 I didn't run and one of the reasons I didn't run was because I thought I might get beat. I think we've qualified judges. I think we've come a long way in this state at every level, city court, district court, court of appeals, Supreme Court. I think we've come a long, long way in the thirty some odd years that I've been practicing law where there's been a vast improvement of the judiciary, and I think that the more favorable terms at the appellate level have been one of the reasons why we do have a better judiciary today than we have had before.

Mr. Wall Is it true that lawyers make the kind of money that you make don't want to be judges, Mr. Gravel?

Mr. Gravel Well, I had to make mine. You know some people can marry into theirs.

Mr. Leigh Mr. Chairman and ladies and gentlemen of the convention, I'd say that's rather a difficult act to follow...Mr. Chairman and ladies and gentlemen of the convention, as I just said I think that's a rather difficult act to follow. I want to apologize to you. I have not appeared before this microphone until today and here I am twice in the same day. But again, I feel very strongly upon the subject that's under discussion.

I would like to endorse strongly the words that Mr. Drew has uttered as well as what Mr. Canille has said. I practiced law in this state for nearly fifty years before I got out every court that's in the state and no judge has every tried to compel me or call me aside to try to force me into a decision one way or the other.

Unfortunately, I could not be here tomorrow, I mean yesterday, because I was detained at home on important business and I was not here to vote on the question of the terms of the Supreme Court. But I suggest to you very strongly that the convention has made a mistake in reducing those terms from fourteen years to ten years and I would hope that some means can be found by which we can go back and lengthen the term to fourteen years.

It seems to me that if we defeat this amendment and fix the terms of the courts of appeal at twelve years as they are at the present time and as they have been recommended by the committee, and stabilize it at the twelve years, we will have a better chance of reconsidering the vote of yesterday on the fourteen year term for the Supreme Court, and I strongly urge that we defeat this amendment, reinstate... leave the terms of the courts of appeals at twelve years, and then at the proper time take such parliamentary steps as may be necessary to reconsider the vote by which the Supreme Court was reduced yesterday and I urge you to defeat this amendment.

Further Discussion

Mr. Abraham We've heard from many attorneys, but as a lay person I simply want to say that I am in favor of retaining the terms at twelve years. I see no need to change them to ten and I ask you to defeat this amendment and leave the terms at twelve years as they are now. And Mr. Chairman I move the previous question.

[Motion for the Previous Question
Withdrawn.]

Further Discussion

Mr. Jack Mr. Chairman and members, I rise against this amendment. Now in selecting judges, I want to elect people, that's my idea, that are close to the people. Then, when they serve, I want them to stay close to the people. We have what we call case law and that means not just interpreting what is in the legislative act, but considering other circumstances. It is absolutely necessary to be a good judge that a judge is close to the people, knows how the people think.

Now, as I said the other day, and this is a little change on it, addition to it. I'm for district judges for six years. I want to fix these terms so I know a judge will not neglect his work but will stay close to the people. Now a district judge, I can tell whether he's up on that bench because physically he has to be there or the case stops. So his term, six years I think is fine. And that goes for the Orleans Civil District and Criminal District.

Now as to the court of appeal, I'd like to see whose working in his library if he's on my client's transcript or brief, to be quitting, going out and politicking and I think he deserves a longer term. I think the Supreme Court judges do. I think it was a mistake yesterday when we reduced their fourteen to ten. I hope this will stay at twelve and we will rectify what was done yesterday.

Now I want to show you, and Mr. Chairman, would you...I rarely take the microphone and I want to be heard...I want to give you an example of a judge making a ruling, and Mr. Bollinger you will be interested in this too, I read it in the morning paper. Where he is abreast of the people...all right, o.k. when I am finished...where a judge keeps abreast of the people...I think that Judge Humphreys is such a man that takes interest in the community affairs and gets around. Now I notice he's from up in Rapides.

In the *Shreveport Journal* that I read this morning of last night a very interesting case is before him. If this case had been there ten years ago and some other judge had handled it...where a judge keeps abreast of the people who like to fish will have a right in their lawsuit against this company that's polluting a lake, to have a suit under our law, you have to have as a plaintiff a real interest.

The older decision says that people with just pleasure rights, not commercial fishing but for pleasure, recreation, they don't have a real interest. Judge Humphreys gets about, he knows the needs of people. Now that's an important thing. It is absolutely essential that in this day of time of stress and strain, that people have recreation and that's why we've built lakes. Now a judge that doesn't get out and know the people would not see what Judge Humphreys saw there. So I say that is judge one of hundreds of examples of reasons why judges should get out.

Now a court of appeals, leave this like it is. Let's correct the error of yesterday and go on with it. And thank you and I ask for a roll call to see how many are present so we can vote after the other speakers.

[Quorum Called. A delegate present
and a quorum.]

Further Discussion

Mr. Nunez Mr. Chairman and fellow delegates, I'll be very brief. I'm voting for the ten years because I believe ten years is a good enough or sufficient time for the courts of appeals justices. I voted for the ten years for the Supreme Court justices because I thought ten years was a long enough time for them.

I think that every member of this convention, whether you be business man, doctor, lawyer, labor, industry or otherwise is a voted thing for the same reasons. And I believe the direction we're heading, if we keep saying let's defeat this and give the court of appeals twelve years and let's go back and

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change the Supreme Court to fourteen years is exactly the direction that some people want to head. Let's go back and change the executive department. I would like to go back and change the legislature from eighty-five days to sixty days. And I think when we start doing this we are jeopardizing and I think the news media is probably right. We are starting to jeopardize the passage of this constitution because it just seems like we can't stick with the majority of this convention.

We voted yesterday sixty or fifty-nine to fifty-two. And I realize it's close. We are about to vote today to go back and redo or undo what we have done yesterday. Now I don't think that's the way this convention ought to run its business and I might be in a minority. But I think I can sense what I see is going to be a move on after we reconsider this if we don't pass it, we go back to the fourteen and we reinstate that, and you heard some of the delegates, let's go back and reinstate what we undid...or what we did in the executive department.

Well, I want to go back to the legislative department. I don't like eighty-five days and I'm a legislator. And there's a lot of people in this state don't like eighty-five days. So let's just keep going back and back and back. I think the personal attacks on the attorneys in this body are unjustified. I personally have enjoyed every bit of serving and appreciated the advice of the attorneys and the various people in these halls. I don't think we can do without them. I don't think we can do without the diversity of people we have in this hall, and I don't believe...I believe if we didn't have the diversity, we wouldn't be coming up with the good constitution I think we are. We are a debating society, we are a deliberating society or body, and that's what we are doing, but I think if we keep going back, and keep going back and keep going back, we are going to kill this constitution. And I think a lot of people want it killed. I, personally, don't. I want to see it pass. I would ask you to support the ten years. It's ridiculous to say we are going to give the Supreme Court ten years and then give the court of appeals twelve years. It's a mockery and I think we should go ahead and give them ten years.

Question

Mr. Fontenot Sammy, I noticed you and I voted together yesterday in a majority. Don't you agree that the people who are saying that we made a mistake yesterday, all happen to be in the minority? Isn't that correct?

Mr. Nunez Mr. Fontenot, if a majority of this convention January the fourth has made a mistake and submit it to the people, it's going to be submitted to the people. If the majority of the people after January the fourth make a mistake and adopt this constitution, it's going to be adopted by a majority of the people. And I don't see any other way we can operate but by the majority rule. But there are some delegates in here who evidently want to operate by the minority rule and put the minority will on the will of the majority and I think that's what's attempting to go in this convention.

Further Discussion

Mr. Anzalone Ladies and gentlemen of the convention, I am an attorney this week. I may not be next week. I do not think we made a mistake yesterday. We have long discussed the philosophy of responsiveness to the people. Let me explain something to you that has not been brought up before as to what a twelve year term will do for a judge in the court of appeals.

Mr. Gravel he said that he is going to oppose the adoption of the retirement benefits as set out in the constitution. I feel that in all probability it will be passed by this convention. If it is passed, on page 8, beginning with line 7, "a judge with sixteen years of judicial service may retire at any age. A judge of twelve years of judicial

service may retire with benefits commencing at the age of fifty-five. On retirement, a judge shall receive annually, as retirement benefits, four percent of his salary times the number of years served but not more than ninety percent." Ladies and gentlemen, let me tell you what this does. Four times twelve is forty-eight percent. Forty-eight percent of thirty something thousand dollars represents in the neighborhood of seventeen thousand dollars a year retirement from the time a man reaches fifty-five years of age on. I say to you to elect a man for one term, allow him to retire at the end of that one term on a retirement program which grants to him seventeen thousand dollars a year is by no stretch of the imagination making him responsible to the people. I reiterate, I do not think we made a mistake yesterday, and I hope we don't make one today.

Mr. Chairman, if there are no other speakers, I move the previous question.

[Motion for the Previous Question withdrawn.]

Motion

Mr. Thompson I move the previous question.

[Motion for the Previous Question adopted: 60-47.]

Closing

Mr. Henry Mr. Chairman and ladies and gentlemen of the convention, I stand of course, to support this amendment and for several reasons primarily because if we defeat this amendment, what we are going to end up with in this proposed constitution is twelve year terms for appellate judges and ten year terms for the Supreme Court justices. Because there's just not any way, I don't believe, that the delegates of this convention are going to muster up eighty-eight votes on such a term for the Supreme Court justices to call that motion to reconsider from the table.

In that connection, let me say this. We've talked about the sanctimony, I guess might be the word, of the judicial system in this state. What's so much more sanctimonious about that branch of state government than the legislative branch or the executive branch?

Sure, we need longer terms and ten years is sufficiently long, I believe. Someone pointed out a while ago that, well, the best lawyers won't run for the shorter terms.

Well I submit to you that the same rule applies in the legislative and executive branches of state government. But nobody seems that concerned about that. I don't see anything wrong at all in a democratic society to people having to be submitted to the electorate on a more frequent basis than we have in this state insofar as the judiciary is concerned. There's not a better friend anywhere in this state, than I've been to the judges. Ask them. Ask them about that when we came up with that pay raise and it wasn't popular. I believe in compensating them, and I believe in paying them well. I believe in paying them so we can attract the best. But I don't think we ought to lock them in for life. I think it's ridiculous.

I think the arguments that have been presented in so far as longer terms are fallacious, they are not necessary and they have not been made today.

So I ask you to accept this amendment so that we can get on with the business of this convention. Thank you.

[Revised vote ordered. Amendment adopted: 78-39. Motion to reconsider tabled: 14-41.]

Chairman Henry in the Chair

Personal Privilege

Mr. O'Neill Ladies and gentlemen of the convention. I rise briefly to ask you to join with me in a

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silent moment of prayer for a friend of mine who was killed last night in a murder-robbery.

Marshall Bond lived and was believed to be the longest living elected official in the state of Louisiana. He is currently or was currently an Alderman in the town of Zachary. He served thirty years as an Alderman, eight years as the Mayor of Zachary. He served on the former Police Jury of East Baton Rouge Parish and also on the Parish Housing Authority.

Mr. Bond came to Zachary in 1923 and he opened one of the first drugstores in the area. He was known as Dr. Bond because there was no doctor in the area and the druggist then administered all the medical care to the persons who desired it in that area. And I must say that he never showed any partiality towards one segment of the population or the other, that he was fair in administering medicine just as he was fair in administering the policies as he was Mayor of Zachary.

He was brutally killed because he was known to have carried large sums of money which he loaned to people upon request. He didn't keep records and he didn't charge interest rates. He just loaned money to people. And because he carried such large sums of money someone killed him and they robbed him, a defenseless, seventy-five year old man.

I ask you now to stand with me and join in a silent moment of prayer for the repose of Mr. Bond's soul.

Moment of Prayer

Personal Privilege

Mr. Dennis Mr. Chairman, fellow delegates, in his closing, the chairman refused to yield to my question and that is his privilege and I don't quarrel with it nor do I quarrel with the position he took on the merits of the question.

But the question I wanted to ask is one that's been bothering me and I'd like to just share it with the convention.

If we are getting to the position where we can never reconsider a vote that we have taken except by this super majority vote, I suggest to you that we may be headed for disaster in that respect, also. Because if we do change our minds on something of importance and find ourselves boxed in and can't go back and change it and present a constitution to the people that we know a majority of the delegates disagree with in some respect, I think that would be detrimental to the constitution, also.

This article was mailed to you on Monday and I hope and pray that most of you had time and did consider it carefully before we took our votes. But I think there is a chance that a substantial number of delegates may not have had adequate time to consider some of the issues when they come before us, and if that happens, I hope that we will never find ourselves in the position where we cannot as an intelligent and democratic body go back and express the wishes of the majority of this convention on important issues.

Thank you.

* Recess

[Quorum Call: 94 delegates present and a quorum.]

Amendment

Mr. Poynter Amendment No. 1 [By Mr. Alario and Mr. Lanier], on page 3, line 23, after the words "shall be" and before the word "years" delete the word "twelve" and insert in lieu thereof the word "eight" and we need a technical addition, and strike out floor amendment 1 proposed by Messrs. Lanier and Alario and adopted by the convention on the day,

[Mr. Lanier deleted as author of the amendment.]

Explanation

Mr. Alario This would set the courts now at eight

years and would be a little more consistent with what we were talking about doing when the Supreme Court would have ten, we would go ten, eight and then six on the district court. I think it's been debated long and hard today and I certainly don't want to delay the convention any longer and I just ask that you support this.

[Motion for the Previous Question adopted: 54-35. Amendment reread. Amendment rejected: 14-84. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [By Mr. Lanier, et al.], on page 3, line 22, after the word and punctuation "judgment," and before the word "the" insert the following: "However when the judgment of the district court is to be modified or reversed and one judge dissents the case shall be reargued before a panel of at least five judges prior to rendition of judgment and a majority must concur to render judgment."

Explanation

Mr. Roy Mr. Chairman, ladies and gentlemen of the convention, in your wisdom yesterday, and I want to apologize for saying I thought it was a little dirty pool but I got a little excited. You voted that the appellate courts would have the right of review in cases. Let me point out to you, I hate to talk like a lawyer but I'm going to have to for those who aren't lawyers. Let me tell you what the present circumstance is in this state with respect to appeals to your appellate courts. There are four appellate courts in this state. They are numbered one, two, three, four. They cover certain judicial districts of this state, that is certain parishes. The first circuit court of appeal is here in Baton Rouge. It has one judge on it. The second circuit court of appeal is in Shreveport and it has five judges on it. The third circuit sits in Lake Charles, it has six. The fourth circuit sits in New Orleans and it has nine judges on it. Now as long as there were five judges on these different courts of appeal you didn't have much of a problem because this is what has happened in this case. You try a case in district court and a judgment is rendered. Yesterday I said ninety percent of the cases are appealed. I didn't mean it that way. What I meant was that ninety percent of the cases appealed are generally on fact issues. That is if somebody lost in a district court and is not satisfied so he asks for another review of the case. But to any event, presently whenever a case is appealed to one of the appellate courts as they now are constituted they sit in panels of three and we have constitutionalized that motion in this Section B which says, "they shall sit in panels of not less than three members." Now what happens. You have a case and the district judge has decided after let's say, three days of testimony, the whole issue. Did the district judge believe? He believed me instead of the other guy. The case goes on up on appeal. If two of the three judges sitting on the panel, you understand, decide that they disagree with the district judge even though they haven't heard the witnesses, saw them testify, etc. and all these good things that you don't want to reverse district judges for, they may nevertheless vote two to one against a dissenting judge who says that the case should not be reversed or modified. When that occurs, the present rules of the court are that if you apply for a rehearing, the rehearing goes back to the same panel that heard the case. So what happens, the two judges that already decided against you and reversed the district judge will naturally deny the rehearing. Under the concept of the judicial review by the Supreme Court in writ cases, the Supreme Court will grant a writ of review only when there is no question of facts involved. So if you are dissatisfied you then apply to the Supreme Court for a writ of review, the Supreme Court simply says writ of review on the law on the facts signed by the court of appeal. Now

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what does my amendment do? All of these people who coauthored this amendment voted against me yesterday on judicial review. It simply says this. When a case goes up to a court of appeal and when you are going to reverse the district judge or modify its opinion, then if there is one dissenter of the three who says that it should not be done, that you should not reverse the district judge, at that time instead of rendering the opinion, the parties are entitled to a reargument before at least five judges of that appellate court. In other words they call in two additional judges, the case is reargued. If at that time a majority decides that you should in fact be reversed, you are reversed. If not, you are not reversed. Now let me show you what can happen as a result of the present circumstance. Since the courts of appeal sit in rotating panels of three, never the same three judges at the same time, we are getting out of the same court of appeal sometimes different results in almost identical cases. That is compounded when you think of the fourth circuit having nine judges and they sit in panels of three. You can get out of the same court of appeal two different results from the same type case. I think this is a very, very good amendment. What it does is, it allows the verdict, the judgment of that district judge to be entitled to a little more weight than it's got now. As you see right now you can simply disagree with the district judge, two judges reversing, and that is the end of it. That's the finis of it. I ask you to consider this in light of what I have told you about the appellate structure. I hate to get so lawyer-like in telling you but that is the only way you will understand. If there are any questions, I will be happy to answer them.

Questions

Mr. Tobias Mr. Roy, I am reading the committee proposal and it says that each court of appeal shall sit in panels of at least three judges. Under your amendment...well this would allow a court of appeal to sit in panels of possibly five, is that not your interpretation of it?

Mr. Roy No, no, mine doesn't say that.

Mr. Tobias I am not talking about your amendment. I am talking about the committee proposal. It would allow the court of appeal to decide to sit in panels of five.

Mr. Roy If they have a uniform rule, which they don't have, you are right.

Mr. Tobias All right. Now, my question is this. The second circuit court of appeal only has five members and let's suppose that court of appeal decides to sit in panels of five. What would happen in the event that one judge dissented on the facts?

Mr. Roy Mr. Tobias, you would have of course under this, because not everything can be worked out perfectly, you would have the reargument which does not mean that you are entitled to reargue the case. The court simply considers it reargued and then renders its decision.

Mr. Tobias Mr next question is, under the committee proposal would not the Supreme Court have the right to review this judgment?

Mr. Roy On what?

Mr. Tobias A judgment of which the court of appeal split. would it not have that right?

Mr. Roy No, because they have taken out incidentally, and I disagree with that, they have taken out the right of review as a matter of law whenever the two circuits disagree. That is no longer in the constitution.

Mr. Tobias True, but it provides the general supervisory jurisdiction in all courts in the state.

Mr. Roy Mr. Tobias, it doesn't. Under the present law, there is an absolute right of appeal to the Supreme Court when two circuits disagree on the same rule of law and the committee, in its wisdom, has seen fit to take that out of the constitution and rely on the Supreme Court to continue to provide for that. I really have my doubts about it but you are getting into another field.

Mr. Vick Under the present constitution and the constitution as proposed you have the constitutional right to an appeal. Correct?

Mr. Roy Up to the appellate court level, correct.

Mr. Vick All right, fine. Your proposal would thereby make it a right, an absolute right, to two appeals.

Mr. Roy No, I don't understand. No.

Mr. Vick Let me ask you this. Aren't you prolonging finality?

Mr. Roy No, I am not. I am seeking justice. Yesterday, we heard where everybody got up and Walter Lanier got to me and said, "Don't you believe that the appellate court should have some say in the end? Don't you believe that more than one man can better decide the case?" And I had to say yes, but I don't think it really works out that way all the time. All I am saying today is that no two judges on an appellate court who read a cold record should be able to take what a district judge has done after hearing a case for three days and subvert it by simply outvoting another judge. It does not do anything except, and this is the argument against it, it makes some appellate judges, if they have to reargue the case, you have to call in two more appellate judges and two more will have to read the record. Now gentlemen and ladies of the convention, I'm for paying these judges, and they get a good salary. They make \$36,000 a year. I think that in the interest of justice, it is not too much to ask an appellate court to have two more judges come in and read a record where one judge vehemently dissents and says you have done the wrong thing by reversing this district judge. Let's seek justice. Justice delayed may be justice denied. Justice denied is justice denied and when two judges can take a district court and reverse it simply almost on a whim, that is not justice in my judgment.

Mr. Abraham Chris, for my own education, what percentage of the cases would you say...decisions rendered are split decisions?

Mr. Roy Mac, that is a pretty tough question to answer. I would say that you have the split decisions in probably one out of six or seven cases, which is a pretty good number of cases. Let me point out another thing, ladies and gentlemen. Yesterday they talked about for instance, and I said those things that weren't at issue, they talked about jury trials killing you. This is the judicial council's Supreme Court official edition of what's happened in this state. In the year 1970 there were a total of 156 civil jury trial cases in the state of Louisiana, over the entire state. Yesterday you were told you know that we would really subvert the appellate structure by having jury trials all over. There are just a lot of other notions that are not really germane to this issue that may be raised. All I am saying is that yesterday you said that the more people you have looking at a record the better chance that justice will prevail. I have to agree with that although I didn't want it to be reviewed. If we are going to review then let's have as many possible which doesn't impede the efficient operation of the court look at it. That's all this amendment does. It says that when two decide to reverse one, and to reverse that district judge, it must be reviewed by at least five.

Further Discussion

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Mr. Tate I rise in opposition, Mr. Chairman and fellow delegates, to Mr. Roy's amendment. It has some desirable features. There is much merit to what he says, however, I primarily oppose this because of the set of intra-court regulations that should not in my opinion be in a constitution. Incidentally, New York State has a constitutional provision that in the case one judge on the intermediate court dissents the Supreme Court has to review the matter. They removed it finally, but the experience in that state was that it involved the membership of the Supreme Court at that place in a great number of essentially uncontradicted appeals. Essentially because when two judges have studied the matter, that's two-thirds of a three man panel. We feel it is a tremendous protection to require two-thirds of the legislature. When two out of the three judges who have studied the matter come to a conclusion different than the other judge, it is something like when an appeal is reversed. When an appeal is reversed, one judge may be wrong and one may be right but somewhere there has got to be finality in our system. We are entitled to one fair trial, one fair appeal and in the event that the panels of a court of appeal differ supposedly the Supreme Court is to grant a writ of differences of law, not of fact however, I agree with Mr. Roy on that. I rise primarily to oppose it because justice was delayed, my chairman was delayed, and he is now here, and I rise because I think it is just bad constitutional detail to put in the constitution.

Questions

Mr. Lanier Mr. Justice Tate, would you agree that in about 75 to 80 percent of the cases that writs are sought from the Louisiana Supreme Court on questions of fact that these writs are denied?

Mr. Tate Oh yes, I would agree with that. I didn't contradict that.

Mr. Lanier Now, in the situation where you have a three judge panel that reverses a finding of fact of a trial court judge by a two to one vote in essence do you not have the situation where four judges have looked at the case and two have decided one way and two have decided the other way?

Mr. Tate No doubt about it.

Mr. Lanier Don't you think that justice would be better served if we had additional persons look at this and make a determination rather than have to decide the case on a two-two split?

Mr. Tate All right. Let's say they split three and two the next time. It is still three and three. Somewhere there has to be an end to the system. I think perhaps this would be a good internal rule maybe but to lock it into the constitution no matter how badly it works, to say that from now on until they amend the constitution they have to do this, is in my opinion unwise.

Mr. Tobias Judge Tate, I am looking at the Judiciary Committee proposal. It says that the Supreme Court has the power, this is Section 5C, has the power to review both law and fact in civil cases. That is your understanding?

Mr. Tate Yes, it is.

Mr. Tobias Section 2 of our proposal says that a judge may issue habeas corpus and all other needful writs. Does this not mean to you that the Louisiana Supreme Court could grant writs of review. In other words could review a judgment of a court of appeal that would, if for example there was a two to one split in the court of appeal on a question of fact?

Mr. Tate Well of course they could, and of course the present constitution says that we must grant them when there is a question of law in error, and it doesn't say we cannot grant them when it is a

question of fact. As a matter of fact, when there is a dissent we do study them as closely...and perhaps very closely...But anyway I'll have to say in fairness the policy of the court has been on a question of fact not to accept it unless there is absence of a question of law, or manifest injustice.

Mr. Tobias In other words, what you are saying is that when there is a two to one split in a court of appeal, where one judge dissents on a question of fact, then the Louisiana Supreme Court will look at that judgment of the court of appeal more closely to see if there is possibility that the facts in that case have been properly interpreted, as a practical matter.

Mr. Tate I would hate to say that we look at it more closely if there is a dissent, but I will say that when...

Further Discussion

Mr. Pugh Mr. Chairman and members of the convention, I rise in favor of the amendment. The only concern that I have for this amendment is that apparently it provides for an absolute right to a rehearing. I would suggest that if this amendment were to pass, and if it does I will provide an amendment to it myself to provide that this ruling will occur in such instances where a rehearing is actually granted. We have, in the second circuit, a rule not too dissimilar from this. In the second circuit where there is a rehearing that has been granted, then that matter is reheard by all five of our judges. It is an excellent rule and it works well. What concerns me about our present system, and I am sorry that a speech yesterday kept me from being here because I feel rather strongly on this issue on whether or not an appellate court should review matters of fact from a district court. Under our existing system you can have a jury trial and the jury can find for the plaintiff and it works can be asked for, and the judge in effect finds for the plaintiff, the matter is appealed, the appellate court reverses on a question of fact, it can be a two to one reversal and the Supreme Court for all practical purposes will not look at that record. Insofar as a writ application is concerned on a factual matter in this state, it is a waste of time. For that reason I suggest to you that we need to be greater safeguards built into the system and I think that this particular amendment approaches that direction much more so than the initial provision set forth by the committee. I thank you for your time. I yield to questions.

[Previous question ordered. Amendment adopted, 66-46. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendments sent up by Delegate Avant. Amendment No. 1, on page 1, line 22, after the word and punctuation "judgment" and before the word "the" insert the following: "however when the judgment of the district court is to be modified or reversed and one judge dissents, the case shall be reargued before a panel of at least five judges elected to the court prior to rendition of judgment and a majority of them must concur to render judgment." Mr. Avant, we need to add an amendment deleting the previous amendment as well.

Explanation

Mr. Avant Mr. Chairman and fellow delegates, there is a small difference between the amendment I voted for and Mr. Roy's amendment. I also, if you remember yesterday, voted against and came to the microphone and voted against, the complete elimination of the review of facts. But, the purpose of this amendment is simply this. In the first circuit court of appeal we have seven elected judges. That court sits in panels and in numerous instances sits in a panel composed of two elected judges and one assigned judge who has

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been selected by some process. He is not an elected judge of that court. Now this amendment simply provides that in any case where there is a reversal of a district court and there is one dissent, one of the judges dissents out of the three, that this rehearing that Mr. Roy's amendment provided for will be held by at least five of the judges elected to that court. Not some assigned judge that's been sent in here from somewhere else and is not from this circuit and has never been elected to this court of appeal, and it will take a majority of those five judges elected to the court to reverse one of the district judges in those cases where there has been a dissent. Because what happens if you have a panel of three judges, one of whom is an assigned judge, and you have a dissent you can well have a situation where you have two judges who have voted a certain way, two judges who have voted to do the opposite on the same particular question and one of those judges may not be an elected judge.

Questions

Mr. Pugh Mr. Avant, in the second circuit we have five judges and that is all, and one of them has a son practicing law, and therefore he must recuse himself on all cases relating to that particular firm, and it happens to be one of our larger tort firms. I think you have a problem about your election to that extent. What would you do in the second circuit?

Mr. Avant It does present a problem, but I am concerned particularly about the problem in the first circuit and in the other circuits. I wasn't aware of that problem. I think that it should be by the judges elected to the court.

Mr. Pugh As I understand it we couldn't adopt your amendment and comply with the existing condition in the second circuit because in perhaps twenty percent of the cases, or ten percent of the cases, one of the judges must disqualify himself.

Mr. Avant In the first place, you are going to have to have a dissent. Mr. Pugh. If you don't have a dissent, you've got no problem.

Mr. Pugh Do you understand my question, Mr. Avant? We only have five judges.

Mr. Avant I understand your question.

Mr. Pugh Well, can the second circuit operate under your amendment?

Mr. Avant Yes sir, I think they can.

Mr. Pugh If we have five judges and one is required to recuse himself, that leaves us four. Where do we get the five elected judges from to rehear?

Mr. Avant I think that is a problem that may occur once in a thousand years because you've got to have a dissent.

Mr. Pugh I am sorry to labor the point. I understand you need a dissent. My thrust of my question is to your amendment providing that the rehearing is judges sitting on it must all be elected judges. I tell you, we only have five, one of them recuses himself quite often on account of his son being involved in litigation, so we only have four elected judges. How can this rule be applicable to the second circuit?

Mr. Avant It will be applicable if it is adopted.

Mr. Pugh This says that there will not be an assigned judge. It must be elected judges.

Mr. Avant I know what it says, Mr. Pugh.

Further Discussion

Mr. Dennis Mr. Chairman, fellow delegates, I rise

in opposition to the amendment. I believe Mr. Pugh has very clearly pointed out that this would present an insurmountable problem in the Second Circuit Court of Appeal. Also, fellow delegates, I think in this amendment and the one previously adopted, we are delving much too deeply into procedural aspects of law and writing into the constitution what is really a code of procedure that should be statutory or by court rule so I ask you to reject the amendment for both reasons.

Point of Information

Mr. Kean I have a question of the chair. Mr. Chairman, I am not clear. Does the Avant amendment delete the Roy amendment or is that going to be an addition to the Roy amendment? If it is, we are going to have a terrible time trying to figure out how to get out of the court appeal.

Mr. Henry I believe that the Avant amendment would require the technical amendment up here that would delete the Roy amendment, Mr. Kean.

[Previous Question ordered. Amendment rejected: 7-105. Motion to reconsider tabled.]

Amendments

Mr. Poynter Amendment No. 1 [by Mr. Pugh], delete Floor Amendment No. 1 proposed by Delegate Lanier and others and adopted by the convention on date, August 16, 1973.

Amendment No. 2, page 3, line 22, after the word and punctuation "judgment" and before the word "the" insert the following: "however, when the judgment of the district court is modified or reversed and one judge dissents the court shall grant a rehearing before the court en banc if requested by either party."

Explanation

Mr. Pugh Mr. Chairman, members of the convention, this is the amendment that I stated that if you passed Mr. Lanier's amendment, that I would provide for. The purpose of this amendment would be that if an appellate court through a panel of three judges or more if the rules of that court provide for a panel of more than three, if there is a dissent then either party may ask for and will receive a rehearing at which time a panel of at least five judges will hear that rehearing. Are there any questions?

Questions

Mr. Avant Mr. Pugh, your provision, your amendment doesn't make a rehearing mandatory in those circumstances where there has been a dissent and a reversal of the district judge, does it?

Mr. Pugh Yes, this provides for a mandatory rehearing.

Mr. Avant A mandatory rehearing in those cases.

Mr. Pugh That's correct.

I made one misstatement a minute ago. As this is drawn, and I will go with it, it provides that before the court en banc... that would mean the entire court would hear it. I made the statement, five judges but this is the old court.

Mr. Duval Mr. Pugh, under your amendment in the event the district court were sustained and there is a dissent, would there be an automatic rehearing?

Mr. Pugh It swings both ways.

Mr. Dennis Mr. Pugh, as I understand your amendment, and correct me please if I'm wrong, you're simply substituting for the five judge panel in Mr. Roy's amendment an en banc hearing, is that correct?

Mr. Pugh That's correct.

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Mr. Dennis Well, what are you going to do in the situation that you raised on the second circuit when one judge is recused? Does "en banc" mean whoever's not recused?

Mr. Pugh Yes, in my opinion, we'll still have four and we won't have a problem in the second circuit.

Mr. Sutherland Delegate Pugh, in Orleans, I think we have nine appellate judges does that mean the whole nine have to decide these rehearings?

Mr. Pugh Under the terms of this it would.

Mr. Denberry Mr. Pugh, did I understand you to say that that was the only difference? I thought when it was read it said that there shall be a rehearing rather than a reargument. Aren't those two distinct propositions?

Mr. Pugh No, sir. In appellate court, a rehearing is a reargument, as I appreciate it.

Mr. Denberry Well, as I understand the way the present proposal reads with the amendment that's in there, the reargument is held before there is any judgment rendered. Now, if there is a rehearing you're going to have a judgment first. Is that not correct?

Mr. Pugh That's right. I think there's got to be a judgment to get the dissent. You can't get to the point of the dissent without having a judgment.

Mr. Denberry Well, as I understand the way it is presently, you don't have that. If the judges find in discussing the case that there will be a dissent they call automatically for a reargument before a judgment is rendered. Now, your amendment is entirely therefore, is it not?

Mr. Pugh That is correct. My amendment provides that when there is a district court judgment that's been modified or reversed by the appellate court and one judge of that panel dissents then either party may ask for and automatically receive a right of rehearing to be heard before the court en banc.

Mr. Kilbourne Mr. Pugh, I would just...this is really for information...I'd just like for you to explain what makes your amendment better than the one that we just adopted that Mr. Roy introduced?

Mr. Pugh Well, let me see Roy's amendment. There is really no distinction between the two of them except his provides for five judges; mine provided for en banc rather than five judges.

Mr. Kilbourne Well, I understand from the way I read Mr. Roy's amendment, if the judges...I believe as Mr. Denberry pointed out...find that there's going to be a dissent then they can call for the case to be reargued before it's ever decided. Is that correct?

Mr. Pugh Under the terms of his, he talks about there not having been first rendered a judgment. I don't believe you can ever get to that place. You can't ever dissent until the judgment has been rendered. Once the judgment is being rendered, obviously there can be two judges who go in one direction and one who dissents. I talk about rehearing because I think you rehear an existing judgment at that point in which one of the three judges has dissented.

Mr. Denberry Suppose you had a panel of five judges and one judge dissented. You would require a rehearing in any event, even though the count would be four to two as we were considering...

Mr. Pugh That is correct, and it may be that those five are in fact all of the court.

Mr. Denberry Thank you.

Mr. Avant Bob, I want you to understand this is a friendly question. There's nothing in the world to prevent if the three judges had heard the case and then in conference they knew that they were not unanimous and that there was a dissent, under your amendment there would still be nothing in the world that would stop them to call by rule of court for a reargument before they actually handed down the decision in order to maybe obviate the possibility of having to have an en banc rehearing. There is nothing that would stop them from doing that, is there?

Mr. Pugh Absolutely nothing. Unfortunately, they don't, but there is nothing to stop them from it.

[Previous Question ordered. Amendments rejected: 24-30. Motion to reconsider tabled. Previous question ordered on the Section. Section passed: 97-21. Motion to reconsider tabled: 85-30.]

Reading of the Section

Mr. Poynter Section 9. Courts of Appeal. Circuits and Districts

Each circuit shall be divided into at least three districts with at least one judge elected from each. One or more judges may be elected at large from within the circuit. The present circuits and districts and the number of judges as elected in each circuit are retained subject to change by a two-thirds vote of the elected members in each house of the legislature.

Explanation

Mr. Dennis Mr. Chairman and fellow delegates, this section sets forth the Circuit Court of Appeal, the Court of Appeal Circuits, provides that they shall be divided into districts, retains the present circuits and districts subject to a change by a two-thirds vote of the elected members of the legislature. The 1921 Constitution spells these districts out by parish. It describes which parishes are in which districts. That spelling out is omitted but we do retain by reference those same districts and circuits subject to change by a two-thirds vote of the legislature. So, there is no change in substance in this section. I ask for your adoption.

Amendment

Mr. Poynter Mrs. Miller sends up the following amendments.

Amendment No. 1, page 3, at the end of line 26, delete the words "one or" and at the beginning of line 27, delete the words "more judges may" and insert in lieu thereof the following: "after January 1, 1975 no judge shall".

Explanation

Mrs. Miller For you delegates who are not lawyers and do not realize that we have four circuits for the Court of Appeal in Louisiana, one of your circuits sits in New Orleans area, one in the Baton Rouge area, one across the northern part of the state taking all of your northern parishes, and one of your circuits is the Third Circuit that goes to within forty miles of Shreveport, within forty miles of Monroe, down to the Gulf of Mexico. It goes from the Sabine River to the Mississippi. This amendment is going to affect this circuit, the Third Circuit, with this large geographic area more than it is going to affect the circuit in New Orleans or Baton Rouge. It will have some effect also on your Second Circuit which is your northern circuit with the judges the Shreveport to Monroe area. The reason this is important is because you already have the situation where your circuits are divided into three districts with at least one judge from each district. Now, as the legislature has created more judgeships for these circuits, they have made a lot of these at large. What has happened now in the Third Circuit is you have six judges, three of whom are assigned to districts. A judge that runs in a district runs

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in six or seven parishes, but you have three judgeships where the judges run at large, and those three judges who run at large run in 21 parishes. Now, other than your public service commissioners and your statewide officials, I do not believe you have any public official in the state of Louisiana who is required to run in such a large geographic territory. This has placed an impossible burden on people who seek judgeships and it places a terrible burden on the people of those 21 parishes in trying to decide on someone they have never known and seen for a judgeship. Now, as I said before, I do not think you are going to affect very greatly your situation in your Orleans and Baton Rouge parishes. In the first place, they will be given more judges from time to time and it will not be impossible or difficult for them to be assigned to districts and kind of keep you assignments equal. What we are trying to do is to require that these judgeships in these larger geographic areas...that the judgeships created will be assigned to districts so that they will not run at large any more after January 1, 1975. I will answer any questions.

Questions

Mr. Dennis Mrs. Miller, I haven't had time to check this...how many at large judges are there in these circuits, for example, the Fourth Circuit?

Mrs. Miller To be very frank, I do not know how many are at large in the Orleans area, and I've asked some of the Orleans delegates and they don't seem to know so it doesn't seem to affect them very adversely, because, of course...

Mr. Dennis My problem is, will this have the effect of creating single member districts for these judges or do you feel that this will allow multi-member districts?

Mrs. Miller Well, what you do have now in the New Orleans area, I believe, are multi-judges anywhere in your districts. What you're going to create for a while is a problem, like in the Shreveport district. The Shreveport circuit where you have five judges for three districts. You may have two assigned, but it doesn't create any problem as far as the people, because now if they elect them at large they could all be from one geographic area anyway. You could have then, the Third Circuit just electing at large. You can elect them all from Lake Charles or all from Lafayette or all from Alexandria, but this will force the legislature from now on to grapple and wrestle with the problem when they are creating those judgeships and not just to say "oh, well, we'll pass over the problem of the at large judgeship and just take that up later". This will say to the legislature when you create these judgeships, assign in the circuit territory where you think they are needed and the district that needs to be represented more or create more judgeships. I think we're always moving toward more judgeships and so that the problem you have in the Second Circuit in Shreveport will eventually be taken care of because as they need another judge it will let the legislature there have two in each circuit. But the problem is bad anyway and to continue that problem is not going to help the matter as far as getting them elected from different districts.

Mr. Dennis If I may ask another question, I gather to summarize, your position is that this would not force the legislature to create single judge districts but it would force the legislature to reapportion the circuits of the Court of Appeals.

Mrs. Miller Yes, after January 1, 1975, it will force the legislature to do something about judgeships that come up to be filled to go and assign them to districts.

Mr. Stinson Mrs. Miller, I'm concerned about your amendment. If you take just the first two sentences; the first says "each circuit shall be divided into at least three districts"...

Mr. Miller That is already the provision in the proposal from the committee. My amendment only adds that after January 1, 1975, no judge shall...

Mr. Stinson Well, take our district up in north Louisiana. We have five judges and what you're doing you're trying to make them run just in the district and not at large.

Mrs. Miller We're trying to make the legislature to assign them to the districts from which...

Mr. Stinson Well, suppose, they refuse to do it. We're going to have a problem, it looks to me like. It goes on in the last part of the committee and says that the present...suppose one of the present judges dies...aren't we going to have a problem as to where he's going...his successor will run from and so forth...

Mrs. Miller It won't be a problem with that because I think this will be mandatory to the legislature to create these judgeships and to assign them. Now, we can come back with another amendment to spell out the way in which this would be done, but I think at this time we need to go and take up the problem about these at large judgeships which are creating problems in these large geographic areas.

Mr. Stinson ...They have their own district and then also one runs according to Public Service Commission District. Would that be considered as a district or would they have to limit that even?

Mrs. Miller Excuse me, I didn't understand...

Mr. Stinson I believe that one of ours runs in the Public Service Commission District, doesn't he?

Mrs. Miller Well, there may be some overlapping of these districts, but primarily they are assigned within...right now, we have these district set ups.

Mr. Dennery Mrs. Miller, in the Fourth Circuit, right now, one judge is elected from the combined first and third districts. You have to have at least one from the first, one from the second and one from the third in addition, but would this prohibit it because it covers two out of the three districts, the way you have it worded?

Mrs. Miller I don't believe it would. Of course, the committee proposal is that there shall be a judge from each district anyway and this will only be for these additional judgeships that are being created and the legislatures have this tendency to create at large judgeships so they didn't have to worry with the problem of where to assign them.

Mr. Dennery In other words, as the proposal is written with your amendment it would not affect the present situation in the Fourth Circuit where one judge runs from maybe five parishes which are composed of two separate districts of the three districts.

Mrs. Miller He might if he comes up after January 1, 1975. It might affect where he would have to run from. If his particular at large position is assigned to a district.

Mr. Dennery It's not an at large position; it's from two of the three districts. He doesn't run in all three districts. He only runs from two of the three. So, that would not be at large as I appreciate it; am I correct?

Mrs. Miller You're correct on that.

Further Discussion

Mr. Dennis Mr. Chairman and fellow delegates, I reluctantly rise to oppose this amendment. I believe the intention behind it is good, however, I believe we're beginning to get more and more in the last few amendments into the field of legislation.

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Now, our general approach in the committee was that we were going to turn this job over to the legislature but we weren't going to tell the legislature how to reapportion courts of appeal circuits. We simply said that by a two-thirds vote of the legislature, the legislature may reapportion these circuits. Now, the legislature, under that provision, can do exactly what Mrs. Miller wants, but I'm not prepared to act as a legislator at this moment, and say that what she wants is what the legislature will do, or should do. It may be that there are some knotty problems that will require the continuance of some at large districts. It may be that there is no way to do away with an at large district without gerrymandering a present sitting judge out of office. I realize that's no justification in and of itself to take this step, but those are just some of the problems involved in reapportioning something, which I believe, shows you that it is a legislative problem. So, I ask you to sustain the committee's position that we should not legislate at the same time we're taking things out of the constitution. If we do that, we're also going to buy some votes against this document that we can't afford. I ask you to sustain the committee's position which is simply to take this detailed spelling out of circuits out of the constitution and leave it up to the legislature to change them in the future by a two-thirds vote.

Questions

Mr. Stagg Jim, are there six judges in the Third Circuit that Mrs. Miller was talking about? And she said three of them run from districts and three of them run at large?

Mr. Dennis I think that's correct. I'm not certain. I haven't had time to check.

Mr. Stagg Could, under your committee's provision, 11 be fixed to where two judges would run from each circuit and cut down on that at large problem of covering 21 parishes?

Mr. Dennis Yes, sir. Under the committee provision they could do everything that she would like to require the legislature to do.

Mr. Weiss Would you say that the legislature has created the present problem in this district that Mrs. Miller is speaking of?

Mr. Dennis Well, I wouldn't say that. I would say that the legislature has met the need for additional judges which was an emergency type problem and has done so without reapportioning these circuits which may have been justified, because reapportioning probably should not be done but once every ten years or so in any case, and when you have a problem, you need additional judges...I think the adding the at large judges is a reasonable and satisfactory solution to the problems that were facing the legislature when it acted.

Mr. Weiss Since the legislature created this, don't you in this section allow the legislature to correct this?

Mr. Dennis Yes, sir. That's the whole idea behind it.

Further Discussion

Mr. Jackson Mr. Chairman, fellow delegates, I think that the problem that Mrs. Miller has raised before this convention is a very real problem. I do not see any problem in the fact that we are somewhat making the legislature to take positive action. I think that as you will find out as we deal with most of these committee proposals, that's why we have a Committee on Legislative and Transitional Measures, whereby the legislature must act on certain provisions that we take out of the constitution. It seems to me that the two...that the wording of the committee proposal is a contradiction in itself, even though it's part of the present

constitution where on one instance it very clearly states that they must run from respective districts, at least three districts, and in the next sentence they say that one or more can run at large. I think the argument as presented by Mrs. Miller deserves serious consideration by this convention and that we ought not be that much concerned about the legislature having to assume the responsibility of correcting a situation, as I appreciate her comments, that it is basically responsible for. With that explanation, I would ask your favorable adoption. Mr. Chairman, if there are no more speakers...

Further Discussion

Mr. Tate Mr. Chairman, Madam Ruth, fellow delegates, I wish to bring to your attention the background behind the at large delegates to let you vote against them if you want...the at large judges. But the background behind it was this; in 1958 when we created the new courts of appeal the districts were believed to be approximately equal in population and one judge was assigned to each. Now, it was felt inadvisable to make districts too small. They were trying to keep these districts and then to have additional judges like in the Fourth Circuit, they had one at large, and the idea was when they added the first one there, they had two, one eventually to ours in the Third Circuit, was without reapportioning all the districts...without having to reapportion districts every time you added a judge you could have all the people served by that court have an equal voice in the selection of the judge. Now, unless you...the practical problems involved in Mrs. Miller's amendment which has a very good purpose are this; one, you have, for instance, in certain places in the Second Circuit up in Shreveport, you have the three judges elected from one end which may or may not be where the population is but I think it is, and in Lake Charles three elected there. Now the people from the whole circuit had voted on them and selected them to serve a lot of them. Now, if you cannot draw your districts to protect incumbents, it's true, but you will have the practical problem of someone or another having to move somewhere else. Now, you have this problem, if you keep the present districts the Lafayette district, I think has, if someone doesn't correct me, but it's roughly like this, six or eight hundred thousand people; the Alexandria district may have about three hundred thousand people. If you had two judges from each you have a problem. If you assign three over here and...there are a lot of problems. If you add another judge, are you going to have to redistrict? Now, the chief advantage of the committee proposal is that it leaves the legislature the freedom to work out to use at large judges when they can add district judges when possible. For instance, the First Circuit is ready right now to be divided into three districts, approximately equal, six judges; the First Circuit's of Baton Rouge. Another circuit may not be in such a condition, like the Shreveport circuit as my friend Buddy Roemer is going to say something. If we have the committee proposal leaves the legislature some flexibility to use at large judges when necessary or to use district judges when necessary.

Is that brief enough, Mr. Speaker?

[Previous question ordered.
Record vote ordered.]

Closing

Mrs. Miller I do want to make it clear, I'm perfectly happy to leave everything to the legislature. I'd be happy to leave it to them with less than a two-thirds vote as the committee has drawn this, but I do think the legislature each time the matter comes up and it's come up year after year for 12 or 14 years, they do not want to grapple with the problem of the...of going on and making these assignments and we have gotten a terrible imbalance because of this particularly in the Lake Charles and the Shreveport circuits, so I ask you to support this. I think it will be good. I think it will

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have good benefits and I think the legislature can live with it and I believe we'll be asking the legislature to look at our problems each time they create a judgeship and just not try to say well we'll make it at large and cope with the problem later. We're eliminating this at large position which has had such disastrous effects particularly on your Third Circuit and your Second Circuit. I ask you to support it.

Questions

Mr. Abraham Mrs. Miller, as I appreciate your amendment, isn't it true that this would not require any redistricting at all. It simply means the assigning of judges to run in a particular district. Is that not true?

Mrs. Miller That's right. This would just permit the legislature to assign, it has absolutely no domicile or residence requirements at this time. If the legislature wants to write it in they'll be free to do this. It will leave the freedom that I believe Judge Tate mentioned we needed and I'm for leaving that freedom for the legislature except to tell them to quit creating these at large judgeships.

Mr. Abraham Isn't it also true, that there is nothing in this article which requires that a judge reside within the district from which he runs?

Mrs. Miller That's correct. I don't believe you'd force any judge to have to resign.

Mr. Weiss Delegate Miller, the section we just passed, 68, notes that the chief justice is responsible for the judicial system of the state. Do you think the chief justice now will carry any more weight in recommending to the legislature what these changes should and might be?

Mrs. Miller Well, I think as a practical matter, that when it comes to these judicial districts that the legislature has shown a great inclination to listen to the members of the judicial council and take their recommendation and I hope that in the future they'll continue this policy but, of course, none of us ever know what the legislature is going to do.

Mr. Weiss Well, why have they allowed this condition to be established that's presently existing in the state?

Mrs. Miller Well, I believe Judge Tate gave us that background very well, that it just kind of grew. You know, why does a problem grow. It was the easiest way to cope with it at the time, and it didn't cause any problem.

Mr. Arnette This won't cause any changes in the parish of Orleans or in the Fourth Circuit, will it?

Mrs. Miller No, I believe when we discussed that with Mr. Denberry, it looks like it will not cause any problems.

Mr. Arnette So, this will leave the Fourth Circuit just as it is, and it just will help out the people of the Second Circuit and the Third Circuit?

Mrs. Miller Primarily, and it would also help the situation in the future.

Mr. Denberry Mrs. Miller, in our previous discussion I was reading from the present constitution. The way it reads now it would change it considerably, because all...

Mrs. Miller It's not saying that the legislature has to apportion or to make anything equal or to assign an equal number of judges and, of course, you don't have an equal situation now.

Mr. Denberry The way it reads now as it presently is set up in the project, in the proposal, excuse

me, it says that at least one shall come from each district within the circuit. No further limitations. In other words, in Orleans, since there are three districts, Orleans could elect everybody except two, is that correct?

Mrs. Miller Right, and when they create at large judgeships you could create three or four more at large judgeships down there and they could all get elected from one area of New Orleans.

Mr. Denberry I must confess, Mrs. Miller, I hope that you are not as confused as I am, are you? I'm terribly confused by it.

Mr. Jack Mrs. Miller, I'm from the Second Circuit and I haven't heard the Judges say one way or the other. Now, you keep saying it would help the Second Circuit. Have you talked to any of them. I don't know whether it will help them or hurt them. We don't have an even number there. We have five judges and, of course, three districts, and we look like at present we need that at large section in the constitution.

Mrs. Miller Well, let's put it this way. You're from the Shreveport area and the Shreveport people have never complained because basically they are usually able to elect their at large judges from that area.

Mr. Jack No, that's not what I'm talking about. Have you talked to any of those judges? I haven't heard from them.

Mrs. Miller Well, let's put it this way. They do not have the same problem that the Third Circuit judges have because they don't run in 21 parishes.

Mr. Jack But, you're not answering my question. I don't want to argue with you. Have you talked with any of them?

Mrs. Miller Thank you; I ask you to support this.

[Amendment adopted: 63-52. Motion to reconsider tabled: 81-33.]

Amendment

Mr. Poynter Amendment No. 1 [by Mrs. Miller], on page 3, delete line 30 in its entirety and insert in lieu thereof the word "the".

[Amendment withdrawn. Previous question ordered on the Section. Section passed: 109-8. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter "Section 10. Court of Appeal. Appellate and Supervisory Jurisdiction

Section 10. Paragraph A. Except in those cases appealable to the Supreme Court and as otherwise provided in this constitution, a court of appeal has appellate jurisdiction of all civil cases decided within its circuit. It has appellate jurisdiction of all matters appealed from the family and juvenile courts except criminal prosecutions of persons other than juveniles. It has supervisory jurisdiction over all cases in which an appeal would lie to that court.

Paragraph B. Except as limited to questions of law by this constitution or as provided by law in the case of review of administrative agency determinations, its appellate jurisdiction extends to law and facts."

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, this section continues the appellate and supervisory jurisdiction of the courts of appeal in our state, essentially as it is...as these jurisdictions are set forth in the present constitution. As you will recall under our general scheme of things in our

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court system the...most of the criminal cases are appealed directly to the Supreme Court and all civil cases...most all civil cases are appealed to the court of appeal. We add to that juvenile matters and cases appealed from the family courts. The courts of appeal's review of facts and law is similar to that granted the Supreme Court in cases appealable to it. There are no questions, I ask for your favorable adoption.

Questions

Mr. Duval Thank you, Mr. Henry. Judge Dennis, in the last sentence, it says, it has supervisory jurisdiction over all cases in which an appeal would lie to that court. Now, I just want to get the intent. This is purely for information. That does not, does it, take away supervisory jurisdiction over interlocutory matters in which an appeal would not lie?

Mr. Dennis Wait a minute; say that again, please.

Mr. Duval An appeal does not lie over an interlocutory matter, but under the supervisory jurisdiction of the appellate courts, and writs can be taken. Now...to the appellate court...this sentence does not intend to take away the right to apply for writs to the court of appeal in an interlocutory matter, does it?

Mr. Dennis No, sir. It grants supervisory jurisdiction over all cases in which an appeal would lie to that court.

Mr. Duval So, the appeal would ultimately lie, then, after...

Mr. Dennis The particular ruling would not have to be appealable but it would have to occur in a case that would be ultimately appealable to the court of appeal. This represents no change.

Mr. Jenkins Judge Dennis, in Subparagraph B, you provide that administrative law in this case, review of administrative agency determinations appellate jurisdiction would not apparently lie as to both law and facts. Now, we have a provision in the Bill of Rights section providing that factual determinations by administrative bodies would be reviewable by the courts. Now, would this preclude that? How would that affect that provision in our Bill of Rights, do you know?

Mr. Dennis Well, if you provided that in the Bill of Rights and there was no other provision in the constitution or law, and I suppose that if you provided that in the Bill of Rights there could be no constitutional law in conflict with this then it would mean it would take out our exception clause, really in effect; it would mean that all facts, even those in an administrative agency determination would be reviewable in the court of appeals.

Mr. Jenkins The thinking of the committee, I think, was that so often in these administrative agencies, factual determinations are made and then the courts are bound by them even though these agencies are made up of people who have no judicial experience whatsoever, and at certain times it's extremely cumbersome and it creates hardships on the parties. I'm wondering, does your committee have any strong feeling about that? Do you think you could go along with omission of that clause relating to administrative agency determinations?

Mr. Dennis We would prefer to have it drawn this way and adopted and if the constitution turns out as you think it will, have the section taken out in Style and Drafting as being unnecessary, because right now there are some statutory administrative reviews limiting the power of the court of appeals to review the facts, I believe.

Amendment

Mr. Poynter Amendment No. 1 [By Mr. Jenkins, et al.]

[764]

page 4, line 10, immediately after the word 'except' delete the remainder of the line and at the beginning of line 11 delete the portion of the word 'tion or'.

[Amendment withdrawn.]

Recess

[Quorum Call: 107 delegates present and a quorum.]

Amendment

Mr. Poynter Amendment No. 1 [By Mr. Jenkins, et al.], on page 4, delete lines 10 through 13 both inclusive in their entirety and insert in lieu thereof the following: "Paragraph B. Except as limited to questions of law by this constitution its appellate jurisdiction extends to law and facts."

Explanation

Mr. Jenkins Mr. Chairman, delegates to the convention, the effect of this amendment is to delete on line 11 everything after partial word "tion" through line 12 through the word "determination", so, that it says "except as limited to questions of law by this constitution its appellate jurisdiction extends to law and facts." The practical impact of this change in the committee's recommendation is to bring it in line with the provision in the Bill of Rights which you'll consider later. It would mean this, in cases coming out of the district courts, your appeals court can reexamine both the facts and the law, but unless we eliminate this provision, unless we eliminate this clause that this amendment would eliminate, it would mean that an administrative agency's determination would have a higher standing than a determination by a court of law. Now, this applies to most of the state agencies that have boards or panels of review of one sort or another that make decisions which are basically of a judicial nature, or of an administrative nature in some instances. You just think of an agency and it would probably apply to it. The reason for making this change is this, generally the decisions coming from administrative agencies have very poor fact records. That's because most agencies don't strictly conform to the rules of evidence or many of the safeguards that a court of law would. If you wanted to put something about administrative agencies in this article this would not be the place to do it, and so that's why this attempt is being made to delete this reference to administrative agencies. It would simply say that the appellate jurisdiction of the court of appeals extends to all cases as far as the review of fact and law except those mentioned in this constitution. I say once again, we need this otherwise we put the determination of an administrative agency higher than that of a determination by a district court. The decision by a district court can be reviewed as to law and facts. An administrative agency's decision should be reviewable in the same way, because its decision has probably not been made in any way near the manner that a district court would probably do it. So often there are instances where injustices are done because an administrative agency will make a factual determination. Frequently, it's in tax matters, and say that a certain amount of income, maybe, has been earned by an individual, and then, that determination by that administrative agency, however erroneous it may be, will have to be accepted and dealt with by the courts later on. They can only determine the law in the case and can't determine from the record the facts indicate otherwise than the administrative decision. That's why this amendment is necessary and I urge its adoption.

Further Discussion

Mr. Flory Mr. Chairman and delegates, I rise in opposition to this amendment and I ought to know better, I guess, than to get involved in something that's lawyers' business, but let me tell you what this amendment does in one area of the law. At the

present time, there are 80,000 people in this state unemployed. The law governing the payment of unemployment benefits provides that either the employee or the employer has the right of appeal. The appeal goes first to the appeals referee and then either side has the right of appeal to the board of review. Then, they have the right of appeal to the district court, but only on questions of law set out in the statutes. Now, if you take the language out of the proposed Section B, as provided by law in the case of review of administrative agency determinations, what you're doing is requiring the court to review facts in every one of these cases. Now, the board of review, the appeals referees and the agencies all have to conform to rules almost identical with any court of law in this state and that is that they don't take any hearsay evidence. They have time prescribed in the statute as to the rights of appeal, time limits and etc. So, that their rules are set forth in the statutes, but if you adopt what the amendment calls for here you're going to require a review of fact in every one of these cases. I suggest to you that it ought to be only on the questions of law. Now, it's my understanding that one of the authors of this amendment is coming back with another amendment which would do exactly what the authors here purport to do but still protect the right of those agencies whose rule, etc., are in proper form and in accordance with the courts, and still allow them to accomplish what they're after. I would suggest that you defeat this amendment and then go with the amendment that will come afterwards. I'll be happy to answer any questions, Mr. Chairman.

[Previous Question ordered.]

Closing

Mr. Jenkins Just in closing, I'd like to say that with regard to Mr. Poynter's objection, I don't think that it's well taken for the reason that every case certainly is not going to be appealed, but in those cases where there is an appeal the decision of the administrative body should not be given any higher sanction than the decision of a district court. That's what would happen, and if we don't make this amendment. That's why this amendment is necessary. The law books are just full of instances time after time after time where an administrative agency has made a decision; it has the facts before it; the facts are in the record, but the decision it makes is clearly contrary to the facts. That should not be sanctioned, anymore than it's sanctioned when a district court makes that determination. So, there's no need in this section to talk about administrative agencies as in the proposal originally. This amendment takes out references to administrative agencies and puts them on the plane with the court subject to all the same standards as the courts of law. So, I urge the adoption of this amendment.

Questions

Mr. De Blieux Mr. Jenkins, according to the present wording of the proposal, if the administrative agency or some other of the courts would be overstepping its authority, couldn't the legislature correct it while they would not be able to do it under your amendment?

Mr. Jenkins I'm sorry, I didn't really understand that, Senator.

Mr. De Blieux I say, according to the wording in the present proposal where you say "as provided by law", if there were abuses made couldn't the legislature correct it while in other words, if we took out that language as you have amended it wouldn't it prevent the legislature from making a correction in that abuse?

Mr. Jenkins Well, I think the answer is that with this amendment we allowed the court to make the correction in the case involved. You wouldn't require legislation coming up to correct a particular

injustice because it would allow the appellate court to do justice in the particular case in question. So, I think that gives us justice much more directly than through a legislative sanction. I urge the adoption.

[Amendment rejected: 49-58. Motion to reconsider tabled.]

Amendment

Mr. Poynter On page 4 [by Mr. Avant], between lines 13 and 14 add the following paragraph: "Paragraph C. The legislature may provide for administrative agencies and authorize such agencies to make factual determinations which shall not be subject to review if supported by competent evidence following notice and hearing."

Explanation

Mr. Avant Mr. Chairman and fellow delegates, this amendment is intended to accomplish what Mr. Jenkins, I think, wants to accomplish and at the same time eliminate the objections to the provision which you've heard which would result if this was taken out completely as Mr. Jenkins' amendment did. I understand it was rejected, Mr. Dennis. May I have my amendments? Now if you read this section or subsection as it is written... All right, now. The purpose of this amendment is to eliminate the danger that Mr. Jenkins brought to your attention and I think it is a very definite danger or possibility... without the objection that Mr. Flory made. Now, if you will read this Subsection B in this Committee Proposal No. 21 you must come to the conclusion, I think that the language "or as provided by law in the case of review of administrative agency determinations" would permit the legislature to create administrative agencies and authorize that agency to make factual determinations from which there would be no review period. It would authorize the legislature to do that which would be exactly the situation that is constitutionalized now with respect to the Civil Service Commission. That's in the constitution. The people put that in the constitution. Now, on the one hand, if you take out the language out completely and say nothing about administrative agencies then their review or review of the findings of fact of an administrative agency in an administrative determination would be just like any other finding of fact made by a court. It would be completely subject to review on the facts. Now this amendment would incorporate into this section a long-standing, well recognized rule of administrative law and that is simply this, that the legislature may provide for administrative agencies and authorize those agencies to make factual determinations and that they will not be subject to review if they are supported by competent evidence following notice and hearing which meets the requirements of due process of law. I urge you to adopt the amendment, to eliminate an unsatisfactory condition which would exist, I respectfully submit if you leave this language in that Mr. Jenkins wanted to remove or would also result if you had taken it out.

Questions

Mr. De Blieux Mr. Avant, I'd like to know what could the legislature do under your amendment that it couldn't do under proposal B in the original proposal?

Mr. Avant What could they do or what could they not do?

Mr. De Blieux That's right.

Mr. Avant Well, which one?

Mr. De Blieux Well, either answer, because under the original proposal it says "as provided by law" which means the legislature can enact laws for administrative agencies.

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Mr. Avant All right, under the proposal, Senator De Blieux, as it is written, Subsection B, the legislature could create an administrative agency of any kind, you name it, authorize it to make findings of fact, or factual determination and in that same statute provide that those factual determinations were final and not subject to review by any court, period. It could do that.

Mr. De Blieux That's under proposal B?

Mr. Avant Under proposal B. If you read it, I think you must come to that conclusion.

Mr. De Blieux All right, would C keep them from doing that?

Mr. Avant C limits the legislature because it could not do so without the qualification that those finding of facts must be supported by competent evidence and must be the result of a hearing following adequate notice.

Mr. De Blieux Well, couldn't the legislature provide that under proposal B?

Mr. Avant They could provide that but they are not compelled to do so.

Mr. De Blieux Well, they're not compelled to do it under your section, either.

Mr. Avant Yes they are.

Mr. De Blieux It says the legislature "may". It doesn't say they shall.

Mr. Avant Well, they don't have to provide for the administrative agency at all, but if they provide for one then they have to also provide that if they're going to limit the review of its findings of fact that they have to be supported by evidence and they have to be after a notice and hearing, Senator De Blieux.

Mr. Dennis Mr. Avant, don't you think that your Subsection C is subject to the interpretation that apparently Senator De Blieux made of it that this doesn't require or put any restriction on the legislature. It simply authorizes them to do something. It's permissive. Wouldn't it be clearer if you withdrew it and spelled it out a little bit more that this actually says you can't even set up an administrative agency unless you provide this kind of review?

Mr. Avant I think this language in C provides that very clearly. They may provide for administrative agencies, and they may authorize them to make factual determinations which shall not be subject to review but only if they are supported by competent evidence following notice and hearing. That's what it means.

Mr. Dennis Isn't it true that under the basic Constitutional theory that anything you say that the legislature...unless you say the legislature can't do something, it can do something?

Mr. Avant Well, you're saying right here, Judge Dennis, that they can't set up an administrative agency and give it authority to make factual determinations which will be final if those factual determinations are not preceded by competent evidence and haven't been preceded by a notice and a hearing.

Mr. Dennis Well, I don't know that I agree with you, but even if that is so, would this mean that this is the only standard that could be placed upon a court in reviewing the determination of an administrative agency?

Mr. Avant That is the standard that is imposed now by due process of law, and I'm afraid if you adopt this thing as it is written you're going away with certain of the present requirements of due

process of law.

Mr. Jenkins Jack, rather than accomplishing what my amendment would have, don't you think that this is just the opposite of my amendment, because didn't my amendment provide that a factual determination of administrative agencies would always be subject to review and doesn't yours provide that they shall not be subject to review if there's any evidence at all to support the decision?

Mr. Avant Any competent evidence, Mr. Jenkins.

Mr. Rayburn Mr. Avant, I certainly don't want to clamor the constitution up with a lot of "may" propositions. If we would adopt this amendment and say the legislature may do this, don't you think that we could do it without this amendment?

Mr. Avant Mr. Rayburn, the purpose of this amendment was to prohibit the legislature from doing something which I think they can clearly do under Section B and that is, to create an administrative agency and authorize it to make factual determinations on any basis they want to, no evidence, incompetent evidence, if that's the way they set it up, and at the same time, provide that that would not be subject to any kind of review.

Mr. Rayburn Mr. Avant, so under Section B, they have the language "as provided by law" and then Section C in your language says they may provide, so I'm at a loss as to know the difference. Section B says as provided by law and you don't say they shall; you say they may.

Mr. Avant We're talking about two different things, Mr. Rayburn. This "as provided by law" means by whatever the legislature does.

Mr. Rayburn That's right. Can you explain to me by what you mean by what they may do?

Mr. Avant I'm sorry, I didn't hear you.

Mr. Rayburn "As provided by law" in my interpretation means what the...a law that is passed by the legislature. Now, under Section C you say "as may be provided by law". I want to know the difference.

Mr. Avant I don't say anything about "may be provided by law".

Further Discussion

Mr. Dennis Mr. Chairman, fellow delegates, I rise in opposition to the amendment. It is very unclear, I believe. I believe Mr. Avant is trying to say that if the legislature should provide for judicial review of facts of an administrative agency that if it's going to reverse those facts there must be at least some competent evidence to base its decision on. I think that's what he's trying to say, but I don't think this says that. I think this is...really may add nothing at all to the section beyond what the legislature is authorized to do in the first part. On the other hand, it might be interpreted to have a very bad meaning. To mean that if there is any competent evidence to support any administrative determination it could not be reversed, even though the legislature attempted to say that the court could review fully the findings of fact of an administrative agency. I don't know exactly what it means. I believe many of us are having trouble with it. I would hope Mr. Avant would withdraw his amendment and redraft it more clearly, but if he does not then I must ask you to reject it because I'm afraid not enough of us really know what it means.

Questions

Mr. Kilbourne Judge, you won't be held to your ruling on this if it ever comes up in your court, but this says...I'm having the same trouble you are. I don't think I understand it...shall not be subject to review...shall make factual determination

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which shall not be subject to review if supported by competent evidence"...my question is, wouldn't you have to review those facts to determine whether there was competent evidence? That's what's bothering me about this. I wanted to ask Mr. Avant the question, but he didn't have time.

Mr. Dennis I'm having the same trouble you are. To me, it means that if there is any competent evidence then the legislature couldn't tell the court that it could change the determination of the administrative agency, but since he puts the word "may" in there, it doesn't seem to compel the legislature to do anything.

Mr. Guarisco Judge Dennis, under the law as it is presently and under this provision, if the fire marshal should check out a person's building and make a determination of fact that his building should be condemned and he reaches that factual determination, can any court review that fact or is that fact conclusive?

Mr. Dennis Well, it depends upon what the legislature says. If the legislature said that the court can review that administrative agency's determination then it could review it according to such standards as the legislature set forth.

Mr. Guarisco But isn't it now that administrative agencies, determinations of fact by those agencies are not subject to review by the courts? Yet, court decisions are reviewable by the higher court. Isn't that correct?

Mr. Dennis No, sir. I think unless there's a limitation placed on the court in the constitution or in statutory law it has appellate review of all facts coming before it. Now, we have attempted to say in the previous section that the legislature can withdraw this appellate review of facts from the courts in administrative determinations as the legislature should see fit. Now, Mr. Avant is coming back and saying the legislature may provide a review but can't tell the court it can reverse if there's any competent evidence. I'm confused as to what it means. I don't think it's clear and I'm not sure even if we can all agree upon what it means that it is good.

[Previous Question ordered. Amendment rejected: 10-101. Motion to reconsider tabled. Previous Question ordered on the Section. Section passed: 11-1. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter Section 11. Courts of Appeal, Certification of the Supreme Court, Determination

Section 11. A court of appeal may certify any question of law before it to the Supreme Court whereupon the Supreme Court may give its binding instruction or consider and decide the case upon the whole record.

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, this continues a provision that is presently in our constitution without any essential change except to simplify the language. For those of you are not attorneys, in case you don't get the word from my fellow members of the Bar, on the floor, to certify a question to the Supreme Court from the court of appeal simply means that the court of appeal writes out the question of law that it wants to know and wants to have decided in a particular case and sends it up to the Supreme Court. The Supreme Court can answer that question for them without reviewing the whole case. However, if the Supreme Court finds that it needs to consider the whole case in order to adequately answer the question, it can require that the whole case be brought up and be decided in the Supreme Court instead of in the court of appeal.

Questions

Mr. Roy Judge Dennis, that's been the rule in the past, has it not?

Mr. Dennis Yes sir. This is the same provision.

Mr. Roy And it's worked to obviate a lot of extra work and a lot of decisions by a court of appeal that later would need clarification by the Supreme Court anyway. Hasn't it?

Mr. Dennis Yes. The committee went into this and decided it would be desirable to continue this in our constitution.

Mr. Pugh Judge, as you know by statute, the federal court of appeal may also certify a question to the Supreme Court. I doubt its constitutional validity in its present form. Did you give any thought to providing here that a federal court of appeal may certify such questions or did you intend when you say "court of appeal", without referring to Louisiana Court of Appeal, to cover both the Louisiana Courts of Appeal and the federal Fifth Circuit Court of Appeal?

Mr. Dennis Mr. Pugh, I may stand corrected by other members of the committee, but I don't believe we considered granting to the state Supreme Court, if I understand you correctly, the power to certify to federal courts, questions of law. Is that what your question was?

Mr. Pugh No. The statutes now provide that the Fifth Circuit Court of Appeal may certify to the Louisiana Supreme Court, questions, much as a court of appeal, Louisiana Court of Appeal, may certify to the Supreme Court. I'm saying that I don't think that statutory provision is constitutional. I'm asking you whether or not you all intended to include, when you used the phrase, "a court of appeal may certify a question to the Supreme Court", did you intend to include both the state courts of appeal and the federal courts of appeal?

Mr. Dennis No sir. I can answer that definitely. We intended only to speak of state courts in this article.

Mr. Pugh Did you intend to cover the federal courts of appeal in any other section?

Mr. Dennis No sir.

Mr. Tate Judge Dennis, with regard to Mr. Pugh's question, did you know that when the statute was adopted the Louisiana State Bar Association had made a full study and came to the conclusion that in every state where such a provision was adopted, it was within the constitutional powers of the legislature to provide for that procedure? That the... Did you know that?

[Previous Question ordered on the Section. Section passed: 11-4-0. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter Section 12. Courts of Appeal, Chief Judge; Duties

Section 12. When a vacancy in the office of chief judge of a court of appeal occurs, the judge oldest in the point of service on the court, below the age of sixty-five years, shall succeed to the office and shall administer the court, subject to rules adopted by the court."

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, this provision provides for the selection of a chief judge in each court of appeal. In the present constitution, we have such a person already. He's called the presiding judge. So here we are changing

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his title to chief judge. The committee proposal provides for selection based on seniority except that the judge must be under sixty-five when he fills the vacancy, similar to the provision in the chief justice position of the state Supreme Court. I suppose that we have already fought this fight and unless there is any other member of the committee who would like to resist the amendment to make this one consistent to the Supreme Court Chief Justice selection, I would accept that amendment. I believe Mr. Kean has it prepared and has offered it, taking out the words "below the age of sixty-five years".

Questions

Mr. Pugh Judge, I noticed by this section that you provide a method by which the office of chief judge may be filled in the event of vacancy, but I found no place in the constitution providing for a chief judge. The Supreme Court provision provides for a chief justice and six associate justices. I do not notice anywhere in the court of appeal provisions that a chief justice is defined or named, except here, where it says how he will be replaced. Am I in error?

Mr. Dennis You are correct, Mr. Pugh. The reason that the committee chose this language, beginning when a vacancy in the office occurs, was to make it absolutely clear that we would not oust from the position, the incumbent chief judge or presiding judge, should he be below the age of sixty-five. Of course now that the sixty-five year old limitation has gone out the window on the chief justice and will soon go out here, I guess we could rephrase the whole section. I might suggest, though, that we could take care of that in Style and Drafting, I believe, because it would not be a substance. I believe that it's adequately clear that the presiding judge, which is provided for now, is going to become the chief judge.

Mr. Pugh In other words, what you are saying is that Styling and Drafting will actually create the position of chief judge. Then, of course, your section will then provide for his replacement. Is that correct?

Mr. Dennis I'm suggesting that they could provide something like "there shall be an office of chief judge which shall be occupied by the oldest member on the court" instead of saying "when a vacancy occurs in the office of chief judge."

Mr. Pugh That's what disturbed me. I couldn't find the creation of the office, but I could find how it was replaced.

Mr. Stinson Judge Dennis, I'm following the line of questioning of Mr. Pugh. Without being critical, it was an oversight, wasn't it? Don't you think we should prepare an amendment and put it in? Style and Drafting can't change and put that in without being instructed, can they?

Mr. Dennis I believe that they could propose an amendment to this when they come back to us. Point out to us that it was an oversight and propose an amendment. If you have an amendment prepared or if we can stand the delay, I don't mind doing it now.

Mr. Stinson I don't have one, but I'm afraid we're putting so much burden on Style and Drafting, we're going to have to extend this convention a year for them to do their work and then come back to us.

Mr. Dennis Your point may be well taken, Mr. Stinson, but I believe we need to...

Vice Chairman Miller in the Chair

Questions

Mr. Rayburn Judge, did I understand you correctly

to say that Style and Drafting could come back after we had already adopted this particular section or schedule and put in there a chief justice which was not in there now, spell it out? Is Style and Drafting going to have that much authority?

Mr. Dennis No sir. What I may have suggested in not too clear words, was that Style and Drafting could suggest to the convention that there was an oversight here and that we should adopt an amendment clearly setting forth the following, quote, unquote, and if we decided to adopt it, we could put it in there.

Mr. Rayburn Okay. In other words, what you really said, Judge was that Style and Drafting could call that oversight to this convention and then we could act on it at the time they called it to our attention. Is that correct?

Mr. Dennis That was what I intended to say.

Mr. Riecke I just want to make sure, Judge, when I vote on this that your proposal includes Mr. Kean's amendment. Is that correct?

Mr. Dennis It does not right now, but when he offers it, I do not plan to object to it. I plan to accept it unless someone else wishes to object on the committee.

Mr. Weiss Delegate Dennis, couldn't one member of your committee make a floor amendment to correct this error?

Mr. Dennis Yes sir. I believe that each one of them would be capable of doing that.

Gentlemen, it's really just a matter of whether we're going to call him the presiding judge as the present constitution states, or change the name to chief judge.

Mr. Sandoz Judge, would you have any objection to passing this section until we could get an amendment printed up in accordance with your suggested change?

Mr. Dennis I have no objection. I don't know whether that will be necessary. We do have other amendments, I understand, to it.

Mr. Jack I just want to make this point Judge, if you'll explain to them. If we wait to fix the amendment, you're going to have to go back to the section on the chief justice of the Supreme Court because it had the same wording as this would. We'd just have to...

Mr. Dennis No, Mr. Jack. I don't believe so. The chief judge of the Supreme Court is now called the chief justice and was called the chief justice in the 1921 Constitution. The problem arises here because in the '21 Constitution it referred to a presiding judge in the court of appeal and we are now switching terminology and calling him the chief judge.

Mr. Jack All right. Then they already had it created. Okay.

Mr. Dennis We had a similar position but it was not called the same thing.

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Kean]. On page 4, line 23, immediately after the word "court" and before the word "shall" delete the following: ", below the age of sixty-five years,".

Explanation

Mr. Kean Madame Chairman, this amendment is simply designed to make the provisions of Section 12 consistent with the provisions of Section 6A which we debated this morning. I see no need to rediscuss

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the matter, and in light of the comment by Judge Dennis, I request of Judge Dennis that he accept this amendment so that the matter can be included as part of the new section.

[Previous Question ordered. Amendment adopted without objection.]

Amendment

Mr. Poynter Amendment sent up by Delegate Guarisco as follows:

Amendment No. 1. On page 4, line 24, after the word "office" insert a period and delete the remainder of the line and delete line 25 in its entirety.

Explanation

Mr. Guarisco What this does is simply to not force the chief justice to be also the judicial administrator of the court. In other words, the person will become the chief justice but he may or may not be the administrator. He may not want the job or someone else in the court may be better able to handle the administration or there may be a present administrator that is separate and apart from the chief justice. So this would allow flexibility on the court as far as the internal workings. If they wanted someone else to administer the court, the chief justice would not be forced by this constitution to do so. I've had several court of appeal judges to ask me to bring up this amendment and Judge Tate says that he has no objection to it. I ask that you adopt the amendment.

Questions

Mr. Silverberg Tony, if we adopted this amendment, would this mean that we were silent on the subject? Would automatically another administrator be picked?

Mr. Guarisco Well he may or may not be. Someone will administer the court and the way they work it, sometimes do it "round robin" as I understand, or sometimes the chief justice himself is the administrator. But in many instances, the job of chief justice and administrator are too much for one man to handle. This allows them to do whatever they want to do.

Mr. Silverberg Well the article doesn't say administrator. It said "shall administer". Doesn't it? He could pick an administrator if he needed one, if he wanted one.

Mr. Guarisco Well the only reason why the judge who had talked to me about this, or the several judges, he was afraid that this administration would be forced upon the chief justice. Now whether or not that will happen, I do not know.

Further Discussion

Mr. Dennis Madame Chairman and fellow delegates, I hate to disagree with Mr. Guarisco and apparently my colleague Justice Tate, but on behalf of the committee, I feel that it is important that this provision remain as it is and I don't think that it will cause the problem that Mr. Guarisco fears. As Mr. Silverberg pointed out quite correctly, the chief judge could administer the court by assigning some of his administrative duties to another judge or judicial administrator. So the provision would not prevent that. However, if we adopt his amendment, I think it will prevent the vesting of the final ultimate authority for the administration of these courts in a particular person. It will leave it without an administrative head, whether he is active or whether he delegates that administrative chore. This is even more important to the scheme that has been followed by the committee later on in the district court provision because later on we have provided, for the first time, that there shall be a chief judge of each multi-judge district court who shall have the administrative duties assigned to him by court rule by the other judges. The

committee, I believe, felt, I know, felt that this was very important because this is something that is lacking in our court system today. A chief judge on the trial court level who has some authority granted him by law in the constitution to be the administrative judge. I would ask you to reject the amendment because I don't believe the amendment is necessary to take care of the special problem that Mr. Guarisco is attempting to solve for one of his judges.

Question

Ms. Zervigon Judge Dennis, if you took the administrative duties away from the chief judge, what would distinguish him from the other judges other than his title?

Mr. Dennis I guess his title and his seniority would be, perhaps, the only thing except that I believe under this amendment he could do what Mr. Guarisco has in mind. He could delegate a lot of his responsibilities to someone else and he could make the ultimate decision.

[Previous Question ordered. Amendment rejected: 12-99. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Pugh]. On page 4, line 21, after the word "Section 12." and before the word "when" insert the following: "The presiding or senior judge of each of the circuit courts of appeal shall be the chief judge."

Explanation

Mr. Pugh I don't believe it needs explanation. The reason I used the phrase "presiding or senior" is because the existing constitution uses the word "presiding". The phrase is therefore, the existing or presiding judge will automatically be the senior judge.

Are there any questions?

[Amendment reread.]

Further Discussion

Mr. Dennis Madame Chairman and fellow delegates, I have no objection and I don't believe the committee has any objection to this amendment. This clarifies the question raised earlier by Mr. Pugh and others. It makes it clear that the judge that we call the presiding judge in the 1921 Constitution will automatically become the chief judge when the new constitution is adopted. So I ask your favorable passage of this amendment.

Questions

Mr. Sutherland Judge Dennis, you say the committee has no objection to this amendment but this doesn't define, under the section, it says the duties of the judge. This doesn't define the duties. We just voted on one that kept those duties in.

Mr. Dennis Mr. Sutherland, I think this is just an additional sentence at the beginning of the section. That was the way I interpreted the amendment as I heard it read by the Clerk. I'd like to ask the Clerk if that is correct.

Mr. Poynter Yes, Judge Dennis. It inserts a new sentence and leaves the balance of the section as previously amended by the convention.

Mr. Rayburn Judge, what would be the difference in the presiding judge or senior judge, in your opinion? Does that mean if the senior judge is not there, the presiding judge shall be the senior or will be the senior judge in the senior judge's absence? I'm just trying to define why you would say the presiding or senior judge. They both can't be senior judge.

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Mr. Dennis Well sir, with the background of the 1921 Constitution, I feel safe in saying that this would be interpreted to mean the same judge who is the presiding judge, under the 1921 Constitution, which is the senior judge.

Mr. Tate Judge Dennis, would you ask Mr. Pugh, this is probably out of order, if he would accept taking out of his amendment "presiding or" which I, unfortunately, suggested to him that he add in at another stage of the composition?

Mr. Dennis Judge Tate, I think that it is very clear that we mean the judge who is the presiding judge under the 1921 Constitution shall automatically become the chief judge under the new constitution. I don't think it's necessary to amend it any further. If there are any stylistic changes, I think that these can be recommended by the proper committee.

Mr. Chatelain Judge Dennis, do we really need this amendment in this section, sir? It seems to me like we are amending your committee's work to death. I just want to know if we really need this amendment, sir, in your opinion?

Mr. Dennis Well Mr. Chatelain, it doesn't change the substance. I believe it does make some of the delegates feel a little more comfortable with the section, and we have no objection.

Mr. Chatelain Well I think that we are writing a 1973 model constitution and there's no use to go back to the 1921. I think Style and Drafting and with your committee's work could do the job well enough.

Further Discussion

Mr. Jack Has anybody asked a question on it. If not, I want the floor if it's not too late.

You've got an error here on this senior judge. You don't say...Madame Chairman, ladies and gentlemen, I was looking at this and I called it to the attention of Judge Tate and I think he agrees. You're using the word "senior judge". Now "senior judge" does not mean in point of service. It means in age and you are interested in, from the original material, from point of service. So I suggest that we hold up or however you want to do to get your amendment drawn. I don't like the word senior citizen, but that means age, and senior judge means age, and not point of service. So if you adopt this amendment without correcting that, you're going to have your chief judge to be the oldest judge and not the one oldest in point of service. I just wanted to mention that.

Further Discussion

Mr. Alexander My question is to the chief Clerk. In order to satisfy the objection of Mr. Jack, if you can technically add "in point of service". I think that's the intent of the amendment.

Mr. Poynter Well now Reverend, he's offered these amendments. If he wants to withdraw them and the convention lets him, that's Delegate Pugh's business. But he has pending amendments and that gentleman is going to have to request to withdraw the amendments if he so chooses.

Mr. Alexander Well that's what I'm suggesting. That he withdraw the amendments temporarily and then make the technical correction and reintroduce them.

Mr. Poynter The gentleman doesn't want to withdraw the amendments at this time, Reverend. He says he thinks he can clear up some of the problems on his closing.

[Previous Question ordered.]

Closing

Mr. Pugh Madame Chairman, delegates, the only reason I suggested this amendment is because I do

not believe we ought to leave it up to Style and Drafting to create constitutionally endowed offices. As originally written, this section provided for the method by which you would replace an office, but you failed to create the office. Under the existing constitution, the presiding judge is what will then be, upon adoption of this constitution, the senior judge. Therefore, the phrase, "the presiding or senior judge" takes care of the situation without having to put "in point of time". After the presiding or senior judge dies or is replaced subsequent to the adoption of this constitution, then the balance of the section clearly flows to provide that that is the person who is senior in point of service time. Are there any questions?

Questions

Mr. Alexander Delegate Pugh, suppose we take this hypothetical question. Suppose there is a judge on the bench who is seventy, but he has only been on the bench for ten years. There is another who is sixty, but he has been on the bench twenty years. Now which one would become the presiding judge?

Mr. Pugh The presiding judge, under the existing constitution, the presiding judge is that judge who has been there senior in point of time to all others. That presiding judge automatically will be the one who will be the chief judge under the new constitution. That's what that provides.

Mr. Alexander But what would you do with the seventy-five year old judge who is senior?

Mr. Pugh He's not senior in point of time.

Mr. Alexander Well I know, that's exactly what you mean and that's what should be there.

Mr. Pugh I apologize. I can't follow you.

Mr. Alexander What I'm saying, you mean in point of service.

Mr. Pugh That is correct.

Mr. Alexander And that's why I suggested the phrase "senior judge" after judge, "in point of service," which would have corrected the amendment and made it acceptable.

Mr. Pugh Well first of all, it's never been so interpreted. But more important than that, the point I'm attempting, unfortunately not very successfully to put across, is that there is an existing presiding judge under the existing constitution. The day this constitution is adopted, he automatically will be the chief judge and it is for that reason that I drafted that amendment in that form.

Mr. Denney Mr. Pugh, are you aware that in the earlier portion of this proposal when it mentions the Supreme Court shall consist of a chief justice and six justices, it never says who the chief justice is? It provides subsequently that in the event of a vacancy in the office of chief justice then the justice who is senior in point of service shall become, just as this one does. But it has the same omission in the Supreme Court section as it does in this section. What I was going to ask you sir, is don't you think both of those should be taken care of in the transitional portions of the constitution which state that the man who is chief justice of the Supreme Court at the time this goes into effect shall remain chief justice, and the man who is chief judge shall remain chief judge?

Mr. Pugh You are absolutely correct. Both of the sections should so provide and I certainly see no reason just because we failed to do it on the Supreme Court, that we perpetuate our errors. So I ask you to adopt the amendment so at this point of time take care of the court of appeal problems. I just don't think we ought to have constitutionally provided offices without spelling them out. It's

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one thing to say how you are going to replace them, but let's put them in before we talk about replacing them.

[Amendment rejected: 29-0.
Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Dennis], on page 4, line 21, after the words, "Section 12.", delete the remainder of the line and delete line 22 and insert in lieu thereof the following:

"There shall be a chief judge of each court of appeal who shall be the judge oldest in point of service on the court and who shall administer the court subject to rules adopted by the court."

Explanation

Mr. Dennis Madam Chairman and fellow delegates, this attempts to say what I think we all want to say and remove the objections that we have been debating for the last few minutes.

It says affirmatively that there shall be a chief judge and that he shall be the judge who is oldest in point of service on the court and that he shall administer the court subject to the rules adopted by the court.

If there are no objections, if you don't have any questions, I will move for adoption of this amendment.

[Amendment reread.]

Questions

Mr. Champagne Does that alter any other part of the section?

Mr. Dennis Mr. Champagne...

Mr. Champagne It won't alter anything of what we have already...

Mr. Dennis I am sorry. Someone was speaking to me...

Mr. Champagne Yes, well does that alter anything to follow? In other words we still have the procedure in case of a vacancy. Right?

Mr. Dennis No, sir. This doesn't alter any substance. However, I would like to point out to the Clerk that the amendment is falsely drawn and doesn't delete enough of the former Section.

Mr. Poynter You're right. Shouldn't it, Mr. Dennis, be after the word, "Section 12", insert the following

Judge Dennis, you and I need to get together just a second... I think we understand where we are, anyway.

The amendment was incorrectly drawn. It should be on page 4, line 21, after Section 12 delete the remainder of the line and delete lines 22 through 25 and insert in lieu thereof the following, and then the language that you have there deletes the entire Section 12, in effect, other than the title and so forth and a second amendment will add just for an abundance of caution, to strike out the floor amendment proposed by Delegate Kean and adopted by the convention on today.

But it would have the effect of striking out all of Section 12 as it now stands and inserting the sentence contained in the amendment on your desk.

Explanation

Mr. Dennis Madam Chairman and fellow delegates, I believe the amendment is on your desk and has been explained. If you have no questions, I'll ask for your adoption of the amendment.

Questions

Mr. Kilbourne Judge, would you read the entire

Section now as it would be, and would be stated?

Mr. Dennis Yes, sir.

"There shall be a chief judge of each court of appeal who shall be the judge oldest in point of service on the court and who shall administer the court subject to rules adopted by the court."

Mr. Bergeron Judge Dennis, this simply establishes the chief judge and it coincides with what we have done for the Supreme Court Justice, chief justice, in case of a vacancy. Am I correct?

Mr. Dennis Yes, sir.

Mr. Bergeron Thank you.

Mr. Dennis I move for adoption of the amendment.

[Previous Question ordered. Amendment adopted without objection. Previous Question ordered on the Section. Section passed: 112-0. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter Section 13. Courts of Appeal, Clerks and Staff—Section 13.

Each court of appeal has authority to select its clerk and other personnel and prescribe their duties and compensation.

Explanation

Mr. Dennis Madame chairman, chairwomen, and fellow delegates, this is a provision which is similar to that that was in the Supreme Court Section granting the court of appeal authority to select its clerk and other personnel and prescribe their duties and compensation.

We ask for your favorable adoption. I believe Mr. Gravel has an amendment to which I have no objection. It deletes the word "compensation" and we had fought that battle earlier and so I will offer no objection to the amendment.

Amendment

Mr. Poynter Mr. Gravel and others send up amendments at this time, Madam Chairman.

Amendment No. 1, page 4, line 28, immediately after the word "duties" insert a period and delete the remainder of the line and delete line 29 in its entirety.

Explanation

Mr. Gravel Madam Chairman, ladies and gentlemen of the convention, this is the same kind of amendment that was accepted by the convention with reference to the substance of the Supreme Court.

Judge Dennis says that he has no objection to its adoption and I move the adoption of the amendment.

[Previous Question ordered. Amendment adopted without objection. Previous Question ordered on the Section. Section passed: 112-0. Motion to reconsider tabled. Quorum Call: 100 delegates present and a quorum.]

Personal Privilege

Mr. Roemer Fellow delegates, I rise on personal privilege to make a personal testimony about what I think this convention is and is not.

I submit that we are not a personal joke. I submit that we are not the tool of the whim of any one delegate, whoever he or she might be.

I submit that as best we can, we do represent the honest, hard working, serious people of the state. I submit that at night and in our off hours we can have our good times. But while we are here, supported by tax dollars, looked at by every citizen of this state while we are here, we can expect no

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less than to do our best.

I suggest to you that one delegate, either consciously or unconsciously has added himself and his actions to a list that is already too long, of people who have abused and misused my name and yours, my thoughts and yours, my constitution and yours.

Fourteen amendments have come across my desk in the last twenty-five minutes that directly contradict delegate proposals passed here, No. 9 and No. 30 that call for amendments, at tax payers' expense to the tune of at least twenty dollars a set, to be pertinent and germane to the issue.

I suggest that this man is ill-advised and misguided and whether you agree with me tonight, I want to take these few moments to say, I object as a friend of his. I object as a fellow delegate of his. I object as a citizen of this state.

I say no more. I say, shame on you. No more. Now is the time to grow up together.

Personal Privilege

Mr. Wall Mr. Chairman, fellow delegates, I'm here to represent the people of the fifteenth district and the state of Louisiana, in the manner in which, I think, will serve the people and at the same time serve the people of this state. No individual, no matter how immature he is, will affect that type of representation by me.

The amendments that I have, I have them because, and had them prepared in advance and there will be some more because I know what you have to do to compete with that pressure and that politics of nonpoliticians, the judges. I have fought this battle before.

Some immature, inexperienced people haven't fought this battle before. So you have to get the issue out before they get the commitments out of delegates without telling them the true story and true issue and the true expense of the taxpayers. Yes, my amendment is... Let's say that they cost twenty dollars apiece. Let's say that I have twenty of them or thirty of them. They would cost six hundred dollars. That is a pittance to what the judges are taking from retirement in this state without contributing to it.

And it's a pittance to what they are trying to get benefits and tribute according to those benefits. Now the retirement system in this state are not in the constitution except for the judges... except for the judges, ladies and gentlemen. Retirement should be a statutory matter. The judges are entitled to a retirement system. I have told the judges that I will support an amendment to take them out of the constitution but guarantee them all of the benefits that they are entitled to under present law in the constitution. Guarantee them that. Even to the extent if they've earned... say that their term provides for them to be entitled to two-thirds of their pay and say their pay was eighteen thousand dollars a year and they got a better judgeship where they are paid thirty thousand dollars a year. Years from now, I would go so far as to say that they are entitled to that two-thirds pay on that thirty thousand.

And then, but at the time this convention is over, if the legislature put in a retirement system to where they get the benefits according to what they want to contribute for an actuarially sound system. And if they earn another ten percent under another ten percent basis of thirty thousand, they'd get twenty thousand plus a ten percent of twenty-three thousand. Ladies and gentlemen, yes, I can see where inexperience and immaturity would say that my amendments are unnecessary.

I can see where they don't understand the process of government and the process of judges' lobbying. They don't understand the saving of taxpayers' money. But a little six hundred dollars is nothing to what the judges are milking the taxpayers for on retirement and not contributing to it.

So yes, they are asinine, but they are not near as asinine as what the judges are doing to the taxpayers and I shall continue to make a thirty minute talk and I talked about district attorneys race and

didn't even mention the constitutional convention and about the twenty-nine and a half minutes and I thought, "Oh yes, I am running as a delegate to the constitutional convention." And I said, "By the way, you people in the fifteenth district over there, I'm a delegate to the constitutional convention and there's one thing I'm going to do if I go down there. I am going to do everything in my power to take the judges' retirement out of the constitution where it has no business and see that they contribute." That's the only promise I gave the people of the fifteenth district that I was going to try to do if I was elected to this constitutional convention.

So what I am doing is exactly what I promised the people. And I am going to tell you right now, it has already had its effects. The judges are all ready to make some compensation that will save the state many thousands and hundreds of thousands of dollars more than what these little amendments are costing.

Thank you.

[Motion to take up the orders of the day adopted without objection.]

Reading of the Section

Mr. Poynter Section 14, District Courts, Judicial Districts

Section 14. The state shall be divided into judicial districts each composed of one or more parishes and served by one or more district judges.

Explanation

Mr. Dennis Fellow delegates, Section 14 simply provides that the state will be divided into judicial districts each composed of one or more parishes and served by one or more district judges. Later sections will retain all districts just as they are without spelling out the changes in the constitution and provide for the method of rearranging districts.

But all of that is contained in Section 15. This simply affirms our method of dividing trial courts and the names of them into... by dividing the state into judicial districts.

Question

Mr. Pugh Judge, I don't find, excuse me, is he yielding?

Judge, I don't find any provision about the election of these judges. Are we going to elect them or appoint them? It merely says we will have judges but it doesn't say how we are going to get them.

Mr. Dennis That's provided by a later section if I can put my finger on it here... Section 22 provides for the election of judges at a regular interval.

Further Discussion

Mr. Schmitt We have proceeded so far and made the Supreme Court judgeships from single member districts, we have made the court of appeal from single member districts and I wonder if there is any reason why we are not going to make the individual judges from these judicial districts to be single members. I feel that this would help the people to be better represented by their judges. It would make it a lot less expensive for a person to run for office.

As an example in the Parish of Orleans a person running for the criminal district court judgeship must spend almost sixty thousand dollars in order to be elected. This is a very expensive race for an individual to have. I am sure throughout the state in the larger districts that the cost of running would be very high. This tends to keep down the competition for these individual judgeships and I was just bringing it out as a matter of discussion.

Questions

Mr. Stinson Mr. Schmitt, suppose a judicial district

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is one parish and they have two judges? Are you going to say one judge runs from North Bossier Parish and one from South Bossier Parish? Are you going to create two judicial districts within one parish?

Mr. Schmitt The number of judges are decided according to case load and this would be divided according to districts within that individual judicial district.

Mr. Stinson I know, but where that exists now is Division A and B which are elected parishwide.

Mr. Schmitt That's correct, they have to run from the entire district and in your case it would be the entire parish. In Orleans it's the entire Parish of Orleans which has hundreds of thousands of people and you have to project your views to these hundreds of thousands of people in order for you to have a chance of winning which means it costs a lot of money.

Mr. Stinson But if you're going to have one judge for each group, you are going to divide the parish into...

Mr. Schmitt Well, that's what you're doing with Representatives and Senators and judges from the courts of appeal and judges from the Supreme Court.

Mr. Stinson Well, that's an entirely different problem from this.

Mr. Schmitt Why?

Mr. Stinson Because, if you got one parish and you are going to divide it into two different judicial districts, who is going to use the courthouse? The courthouse would be in one part of it and not in the other part.

Mr. Schmitt You are not going to have a new district. You are only going to have those judges elected from part of that district. In other words, as an example, the twenty-fourth judicial district court would still be the twenty-fourth judicial district court. However, the judges would run from just one portion of it.

Example, one might run from Gretna, one from Westwego, one from this other area. They'd all serve in the same building.

Mr. Stinson But in Bossier...my parish, the north part of the parish doesn't even have a lawyer so they wouldn't have a judge then, would they?

Mr. Schmitt I am sure one attorney would move there.

Mr. Dennis Mr. Schmitt, I wanted to ask you a similar question. Do you realize that we are providing in this constitution that in order for a person to run for judge he must practice law for five years first?

Mr. Schmitt I don't see any problem with that...

Mr. Dennis If you divide the state into single member districts based on population you might not have any...

Mr. Schmitt I am not talking about dividing the entire state. I am talking about dividing the individual judicial districts which have the number of judges based upon case loads. You might have one small parish which may have more judges. You may have one larger parish which may have fewer judges. But it would be based upon...

[Previous Question ordered on the
Seltman. Motion passed: 19-4.
Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter "Section 15. Courts continued juris-

dition, judicial districts, term.

Section 15. A. The district, parish, city, family and juvenile courts existing at the time of the adoption of this constitution are retained. Except as provided in Section 35 of this article, the legislature may abolish or merge trial courts of limited jurisdiction subject to the limitations in Sections 16 and 21 of this article. Except as provided in Section 35 of this article, the legislature may establish trial courts of limited jurisdiction which shall have parishwide territorial jurisdiction and subject matter jurisdiction which shall be uniform throughout the state. The office of city marshal is continued until such time as the city court he serves, is abolished by the legislature.

B. The judicial districts existing at the time of the adoption of this constitution are retained. The legislature, by a majority vote of the elected members of each house with approval in a referendum in each district or parish affected, may abolish or merge judicial districts, subject to the limitations in Section 21 of this article.

C. The term of district judge shall be six years. Terms established for judgeships existing at the time of the adoption of this constitution are retained. However, the legislature by a majority vote of the elected members of each house with approval and referendum in the parish affected may reduce the terms of district judges in a parish to not less than six years."

Chairman Henry in the Chair

[Motion to revert to other orders
of the day adopted without objection.]

Announcements
[J Journal 327]

[Adjournment to 9:00 o'clock a.m.,
Friday, August 17, 1973.]

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Friday, August 17, 1973

ROLL CALL

[107 delegates present and a quorum]

PRAYER

Mr. Stovall Let us pray. Eternal God, Father of us all, all of us need those moments when we wait in quietness before You to realize who we are, who it is to whom we belong. Wherein lies our strength, the values for which we live and the direction our lives and our state should take. May this be for each of us such a holy moment. When we realize anew that we are Your children, created in Your image. You are the source of wisdom and guidance and You seek to lead each of us and our state toward Your kingdom, the fulfillment of Your purposes. We are grateful to You for this state in which we live and which we represent. We are grateful for the concern and the dedication of these delegates. We pray for Your presence with us here today that we might be patient one with the other, understanding of the issues that are before us and the willingness to stand for the hard rights against the easy wrong. And above all, work together to move us forward as a state, as a people, as a convention, that we might fulfill Your purposes. Be with our dear loved ones while we are separate one from the other and give us Your presence and Your wisdom for we offer our prayer in Your name, the one who was, and is, and ever shall be. Amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Mr. Poynter Committee Proposal No. 21 introduced by Delegate Dennis, Chairman on behalf of the Committee on the Judiciary and other delegates and members of that committee.

Which is a substitute for Committee Proposal No. 6. A proposal making provisions for the judiciary branch of government and necessary provisions with respect thereto.

The status of the proposal at this date is that the convention has adopted, as amended, Sections 1 through 14; presently has under consideration Section 15, which was read but I believe not explained on yesterday.

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, we present to you at this time Section 15 of the committee proposal which relates to the courts at the district court level and below that level. As you know, the district courts are the basic trial courts in our state. The other courts below that level are referred to in this section as limited jurisdiction courts and I plan to offer a technical amendment to include special courts to make it clearer. The basic idea here is to retain the present structure of the trial courts of original jurisdiction in the state of Louisiana, and to provide for a mechanism for the legislature to be able to change and reorganize the courts below the district court level as time demands. Now this is not as big a change from our present structure as it may appear at first glance. Because even today, most of our city and other limited jurisdiction courts of original jurisdiction in the state of Louisiana were created by statute pursuant to a grant of authority in this constitution. So here we are more or less continuing the same thing, except that, we are providing that future courts below the district court level must be established parish-wide and have uniform subject matter jurisdiction throughout the state. This we hope, will provide a vehicle for the legislature if it sees fit over the next period of years to move toward either a

three leveled or four leveled court system that would be uniform and consistent throughout the state and would not be fragmented and specialized as it is today. Paragraph B provides that in order to change a judicial district from those existing at the present time, the legislature would be required to pass such a change by a simple majority and then that change would have to be approved at a referendum in each parish or district affected. Paragraph C represents a compromise on a very hard fought issue and that was the term of district court judges. As you know, the terms of district judges in Orleans Parish are twelve years and elsewhere in the state, they are six. Our committee considered increasing them all to twelve, reducing them all to six. A combination of having the first term being four or six years and then the second term twelve and after several days of debate finally adopted this compromise, which establishes the minimum term at six years but provides that the legislature could by a majority vote with approval of the referendum in the parish affected, reduce the terms of any judge who had a term over six years down to no lower than six years. I might add one comment on the style of this section as it might refer to the state to which we have finally adopted both the section and the schedule. I believe for clarity sake in the schedule and this is my own personal view and it may not prevail in the schedule or in the Style and Drafting Committee. I believe we could set forth in the schedule specifically the parishes outlining the districts as they are today. And simply refer to the schedule in this section, it would make this section a lot neater and a lot clearer when we finally adopt the product. But what this section says now is exactly what we are attempting to do, we are attempting to retain all of the courts as they are today, but allow the legislature to have the power to reorganize courts below the district court level in the future. And as I said earlier, the legislature has this power largely already. We are simply making it clearer and we are imposing two guideline to make sure that the courts established at this level in the future, would be established on a uniform basis.

Questions

Mr. Stinson Jim, I am wondering up in Subparagraph A, you say the legislature... on line 7, "the legislature may abolish or merge trial courts of limited jurisdiction". Is the district court a limited jurisdiction?

Mr. Dennis No, sir.

Mr. Stinson Well, you say "subject to limitations in Section 16". And Section 16 says "district courts".

Mr. Dennis Section 16.

Mr. Stinson Covers district courts.

Mr. Dennis That provides for matters which have their original and exclusive jurisdiction in the district courts. The basic purpose of Section 16 is to make sure nobody else has jurisdiction of many matters, such as felony cases, other than the district courts.

Mr. Stinson I know, but on line 8 and 9 you say "subject to the limitations in Section 16", do you mean some other section other than 16 and 21?

Mr. Dennis 21 is the safeguard against reducing the compensation of judges in office during their term.

Mr. Stinson But I can't understand what is the reason for saying "Section 16" when it doesn't apply to limited jurisdiction. It applies to district courts.

Mr. Dennis What it means, Ford, is that Section 16 says nobody else can have this type of jurisdiction. And we are saying the legislature can't give

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it to these limited jurisdiction courts, is what we are attempting to say here.

Mr. Stinson Fine. The next question with reference to city courts. Now, does your research show that city courts will cover ward courts? We do have some ward courts you know, that takes care of two or three municipalities.

Mr. Dennis Yes, sir. The section allowing the legislature to establish courts in cities of certain wards in lieu of J.P. courts relates and is referred to as a city court section in the present constitution. So I think that ward courts are well identified as city courts.

Mr. Stinson My next question is on line 27. It says about reducing the term of office. It says that you may reduce the term of district offices in the parish to not less...does that apply to New Orleans, only? Under that the present officeholders can they be reduced?

Mr. Dennis No, sir. Not during their present terms.

Mr. Stinson Well, why do we need from twenty-four through twenty-eight then?

Mr. Dennis Well, this as I said was a compromise. We are not going...the committee wrestled with this problem and did not decide to take the action of reducing all judges to six year terms. Instead they said, all judges will be six year terms, but if there are any who have more than that, they will continue to have whatever their terms are. But the legislature may reduce that term by a majority vote and a referendum.

Mr. Stinson In other words, in Orleans Parish they will continue the present term unless the legislature reduces it and the people vote likewise in referendum.

Mr. Dennis That is correct.

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Dennis]. On page 5, line 8, immediately after the word "limited" and before the word "jurisdiction" insert the words "or specialized".

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, this is in the nature of what I hope and think is a technical amendment. When we were debating this in the committee we were using the term "limited jurisdiction" to cover all of the courts below the district court level. However, it has come to our attention that this may not be descriptive of some courts like juvenile courts, and others who are really thought of more as specialized courts rather than limited jurisdiction courts. So we are simply inserting the word "specialized" here to include all of the courts below the district court level.

Questions

Mr. Avant Mr. Dennis, you are aware of the fact that the family court in the Parish of East Baton Rouge is a constitutional court at this time?

Mr. Dennis Is not a what, sir?

Mr. Avant Is a constitutional court. Now wouldn't this amendment permit that court to be abolished by simple legislative act?

Mr. Dennis Yes, I believe it would. However, it would not prevent the...it would prevent the district court from being abolished by a legislative act.

Mr. Avant ...I understand that.

Mr. Dennis ...It could also, since it is parish-wide, I believe that you could add to it by a legislative act to, which I believe is what you have been seeking the last few years, isn't it, Mr. Avant?

Mr. Jack Judge, on that Section 15A, now if we have a juvenile court in Caddo, it can be abolished by a simple act of the legislature, that is correct isn't it?

Mr. Dennis Yes, sir. And it can also be established by a simple act of the legislature.

Mr. Jack Well, it is already established. Let's stick to my question. It can be abolished by a simple act of the legislature.

Mr. Dennis I have already answered that question, Mr. Jack. Yes.

Mr. Jack You all be quiet. I want to show you a great injustice because if you read Section 35 you are going to find you've got another law for New Orleans and in our parts of the state and everything out of New Orleans a different one.

Now isn't this correct, Judge, when you read Section 35, plus Section A of Section 15 you find this situation. A city court or a juvenile court in Caddo Parish or anywhere else in Louisiana that they have those specialized courts or limited jurisdiction courts. They can be abolished by a simple act of the legislature. Except New Orleans?

Mr. Dennis Is that the end of your question?

Mr. Jack Yes, sir.

Mr. Dennis Yes, that is correct. And they can be established by that same...

Mr. Jack ...All right...But in New Orleans, isn't it a fact to abolish a city court, juvenile court or any limited jurisdiction court, you have got to have not only the legislature but a referendum of the people within the district that that court has jurisdiction?

Mr. Dennis That is correct. New Orleans has a special section, Section 35.

Mr. Jack Isn't that the same old thing. One law for New Orleans, another law for the rest of us peons in Louisiana?

Mr. Dennis Yes sir, it is the same thing except that it is not...the referendum would be a local referendum. And I would like to further elaborate on that for the convention. We started out in our committee, with the idea that there would be no New Orleans exception in this article. However, the courts in New Orleans by tradition and custom have operated a little bit differently, have had different terms and different provisions in their law and different organizations. And to be just plain blunt about it, they had the votes in our committee to put in these referendums and since we were not going to give them...their courts separate treatment, they put the referendum in, on all changes of all courts. Well the majority of the committee felt that this was bad for the entire state and so we reached a compromise with the Orleans members of our committee, to go back and create an Orleans exception and let them have the referendum. But for the rest of the state, the committee did not feel that the referendum was a good thing because it actually puts more restrictions on the legislature than presently exists in dealing with courts below the district court level. Presently, the legislature can establish and abolish city courts by statutory law in most cases. But if you put this referendum in on all the other...on city courts all throughout the state, you are going to be more restrictive than you presently are in the constitution. The committee proceeded on the theory that only the main

courts should be constitutional courts. That is, Supreme Court, court of appeal and district courts. And below the district court level, the legislature should be left free to change the specialized and limited jurisdiction courts as the times change. In other words, if you find you need a parish court in your parish instead of the one or two city courts that you might have now. This is the situation that exists in my parish perhaps today. Perhaps my people would want to go to a parish court system. There are some other parishes, Mr. Landry's parish is considering a parish court system. Well, we are attempting to leave the legislature free to deal with that problem by establishing a parish court without having to amend the constitution in order to get it. So, we are not attempting to discriminate in favor of New Orleans or against it. They like the referendums, they had the votes in the committee and so we compromised with them and gave them a separate section. But for the rest of the state, we repeat, the committee felt that it was best to not put restrictions on the legislature in dealing with the courts below the district court level. So that is why the article... the section provides the exception to Section 35 which is the Orleans Parish court system.

Vice Chairman Roy in the Chair

Mr. Abraham In answering Mr. Avant's question a while ago, on this limited or specialized jurisdiction. You made the statement that the legislature may also establish courts of specialized jurisdiction. If that is true, then should not you put the same language in line 11?

Mr. Dennis No, sir. We specifically wanted to provide that future courts created by the legislature below the district court level would be parishwide and would have uniform subject matter jurisdiction with other courts of like nature created throughout the state. We did not want to encourage the legislature to attempt to establish district or city courts or fragmented courts. We wanted to encourage them in the future to establish parishwide courts. And so we gave them the power to establish parishwide courts and when they do that, of course, they may find it necessary to merge the city courts and other ward courts into the parish court system.

Mr. Heine Judge Dennis, give me your explanation again please, sir, on why your committee did not give the referendum privilege to the remainder of the state. And let me tell you my situation. Two years ago, the people of Baker voted to create a city court by referendum. Now you are telling me that the legislature would have a right if this is adopted, to come back and abolish our city court and why... would it create a hardship on the legislature to allow the people of my city for instance to vote whether they want a court or not. I don't believe we would have to amend the constitution to do this. And I can't see where it would work a hardship on the legislature. If the people of Baker want a court I should think they should have the right to vote to have a court. Or, if they want to abolish... or the legislature wants to abolish the court... I think on that hand the people of Baker ought to vote as to whether they want to abolish the court or not.

Mr. Roy Judge, before you answer that. Delegate Heine, are you on the technical amendment or are you talking about the section in general?

Mr. Heine I am talking about the section that he has been talking about. On the proposal itself. Same question that Mr. Avant was asking about the family court in Baton Rouge, where the legislature would have the right to just vote to abolish these special courts, such as the city court.

Mr. Dennis May I answer that question, Mr. Chairman?

Mr. Roy Yes, go ahead and answer that Mr. Dennis.

Mr. Dennis First of all, Mayor, the 1921 Constitution does not require a referendum to be held to establish a court that you are talking about. I don't know enough about your particular situation and why you had a referendum, but the 1921 Constitution simply provides that the legislature may substitute a city court for a J.P. court, and where you have enough population for it. So, to come in now and put a referendum requirement in the constitution, would put in the constitution more restrictions upon the legislature than you presently have with regard to establishing and abolishing city courts. Now, I am talking only about city courts at the moment.

Mr. Heine Right, I understand this and let me bring you up to snuff on my deal. We established our court by charter when we adopted the home rule charter. We established our court in the charter...

Mr. Roy I don't want to interrupt, but I understand from the Clerk that there was a technical amendment that we should be discussing at this time which would substitute or add "or specialized" in lieu of just the word "jurisdiction". And if that is it, I think we ought to get that out of the way and then go back to the amendment as a whole.

Mr. Heine Ok.

Mr. Dennis Let me say this, Mr. Acting Chairman, if I could. I don't think this amendment would relate directly to the problem the Mayor has and I believe the Mayor has a special problem that is not really going to be changed that much by our constitutional provision.

Mr. Denberry I have a question. Judge Dennis, as I understand it, starting at line 9 you have a provision that except as provided in Section 35 relating to New Orleans, the legislature may establish trial courts and so forth. Now, under the theory we have been operating on the legislature has power to do anything that is not prohibited to the legislature, is that correct, sir?

Mr. Dennis That is correct, sir.

Mr. Denberry Well, then why would you need this in here unless you say they may only... they may establish trial courts but only those which have this type of jurisdiction?

Mr. Dennis The main reason is we have a limitation upon what the legislature can do in this area. And that is, it must establish these courts with parishwide jurisdiction....

Mr. Denberry ...no, it says it "may"... doesn't say it "may only" ... and if you don't limit it then you... the legislature has the power.

Mr. Dennis In other words it says if you do establish it, it shall have parishwide... territorial jurisdiction and uniform subject matter jurisdiction.

Mr. Denberry Well, now is there anything in the constitution in your provision now which says where these various courts must be?

Mr. Dennis Oh, I see your problem, the reason for the New Orleans exception is, there is no referendum requirement....

Mr. Denberry No, I'm not speaking about New Orleans.

Mr. Dennis Sir.

Mr. Denberry I wasn't speaking about New Orleans. The legislature then could for example, have a parish court with the jurisdiction required here, but it could be set up anywhere in the parish. Is that correct? It wouldn't have to be in that parish seat. As a matter of fact I don't see anything in here which says where the Supreme Court is to be domiciled or any of the courts of appeal are to be

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domiciled. So, presumably the legislature could change those, is that correct?

Mr. Dennis Presumably so. We felt that this was a statutory matter. That the population of the state might change, but getting back to your first question, I think unless we provided here that "except as provided in Section 35 the legislature may establish parish courts", then the legislature will be able to establish by act a parish court in Orleans Parish and we were attempting to make that distinction.

Mr. Denberry But you are satisfied that the way it is drafted, the only type of parish courts it may establish are those which have parishwide jurisdiction and is uniform?

Mr. Dennis Yes, sir. Because of Section 1, it would be the only kind of parish court that would be authorized by the constitution.

Mr. Denberry Thank you.

[Previous Question ordered. Amendment reread and adopted; 103-5. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. D'Gerolamo]. On page 5, line 4, immediately after the word "parish" and the comma "," and before the word "city" insert the word and punctuation "magistrate".

Explanation

Mr. D'Gerolamo Mr. Chairman, fellow delegates, what this amendment does, is include the word "magistrate" after parish. We have a magistrate court in the city of Kenner. The legislature in 1972 in lieu of the mayor's court, allowed us to have a magistrate court whereby the mayor and city council could appoint a lawyer as the judge, hearing cases on city ordinances. And this is what we have and I would like to protect that because it is a creature of the legislature, lower than a district court and we want to put in with the parish, city, family court.

Questions

Mr. Newton Mr. D'Gerolamo, couldn't that magistrate court that you want to put in there be construed to include all mayors' courts in the state?

Mr. D'Gerolamo No, this is not a mayor's court. This is in lieu of a mayor's court.

Mr. Abraham Eddie, you said this was passed by the legislature, is this court in the constitution now?

Mr. D'Gerolamo No, sir, it is not.

[Previous Question ordered. Amendment adopted; 88-20. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Nunez and Mr. Toomy]. On page 5, strike out lines 4 through 15 inclusive in their entirety. (And I guess we need to now add, Senator, to strike out the previous two amendments which have just been adopted).

And insert in lieu thereof the following:

"Section 15. Paragraph A. The district, parish, city, family, and juvenile courts existing at the time of the adoption of this constitution are retained. Except as provided in Section 35 of this article, the legislature by a majority vote of the elected members of each house and with approval and a referendum in each district, parish, or portion affected may abolish or merge trial courts of limited or specialized jurisdiction, subject to the

limitations in Section 16 and 21 of this article. Except as provided in Section 35 of this article, the legislature may establish trial courts of limited jurisdiction which shall have parishwide territorial jurisdiction and subject matter jurisdiction which shall be uniform throughout the state. The office of city marshal is continued until such time as the city court he serves is abolished by the legislature."

Explanation

Mr. Nunez Mr. Acting Chairman, and fellow delegates, this amendment would do exactly what you were arguing about before, which some of you were trying to accomplish. That is, number one, it would treat the courts of limited jurisdiction just like you treat the district courts. And number two, it would treat the city of New Orleans, or it would treat the rest of the state just like we are treating the city of New Orleans. It would allow the merging or abolishing of these various courts of limited jurisdiction as per their establishment. Many of them by the constitution, by vote of the legislature and a vote of the people in that or those districts. I think it is a reasonable amendment. I think it is consistent with what we should be doing, that is, being consistent in writing this document on all of these limited courts of limited jurisdiction. I understand that this was an original proposal of the committee. And when we had our nuddle up here, I understand that the delegates from Orleans were more successful in lobbying than the delegates from the rest of the state. That is, in eliminating this provision. It speaks highly of those delegates, but certainly we are still faced with the problem as to what to do with these courts of limited jurisdiction. The many have been established by the constitution and now can be abolished by the legislature. I think we have to treat this subject consistent as the other courts in this area. And I think that it would be the only way that we can do it.

Yes, I will yield to a question.

Questions

Mr. D'Gerolamo Senator Nunez, just a few minutes ago, we passed an amendment putting in the magistrate courtness of Section 15A. And I was wondering in your amendment, if you would withhold it a while or draw it back and insert the magistrate court in your article. It would save me then the problem of going back and should yours pass and go back and have mine redrawn and resubmitting it to the delegation.

Mr. Nunez Mr. D'Gerolamo, I suggest... I have been advised by the Clerk, this was as yours was drawn yesterday and I had no idea that we would have one passed before it. What we can do, if this is passed is to come back and resubmit yours from the way the Clerk explained it to me.

Mr. D'Gerolamo Thank you.

Mr. Newton Senator, you say you want to treat everybody the same, would you be satisfied if we took the referendum provision out of the article on Orleans Parish?

Mr. Nunez That would be another way to treat them the same. But I think this would be a better way to handle it. It is a more positive way of handling it. Those courts were established many of them by the constitution and many of them voted on by the people. And I think if you are going to abolish them, I think that it should be handled in the same way they were established.

Mr. Lebleu Mr. Nunez, I don't have a copy of the amendment, but I just wonder if your amendment is adopted, would Section 35 really be necessary since you indicate in your explanation that all of these specialized courts would be treated the same as far as the referendum is concerned throughout the state. And if I am correct in that, I just wonder if your

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amendment shouldn't include the deletion of Section 35?

Mr. Nunez Mr. LeBleu, I would think it would be necessary if we have...if the committee...if we have to establish a procedure in which to merge or abolish the district courts, we should do it with the other ones also.

Mr. Jack The question is this, just what was asked in...I don't think you caught what the delegate was referring to, about a little better than half way in your amendment, and I like the whole amendment except I think this part that says "except as provided in Section 35 of this article". Now, weren't you just tracking Section A of Section 15, it has no application, Senator, in your amendment here because these parish courts are going to be statewide. And by limiting to 35 in any way, that is all of Section 35 has to do with Orleans Parish. I think if you will check that out you will find that you would want to eliminate the words "except as provided in Section 35 of this article."

And your sentence would read, now please follow me. "The legislature may establish trial courts of limited jurisdiction which shall have parishwide territorial jurisdiction and subject matter jurisdiction which shall be uniform throughout the state. The office of city marshal is continued until such time as the city court he serves, is abolished by the legislature."

Do you follow me?

Mr. Nunez Yes, Mr. Jack, I follow you and that is exactly the way the article reads. From conferring with the committee while you were asking the question and Judge Tate, I was informed that that could be handled by Style and Drafting.

Mr. Jack I am telling you it wouldn't take long to take that out the Clerk could...

Mr. Roy Mr. Jack that is not a question.

Mr. Dennis Sammy, to clarify something, did you just say in your opening remarks that the delegates on our Judiciary Committee from outside of Orleans wanted a referendum, and that the Orleans delegates kept us from having it? Somebody asked me if you didn't say that.

Mr. Nunez Judge, the only thing I said, is what you told me. That the delegates from Orleans were more successful in keeping in the article as your original proposal of keeping in their section as proposed to your original proposal. Now, evidently it is correct because it is in here and the other ones are out. And I am just assuming that that was the...

Mr. Dennis Well, did you know that is not exactly what happened. What happened was that the delegates from outside of Orleans were agreeable to not having this restrictive referendum below the district court level, but that Orleans wanted it and that is why we created a separate section for Orleans in order to give them what they wanted.

Mr. Conroy Mr. Nunez, I noticed that the last part of this section provides that the legislature may establish trial courts of limited jurisdiction without any vote within that particular parish. As I read it, it just can establish trial courts of limited jurisdiction throughout the state. If the legislature did that, would the sentence which you propose putting in, prohibit the legislature then from abolishing any courts or anything without a referendum in that area, or does that apply only to presently existing courts, your proposed amendment?

Mr. Nunez The proposal as written, Mr. Conroy, if you will read the original proposal, is just about the same as it was.

Mr. Conroy So it is intended to apply...to abol-

ish the requirement for a vote is intended to apply only to the existing courts, not to any new courts, is that right?

Mr. Nunez Yes.

Mr. Jack Senator, now up above and as I say, I am for yours, but I find these things. And with approval in a referendum in each district, parish, I think and ask you, don't you think you should have city apportionment affected?

Mr. Nunez Mr. Jack, I understand again that can be handled by Style and Drafting.

Mr. Jack Well, let me ask you this and then I am through. I am preparing an amendment to correct those two things, and I am going to vote for yours and I want to ask you, will you support the others? So we won't have to leave it to Style and Drafting.

Mr. Nunez Yes sir, I will.

Mr. Abraham Sammy, I see what you are trying to do. The question I wanted to ask, is that...does the present constitution provide that these courts are created or may be abolished by referendum or it is a simple act of the legislature?

Mr. Nunez If they were created by the constitution, they would have to be abolished by constitutional referendum.

Mr. Abraham Well, the point I am asking, though, these particular specialized courts now are courts of limited jurisdiction. Are they constitutional courts now or were they simply created by the legislature?

Mr. Nunez Yes.
Further Discussion

Mr. Burson Mr. Chairman, fellow delegates, I rise in opposition to the amendment. It seems to me that the provision that the committee has come out with here is the only really significant reform in their proposal. And to accept the amendment as proposed would be not a step forward, but a retrogression. Under the present constitution I would urge you to look at Article VII, Section 34, which reads as follows:

"Article VII. Section 34, reads as follows: The legislature may rearrange the judicial districts and by a two-thirds vote of the membership of each house, may increase or decrease the number of judges in each district. Now it takes a two-thirds vote to increase or decrease the number of judges. But by a simple majority vote, the legislature can rearrange judicial districts at the present time. And as far as my knowledge goes, there is only one time since 1921 when this power has been abused: That was when Huey Long got the legislature to gerrymander that Judge Payne out of office in St. Landry Parish, which is my home. And I hope and pray that we are long since passed the days when that kind of thing would happen in our legislature. Now when we adopted the legislative article, we heard a lot of rhetoric with which I agree, talking about how the legislature has come a long way since those days. We heard a lot of rhetoric in which we wanted to emphasize the responsibility of the legislature. I say to you if you adopt this amendment, you will be taking away from the legislature a significant power which it has at the present time and ought to have to run the business of the state. Now our people sent us up here, in most cases, asking us to cut down on the number of unnecessary elections that they had to vote in. They don't like the idea of having to vote on a lot of unnecessary constitutional amendments away from the legislature. They also don't like to have to vote in a lot of unnecessary referendum. We have single member legislative districts. Is it plausible to believe that a legislator who comes from a single member district is going to get up in the House or the Senate and sponsor a piece of legislation regarding local courts that the people in his district don't want?

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It does not seem to be plausible to me. In that light, I say again that the authors of this amendment, it seems to me, are motivated by a fear which is not grounded in fact. But the most important consideration, on this issue is, that you have got to leave to the legislature the power to do what is necessary to modernize and update our courts as the need arises. If we adopt this amendment, we will in my view be sponsoring the Balkanization of our judicial system. Let me give you a very clear and concrete example. Suppose we have, at the present time, a ward court. And suppose the people of the parish decide, in their wisdom, and get together with the legislative delegation of two or three legislators if we want some parish courts. We need parish courts. But you have one small country ward whose got a justice of the peace. Who happens to be very well liked, he has been in office for thirty years. Well, the way I read this amendment, and especially in light of the amendments to it that Mr. Jack said he is going to propose, it would be necessary in order for the people, let's say of St. Landry Parish, to establish a system of parish courts. That they would have to get the consent of the voters of each and every ward in our parish. And even though ninety percent of the population wanted a parish court, if you had the members of one rural ward who liked their justice of the peace and wanted to keep him, they could vote against the establishment of a parish court and thwart the will of the majority of even ninety percent of the people of the parish. And certainly this is a real and pregnant possibility under this amendment. So I ask you in the name of legislative independence, in the name of giving the legislature power that it ought to have, and most of all in the cause of true judicial reform to vote down this amendment and maintain the committee proposal as it stands.

Questions

Mr. Kilbourne Mr. Burson, did I understand you to say that the legislature could change these courts by just a simple majority vote now?

Mr. Burson They can change the judicial districts, Mr. Kilbourne, under Article 4.

Mr. Kilbourne Is there any other article in there that you know of except Section 34, Article VII, which said that it required a two-thirds vote of the legislature to merge the districts or rearrange the districts?

Mr. Burson No, sir, not that I know of.

Further Discussion

Mr. Lethman Mr. Acting Chairman, members of the Convention, this is a very serious matter as far as each of you and the courts that you have in our related districts are concerned. I'm speaking primarily to draw a parallel to give you some idea how it relates to my district, which is Jefferson Parish. In this constitution, we have heard previous speakers ask that we maintain the article as it came out of committee. Which will give New Orleans legislative approval and referendum approval. All that we're asking is that each of us around the state have that same opportunity. Now I'm going to speak to you, to give you some idea of what and how valuable the courts are in Jefferson Parish. I'm sure this can be drawn and related to your own district. In Jefferson Parish we have some nine district courts right now, which are heavily burdened. We have one juvenile court and we have three parish courts which we are now discussing. Let me give you the workload on just one of these parish courts over the last nine years. This parish court, that we're discussing now, has had over 180,000 criminal cases filed, in excess of 22,000 civil cases filed. This same court handles traffic courts, municipal court business, city court business up to \$1,000 and criminal court activities with the exception of felony cases. So gentlemen, in this essence, this court that we relate to in this important amendment re-

lieves our district courts to a tremendous extent and is vitally needed, just as each court is in your district. New Orleans is granted this privilege and I'm certainly not opposing or directing my opposition at New Orleans. New Orleans has a population just a little bit in excess of Jefferson, perhaps within the next ten years it will be equal population. So gentlemen, think about it and ladies, this relates to your family courts and your courts your district. I don't think we should set Orleans aside and handle them in any different manner than we handled your court or my court around the state. I strongly urge that you adopt this amendment. Thank you.

[Quorum Call: 102 delegates present and a quorum.]

Further Discussion

Mr. Tate Mr. Chairman, and fellow delegates, I see you are somewhat tired of hearing me speak. I understand. I'm going to best my good friend, Senator DeBlieux, this month. But if I have said anything to be of assistance to you till now, I pray that you listen to me right now. Because this is the most important issue before us for judicial reform. I didn't speak for my own term, I'm not going to speak on some things that affect me personally. But this affects the future of judicial reform. I'm telling you if you pass this amendment you might as well go home as far as any possibility of this judicial article being any improvement on the present. First though, I'm not going to go into details. I'm just going to tell you. Under the present constitution, there is some flexibility as to many of these courts. The legislature may do things with regard to them that this particular amendment will not allow. Now under the present constitution, Orleans has a very specialized system. Every change in that court system for city court and all that needs a statewide vote and a parishwide vote. Although, I was personally originally against the referendum for Orleans, I could live with that compromise because it doesn't change it making the constitution more flexible for Orleans. But for the rest of the state, the rest of the state, the very important thing is to look to the future, thirty and forty years ahead we hope. Now, the committee has drawn up a proposal that allows the future to develop this way. Either we will have a uniform four tier system eventually, as court by court drops out and they establish parish courts. Or, it will allow them perhaps to go as the future deems necessary. To district courts uniform three tier level, but that's for the future. We aren't making that choice for them. What we are trying to do, is not freeze in courts that can be taken out, freeze in uniform statewide possibility reform. As Mr. Burson pointed out, if you need a referendum, for instance not only in the parish, but everywhere in the parish affected, that would mean in my parish for instance...before you get out of the parish court, get rid of the city court of Turkey Creek, which there isn't any but there could be as it goes on. Ninety-five voters could defeat the will of the parish, ninety-five, you couldn't uniform it. I hesitate to speak as strongly as I do. I hope that the parish affected that would mean you time as you are going out of the area of my expertise. But I can only tell you from every ounce of sincerity, and I have never said this before, I haven't tried to influence you that something like the end of the world is at hand. But I promise you, if you doubt this amendment in my opinion, and my opinion may be wrong, but I do not think it is. You have defeat judicial reform under this constitution and we might as well forget about it. I'll yield to questions.

Further Discussion

Mr. Drew Mr. Chairman, ladies and gentlemen of the Convention, I regret that much of the time this stage and on this particular article, that we have gotten into an argument already between Orleans Parish and the rest of the state. Let's do this, let's

consider this article and we will consider the Orleans article when we get to it. It's very difficult for me to add too much to what has already been said by Mr. Durson and Judge Tate. But they have laid out, have pointed out the problems that we will be faced with, if you adopt this amendment. This amendment was thoroughly discussed, the contents of the amendment at least, in committee and all of these danger points were pointed out to us as the reason it was not submitted in the final proposal. I think this, if you will really stop to think, of what a small percentage of the people of this state have any contact whatsoever with the courts, to leave the decision of the needs of the judiciary to a referendum is a dangerous and very erroneous way to approach a problem. We need flexibility, as far as Mr. Leithman is concerned, they have the courts they need. I cannot, under any circumstances, foresee that the legislature would override their will of the representatives from Jefferson Parish and start abolishing courts down there. Under this we could increase their courts without having to go to a referendum. I'm not saying that the people of the state shouldn't know, but I am telling you that they do not necessarily know the needs of the courts. We have the judicial council. The legislature relies heavily on the recommendations where courts are needed. I don't know in my short tenure of where they have been denied when it was shown that the courts were needed. If we defeat this proposal, the legislature has that flexibility to provide for the future. Let's not lock this thing in to where we cannot foresee what may be needed in the future and not be able to provide the needs of the courts. I humbly ask you to reject this amendment.

[Motion for Previous Question rejected: 27-76.]

Further Discussion

Mr. Gravel Mr. Acting Chairman, ladies and gentlemen of the convention, I don't think I can add much to what Justice Tate has already said. But I can assure you of one thing, if you want to create the probability of a crazy quilt, patchwork judiciary system for all times in the future, then vote for this amendment. If you afford judicial reform and moving the state of Louisiana forward, vote against it. Thank you.

Further Discussion

Mr. Abraham Mr. Chairman, delegates, I think it's time that the lay people speak out on this issue. Now we have already discussed this particular article, provisions where the legislature can change the size or the arrangement of the Supreme Court districts. We have already provided for the legislature to provide for additional courts of appeal district. It can revise those, and then we come along here and we're going to say now that the legislature can't handle these minor courts except through a referendum. I think this is wrong, it's dead wrong. I can't add a whole lot to what Justice Tate and Mr. Gravel and the rest of them have said, other than I am vehemently opposed to this amendment. If we're ever going to get some order to this court system, we are going to have to give the legislature the authority and the flexibility to set the thing up as it should be. I ask you to, we've got to vote this amendment down and we're going to have to go along with the committee proposal. Thank you.

Further Discussion

Mr. Jack Mr. Chairman, ladies and gentlemen, I arise in favor of the amendment but I also have amendments as I indicated when I asked questions. Now, I think and most of you have pledged yourselves over the years to home rule. Now take in Caddo, we have had a juvenile court prior to 1940. I've never heard anybody want that repealed. We have had a city court since I got caught for speeding when I was about sixteen and I'm sixty-five. I've never

heard anybody want that law repealed. Now, I think there would be plenty of protection and be fine that in order to change these, you not only have the legislature but a referendum. However, this does not provide for certain amendments. It's left out the word "city" and it has in a referendum in each district parish a portion affected. Now my amendment is going to leave in district and parish and add city. Now I'm going to take out, and Judge Tate I think this is one of the things you were worrying about, I'm going to take out that word in my amendment "a portion". Because I'm not concerned about the referendum in a small area like the justice of the peace court. But I am interested in having a referendum before the legislature can abolish well established things like juvenile courts and city courts. I do not, in short, believe in a three tier system of the Supreme Court, court of appeals, district court or a four tier system which includes the parish court. I think it's a step backward to get rid of juvenile courts because that's a special field. I think it's a step backwards to get rid of city courts...

Now, today, the world's moving fast. No one can be an expert in every field, lawyers can't, doctors can't, any other profession can't. Now how can a three tier court with the district court handling every thing be experts. When they couldn't as lawyers cover all the fields. You are doing away with having criminal judges, and civil judges and juvenile judges and city courts making it all one. I say this is a good amendment except it should be amended. I have talked to Senator Nunez over the mike and he agreed that my amendments and in closing my amendments are simply that you are going to add where they accidentally left out "city" and we are going to take out that part about our parish. Then you're going to leave out the words "except as provided in Section 35" Because Section 35 has to do with Orleans Parish alone and this article, as amended by Nunez, as amended by me, will be statewide. I trust you will go along with this amendment. You have my word that we have our amendments and also Senator Nunez and he speaks for Mr. Toomy because he is the head author. Now Mr. Drew, I'll answer your question.

Questions

Mr. Drew Mr. Jack, can you at twenty-four years in the legislature, was there ever any attempt to abolish a court that you know of? Other than when a city court was created and a J.P. court was automatically abolished?

Mr. Jack I saw one of the most amazing things in my life happen on that line. There was a lady representative came down there, this had to do with the J.P. court. And we aren't saying it, but I'm showing you how people can do when they are mad. She came down there, she had just been elected, this lady. And the J.P. had just been elected, and the marshal had just been elected and she tried to abolish their office.

Mr. Drew Was she successful?

Mr. Roy He's exceeded his time. Thank you, Mr. Jack.

Further Discussion

Mr. Stovall Mr. Chairman, ladies and gentlemen of the convention, I rise to speak in opposition to this amendment. It seems to me that there is something very basic and fundamental here that we need to consider. It is the question of whether or not we are going to trust the wisdom and integrity of the legislature of our state. I submit to you that former Representative Jack and Representative Leithman and the other legislators are not the kind of men who would eliminate courts that are serving a useful purpose in the state. It seems to me that what we need here is some trust in their wisdom to deal with this matter in a meaningful way. And therefore, we ought to reject this amendment and

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we ought not to involve the people unnecessarily in elections. Amendment No. 4 deals that to reject the amendment will provide the kind of flexibility which the future might demand. I encourage you to reject this amendment and to have the kind of trust in our legislature that I think they will merit in the future. Thank you.

Questions

Mr. Anzalone Reverend Stovall, my concern is mainly with the line beginning on line 4, the district, parish, city, family and juvenile courts existing at the time of the adoption of this constitution are retained. If we are going to go into judicial reform, is this first sentence not locking us to this type of judicial reform, rather than another type which we might foresee would be better in the future?

Mr. Stovall Mr. Anzalone, the amendment that I'm opposing does not change those first three sentences. The amendment which I am opposing does not change those first three sentences at all. I think if you want to change that, you should present an amendment to come at a later date, at a later time, which would change that.

Mr. Avant Reverend Stovall, do you believe and feel that when the people drafted the Constitution of 1921 that they had this faith and confidence in the legislature and in the executive branch that you feel we should have now, that they had that confidence when they drafted that document?

Mr. Stovall Mr. Avant, I feel that they did not have enough faith in the legislature and governor at that time. And possibly that's one reason why the legislature and the executive branch has not merited that much faith. I think if we show faith and confidence in the legislature, that this will encourage us to elect better people to the legislature.

Mr. Avant Do you know, that under that constitution, which didn't have this protection that we are asking for, that a very well and able and respected judge was gerrymandered out of office by a powerful political figure and a subservient legislature? As a result of that, a direct result of that, it led to the assassination of a United States Senator.

Mr. Stovall Yes, I'm aware of that and that's possibly happened once in fifty years, Mr. Avant. And to conclude from that, that we should provide for the many elections which would be called for in this amendment, I think is taking, is responding more than we should to that one situation.

Mr. Burns Reverend Stovall, to clarify Mr. Anzalone's question to you just now. Is it not a fact that this Section 15A provides first that we should not do away with any existing courts. But in the future, if the condition should justify that the legislature could merge, abolish or establish a new court. Isn't that what this section provides?

Mr. Stovall Yes, sir. Below the district court level.

Mr. Burns Of course I'm referring to that.

Chairman Henry in the Chair

Mr. Champagne Reverend Stovall, are you aware that the judge that Mr. Avant speaks of and the parish that he represents, that he was a friend of mine and his entire family and I represent that parish and I am against this amendment.

Mr. Stovall Yes.

Further Discussion

Mr. Sandoz Mr. Chairman and fellow delegates, I'll attempt to be brief but I served on the Judiciary

Committee for the past six months. I urge you to defeat this amendment. As Judge Tate says, if we have one provision in this entire article that gives us room for judicial reform in the future, it is this section. I don't think because of the history that we have in the legislature, Mr. Champagne comes from my parish too, and I feel that the one instance that he speaks is not something that should preclude us from moving forward. I feel with the testimony and the expertise that this committee had, and that you should follow the wisdom of the committee proposal and reject this amendment. It gives us an opportunity in the future, to give the legislature an opportunity to abolish some of these courts and go into a more modern system, such as the parish courts that Jefferson has. We have in our state, in addition to the Supreme Court, the courts of appeal, the district courts, we've got these family courts, juvenile courts, city courts, ward courts. As our society becomes more urbanized and more complex, we need to move into the parish court system and do away with these city courts and these mayor courts and other courts of lower jurisdiction. I urge you, if you're going to vote for any section of this judiciary article, to support the committee proposal on this section and defeat this amendment.

[Quorum Call: 112 delegates present and a quorum.]

Further Discussion

Mr. Heine Mr. Chairman, fellow delegates, I rise in favor of this amendment and also of the Jack amendment. I don't see how we can stand here and be opposed to giving the people the right to speak for themselves. I'm not an attorney, but I do have eight years experience as serving as a judge. My situation may be unique in East Baton Rouge Parish, but it's always that possibility that the legislators in East Baton Rouge Parish could decide that they wanted to expand the city court of Baton Rouge to take in the city court of Iber. And by a vote of the legislature, they could do this. About two years ago the people of Baker decided for themselves that they wanted a city court. They voted for a city court, they've got a city court. And I don't want to see them in a position of losing this court unless they vote themselves that they want to get rid of their court. There may be other situations throughout the state, or other courts that are in the same position that we are in Baker. So I ask you to vote favorably for this amendment and also for Mr. Jack's amendment because I think it is good and I just don't see for the life of me how you can argue with giving the people the right to speak for themselves. What is the cost of an election? This is the American way. I put many issues before my people in referendum. Many of them that I was in favor of that I lost, but at least the people spoke. And they weren't able to be critical of me. I have been in office eighteen years. I think this speaks well. I think this is success and I give the success to the fact that I let the people back home speak and I don't see how you can argue against that.

Further Discussion

Mr. Dennis Mr. Chairman, fellow delegates, I rise in opposition to the amendment for the same reason as stated by Justice Tate, Mr. Gravel and others. If this amendment carries, you will strip from our committee proposal the only real, significant movement toward court reform that I believe we have made in the past six or seven months. I can't really add to any of the reasons, they have all been stated. And it boils down to simply, the only reason to vote for this amendment is to show your distrust to the legislature and to freeze the present court system and perhaps create a crazy quilt work in the future. The reason to vote against the amendment is to show some trust in the legislature to deal with the courts below the district court level and allow us, hopefully, to move

toward a more logical and consistent court system that the people will understand and get justice from. So I ask you to defeat this amendment.

Further Discussion

Mr. Duval Mr. Chairman, fellow delegates, I realize the natives are restless and this issue has been argued and reargued. But I would like to state my reasons for opposing the amendment. One thing we have to do, in this constitutional convention, is eliminate sacred cows. Now I ask you, how can the legislature vote on laws that affect the life and limb of its citizens without public referendum? It can pass local and special laws, affecting the locality much more than the court system. It can pass criminal laws, it can pass tax laws, new taxes without referendum of the people. I think the concept of public referendum is a great case of buck passing. We, in this convention, I think have been mandated by the people to make this constitution concise and progressive. This is a step backwards. It is fixing sacred cows in this constitution and is showing great mistrust of the legislature, which we have already shown the powers of, showing a trust in that legislature, who are the representatives, the direct representatives of the people. Why not a public referendum for everything? What makes this so sacred? Why is this any different than any other law? Why is the court system and the courts of limited jurisdiction any different? The laws affecting civil imprisonment, laws affecting revenue, laws affecting any other facet of government, I suggest to you that this is a bad amendment, it should be killed and this constitutional convention has got to stop putting sacred cows in the constitution. And has got to eliminate them, if we are going to do our job. Thank you.

Questions

Mr. Burns Mr. Duval, do you think any Senator or Representative representing a district or a parish would take it upon himself if he knew that it didn't meet with the approval of the voters and the citizens of that parish...would take it on himself to abolish or to amend or to create a court of limited jurisdiction in his district or parish if he wasn't sure that it met with the voters approval?

Mr. Duval I couldn't agree with you more.

[Previous Question order'd.]

Closing

Mr. Nunez Mr. Chairman and fellow delegates, I'll be brief in my closing. Constitutional reform or judicial reform, it seems like we want judicial reform for half the state and let the other half the state not have judicial reform. It seems like we have the parish want the Supreme Court, the court of appeals and a district court and deny the other courts their right to exist as set up by the people of this state. And that's all this amendment does. That's all it does. It does it treats the other courts that were constitutionally created exactly like it treats the court, the district courts that were constitutionally created. It just amazes me to hear the type of rhetoric we hear today about the people in the legislature. Certainly what's wrong with allowing the people to undo what they have done. What's wrong with submitting them to the people, if they want to abolish those courts and allow them to abolish them. If they so created them, and they so created them, I just can't believe that we are here rewriting a constitution and we are going to take constitutional rights away from people that we had given them before. These courts were created by the people, and they serve a useful purpose. And that purpose is judicial reform. Now if we are going to have reform, let's have reform all the way. Let's have reform all the way, and I certainly don't want to start a new Orleans voice that's anti-New Orleans controversy here. Because it's going to come up again and

somewhere along the line we are going to have that reform. So, I would say for the people of New Orleans to vote for this amendment and very possible it would be consistent throughout the constitution. Rather than waiting for Section 35, and they abolish 35, and then you don't have what you want in your courts down in New Orleans, which I want you to have. So I said, let's be consistent. Let's leave the people what they now have and let's make it consistent with the judicial districts or the district courts of this state. That if we want to merge or abolish those courts, they shall be merged or abolished by a majority vote of the legislature and by the people, just like they were created. That's terrible to say that I guess in these halls, that we are going to let the people do, use what they did. Let's trust the legislature, first time I've heard that in a long time. All of a sudden, we want to trust the legislature. Let's trust the people, if those courts worked good for them, and they were constitutionally created, let's let them undo them. You know I imagine there would be a lot of people in this state that would like to do away with all the mayors. Let's do away with all the municipalities, let's have purity in our parish government. Let's have one form of government in our parish government. One government in all parishes. All of these municipalities throughout the state don't do any good, they don't serve the people. Let's abolish them. Let's abolish what the people want, if that is what we want to do, let's go ahead and do it. I would ask you ladies and gentlemen of the convention, these courts exist and they exist for a reason. That reason is a good reason. The people wanted them, they voted for them and they serve those areas of this state that they were created to serve. I see no real drawback or no real condition if they want to create an appellate district court that the people do not vote, because they have a parish or city or family or what have you court. Mr. Chairman, I've finished my remarks. Mr. Leithman, I think wanted to say something. If there is additional time, I would yield to him to close.

Mr. Leithman Mr. Chairman and fellow delegates, the big word that I've heard from the people opposing this constitution and this article, I find something that we have been able not to do apparently and that is what we wanted to do and that's to keep New Orleans separate, Orleans opposed, from the rest of the state. I want what is good for Orleans. In the article on education we have a section, "except Orleans." Here, thirty-five, "except Orleans." Orleans doesn't want to be...Gentlemen and ladies, I do ask that you bring this state together and support this amendment. Thank you.

[Amendment rejected: 35-81. Motion to reconsider table'd.]

Amendment

Mr. Poynter Amendment No. 1. [By Mr. Tobias and Mr. Arnette] on page 5, line 13, immediately after the period, delete the remainder of the line and delete lines 14 and 15 in their entirety.

Explanation

Mr. Tobias Mr. Chairman, fellow delegates, the sentence which I am trying to delete from Paragraph A of Section 15 is covered in sentence No. 1 of Paragraph B of Section 15. In the first sentence of that paragraph it says "The district, parish, and now magistrate, city, family and juvenile courts existing at the time of the adoption of this constitution are retained". This automatically implies that a city marshal would be continued. Now presently city marshals are not in the constitution. What this sentence at the bottom, "The office of city marshal is continued until such time that the city court he serves is abolished by the legislature.", we are creating a new, a new constitutional office. Presently, city marshals are provided for only by

statute. They would not be abolished until such time as the city court would be abolished. They are protected under the first sentence of this paragraph and I would urge that you adopt this amendment.

Questions

Mr. Pugh Mr. Tobias, is it not true that this sentence as it presently is proposed and exists is another instance when we talk about continuing or substituting or replacing an office without specifically spelling that office out prior to the time we talk in terms of either continuing it or replacing it or showing what would happen upon a vacancy?

Mr. Tobias It is.

Mr. Lanier Mr. Tobias, wouldn't you agree that really to do what this sentence wants to do would probably more properly be done in the schedule anyway?

Mr. Tobias Yes.

Further Discussion

Mr. Arnette There are several reasons to pass this amendment. I guess the main one is I don't think city marshals are a proper constitutional office. That's the main thing. The next thing is this type of thing doesn't belong in the constitution itself. If you want to have this type of thing it can much more properly be done in the schedule. The main thing though is a city marshal... if we are not going to constitutionalize many local offices, let's not constitutionalize the city marshal's office. Also, what this does is it prevents a local option on whether you want to have a city marshal or not and I think local offices like city marshal need to be properly left up to the local option on whether they want to have it or not. The thing is that constitutional convention is going to come out with a strong home rule provision and I think if we adopt this amendment it will aid that home rule. Thank you.

Further Discussion

Mr. Bel Mr. Chairman, ladies and gentlemen of the convention, I rise to support the amendment. I feel, and the forty-six marshals in the state of Louisiana feel, that they are entitled to be in this constitution. As much as the clerk, he is part of the court and for that reason I am asking you to support the original proposal which we have studied in committee. We have had the approval of the majority of the members of the committee. I say not majority, only two members dissenting of present, ten to two was the vote. So I ask you... I am not going to make a lengthy speech. We have too many lengthy speeches up here already on this. We will never get done, so I am asking you to go along with the proposal and recommendations of our committee that we keep this in the constitution. You have forty-six marshals representing forty-six parishes and therefore I ask your favorable report to defeat the amendment. Thank you.

[Previous question on article 4, Amendment rejected: 40-60. Motion to reconsider tabled.]

Amendments

Mr. Poynter Amendment No. 1 [by Mr. Tobias], on page 5, line 6, immediately after the period, and if you will follow with me he has changed the technical instructions here. It should read on page 5, line 6, immediately after the period insert the following: "notwithstanding any provisions of this constitution to the contrary there shall be no civil district courts or criminal district courts but a district court may sit in specialized divisions as provided by rule of court."

Amendment No. 2, on page 5, delete line 7 in its entirety and insert in lieu thereof the following: "The legislature may abolish or merge trial"

Mr. Tobias Mr. Chairman, fellow delegates, this one amendment is what I consider the major reform that this constitutional convention can adopt that will correct a rotten situation in the city of New Orleans. Presently New Orleans is the only parish in the state that has separate civil and criminal district courts. Every other parish... sixty-three parishes have one court which handles both criminal and civil cases. The system works in sixty-three parishes. Why would it not work in New Orleans? Sixty-three parishes. In East Baton Rouge Parish there is one district court and that district court by rule of court sits in specialized divisions. Some judges sit on civil matters and some judges sit on criminal matters and some sit on mixed matters. They decide it by rule of court. What is more fair than to let the judges decide among themselves. I have been pressured beyond belief by the judges of Orleans Parish, the civil district judges, to keep the present diversity of courts in the city. I can say this, that seven of the criminal district judges have publicly stated that they are in favor of this merger. Why are the civil district judges of Orleans Parish opposed to this merger? I can see the rotten situation, a situation at the corner of Tulane and Broad where the criminal court is situated, where defendants are not getting what they should, a fair trial probably, they see that and they don't want to have any part of it. They don't want to be anywhere near this. It's dirty, dirty, dirty to get involved in any criminal matters. Well let me say this. In the city of Orleans Parish there is a division between the lawyers of that city. There is a group that practices generally nothing but criminal law. There are three groups. There is a group that practices nothing but civil law and that is the largest group. And there is a group that handles a mixed practice. The overwhelming majority practices nothing but criminal law. I wish you would consider this. When you listen to nothing but criminal cases, nothing but criminal cases, you become hardened to the plight of the criminal and to the rights of an individual. I was a law clerk, as many of you probably know, at the Louisiana Supreme Court for a fourteen month period. That was about a year and a half ago. I aided in the drafting of some criminal law opinions, very few civil opinions, and towards the end of my tenure in that position as a law clerk, I got to the point from handling criminal cases that I said to myself, "Well why was the defendant charged if he wasn't guilty?" and "Why does the jury convict him if he wasn't guilty?" You ask yourself that. If you hear nothing but criminal matters you have got to be convinced, or you least think, that probably the district attorney must have a case up there that this guy is guilty. Why would he have brought the case to trial? The guy must be guilty. You automatically think that. You become hardened. This amendment if effect attempts to merge, to move, the New Orleans court system back into the state, back into the mainstream. It's a state court. It's not a city court. It's a state court. Let me say this. A lot of people would say that the trend in law today is toward specialization. True. The trend today in law is toward specialization. But it is not that way in the court system of this country. The trend is toward one court that will handle all cases. A judge is a judge. An argument may be made, "Well there will be two separate buildings. Two separate buildings. You have one that is fifteen blocks away from the other. The judges have to run around like chickens with their heads cut off." Let me suggest to you this. First of all, fifteen blocks is not that far. But I am saying that these judges have to sit in different courts, in separate courts, have to sit on all types of cases. I am just saying let them decide among themselves. Now let me also point this out. I'm not saying that there should be the same civil sheriff and criminal sheriff. I am not saying abolish those offices and create one sheriff. I make a distinction there. There is enough work that you

can justify having a criminal sheriff and a civil sheriff. There is enough work to justify having a civil clerk and a criminal clerk of court. There is enough work. The system of criminal justice in Orleans Parish is failing. It's failing. This convention has the chance, the chance, to bring it back into the system of the rest of the state. Another reason for the merger, the court system could have one judicial administrator who could examine the work load of the court, both civil and criminal, and when a criminal docket gets far behind, they could shift, the court itself. They don't have to go to the Louisiana Supreme Court. The court itself can shift judges from the criminal district court to catch up on the civil backlog or vice versa in the criminal backlog. The system in New Orleans is in bad shape. We've got the opportunity to change it. If we leave it to a majority of the legislature as in Section 35 and the majority vote of the people of Orleans Parish in a referendum called for that purpose, what are we doing? First of all as a practical matter you can believe me that the Representatives and Senators of Orleans are never going to ever, ever propose the merger. They are just not going to do it. The reason we are not going to do it? "Why should we destroy a judge, a judge of a court, why should we attack him? He has political power." Judges have political power. I repeat that. I said that a couple of days ago. I want to make that clear and I don't think anyone here would deny that. Bring in the bar and the bench Orleans Parish back together. Let's clean up a rotten system.

Mr. Chairman, I would like to make a technical amendment, to delete the second amendment.

[Amendment No. 2 withdrawn.]

Questions

Mr. Drew Max, I agree with what you are trying to do, but the way your amendment is written aren't you actually permitting a continuation of your civil and criminal courts in Orleans and by leaving it up to the court actually speaking that as you describe "intolerable situation?"

Mr. Tobias I am going to take away those sentences in the present proposal and say "notwithstanding any provision in Section 35 to the contrary." I am going to come back with another amendment.

Mr. Drew Well, what I am talking about, by leaving it up to the court to sit in specialized divisions it could remain not only there but I mean it would authorize....

Mr. Tobias It could remain the way it is, and I think it probably will for some time to come but this is....

Mr. Drew My point is, not only leaving it there as it is, but would it not be indicating that it possibly should be used throughout the state in specialized divisions.

Mr. Tobias The point is that they do it already. They can do it under the present constitution. They do it in East Baton Rouge Parish.

Mr. Drew But, they rotate don't they?

Mr. Tobias They don't have to. There is no rule of court that says they have to. There is nothing in the constitution that says they have to. In our committee thirty-nine witnesses came before us. Thirty-nine and of that number, thirty-four of them said they were in favor of the merger. And who were those other five? I remember four of them were judges. Two were from the civil district court and two were from the criminal district court. I don't remember who the fifth one was.

Mr. J. Jackson Max, did I understand you to say that publicly there have been some announcements by particularly the Orleans criminal judges, now

you are talking about criminal judges, who have indicated some sentiment towards that. I just want to understand that you said that.

Mr. Tobias Yes, one who comes to mind is Judge Ward who spoke before the New Orleans Bar Association in favor of consolidation. Judge Bagert spoke before our committee and spoke in favor of it. Those two come to mind offhand.

Further Discussion

Mr. Alexander Mr. Chairman and delegates, I hate to disagree with my friend, Mr. Tobias, but I have information to the contrary. Let me see now why these courts are so constituted. At the time when this process began, even before 1921, at the turn of the century, most of the parishes, most of the district courts in Louisiana, were made up of several parishes. One judge presided over a court made up of several parishes. Orleans Parish, being the largest of the state, naturally could not operate that way because the case load was naturally larger. As you know, most litigation develops in urban areas. Then the number of suits, the amount of litigation per capita has increased since that time. As a result, Orleans Parish not only needed additional judges, more judges, but specialized courts. Now, if you do this, suppose we go below the district court level and talk about the city court, the first city court and the second city court, the municipal court, the juvenile courts, the traffic court. Are we going to consolidate them? Are we going to consolidate a traffic court with a criminal court? Where a traffic judge may handle three hundred cases in one day, three hundred I said, whereas in a criminal court he may not be able to conclude a trial in one day. I submit to you that this system was necessary at the time and it cannot be entered or abolished simply by this amendment. Let me see, these judges, that is the judges of the criminal court and the judges of the civil court, sit in building about three miles apart. Which building are you going to transfer them to? Who is going to provide the money if another building is to be constructed? This amendment does not, so I submit to you that until a better system is developed, let's go against this amendment. Thank you.

Further Discussion

Mr. Bergeron Mr. Chairman, ladies and gentlemen of the Convention, I really like to get up here and say, "I'm a country boy," but I can't do that. I am from the big city of New Orleans and let me tell you I'm proud of it. We've heard from some previous speakers that said so many judges are opposed to this, that so many judges want the courts merged. Publicly they have announced this. Well, I don't know where they are getting their statistics from. I don't like to lie. We have heard from previous speakers that the trend in this country and in this state is toward specialization... toward merging courts and against specialization. I don't believe that. I believe the day of specialization is coming, if not here. Our committee has discussed this for four months, time and time again we have heard this, merge the courts in Orleans. Do away... pull them back into the rest of the state. Well you know this sounds fine on paper. It really sounds good. It looks like one, big uniform system. And, if that is what it were, I would go with it, but it just does not work that way. This would be the Achilles ankle to New Orleans judicial system. Now we have heard from some thirty-nine witnesses who said, "O.K., we want a uniform system. It might be good." Well that's fine. We heard from thirty-nine witnesses. We heard from people from California, from New Jersey, from Washington. Well, it might work fine for them but it is not going to work for us. Our system in New Orleans has worked well. It has worked fine. We have had no problems I've heard that on Tulane and on Broad that is the scum of the city. I'm not an attorney. I don't visit Tulane and Broad very often but when a man

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runs for judge, when he runs for a criminal judge in New Orleans, the people know what he is running for. If they don't like the work he is doing, fine, they can vote him out. When a man runs for a criminal judge in New Orleans he knows he will be handling criminal matters. If he doesn't want to be a criminal judge, he doesn't run for that office. I would like to point out also that we had a poll of the lawyers in New Orleans taken. The facts revealed overwhelmingly that the attorneys of our city favored the way the court system in New Orleans is operated. I would just simply like to say to vote this amendment down. You will be greatly harming the working of our judicial system in New Orleans. Thank you.

Further Discussion

Ms. Zervigon Mr. Chairman and fellow delegates, I rise in opposition to the amendment. First let me say that I oppose the separation of criminal and civil district courts. I think it is an evil system that allows a good part of the people who ought to be working for court reform in New Orleans to ignore the court where many of the problems are, but I think that this amendment makes an exception for New Orleans and that is one of the things that's been said over and over again on the floor that we want to avoid doing. In every other parish and in every other municipality the courts are continued as they now exist subject to a change by the legislature. I am supporting an amendment by Mr. Jack later on that will take the local referendum out of Section 35 so that Orleans will be just like the rest of the state, subject to change by a vote of the legislature. But I object to singling out Orleans and changing something through this body. I don't think that this body is the vehicle that this change ought to be made through. I think we were sent here to write a flexible document to allow the proper agencies of government to make changes after long consideration and study. I think the flexibility is what we were sent here to provide, not the change. I think the other thing we were sent up here to do is to take amendments of the ballot and I believe the Judiciary Committee has done a very, very fine job of that by taking out all the minute description of judicial districts. There are lines on how many judges sit there and that sort of thing. That was one of the things that bred the most amendments over the years. I'll say again, I don't think we were sent up here to mandate change to the local people in the areas. I think the legislature may do that for Orleans as it does for other parishes over the years after due consideration, and I urge the defeat of this amendment.

Further Discussion

Mr. Casey Mr. Chairman and delegates, the Chairman reminded me again that I can do it in minutes and a half which I did not do last time I was up here. At this time New Orleans does have a specialized court system, criminal court and also civil court. Mr. Tobias certainly made some good points and there are many merits for merger of those particular courts. But there are some real practical difficulties and I just don't think this is the way it can be properly achieved. All I am saying is that it really should not be done by rule of court. I can imagine some of the difficulties that the judges would have, ten civil district court judges and eleven criminal district court judges getting together and trying to work this out. I think it might be more properly handled by a legislative act. At this time we have separate court buildings. We have a civil court building and a criminal court building. There is a lot of merit for specialization. We have specialization in family court. We have specialization in city courts, traffic courts, magistrate courts and many other types of judicial proceedings throughout the state of Louisiana. If it becomes meritorious and necessary at a later date, my preference would be that after a proper study whether it be in the city of New Orleans or East Baton Rouge Parish, that it would be properly han-

dled by a legislative act and not by a rule of court. I think there are many difficulties that could arise in handling this by a rule of court. I would urge defeat of the amendment.

Further Discussion

Mr. Deshotels Mr. Chairman, ladies and gentlemen, members of the convention, I was on the Judiciary Committee that came up with this proposal. We had a lot of debate on it and we had a lot of pro and con, and the more debate we had the more we realized the importance of the question. And the more we realized that we had to be careful what we were going to do and what we were going to provide for in this situation. We are talking about a fundamental court. We are talking about a district court. In our proposed article we provide that district courts can only be merged and changed by referendum. Well, this is a district court. This is a basic institution that Orleans has had, we've been impressed, for years and years. We are not running a constitution in a vacuum. There are already institutions existing. This was brought to our attention when we passed upon the executive proposal. My God, look at the problem we had with trying to get some of these institutions merged and changed and moved around. This is the same thing that we have got here. We're not locking anything in, Mr. Tobias. We are providing for change. We are providing for a living constitution. Today you say that civil and criminal district courts don't work. Well, people disagree with you. In fact, it is pretty well split. The point is maybe in ten years from now the entire state will want that. It may be a thing of the future. So don't lock it in. Don't tell New Orleans that they don't know what they want, which is what you are doing. The system has been working. Let's give them a chance and let's provide for the same type of change for them that we are providing for the rest of the state, to wit, changing the district court. That's what we have, referendum. Now, are we also going to force all the other district courts to be like the majority of the district courts in the state? You realize that we have family courts here in East Baton Rouge Parish. Does anybody propose an amendment to make the family court a part of the other courts? In other words, abolish it and provide that judges in the district courts in East Baton Rouge Parish may sit according to court rule as a family court judge. I haven't seen it and I don't expect it. I understand there is one also in Shreveport and some other districts. Nobody is trying to force them to change and I don't believe we ought to force Orleans to change something. We provided for the change. Ladies and gentlemen, we wrestled over this in our committee. We come to you with not a unanimous proposal on this particular area but it had overwhelming majority of our committee. I would ask you to support our committee proposal in this area. Allow New Orleans to change whenever the people in Orleans Parish want a change. We are not forcing anything on them but Mr. Tobias would be doing that. Let's go along with the committee proposal and let's defeat the amendment and move on. Thank you.

Questions

Mr. Kelly Mr. Deshotels, does not our committee proposal allow the flexibility for Orleans in the future to solve this problem themselves?

Mr. Deshotels Absolutely. Mr. Kelly, just like we provide for other judicial districts to merge, to be created, by referendum and act of the legislature. This is no different. We are talking about a fundamental part of our judicial system, our judicial district courts. And, let's be consistent. Let's allow the referendum, if we are going to allow it. Thank you.

[Proceedings continued in item 1, Jurors Ball:
104 delegates present and a quorum.]

Closing

Mr. Gauthier Thank you, Mr. Chairman. Members of the delegation, I come before you today to plead with you for logic and reason. We have heard the argument that Orleans wants it this way and it should stay this way. And I ask you, whose court is the criminal court in Orleans Parish? If your brother your sister, your relative or your neighbor is charged in the Parish of Orleans, then whose court is it? I suggest to you that this plan is a great improvement. And talking about improvements, if I can have your attention for a minute I would like to tell you a little joke. There was a factory worker that on his way to the factory—he was a big, bungling guy—he found a little sparrow that was crippled, had a wing out of focus. So he picked up the little sparrow, put it under his arm to keep him warm, and walked all the way to the factory carrying this little sparrow. When he got to the factory door, he realized he would look pretty funny going into the factory with a little sparrow under his arm, so he looked for a nice warm place to put him. Not finding any good places, he bumped upon a pile of cow manure and he snuggled this little sparrow down into it, and the little sparrow was nice and warm and he was comfortable and he was chirping away. Then along came a cat and snatch, off the little sparrow's head went. The moral of that story is that it is not always your enemies that put you into it, it is not always your friends that take you out of it. Now, if I have your attention, every judicial district in this state has one district court. In Orleans we have separate criminal and separate civil district courts. What does this do? What does it accomplish? There is approximately 4,500 attorneys in Orleans. Out of this number a small few, I am told, are five or six hundred, practice criminal law. From this amount comes all of your criminal attorneys, your criminal judges and the district attorneys. I suggest to you that the criminal court has been taken out of the mainstream of the practice of law and isolated. Consequently, we are not getting the best qualified people for judges, we are not getting the best qualified people for district attorneys. And if you doubt this, ask yourself why, why are there two judges that are presently under federal indictment and a district attorney under indictment? The argument has been raised again and again and again that this is an Orleans matter. Don't be deceived by this. That court is your court, it's our court, it's every person in this state's court. If you don't believe it, how are criminal charges filed? The state of Louisiana versus... That court belongs to us and I suggest to you that if you pass this amendment it will simply say, there is one district court in the city of Orleans. Now, what will that do? What will that accomplish? Will it force them to build two buildings? No, no it doesn't say that. It says one district court and by local rule, by the judges meeting together, they can decide if they want to sit on just civil matters or just criminal matters. Now, what will this accomplish? It will put the criminal division back into the mainstream of the practice of law in New Orleans where it belongs. We are not trying to force them to build new buildings, force them to rotate. We are going to create one district court. Who agrees with this concept? The senior district judge, Judge Bernard Bagert of the criminal division after sixteen years of practice said, "It is good. We want it. Let's merge." One of the junior judges, Judge Israel Augustine, said "It is good. Let's merge." They are saying this with no rotence. We are saying devotion to try and improve on a system that is not working. The argument about us causing Orleans to do something they don't want to do to make them spend money and build buildings is not so. It is definitely an improvement. It's a step in the right direction, and I urge your support of this amendment. Thank you.

Questions

Mr. O'Neill Mr. Gauthier, we've been told this

New Orleans matter. Let me see if you agree with my appraisal of it. The criminal judges in New Orleans have a very heavy case load and they pretty much favor merger with the civil district judges down there. The civil district judges have a fairly light case load and they don't favor merger. Is that an accurate appraisal?

Mr. Gauthier Also, Mr. O'Neill, the criminal judges have recognized the fact that hearing criminal cases day in and day out does one of two things to a man. He either becomes callous and hard or vice versa, he becomes lax. Now that is not true in every case. There are some exceptions. Some judges can hear it all day without it bothering but I am told by Judge Augustine and Judge Bagert that it does something to destroy a man's equilibrium listening to one matter all day.

[Record vote ordered. Amendment rejected: 46-68. Motion to reconsider tabled.]

Recess

[Quorum Call: 104 delegates present and a quorum.]

Personal Privilege

Mr. Heine Mr. Chairman and fellow delegates, you know when I was a boy my old dad gave me what I think was some very good advice. He said to speak only when spoken to and be a good listener if you want to learn a lot and stay out of trouble.

Well, that's what I've tried to do during the convention. And I must admit I've learned a lot. I've learned a lot of parliamentary procedure and I'm no sure that my council back in Baker is going to be able to put up with me when I get back.

I've also learned that when you get up here to speak, you're supposed to say, "Mr. Chairman, I'm going to be very brief," and then you go ahead and speak for five minutes.

You know there have been a lot of questions going around about this red coat that I am wearing such as, "I wonder if he'll wear it." "I wonder if he's got more than one?" "I wonder if he's got another suit?"

Well, I want you tonight, if you will, to tune in Channel 33 at 7:30 and you will see why the Mayor of Baker is so proud to wear this red coat which is the official blazer of my city. And I'm giving you all a special invitation. That's on Channel 33 at 7:30 tonight and I'll appreciate it and all the people of Baker will.

Personal Privilege

Mr. Tobias Mr. Chairman, fellow delegates, I will just call to your attention that on that last vote regarding the Orleans Civil and Criminal District Court, there was a split in the parish of Orleans. The vote was 13 to 9.

Vice Chairman Roy in the Chair

Amendments

Mr. Poynter Amendment No. 1 [By Mr. Abraham], on page 5, line 6.

Immediately after the period, delete the remainder of the line.

Amendment No. 2, page 5, line 7, at the beginning of the line before the word "legislature", delete the words and punctuations "of this article the" and insert in lieu thereof the word "the".

Amendment No. 3, on page 5, line 9 immediately after the period, delete the remainder of the line.

Amendment No. 4, on page 5, line 10 at the beginning of the line immediately before the word "legislature", delete the words and punctuation "Section 35 of this article, the" and insert in lieu thereof the word "the".

Explanation

Mr. Abraham Mr. Chairman and fellow delegates, this amendment will determine how serious this convention is in taking out of the constitution the exceptions for particular parishes. In the previous arguments this morning we talked about having all parishes treated alike in the judicial system, that what is good for New Orleans is good for the rest of the state and vice versa.

So what this does, this is the beginning and all this does is it takes out the words, "except as provided in Section 35 of this article". And Section 5 is the one that deals with the Orleans courts. So I ask your adoption of this amendment.

Further Discussion

Mr. Vesich Mr. Acting Chairman and members of the convention, I hope we do not have to go through this particular section, Section 15, all day long like we did in the committee for months and months and months on the Orleans situation. We got some, we talked and we fought in that committee about the situation in Orleans and what I ask for, and the majority of the members from the Orleans delegation on the Judiciary Committee asked for, was only one thing. Please don't do it to us overnight.

If you are going to merge us or whatever you are going to do, give us some time. Put on a local opinion basis. That's all I ask. That's the way it stands in Article 35. It says that when the majority of the legislature and a referendum of the people in the City of New Orleans decide, they will do it.

You just don't understand the complexity of the situation of the courts in New Orleans. They are financed from Orleans situation. We get some from the judicial expense fund, we get some from the criminal court fund, we get some from the state, we get some from the city, our different courts down there are financed separately and you just cannot say overnight you are merged.

And we have asked that you please just go along with us and let us do it in the orderly process. That's all we ask for and that's all Section 35 does.

In the event that sometime in the future, I sat there and I listened to the opponents, in the future we decide in the City of New Orleans that it is best for us to merge or the legislature decides that it is best for us to merge, that at least proper preparation will be made for it.

Now you have to admit that your situation in the country parishes is different than ours and if you just look at it, you will see how different it is. I mean we are sorry that it is. It was something that was created many years ago. We can't help it, but you can't say today you merge...bang! it's over with. If you do, you are going to have complete chaos in the city.

I ask you, please defeat this amendment.

Further Discussion

Mr. Tapper Mr. Chairman and fellow delegates, I rise in opposition to the amendment. I was talking to Mr. Abraham, I'm not sitting down and I don't know whether he is or not. I hope he will explain it in more detail when he closes if he does. But I think what he is attempting to do is to authorize the legislature to either abolish or create certain offices within the parish of Orleans. And of course, I'm from St. Bernard, but I represent part of Orleans and I do some practice in the City of New Orleans.

I don't believe that we want to allow the legislature to maybe abolish something that would be all right but to create a particular office and have the people in a particular parish have to pay the salary and fees and costs of operating that office...I think it's a bad principle and I don't believe that we really want to do that. I don't think that Mr. Abraham wants to do allow the legislature that his amendment will set into motion the procedure by which that can be done. I believe it's unfair to the people of any locality for the legislature to be able to create an office and not fund it; an office that will be funded by the people of that

particular parish, and I urge that you defeat the amendment. I hope that he would withdraw it or maybe explain it in more detail when he comes up.

But I ask that you defeat it at this particular time.

Further Discussion

Mr. Alexander Mr. Chairman and delegates, this is more or less the same amendment that has been defeated previously and it poses the same problems, the same questions and the same threat to the orderly operation of the courts in the parish of Orleans.

I agree with previous speakers who have said maybe there are some improvements and some changes necessary. But to do it helter skelter as proposed here would create chaos and confusion in the court system in the city of New Orleans. I admit that if something was wrong in Calcasieu Parish, I possibly would consult with some of the delegates from that parish before introducing an amendment affecting that parish.

Let me raise one little question briefly. When an individual is convicted in the criminal courts, in any criminal court for that matter, the judge retains jurisdiction. That criminal may appeal and his case may go to several courts including the United States Supreme Court. In the meantime, that judge is back in civil court. What happens? And this may not include just one case, there may be many cases. What he does... he runs back and forth from criminal court to civil court and etc., and etc. This would entail time. This would make, or...the other alternatives...Then while the case is on, when the case comes before him again or would come before him, the case has to remain on the docket and the individual stays in jail, especially if it's a capital case or what used to be a capital case where he can't make bond. Then the man stays in jail until this judge is shifted back to criminal court.

All these are possibilities and all these things could happen, and I ask you to defeat the amendment. Thank you.

[Quorum Call: 105 delegates present and a quorum.]

Further Discussion

Mr. Tobias Mr. Chairman, fellow delegates, this amendment, and I wish you would listen to this carefully. This amendment is a technical amendment and I'll explain to you why. I disagree with Mr. Abraham. It does not substantively change anything. If you will look at Section 35 of the proposal, the first line says, "Notwithstanding any provision of this article to the contrary". The provisions... and then it continues with the provisions for Orleans Parish.

That would override the statements, "Except as provided in Article...in Section 35 of this Article" as proposed by Mr. Abraham's amendment. It's better constitutional draftsmanship, it cuts down on a lot of words. It's just surplus wordage. It doesn't do anything and don't let anyone up here kid you.

Further Discussion

Mr. Fontenot Mr. Acting Chairman, fellow delegates, I rise in support of this amendment and I'll try to be brief.

The point was made that the judicial system in New Orleans is different from the judicial system in the parish courts throughout the state. But whether they are different or not, or whether they should be different or not is not the issue before us today.

I can't sit here today and decide which courts ought to be maintained and which courts ought to be taken out of the New Orleans system or Evangeline Parish or Baton Rouge or any other parish. I'm not here to decide that. I don't think the committee decided that either.

The committee decided that the legislature should have that power and I agree with the committee. The

thing I don't agree with what the committee did was give New Orleans a special treatment in the sense that it allowed both the legislature and the people in the New Orleans area to decide whether they would change their system where as the rest of the state, the legislature has that power to do without the referendum of the people.

Our job here is to decide what should go in the constitution or what should be left out of the constitution. As far as I can see it, we have to take away these certain words, "Except as provided in Section 35", then we have to take away the particular section Mr. Tobias stated, concerning notwithstanding any provision to the contrary or set or...whatever words he used. We will have to do away with that if we want to let New Orleans join the rest of the state.

And like I said, I am not trying to decide what judicial court should remain in the state or through the rest...in New Orleans or the rest of the state. That's not our job. Our job is to decide what should go in the constitution.

Therefore I feel that we should treat everybody the same, New Orleans included, and let the legislature decide which courts ought to be maintained and which ones should be removed.

Like I said, I am in support of this amendment. I feel that it is needed to get rid of this extra language and then whenever we get the article... Section 35, we will be able to clear out the rest of the mess.

I urge your adoption of this amendment and I would now move the previous question if there are no other speakers.

Chairman Henry in the Chair

Further Discussion

Mrs. Zervigon Mr. Chairman and fellow delegates, I don't want to take much of your time. I just want to say that I am from Orleans Parish and I agree with everything Mr. Fontenot said.

It's only a technical amendment. Let's remove it here and let's go ahead and remove the referendum in Section 35 and treat Orleans Parish like the rest of the state in this instance. The process for change in Orleans ought to be exactly the same as the process for change in the rest of the state.

Further Discussion

Mr. Jack Mr. Chairman and fellow delegates, I am for this amendment. Let's get New Orleans in Louisiana and have the same laws there as we have other places.

Now what started all the big argument this morning, and we really had a good one, when you consider Section 15 and 35, take the points...suppose a... city court...I'm not going to yield until I finish...city court in Caddo, juvenile court in Caddo, suppose the legislature if all this passes like it is, they could abolish the city court in Shreveport. They could abolish the city court in New Orleans. They could abolish the juvenile court in Caddo, the juvenile court in New Orleans if these pass. Then the city court in Caddo and the juvenile would be abolished. But this provides further that New Orleans has the right of referendum and the people there, after being abolished by the legislature, if they voted to keep their city court, they would have theirs, but we in Caddo would lose ours. And the same thing for the juvenile court.

Let me tell you, it's time that New Orleans be subject to the same laws that we in Shreveport and the rest of Louisiana are subject to. I just know it must have been a compromise up in the Executive Committee to keep their city court, whatever is correct, this kind of paper out on this floor.

Now ladies and gentlemen, let's pass this amendment and let's amend Section 35 where the same thing is done again.

Thank you.

Further Discussion

Mr. Landrum Mr. Chairman and fellow delegates, I am of the opinion that New Orleans is different. Now maybe some of you may disagree with me. But I do believe that New Orleans is different in the sense that some things that could be used and will work well in one part of the state will not work well in New Orleans. Now that's my belief.

I've heard, too, about bringing New Orleans into the state. I always believed this that when you pay taxes, then you are a part of the state. New Orleans therefore shares a responsibility to the State of Louisiana.

I ask that you defeat this amendment.

Further Discussion

Mr. J. Jackson Mr. Chairman, ladies and gentlemen of the convention, I must admit to you that before the Tobias amendment came up, I had some very strong reservations concerning the status of all courts, particularly the unique status of our court. I must also admit to you that I weighed very heavily the arguments as presented pro and con for the Tobias amendment. I always believed that the amendment as presented here and the arguments that we previously heard have convinced me that this amendment will begin to bring New Orleans, and particularly our courts, to the rest of the state. I recognize the political implications involved. But it just seems to me that we are talking about the courts of the State of Louisiana.

I am particularly concerned, and I guess I was convinced, about the remarks made concerning the posture or the attitude that can develop when we do get into the situation of constantly having to hear kinds of cases that hearten us.

I am also particularly concerned to the fact that the attitude towards the criminal area of judicial...of the criminal justice system, I know it's going to be very hard, and I guess it kind of pro and con. And I know being from New Orleans, I want to make it perfectly clear, as I quote someone else, I want to make it perfectly clear that I think the amendment as presented by here has great merits.

I think what it will eventually do is bring the kinds of judicial reform, the kinds of equal treatment of not only the court, not only the defendant, but the courts throughout the state. I know this sounds somewhat in opposition to some of my colleagues from New Orleans, but I would seriously ask that they would weigh this proposition because I would imagine, and I know there will be other circumstances where we are going to be pushing for maintaining exceptions.

And I think it has gotten to the point now within the state that we ought not allow, particularly if sixty-three other parishes that it has worked, that we ought not to allow for such an exception to continue. I just felt that I had to rise in support of this amendment so that those delegates that are serving, non-voting, those delegates who maybe took in some political considerations, would think about what will that mean, not necessarily to the judges, not necessarily to the political factors involved in the City of New Orleans, but mostly to the people who have to go before these various courts.

And with that, I would ask for your favorable adoption.

Questions

Mr. Nunez Mr. Jackson, when you say that the amendment this morning tried to put the rest of the state in line with New Orleans, and it was defeated...now this amendment today puts New Orleans in line with...puts the rest of the state in line with New Orleans, if passed.

Mr. J. Jackson Well, if I understand what you are trying to say, Senator, I think either way we ought to be talking about one state. We ought to be talking about one judicial system, one civil law and criminal law in Shreveport, in Luke Charles, in Lafayette, it's the same civil law and criminal law in the parish of Orleans.

[Previous Question ordered.]

Closing

Mr. Abraham Briefly, I just want to say that we rejected the Lunez-Toomy amendment this morning, 35 to 81, and that amendment provided that the state would have referendums in the rest of the state if the legislature wanted to revise or change a court or a system.

Now this amendment here does not do away with any of the offices of New Orleans or anything else. All it does, it paves the way so that when we get to Section 35, we can do...either decide on what we want to do on the referendum there, see. So it just simply, all this other leaves it up to the legislature to decide the issue in New Orleans the same as it does for the rest of the state if we want to take off the referendum.

Now I don't disagree that New Orleans differs from the rest of the state. But so is Shreveport different from Lafayette, and Monroe is different from Baton Rouge, Lake Charles is different from Alexandria, and if the legislature can decide things for these different areas of the state, well then surely it can decide for New Orleans.

All this does is just paves the way so that when we get to Section 35 we can make a decision then.

Question

Mr. Tapper Mack, I realize what you are trying to do and what your theory is, and in principle I agree with you, but don't you believe that it is better for the people to decide locally whether or not they want these particular offices than for the legislature to do it when the people locally are going to have to fund these agencies?

Mr. Abraham Well, how I feel right now is not the issue because we decided this morning that we did not want the referendum.

[Record vote ordered. Amendment adopted: 68-47. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Duval], on page 5, line 18 at the end of the line, delete the word, "with", and delete line 19 in its entirety.

Explanation

Mr. Duval I think the convention has already voted against the public referendum concept in reference to judicial districts and courts. To reiterate, this amendment deletes the public referendum portion of Section B, of Paragraph B. It seems rather ludicrous to have a public referendum on a matter of this sort and not to have a public referendum for each additional crime enacted by the legislature; for each increase in the criminal penalty; for each law changing the Civil Code; for each law affecting a profession; for each law affecting a parish; for each law affecting wildlife; for each law affecting environmental control and every other matter which affects the citizens of a locality. This is not an orderly way to conduct state business to have a public referendum on the merging, or creation of a judicial district.

Why a public referendum here when there are many many more crucial issues in the state where there is no public referendum. I think it should be deleted. It has no purpose here. It puts something in the constitution which shouldn't be here, and if you are going to have it, you ought to put it everywhere because almost every other type of law affects the people more than the changing of a judicial district and the people have no public referendum. They have their legislators in Baton Rouge and that is a representative to vote on the issues which affect them far more than the merging of a judicial district.

And I suggest to you that you adopt the amendment and delete the language on the public referendum.

Questions

Mr. Jenkins Stan, I'm concerned about the possibility particularly of some of the smaller rural areas being merged with the urban areas.

For example, if we take this out, wouldn't it allow the Twentieth Judicial District, which is composed of East and West Feliciana, to be merged with the Nineteenth Judicial District which is East Baton Rouge Parish, even though the people of East and West Feliciana would be opposed to such a merger?

Mr. Duval Mr. Jenkins, I answer your question in the following way.

Why have a public referendum here when you have no public referendum regarding laws which affect life, limb, local government, wildlife, the basic economy of your state, and why have a public referendum dealing with judicial districts and nowhere else? I think it's a bad concept and it's not an orderly way to run state government, and I'm totally opposed to it.

Mr. Jenkins Well, but isn't there a distinction to be made because, the court system, the judges, the district attorney assigned to each of these various districts, which will administer all of the life and death things? And shouldn't the people in the particular locality be able to determine who will be administering the life and death laws which are passed by the legislature?

Mr. Duval I think as a practical matter additional to the things I have already said, that the legislators in the various districts can work out equitable solutions to those problems.

Mr. Pugh Mr. Duval, is it not a fact that we don't have any general referendum law in Louisiana and that, therefore, if this constitutional amendment, as it's provided, if we did have a referendum, will have to amend this section further to provide that the legislature would have to provide the manner in which said referendum would have to be called?

Mr. Duval Yes, sir. That is correct.

Mr. Stovall Mr. Duval, don't you think we can trust the legislature to act wisely and impartially in matters of this kind?

Mr. Duval Yes.

Mr. Fontenot Mr. Duval, I'm not exactly sure what the effect of this would have on certain possibilities. Let me give you an example.

Suppose St. Landry Parish, right now has a district court and they have three judges over there. And Evangeline Parish, which we are right next to them, has a district court with one judge in it. Could the legislature, without the people voting on it at all, just say, "O.K. we are going to have one big district," and include Evangeline Parish and not give the people in Evangeline Parish a voice at all?

Mr. Duval Mr. Fontenot, I might point out for the last since 1812, we have been managing without this provision that is proposed by the committee.

Mr. Fontenot But I mean, the legislature could just, if I understand you correctly, without this referendum, just suck in a whole geographical area into a new district and create a new district without the people having any say-so at all.

Mr. Duval The legislature, aside from the facts I have already said, the legislature can also pass laws affecting your area without your having voted on them which certainly will affect you more than the judicial districts.

Further Discussion

Mr. Burns Mr. Chairman and fellow delegates, we have heard a lot of talk this morning and prior days about referendum and I thoroughly agree there are many, many instances where a referendum is unnecessary, and it'd be left to the wisdom of the legislature.

But this is one situation, this is one issue, that I think that if there ever was a referendum necessary, it is necessary when you start redistricting the judicial districts of the state or abolishing judicial districts or merging judicial districts. That strikes at the very heart of the judicial system of our state as far as the voters and the citizens and the people of the state are concerned.

And that's what we lay so much stress and emphasis on up here in this convention. And I think we should very properly do so, is to think about the people and how their interests are affected.

And I don't think any judicial district in the State of Louisiana should be abolished or I don't think any judicial district or any parishes should be forced into another parish unless the people of that district are entitled to vote on it.

And I ask you in all seriousness to give this matter your most earnest consideration and thought before you vote for this amendment.

Questions

Mr. Abraham Mr. Burns, don't you think if we empower the legislature...

Mr. Burns Don't you think that if the legislature has the authority to revise or change Supreme Court Districts without a referendum of the people, or to change the appeals court district without a referendum of the people, that it should also have the authority to revise the districts themselves?

Mr. Burns Mr. Abraham, in some instances I would agree with you. But in this instance I can't because there are so many political considerations that could come into this situation that perhaps the wishes of the people of that particular district might be ignored.

Mr. Flory Mr. Burns, isn't it true that where the legislature has the right to change the judicial districts as they relate to the appellate court and the Supreme Court, it requires a two-thirds vote of the legislature rather than as is provided in this section, a simple majority of the legislature?

Mr. Burns Well, I might agree with you on that otherwise, Mr. Flory. But I still...this is one question or one situation where I think the people residing in a particular district should have a voice in it.

Mr. Flory That's correct. But what I'm saying in answer to Mr. Abraham's question is where the legislature solely had the jurisdiction to change those judicial districts, it requires a two-thirds vote of the legislature where this does not.

Mr. Burns I see.

Further Discussion

Mr. Rayburn Mr. Chairman and fellow delegates, I rise in opposition to this amendment and I see where we can do a lot of damage to the people in the rural areas and the small areas of this state by not allowing them an opportunity to vote. I have been in the legislature when the governor fell out with some certain individual and removed certain individuals from public office and replaced them with a plan of his own. And I don't want to have to compete with some people who are really not interested in my judicial district by saying how it would be arranged and what would compose it. And I think the best thing to do is to do like we've been doing in the past...let the people of those districts have an opportunity to speak because they are going to be the ones that are going to be con-

cerned. And I have seen things like this happen in the legislature. I hope it don't see it any more. But it has happened and it can happen when someone would want to interfere with your local government or your local district, and they would get a majority of the legislators who didn't live in that area or weren't too concerned over that area to go along with them and let the little people back in the rural parishes do the best they could without having a chance to speak and I want to see them have an opportunity to vote on their judicial districts and I think they should have that opportunity and I hope you don't take it away from them.

Further Discussion

Mr. Avant Mr. Chairman and fellow delegates, I rise in opposition to this amendment and I think you should well heed the words of Senator Rayburn.

I want to give you a specific example. I'm not saying that this would happen or is going to happen, but it could happen. I live in East Baton Rouge Parish. We have eight Representatives in the legislature. We have one Representative who we share with East and West Feliciana. We have two Senators. We have one Senator whom we share with one or more of those parishes, or maybe both. I am not sure.

We have in this parish approximately seventy thousand plus registered voters. We have in the parishes of East and West Feliciana less than half that many people altogether. Now many people in East Baton Rouge Parish own property in East and West Feliciana Parish which is the twentieth Judicial District. They have a judge there and they have a district attorney there. A U.S. highway, 61, goes through that parish.

Now this is just an example, and I'm not saying it would ever happen, but if the people of East Baton Rouge Parish ever decided for some reason or another that they wanted to abolish up and swallow that judicial district, they could do it if you adopt this amendment. And the way this article is written as it now stands, it would require the approval of both the people in East Baton Rouge Parish and the people of East and West Feliciana before that could be done. Now that is exactly...I didn't raise this morning on a Nunez amendment, I didn't speak on it though I was in favor of it, but this is exactly the Judge Pavy situation, exactly what was done in the nineteen-thirties when you didn't have the protection that this article as it's drawn gives you, when a judge was gerrymandered out of office for political reasons. And this is what we are trying to protect against ever happening again. And I say you should well heed the words of Senator Rayburn because that's why you write constitutions. If you wanted to put your complete faith in the legislature and in the judiciary, and in the executive, you could just say, "Let there be government," and forget the rest of the constitution.

But what happened in the nineteen-thirties in the case of St. Landry and Iberville Parishes, the Judge Pavy situation, pray to God never happen again. But it certainly won't happen if we reject this amendment.

Further Discussion

Mr. Tapper Mr. Chairman and fellow delegates, I rise in opposition to this amendment, not because it's in this section, but the convention, I think this morning, set a dangerous precedent and this will be a continuation of that dangerous precedent, and I'd like to leave with you just one thought.

If we continue with this procedure, where do we stop? Where do we stop...what about not calling bodies, what about school boards? You answer that question and think about it when you vote, and I hope you vote against this.

Questions

Mr. Stagg Mr. Tapper, the question before the house at the moment is whether or not there needs to be a referendum to change judicial district

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lines. Is that not correct?

Mr. Tapper I believe you're right.

Mr. Stagg Do you know what the present constitutional provision is?

Mr. Tapper Yes.

Mr. Stagg Does it not permit the legislature to change district lines and has it not so permitted for the last 51 years?

Mr. Tapper I believe you're right.

Mr. Stagg By an ordinary vote of members of that most special protective vote or anything.

Mr. Tapper But it says two-thirds of the legislature.

Mr. Stagg If I may ask you a question this way: does the Section 7, Paragraph 34 not say "the legislature may rearrange the judicial districts", and then it says "by a two-thirds vote of the membership of each house, may increase or decrease the number of judges in a district". It does not put a two-thirds vote on the rearrangement of district lines and it has not so done for 51 years. Do you not know that to be the case?

Mr. Tapper You're reading and you have me at a disadvantage, Mr. Stagg, as you so often do, however, if that is in the present constitution I think, like on many, many other things that are in there, we're here to change that and I hope that we change it in this convention. It is wrong to burden the people with the decisions of the legislature at the whim of the vote in the legislature to rearrange your judicial districts, your school boards and your governing bodies, and I hope that you defeat this amendment. If we're going to do this with the judiciary, we're going all the way.

Mr. Perez Mr. Tapper, isn't it true that Mr. Stagg's interpretation of the constitutional provision must be patently wrong because of the fact that many, many times there have been attempts to pass constitutional amendments in order to attempt to divide judicial districts as we, I believe you can recall, that we had with respect to the 25th Judicial District.

Mr. Tapper Yes, sir, Mr. Perez, I sponsored and passed successfully through the legislature two such bills attempting to divide our judicial district, and we passed it in both Plaquemines and St. Bernard, and the rest of the state voted it down. Ladies and gentlemen, for the sake of getting at the judiciary let us not ruin the whole state, please.

Further Discussion

Mr. Kilbourne Mr. Chairman, fellow delegates, I rise in opposition to this amendment. I oppose this concept for the same reason that I opposed it on the Judiciary Committee. Now, in the article in the sections that we've already passed, it's true that the legislature can rearrange the Supreme Court districts and the Court of Appeal districts, but that takes a two-thirds vote. If this amendment is passed it wouldn't take anything but a simple majority of the legislature to do that. I think it's a very dangerous thing and it's not solely because I'm from a rural district as Mr. Avant pointed out, the 20th Judicial District, East and West Feliciana; it's not simply for that. We could get gobbled up just like he said, but as I said in the committee, I'm not so afraid of what might happen again that happened up in the St. Landry situation. What I am afraid of is all of the propaganda we have been getting and I don't know if the rest of you got it but we got it on the Judiciary Committee. This modern concept of a unified court system; it's in the model state constitution which the League of Women Voters so kindly sent, I'm sure, everyone. But,

under that concept you wouldn't have any district courts; you would just have a court, a state court. There would be no judicial districts. Ladies and gentlemen, I want you to know that there is a great hurrah for this concept by the social engineers who are pushing all of this socialist stuff on us in this country today. That is a part of it. Do away with your judicial districts, do away with your local control, concentrate it all in a Supreme Court, in the governor, in just a few people, and you won't have any more local control. I know the gentlemen that introduced this amendment don't have anything like that in mind, but I have been watching what has been... was tried to get off on the Judicial Committee by the reformers and let me say this that most of them were outside the state of Louisiana. We had all kinds of experts come in and talk to us and explain to us what great advantages this uniform court system could be, and I can see in this amendment the effect of it would be an opening wedge where you turn this matter simply over to the legislature and the legislature is going to be bombarded with these reformers' efforts to change. I want you to know that they have their organization and they have the money to put these things over. I ask you to defeat this amendment. Leave this thing to local control. I believe, I know that people make mistakes at elections, but I am a fundamental believer in the ultimate wisdom of the voters if they are free to vote as they please. If anyone has a question, I'd be glad to answer it.

Question

Mr. Weiss Delegate Kilbourne, who finances the judicial district courts? Who pays for this?

Mr. Kilbourne The state pays most of the expense, but not all of it, and that's another thing. That's another angle they have. The state pays the judges. Most of the other expenses are paid for locally. That's another thing that's going to be brought up here, I imagine. They'd have to take all the local bonds and everything and send it into Baton Rouge and let the state dole out your funds for your clerks of court and your sheriffs and everything.

[Previous Question ordered.]

Closing

Mr. Duval I've heard the many arguments against the amendment. I understand these arguments, and I certainly would be willing to accept an amendment to the section that it takes a two-thirds vote of the legislature. But I might point out this, why have a public referendum here on judicial districts and this great paranoia here, when the legislature can pass laws which affect the entire judicial districts by referring directly our local area without a public referendum. If this amendment fails, I suggest to you that we have a public referendum for every law affecting wild life, for every law affecting oil, for every law affecting a local government, we ought to have a public referendum affecting the economic structure of the state, affecting reorganization, all of these things that are important facets of our government, I realize that. But, I suggest to you that the concept of a public referendum in this instance is not a good idea, why here and no other place which is just as crucial, why not in every article? Every article is equally sanctified, I think in this constitution. Equally important. Why not have a public referendum on all laws affecting those articles? Why even have a legislature? We'll just have a public referendum on everything. I suggest to you that that's the basic fallacy with the committee proposal. I see no harm in a two-thirds vote and would like to see an amendment for a two-thirds vote, but I don't think the public referendum concept is a good idea. It's not an orderly way to run state government, and why is this so different than every other area of state government. Why can we pass laws affecting the entire economy of a local parish and not have a public referendum in that parish? Why can we pass

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taxes and not have a public referendum on that? I suggest to you it's a bad idea. It's such a dangerous precedent, and if the amendment fails we ought to have a public referendum everywhere.

[Amendment rejected: 34-82. Motion to reconsider tabled.]

Amendments

Mr. Poynter Amendment No. 1 [by Mr. Perez, et al.] on page 5, line 19, between the words "district" and "parish" delete the word "or" and insert in lieu thereof the word "and".

Amendment No. 2, on page 5, line 20, between the words "establish" and "or" insert the following: ",divide,".

Explanation

Mr. Perez Mr. Chairman and delegates to the convention, these amendments are primarily technical in nature. The first amendment on line 19 would make it clear that in order to be able to change a judicial district it would require the vote not only in the district but also in each parish affected. The second amendment on line 20 would simply make it clear that not only can judicial districts be established and merged but they may also be divided. I've discussed this with most of the members of the committee, and they have agreed to the amendment, and I don't believe there should be any objection. So I ask your favorable vote.

Questions

Ms. Zervigon Mr. Perez, you speak of this as a technical amendment, but isn't there a difference between a referendum in the district or parish and a referendum in the district and parish?

Mr. Perez Yes, Ms. Zervigon, what I mean by the fact that it's technical, I've discussed the matter with the author of the amendment and with most of the members of the committee. It was an intention to require that the vote be both in the district and in the parish also. I was just a bad choice of words of "or" instead of "and". The intent of the committee was that the requirement be both in the district and in the parish, and that's the reason that I call it a technical amendment because it would carry out the intent of the members of the committee that I've talked to and that's been most of them.

Mr. Jackson Mr. Perez, I'm not as familiar with the judicial districts as I feel I ought to be, but would there be cases whereby a district may transcend maybe a parish line?

Mr. Perez No, all judicial districts are composed of one or more parishes, but there are parishes where the judicial districts are divided with one part of the parish in one and one in another, as far as I know.

Mr. Jackson Well, conceivably, what you're saying is that you could not have a situation whereby the vote could pass maybe in either the parish or the district or fall in either one?

Mr. Perez It could be done in the future, but it would require the approval of the entire parish.

Mr. Jack Mr. Perez, I voted against knocking this referendum out, but I want to know this; it looks to me like that you're going to change "or" to "and". Suppose the judicial district had three parishes in it. My idea for a proper referendum is the majority vote of all three of those parishes, but it looks to me like this might mean that when you put "and" that it would have to be approved by a majority of each of the three parishes.

Mr. Perez Yes.

Mr. Jack Well, in other words, you could have a hundred thousand votes for making whatever the change is and then one little parish that had only 15,000 and yet the 15,000 would defeat the hundred thousand votes.

Mr. Perez I think that's probably hypothetical but the proposition is to protect the little fellow against being put into a very large area and thereby eliminating the opportunity of the people of that area to be able to elect a judge.

Mr. Jack O.K.

Mr. Reeves Mr. Perez, is this not consistent with our ideas on the Local and Parochial Government of more home rule and ideas of bringing the rule of the people back to the local areas to protect the small people.

Mr. Perez Yes, sir, Mr. Reeves, it certainly is, and I hope that we can return government to the people as much as possible.

[Previous Question ordered. Amendments adopted: 92-18. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Pugh], on page 6 at the end of line 12, after the period, add the following: "the manner of holding such referendum elections shall be as prescribed in the legislative act providing for the referendum."

Explanation

Mr. Roy Mr. Chairman, ladies and gentlemen of the Convention, the amendments are self-explanatory. They simply provide that the legislature shall provide the vehicle by which these referendums will be called. That is you won't have different referendums from different parishes and the legislature should designate exactly how the people will vote for or against the amendment. I think it's more of a technical amendment than anything else, and Mr. Pugh asked me to explain it because he had to leave.

Questions

Mr. Dennyery Mr. Roy, in the Bill of Rights and Elections Committee, I know there is a section on initiative. If it were to contain a section on referendum this would be unnecessary and would you agree that Style and Drafting could then take it out?

Mr. Roy Yes, sir, I would agree, but I think we ought to maybe pass it at this time.

Mr. Dennyery I agree with that. I just wanted to be sure that you thought we could take it out if it was a general law on it.

Mr. Roy He just wanted and I think he was right, a uniform type of referendum vehicle all over the state.

Mr. Fontenot Mr. Roy, if you leave out these words exactly what will the situation be whenever there is an attempt to change these districts? Why do you require the language in the constitution? I'm not exactly sure what the intent is of your amendment.

Mr. Roy I think Mr. Pugh was worried about the fact that there's no special act or law right now on referendums and it may differ from parish to parish as to how the referendum would be called, how it would be presented, and in what form would it be presented, and the voter may not know what actually he's voting on. It may just promote some type of litigation. You would have a uniform referendum method presented with each particular attempt

amendment or change of a judicial district.

Mr. Fontenot But, if you say they should be uniform, this doesn't say that, it says in the legislative act that providing for a referendum you could have a variation of kinds of referendums proposed. Isn't that correct?

Mr. Roy Well, that would be possible, but in that particular district, the legislature would be setting forth something that would be specific. I guess that you have point in a sense there.

Mr. Kean Mr. Roy, would it not be better to make this a separate subsection to this section, if we're going to include it, because we again have in Subsection C a reference to a referendum and it would seem to me that if we put it in this particular paragraph B that we're simply going to have to repeat it everywhere we have such a requirement.

Mr. Roy That's a good suggestion, probably, Mr. Kean. Mr. Pugh did have several... he has two such amendments and maybe we ought to just put it as a next alphabetical designation with the same language, that all referendums will be provided by the legislature.

Mr. Henry Are you ever going to pull them, Mr. Roy? Do you withdraw the amendments?

Mr. Roy No, I'm not authorized to withdraw his amendment.

Mr. Stinson Mr. Roy, isn't a fact that Style and Drafting can do that like they're going to do everything else?

Mr. Roy I would think they could, and just suggest that we put it in as an extra alphabetical designated number... alphabet area, but Mr. Chairman, you wanted me to be very brief, and I've been trying to be and that's my problem. I can't be brief.

Mr. Rayburn Mr. Roy, I know we've done a lot of stupid things in the legislature but I see here where this thing in the constitution that the legislative act providing for a referendum, that we will state in the act how the referendum will be called. I don't believe I've ever seen one that didn't provide where it would be called according to general statutes or either put the provision in the act. I hope that we haven't got so bad that we'd pass an act calling for a referendum and then provide how it would be handled. I don't believe this belongs in the constitution, Mr. Roy.

Mr. Roy Senator Rayburn, I can't vouch for what the legislature would do, and I do.

[Previous Question ordered. Amendment rejected: 35-76. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Willis, et al.], on page 5, at the end of line 22, delete the word "term" and delete lines 23 through 28, both inclusive, in their entirety.

Explanation

Mr. Willis Mr. Chairman, gentlemen and gentlemen of the convention, notwithstanding the gallant support of the co-authors of this amendment, assuring its approval, I cannot be studious of brevity with a full heart. It is the sense of omnipresent duty which pursued me to this podium. I do not appeal to you from lip to ear; I appeal from heart to heart. I rise, with reluctance, to express my aversion to a sentence in an article of the judiciary plan for which we are so much obliged to the honorable men who laid it before us. After you attentively listened to prayer this morn, you stood at attention with hand over heart and repeated a pledge

of allegiance to the red, white and blue bunting on this platform which is a symbol of our union, and ended by saying, "...justice for all." This you said. Did you mean it?

With the virtuous education and dedication you have, I warrant you did, because no time is good time to tell ourselves or each other an untruth, which immediately compels me to recall the final advice of Polonius to his son, Laertes, upon the latter's departure, in the tragedy of the Prince of Denmark by the bard of Avon:

"This above all: to thine own self be true, and it must follow, as the night the day, Thou canst not then be false to any man." Especially at this time, heed God's monitor in your bosom—conscience. On this side of the grave, there is no greater joy of enjoyment than a clear conscience and sense of duty performed. Righteousness is always an evidence of greatness and honor. Wrong is the property of small souls.

Your loyalty is due to no mortal man in authoring this constitution; it is due to good government -- justice for all.

I ask you to please your constituents and so the public at large. If you do what is right, the consequences are nothing and you clothe yourself in armor that the arrows of consequences can never penetrate, and only nature is responsible; if you do wrong, you are responsible for all the consequences to the last sigh.

Much evidence was heard by the Committee on the Judiciary. The totality of that sponsoring the disparity of terms of district judges whereby those serving within the crescent of this mighty and muddy Mississippi, a block away, should have double terms of all other judges in Louisiana is that campaign costs are higher in that half-moon area. If you project that argument vis-a-vis other officials in any branch of our government, you will see how ludicrous it is to measure the terms of officials by the costs of campaigns. So, I do not belabor the point. Although a majority of the committee embraced that argument from that evidence, I am inclined to a contrary opinion, because the term of a judge should not depend upon its price or the size, population, or configuration of an area.

I cannot admonish you enough that equal judges should have equal terms and that the bad habit of history, another argument for disparity of terms, should not be repeated in this constitution in total violation of justice for all.

I am sorry to dissent from the proposal of the committee to which I have been assigned, but my heart is full of contempt for injustice, so I must exclaim as did Malcolm, son of Macbeth, to MacDuff: "Give sorrow words; the grief that does not speak Whispers the o'er-fraught heart and bids it break."

I envy the happy moment so soon to arrive when you will restore justice to our district judges by carpeting our voting board in green, the color most favored by God in carpeting our world.

And therefore, Mr. Chairman, if there are no questions and no further speakers, in great security, I move the amendment and I am content with the satisfaction of having poured my heart, given my frank opinion and done my duty.

Questions

Mr. Lowe I'm a co-author to this proposal, Mr. Chairman, and I didn't have it explained to me that way and I'm not really sure whether I really want to be a co-author any more or not.

Mr. Willis You put a question mark to that and here's my answer, Mr. Chairman. You may visualize a dream in deep slumber but you must be wide awake to realize it.

Mr. Anzalone Mr. Willis, do you know that one time in the history of the fifth ward of Tangipahoa Parish that we had a man that made a speech something akin to what you just said and after he finished it, an old fellow that I'd sat next to reached and punched me in the ribs and he says, "Jody, I

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sure don't know what he said but it sounded pretty

Mr. Willis I accept it as an accolade.

Mr. Derbes Mr. Willis, I just can't resist this, do you remember the quotation from, I think it's Macbeth, which says, "life is but a walking shadow, a poor player that struts and frets its hour upon the stage...[Mr. Derbes and Mr. Willis recite together]...and is heard no more. It is a tale told by an idiot full of sound and fury signifying nothing."

Mr. Willis Do you have my answer?

Mr. Henry Would you yield to a question from Mr. Jack, the Falstaff of Caddo Parish.

Mr. Willis I do yield to a question from Mr. Jack and warn him that brevity is the soul of wit.

Mr. Jack First, I want to mention, Mr. Chairman, I do not drink, but when I did I never drank Falstaff; it was always Jax Beer.

Mr. Henry I'll have to say, you're still a hundred proof, Mr. Jack, a hundred percent.

Mr. Jack Thank you.
I'm the gray hair...I'm "Old Grandad".
I'm a co-author of this and I believe...

Mr. Henry The amendment or the proposal?

Mr. Jack This amendment. Not that other...of the amendment.

I believe we have 74 co-authors so I don't look for the vote to be too close, so I suggest we get on with it. Thank you.

Mr. Willis That is wit.

Mr. Henry I'd like to hear Mr. Willis close.
Do you have a closing statement, Mr. Willis?
If Mr. Willis has a closing statement, I'm going to object to the amendment.
Do you have a closing statement, Mr. Willis?

Mr. Willis Yes, I do, Mr. Chairman.

Mr. Henry I object to the amendments.
You have the right to close, Mr. Willis.

Mr. Willis Just one moment and I shall.

Closing

Mr. Willis Mr. Chairman, with gratitude, gentle-ladies again, and gentlemen of the convention, in the name of justice, I adjure you to deal fairly with judges. Be loyal to justice. Beware you do not betray it or our district judges. They await your decision with composure and fortitude and with union, justice, and confidence, the three words written on our state seal which is lighted in front of this podium.

You may not, you must not, deprive justice to judges. My calm analysis of the evidence supplied the Committee on the judiciary demonstrates to me that there was no valid evidence to support unequal terms for equal judges. Why is equality so difficult to understand or to live by?

I plead for our district judges nothing more than that justice which they or you would mete out to the humblest citizen: equal justice. If equality is part of justice, then justice requires equality. That is no more arguable than the Ten Commandments.

I am calm and confident that you will lean on your daily pledge to "Old Glory" and glorify your vote for justice for all judges and receive the blessings and honor of our people by so doing. I am equally confident that you will vote for union, justice and confidence. I am that you will vote for justice for all, including our district judges. Because I wish our decision remembered with un-

diminished interest, Mr. Chairman, I request the vote on the amendment be recorded, and I, if you please, move the question.

[Record vote adopted. Amendment adopted 96-20. Motion for adjournment denied. Motion by Mr. Wall that Mr. Willis's opening and closing statements be narrated into the Journal adopted without objection.]

Personal Privilege

Mrs. Miller If I may say, I would like to say to the delegates who gave this overwhelming vote on this issue, to Mr. Willis and to Mr. Wall for his very generous statement, I would like to say in the words of Hamlet, "for this relief, much thanks."

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Toomy, et al.] On page 5, line 22, immediately after the word "district" and before the word "shall" delete the word "judge" and insert in lieu thereof the words "and parish judges."

Explanation

Mr. Toomy Mr. Chairman, fellow delegates, this amendment simply clarifies the committee proposal. If you will notice in the first sentence of Section 15 they provide that the parish courts would be retained in the new constitution. Nowhere in the proposal do they clearly specify the terms or what the terms of these particular judges would be. I talked to several members of the committee, including Judge Dennis and Justice Tate, and each of them concurred that it was their intention to provide for the same terms for the parish judges, but that they hadn't clearly enumerated it. Presently, the parish court judges have a six year term and we simply wanted to make it clear. In Section C would I read, with this amendment "The term of district and parish judges shall be six years." Presently, only Jefferson Parish has parish court judges and the present term is six years. They were established under a constitutional provision and the intention here is just to have specified what the terms of these judges should be. I ask for your favorable adoption of this. I will yield to any questions, Mr. Chairman.

Questions

Mr. Conroy Mr. Toomy, the problem I've had is that I'm not quite sure it's clear what your amendment is proposing to do. In Section A, it says "The legislature may establish trial courts of limited jurisdiction which shall have parishwide territorial jurisdiction and subject matter jurisdiction which shall be uniform throughout the state." It doesn't, that section doesn't establish a title for those courts, but those are all parishwide courts that the legislature might establish in the future. Does your amendment, in effect, say that the judges of all such courts in the future would have six year terms or is it limited only to the present existing parish courts?

Mr. Toomy The amendment, with the amendment, line 22 would simply read "the term of district and parish judges shall be six years." The establishment of any further parish courts, the judges' terms would be six years. A number of people had mentioned earlier in the day that for a uniform court system, more parish judges may be established. Parish court judges.

Mr. Conroy So this is intended to make it six year for all parishwide judges. Is that correct?

Mr. Toomy Right, which as we presently have in Jefferson and any new ones which may be established.

[Previous question ordered. Record vote

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ordered. Amendment adopted: 100-13.
Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [By Mr. Juneau, et al.]. On page 5, between lines 28 and 29, add the following: Paragraph D. "The legislature may increase or decrease the number of judges in any judicial district by a two-thirds vote of the elected membership of each House."

Explanation

Mr. Juneau Mr. Chairman and fellow delegates, this is a provision which was specifically stated in the 1921 Constitution, but which is, in essence, I submit, silent in the proposal which is now before you. If you will look at your books that were provided for the compilation on Article 7, Section 34, it provides that the legislature by two-thirds vote may increase or decrease the number of judges in a district. The reason for this was this, if you're going to create another judgeship in a judicial district, you will of necessity create a financial condition or burden upon a locality. The court reporter, the facilities, the judge's salary and so forth. It has been in our law, and I think a worthwhile purpose that if you're going to impose that financial burden on a locality, which may be necessary, then it should require a two-thirds vote of the legislature. I respectfully submit that I think that's a legitimate, well-founded principle that was in the 1921 Constitution. I find it to be silent in the proposal which you now have before you, and I think silence would connote the word majority. Again, I think that this is merely a protection and giving security to a local government that if they're going to put that financial addition to their budget, then it at least should require the consideration of two-thirds vote of the legislature. I would ask you for your favorable consideration. I think that it puts in proper perspective the relationship between state government and local government and is consistent with the provisions that will be before you with regard to the local government provision. I move for final passage, Mr. Chairman.

Questions

Mr. Brown What are the abuses that you are so concerned about if only a majority vote is allowed to, say, create a new judicial district? What are you so concerned about happening that it's going to require a two-thirds vote?

Mr. Juneau Well, I could visualize a situation, Mr. Brown, that if someone wanted to, for a particular reason, create a judicial district in a particular area, I wouldn't think that it would be that difficult to muster a majority because of friendships. Mr. Brown, I think what we're doing in this situation is not dealing with the matter necessarily of state or local interest. Lafayette Parish or Webster Parish, whatever parish it may be. I think when it gets to that magnitude, the history has shown that to get a two-thirds vote is not necessarily difficult in that regard, but it does assure to a locality some stability that they will not be indiscriminately taxed with additional appropriation on a local level.

Mr. Brown Well how is the two-thirds vote of the legislature going to have any effect on the locality? As a member of the legislature, on something like that, most of your legislators, they've got a twofold purpose in looking at something like that. Number one is the local delegation for it? Number two, what does the judicial administrator have to say? Does he say there is a need right there? So I don't see how the local people are going to be protected by the two-thirds element.

Mr. Juneau Well, I'll put it this way, Mr. Brown. We have many, many provisions in this constitution, apparently, which are going to retain the provision of two-thirds. I think this is just one more of the

continuation of what is considered to be historically a protective device, be it local government or otherwise, even in the tax field. It's my impression and my strong feeling that that again is nothing more than a protection for local government. That's the best way I can answer your question.

Further Discussion

Mr. Singletary Ladies and gentlemen, I urge the rejection of this amendment. I think that the authority would be in the legislature to increase or decrease the number of judges needed by a majority vote without this amendment. I think historically the problem has been that there have not been enough judges, rather than too many.

[Previous Question ordered. Amendment adopted: 86-23. Motion to reconsider tabled. Previous Question ordered on the Section. Section passed: 115-1. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter "Section 16. District Courts; Original Jurisdiction

Section 16. Paragraph A. Unless otherwise authorized by this constitution, a district court shall have original jurisdiction in all civil and criminal matters. It shall have exclusive original jurisdiction of felony cases; cases involving the title to immovable property. . . . I might interrupt here, Justice Tate indicates to me that there was a technical error in the preparation of this and he will propose an amendment to line 1 so that it would read, the portion of the word 'carried over original jurisdiction: of felony cases and cases involving: the title to, etc.

Picking up on line 3, "position, civil or political rights; probate and succession matters. The state, a political corporation or a succession is a party defendant regardless of the amount in dispute and the appointment of receivers or liquidators to corporations or partnerships.

B. A district court shall have appellate jurisdiction as provided by law."

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, Section 16 provides for the jurisdiction of district courts. Paragraph A speaks of two kinds of jurisdiction. One is original jurisdiction which means that the district court may hear all civil and criminal matters upon their original trial. It also speaks of exclusive original jurisdiction which means that these kinds of cases must be started in the district courts. These include felony cases, cases involving title to immovable property and the other types of cases listed therein. This is no substantive change from the present constitution and the present scheme of original and exclusive jurisdiction for district courts.

Paragraph B does represent a change. It provides that a district court shall have appellate jurisdiction as provided by law. This is not in the present constitution. But this is simply a provision authorizing the legislature to provide for appeals from limited jurisdiction courts to the district courts. There is a provision in the present constitution providing for trial de novo which means a new trial all over again in the district court from such a limited jurisdiction court. The legislature could, under this, bring back the trial de novo. However, the trial de novo has been subject to some criticism and it may be that the legislature would wish to authorize a different kind of review in the district court rather than trying the case all over again. So that is why we have provided for a permissive grant of power to the legislature to simply provide by law for appeals to the district court from the courts below them. If there are any questions, Mr. Chairman, I will be happy to answer them at this time.

Mr. Poynter Amendment No. 1 [By Mr. Tate]. On page 6, line 1, immediately after the word "jurisdiction" insert a colon (:) and delete the remainder of the line and insert in lieu thereof the following: "of felony cases and of cases involving: the title to".

Explanation

Mr. Tate Mr. Speaker and fellow delegates, this is in the nature of a technical amendment. We were originally, wrote this article to say... incidentally, the wording of this article comes from the project of the 1954 Constitution before we inserted something. It originally said "jurisdiction of cases involving the title to immovable property," cases involving, in other words, the right to office, if you follow what I mean. Of cases involving all those semicolons were the objects of that phrase, cases involving (1) the title to property, (2) the right to office, (3) civil or political rights, (4) probate and succession, (5) the state as a party defendant, etc. Now when we added jurisdiction of felony cases and put a semicolon and then we say cases involving the title to property, that could be read, and two or three delegates whose draftsmanship I have confidence in pointed out to me, you could read it to say jurisdiction of felony cases, of cases involving the title to immovable property, of the right to office or other public position. You see, it's not a sentence. It doesn't make sense unless you understand that "of cases involving", that phrase, is an understood, whatever some grammarian... it's an understood... the prepositional phrase which has an object, each one is involving the title to immovable property, involving the right to office, involving civil or political rights. Does anybody follow me? You want me to talk some more? You know when I taught law school, somebody got up and said "why do you talk so fast, and why don't you finish your sentences?" And why don't you make sense, they should have said. But I wish a grammarian like John Thistlethwaite would explain it a little better than I can. Does anybody see any difference in putting it this way and not putting it this way? All right...

Questions

Mr. Deshotels Justice Tate, unless we put it the way you have it, I'd refer you to line 4, for example, as one example, right after "matters;" if you omit the semicolon... if you omit after the semicolon the first line and then jump down to the fourth line, it wouldn't make sense as we have it now. Isn't that correct?

Mr. Tate Yes. Without my amendment.

Mr. Deshotels That's correct.

Mr. Tate It was a friendly question, thank you sir. It's a grammatical mistake.

Mr. Stinson Judge Tate, I think that kills what we were talking last night. But on line 5, didn't we say instead of "as", it should be "is"? I don't think it will cure that, will it? Style and Drafting will do that?

Mr. Tate Well no, Mr. Stinson. It does that because it says "cases involving the state, a political corporation, or a succession as a party defendant." You'd have to put "where" in, otherwise. Cases "where" the state is... if you said it.

[Amendment withdrawn.]

Amendments

Mr. Poynter The next set of amendment, is sent up by Delegates Abraham, Tobias and Gauthier. Amendment No. 1. On page 5, line 30, after the letter "A" delete the remainder of the line. Amendment No. 2. On page 5, line 31, at the beginning of the line delete "stitution, a" and insert

in lieu thereof the word "A".
Explanation

Mr. Tobias Mr. Chairman, fellow delegates, this is another one of the technical amendments similar to the technical amendment that we adopted on Section 15A. If you will follow me, we say in this Section 16, unless otherwise authorized by this constitution. If you will look at Section 35 of this constitution, of our proposed draft, the second paragraph which says "the civil district courts shall have civil jurisdiction as provided in Section 16 of this article and the criminal district courts shall have criminal jurisdiction as provided in Section 16 of this article." So in effect, this refers you, Section 35 would refer you back to Section 16, and it would override the previous article. In other words, it's simply technical. It should be non-controversial.

Question

Mr. Denney Mr. Tobias, I understand the purpose of your amendment. Where would jurisdiction of public service commission cases be? It's a civil case therefore original jurisdiction would be, according to your amendment, with the district courts. Where would civil service commission cases go? According to your amendment, it would to the district courts. It seems to me that it is overly technical because I think it goes beyond what you intended it to go. Now I believe the purpose of your amendment, if I am correct, and please correct me if I am wrong, was to clarify the situation with regard to New Orleans. But do you not agree that it goes much further than that?

Mr. Tobias I stand corrected. I withdraw the amendment.

[Amendment withdrawn.]

Amendment

Mr. Poynter Amendment No. 1 [By Mr. Gauthier and Mr. Kees]. On page 6, line 9, after the word "law" change the period "." to a comma "," and add the following: "except that from parish courts, appeals by trials de novo are prohibited."

Explanation

Mr. Gauthier Members of the delegation, if you refer to Section 15, line 10, we provided that parish courts could be created at a time when they were needed. In our committee, we hassled back and forth about appeals. Presently in the constitution, trial de novo is a right granted. Trial de novo simply means this, the ability to have a complete new trial in the district court. Now this is what happens. If you create new parish courts and then you give the right to have a complete new trial in the district courts, you would be doubling the expense of the state. The parish courts, as we foresee them, will be totally equipped. They will have record keeping equipment and the appeals should be on the record. This is all this does. It prohibits a new trial bringing back all the witnesses, bring back the defendants. It simply provides that the appeal will be on the record. Thank you.

Questions

Mr. Abraham Wendell, though you've explained the meaning of the term de novo, doesn't the manual on Style and Drafting specify that we should not use terms like this in the constitution?

Mr. Gauthier That objection has been raised and I'm told that there would be no problem for Style and Drafting to change it and put it in English language which would be acceptable and mean the same thing. They would not be changing the meaning, then.

Mr. Kean Mr. Gauthier, when you talk about parish

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courts, what kind of a court are you talking about?

Mr. Gauthier If you refer back to Section 15, Mr. Kean, on Line 10, "the legislature may establish trial courts of limited jurisdiction which have parishwide territorial jurisdiction and subject matter jurisdiction which shall be uniform throughout the state." The intent of the committee was that these courts be parish courts.

Mr. Kean All right. Now, as I appreciate that provision which you have just read, the legislature could create a parish court, that is one having parishwide jurisdiction, over nothing but traffic violations and misdemeanors.

Mr. Gauthier That's correct.

Mr. Kean In an effort to help handle traffic violations. Under the circumstances of your amendment, a person who was tried and convicted in that parish court of a traffic violation would not be entitled to a trial de novo in the district court in the event of appeal.

Mr. Gauthier He would be entitled to an appeal on the record. Right, no new trial de novo. Not having a complete new trial. That's correct.

Mr. Kean In other words, it's not the intention by this to limit the appellate jurisdiction of the court, simply to avoid a trial de novo.

Mr. Gauthier No sir. Not at all.

Mr. Anzalone Mr. Gauthier, aren't what you are really saying, that if you set up a parish court, you are going to set up a parish court of record?

Mr. Gauthier That's correct.

Mr. Anzalone Well, Mr. Gauthier, of course there are those of us that represent small municipalities in which there are mayors' courts and there may or may not be a conflict in term in here which are not courts of records because of the expenses involved. Do you think that a better language, and I hate this, but I'll ask you anyhow... is to establish trial courts of record with limited jurisdiction would be better language than the prohibition that you have here?

Mr. Gauthier Mr. Anzalone, I personally would have no objection to that amendment and I agree with you. However, there are members of the delegation that say that they have smaller courts which would not be able to afford the necessity of record keeping and therefore they couldn't go along with it. This is a compromise providing that just parish courts which will be courts of record.

Mr. Velazquez In effect, Delegate Gauthier, when you cut in half the expense of the state in this matter, aren't you in effect cutting in half the rights of the defendant?

Mr. Gauthier I don't follow you on that question at all, Mr. Velazquez. In the parish court, there will be a complete record of the trial. He will have an appeal on the record. You're not in any way cutting off any of his rights. No.

Mr. Velazquez Well, often, isn't it true, that very often a new trial is much fairer to the man than to have to go on his record?

Mr. Gauthier I wouldn't say that in the parish courts, no, Mr. Velazquez.

Mr. Roy Mr. Gauthier, I'm a little worried about... because I'm not familiar with parish courts, not being from around the Jefferson area. But is it your idea that you could have a parish court with, let's say, jurisdiction of up to ten thousand dollars in civil cases that the legislature could provide for in the future?

Mr. Gauthier Mr. Roy, I'd find it difficult to answer you because we provided in Section 15, Line 10, that the legislature will establish the jurisdictional limits.

Mr. Roy Well, that's what I'm saying, and if it does, then your amendment necessarily implies that all litigation from a parish court even with a jurisdiction of as much as ten thousand dollars would have to go to a district court. My question is, couldn't the legislature decide that it would go to the circuit court of appeal rather than the district court?

Mr. Gauthier You're correct. It could go either to the district court or the court of appeal. I checked with Justice Tate on this and you would have a right of appeal on the record to either the district court of the court of appeal.

Mr. Roy When you say "except from parish courts, appeals by trials de novo are prohibited"...

Further Discussion

Mr. Avant Mr. Chairman and fellow delegates, I must rise to oppose this amendment. I hate to anticipate another section, but we're in a situation where I think you have to look ahead to the future provisions that we are going to be coming to. Now, the idea behind the parish court was that it would be a court of limited jurisdiction and that the legislature could establish these courts of limited jurisdiction. Their jurisdiction would have to be uniform wherever they were established. But the question of the trial de novo, I have to go and make a little explanation. Under the present constitution, in criminal cases where there is an imprisonment of less than six months or a fine of less than three hundred dollars, you do not have any right to appeal to the Supreme Court. Under the provisions that are in this article, if it's less than five hundred dollars or less than six months, you do not have any right to appeal to the Supreme Court and there is no provision for an appeal to the court of appeal. Now, under the present law, there is a right to appeal in those cases to the district court if you in a court that is not a court of record. Say a district court or a court of record where they do not have a record. You have a right to appeal to the district court for a trial de novo, which means you get a complete new trial. Now, we got into this question and we considered it at great length in the Judiciary Committee. I for one, I wanted to put a provision in here that any person could not be convicted of any crime and sentenced to any imprisonment, or fined, or forfeit his driver's license without a right or appeal based upon a complete record of all of the evidence that had been taken. Since we had done away with the trial de novo in this. But the result that we came up with, and you have to look forward to Section 20 is to provide that evidence shall be preserved in all trials, and that the legislature or in the absence of a legislative act, the Supreme Court by rule, would provide how that evidence would be transcribed. Now then, in those misdemeanor cases where you presently have a right to a trial de novo, then we simply made a provision that the district court will have appellate jurisdiction as provided by law. Now what we have done then in these cases of limited jurisdiction have, in effect, provided that all evidence has to be recorded, or preserved or kept in some way. That then, in those cases where you do not have a right to appeal to the Supreme Court, that is in those cases where there has been an imprisonment of less than six months or a fine of less than five hundred dollars, that the legislature would have the right to provide an appellate procedure of some kind which could go to the district court. It could be either on the record or it could be by trial de novo. Now if you adopt this amendment that Mr. Gauthier is offering, I feel that you are disrupting the plan or the system that we had tried to put into effect which was "inly to provide" that in those cases where you don't have an appeal to the Supreme Court, coming

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from one of these courts below the district court level, that there must be a record and that then we would leave it up to the legislature as to whether or not the appeal would be on that record or based upon the trial de novo. The reason for that was, is that this language which says that evidence shall be preserved in all trials, the legislature is going to have to implement that in some sort of way because it provides that it shall be as provided by law. There was discussion of many practical problems that would arise in certain cases such as mayors' courts and city courts where they don't have the facilities to do that, and the expense that would be involved in doing that. So that's why these two provisions were put in there. They've got to be looked at together, and that is the Section B in Section 16 and Section 20. They have to be looked at together. Together they give to the legislature the leeway to provide how those appeals will be handled.

Vice Chairman Casey in the Chair

Further Discussion

Mr. Stinson Mr. Chairman, members of the convention, I wanted to clarify this by a question, but wasn't able to. The statement was made that it was a hardship on the defendant to go trial de novo. Well the defendant is the one who is appealing. He's the one that's asking for a review by the higher court. Certainly there's no hardship on him. And again I'd like to point out if we want to or you want to help the little man, this is the same as an appeal from the city court in which ordinarily the defendant goes in the court without an attorney, not knowing that he's got to introduce all the witnesses and have it transcribed if he is to have his day in court on appeal. I think to protect that type person, that we should make the appeal, leave it like it is recommended by the committee so the legislature can say it will be de novo, if in the legislative wisdom they so see. I'd like to urge you, let's discuss this amendment.

Questions

Mr. Sandoz Mr. Stinson, the proposal as contained in the committee proposal does not provide that a parish court is a court of record. Is that right sir?

Mr. Stinson Yes sir.

Mr. Sandoz Therefore, if you did not... if you denied them a right to a de novo trial, there would be no transcribed evidence on which the other court could go on. Is that right, sir?

Mr. Stinson Exactly. That's one main objection. I believe Mr. Gauthier, himself, said that some courts couldn't afford to transcribe it. Therefore, they wouldn't have a record. Well I don't think that the people of this state should suffer by having such a burden placed on them. They are being denied the right to appeal.

Further Discussion

Mr. Conino Mr. Acting Chairman, fellow delegates of the convention, if you refer to the amendment you'll notice that we stated parish courts. These parish courts will be all uniform. We happen to have two in Jefferson Parish that I'm very familiar with. These are what is known as courts of record. In other words, we have a stenographer there who takes all of the testimony regardless of the type of case that it might be. If it's a traffic case it's taken down, or a DWI, or a misdemeanor, or a civil matter up to a thousand dollars. Regardless of what comes into these parish courts, they will be recorded. They are called courts of record. These records can be taken up on appeal. If you have to have, if you feel justice has been neglected then you ask for a new trial in that particular court. You don't have to go up on appeal without a record. Usually the judges in these particular

instances will advise the defendant, if it's a matter of a serious nature, that that particular defendant should obtain counsel so that he will have his day in court. When he has his day in court, there is a record and this record will go up. It saves the state and it saves the defendant and all of us a lot of money so that we don't have to try at a lot of expense by going de novo. De novo means all new, completely new, where you subpoena a of your witnesses and your state evidence and whatever you have. So I urge the adoption of this particular amendment.

Questions

Mr. Anzalone Mr. Joe, do you realize that what you are saying that you are prohibiting a trial de novo from a parish court that has not kept a record?

Mr. Conino No, Mr. Anzalone, I stated that a parish court is a court of record.

Mr. Anzalone No sir, you are not saying that. You are leaving up to the legislature... or do you know that you are leaving up to the legislature the right to decide whether or not this will be a court of record? If the legislature should so decide that this is not a court of record, you are, in fact, prohibiting an appeal from that particular court.

Mr. Conino I have been told that all parish courts will be modeled after Jefferson Parish and they will be courts of record.

Mr. Anzalone But that isn't what you're saying here.

Mr. De Blieux Mr. Conino, as the provision now reads, it says "A district court shall have appellate jurisdiction as provided by law." Now the question I want to ask you, couldn't you accomplish the same thing that you're trying to do with this language by a legislative act?

Mr. Conino Yes, yes.

Mr. De Blieux Well why do you want to clutter up the constitution with it, then?

Mr. Conino Because we feel that the trial de novo is not necessary.

Mr. Dennyery Mr. Conino, under Section 2D, the provision is made that "evidence shall be preserved in all trials. The method of preservation shall be provided by law or by rule of the Supreme Court not inconsistent therewith." Don't you think it would be far better if you went a provision of this nature, rather than saying "except from parish court..." that you say except from courts of record, and then no question could arise? If you have a court of record, I can't see that there would be any damage done. But if the record is preserved by means of a tape recording, it wouldn't do much good on appeal. Do you agree?

Mr. Conino I'm sorry, but I can't hear you.

Mr. Dennyery I say if the record is preserved merely by a tape recording, it wouldn't be of much value on an appeal. Do you agree?

Mr. Conino No, it would have to be transcribed. That's correct. The court would have to have those facilities or make those facilities available, and I believe that with the decisions coming down from the United States Supreme Court that that would be made available to any defendant who decides that he needs it.

Mr. Jack Let me ask you this. Suppose, I'm not familiar with this parish court in Jefferson, but we passed, today, a provision where other inferior courts can be created and they may have parish courts other places. So it's very important to all

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of us. Under your law regarding the parish courts now, where a suit is filed there for \$25, now that's what we would term in city court in Shreveport a non-record case and evidence is not transcribed. Do you mean you transcribe the evidence in a account that's contested, say, for \$25?

Mr. Conino That's correct.

Mr. Jack All right. Now remember, \$25 is involved. Suppose you passed this law that you can't have a de novo trial and you've got to appeal on a record. Who pays for that record when there's only \$25 at stake?

Mr. Conino It would be paid by the plaintiff.

Further Discussion

Mr. De Blieux Mr. Vice Chairman and ladies and gentlemen, I just want to make this observation. The provision as it presently reads says that a district court shall have appellate jurisdiction as provided by law, which means that the legislature can set that appellate jurisdiction as it sees fit. Mr. Conino just said that the legislature could do exactly what he wants to provide here. So if the legislature can do it, why do we want to clutter up the constitution with needless words, which you might say is meaningless and which we do not need. Therefore, I think the amendment is a bad one and we should not stick meaningless words in the constitution. I ask you to vote against it.

Further Discussion

Mr. Jack Mr. Chairman and ladies and gentlemen, I rise to oppose this amendment. We will probably have other parish courts, and in my opinion, if we adopt this amendment, we will have an article in the constitution that's going to govern all of them. Now Section B says "the district court shall have appellate jurisdiction as provided by law." Now nothing should be added to that. To show how ridiculous this could be to do away with appeals by trial de novo, take the example, I was asking the question on when the speaker's time ran out, suppose in that parish court you had a case involving \$25. The plaintiff has to appeal it, or the defendant. You've got to, as he said, the plaintiff pays for the appeal, I imagine whoever lost in the lower court. Well the general cost on transcripts per page is one dollar unless you have a scale law like a flat filing fee which some parishes do, Caddo does. But in certain parishes, like we tried a case just recently over in another parish in north Louisiana, for a case that lasted a day and a half, and it's a dollar a page, \$285 for 285 pages. But if we win that case, we're going to win a lot of money--thirty or forty thousand dollars. That's different. But if a person sues for \$25 or \$30 or under \$100 in a non-record, it's not justice where there's an appeal, the loser have to pay maybe a dollar a page. So I say, let's defeat this amendment. Also, there's another amendment dealing with this same thing that I have a copy of, and I'm speaking now against both those amendments.

[Previous Question ordered. Amendment reported: 28-78. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Pugh]. On page 6, delete lines 8 and 9, and insert in lieu thereof the following:

"B. The district courts shall have such appellate jurisdiction as the legislature shall provide by law."

Explanation

Mr. Roy This amendment was going to be introduced by Mr. Pugh. He asked me to introduce it for him. I submit it for your reading and I will not yield to any questions.

Further Discussion

Mr. De Blieux Mr. Vice-Chairman and ladies and gentlemen. Mr. Pugh discussed this amendment with me before he left this afternoon and his explanation was this and I think it makes sense. It is the nature of a technical amendment. He takes the provision that jurisdiction has to be conferred by the constitution. It cannot be done necessarily by the legislature unless the words explicitly provide that. And as the reading of the present provision says, it just says "appellate jurisdiction as provided by law" which doesn't necessarily clarify the situation and give the legislature the right to make jurisdiction with reference to the appeals of court. And he just wanted to reword that particular section as he has outlined it here. It is a technical amendment and I think that he has made his point and it would be worthwhile to adopt it. That is his explanation.

Questions

Mr. Weiss Delegate De Blieux, isn't the legislature the only law...section which makes the laws in our state?

Mr. De Blieux That is not true, but you have law contained in the constitution too, Dr. Weiss. He just wanted to clarify that the legislature would have this particular right to grant the jurisdiction to a court. It only applies insofar as jurisdiction of courts are concerned.

Mr. Weiss Well, if it is in the constitution, it is spelled out too then. It seems like a redundant bit of amendment.

Mr. De Blieux Well, you can decide as you see, but I am just giving you his explanation of it to me.

Mr. Stinson Senator De Blieux, some of those that might not know, isn't the jurisdiction of venue all important, you can have a good legal action, but if you get in the wrong court, you'll have a sad day and lose your case, don't you? So this is an all important to be placed in the constitution, isn't it?

Mr. De Blieux That is true.

Mr. Champagne Really, do you think that this has to be in the constitution?

Mr. De Blieux I think he has made a point... Mr. Champagne, I don't necessarily say I agree with him in all points, but I think he has made a good point in this, and certainly no damage would be done by rewording that particular provision as he has outlined it here on this particular issue.

Mr. Duval Senator De Blieux, doesn't this merely mandate the legislature as it should in reference to jurisdiction?

Mr. De Blieux That is true, yes that is right.

Mr. Kean Senator De Blieux, I understand the intention that Mr. Pugh has in this amendment and that is to make it clear when we say "provide by law" that we are talking about the legislature doing it. But we have got a number of other instances in the constitution where we have used the term "provided by law". Under those circumstances, wouldn't this change raise some questions as to the meaning....

Mr. De Blieux Not necessarily, because in this particular provision he is stating that the legislature shall provide... he doesn't say that as "provided by law" because this is to make the mandate to legislature to provide the appellate jurisdiction of district court.

Mr. Kilbourne Senator De Blieux, do you feel that

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this amendment is really necessary?

Mr. De Blieux Well, let me put it this way. It does.... It clarifies the situation. I certainly think that it will make a little bit better provision out of it. I can't say how much it would actually change... if you did not adopt it but I think it does make a little bit better provision. It is only a technical amendment.

[Previous Question ordered. Amendment rejected: 50-55. Motion to reconsider tabled. Previous Question ordered on the Section. Section passed: 108-0. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter Section 17. District Courts; Chief Judge

"Section 17. Each district court shall elect from its members a chief judge who shall exercise, for the term designated by the court, the administrative functions prescribed by rule of court."

Explanation

Mr. Dennis Fellow delegates, Section 17 supplies something that we, on the committee felt has been long needed in the district courts of Louisiana, and that is, someone who is officially designated as the administrative judge, the chief judge in each district court. Some of the district courts do this by agreement already but in other districts they have failed to choose a district judge because there is no requirement in the constitution or in law that they do so. You will notice that although this requires the selection of a district, of a chief judge in each district, it does not grant him carte blanche the administrating powers. It provides that he is delegated administrative duties and functions as prescribed by rule of court. Which gives the other judges on the court a voice in formulating the rules under which he will administer the court.

Questions

Mr. Lanier Judge Dennis, in the Seventeenth Judicial District, which is Lafourche Parish, we have two district judges. What would we do in the circumstance if the vote was tied one to one as to who would be the chief judge?

Mr. Dennis What do you do now for court rules if you can't agree upon a rule when the vote is tied?

Mr. Lanier We don't have court rules if they don't agree. And fortunately they have agreed, but if we are mandating that a chief judge be elected in the constitution and our two judges are unable to agree as to who is going to be the chief judge and it is a one to one tie, what do we do?

Mr. Dennis I suppose you don't have a chief judge. But I think that knowing your judges, Mr. Lanier, I know that they will have worked something out and one of them will be the chief judge.

Chairman Henry in the Chair

Mr. Stinson Mr. Dennis, in that case don't you think that Representative Guidry could cast the deciding vote for them?

Mr. Dennis He might arbitrate for them a little bit there.

Further Discussion

Mr. Guarisco Might I suggest that we do the same thing that we do to women, appoint a head and master.

Amendment

Mr. Poynter Amendment No. 1 [By Mr. De Blieux]. On page 6, delete lines 11 through 14 both inclusive

in their entirety and insert in lieu thereof the following:
"Section 17. There shall be a chief judge of each district court who shall be the judge oldest in point of service on the court."

Explanation

Mr. Bollinger We voted to allow the Supreme Court to have the chief justice be the oldest judge in point of service. We voted to have the court of appeal chief judge to be the oldest judge in point of service, I can see no reason why we should differentiate between the district courts. As Mr. Lanier said, Lafourche Parish has two judges and if for some reason they could not agree we wouldn't have a chief judge. Now, possibly the two judges that we have now could agree. However, we are not writing a constitution for two judges that are presently in office, but for judges who are to come in the future. So I feel for the sake of uniformity throughout this article that we should adopt the language in the amendment.

Questions

Mr. Flory Mr. Bollinger, wouldn't it really be better to leave that up to a rule of the court, and I say that in the form of a question because of the fact that in East Baton Rouge in the Nineteenth Judicial District, I believe, the court here rotates on an annual basis?

Mr. Bollinger Mr. Flory, I think that if you had a chief judge in name the chief judge could designate someone to administer it if he saw fit. However, I think that for the sake of uniformity throughout the constitution we shouldn't make exceptions because East Baton Rouge decides to rotate it from year to year. I think if they disagree among themselves that they want to let someone act as chief judge although one man is the chief judge, it would be legal.

Mr. Flory How could it be legal if you spell it out in the constitution that the oldest in point of service shall be the chief judge?

Mr. Bollinger Well, I agree that one will be the chief judge. However, another could execute his duties if he so allowed.

Ms. Zervigon Mr. Bollinger, in the section you are proposing to replace it says "that the chief judge shall exercise the administrative functions as prescribed by a rule of court". What would be the duties of the chief judge under your amendment?

Mr. Bollinger Mrs. Zervigon, we have had the same problem I think with the court of appeal chief judge in that Mr. Guarisco had offered up amendments saying that he would not be the chief administrative officer because he often times designated someone else to administer the duties of the court. I think the same thing could apply to this. Where the chief judge could appoint someone or designate someone to administer the duties of the court.

Ms. Zervigon He could appoint some other judge?

Mr. Bollinger A judge or an administrator.

Ms. Zervigon And then all he would have to show that he was chief judge is the title and no duties or powers?

Mr. Bollinger If he so saw fit, yes.

Ms. Zervigon Thank you.

Mr. Sandoz Mr. Bollinger, in the cases of the Supreme Court, that court sit as a panel of seven and the chief justice presides, is that right, sir?

Mr. Bollinger That is correct.

Mr. Sandoz And of course in the courts of appeal,

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you have panels again sitting, more than one judge on each case, is that right, sir?

Mr. Bollinger That is correct.

Mr. Sandoz Now, in the district court, each judge sits individually and has the same powers, is that true sir?

Mr. Bollinger That is correct.

Mr. Sandoz Now, don't you think then there was a reason behind the distinction that the committee made because of that fact?

Mr. Bollinger Well, if you would go along that premise you wouldn't need a chief judge in the district court.

Mr. Sandoz Well, but the point I am making is that the judges in the district courts are all elected coequal and they do not sit in panels, is that true?

Mr. Bollinger That is true.

Mr. Smith Mr. Bollinger, don't you think that it would be better to get a judge that is the oldest in point of service. You take in our parish of Caddo with five judges, we may have one elected to be the oldest that he won't have to be there but about maybe a day or two and yet he would be the chief judge, won't you cause an abnormal situation there?

Mr. Bollinger The purpose is, the judge oldest in point of service, yes, sir.

Mr. Smith Is that your amendment?

Mr. Bollinger Yes, sir.

Mr. Smith Well, that is all right.

Mr. Silverberg Boysie, earlier you said that the chief judge could relegate his responsibilities to an administrator?

Mr. Bollinger If he so desires, yes.

Mr. Silverberg However, do you still think that ...do you mean that he could relegate his authority?

Mr. Bollinger I don't...I think the basic or the ..responsibility of the court would lie in him, however, I think he could designate someone else, if for instance he didn't want to be the chief judge.

Mr. Silverberg You mean...the day to day technicality of the management of his office?

Mr. Bollinger Exactly.

Mr. Silverberg Thank you.

Mr. Arnette Mr. Sandoz brought up a fairly interesting point when he talked about the panels of judges sitting. In some appellate circuits, don't they have more than three judges?

Mr. Bollinger I would presume so, Greg, I am not sure.

Mr. Arnette Well, they do in most...in fact in all of them. Now, in a lot of cases the chief judge of the circuit court is not sitting so he has no presiding power over that particular thing which would be exactly the same situation as a district court, is that not correct?

Mr. Bollinger That is correct.

Mr. Champagne I just had a question. It probably doesn't mean anything, but now point of service, would his ten years that he had been a justice of the peace, would that count too?

Mr. Bollinger Is a justice of the peace considered

a district judge?

Mr. Champagne Well, does this say as a district judge?

Mr. Bollinger Well, it is in point of service in his Office I would presume...

Mr. Champagne Ok, well...

Mr. Stinson Mr. Bollinger, isn't it a fact that in Caddo Parish at least once a week they come in as a panel and they decide at the time the future setting of the cases and the motion that day and someone has to be in charge and preside don't they?

Mr. Bollinger I would agree with you, Mr. Stinson.

Mr. Fontenot Mr. Bollinger, excuse me for not paying attention, and right at the beginning, but I'll understand your amendment and the discussion now. Suppose you have nine district judges and the oldest in point of service doesn't want to be the chief justice, or doesn't want to run the show, are you going to require him to be the chief justice or the chief judge?

Mr. Bollinger Yes, he would. Just like the Supreme Court or the court of appeal.

Mr. Fontenot Well, of course, you know like in the court of appeal or the Supreme Court you know it might be some kind of honors you know to be the chief justice, you know up there. But down in the district court level you might have a man who just does not want to be the presiding judge. Don't you see that you might have problems if you force a man to be the presiding judge?

Mr. Bollinger Well, I presume that they could elect him and he still wouldn't want to be the chief judge. So I don't think that argument is valid.

Further Discussion

Mr. Dennis Mr. Chairman, fellow delegates, I rise in opposition to the amendment. First of all I think that if the chief judge in the district courts is elected in ninety percent of the cases the judges are probably going to elect the senior judge. But for the benefit of those courts who have already been rotating the job of chief judge, I think we should allow them to do so because where they have tried this, this has worked well. Also the amendment is defective from the standpoint that it...it leaves out the last two lines where the committee had provided that the chief judge would be selected by the other judges to exercise for the term designated by the court, the administrative functions as prescribed by rule of court. Mr. Bollinger, by leaving this language out is either going to make the senior judge in point of service the complete dictator of the court because he is not subject to court rules, or he is going to make the title meaningless because he doesn't allow the other judges by court rule to delegate any duties to him. In either event, it would be a bad situation. You would either have a man with a title with no requirement that the other judges delegate any duties to him or he would have all the duties and functions that are implied in the words "chief judge". So for those reasons I ask that you vote this amendment down.

Questions

Mr. Schmitt Did you vote for in favor of the chief judge being elected for the court of appeal in the different divisions?

Mr. Dennis On the committee Mr. Schmitt, I took the position that we should elect the chief justice and the chief judges of all the courts.

Mr. Schmitt And how did you vote today?

Mr. Dennis ...but I was in the minority on the

chief justice....

Mr. Henry Gentlemen that is not relevant....

Mr. Dennis As I explained earlier, we reached a compromise on the chief justice. But let me say this, I don't think you have the argument here at the district court level that you have at the Supreme Court level about politics entering the elective office. As Mr. Fontenot has pointed out, there is not a whole lot of honor attached to the job of being the administrative judge at the district court level. It is a job of very great responsibility and a lot more work, but it doesn't have near about the honor of chief justice of the Supreme Court. And I don't think you will have the politicking and this was the main reason that the committee shied away from election at the Supreme Court level. I believe, was because they thought it might inject politics. And I don't think that would happen on the district court level.

Mr. Bollinger Judge Dennis, could not the language be added "who shall exercise the administrative functions as prescribed by rule of the court" and cover any and all instances where he might not want to serve as chief judge or he might want to designate someone else as the administrative officer. Because the court could adopt the rule to allow him to do so?

Mr. Dennis I think what you are suggesting now if I understand it would be better than what you have. It still would not solve the problem of what you are doing to the courts that would like to rotate this job and elect a different man from time to time for periods of three or five years.

[Previous Question ordered. Amendment rejected: 36-68. Motion to reconsider tabled.]

Further Discussion on the Section

Mr. Roy Mr. Chairman, ladies and gentlemen of the convention, I don't want to waste your time, but I just see no need for Section 17 at all. As specific examples have been brought out that if you have a two man court or an even numbered court you are just not going...you can't force somebody to elect someone else. Besides that it provides that they will have the administrative functions as prescribed by rule of court. Now, you can't say in response to a question like when Mr. Duval asked, or Mr. Lanier, what happens in a court with two judges? Well, knowing the personalities of the court we will never reach that problem. When you are talking about constitutional language and constitutional law you don't solve a problem by saying the personalities will never create it. Either you can obviate the problem or you can't. Now the problem can't be obviated as Section 17 is presently written. It mandates something that may not be able to come about. In my opinion it is eyewash. It is not needed. The courts have gotten along fine, the district courts in the past without such a provision. I just think it is redundant and we ought to defeat the whole Section 17 as it presently exists and go on to something else.

Questions

Mr. Champagne Mr. Roy, do you agree with me there's a possibility by putting this in the constitution that you might arouse a lifetime conflict between two friendly judges or three like we have in my parish? They might figured somebody grouped up against them, they might not even talk to each other.

Mr. Roy That's exactly right. It's just not needed, it's worked fine in the past. The Supreme Court, with the judicial administrator, is actually able to conduct and have all judges of districts courts respond to it. It's not needed.

Mr. Weiss Mr. Roy, if judges have such problem as that, do you think they should be on the bench if they can't talk to one another?

Mr. Roy Dr. Weiss, that's not the issue. I'm not going to answer that.

Mr. Denney Mr. Roy, are you aware that this provision states that the term shall be fixed by the rules of court?

Mr. Roy Am I aware of what?

Mr. Denney The term for which the judge shall serve as chief judge, shall be fixed by the court rules.

Mr. Roy I think probably some district courts have that and they ought to solve their own problems.

Mr. Denney No, no I asked you if you are aware of the fact that the provision against that which you are presently talking, has that specific language in it. And if you are aware of it, would that not solve the problem that has been raised as to judges fighting with each other?

Mr. Roy I don't see that... The only thing I see that this provision has in it, is that the administrative functions will be prescribed by rule of the court.

Mr. Denney No, read this before that, Mr. Roy, if you please.

Mr. Roy "Shall elect from its membership, a chief judge who shall exercise for that which you are presently talking, the administrative functions as prescribed by rule of court".

Mr. Denney "for a term designated by the court". Correct? So that you could rotate the judgeships, and that would obviate any problems of personal difficulties, would it not?

Mr. Roy Yes, if they agree to it fine. But suppose they don't agree and you have a two man court.

Mr. Denney Now, Mr. Roy, let me ask you this question. If you don't like this rule for your courts, would you agree to put in an amendment which would say the parish of Orleans excepted, if we wanted it in our courts?

Mr. Roy No, I'm not liking it for my court or not, I just don't think it makes any sense.

Further Discussion

Mr. Tate Mr. Chairman, fellow delegates, the committee considered this long and hard. In many districts, Rapides, which my friend Chris Roy just spoke from, they have no problems. In St. Landry, which my friend Mr. Champagne just spoke from, they have no problems. The senior judge in each of those instances does exercise administrative powers. The reason the committee ultimately concluded to put it in, is that without constitutional status a chief judge, no matter what rules there are, has absolutely no authority over a brother judge who's elected to him. When he says you didn't get to court at nine, he says I'm responsible to the people just like you. It gets a little bit more sanctioned to the fact that in large, multijudge district courts, you may need some administration. The best way to provide it, as they do in many large cities throughout the country, is to let the judges provide the rules and elect one or another for two years at a time, or however they want to do it. They would usually I would say, for instance in St. Landry Parish, they would elect a senior judge, Judge LaHaye, one of the finest judges in our state. But in neighboring parishes, a senior judge is a man who just doesn't like administration. Mr. Chatelain, mentioned he talked to them last night. There would be no way to do it. In Baton Rouge Parish, they do elect an administrative judge. And they do follow them, and

it works. We are just letting every district decide what function that judge should have.

Questions

Mr. Lanier Judge Tate, did we not previously adopt a provision that gives the chief justice of the Supreme Court of Louisiana administrative control over all courts in the state?

Mr. Tate That's an excellent question, Mr. Lanier. And one of the reasons that this was adopted, was to be sure that we, in our supervisory administrative power, would not have a super riding authority over the local districts way it wanted to select its own chief judge and the functions it wanted to give to them. Very good good question, though.

Mr. Lanier Wouldn't the court have the authority, under this power given, to do this on the local level?

Mr. Tate I do not believe they would have the power. If this amendment is adopted, to provide for a method of selecting chief judges and to allot such chief judges, duties by Supreme Court rule. I do not believe, and that's one of the reasons, those who proposed it wanted it in the constitution. I'm glad you brought that point up.

Mr. Lanier Well, let me ask you this then, so we can make the record on this real clear. It is your feeling and opinion, as a member of the committee, that the intent of the committee here was that the administrative rules fashioned by the district judges and the chief judge thereof, would have precedence over those rules which would be promulgated by the chief justice of the state of Louisiana.

Mr. Tate No, Mr. Lanier, what I mean, is this. The administrative powers of the chief judge and for each district, and how it shall be selected are exclusively the prerogative of the district. I'm not saying that under the general rule-making power, the other authority that the court might suggest, for instance, that all judges decide cases within thirty days as required by statute, and so on. Is that an answer to your question?

Mr. Lanier I'm not sure, Judge. Are you saying...

[Previous Question ordered on the Section.]

Closing

Mr. Dennis Mr. Chairman, fellow delegates, I think we've got to assume that most of the judges in the state are going to follow the law and the constitution. If we provide in the constitution that each district shall select a chief judge, I feel that they will all do so. No matter what these problems may be, and I really don't see any because he is ultimately subject to court rule adopted by all of the members of the court. There could possibly arise, a situation where some individual would devise a means to circumvent the law. But that would be so, in just about any situation. I think we must give our judges more credit than that. I think they're going to try to implement this constitutional provision and carry it out. Because, there is a much needed purpose behind it. Right now, we don't have administrative heads designated by the constitution or by law, in our district courts. I disagree with Mr. Roy, to this extent. He says everything is working well. But it seems to me, that is one of the big problems we have in our district courts. We do not have enough consistency or uniformity and discipline in our district judges because there is no administrative head now, in the district court bench. I submit to you, this is the most democratic, the most flexible way to do it, that will fit with the way most courts are handling their problems already. So I ask you to adopt this provision, as a move toward court reform and toward the better administration of justice in our state.

Questions

Mr. Lanier Judge Dennis, do you agree with Justice Tate? That if this provision is in here, this would give the local courts, on the district level, the exclusive right to make their own court rules?

Mr. Dennis I believe that this grants the chief judge, the authority to exercise administrative functions, as prescribed by the local court rules. Yes, sir.

Mr. Lanier And if they prescribe their own local court rules, pursuant to this provision. That the chief justice of the Louisiana Supreme Court could not supercede those rules.

Mr. Dennis As long as these rules are related to administrative functions of the local court. I agree, yes, sir. Because that is all we are talking about here, Mr. Lanier. We're not talking about procedural rules relating to the operation of the entire system. We're talking about the administrative functions in the local court, as I perceive the section.

Mr. Lanier Well, the point I'm driving at, is I think Justice Tate brought up a very good point. Which I think has changed my mind on how I'm going to vote on this thing. But, I want to make sure the record is clear. If we don't have this then there would be no authority for the local court to make these administrative rules which would be exclusive on the local level. Is that correct?

Mr. Dennis I think you might be right. I think, then this would leave the door open completely for the Supreme Court to spell out how the local functions are administered, possibly unless you had this section. If that's what you're saying, I think you may be right.

Mr. Lanier So then that the legislative history of this provision will be clear, is it your feeling and the intent of your committee of which you are the chairman, that if this provision is adopted, the local court would have the exclusive authority to make its own administrative rules?

Mr. Dennis It is my personal view, that this would grant them the complete authority to make administrative rules about local functions. As long as they did not interfere with some overall state policy of the Supreme Court, in the administration of justice. But, I can't tell you that every member on my committee would express it the same way. But this is the way I see it.

[Section passed: 95-15. Motion to reconsider tabled.]

Motion

Mr. J. Jackson Mr. Chairman, ladies and gentlemen of the convention, the next matter under consideration has to do with the jurisdiction of the juvenile courts. I am prepared to make a motion before this body that we pass over this section temporarily, in order that persons who are interested in the protection of the jurisdiction of the juvenile courts, particularly, the courts of East Baton Rouge Parish can get their heads together and work out some sort of reasonable approach to this problem. I think that the matter of jurisdiction of where our youngsters are going to be handled, should not be embedded in the constitution in a simple sentence. Particularly, in light that we have spelled out the jurisdiction of the Supreme Court, the court of appeals and the district court. I would ask, and plead for your consideration, to allow us to pass over this section, temporarily. Mr. Chairman, I so move.

Mr. Henry The gentleman moves now that we temporarily pass over Section 18.

Is there objection?

Judge Dennis, you object?

Mr. Dennis I don't know whether to object or not, Mr. Chairman. Could I get some more information about how long the delay will be? And whether or not this would be establishing a bad precedent. I think there may be some other sections, some other people would like to defeat or change and have a little more time to...

Mr. Henry You might address your question to Representative Jackson.

Questions

Mr. Dennis Could you tell me that?

Mr. J. Jackson Judge Dennis, in talking with particularly with Mr. Keon and other delegates, we feel that we could resolve whatever problems that we have concerning this section by Wednesday. In fact, that will meet tomorrow, and we wanted the rest of the present articles as basically a matter of routine. That by Wednesday, which would give us the weekend and a couple of days before the convention reconvenes to work out the approach to this problem.

Mr. Dennis Well, I won't raise any objection at this time. I would ask, maybe, if we could do it by tomorrow, it would be better. We might be able to finish this article if we proceed.

Mr. J. Jackson Judge, we will begin to work on it immediately.

Mr. Gravel Mr. Jackson, if I understand you correctly, you want some time for the amendment, with the understanding that we will take it up before by tomorrow, it would be better. We might be able to conclude this article and it will not unduly delay that.

Mr. J. Jackson Right.

Mr. Fontenot Mr. Jackson, concerning this section. The jurisdiction of juvenile courts, as it is now, is it in the constitution or in the statutes?

Mr. J. Jackson Yes, sir. It's in the constitution.

Mr. Fontenot Is it just like it is here?

Mr. J. Jackson No way.

Mr. Fontenot It's more detailed, than it is here?

Mr. J. Jackson It's more detailed because it talks about the jurisdiction in the area...

Mr. Fulco I just wanted to ask Representative Jackson, he said something about working out problem that exists in East Baton Rouge Parish. Now, would the solution that you would come to, have an effect over the whole state? Juvenile cases in juvenile court in Caddo?

Mr. J. Jackson Yes, sir. I would suggest that the parish of Caddo, because there is a particular reference about the juvenile courts of Caddo also in the constitution.

Mr. Fulco Well, don't you think that maybe some of us from Caddo should get involved in the conference?

Mr. J. Jackson Yes, sir. I would seriously agree, right.

Point of Information

Mr. Burns Information. If we agree to pass this over, I would definitely suggest that some definite time be fixed so that if we finish this article, we won't be confronted with the situation they haven't come up with a solution.

Mr. Henry Mr. Burns, it's a temporary pass over.

and I'll guarantee you we are going to take it up, at least when we get to the last section of this. If you understand what I mean? I've already discussed this with Representative Jackson and Mr. Keon, and I don't think there will be any problem on that at all, sir.

No objection to the motion, so ordered.

Reading of the Section

Mr. Poynter "Section 19. Mayors' courts, justices of the peace, continued.

Section 19. Mayors' courts and justices of the peace courts existing at the time of the adoption of this constitution, are continued, subject to change by the legislature."

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, it is the intention of this section to continue the substance of the present constitutional provisions relating to mayors' courts and justices of the peace courts. Under our present constitution, these offices may be changed or abolished by legislative act. Some of the delegates have pointed out to me, that this language is not very exact in this section. That it does not completely track the language in the present constitution, I agree with those delegates. Although the committee has not authorized me to do so, I would like at this time to offer an amendment on my own. If any members of the committee object, then we will discuss it further. But it's my intention, at this time, to offer an amendment placing into this section the same language that is in the present constitution, which does the same thing that I have just explained to you. It allows the mayors' courts and J.P. courts to continue, but to be subject to abolishment by the legislature as they now are in the present constitution.

Amendments

Mr. Poynter Amendment No. 1 [by Mr. Pugh]. On page 6, line 20, immediately after the word "mayors' courts", delete the remainder of the line.

Amendment No. 2. On page 6, line 22, at the end of the line add the following "any parish of the state, the parish of Orleans excepted, may be divided by the police jury thereof, into not more than six nor fewer than three justice of the peace wards. From each of which there shall be elected one justice of the peace, provided that the legislature may reduce such number or even abolish the office of justices of the peace throughout the state. The number of justice of the peace wards in the several parishes, shall remain as now fixed until rearranged or until the office of justice of the peace may be abolished as herein provided."

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, I believe I have already explained the amendments. This is the exact language from a previous section of our constitution, Article VII, Section 46. It is the intention of this amendment to clarify what the committee, I believe, intended to do. Which was to simply leave the J.P. and the mayors' courts just like they are. Which means, that the legislature could reduce the number or abolish them all together.

Questions

Mr. Tate Judge Dennis, in fairness to the Justices of the Peace Association, I think I'll have to object to the amendment. I had brought it to their attention. What it was, they asked about the language, and I replied that the language meant only such and such. In fairness to them, I will have to object to let whoever has talked over the matter with them have a chance to debate that change.

Mr. Burns Judge Dennis, I notice in your amendment, you say after excepting the parish of Orleans,

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may be divided by the police jury, thereof, into not more than six justice of the peace wards. In other words, in St. Tammany Parish, just using that as an example, it seemed like this is going to be a temporary arrangement anyway, till the legislature steps in and does something.

Mr. Dennis Mr. Burns, the last sentence states, that the number of justice of the peace wards in the several parishes shall remain as now fixed until re-arranged, or until the office of justice of the peace may be abolished as herein provided. I believe that would take care of any situation where there might be more than six, if that's what you are worried about, sir.

Mr. Burns Now, didn't that mean that when they are rearranged that there shall not be more than six in any one ward? I mean in any one parish?

Mr. Dennis No, sir.

Mr. Burns Well, what does that six mean, that the police jury thereof into not more than six or more than three?

Mr. Dennis That means if there is a new parish created, you could only have six. But if you have more than six now in a parish, you keep six.

Mr. Burns It doesn't apply to existing parishes and the number of wards that now exist?

Mr. Dennis The last sentence does, it says the number justice of peace wards in the several parishes shall remain as now fixed.

Mr. Burns Well, I understand that.

Mr. Hayes Judge Dennis, I imagine you have answered some part of the question I had about this "more than and less than" business. Why you must have at least three justices of the peace, if you must have justices of the peace?

Mr. Dennis Mr. Hayes, this language came out of the '21 Constitution. I don't know why they said you had to have not less than three. All I'm trying to do gentlemen, at the request of some people who were worried about the J.P.'s, is put back in this new constitution the same language that was in the old one, pertaining to justices of the peace.

Mr. Hayes Your committee, then, didn't come up with anything new with reference to the justice of the peace. Are they based on population at all?

Mr. Dennis No, sir.

Mr. Hayes No population?

Mr. Dennis No, I don't believe they are.

Mr. D'Gerolamo Judge Dennis, what does your amendment do to parishes who do not come under the police jury form of government and have justices of the peace and constables?

Mr. Dennis Well, I don't think it would do anything. Mr. D'Gerolamo. Because of the last sentence, which says, the number of justice of peace wards in the several parishes shall remain as now fixed. But the first part there comes straight out of the, in fact, all of this that I'm adding, comes straight out of the '21 Constitution. So if you've got some J.P.'s without having a police jury, under the old constitution, I think you can continue them under the new constitution.

Mr. D'Gerolamo We have a councilmatic form of government in Jefferson Parish, with six justices of the peace and constables.

Mr. Dennis Yes, sir.

Further Discussion

Mr. Champagne Mr. Chairman, ladies and gentlemen, I am very much opposed to Judge Dennis' amendment for many reasons. The first of which, it is 1921 vintage, this is 1973. The second is, I made a pledge to my people to try to work for a new, modern, shorter constitution. This does nothing in that respect. Further, I only last night, was in a meeting in which justices of the peace were in attendance. I assured them that they would be kept in their position until such time, as the legislature saw fit to change that position. They accepted this, graciously and nicely. They thought it was a good move, they were satisfied. I have been told by some people here, that the legislature will never abolish the J.P. courts and the mayor's courts. I ask you if the legislature finds this too political to tackle, why should we risk passage of this constitution by taking on that point. I feel that the committee's proposal, as submitted, is an excellent one. I think it's clear to me. I think it's clear to the people in the parishes. I think that there is not a justice of the peace or mayor who understands exactly that his position is maintained at this time. I'm sure they are all aware of the position they now hold. Now we made provisions that the legislature could provide for parish courts. At the time those courts are provided, I can see that when they do this, these courts will be eliminated. Most of the mayors, including me, in my district, are not violently opposed to doing away with their courts. What they wonder about, is where will the money they were getting will come from. I feel that the committee proposal is a good one. I am extremely against the amendment. I hope you will join me in defeating the amendment.

Questions

Mr. Chatelain Mr. Champagne, at this meeting you attended last night, was not it in Lafayette Parish?

Mr. Champagne Right.

Mr. Chatelain You and I were at the same meeting, were we not? I will join you in strenuously opposing the amendment.

Further Discussion

Mr. Rayburn Mr. Chairman and fellow delegates, I don't know where Judge Dennis got this amendment, but he must have stayed up late last night. Under the present committee proposal it states in there, that the existing justice of the peace courts shall remain as they are at the time of the adoption of this constitution. They shall be continued subject to change by the legislature. I think that language is broad enough. Now this amendment says, that you can go back and you can't have over six or you can abolish them all or less than three or abolish them all. So I don't really know what we are trying to do with this amendment that can't be done in the present proposal, where it says, subject to change by the legislature. It does say here, that any parish, the parish of Orleans excepted, as usual, may be divided by the police jury into not more than six, not more than six or not less than three. Do they may abolish them all. So I don't see any need for this amendment, when you've got the broad language you have. You are leaving it subject to change by the legislature in the committee's proposal. You are leaving it subject to change by the police jury in this proposal, with certain restrictions. I just want to say this in closing. I don't know who you people are going to look to adopt this final product if we ever come up with one. But you keep on at the rate you're going, you're going to have every little old snuff-dipper, every little old tobacco chews, disgruntled judges, disgruntled teachers, disgruntled other people and by the time you add them all together, what you are going to be in an awful mess. The legislature, in this provision right here, has the complete control and authority. If they think you need J.P.'s to continue them or if they want to abolish them, abolish them. And I see nothing wrong with that.

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Vice Chairman Miller in the Chair

Ms. Zervigon Senator, you made a remark that Orleans was excepted, as usual...

Mr. Rayburn I know you don't have any J.P.'s down there.

Ms. Zervigon Was this amendment requested by anybody in Orleans that you know of?

Mr. Rayburn I don't know who requested the amendment. I see Judge Dennis' name on it, I don't know if that's because it's his proposal or what. I don't know who. I know this, I've talked to some J.P.'s a while back and they are very concerned about what we are going to do with their little old office. I think this is planned here, that it leaves it strictly up to the legislature. This leaves it up to the police jury, so I don't know who they rather be at the whims of the police jury or the legislature. It looks like they are getting a shot either way it goes here. But I'm just of the opinion that I think the language is plain here and we should leave it along.

Further Discussion

Mr. Fontenot Madame Chairman, fellow delegates, I rise in opposition to this amendment. We were elected to rewrite a constitution. And like Mr. Champagne said, we promised people we would take out the excess verbiage. Judge Dennis, says he proposed this because it's just like the 1921 Constitution. This is exactly what the people want us to rewrite, the 1921 Constitution, with all its excess verbiage. I think the committee proposal in three lines is exactly what Judge Dennis is saying which his amendment, which is God knows how many lines. Therefore, I think we ought to just stick with the committee proposal. It says the same thing, it has the same substance and let's get on with the convention. We don't need all this excess language, every time something comes up, people wanted to leave it just like it was. It says the same thing in this section the committee proposed. Let's stick with the committee. And I also move the previous question.

[Motion for the Previous Question rejected: 16-81.]

Further Discussion

Mr. Perez Madame Chairman and delegates, in fairness to Judge Dennis, I would like to explain to you what the present posture of the law is with respect to justices of the peace, so that you will understand what you are voting on. The proposed section provides the justices of the peace courts existing at the time of the adoption of the constitution are continued, subject to change by the legislature. Now the present law, under the present constitution, it is provided that when the local governing authority determines that it wants to change the boundaries of wards, that it may do so. And that there shall be one justice of the peace for each ward in the parish. Now the problem we are getting into is that what we will effectively be changing the law so that instead of the local government providing for a justice of the peace for each ward in the parish, it would require that whenever any particular local government wanted to either decrease or increase the number of justices of the peace, they would have to go to the legislature and get an act. Now the amendment suggested by Judge Dennis, is exactly the same provision which is now in the present 1921 Constitution. The question was raised, with respect to the reference to police jury. And whether or not, for instance in the parish of Jefferson, where they have gone to a council form of government, whether it would apply to them. In the parish of Plaquemines, we have a council form of government and we have a provision, I am sure Jefferson has the same, in which the new council of Jefferson Parish and Plaquemines succeeded to all the rights, responsibilities, etc. of the police

jury. That particular provision does not, and will not, under the law give any trouble. The other provision, with respect to the number of justices of the peace, the last sentence in the proposed amendment by Judge Dennis, which is exactly what is in the constitution now, would protect those justices of the peace who now hold office. But provide that in the event, in the future that there should be no more than six if changes were made in the justices of the peace offices. So again, if you leave the section as it is, you will substantially be changing the law and require the local government to go to the legislature to get an act passed to change the number of the justices of the peace. Whereas, with the provisions submitted by Judge Dennis, it could be done on a local level by local government. That's the difference between the two.

Further Discussion

Mr. Sandoz Madam Chairman, fellow delegates, I rise in opposition to the amendment and in support of the committee proposal. I think this is a classic example of the difference between 1921 language and 1973 language. We are saying in three lines what this amendment, in a very awkward way, says in twelve lines. For example, we are excepting the parish of Orleans as far as police juries. In the fifty intervening years there are several other parish governments that no longer have police juries. I think the committee proposal which was considered after much deliberation is much superior to the amendment which has been offered here. I urge you to defeat this amendment and, Madam Chairman, I ask for a record vote.

Further Discussion

Mr. Tate Madam Chairperson, fellow delegates, I want just to call your attention—I am wasting your time, but we have that in the present constitution, but when Avoyelles Parish wanted to reduce the number of justices, they had to have a constitutional amendment that reads in the constitution, Article VII, Section 46, page 224, it says all that you've said here and then it says, "provided however that the police jury of the parish of Avoyelles may reduce the number of justices of the peace for Ward 9 of that parish to one." Now this is a sample of the sort of thing you get into when you get into this kind of detail. Avoyelles Parish is a great parish, Miss Perkins and Mr. Roy, and I am sure the people love to have to vote on it. The present constitution, for instance, says the legislature shall have the power to abolish justice of the peace courts. As I view it in the committee's amendment is essentially a reasonable, sound regulation of an institution that is useful in some areas of the state and will probably eventually wither away by the force of time and parish courts and so on. I'm subject to questions. I am against the amendment and for the committee report.

[Previous Question ordered. Record vote—record. Amendment rejected: 1-100. Motion to reconsider tabled.]

Chairman Henry in the Chair

Personal Privilege

Mr. Dennis Mr. Chairman, fellow delegates, I would like to take one minute to explain what happened on that amendment and apologize to the convention for the confusion. Mr. Perez had asked me to—he pointed out a problem involved that we were changing the law to some extent as he said and I thought I was offering what was going to be a technical amendment to simply clarify that the law was going to be continued. I did not appreciate the complexities I was getting into. I should have allowed Mr. Perez to offer the amendment since he understood it far better than I did. I apologize for getting the convention into that situation.

[Previous Question ordered in the section.]

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[Section passed: 106-4. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter Section 20. Preservation of evidence
Section 20. Evidence shall be preserved in all trials. The method of preservation shall be provided by law or by rule of the Supreme Court not inconsistent therewith.

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, this will be a new provision in the constitution that is not contained in the constitution at present. The problem that created this section has already been alluded to by Mr. Avant. It is to fill a need in the law for an adequate appeal from courts of limited jurisdiction such as justice of the peace, mayors' courts and city courts. It is to make sure that there will be an adequate record, and primarily this is aimed at criminal cases but it will apply to civil cases also. Primarily, it is designed to bring justice to a situation where perhaps it may not exist at the present time. Where a defendant is convicted and incarcerated by a J.P. or a city court and no record is made of his testimony or the evidence at the trial at the present time, when he tries to appeal or go up on a writ he has no record to present to the court he appeals to. This section would simply make sure that evidence is recorded in all trials and it would leave to court rule or law the method by which the record, the testimony and evidence would be recorded, transcribed and presented to the higher court. I ask for your favorable adoption of this section.

Questions

Mr. Duval Judge Dennis, did I understand you to say that justices of the peace would have to keep records?

Mr. Dennis Yes sir. This is something that the committee had in mind that could be provided by rule that justices of the peace at least record all testimony on a cassette recorder. At least some record would be made of what happened at the trial. This would not require a court reporter necessarily. But it would require that some type of record be made. Whereas now, as you know, no record is made in a J.P. court trial.

Mr. Duval Did you check into the expenses, what this would be?

Mr. Dennis No sir. That is why we left the matter flexible in the hands of the Supreme Court and the legislature to work out reasonable rules. We realize we are dealing with courts that don't have a lot of money to operate. Yet, we are also dealing with a precious thing called justice and we feel that that must be served by a record of some sort being made of what went on at the trial because a man or a lady could be incarcerated for a substantial period of time as a result of one of these trials.

Mr. Duval Do you really feel this is necessary in the constitution? Couldn't it be handled by a statute? Do you think it is necessary to be in the constitution?

Mr. Dennis The committee felt it was necessary and adopted the section because the committee felt very strongly that something should be done about the hiatus in our law where no record is required to be made of what goes on in a small court trial like this.

Mrs. Warren Judge Dennis, I'm trying to find out if there are any trials where the justice of the peace now, where there are no records made?

Mr. Dennis It is my information, and it may be faulty, that the justices of the peace customarily

do not make records of their trials. That no record is made.

Mrs. Warren Why?

Mr. Dennis Well, under the present law it provides for a trial de novo from the J.P. court. That is you have a trial in the J.P. court and if you don't like what happened then you ask for a new trial in the district court, all over again, where testimony is introduced again. But this would say that the J.P. has got to record what goes on in his court so that on appeal they would know what went on the first time. It wouldn't be tried over, see.

Mrs. Warren I think that's a good amendment.

Mr. Jack Judge Dennis, I need to be brought up to date. Does the justice of the peace now have any criminal jurisdiction? I know at one time they did not. They were a committing magistrate but they never did hear those things.

Mr. Dennis It is a committing magistrate at the present time.

Mr. Jack All right now, you mean then we are going to make them--I never heard of them committing anybody or hearing a committing but the only thing I know they have jurisdiction of those cases under a hundred dollars, civil ones. Are they going to have to make some method of that and who is going to pay for all of this? That's what I want to know.

Mr. Dennis Well, the method for preservation shall be provided by law or by rule of court not inconsistent therewith. That means that the legislature can decide who will pay for this. Or that the Supreme Court could make a rule not inconsistent with law.

Mr. Jack Judge, isn't this a thing that the legislature is very well capable of dealing with instead of putting it in the constitution?

Mr. Dennis Well sir, the legislature is capable of dealing with a lot of things that we are putting in the constitution. But we are putting them in the constitution--I believe the committee recommended that this be put in the constitution because they felt that it was extremely important that it be done.

Mr. Kelly Judge Dennis, this provision is not necessarily directed at justices of the peace courts though. This is to be made applicable to district courts. Is that correct?

Mr. Dennis This is to be made applicable to all courts.

Mr. Kelly That is correct. Would you not agree that there are some cases right now, even in district courts, where a complete record is not retained for the people before that court?

Mr. Dennis That is correct, Mr. Kelly. I may not have selected the best example in my earlier illustration. This would apply to all courts and it would require that they preserve the evidence introduced in all trials.

Mr. Stinson Judge Dennis, preserve means to keep it from now on, doesn't it?

Mr. Dennis Yes sir.

Mr. Stinson Well, suppose a man is charged with carrying a concealed weapon and he had an expensive pistol or gun and he is cleared, the court could still keep that and wouldn't have to return it to him?

Mr. Dennis Well, I think--let me qualify what I said. You said preserve from now on. I don't think it necessarily means to preserve forever. I think

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the intention is clear that it is to be preserved in case of an appeal so I think that after an appeal is over I don't know that this would apply.

Mr. Stinson But it doesn't say that and preserve usually means from now on doesn't it?

Mr. Dennis I think logic demands that interpretation of it.

Further Discussion

Mr. Avant Mr. Chairman, fellow delegates to the convention, this is a most important section of this article. Under the law now, if you are convicted and the court is not a court of record you have the right to a trial de novo. You don't necessarily have that right under this article as it is now drawn. The only absolute right of appeal that you have in a criminal case, under this article as it is now drawn, is if you are sentenced to more than six months in jail or if you are fined more than five hundred dollars. Otherwise, under this article as it is now drawn, you have only the right to ask an appellate court to review it under a discretionary writ which they may or may not grant. Now as I explained to you when I was up here before, it was my position in the committee and I did everything I can to have it adopted, that we adopt a provision that said that nobody, nobody can be fined or imprisoned or subjected to a forfeiture without a complete record of all of the evidence upon which that judgment is based and the right to appeal based upon such a record. We fought that thing and I couldn't prevail in the committee and what we finally wound up with is what you have before you. That is that the legislature may provide for certain appellate jurisdiction in the district court which, coupled with this provision requiring the preservation of evidence in all trials, would leave it up to the legislature to provide whether or not you would have a trial de novo in those cases or whether or not you would have a full and complete record on which you could base an appeal or base an application or a writ of review. Now this writ of review business, if that is what the legislature ultimately decides that they are going to do, is not worth a thing if you don't have a record. An appeal is not worth a thing if you don't have a record. If you are tried and convicted and the evidence is not preserved, you can have all kinds of rights of appeal and all kind of rights to ask for a review but review what? There is nothing to review. It is a rule of law which all lawyers know that the judgment of the lower court is presumed to be correct. The burden is on the party who is appealing to point to something and say this is in error or this is wrong, this is why I am entitled to relief. If you don't have a record, you don't have a right. You have only a hollow, worthless remedy. I implore you, do not delete this provision from this section because if you do, and bear this in mind, if you do then it is possible for a man to be imprisoned for up to six months, five months and twenty-eight days, to be fined, to have his driver's license taken away from even though he may drive every day for a living, and he has absolutely no right except the hollow remedy to ask the court to look at it in their discretion based upon no record. What they are going to look at I don't know. So I submit to you that this is a most vital part of this entire article and that if you delete it then you are seriously jeopardizing the right of every person in this state.

Questions

Mr. Hayes Mr. Avant, I don't know if I really understand this. In Section 20, has to do with preserving records in all courts, right? Is that correct?

Mr. Avant That's correct.

Mr. Hayes Wherever you have a trial, regardless to the court, you will have a record. All right now, what does that have to do with a trial de novo?

Mr. Avant Well, it is has this to do with the trial de novo. The legislature could provide if ---this doesn't say that there will be a complete transcript, it says that the evidence will be preserved, whatever that means. The legislature could provide if in these cases from justice of the peace courts or from mayors' courts or city courts where they don't have a court reporter and a complete shorthand transcript and all of that, if the preservation of evidence is inadequate under this provision, which was the best that I could get out of the committee, then they could provide for a trial de novo and hopefully they would. But if you take this out then you've got nothing.

Further Discussion

Mr. Newton Mr. Chairman, fellow delegates, I rise in opposition to this section. I don't have too much of a problem with it if it said, "Evidence shall be preserved in all criminal trials," but it doesn't say that. It says, "all trials." Now let me tell you city fellows something: Out in the country we try some small law suits. You are talking about fifty or one hundred dollars. The guy wants to have his day in court and he wants the judge to decide the case. You go in that courtroom and they are going to transcribe the testimony and you've got to put down a twenty dollar deposit, a twenty-five dollar deposit, a thirty dollar deposit, and you may not want that testimony transcribed. You may want to go ahead and put your evidence on, have your case heard, let the judge decide it, shake hands and go home. Under this section as we've got it here, I couldn't even waive the transcript if I wanted to. I submit in answer to some of Mr. Avant's argument on appeal, I think that if there were no records and there were no provisions for a trial de novo that any statute with such provisions would be unconstitutional, a deprivation of due process of law and I urge the defeat of the section. Thank you.

Questions

Mr. Lanier Mr. Newton, are you aware that in the parish that I come from we have a lot of French speaking justices of the peace and a lot of French speaking people? Don't you think that the problem that you've just described would be compounded by the fact that very often we'll have the proceedings in French?

Mr. Newton I certainly do agree with you.

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Anzalone], on page 6, delete lines 24 through 26 both inclusive in their entirety and insert the following: "Section 20. Evidence and its method of preservation shall be provided by law."

Explanation

Mr. Anzalone Ladies and gentlemen of the convention, the committee proposal makes a mandatory that in their transcript insert evidence in all trials regardless of which court you are attempting to try your case in this state. There are those of us who are used to the justice of the peace courts and realize that these people deal strictly in minor, minor matters. If there is an appeal lodged against the justice of the peace decision, the case is tried de novo. There are not that many. What is being done here by establishing a rule that you have testimony transcribed in every case is that you are now making the justice of the peace hire additional personnel which is absolutely and totally useless. The legislature, in its infinite wisdom, can provide if it sees fit along with its jurisdiction over the justice of the peace courts, insert the transcripts or anything else that they want to put on it. What you are telling the legislature here in effect is that you either come up with the money to further fund the justice of the peace courts or we are going

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to force you into the abolition of the same. Well we have heard just a few minutes ago some of the very valid reasons as to why we should keep them. I do not think that it should be a constitutional provision that evidence be kept in all trials in all sections of the court and I urge your adoption.

Questions

Mr. Derbes Here I am, Mr. Anzalone. I've been diagramming this sentence here and it says...

Mr. Anzalone I tell you what. It was drawn quickly now, you can believe it.

Mr. Derbes Well I hope so for your sake. If you take out one of these clauses, it says, "evidence shall be provided by law." Now I don't know what that means. Can you tell me what that means?

Mr. Anzalone Mr. Chairman, can I talk for a few more minutes until I get another amendment?

Mr. Derbes I thought evidence was provided mostly by witnesses.

Mr. Anzalone Well you see, you all practice law different in the city than we do.

Mr. Henry You don't belong to the same organization Mr. Anzalone belongs to.

Mr. Anzalone Mr. Chairman, in all honesty, I have not had the chance to really prepare the thing in its proper form nor digest it and if it says what Jim says it does, I would like to withdraw it and take Judge Dennis to the bathroom until such time as I can get another one.

[Amendment withdrawn. Previous Question ordered on the Section. Section rejected: 37-67. Motion to reconsider tabled.]

Recess

[Quorum Call: 93 delegates present and a quorum.]

Reading of the Section

Mr. Poynter "Section 21. Judges; Term of Office or Compensation May Not Be Decreased

Section 21. No judges term of office or compensation shall be decreased during the term for which he is elected."

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, this section is fairly short and simple and self-explanatory. It simply provides that the judges' term of office or compensation shall not be decreased during the term for which he was elected. It is similar to the provisions we adopted in the other articles affecting other public officials. I ask for your adoption of the provision.

Amendments

Mr. Poynter Amendment No. 1 [by Mr. Bollinger, et al.], on page 6, line 27, after the word "of" delete the remainder of the line and insert in lieu thereof the words "office, compensation or retirement shall".

Amendment No. 2, on page 6, line 30, at the end of the line change the period to a comma and insert the following: "nor shall the retirement benefits or judicial service rights of any judge, whether sitting or retired, or the benefits of the surviving spouse of any judge be reduced."

[Section reread with proposed amendments.]

Explanation

Mr. Bollinger Mr. Chairman, fellow delegates, I think the committee proposal is good. This merely

expands on the committee proposal to include the protection of retirement. A big underlying factor has been discussed with regard to Section 23. Regardless of what happens to Section 23, this is a good amendment. It just simply protects the retirement of judges and their spouses' right to those retirements. I move its favorable adoption.

Further Discussion

Mr. Jack Mr. Chairman and members, I rise to oppose this amendment and I hope you will listen carefully. Now the section on retirement of judges is Section 23. There are going to be amendments to delete that, and put the judges' retirement in the hands of the legislature where all other retirement systems are. But be that as it may, this to begin with is not the proper section to have it under even if you don't agree with me. Now the next thing that's wrong with this amendment, and please listen. If we put the judges' retirement system in the legislature, then if you had this amendment passed you are making theirs entirely different from other people's. For instance the Representatives and Senators, the legislature's retirement, is set up by legislative act. They can change that, for active members. Members that were in the legislature in 1964 had their's changed. Senator Rayburn had his changed. A different formula was made and they are made from time to time. Now I cannot for the life of me see why the judges, if they are placed in the legislature's hands on a retirement system, they should have a clause in here restricting that legislature except where they are retired, then that is another matter and there are numerous amendments that have been prepared. Mr. Grave and I have been working on one and he's got a good one that will keep from prejudicing the judges at all if their retirement system is taken out of the constitution and placed in the legislature. I again repeat, this amendment is bad because it will place them in an entire different position from anybody else that is under the legislature.

Point of Order

Mr. Tate Mr. Chairman, the project of the Judiciary Committee has retirement as a different section. It seems to me that this is not germane or can you make it germane by amending the title. Because where we ought to discuss this it seems to me would be back when we come up to the retirement. Who would provide it and so on instead of now.

Mr. Henry Justice Tate, it has to do with the reduction of benefits, compensation one way or the other, so the chair would rule that it is germane, sir.

Mr. Landry for a question.

Question

Mr. A. Landry Mr. Jack, if we adopt this particular amendment would that provide anything, supposing that the retirement system of the judges would be defeated, does that provide anything for the new judges who are going to come into office later?

Mr. Jack What, this one? It says whether sitting or retired, "nor shall the retirement benefits or judicial service rights of any judge, whether sitting or retired, or the benefits of the surviving spouse of any judge, be reduced." Now that's just what I was saying. Sure, it will freeze into the constitution any rights and the legislature will be ham-strung by this if we vote later, when we get to Section 23, to take that out and let the legislature handle the judges' retirement system. The people, it's been for a long time they are tired of the judges not paying into a system and being regulated. I'm for the judges. I've helped them a lot. But, I mean, we just can't give them everything. They should pay into it. Poor policemen pay into it. The highway worker pays into his. Everybody else, and the judges should have to pay into theirs. They don't pay anything and yet when you get to 23

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you are going to find where they are asking more. Where they can serve twelve years, one term on the court of appeal if it is twelve years, and at fifty-five quit and things like that. Let's just level it down.

Mr. Gravel Mr. Chairman, and ladies and gentlemen of the convention, I disagree with my friend, Mr. Jack. I think this amendment is needed because what we are saying here is that during the term of office for which a judge is elected, that none of the emoluments of his office will be diminished, including his retirement benefits.

Now it's very important that we have this kind of a provision in the constitution for two reasons: Number 1, there is presently in favor of the judges a provision in the constitution that has to do with retirement. So any approved rights there have got to be protected by any new constitution. Number 2, it's proper and appropriate to make sure and to give constitutional assurance to those who run for public office such as judges here, that their rights including their retirement rights, will not be diminished during the term for which they are elected because those potential retirement benefits, the judges may consider, or the candidates may consider before they seek office.

I think it's absolutely essential that we expand on the very good concept that the committee has suggested by adding to the compensation guarantees the concept of retirement and making sure that there shall be no diminution of any benefits that the judge may have during the term for which he has been elected.

And I urge your support of this amendment.

Questions

Mr. Keen As I read your amendment, it is based upon the presupposition that the legislature is going to provide for the retirement of judges, does it not?

Mr. Gravel Either the legislature will, or the present provision in the constitution will probably be carried over into the law by some provision that this convention will adopt.

Mr. Keen My point is that if he put it in the constitution, the retirement benefits of the judges in the constitution by whatever formula we want to divide, then this provision is not necessary, is it?

Mr. Gravel Well this provision, to me, doesn't have any relationship to the formula. All this says is, "that with respect to the judges, that any retirement benefits that they are entitled during their term of office, there shall be no diminution of those benefits by any legislative act".

Mr. Keen But if the provision with respect to judges' retirement is in the constitution, we don't need that protection against legislative action, do we?

Mr. Gravel That might be correct.

Mr. Keen It would be correct, would it not, sir?

Mr. Gravel I think you are right. In other words, I think if later on the constitution spells out in detail all the things that relate to retirement for judges it might not be necessary. We are not there yet.

Mr. Asseff Isn't it true that we have not provided, or do not have such a provision for legislators, state employees, teachers or anyone else? So my question is, why should we have a special provision for the judges, sir?

Mr. Gravel Only because, Dr. Asseff, that in the present constitution there is a special provision for judges. And in the event this convention carries over that constitutional provision into the statutory law or otherwise provides constitution-

ally for judges, this provision will be needed.

Mr. Asseff I have no objections to it, but I feel that it should be statutory.

Mr. Dennis Mr. Gravel, are you attempting by this to transfer the provision in 23-B over to this part, and if so, why didn't you include all of the language there? It seems to me you've left some pretty important provisions out.

Mr. Gravel Well, Judge Dennis, there's no such intent. The intent, of course, is to make sure, as I've mentioned before, that the judges' retirement benefits that are accrued are protected.

Now, when we get to Section 23, probably a great deal more will be said and be done about judges' retirement.

Mr. Dennis Mr. Gravel, isn't this really just part of your plan to defeat Section 23 when we get to it?

Mr. Gravel This is part of an effort to be fair in reaching a determination with respect to provisions relating to judicial retirement.

Yes, Judge Dennis, it certainly is a part of an effort that we are making that encompasses some of the aspects of Section 23. Yes, sir.

Further Discussion

Mr. Weiss Fellow delegates, this approach that's being used, I'm happy the judges themselves detect because there's just something that smells about it. I would suggest we defeat this proposal.

We are talking about an extremely complex matter. I am sorry that neither of the more vocal advocates, Mr. Wall, Delegate Wall and Delegate Womack, are not here to explain to you how complicated this issue is. I spent some time with both of them last night and this morning discussing this. It amounts to insurance, and if you know, and I'm sure all of you do who have policies on health and accident or life or automobile, will simply look at that policy, you will see how complicated it is and how complicated the actuarial components are and how when you are through taking it, that is taking the policy out, sometimes you don't have what you think you have and then the company doesn't pay what you think they should pay.

This matter of retirement involves not only judges but all other officials of the state, and I will not go into details. But to me, it is extremely complicated with many percentages being paid by the employees of the state whether they be the judiciary or the district attorneys or the harbor police of the Port of New Orleans, or whoever the retirement system may be for, some thirty-eight systems, I understand, in the state, and each has its own formula.

Representative Wall, who is Chairman of the Committee on Retirement in the House, I understand, has tried to consolidate this and make money for the one and a half, I believe, billion dollars that are now in these funds. In any event, this matter is so complicated that I see no reason for it to be introduced at this time, nor discussed or introduced until we come to the retirement section.

And I resent for the judges, those who are using back door methods to defeat the amendments so early before we have a full understanding of the problem is presented to you.

I therefore recommend that this floor amendment be defeated.

Further Discussion

Mr. Tate Mr. Speaker, fellow delegates, can you see me above this thing?

I promise you when Section 23 comes up, I will not speak. I rise only now to speak to ask for you not to pass this amendment but to defeat it because it comes up at the wrong time and the wrong place when we should when we get to retirement discuss all the ramifications.

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You've heard three opposing views on the merits of judicial retirement. That should be discussed in the retirement article. I point out questions this thing raises to me. For instance:

It says, "No judges' term is to be reduced during the term for which elected". Now what about a sitting judge who has been on the bench eighteen years and he's reelected. Does that mean that all that eighteen years is out and the new term starts under some new system that he gets no credit for the past if the legislature doesn't provide for it?

Does it mean...those are a lot of problems that we should discuss in an orderly way when we get to Section 23, Section 23, Retirement. Let's discuss the whole ball of wax, and I promise you, and this ought to get me a few chances and plaudits, I promise you I won't speak when Section 23 comes.

Now, if there are no questions and no other speakers, Mr. Speaker, I move the previous question.

Question

Mr. Nunez Judge, I don't know whether it was you or the previous speaker said this was a "judges amendment". I don't read it that way. I read it as a test vote on who to work on for tomorrow. Don't you agree?

Mr. Tate Senator Nunez, I am not a politician. Senator Nunez, I don't understand parliamentary tactics.

Mr. Henry If you ain't a politician, you ain't a judge, Judge Tate.

Mr. Tate I'm trying to learn parliamentary procedure. In fact, I don't understand what you meant, sir.

Further Discussion

Mr. Dennis Mr. Chairman, fellow members, I think we are about to take a step here that's very inadvisable on something that is extremely serious. You may be about to affect the retirement rights of all of the sitting judges in this state, and this amendment is obviously introduced by Mr. Gravel as a tactical maneuver to defeat the entire retirement provisions that are contained in the committee's proposal in Section 23 that we labored on for seven months and which is based upon actuarial advice, the advice of experts, it's been carefully thought out and here in five minutes we are going to adopt something that is going to change the entire course of this convention's deliberations on judges retirement.

I think this is a shoddy way to debate this issue. This issue should be debated in the Retirement Section. And Mr. Chairman, before we do something here that is wrong and detrimental to our state, if I'm in order, I'm going to move that we return to other orders of the day.

[Motion to take up other orders rejected: 44-56. Previous Question ordered.]

Closing

Mr. Bollinger Mr. Chairman and fellow delegates, I'm going to be very short.

First of all, I want to say this is my amendment. I'm the one who looked in this Section. I'm the one who brought it up. Mr. Gravel saw the amendment and then co-authored it. It was not his move.

We have been here for four or five days discussing how judges should be free from politics. All this amendment does is protect a little bit of the political part of politics. What's wrong with saying that their retirement benefits shall not be reduced during their term of office?

I move the adoption of the amendment.

[Amendment rejected: 34-66. Motion to reconsider tabled. Previous Question on the Section ordered. Section adopted: 105-0. Motion to adjourn adopted: 56-46. Adjournment to 9 o'clock a.m., Saturday, August 17, 1973.]

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Saturday, August 18, 1973

ROLL CALL

[105 delegates present and a quorum.]

PRAYER

Mr. Burns Our Heavenly Father, as we begin the last day of this week's work, we pray that Thy would give us a spirit or atmosphere of harmony and goodwill. Give us the concern for the opinions of our fellow delegates and may we all work together today, that at the end, that whatever we have done will meet with Thy approval and with the approval of the people of this state. We ask these things all in the name of Our Lord and Savior Jesus Christ. Amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

INTRODUCTION OF RESOLUTIONS

[I Journal 338]

INTRODUCTION OF PROPOSALS

[I Journal 338]

PETITIONS, MEMORIALS, AND RESOLUTIONS

[I Journal 338-339]

[Motion to make Committee Proposal No. 4 Special Order of the Day for Thursday, August 23, 1973 adopted without objection.]

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Mr. Poynter Committee Proposal No. 21, introduced by Delegate Dennis, Chairman, on behalf of the Committee on the Judiciary and other delegates and members of that committee.

A proposal making provisions for the judiciary branch of government and necessary provisions with respect thereto.

The present status of the proposal is that the convention has adopted as amended, Sections 1 through 21 of the proposal, save for Section 20, which section was not adopted on yesterday.

The next section presently under consideration is Section 22. Judges; Election; Vacancy in Office.

Reading of the Section

Mr. Poynter That's correct. Mr. Staggs has indicated that we have additionally passed over Section 18 on a temporary basis.

Section 22. Judges; Election; Vacancy in Office.

"Section 22 (A). Election of judges shall be at the regular congressional election.

B. A newly-created judgeship or a vacancy in the office of any judge shall be filled by a special election which shall be called by the governor, and held within six months of the day on which the vacancy occurs or the judgeship is established, except when the vacancy occurs in the last six months of an existing term. Until the vacancy is filled, the Supreme Court shall appoint a person meeting the qualifications for judge to the office, to serve at its pleasure, who shall be ineligible as a candidate for election to the judgeship.

C. A judge serving on the date of the adoption of this constitution shall continue in office for the term to which elected and shall serve through December 31st of the last year of his term or, if the last year of his term is not in the even-numbered year of a general judicial election, then through December 31st of the following year. The election for the next term in the office will be held in a general judicial election of the year in which the term expires as provided above."

Explanation

Mr. A. Landry Mr. Chairman, ladies and gentlemen

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of the convention under the present constitution. Article VII, Paragraphs 7, 23, 33, 51, and 53, 69, 80, 82, 90, 92, 94 and 97, under that article, it authorizes the governor to fill vacancies in judgeships and to appoint in some cases judges to newly created judgeships below the level of court of appeal. The proposed article provides a change and a uniform method of filling all vacancies in judgeships. Under the new procedure, the vacancy would be filled at a special election if there are more than six months remaining in the term. Pending an election, the Supreme Court would appoint a qualified person to serve as judge. That person who assumes the duties of the judge by appointment of the Supreme Court would be ineligible to be a candidate for election to the position for which he temporarily assumes the duties. This proposal would make it more responsive to the people of the state of Louisiana. Also, the present constitution provides that the term of court of appeal judges ends in odd-numbered years. In the proposed constitution, the proposal we now have would have such judges' term ending on December 31st of the year in which the congressional election is held. The provision also indicates when a term shall end for all judges as well as the beginning point. Now prior, under the old constitution, if a judge was elected and decided to take his oath of office just before, immediately upon receiving his commission, he could possibly be ineligible for the term of his predecessor. This is why the change. Do you have any questions?

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Jenkins, et al.]. On page 6, line 32, immediately after the word "be" before the word "at" insert the words "conducted on a non-partisan basis."

Explanation

Mr. Jenkins Mr. Chairman, delegates to the convention, as you all know, at present our election for judges is conducted on a non-partisan basis. Our election for all other public officials. Those people who would like to run for judge, providing they meet the qualifications for seeking a judgeship, qualify with a party, go through a first and second party primary and a general election, assuming there is opposition from the opposing party. In practice, the way it works is this. Occasionally an incumbent judge is opposed for reelection, but that is rare. When there is opposition, it's usually within the Democratic Party and the whole contest is settled in the first or second democratic primary. Rarely is there a general election. Now this amendment would provide that we would elect our judges on a slightly different basis. We would elect them on a non-partisan basis, and that would mean at least three things. The first thing it would mean would be this, that no one would be denied the right to vote for his judges. At present, from a practical standpoint, no one who is registered as a republican or an independent or a member of a third party is allowed to vote and participate in the election of judges. Second, it would mean that no qualified candidate for judge would be forbidden from seeking that office in the real election. That is, if a person were a Republican or an Independent or third party candidate, he could really run and participate in the full process. Third, there would be no party designations on the ballot for judges. Second, if you elect just as there is at present, no party designation on the ballot when we ran for constitutional convention delegate, just as in many other states when they elect their judges there is no such designation. Just as there is no designation when Orleans Parish elects its school board members, and I believe that that's true in some other parts of the state as well. Now I think the most important aspect of this proposal is this. A large portion of our electors in this state are disfranchised from voting for their judges. In my own legislative district there are 955 voters who are registered as republicans,

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independents or third party candidates. They have rarely been allowed to vote for a judge. In East Baton Rouge Parish there are ten thousand electors, people who are registered to vote. They are registered as republicans, independents and third party candidates. Only once in the last five years, to my memory, have they been allowed to even participate in the election of judges. Across this state, and this figure is really staggering, there are almost ninety thousand voters, Republicans, Independents and members of third parties who do not participate in the election of judges. None of our district judges, courts or appellate judges or Supreme Court justices are registered with any party other than the Democratic Party. Now this problem is particularly aggravated in the case of the judicial branch of government because there is such a tradition in the judiciary that seldom are incumbents opposed, and seldom is there a great deal of opposition at election time. Now, when there is Republican opposition at present, it is normally when there is a new judgeship created or where there is no incumbent seeking office. In those circumstances, there usually has to be a first primary, a second primary and a general election. A person who runs for judge has to put up with three separate elections. It makes it at least a time and a half as expensive as it would be if we had a nonpartisan election. At least a time and a half as expensive for him. If there would only be a first primary and a general election, it's obvious that he would save a lot of money. Now how would this be done? It would be done this way. It would probably be done just as we were elected for the first time in the legislature. At the time of the first democratic primary, the primary for judge would be held on the same ballot. If no one got a majority in that primary, there would be a runoff at the time of the general election. But, those mechanics would be established by the legislature. If our state later decided to have an open primary system for all public officials, this would fit in with that even though an open primary is a partisan system, it would make it very easy for us to have nonpartisan elections in conjunction with it of this nature. The most important argument about all of this, though, is the fact that our judges should not be partisan officials. They should not have party loyalties. They should not be involved in partisan politics for their election. For one reason, they are the very ones who decide election contests when there are election disputes. They should not have a special interest one way or the other. And as you know, at present, once a person is elected to a judgeship he cannot engage in partisan politics now. He can't hold a party office, he can't endorse candidates, he can't be active in other political campaigns. Now, that's the case now, after he's elected. Since that is the case now, there's every reason that that be true during his election as well, so that there is no taint as to his nonpartisanship. Also, the present law works to deny his impartiality because even though after his election he can't engage in partisan politics when it comes time to be reelected, he'll have to run on a party label and thus that somewhat destroys the nonpartisanship, the non-politics which have been established during his term. So I urge you to consider this system. It comes highly recommended from other places. It's completely workable. It will not engage in partisan politics in cases where we have contested elections. But most important of all, it will allow all of our citizens, including 950 in my district, an average of 800 in every representative district across the state, ninety thousand voters across the state to participate in the election of their judges, just as they participated in our own election. So I urge the adoption of this amendment.

Questions

Mr. Roy: Woody, I don't mind your... ideas so much, but why are you so much against a person declaring on the ballot whether he is a Republican, Democrat, Independent, Communist or whatever have

you? I disagree there, and I don't see why you should insist that the people don't know whether they're voting for one of these type people? I'm for your concept but I don't understand why that has to be a part of it. That you can't declare what party you belong to, if any.

Mr. Jenkins: Well, the rationale is this, Chris, and I'm for party designations for legislative and executive positions. But, someone who is running for the judiciary, naturally he will have a party registration, anybody who wants to know what his party registration can find it out. But it's my contention that the idea of party loyalty or party discipline or partisanship should not be involved with a judge. He should not be owing the Democratic Party or the Republican Party or some third party his position in office.

Mr. Roy: Well I agree there, but that's not my question. My question is it's the voter who should have a right to know and some people may just basically, and all cases being equal, feel that they would vote for a democrat over a republican or vice versa. That's my point. I don't care about loyalty to the party, so to speak, I'm talking about the voter having a right to know.

Mr. Jenkins: Well, naturally anyone could find that out who wanted to, Chris, and there would be no prohibition against someone advertising that fact, but it wouldn't be on the ballot. Someone could carry that in his ads if he desired, but he wouldn't be forced to be labeled that way, one way or the other.

Mr. Derbes: Mr. Jenkins, your provision, which I think is essentially a good one, doesn't necessarily prohibit a listing on the ballot of a person's party affiliation. It merely prohibits a specific party primary, doesn't it?

Mr. Jenkins: No Jim, I think it would rule that out because I think there would be three aspects to having a nonpartisan election. The fact that all voters regardless of party would be allowed to participate, second that all candidates would be allowed to run regardless of their party affiliation, and third that party designations would not be on the ballot for the judges. So I think it would do away with that.

Mr. Fulco: Woody, nonpartisan basis. Now that can be interpreted many ways. Now whether you say on the ballot the party designation should be published by his name or not, we don't know. You just say nonpartisan basis. You don't say that it should be there, and you don't say that it doesn't have to be there. So what are we going to do about that?

Mr. Jenkins: Well, Frank, all I can tell you is my interpretation of the way nonpartisan would be construed. I have to believe that the courts aren't going to allow parties to be involved in the direct election process on the ballot when we say nonpartisan. I have to believe that.

Mr. Fulco: Don't you think that it could be carried out a little more in detail by stating whether or not the party designation should be on the ballot or not, or the name of the candidate or is involved in? I think you can be nonpartisan but still it doesn't say that you must or must not carry your party designation by your name on the ballot.

Mr. Jenkins: Well, Frank, I wouldn't object if you'd like to come with an amendment to do that. That would be fine with me.

Mr. Fulco: I like your idea. I like the idea of the open primary. It's great and should be in Louisiana in every election. But, I would believe if you could hold off on this and elaborate a little bit or expand a little bit, I think you'd have an excellent amendment. I'd like to go with you on it, but...

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Mr. Jenkins Well, Frank, why don't you go on and go with it and then if . . . we can, it would be easy to put in as a technical amendment following this, the fact that party labels would not be on the ballot. But I think if you go along with the concept you ought to support us on this amendment.

Mr. Fulco Well I do.

Mr. Chatelain Woody, I too, like your concept, but I'm a little confused about the judges whose followers or friends are all democrats, for instance, and they'll have to qualify as nonpartisan. Aren't you going to have some conflict there? How are you going to legislate this kind of situation? How are you going to legislate these problems?

Mr. Jenkins Well, it would be just like in our election for delegate, E.J. There would be really no difference in that regard. You were perfectly free, when you ran for delegate, just as I was, to publicize the fact that we were democrats, to run on that basis, but it was not on the ballot. We were not labeled as democrats and we didn't have to qualify with a Democratic Executive Committee or pay any fees to the Democratic Party. We ran on our name and on our records. It would be that exact same way. It would be no different from the way we ran for delegate.

Further Discussion

Mr. Jack I hope you ladies and gentlemen will listen to me here. I'm from Caddo where we have more republicans for the population than anywhere in Louisiana. We also have lots of people that came from other states that are democrats, that are not registered republican, but they vote that way in the general election. They are registered democrats so they can vote in primaries. Now let me tell you, this amendment is the wooden horse of Troy. It may sound good, but it's bad. Now if you want to find out if it hurts to be bitten by a dog, you ask the person that's been bitten by one if you've never been bitten by dog. Now I've seen, and had the experience in a general election after 24 years in the House. At that time, Caddo had elected five Representatives. Now we found when two republicans went in and three democrats, and I went out after 24 years, that republicans do not split their ticket in the general election, democrats do. Now that is an unfair thing. Now if they voted for the man instead of the party, this would have some merit. But the fact is in Louisiana, very few republicans ever split their ticket. They are determined to have the so-called two party system and they're not going to split their ticket. All you are doing with this thing, even if they amend it, is to split the ballot. Now the problem is a democrat or a republican, you're just helping them to get a democrat's job. Now all this talk about you've got to have different rules for a judge's election to keep him honest than you would for a person running for Representative is a lot of hogwash. I don't know that since we made congressional elections the time they run it's changed it. I have never in 41 years run into a crooked judge. So let's quit talking about you've got to do everything to keep judges honest. You don't talk that way about to keep you all honest when you came down here. We've got a fine judiciary. Now I want to say this, if a judge got sick during a campaign, the doctor wouldn't say, "Oh my goodness, hold on the judge's words today, Woody. Now he said, and I wrote his words today, Woody. Jenkins says, "this is highly recommended from sources." Well I'll tell you the source that highly recommends it--it's the republican source. Tom Stag is a good friend of mine, but I'll bet you Tom won't get up here under oath and tell you that

he split his ticket a lot of times, if ever. I've split mine plenty of times for presidential and others. But Republicans, so help me [. . .] they just don't do it. I've been bitten by them, I'm telling you it's the worse bite than a woolly ant, the deadliest of all animals in Texas. Thank you.

Questions

Mr. Tobias Mr. Jack, which would you rather have? A crooked democratic judge or an honest republican judge?

Mr. Jack Now let me tell you, Mr. Tobias, you need to grow up a little. I think that. . .

Mr. Henry Now Mr. Jack, he represents youth, you've got to understand that.

Mr. Jack I think that is a reflection and is not funny to ask a silly question like that. But naturally I want all judges honest and I just told you in the 41 years of practice, and I do a lot of court work, I have never run into a dishonest judge and I don't think we have to have special rules to make them honest when they have very few rules to make you or me honest in the elections we've run in.

Mr. Stinson Mr. Jack, that was sort of an unfair question. Have you ever known of a republican judge in Louisiana since you've been living? I'm not talking about federal.

Mr. Jack Well that's the only ones. We don't want to get on the subject of federal judges because if they would run for office, then we could say something.

Further Discussion

Mr. A. Landry Mr. Chairman, delegates to this convention, I rise to oppose the Jenkins' amendment. When I look at 105 delegates to this convention who were elected to this convention and ask you how many of you had to face the second primary? You ran in a nonpartisan election. You saw the example on the voting machine where your name was. If you were not at least a high school graduate, you could not find a delegate to the constitutional convention who had opposition in the general election. Fifteen percent in my parish, of the voters of the district where there was opposition, about fifteen percent of the voters that went into the voting machine actually cast their vote for that delegate to the constitutional convention because they couldn't find where they were. You are deprived of the right of having a number and our precincts have been used to find a number. You couldn't even tell them where your position was on the voting machine when you talked to them. I say this is bad unless all the candidates throughout the state runs on a nonpartisan election, then why single out the judges? I ask you to vote the amendment down.

Further Discussion

Mr. Stag Mr. Chairman and fellow delegates, I rise in support, which should not surprise any of you, of the Jenkins' amendment. But that didn't get me to my feet. I had not planned to speak until my fellow delegate from Caddo Parish complained of dog bite. So that's the terminology we're going to use when two men run for an office in a hotly contested election. . . . If that's the kind of language we're going to start using to discover how it feels to get defeated in a hotly contested election, I hope you will use it in the democratic primary when some people get beat by a fellow democrat. Mr. Stinson, the terminology of facing the republicans in Caddo Parish as has one or more other delegates from that parish. I wish there was an East Baton Rouge Parish notary who could accompany me to this microphone so that I could be placed under oath and then as subscrib-

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ing to that oath, I would say that I have, as a Republican voter in Caddo Parish, split my ticket and I have voted for democrats. And if Mr. Jack doesn't choose to believe that then I don't know how I can prove it to him since we have the sanctity of the secret ballot in this state, but I vow it is true that I have done so. Now that's not the question. The question is shall we try to get into the selection of the judiciary in this state a method of election that in some measure divorces the judges of this state from politics, as previous speakers at this microphone in the last two days have assured us you cannot do. Some people have said they are the greatest politicians in this state, that they have the strongest lobby in this state and that judges are indeed politicians. They are politicians as we are because we ran for the offices that we seek. But I believe that Mr. Jenkins has a good amendment. I don't know whether this is, as Mr. Jack said, the opening wedge for an open primary. It may be. As he correctly pointed out, when we went into the election for the constitutional convention, the legislature, in its wisdom, in Act 2 of 1972 stated that the election of delegates to the constitutional convention shall be conducted on a nonpartisan basis. Everybody who wanted to run put their name on the ballot and then the top two ran it off. We didn't elect too many republicans—five in number, actually. But that's a pretty good score in a state that has so few republicans. I hope our numbers do continue to increase. Mr. Jack said there are more republicans in Caddo Parish than in any other parish in this state and he is correct. Our numbers are increasing day by day as they are in other areas of the state. Perhaps it's time that we tried elections as they are conducted, I am told, for school board election in other parts of the state, on a nonpartisan basis, and have been doing so successfully. I would like favorable consideration by the delegates to this convention of the Jenkins' amendment. I would, of course, be happy, Mr. Chairman, to yield to any question.

Questions

Mr. Stinson Mr. Stagg, when you voted for a democrat, isn't it a fact, though, that he didn't have a republican opponent?

Mr. Stagg No sir. I don't say that all republican candidates are better by their nature than all democratic candidates. That's just not true.

Mr. Arnette Tom, is there anything in this amendment that would prevent putting numbers on the ballot? In other words, this is one of the objections of Mr. Landry that there was no number on the ballot and you couldn't find someone's name on there as a result. Is there anything to prevent putting numbers on there?

Mr. Stagg Nothing by this amendment.

Mrs. Warren Mr. Stagg, I wanted to ask Mr. Jenkins this question, but I wasn't recognized. Mr. Jenkins said the republicans did not have a chance to run as judge, and I would like to know from you, is there a practice in our state that republicans are not allowed to run as judges?

Mr. Stagg No ma'am, there are a paucity of republican lawyers in this state who would choose to run for judge because of, I guess their feeling that the whole ballot would be stacked against them. There is no law that says a Republican cannot run for judge.

Mrs. Warren Well, I mean he said they couldn't, and this is what I wanted to know.

Mr. Stagg Well, it's just, he meant by that, I think, Mrs. Warren, that it is difficult. He did not mean it was impossible.

Further Discussion

Mr. Derbes Mr. Chairman and fellow delegates, I rise in support of the amendment for essentially a reason which I feel is consonant with the theory and practice of our government. I see the executive branch of government as one where a party or a partisan platform is desirable and that when one votes for an executive candidate one in some instances votes for him because of his party affiliation because that party affiliation stands for some philosophical basis on which his qualifications can be determined. The same is true for the legislative branch of government. But I ask you if that is the case or indeed should be the case for the judicial branch of government. The judge after all is charged with the fair and impartial administration of justice. I see no particular place in that structure for partisan politics and furthermore since a multiplicity of elections merely costs the state additional money, I can see no reason to continue the practice in the past of holding several elections in order to fill a judiciary vacancy. So I urge you to support the amendment. Thank you.

Questions

Mr. A. Landry Mr. Derbes, would you admit that all of this could be taken care of by an election code and does not belong in the constitution?

Mr. Derbes It would seem to me, Mr. Landry, that if it's a good idea, which I think it is, and can be solved very conveniently in the constitution that we ought to do it.

Mr. Riecke Mr. Derbes, are you aware that in Orleans Parish a candidate for school board cannot receive the endorsement of either party or any political faction?

Mr. Derbes I am aware of that and it certainly has brought about the nomination and election of some very fine members of the Orleans Parish School Board.

Mr. Riecke Thank you. I agree with you.

Mr. LeBleu Mr. Derbes, don't you think that this subject should be taken up at the time that we come to the election section? Therefore it would apply to every election in the state, rather than just specifying that it applies to this particular judges' election.

Mr. Derbes I see no reason why it couldn't be in addition to the present amendment, Mr. LeBleu, but it also occurs to me that as far as the selection process of judges is concerned it is very convenient and very simple to do it now and if we do it again later regarding other offices perhaps so much the better. I can make up my mind very easily about judges. I make up my mind less easily about other elected officials in this regard.

[Previous Questions ordered.]

Closing

Mr. Jenkins Mr. Chairman, first I would like to answer some of the objections that were raised, one of them being the ballot position that we suffered from in our particular election for constitutional convention delegate. The fact that it was difficult to find on the election machine. Well that's true but that has nothing to do with any future elections for judges. That was a mechanical situation brought about by a combination of the secretary of state, the custodian of voting machines and I suppose our election law. But that can be changed and dealt with if we are going to do that on a regular basis, and some technicality like that shouldn't interfere with an important concept like this. It can be dealt with. The second point I would like to raise is that it said that we can't have numbers on the ballot if we have this system of election. That's absolutely false. The only reason we didn't have numbers on the ballot

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when we were chosen was that Act 2 of 1972 said we wouldn't. That's what is required. I assume we will have hopes on the ballot. I certainly hope so. That's not inherent in this proposition. Now, whether an election code can deal with this subject. Sure, an election code could deal with this subject but I submit to you our election laws never have dealt with this subject and I submit that if we don't do it here there is a good chance that we never will deal with that subject because of some of the vested interests that want to protect things the way they are. Now whether or not it should apply to every election or not, I certainly don't think we should have nonpartisan elections for every political office in the legislative and executive branches. I think they ought to be on a partisan basis. Now we might want to have an open primary and I'd sure favor that, but what we are talking about here is a nonpartisan election, devoid of party politics, and I think there is a place for that when we elect our judges. But the most important point I want to make is this. If we don't make a change at this point in our deliberations, we are going to be keeping the law the way it is and denying the practical right of a large percentage of our citizens to participate in the election of judges. I have the statistics here from around the state and I can go down district by district where the statistics are complete and tell you just how many people. In my district it's 950 registered voters. You can take in Bob Aertker's district, here in East Baton Rouge Parish, it's 2400, and it varies from place to place, but all of these people in effect are being disfranchised at present when it comes to electing our judges. You can make partisan arguments. This is not to help republicans, it is not to help independents, it's not to help third parties, it's not to hurt democrats. It is to bring about some justice in the election of these public officials. That's what this is about. We were elected in this same fashion and I think this is one of the finest groups that has ever been assembled in this state. And I think our judges will be even better than they are now if we elect them in a similar fashion. So I urge you to adopt this amendment.

Questions

Mr. Smith Mr. Jenkins, why can't this be left to the Legislature? Why should it be put in the constitution?

Mr. Jenkins Well, as I just said, Mr. Smith, it could be done by the legislature but I submit to you it never has been and it's likely that it never will be because of the vested interests that exist, some of whom would like to keep things as they are.

Mr. Smith Aren't you in the legislature?

Mr. Jenkins Yes sir, I am.

Mr. Smith Have you ever placed a bill in to that effect?

Mr. Jenkins No I haven't, but you can be assured that I will continue to try to in the future if this doesn't pass here.

Mr. O'Neill Mr. Jenkins, is it true that the judges you've spoken to have been generally favorable to this proposition?

Mr. Jenkins That's absolutely true, Mr. O'Neill. I haven't talked to any judge who has opposed it. The ones I have spoken to have favored it.

Mr. O'Neill Mr. Jenkins, now just to make it perfectly clear, isn't it true that there is nothing in this amendment that would prohibit advertising the party as I did in my election against a republican?

Mr. Jenkins That's absolutely right. You could advertise your party designation as much as you want.

It just wouldn't be on the ballot itself.

Mr. Roy Mr. Jenkins, Mr. Fulco has an amendment if yours passes which would say, "with the party designation following the name of the candidate on the ballot." Would you be opposed to that?

Mr. Jenkins Well, if this fails I certainly would favor it, Mr. Roy. I think it would be better not to have party designations on the ballot.

Mr. Roy My question is, are you going to oppose this because that's how I am going to decide how to vote? His amends yours, it doesn't...

Mr. Jenkins Oh no, I wouldn't oppose it if we are able to get this basic concept on.

Mr. Roy All right.

Mr. Burns Mr. Jenkins, don't you think that it's about time that we stopped kidding ourselves and kidding each other that every time that something comes up concerning judges that the argument is advanced that judges are out of politics, to keep the judges out of politics. Do you think that this nonpartisan amendment that you have will tend to do that?

Mr. Jenkins Mr. Burns, I certainly believe that in the vast majority of instances our judges at present are more above politics than any other branch of our government. I think this would certainly encourage them to be more and more above it. One of the reasons they are above it now is they can't officially participate in party activities once they are elected.

[Record vote ordered. Amendment rejected: 57-58. Motion for table reconsideration rejected: 53-60.]

Motion

Mr. Jenkins Mr. Chairman, delegates to the convention, because this is such a close vote and I think because this proposition has some merit, I would like to move that we reconsider it. I think that this would be a significant step forward in our election process insofar as judges are concerned. If Mr. Fulco comes with his amendment, and I think he will, to allow party designations on the ballot, I won't object to that. I think that will solve some people's arguments and objections, but that can be decided at that time. But this, at least, will allow all our citizens to participate on a practical level in the election of our judges and that would be a very important step forward. So I move the reconsideration of the vote.

Questions

Mr. Weiss Delegate Jenkins, would you withdraw your proposal and allow Mr. Fulco's to go through at this time so that we can vote favorably, in the majority I believe?

Mr. Jenkins Well I would like to go ahead and vote on this, Dr. Weiss, and his would be an amendment to it.

Mr. Weiss But yours has been defeated already once.

Mr. Jenkins Well it's being reconsidered right now.

Mr. Jenkins Mr. Fulco's amendment is drawn to amend my amendment, Dr. Weiss, and it would be necessary to adopt my amendment first. That's why we need to go ahead and adopt...

Mr. Stinson Mr. Jenkins, one point that I'm concerned with that hasn't been discussed or I'm afraid maybe not considered by a lot of the dele-

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gates. Isn't it a fact that under the present procedure each judicial district has its Democratic and Republican Executive Committee that conducts the elections but under your proposal, all of that will be conducted under the present set-up through the secretary of state in Baton Rouge? Anyone that wishes to qualify will have to qualify with the secretary of state. The secretary of state will be the one that promulgates the returns and such as that. In other words, we are getting away from home rule. We'll send it to Baton Rouge. If they change the duties of the secretary of state, well we don't know who is going to handle that. Isn't that correct?

Mr. Jenkins No, that's not true, Mr. Stinson. The only thing that this would change with regard to the democratic and republican judicial district committees would be their responsibility for qualifying candidates and....

Mr. Henry Now wait just a minute. You are going far afield. What we are talking about is whether or not we are going to reconsider the vote right now. You are getting into the merits of it and we can get back to that in a minute.

Mr. Stinson Mr. Jenkins, don't you know your answer is not correct? It is nonpartisan....

Mr. Henry Mr. Stinson, I said you are out of order. Have your seat.

Mr. Stinson Thank you. I had enough trouble getting it.

Mr. Henry Yes sir. Is there any further discussion on the motion to reconsider.
Justice Tate.

Further Discussion

Mr. Tate Mr. Chairman, I rise in opposition to the motion to reconsider for the following reason. Originally I really was for the nonpartisan election. I think it is unnecessary for us to freeze nonpartisan elections into the constitution because if we fail to reconsider, if we deny our votes to reconsider, the legislature under the present structure of the article has the right to provide for nonpartisan election of judges under such conditions and practical solutions of the problem as is necessary. For that reason only, Mr. Chairman, recognizing the motion is close, the nerves are close, I speak in opposition to the motion to reconsider.

Further Discussion

Mr. Wall Mr. Speaker, fellow delegates, this is one time that Justice Tate and I are agreeing. He is being a good judge and making a good decision this morning. I hope he will continue for the rest of the day. We should make an exception for judges. I really think this convention should make an exception for judges and the judiciary and just let them and all the people of the state know that they are just like everybody else. So let's make an exception and make them just like everyone else. We'd be making a big mistake, a big mistake, if we would freeze nonpartisan elections for the judiciary in the constitution. Now, yes, if I was a republican out there, if I was thinking about being a republican, I would vote for this and support this. I'm a democrat and I think that if we are going to have the two party system, let's have the two party system. Now if you want to do away with the two party system and have all nonpartisan elections that's one thing but don't come here and try to destroy our two party system. Let's don't reconsider this motion. Let's convincingly vote, I don't know how Mr. Chairman is going to state the motion, but let's convincingly vote to not reconsider this provision. Thank you.

Further Discussion

Mr. Jack Mr. Chairman and members, I was going to say some of the things Judge Tate said but since he has, and I am glad he has, I won't go into them. But we have had numerous votes of 51 to 52, more than any other number. We've also had them like this last one. Now are we going to start a policy of reconsidering every time there is a close vote? If we do, we will never finish this thing. Now the thing is, everybody when they possibly can should be here and not let this be an emotional matter. Listen to the speakers, which goodness gracious knows everybody seems to be talking usually when I'm up here and when the people are up here, and maybe you don't hear things is the reason you want to switch back and forth. We are not having consistency. It's amazing. We are writing a constitution for the people of Louisiana. The highest document that we are governed by in law, and we should take it seriously and not vote one time and turn right around and vote the opposite the next time. Now this is purely a legislative matter that Mr. Jenkins has up here and the reason he has it here he says he can't pass it in the legislature, but he has never tried to pass it in the legislature. I won't yield until I finish. When I first went to the legislature, before I knew of Watergate matters, when I believed so-called professional wrestling was honest when I was a young fellow, before I knew maybe what it was all about, before I knew that republicans would not split their ticket and before I knew that if you put a ballot out there and everybody, all parties vote in it and not have their names back of it, that everybody would just vote for the best man, when I believed that, I had a bill in the legislature before Judiciary A for open primary or whatever you call it, nonpartisan, that provided you could not have back of your name what party you belonged to. I'm glad there were wise people on the committee and it didn't get out because I later learned what I have been telling you that the republicans will not split their ticket. This is a republican proposal with Mr. Fulco's amendment. I say let's do not reconsider this matter. Thank you.

Further Discussion

Mr. De Blieux Mr. Chairman, Mr. Jack and ladies and gentlemen, I know that we might be taking a little bit more time because we want to reconsider something but I believe in playing according to the rules. Our rules permit the reconsideration of a vote, and therefore if the rules permit it we ought to be able to try it. Now let me say this, I don't believe you've got anybody in this chamber that is a more loyal democrat than I have been during the past years, but never the less a democrat I think it is my duty and responsibility to my community, state and nation to be a fair democrat. I want impartial justice and I want good judges and I don't want judges who have to run so many times and get so many campaign contributions from influential people that they may have their vote or decision tainted because they want to be a republican or have to favor those who have helped to put them in office by their campaign contributions. I want you to consider that and therefore, a nonpartisan, impartial election will help to do that by making impartial judges. Therefore, I ask you to let's reconsider this vote since it was so close and let's put this little provision in our constitution. I will, or you add just a few words to what we have, and therefore, I think that it is worthwhile that we reconsider and I ask you to do so.

Questions

Mr. Flory Senator De Blieux, are you aware that during the last regular session of the legislature you voted to have a committee established to draw up an election code to fit all people seeking election in this state to be treated equally? Do you remember that?

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Mr. De Blieux I think I did, Mr. Flory, yes.

Mr. Flory Don't you think that all people ought to be treated the same in the election process in this state?

Mr. De Blieux Well it depends upon how you are speaking about it. I believe in fair treatment which is going to get the best result for society, yes, in that regard. It may not be necessary....

Mr. Flory Are you saying it depends on whose ox is being gored?

Mr. De Blieux Well you can't treat all people fair because for instance, those who are in prison can't have the same rights and privileges as those on the outside. You have to take the category they serve in.

Further Discussion

Mr. Stinson Mr. Chairman, fellow delegates, I want to bring out a point that I was attempting to by a question, and that is as to what procedure would be followed for qualifying for the office of judge. You know in the six year term that they run, the district attorneys run at the same time and usually the school board members in our country parishes. The district attorneys and the judges at the present time qualify with the Democratic or Republican Judicial Executive Committee. That is a local committee appointed by so many members of the State Central Committee. They go and file there, that committee. One thing that hasn't been brought out, they set the qualifying fee. Under this, there will be no qualifying fee. I don't know how the parties can carry on the election unless there is some qualifying fee. Under this procedure it will have to be the same as when you were running for delegates. You have to qualify with the secretary of state. Now I can imagine from Bossier Parish, Webster, our district, the way the mails are there, you can mail a letter and it may be two or three days to get to Baton Rouge. The potential candidates will have to come and qualify down here. The returns, we don't know how long it is going to take to get them back. You are taking away home government. You are sending it to Baton Rouge to someone that may be changed or designated later on in this area to conduct such an election. We're supposed to be taking things back to the people. Not concentrating it in Baton Rouge or Washington. I predict that this is only the beginning. It's a farce to say well you've got to have impartial judges. You are supposed to have impartial district attorneys. You are supposed to have the school board members representing everybody. So, under this procedure the next step is going to say everybody will have to run on a nonpartisan basis and that means that Baton Rouge is going to conduct all of our elections, all of them. The next step as we go, it will be the school board members and the police jury and the district attorneys. If it is fair for the judges, it's fair for them if it is bad for the others it is bad for the judges. Now Mr. Riecke said that in New Orleans that they ran there on a nonpartisan basis and he was advised otherwise, and I am assuming that this person is correct, that has been discontinued. Usually when you discontinue something it means that it has been proven not to be correct. I am speaking from the conversation between those two local people who do not know. Now as I say, my main point or question is the qualifying. It is going to be a hardship on whoever is going to qualify. Now at the present time when anyone comes in and qualifies, the day that they qualify it is in the paper that John Jones is running for judge or district attorney and so forth. Under this the local people would not know until the qualifying date is over. I predict, as to who has qualified. It may not be anyone. My main contention is let's have home rule and keep our elections at home. Don't have them operated from Baton Rouge as they will be

under this. If we are going to have it in Baton Rouge, we might as well move it on up and say we'll let Washington run them. I am sure that Washington is qualified. They run everything else in such a wonderful manner. So I say let's vote this down and leave it as it is. There has been no study, no committee hearing on this whatsoever. It can be changed or not be, the legislature can do it in its wisdom after the people have been heard. Mr. Jenkins gets up and says that no judge he's talked to is opposed to it. Well I can say no judge I've talked to is in favor of it because I haven't talked to a judge. I think there should be a committee hearing before the legislature. Let them do it. If it was something that they couldn't do, then we should pass on it. This should be submitted to the legislature where pro and con can be heard, committee hearings in both houses of the legislature, not brought up here on a Saturday morning in a short hour and thrust on the people with no say-so. I say let's vote this down and let the legislature if they wish, they have the power, they are not prohibited, let them pass on it. Thank you.

Questions

Mr. Stagg Ford, the main thrust of your argument that you have just concluded that qualification would be with the secretary of state. Isn't it fair to ask that isn't it also possible that qualification in each parish would be with the clerk of court of that parish within the district where the judge would run? You have, I do not believe, made a very sound argument. Don't you agree that you could be qualifying with your parish clerk of court and we everybody would know who had filed for judge?

Mr. Stinson Well, Mr. Stagg, it may be but it has never been qualified with the clerk of court and the clerk of court is a local, elected official and I don't think she should be one---or he, our clerk of court happens to be of my party. I don't think the local politician should be one that they qualify with. In fact I would rather have it the secretary of state than the clerk of court.

Point of Information

Mr. Champagne I was wondering. Are we debating on whether to recall the deal or are we talking the issue.

Mr. Henry The motion is to reconsider the vote by which it failed to pass and it does open the main motion to debate although it is best not to go too far. Maybe we won't have to do this if the thing is adopted once it gets by. Lord, I hope not.

Proceed, Mr. Alexander.

Further Discussion

Mr. Alexander Mr. Chairman and delegates, I rose for the purpose of supporting the idea of having the vote over to run, even though I have heard some of the arguments I have heard have convinced me definitely and positively that we need this amendment. We need to overhaul the laws of the state of Louisiana, and I think this amendment begins that process. I can't see the legislature of this state enacting laws that would force everyone who wants to run, even go through the motions and this thing is moving. The republican party is gaining in strength. You don't have a two party system in this state yet. In other states where you do have a two party system remember that, in most instances, candidates do not have

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to go through two primaries and then a general election. In Louisiana we have the first and second primary and then the general election and I submit to you that a trip to Baton Rouge even from the farthest corner of the state is cheaper than forcing a candidate for a judgeship or any other office for that matter to go through three elections. Finally gentlemen, I ask you to vote to reconsider this motion and let us pass this amendment so that poor men who aspire to a position of Judge will not have to go through the process of going into a judge's pocket, begging his friends, making commitments in order that he may go through a third election and Mr. Chairman, if you have no other speakers, I call for the previous question.

[Previous question ordered.]

Closing

Mr. Jenkins Mr. Chairman, it is unfortunate that so many speakers have dealt on the technicalities of procedures of our election law. I think our purpose here is to decide broad policy questions. And that is what this would do. The procedures will be dealt with in the legislature and there are few difficulties that arise. The argument about the qualifying, where you are going to qualify, who is going to qualify, you are only talking about two hundred judges in the whole state whose terms are spread out over a fourteen year period. You are not talking about a whole lot of elections. You are not talking about a whole lot of qualifying being done, and that takes the party designations away from the local people that's not a valid point. What this would do would be to allow the local people, all the local people, to participate in the election which they haven't been allowed to do. Now someone has made this argument and I wish you would consider this point. They've said, "Listen you need to have the party designations on the ballot for judge so we'll know their philosophy." Now if anyone can with a straight face tell me that the label democrat in this state indicates anything about a person's philosophy, I'll withdraw this proposal. The label democrat doesn't mean a thing about philosophy in this state. It encompasses all type of philosophies and the way that you find out about a person's philosophy in this state is you interview them in your meetings. You talk to them. You make them take a stand on public issues. That's how you find out their philosophy and that's how the philosophy will be found out in this instance, not by someone just putting a certain label in front of his name. That's not going to indicate anything. It never has, for a long time at least. Now talk about partisanship and the need to remove partisanship from judges elections, I think that our discussion here has demonstrated the need to do that because there has been so much partisanship in our discussion here. The discussion of whether you are going to help republicans or hurt republicans, as though we are supposed to consider this on the basis of our party affiliation. Well let me tell you, I wasn't elected to be a delegate on a party basis. All the people of my district were allowed to vote; republicans, democrats, third party and independents, and that's who I'm here to represent and I think you are too. So I don't think any of these attempts to inject partisanship into this amendment. I think it helps it because it shows how much we need to get away from it in this one field. So let's go ahead and cure this evil right here right now. Let's allow our judges to be elected on a nonpartisan basis and allow all our people to participate in the election of these judges. I think we will have a better judiciary system in the long run.

Questions

Mr. Weiss Delegate Jenkins, were you at one time a registered republican?

Mr. Jenkins Dr. Weiss, yes, I was at one time a

registered republican.

Mr. Weiss What party are you now?

Mr. Jenkins I am a registered democrat right now and I really appreciate your asking that question, Dr. Weiss. I think that once again illustrates the need for just such an amendment.

[Refused to Reconsider: 55-63.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Flory]. On page 6, line 32, immediately after the letter "A" and before the word "election", insert the following: "except as otherwise provided in this section, all judges shall be elected".

Explanation

Mr. Flory Mr. Chairman and delegates, the other day when Judge Dennis began to explain the judicial article, we got into the election and division of the Supreme Court districts in Section 4. I raised the question at that time, that it did not provide that all the judges shall be elected. Section 9, which deals with the court of appeals, contains basically the same language. Section 14 and 15 relating to district judges make no requirement that all of it's judges in the district be elected. What this amendment does, although it's technical in nature, makes it mandatory that all judges shall be elected except as provided in this section. This section deals with the appointment of judges to fill vacancies. Therefore, it was necessary to include that specific language except as provided in this section. But this makes mandatory that all judges shall be elected.

Questions

Mr. Perez Mr. Flory, I'm in complete agreement with your amendment. But there's only one thing that I'm concerned about. You said "except as provided in this Section". The only question I have, do we have in any other area in the proposed constitution, any reference to the election of judges?

Mr. Flory Not to my knowledge.

Mr. Perez In an abundance of precaution, I don't know whether it would be agreeable if this is in the nature of a technical amendment. Whether you would prefer to say the word "constitution" instead of the word "section" and it might take away any question that there would be with respect to the possibility, there maybe some other provision in the constitution dealing with judges.

Mr. Flory Mr. Perez, my reason for wording it to say that provided in this section, this is the section that provides for the appointment of judges only to fill vacancies of unexpired term or perhaps in a newly created district. Now, I believe that regardless of where else you refer in the constitution to the judges, that they ought to be elected. So that the only exclusion granted by this amendment, are for those appointments made to fill vacancies as spelled out in this section, in B, C, of this particular section.

Mrs. Miller Mr. Flory, now your judges have been elected, at congressional elections, will this keep them being elected at the congressional election time rather than changing them where they have to run with all the other public officials?

Mr. Flory It does not change the sentence that is now in there. I just put this in prior to that sentence. So I did not disturb the sentence, "election of judge shall be at the regular congressional election".

Mrs. Miller Is it your desire to keep judges

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electd, at the regular congressional elections, rather than other times?

Mr. Flory I did not get into that area because my point merely was, to say that all judges shall be elected. We can take care of, later, when they shall be elected.

Mr. O'Neill Mr. Flory, didn't this take care of a problem in the earlier section, concerning district judges also? Remember, we discussed that?

Mr. Flory Yes, Section 4 of the Supreme Court, Section 9 with the court of appeals, Sections 14 and 15 for the district judges.

[Amendment adopted without objection.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Jenkins]. On page 7, line 1, at the end of the line add the following: "Judges shall be elected on a nonpartisan basis although party designations of candidates shall appear on the ballot as provided by law".

Explanation

Mr. Jenkins Mr. Chairman, delegates of the convention, this essentially does what Mr. Fulco's amendment would have done. It really means this. It means that the problem of every voter participating in our election of judges would be solved. It would be nonpartisan in the sense, that every voter would participate in the entire election process of judges, regardless of the party affiliation of those voters. And also, that any person could qualify and run throughout the election process for judge. But at the same time, a party designation of the candidate would appear on the ballot. So, certainly, this is not what I would consider ideal. But, I think it does solve the objections of many people. I think the most important advantage, once again, is the fact that it would allow 89 to be elected on the ballot in this state, who are registered as republicans, independents or third party, to participate in a full process of election of judges. At the same time, it would allow people to retain their party designations. Don't want to try to stimulate a lot of discussion, because I know we have hashed this out. But I urge the adoption of this amendment.

Further Discussion

Mr. De Blieux Mr. Chairman and ladies and gentlemen of the convention, I supported Mr. Jenkins' previous amendment because I thought it was a good one. But if we are going to have nonpartisan election of judges, if that should be the will of the legislature, let's don't state you've got to have the party designation on the voting machine. That's all there is to it. If you're going to make nonpartisan elections, let's have nonpartisan elections. You can find out how a person feels about the philosophy of government by asking him. You can't have to have it put it on the voting machine. Nevertheless, even if they put it on the voting machine, it is not a good indication as to how you feel. I just think this is a useless amendment and we shouldn't clutter up the constitution with something like this. I ask you to reject the amendment.

[Motion for Previous Question rejected: 21-86.]

Further Discussion

Mr. Jack Mr. Chairman, ladies and gentlemen, I want to first say this. This is supposed to be a free country. We are down here to vote these matters and to come up with as good a constitution as we can. I want to thank you for giving me the opportunity to talk. People are afraid of wearing

out their welcome, but let me tell you, people may think of different things and all. I'll answer when I finish. Now, ladies and gentlemen, I wish the same speakers could make known on this time, that they are still against this bill like its come out now. I'm beginning to wonder if we don't have some secret republicans here that are registered democrats. Now this whole thing, belongs in the legislature to go over. We do not have the time to consider it real well. We had a vote a while ago, that should have settled it. Regardless of how it goes, the issue will not be settled, somebody will keep on. Now, here is the reason I wanted to say it. A new idea came to me and I wanted to say it. And here is why, this subject should be left to the legislature. If we vote to have these, so called nonpartisan elections, which are not that, then it's in a permanent constitution almost impossible to take out. If we leave it up to the legislature, where it belongs, they can consider it. If they decide to try it and it doesn't work right, then they can repeal it. They can consider it every year because now, they are going to have sixty-day sessions every year. What we do, is put in a permanent volume, you might say, with only a small, small pocket part, because from now on, the people are not going to be voting constitutional amendments. We should draw a constitution where they should not be burdened with those. Now let's defeat Mr. Woody Jenkins' new amendment and get along, and leave this matter with the legislature. We don't have time for details to see whether you will have future regrets by putting in the constitution things that are purely legislative. Again, I want to thank you all for giving me this opportunity. It's been my policy not to cut off future speakers by moving the previous question about a kind of thing. And again I want to thank you and I hope you will defeat this amendment and leave it up to the legislature, where it belongs. Thank you.

Further Discussion

Mr. Riecke Mr. Chairman and delegates, I speak for the candidate, I understand, of New Orleans in the last election, one of the candidates for the judgeship ran for that office. He did not win in the first democratic primary. He had to run again in the second democratic primary, which he won. Then he had to run against a republican for the third time. This judge, spent over \$150,000 to be elected judge. Now, don't care how honest a man is, or how conscientious he is. If somebody gives him 10,000 or \$15,000 for his election, and I come up there having given him that much money with a civil or criminal case, he is bound to be influenced, whether he realizes it or not. I don't think anybody as a judge should be obligated to anybody for contributions to his campaign. Some small contributions maybe yes, but not when he has to raise \$150,000 to be elected judge. He is obligated, whether we realize it or not. I speak for this amendment. Thank you.

Questions

Mr. Avant Mr. Riecke, would you please explain to me, sir, how this amendment would have anything in the world to do with campaign contributions in judge's election?

Mr. Riecke It would eliminate the necessity for a judge running three times.

Mr. Avant In other words, he wouldn't have to get as many maybe.

Mr. Riecke I didn't hear you.

Mr. Avant Maybe he wouldn't have to get as many, but it would not eliminate him running twice.

Mr. Riecke No.

Mr. Stinson Mr. Riecke, my first question is

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along the same lines. But he would, more than likely, have to get contributions. If he wanted to spend \$150,000 in one race, instead of two or three, he would still be obligated, wouldn't he?

Mr. Riecke It would certainly not cost anything like that. When I ran for the school board in Orleans Parish, I sure didn't have to run three times. I ran under a law that said that we could not run as a candidate in either a democratic or republican, nor could we accept partisan support. We ran as independents, and that's the way the judges ought to run.

Mr. Stinson Mr. Riecke, not going into personalities or the judge. I don't know who he is. But would you feel that would disqualify him from being judge?

Mr. Riecke What would disqualify him?

Mr. Stinson The fact that he spent \$150,000 and most of it was contributions, maybe.

Mr. Riecke No, it wouldn't disqualify him. He has to do it now and he's not disqualified.

Mr. Stinson I mean, from the standpoint of being impartial.

Mr. Riecke Well, I said he has to lean one way or another when he has large contributions coming, especially from one or two people.

Mr. Stinson In other words, then when our governor has to spend maybe two or three million dollars, you feel he is obligated the same way?

Mr. Riecke You're ... right I do.

Further Discussion

Mr. Asseff Mr. Chairman, delegates, since Mr. Riecke said it, I will watch my ... language. I would like to make this comment first. I don't like the criticism of the Chair. It is my opinion, that the Chair always has been fair and in my humble opinion, correct in the statements made. I urge the adoption of the amendment. We cannot eliminate politics from anything, I ought to know it. But I feel that this will reduce it. It is considered good governmental practice to elect judges and school board members on a nonpartisan basis. I don't like the idea of adding parties, but that seems to be the only thing acceptable. I do feel that this will remove the judges, and if we do do it to school board members as in Orleans, will minimize politics to the extent possible. I urge your adoption of the amendment.

Further Discussion

Mr. Willis Mr. Chairman, ladies and gentlemen of the convention, I'm troubled to have so soon again to trespass on your tranquility and your deliberation. The thrust of this amendment, has been here considered and rejected. The entire question was considered and the calm and informed deliberation of the committee on the judiciary because the debate is not and here, not so calm, and is knotted in rather harsh words. Let me recommend to you the security of the committee proposals, which has my fullest approbation. May I recommend the final destruction of this amendment, and flank speed ahead.

[Previous Question ordered.]

Closing

Mr. Jenkins This one final word. This issue, of course, was not considered in this form before because in the previous amendment, party designations would not have been allowed on the ballot. Whereas, under this amendment, they would be. I think the people have demonstrated that they are

ready for some changes in our election law. I think they are tired of going to the polls so many times as they have in the past for three elections, when the outcome is always decided in the first two. A fair way to alter that is this sort of system, at least in regard to judges. Perhaps we could make some other changes with regard to other offices. Those would be in order, I think too. But this is a way to deal with the judiciary. There are several reasons for giving them this special treatment, because there is no reason for partisanship to the extent in this branch of government, as in the others. Once again, I appeal on behalf of the thousands and thousands of people in my district, your district, this state, who would like to participate in the elections. Let's give them that chance in regard to judges. They are denied the right, right now, because the decision is made in the primary. Let's give them a chance. I urge the adoption of this amendment and ask for a record vote.

[Record vote ordered. Amendment rejected: 56-63. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Thistlethwaite]. Page 6, delete line 32 in its entirety and on page 7, delete lines 1 through 20 both inclusive in their entirety and insert in lieu the following: "Section 22. Election of judges shall be as provided by law". We should add I believe a technical amendment to delete the Flory amendments for clarity, Mr. Thistlethwaite.

Explanation

Mr. Thistlethwaite Mr. Chairman, ladies and gentlemen of the convention, if ever this convention has been offered a batch of detailed, nitpicking and statutory material, it's what we have here in this section. Accordingly, I have provided a proposal that we leave it to the legislature to adjust and change election procedures as public sentiment and beliefs change. The close vote on Mr. Jenkins' 1921 act to change this section indicates, that there is a lot of change in the air with respect to elections. I think my proposal will result in a better constitution.

Further Discussion

Mr. Stinson Mr. Chairman, members of the convention, I wish to urge you to defeat this amendment. I have been concerned through the years, under the law prior to a constitutional amendment, that I was one of the coauthors in which passed and the people adopted, prohibiting the governor from creating judicial districts and appointing his favorite to such positions. In the present Constitution of this state as amended, this section, creating judicial district, there has to be an election and the people say so and not the governor. It has been tested in the Supreme Court during a recent administration, when all the past administrations have not accepted any. That is the way they pay off members of the legislature, who wish to be judges, without being elected. It was tested in the Supreme Court by appointments in this parish, and Terrebonne Parish and other parishes. In which the governor, to payoff members of the legislature or favorite friends and such, I'm not going into personalities on those friends because they are good friends of mine. But if you get rid of this limitation and this proposal, and adopt this, at every session of the legislature, the governor can come in and create, I think by a majority vote now, a new district and appoint anyone he wants to. Let's leave it as the committee recommends, and say there will not be a political appointment. Under this, it says if there has to be an appointment, the Supreme Court will make it to a person who cannot succeed himself, cannot run for that office, if we want to have fair, impartial judges, non-political. If you adopt this amendment,

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you are putting them in politics more than they have ever been before. I urge you, let's vote down this amendment and accept the recommendations of the Judicial Committee on this, as they have proposed. Any questions, I'll be happy to answer, if not, please let's vote this down.

Further Discussion

Mr. Arnette I must briefly echo the remarks Ford Stinson made. I think his points are well taken. I think we're going to have trouble if we don't go along with the committee proposal. This is a great step forward. This is a step forward to take some of the power away from the governor that he now has, some power that is unwarranted. I think we ought to have the Supreme Court make these vacancy appointments. I think this is the only way to do it. I think we ought to reject this amendment. Thank you.

Further Discussion

Mr. Hayes Mr. Chairman, ladies and gentlemen, we do have a pretty long article on this and rather do I come before the mike, but this seems to be one of the better amendments I have seen. Election of judges shall be divided by law and we can delete all the rest of this. I definitely go along with this amendment.

Point of Information

Mr. Landrum Mr. Chairman, my question is directed to you. Are we dealing with Sections A and B, or just Section A?

Mr. Henry I believe the amendment would have the effect of just deleting A, B and C, would it, Mr. Clerk?

Mr. Poynter That's correct.

Mr. Henry It's just an amendment that would change the whole section by providing this verbiage.

Further Discussion

Mr. Drew Mr. Chairman, ladies and gentlemen of the convention, being a member of the Judicial Committee, I would like to explain to you why this detail is in here. Mr. Thistlethwaite, does have some argument for brevity. Brevity is good if it protects the rights of the people. The information furnished to the Committee on the Judiciary was, that sixty percent, sixty percent of the judges sitting on the bench today were appointed by the governor initially. And that was what we were trying to remedy by the detail of this section here. We feel like, and we have found, and these statistics prove, that an incumbent whether elected or appointed has a distinct advantage over any other candidate for that office. I sincerely hope you will reject Mr. Thistlethwaite's amendment. It would do away with this entire situation that we have tried to remedy by the detail in these articles. Let me remind you again. As Judge Dickson, when he appeared before our committee, warned us very vividly, that brevity is good but you better remember the briber you make the constitution, the more power you give to the court to interrupt. But in this particular case, you are going back to the same procedure you have been operating under which has not worked satisfactorily when sixty percent of your judges are appointed, and when to the bench by appointment only. I ask that you reject the amendment.

Further Discussion

Mr. A. Landry Mr. Chairman, members of the CC '73, the committee spend approximately five months working this article up. If you read the article very closely and you consider the amendment, it will do away with Paragraph A, Paragraph B and Paragraph C. And I know that many of you, in this audience today, would love to be governor of the

State of Louisiana so that you could have all the judges appointed. Therefore, I urge you to vote against this amendment.

[Previous question ordered. Amendments related: 10-99. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Dennis]. Page 7 at the beginning of line 9, after the partial word "tions" and before the word "the office" delete the words "for judge to" and insert a comma, and insert the following words and punctuation: "other than domicile, for".

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, I'm offering this amendment to, I believe, clarify what was the committee's intention. The committee intended in this provision to allow the Supreme Court to appoint judges and attorneys who do not live in the district to serve out the vacancy, although they cannot succeed themselves. We didn't realize, well let me back up. In this section you will notice, that it says that the person to be appointed must have the same qualifications as a person who will later on hold the office permanently. We had overlooked the fact that part of the qualifications, in the qualification section, is that you be a resident of the parish for two years. So this is simply to make an exception, so that in making the appointment, the Supreme Court must appoint someone who is fully qualified to hold that position, except that he does not have to be a resident of that parish. I believe the committee intended this all along, we just had overlooked this conflict with another section of the article.

[Previous question ordered. Amendment adopted: 106-5. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendments sent up by Delegates Rayburn and De Blieux.

Amendment No. 1. On page 7, line 4, immediately after the word "held", delete the remainder of the line and delete line 5 in its entirety. And at the beginning of line 6, delete the portion of the word from established and insert in lieu thereof the following: "at the next regularly scheduled congressional or statewide election".

Explanation

Mr. Rayburn Mr. Chairman, fellow delegates, this is the same language that we have in the other proposals that has been adopted. And I'm merely attempting here to save the taxpayers some money by not having to call special elections so often. Your present language said that the governor shall call an election within six months after the vacancy occurs, or after a new district has been created. It further says provisions, in the present language, for the Supreme Court to fill those vacancies by any qualified person. And since they have the right to do that, I see no real big hurry and having an election, so quick, particularly within six months. And I can see where you might have to have an election in thirty days before a congressional race or a statewide race. And I'm merely attempting to prohibit so many special elections and try to save the taxpayers some money. And I move the adoption of the amendments.

Further Discussion

Mr. Tate Mr. Chairman and brother delegates, there is considerable, you can't hear me, you don't want to hear me? I think in fairness I should

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lay the demerits of the proposition before you without any strong recommendations, though I personally think the committee proposal is better. Senator Rayburn's amendment has considerable merits. It will save expense. The demerits may be this; you wish to fill a vacancy in a district judge or in a court of appeal or particularly in the Supreme Court or the district court as quickly as possible by a regular permanent judge. By having a special election, you will accomplish that purpose. We do have a small pool of retired judges. I hope in the future, we will have a greater number of retired judges that could be sent in. But there is that possibility, of lack of flexibility in immediately filling the post with a regular judge. Just in brief summary, I want to point. Last year, the Supreme Court had two judges retire right at the end of the year. The governor called a special election for March, but he held the primaries before the vacancies occurred in the summer, cost the state not a dime extra. The general election was called off because they had no opposition, no republican opposition. We were able to get two permanent judges on, right away, as soon as the vacancy occurred, without waiting for two years. And I am perhaps, scared by my experience of serving where everybody said, wait until the permanent judges go on. We're having August hearings this year, we couldn't have them last year because everybody said wait till the permanent judges come on. So I may be scared and it may happen never again, there. But in fairness to the merits of the committee proposal, I have to say why I say it's a little better than Senator of Rayburn's, although his has considerable merit.

Questions

Mrs. Miller Justice Tate...

Mr. Tate The court of appeal works this way right now, right.

Mrs. Miller What worries me, you are going to have sometimes, when your district judgeships, when all your judges come up at congressional elections, you may have sometimes, when a Supreme Court judgeship or a court of appeal judgeship has to be filled at the same congressional election at which the district judge is being elected. Then, you have the situation where a district judge would have to make an election whether to run for his office. Then, you will not be able to have a man with experience run for the job because he could not afford to jeopardize his own position.

Mr. Tate I forgot to mention, that's an additional argument for having a special election, yes.

Mr. Lanier Justice Tate, don't you have a proposal later on in the article that says that "while serving as a judge an attorney cannot practice law"?

Mr. Tate Correct.

Mr. Lanier And, if a man had to not practice law for two years and then had to go back into the practice of law and rebuild his practice after a two year period, wouldn't this be a tremendous hardship?

Mr. Tate That happens to be one reason we wanted a special election within six months. I think you could get some older lawyers like Mr. Lamar Polk of Alexandria who would go for six months and withdraw from the practice. You might have a harder time getting people.

Mr. Willis Justice Tate, isn't it a fact that during the consideration of this proposal in committee, we were hopeful that we would have an election code which would give us elections every six months, so that it would be in chronology and would synchronize with what we expect?

Mr. Tate That's exactly correct. For instance in

Evangeline, we have parishwide tax elections very frequently that are defeated nowadays, but anyway, you could elect your permanent judge right then simultaneously and I would rely, incidentally upon the good judgment of the governing authorities who administer this same provision for forty years, from 1921 to 1966, where you had to elect a district judge within four months after vacancy and right now you're supposed to elect Supreme Court judges within four months after vacancy. I would rely on their good judgment to try to save....

[Previous Question ordered.]

Closing

Mr. Rayburn Mr. Chairman and fellow delegates, I have no personal feeling on this particular amendment. I'm merely trying to prohibit a lot of special elections. I know how people feel about special elections when you have a lot of them. I'm also trying to save the expense of calling a lot of special elections. Certainly, it's immaterial to me as to how these vacancies get filled, but since we're going to have a lot of retired judges at the age of 70, if this proposal passes, I felt like we could save a few elections, maybe, by just letting the judge that was appointed by the Supreme Court serve, or the person rather, serve until the next congressional or statewide election. Certainly, I'm not going to try to ask you to, or persuade you either way, I was merely attempting to put the provisions of filling a judicial vacancy in the same category with other vacancies. Of course, it looks like that when we talk about the judiciary, we're talking about the second coming of Christ.

Questions

Mr. Derbes Senator Rayburn, I think your amendment is a good one. I just would like to make one thing clear if you don't mind. If we go ahead and adopt your amendment, you're not going to come back and tell us that we should vote against Section B as amended because we're not going to be able to find qualified people to fill a long temporary vacancy, are you?

Mr. Rayburn No, I'm not going to tell you how to vote on any of these other judicial sections and my only interest here was just trying to alleviate a lot of special elections and saving the taxpayers of this state a little money. I do not want to do anything that would jeopardize the great Judiciary of our great state.

Mr. Deshotels Do you know that I also support your amendment? And another question that I have for you...if you read further into Subsection B, you realize, of course, don't you that the person appointed by the Supreme Court assuming that he would be appointed for a term of almost two years would serve at the Supreme Court's pleasure, and if for some reason that person could not continue in service for the entire time before the election, the Supreme Court could appoint another person. You realize that, don't you?

Mr. Rayburn Well, I believe that person could decline the appointment even though it was offered to him, but my experience on vacancies...they're standing in line at my house when a vacancy occurs in any office. It looks kind of like a funeral. I don't believe you'd have any trouble getting someone to accept an appointment. If they do have those problems, they don't exist over where I come from.

[Amendment rejected; 47-0. Motion to reconsider tabled.]

Amendments

Mr. Poynter Amendments sent up by Delegates Landrum and Alexander..

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Amendment No. 1, page 7, beginning on line 8, delete the words "Supreme Court" and insert in lieu thereof the word "governor".

Amendment No. 2, page 7, line 9 after the word "office" and before the words "to serve" change the comma to a period and delete the remainder of the line 9, and delete lines 10 and 11 in their entirety.

Explanation

Mr. Landrum Mr. Chairman, fellow delegates, this amendment, and I will tell you exactly my purpose in this amendment.... there are many minority groups who could never be elected to judgeships in this state of ours under the present system. We fear that if they would have a chance to display talent and ability and character for a few months prior to an election then the people would vote for them. That is the purpose of this amendment. Now, I'm not here to talk about dogs and cats and hogs and I'm not a country boy. I certainly wish I knew something about it, I would like to know something about the country but I've never lived in the country. So, I cannot tell you about things like that, and I'm not one to tell you other than what I mean. I like to say a thing the way it is. So, we won't have to beat around about it. We want to bring about a system of government that would involve all people of this state. Everybody that pays taxes in this state should have an opportunity to serve in every capacity of government in the state of Louisiana. Until we are able to bring about this type of change, I think that we're going to always find our state having problems...unnecessary problems, but when we let everybody have a chance, give everybody a chance... I'm certain that we should be strong in this state, because all of us have something to defend, to hold up, in this state of ours.

Further Discussion

Mr. Alexander Mr. Chairman and delegates, Rev. Landrum has mentioned the fact that under the system as contained in the proposal it would be almost impossible for blacks to get appointments and/or elections. Not only blacks, but other minorities. Let me point out to you who are members of the legislature, and I single you out because I think you admit that you're politicians, and to the rest of the delegates who are politicians, whether you know it or not... I don't think there is an individual present who has not at some time or other attempted to contact a legislator and/or the governor whenever there is a judicial vacancy. What chance would you have, Mr. Legislator, if the provision as contained in this proposal were in effect? I say to you that this provision would bring politics into the Supreme Court. You would take it out of the governor's office, and bring it into the Supreme Court, would induce factionalism, within the Supreme Court because it is only natural that each justice would have his particular friend or friends for a position. Suppose a faction from south Louisiana controlled the Supreme Court, what would happen when a vacancy occurs in a north Louisiana judicial district? So you can see the problems posed by this particular thing. I say to you, gentlemen, ladies and gentlemen, that the effect of the proposal as it is now contained in this section would be to bring factionalism, to bring chaos, suspicion and strife into our Supreme Court, would possibly cause justice to suspect justice, would make it harder for them to render just and honest decisions, and this amendment would remedy that situation and leave the politics in the governor's mansion and in the legislature where it belongs. I ask you to support this amendment.

Further Discussion

Mr. Tate Mr. Chairman, sister delegates and brother delegates, I think it was fair that this amendment be brought before this convention because it gives you a clear choice. I am going to vote against

the amendment, but the clear choice you have is do you want the governor, and there may be sound reason for you so wanting, to appoint a temporary judge who may or may not have an advantage in subsequent times or do you want to take the temporary judgeship out of politics and do you want to make a special election for the people to select the permanent judge? Those are the merits and I think this amendment should have been brought. I think that we are indebted to Rev. Landrum for bringing it, because it gives you a clear choice. I don't think that we need much debate on it because I think we can understand the merits and demerits. I may say one thing before I yield to you, Mr. Burns, I am in great sympathy with the point made that some of the fine black judges in New Orleans might not have been elected in other times. It so happens of course, that you have Judge Morial elected to the court of appeal. We have an increasing era of modern....something.... I think we are doing better and I look forward to the day in the future when we'll have quite a bit of Christian fellowship and go over the eras of the past. Now, I'll yield to a question.

Questions

Mr. Burns Judge, you made an opening statement that you were going to vote against the amendment. Is that all because you are a member of the Supreme Court and you don't feel that you should vote on this?

Mr. Tate I'm going to vote against the Landrum amendment. In this instance, I will not recuse myself from voting on this thing because, unless you say I should not, I think we're looking at a way to fill vacancies, but I think you've made a point maybe; I shouldn't.

Mr. Brown Judge, under the committee proposal isn't it correct that the court will appoint someone to fill in, is this correct? Now, what's going to happen, Judge, you're making a big thing out of the governor going to appoint, who's going to happen on the court. Let's assume that a district judge in your home town dies...how's my Supreme Court judge going to help pick somebody? Do you think the court, in unison, is going to select a man or are they going to look down to Judge Tate and say "Judge, now who's your friend down there you want us to appoint?" Don't you think that the court themselves are going to have a little patronage out of the thing and say "now look, who do you want to appoint in your area?" Just as it is now.

Mr. Tate All right, Senator Brown, that is a good question. I want to say first of all, I visualize what usually we would send in the man in that district as a sitting judge as we do now when we fill it. Only I visualize, it would be the emergency situation. Second, I want to point out that patronage is a mixed blessing. When I happened to run the first time, my opponent who is a very fine man, had been a campaign manager and he had passed up a number of times there were about 2,000 people that didn't get jobs...it turned out that I had unexpected friends.

Mr. Brown Well, this amendment will give you a little extra, won't it, judge?

Mr. Tate Oh, wait a minute, wait a minute, Senator Brown, I don't think you know, whoever is appointed is ineligible to run. You know that, under the committee proposal. That's deliberately supposed to usually have a judge come in but in rare instances like in Alexandria, have a lawyer be appointed who has no ambitions for a very short period of time. I've been told that this isn't patronage; it's to give the people a choice; not to give the Supreme Court or the governor a choice; to give the people a choice.

Mr. Stinson Judge, you've covered the important

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one, but there's another feature that hasn't been covered. As proposed by the committee, the person appointed cannot run to succeed himself. Under this amendment, the person appointed will be able to, isn't that correct?

Mr. Tate Yes, sir.

*[Division of the Question requested.
Question ruled divisible.]*

Further Discussion

Mr. Stagg Mr. Chairman and fellow delegates, when I received my copy of the Judiciary Article, and I read it, I thought the finest piece of writing by the Judiciary Committee was the language that they designed on page 7 now under discussion. We have sought in this convention thus far to legitimately reduce those areas of powers in the governor's office which ought to be reduced in order collaterally to strengthen, on the one hand, the legislature, and on the other hand, the judiciary. How many district judges do we have? There are in this state at this time 118 district court judges. There are 25 court of appeal judges and 7 Supreme Court judges; a total of 150 judges. I am informed by one source that over 50% of those judges now sitting go to their seat in the first instance by being appointed by the governor to either fill a vacancy or to sit in a newly created judgeship. When he was at the microphone a little while ago, Mr. Drew estimated that that total of judges who first got there was in excess of 60% of those 150 presently sitting judges. For a governor who may be in office for a total of 8 years can accrue to his support in critical cases quite a large number of district judges who got there because the governor appointed them to the job. Now, I spoke to Mr. Landrum about his amendment yesterday, and I sympathized with his objectives but I told him I thought his amendment would destroy the greatest safeguard that the Judiciary Committee has written into this new constitution that when a vacancy occurs, the temporary appointment will be made by the Supreme Court by, of a person, who could not thereafter run to permanently occupy the job. So, I rise vehemently to oppose a man that once he achieves the seat on the bench and he puts on the black robe and then the time for the election comes for him to run permanently for that job; all of his campaign literature and all of his pictures show him in the robe, and his ads say reelect Judge So and So, although that's not quite correct because he was never elected. But, reelect Judge So and So for Judge; and I think that's an unfair advantage over every other lawyer who might want to seek that post who might be equally qualified but does not have the governor's blessing to get there in the first instance. It is with considerable regret because I realize the objectives sought to be achieved by Rev. Landrum and Rev. Alexander that I hope you will vote it down.

Questions

Mr. Tobias Mr. Stagg, the Chair just ruled that the question was divisible. If, for example, we vote to adopt Amendment No. 1, and then we reject Amendment No. 2, is it not your understanding that it would mean that the governor would have the power.... in other words I'm looking at the phrase "to serve at its pleasure".... in other words it would have to be "his pleasure".... in other words, if that judge did not reach a right decision then the governor could kick him off the bench?

Mr. Stagg That's exactly right, because he would serve at the pleasure of the governor.

Mr. Tobias So, in other words, you would advocate that you vote consistently on these two amendments?

Mr. Stagg Correct. If the amendment is divisible as the Chair has ruled, then I would urge you to

vote no on both halves of the amendment.

Mr. Drew Mr. Stagg, if this amendment is adopted in toto, are you not in effect with the figures that we have of fifty to sixty percent of the judges on the bench today having originally been appointed, be endorsing a half or fifty or sixty percent Missouri Plan for our judiciary?

Mr. Stagg Yes, sir.

Mr. Jackson Mr. Stagg, in the Judiciary, some comments have been made about the fact that we under the committee proposal a person could be appointed but he could not run. Is that true of other elective offices, that if someone is appointed, let's say to fill a vacancy in a particular parish, that he is not eligible to run for that position? Or is that only an exception in the judiciary?

Mr. Stagg Representative Jackson, you've asked the perfect question and I'm delighted to be able to answer it. In the Local and Parochial Article you will find that there are suggestions to this convention that vacancies in the office of sheriff and in clerks of court and other places where the governor has had the patronage power to make those replacements on a temporary basis will be suggested to this convention that that be removed and such vacancies be filled by the local governing authority, either the city council or the parish police jury. In the other hand, further diminishing the power of the governor to make such patronage appointments, and I will vote for those sections when they come up for the same reason. I am being entirely consistent.

Further Discussion

Mr. A. Landru Delegates to this convention this is a move towards the Missouri Plan. I can see why people with the federal government flew from Washington to come testify before our committee. We believe that we've come up with a plan to make people responsive to people. They want to elect their officials. They do not want the Missouri Plan. I don't know where they got that, the so-called Missouri Plan in the state of Missouri has only been accepted by two counties out of 105. So, if it's so good, why haven't the 103 counties accepted the Missouri Plan. Later on I'm going to read you an article that I'm sure is coming up from the state of Iowa that just went in with the Missouri Plan and how they so regret it as of this day. I personally conducted a poll in my parish and 98% of the people want elections and let's preserve elections, ladies and gentlemen, by voting down this amendment.

Further Discussion

Mr. Smith Mr. Chairman and fellow delegates, I think this is a bad amendment, for the reason that I was a victim of it. In 1948 I sought the appointment for judge. I didn't get it. The other man got it. I ran, and, of course, the incumbent, naturally they get a little leg there and, of course, I was defeated. He's a good friend of mine and he made a good judge, but I believe that I would have gotten elected if I had gotten the appointment. So, I feel like you want a man to get a little ahead of the other, and I felt like I was equally as.... and I would have been there right now if I had gotten elected.... of course, I'd be in retirement and I wouldn't be down here. So, that would have been bad. But, I don't feel like this is a good amendment. If I had gotten the defeated, I think everybody should run on his own merit. I believe then that if I had.... I would have been elected... had an equal chance... but you don't have one. So, having been in this predicament I can tell you a little about it. You've got to be there to know something about it. So, I feel at this time we've heard enough debate. I believe that we're ready for the question. So,

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I now move the previous question.

[Motion for Previous Question rejected: 42-72.]

Further Discussion

Mr. [J.] Jackson Mr. Chairman, fellow delegate. I wish you would give me your attention for just a few minutes. We've heard arguments against this amendment and people have injected the issue of the Missouri Plan. Let me suggest to you that this does not take away the right of the people at election to determine their judge. This provides for temporary short term vacancies at the termination of which the people will then decide who they are going to elect. I don't think that argument holds much merit. The other objection is the fact that, you know the patronage system, that exist within the state. I want to suggest to you that since 1921 and since the state has come about, that you're going to find patronage in all aspects of life. I want to suggest to you that even in the Local and Parochial Article that there is room for patronage to prevail. Someone raised the question, and I thought it's something we ought to consider the fact of, since it's short term and we prohibit a person from running, what will be the quality of persons aspiring for that position? It will probably be someone who's and I heard the term used, "lame duck". The other point that was raised, and I think Rev. Landrum raised, is the question of the political powers of minorities. I want to suggest to you that it's a matter of fact that we have been able to elect a black to the court of appeal in the city of New Orleans where you've got a ratio of black voters to white voters which is very close. I want to suggest that this amendment only puts us back to where the constitution presently has it. I think that when we talk about reform we've got to look at the future and see what those reforms are going to mean to all the citizens of the state of Louisiana. I want to finally conclude in my remarks that I think as this amendment has been proposed to the convention the only objection that I have been basically able to weigh some merits in, is the objection of whether the Supreme Court or the governor will appoint. It seems to me that it was brought out very ably when Justice Tate was up here and I guess that we have seen in this convention that whether you are in the legislative branch of government or whether you're in the executive branch of government or whether you're in the judicial branch of government, you are very political. Now, I want to suggest to you that those who are afraid of the governor building a base for re-election in the future by appointing certain numbers of judges throughout the state, I want to suggest to you that that applies also to the Supreme Court and I want to suggest to you that any appointment that a governor makes on a patronage system has to involve most often the senators, the representatives and the judges from that particular locality. So, I don't see, very seriously, the merits against, that were being voiced against the patronage system. I would suggest to you that we ought to look in the amendment in the light of what it actually says. It just says in effect that the governor shall appoint and that anyone who appoints should not be disadvantaged. I think it's a double-edged sword. You're saying if I'm appointed to a judgeship that I should not have the right to seek re-election. I don't think that holds merit. I don't think it provides the kind of reforms that we're talking about. If the voters are going to vote and we believe that the will of the people will prevail, then I suggest to you that it's the only advantage that appointment has is very minute and if you've a good candidate and you have qualifications then the people will elect you. This does not do away with the election processes being fostered. I would ask that you give some serious consideration to this amendment and that you move and you vote for its favorable adoption.

Questions

Mr. Smith Mr. Jackson, have you ever heard of an incumbent judge being defeated?

Mr. [J.] Jackson In the judiciary let me suggest to you...that in the judiciary I have never heard of any judge who sought re-election being defeated, and I'm not suggesting that it was a matter of patronage. It was just the matter that that judge had the kind of qualifications that the voters wanted to vote for.

Mr. Smith Well, don't you think that if he's appointed, he's got a lot better chance of getting elected than if he was not appointed?

Mr. [J.] Jackson I would admit to some degree that that's true, sir, but I want to suggest to you that that is also true of every position that runs for office. It I'm appointed to let's say a sheriff, I've known of sheriffs being appointed and have been not re-elected. I've heard of clerks being appointed and not being re-elected. I'm just saying that as we've now that there seems to be some sanctity about the judiciary and that to me prevails more than whether a person is an incumbent.

Further Discussion

Mr. Segura Mr. Chairman, fellow delegates, this amendment is brought to you in two parts. Amendment No. 1 and Amendment No. 2. I'd like to ask you to consider them separately, because in the first part and I have prepared and it's being passed out, an amendment of my own which I had done prior to this which only covers the part of Amendment No. 1. If you would consider them separately and don't weigh the merits of both of them and let them stand then I think you would save yourself the trouble of having to vote and debate another amendment again because then I would withdraw it. Because...my purpose is, in the first part where the governor appoints rather than the Supreme Court...I just don't think judges should appoint judges, I think that it should be somebody separate from the judicial system that should appoint, whether it be the governor or anybody else. I think that the governor probably is the most qualified. As Senator Brown said a while ago, how can his Supreme Court Justice know who's best qualified in my district? He doesn't know the people. The governor runs all over the state. He knows the people in all parts of the state. I do not think that a governor makes himself more powerful by making an appointment because for every appointment he makes there are ten or maybe more that want that same appointment, that he makes enemies with or loses friendship. So, I think that it would be fairer and would be better for the people if the governor would appoint. Now, on the second amendment that is proposed here, I wish that you would vote your own conscience about this. This is debatable. This is..... and I have no feelings one way or the other. I'm not trying to influence you on the second part. I'm just trying to ask you to consider the first part of this amendment and let's decide it one time where we don't have to vote it twice. Thank you.

Questions

Mr. [A.] Landry Mr. Perry, do you remember in the legislative branch, did we, when a vacancy occurs in the legislature, did we give that power to the governor to appoint or did we call for an election?

Mr. Segura I think we called for an election there, but I think that's a little bit different. In the legislature, you have, I don't know the exact number of senators and the exact number of representatives, but you have enough to where the job can go on until you have time to call an election. It seems here that there is a need for an appointment immediately or the committee would not

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have put this in their proposal. If there is no need for an immediate appointment well then it should wait for the election.

Mr. Nunez Mr. Segura, it seems like we've had prohibitions against, in this state and federally, that there's three branches of government, don't you agree, and I've heard some comments up there, I don't think you've made them, but just to get a question over, that putting governors, appointing sheriffs and assessors and legislators... by the way, the government is prohibited from appointing legislators for the very simple reason that there is a prohibition against it, and the three branches of government, don't you agree, if they should remain distinct and separate, that he should not be allowed to appoint members of the judiciary, and that is very simply put that those three branches should be distinct and separate.

Mr. Segura Well, why should... can I ask you a question....why should judges appoint judges?

Mr. Nunez Mr. Chairman, he wants me to answer a question but....I'll answer it....because of separation of powers.

Further Discussion

Mr. Kelly Mr. Chairman, ladies and gentlemen of the convention, there are two distinct issues involved in this particular amendment and quite frankly I don't even care to discuss the first one. I was on the Judiciary Committee and I wouldn't argue one way or the other because quite frankly it makes me no difference, whether or not the appointment comes from the governor's office or whether it comes from the Supreme Court. I wouldn't try and influence anyone's vote on that particular issue. The basic issue involved in this amendment is the second part of the amendment which has to do with the inability of the appointee to go ahead and qualify for the prominent term of the office and therefore make himself a candidate for it. This is the basic concept that I think most of us on the Judiciary Committee are interested in retaining. The issue is just not who makes the appointment. This main issue is to make sure that everyone gets a fair shake at the polls. Now, let me tell you this, something has been said about merit selection. Well, you can believe me; this is the first step toward merit selection. If I'm not mistaken, there're some amendments coming afterwards that eventually are going to try and go to a Missouri-type plan, and I foresee this as one step forward at this particular time. This is nothing more, anytime you've got an appointment and can give one man an edge over another one, that is not basically fair. There's another issue involved, and that is if you can get the appointment, I don't care who you are in a judgeship, then you have really got a big advantage in that particular case. Anytime you've got appointments, what you're doing, is you're substituting the will of the public for that of the will of possibly one or maybe a few. This is something that we have been arguing...this is a carry-over for three or four weeks now. It all gets back to the basic premise. Do you want pure elected public officials? If you do then vote against the second amendment. Thank you.

Questions

Mr. [J.] Jackson Don, I just made a call to really try to answer you. You mentioned that you give a big advantage to incumbents particular in the judgeship race. I'd like to point out that I do have that information to suggest that I know of three cases where incumbent judges were defeated who were incumbent judges. I would like to point out; did you know that in cases where there has been some reference to blacks being appointed to judge...winning elections to judgeships in the city of New Orleans, did you know that they were appointed?

Mr. Kelly I'm not familiar with the situation in Orleans Parish.

Mr. [J.] Jackson Well, directly on one point that you made, Don, isn't it a fact that the public at large throughout the state elects the governor and leaves it to his discretion to fill executive offices, so, in effect, when he makes an appointment, he's making an appointment as an elected representative of the people of the state of Louisiana. So, that... there's always, whether you use the appointment method that there is some injection of the people deciding, you know, deciding to the electoral process about a particular candidate. Because we elect the governor, right?

Mr. Kelly I agree with that, Johnny, and as I said in further answer though, I have no objection. It makes me no difference who makes this initial appointment. But the governor of the state of Louisiana or the Supreme Court of the state of Louisiana was elected to perform a specific duty and perform certain functions and responsibilities of that office, but I do not believe that it is the intention of the people for him or the Supreme Court, whoever it might be making this appointment, to substitute the wisdom of the people back home through this particular elected official.

Mr. Arnette This is a quick one. Maybe you can clarify this for me, since you were on the committee. If we adopt the first amendment and reject the second amendment, then we have got a judge serving at the pleasure of the governor?

Mr. Kelly That's correct.

Mr. Arnette So we could have a justice on a Supreme Court who could be removed at the pleasure of a governor?

Mr. Kelly No, wait. Rephrase your question.

Mr. Arnette If we adopt amendment one, and reject amendment two, then we would have the governor making appointments who would serve at his pleasure, is that correct?

Mr. Kelly Well, whoever makes the appointment, let's assume it's the governor, under the first amendment, and if the section stays intact, then this appointee is only going to serve for the period of that interim appointment, until the election is held. Whoever this appointee is, is going to be ineligible to run for that particular office.

Mr. Arnette Right, but what the point is though, you would have someone serving at the pleasure of the governor, is that not correct, if we adopt amendment one?

Mr. Kelly That's correct.

Further Discussion

Mr. Hayes Mr. Chairman, ladies and gentlemen of the convention, I don't know if amendment one was so much a problem with me as to who appoints who. Now, the problem is, the only way that you could solve this problem I guess would be to rotate the judges from bench to bench, not to give one an edge over the other. But one thing bothers me an awful lot, to deny a man his rights. I'm not a lawyer. I haven't had the first course in law, but I can't see how after appointing a man to a post to serve a term for a month or two that you're going to deny him all these rights that you say he's supposed to have. You say he's supposed to have all the qualifications of a judge and I imagine that's to pass the Bar and have served four or five years someplace or another and then let him serve for about two months in somebody's place and then say he cannot run for election. I think that's taking away a fundamental right. Now, as to who appoints the judge, I couldn't care less.

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Whoever appoints him, he's going to have the same advantage, so why worry about whether that's the governor or the police jury or whoever you want to appoint him. He's still going to be called judge. He'll still have the same advantage when he gets through. He's going to have the same advantage. Now, I'm not concerned about that part of the amendment, number one. I am concerned about number two, once he gets the appointment, don't deny him his rights he had before he went there. Now, it's just like a piece of property. When they deed it to you, you want all the rights that go along with it. We've had people who are appointed to this convention that have the same rights as people who are elected. When you're appointed, you have all these rights. We don't want to deny any of these rights. I'm concerned about the second part of this...it's divisible and I'm concerned about the second part of it.

Question

Mr. Stinson Delegate Hayes, you realize when the man accepts the appointment he knows at that time that he cannot be a candidate and he is not forced to accept it. The only reason that he would be taking it would be possibly because he intended to run and thought it would advantage him.

Mr. Hayes Mr. Stinson, I don't think you should constitutionalize all a rights appointment, don't he is going to be rendering a service.

Further Discussion

Mr. Kilbourne Mr. Chairman, fellow delegates, This matter has gotten bogged down in a whole lot of things that are irrelevant to the issues. This is a very simple thing that our committee has brought out and it's just to take care of a vacancy or newly created judgeship by appointment only where there is six months before an election. In other words, there just could not be an appointment for longer than six months. If there is more than six months in the term the governor has got to call an election for that period. We just simply to make sure that the people who...for instance, you have districts like the one I'm in, where there's only one judge and we've had vacancies where the judge died and under the committee's proposal if it was more than six months left in his term, which there was in that, in that particular term, he would have to call an election and elect a judge. But, if there was less than six months before the election...left in the term then there can be a judge appointed and he would't serve but six months. I just can't see why we've gotten bogged down on this thing. I think it's a very simple thing. I hope we can go ahead and vote this amendment down and do not call the committee because it's just not really all that important if we've tried to take care...the committee tried to take care of being sure that the people would not have a judge appointed for longer than six months by anybody and we thought that the circumstances were such and we gave this a lot of consideration and heard a lot of testimony on it. We just thought that it would be less controversial if the Supreme Court appointed it and to make it to where this appointee would not be eligible to run. That really gives everybody a fair shake. He wouldn't even have to be qualified. They could appoint somebody that's not domiciled...that wouldn't be qualified...couldn't run if he wanted to. As it's been pointed out by the gentleman, if he would know that when he accepted the appointment. Actually, ladies and gentlemen, what happens in these cases, and it's happened in the case that I mentioned from my own district, until we had an election the Supreme Court assigned judges sitting in adjoining districts to help out in that district where there was no judge and that's what they would do in nine cases out of ten; I doubt that this thing would ever come up but the way the committee proposal is drafted, it certainly wouldn't be of any particular importance to anybody who got that, maybe three or four or five months interim appointment.

It would just be somebody there to take care of the everyday business that you have in courts and to meet people's needs and that's all it was for.

Further Discussion

Mr. Burson Fellow delegates, just a few brief remarks to make a couple of points that I don't think other speakers have made. First of all, the idea of the speaker having appointed somebody to fill a vacancy is not a radical departure from present practice, because if a judge is ill now or otherwise incapacitated and unable to carry on the functions of his court, the Supreme Court will assign a judge to fill his position. This is true for the court of appeal as well as for district courts. In the second place it seems to me as a basic proposition that the Supreme Court is more likely to be aware of the professional qualifications of a lawyer as they might relate to his ability to perform the function a judge has to perform more so than the governor, who let's face it, would primarily make that decision on a political basis. Now, the final point that I wanted to make is you ought to realize how this thing has worked in practice in the past, and I know of a few specific examples. When a judge is nearing the end of his term, of retirement, getting ready to retire the political forces in the parish begin to coalesce. The sitting judge is brought into the play and the people begin to make trips to Baton Rouge and delegations come to see the governor to get the appointment lined up. The appointment is lined up and the man gets appointed and if you don't think that he's got a significant advantage in that succeeding election, then I submit to you, you need to participate in a few more local elections. There is no question in my mind that he has got a tremendous advantage as he built down to the fact that if you really believe in electing district court judges as I do, that you will support the committee proposal as it is. I think it makes sense.

[Juuron Call: 112 delegates present and a quorum. Previous Question ordered.]

Closing

Mr. Landrum Mr. Chairman, if I may, so many of us want a little piece of this pie and we believe in sharing it. So, I will only take about one minute and Mr. Alphonse Jackson will take a minute or two and Rev. Alexander will take the remainder. First of all, I want to say to Judge Tate, I want you to vote regardless of what your opinion is, I want you to vote. Now, I disagree very much with you. When you talk about the percentage of how many judges appointed by the governor over how many years and how many of those were of the minority race, that's not what we're concerned about. You mentioned also about the six month period. That six months period is to give to the public a chance to see the character, the ability of these men or women, whatever the case may be. Let us into the mainstream. That's what you said you want us to do. Get into the mainstream of this and that's what we're trying. Don't close the door on us.

Mr. A. Jackson Mr. Chairman, ladies and gentlemen, you've heard the argument that we have a good Judiciary and I agree with it wholeheartedly. You've heard someone suggest that across the years we have had more than sixty percent of the Judiciary appointed by governors of this state. They didn't make this point that they were appointed by governors of this state, no one governor has ever appointed a large number of men to the bench of this state. This has accrued across the years. I think the central question here is not whether or not the governor is going to appoint someone to the Judiciary. The central question is not whether the Supreme Court is going to appoint one. But the central question is whether or not the constitution of this great state of ours is going to

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afford full opportunity to all of the people of this state. That's the central question, whether or not we want to extend the ability to all of the people of this state to participate in all levels of government. Somebody suggests that you give an edge to the incumbent when he is appointed. Certainly you do and this is why we support this amendment because we know. I don't make any bones about it and I don't come here and suggest to you that we have not made progress, but I stand here and say to you that we still have incumbrances of the past that preclude us to look at a man in terms of his work and in terms of his character. We still judge people by the color of their father rather than by the content of their character. This is why we want individuals to be appointed, so he can have that edge. Certainly we want him to have the edge. Now somebody suggested that Judge Morial was elected by the people. Yes, he was elected. He was elected after first being appointed and having the opportunity to demonstrate to people all over this state and all over the city of New Orleans and all over that judiciary district that he had competency and that people ought to look past the fact that he had a few more pigments in his skin and the texture of his hair might be different and he might not have the same symmetry in terms of facial contour that somebody has. That's why he was elected. So I ask you to consider the central question of whether or not you want to include everybody in the decision-making process of this state at this level and vote for this amendment because it will show the people of this state that we are ready to include, that we are ready to extend freedom, that we are ready to put aside and behind us all of the shackles of yesteryears and move forward and make Louisiana a shining star in the great new South.

Mr. Alexander Mr. Chairman, I think I have one minute. Ladies and gentlemen, number one, the Amendment No. 2 as has been pointed out to me makes a very little difference, because the courts are not going to uphold the inclusion of an individual whether he was appointed by the Supreme Court or the governor from running from any election. So I'm not worried about that. But I say to you without equivocation, someone has pointed out that there are some 150 district judges and you can add another 100 municipal judges in this state and out of all those judges, some 250 or more, only four are black. Now that is the fundamental question. We're going to have to face that question sooner or later. We're going to have to fight over that question. We're going to have to vote on it and we may as well face it right now, ladies and gentlemen. No matter how you vote, that is the basic issue. So I call on you and I ask you to vote that has been set aside for that purpose, to exercise your free rights so that we can, within the framework of this democratic system carry on. Please vote for the amendment. Thank you.

[Record vote ordered. Division of the question ordered. Amendment No. 1 reread and rejected: 38-75. Motion to reconsider tabled. Record vote ordered on Amendment No. 2. Amendment No. 2 reread and rejected: 24-94. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Drew and Mr. Gravel]. On page 7, line 11, at the end of the line delete the period (".") and add the following: at the election to fill the vacancy or the newly created judicial office."

Explanation

Mr. Drew Mr. Chairman, ladies and gentlemen of the convention, this amendment is merely to clarify the intent of the committee. As the proposal is now written, it could possibly be interpreted that if a lawyer accepted an interim appointment, that

he would be deprived of running for that judgeship for life. This means that he could not run in the succeeding election, the election to fill the vacancy or to fill the new judgeship but it would not bar him, in subsequent elections, for running for that judgeship. I think it's necessary to not deprive an appointee of his rights for life. I ask your adoption of the amendment.

Questions

Mr. Silverberg Mr. Drew, I'm in favor of your amendment. I want a clarification of the amendment. In the event that an appointee should resign, we'll say three weeks before the election, is it clear in your mind that this man would not be a candidate for this vacancy?

Mr. Drew That is a hiatus, Mr. Silverberg. It possibly needs some clarification.

Mr. Silverberg Are we going to prepare for that?

Mr. Drew I wouldn't think that he was but I don't know that it says that.

Mr. Gravel Mr. Drew, the appointee, isn't it your understanding, Mr. Drew, that if the appointee would be barred from running in the succeeding election? Whether he resigned or not would make no difference. The appointee, under the language, would be barred from running at the election to fill the vacancy.

Mr. Drew That is certainly the intention, Mr. Gravel, of the . . .

Mr. Gravel Well isn't it really the clear letter of the provision with the amendment that you proposed? I just don't think. . . Don't you agree that Mr. Silverberg's fears are not justified?

Mr. Drew With the intent of the committee and as it is written I think that any court would interpret it as you have, Mr. Gravel.

[Previous question ordered. Amendment adopted: 109-2. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mrs. Miller, et al.]. On page 7, line 11, immediately after the portion of the word "ship" add the following: . . . I think, Mrs. Miller, we'd need to amend that considering that last amendment added language after that portion of a word to say on page 7, line 11, immediately after the language added by convention Floor Amendment No. 1, proposed by Delegate Drew and just adopted, add the following sentence: "For service as an appointed judge, the person appointed to fill the vacancy, other than a retired judge, shall not be eligible for retirement benefits provided for the elected judiciary."

Explanation

Mrs. Miller This is in the nature of closing off what could be a possible loophole in the law which would make the judges' retirement fund, wherever it might be, less exposed, to be drained by someone who becomes appointed for just a short time and becomes (1), ill in office, where he might be eligible for medical retirements that are accorded to judges or (2), where he might die in office while he is appointed, and then his widow be entitled to benefits. It just might be possible that this could happen. We've come close to it happening before, and so this is just to close those possibilities so that in the right political climate, attorney general couldn't give a quick ruling which would authorize the treasurer to pay these warrants. So I think that this is sort of a necessary bill to protect the retirement funds. I'll yield to questions.

Questions

Mr. Dennerly Mrs. Miller, I understand your amendment and I agree with it, but don't you think you should also provide that in the event there is a contributory pension system, that the judge would not have the contribution removed from his salary?

Mrs. Miller I think your point is well taken, Mr. Dennerly, and I believe this could be provided by a later amendment in another part of the retirement system.

Mr. Bergeron Mrs. Miller, wouldn't this amendment, also, take care of a situation whereas if an appointee held office maybe for two or three months and at some later date decided to run for that judgeship, that two or three-month period would not go towards his retirement benefits?

Mrs. Miller That's correct.

Mr. Lanier Mrs. Miller, so that the record in this matter will be clear, this amendment is intended to apply only during the period of time for which the person is appointed. If he is thereafter, at some later time elected, he would then be eligible to be in the retirement system.

Mrs. Miller That is right. It is worded so it would be for that particular vacancy for the period for which he is appointed.

Mr. Reeves Mrs. Miller, could this not be taken . . . if the judges' retirement is taken out of the constitution, could this not be provided for in the Legislative act that will provide for the judges' retirement? Could this same . . .

Mrs. Miller It possibly could, but I think this is the place for it to go because it's a matter that a person accepting an appointment knows that he goes in with these conditions and there is no misunderstanding about the situation later. As I say, we don't know where the retirement will be, but I think this is properly put at this particular point. I ask that you support the amendment. I do believe it will be beneficial to the judicial system.

Ms. Zervigon Delegate Miller, I'm just looking for information. Is it true that under the present retirement systems a judge would be eligible for medical benefits the day he is sworn in? Is that your concern?

Mrs. Miller It's open to this interpretation. It's a possible exposure, it's not been tested, but it's possible that it could happen.

Further Discussion

Mr. Wall Mr. Chairman, fellow delegates, this is a good example to show you that the retirement system should be statutory and not in the constitution. Now really, if a person serves in a public position, he should be entitled to retirement benefits of that retirement system. I mean let's just be honest about it. If a person serves in a public position and that system has a retirement system and he does the job that's required, and if he's not the kind of man that's entitled to this retirement benefit, he shouldn't be in that position to begin with. Yes, suppose there is some judge that gets defeated and he locks up for three, or four, or five months of reaching a certain point in his retirement, really and truly, if he's been a good judge just because he didn't have those two, or three, or four, or five months and if he's appointed and serves, I think he's entitled to it. I just can't see . . . this is just something to get in here that if it's going to be in the retirement system, it should be in the retirement system whether it's in the constitution or whether it's in statute. So this is not the place for it as it deals with retirement, whether

the judges have their retirement in the constitution or in statute. So I'm going to ask you to vote against this on the basis first, if it's going to have to do with retirement whether it's constitutional or statute, it should be in the retirement section. Next, if a person serves in an office and if he's the kind of person that should be in that office, he should be entitled to all the benefits that that office provides. So I'm going to ask you to vote against this amendment at this time.

Questions

Mrs. Warren Mr. Wall, I'll hope you'll smile. Just like you're doing.

I'm wondering why you didn't think about this when it came up in the constitutional delegates, which we are known as state elected officials, that we would get some type of retirement benefits for this one year that we are serving?

Mr. Wall Mrs. Warren, that's a very good question and you know what, at the time the Executive Committee passed it, I was one of the cosponsors of it. But this is just what I'm trying to show you. If sometime that that needs to be corrected, it can be corrected in all the retirement systems to provide by that, by statute, if it's not in the constitution. But if you put retirement systems in the constitution, it cannot be provided for.

Mrs. Warren One more question. The Legislature called for this constitutional convention and why you didn't think about it then?

Mr. Wall Mrs. Warren, you know you are absolutely correct. I was a member of the Legislature at the time, but I was in a hospital in West Monroe confined to intensive care, so it was impossible for me to take care of a lot of things that I would like to have taken care of. Thank you.

[Previous Question ordered. Record vote ordered. Amendment adopted: 59-58. Motion to reconsider failed. 51-54. Convention stood at ease for ten minutes. Jubilation call: "4 delegates present and unanimous. Motion to pass over Parvaneh is adopted without objection.]

Amendment

Mr. Poynter Amendment No. 1. On page 7, between lines 20 and 21 insert the following: (This amendment is offered by Delegates Conroy, Casey, Soniat, Sutherland, Kean and Leigh)

"(D). The legislature may provide for a system of merit selection of judges in lieu of election. Such system must provide that the original selection of each judge shall thereafter be by appointment from at least three nominees selected by a non-partisan commission, that such selection shall be submitted for approval or rejection by the electors at the next regular congressional election following such selection, and that the continued tenure of each judge previously elected or thereafter so selected and approved shall be submitted to the electors prior to the expiration of the period of time prescribed as the term for such judgeship. No such system shall be effective for the selection of judges in a Supreme Court, district court, court of appeal district, or judicial district unless first submitted to the electors of such district and approved by a majority of electors voting upon such issue, nor shall any such system operate to reduce the term of any incumbent judge."

Explanation

Mr. Conroy This amendment permits a system of merit selection of judges. It does not require it, it permits it. It permits the establishment of a system of merit selection of judges in lieu

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of election. The amendment is drawn in very general terms to permit the legislature to establish this system subject to local option. That is, in order for this system to be effective any place in the state, the legislature would have to first adopt the system spelling out all of the details. Second, the voters in any given district would have to elect to adopt the system to apply to the judges to be elected from that particular area. In addition, the system itself would have to include certain safeguards. Appointment would have to be from at least three nominees selected by a non-partisan commission. Secondly, the original selection of a judge would have to be submitted to the voters for approval at the outset, and thereafter his continued tenure would be submitted to the voters at the end of each term as established for that particular judgeship. I am fully cognizant of the position that this convention has repeatedly taken in favoring elections of public officials, and more frequent elections, at that. In fact, I myself have voted in favor of reducing the terms of Supreme Court justices, of reducing the terms of court of appeal judges, of reducing the terms of the Orleans Parish Judges. If judges are to be elected, I agree that they should not feel that election every six years or ten years is too often. I certainly agree that New Orleans is and should be a part of the rest of the state of Louisiana. So, ladies and gentlemen, as has been stated before, all candidates for New Orleans a part of the state of Louisiana does not make it the same as the rest of the state of Louisiana. It is different. It has some different problems, as do all of the municipal, the large municipalities in this state are beginning to have problems in this area of selection of judges. I have no question in my mind that this convention has on electing judges now today. But we are writing a constitution for today and the future. In certain areas, as I said before, we are beginning to have serious problems with our present method of selection of judges. Election of judges in the New Orleans metropolitan area is certainly being an increasingly undemocratic process. A candidate for district court must run parishwide in New Orleans. A candidate for district court in Jefferson Parish also must run parishwide. In each case we are talking about running before a constituency of several hundred thousand people. The expenses involved in simply making mailings to that many people is staggering, as are all of the expenses in connection with a large campaign for judgeship. You've heard the figure mentioned earlier today of over a hundred thousand dollars having to be spent in a judicial election. Sums up to that amount of money, sums over twenty-five, sixty thousand, eighty thousand dollars I've heard mentioned as sums that are spent in a race for a single district post, for a trial judge post. With this procedure to reduce the possible candidates for a judgeship to those either very wealthy or the political pals of those who are in power. The judge, in campaigning, can't promise things or can't offer anything other than himself to the constituency. He can't promise to reform government. He can't promise to build highways. He can't promise to pay higher salaries to school teachers or any other campaign promises. All he can do is say he is going to be a good judge. It is a difficult problem to do that and to sell yourself to a constituency without a lot of money. The Louisiana State Bar Association took a poll recently throughout the state and in the New Orleans area the vote was overwhelmingly in favor of a merit selection system of judges. Seven hundred and fifty-nine to three hundred and eighty-two voted for merit selection of trial judges. Eight hundred and fourteen to three hundred and sixteen voted for merit selection of appellate judges. I have become conscious in this convention of the strong personal identification of people outside the New Orleans area with their government. This is good, I admire it. I envy it. It is the true democratic spirit. But where you have a large metropolitan area such as

we have, this identification becomes much less real. I ask all of you delegates to try to recognize the situation which we do have in a large metropolitan area and recognize that election of judges in such areas is becoming an increasing problem. Now I don't ask that we change the system now. Again, I don't propose a change now, I simply ask that you provide in this constitution a means by which those people who need and want an alternative method of selecting judges, in the future, may do so. I'll yield to any questions.

Questions

Mr. Abraham David, one question. This provides for local elections to go to such a system. It does not provide, however, for, and I assume that you would want it this way, that if they went this way and they wanted to go back to elections, I would assume they would be able to do it by local options, also.

Mr. Conroy That would be a part of the system, a detail to be spelled out in the system as to how they would go off of it. Right.

Mr. Abraham All right. I just wondered if it was necessary to provide here that they would be able to go back to it.

Mr. Conroy No, that would be a part of the system. Right.

Mr. Weiss Delegate Conroy, in the metropolitan, locally metropolitan areas that you are confined to, this may be the answer, but what about the outlying areas and defining for me the nature of this non-partisan commission. Where would it come from to decide where our district judges would be appointed and how and the merits?

Mr. Conroy This would be the type of detail that would be spelled out in the system. You could have several different commissions throughout the state. You could have one system, if you chose. Spelling out the details of how you would set up such non-partisan commissions can take pages, one of the reasons why I didn't feel it appropriate to get into it in this constitution. But you can provide for different commissions.

Mr. Weiss This is largely statutory, then, you think, rather than constitutional?

Mr. Conroy Right. Because we have provided for election of judges in the constitution, if you're going to have an alternative method of electing judges, you at least have to authorize it in the constitution. That's all this is intended to do, is to create the authorization for such a system with certain safeguards to make sure that it's a system which will require voter approval.

Mr. Weiss Do the other articles in this section prevent authorization of this type operation by the legislature?

Mr. Conroy Yes. Yes, because we have constitutional requirement now, today adopted that all judges would be elected. So the legislature could not permit a system other than election without this authorization in the constitution.

Mr. Munson Mr. Conroy, would you say that this is what is known as the Missouri Plan where people would get appointed rather than elected?

Mr. Conroy I think that the term 'Missouri Plan' is used to describe, by a number of people, to describe the entire concept of merit selection. It's different. There are no two merit selection systems that are the same and this one wouldn't contemplate being exactly the same as any other one.

Mr. Munson It would be appointing judges rather than electing judges?

Mr. Conroy It provides for an appointed judge to

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be submitted to the voters for approval. It is not strictly just appointed judges. That's a different system, too, because that, such as in the federal system, you have strictly appointed judges who are never submitted to the electorate. This plan would contemplate that the voters would have the candidate submitted to them for their approval, a very important part of the plan.

Mr. Munson Would you agree, sir, which I assume you won't, but I'm going to ask you, would you agree that this is perhaps ever worse than the Missouri Plan?

Mr. Conroy No sir.

Mr. Deshotels Mr. Conroy, the way you've got this drafted, wouldn't this permit twenty-seven Representatives and ten Senators to saddle the state of Louisiana with a Missouri Plan?

Mr. Conroy I'm not sure about your arithmetic. What's your point?

Mr. Deshotels A simple majority of the House and a simple majority of . . . a quorum of the House and a simple majority of a quorum of the Senate would allow Louisiana to go to a Missouri Plan. Isn't that correct?

Mr. Conroy No, no I think that when we pass the Legislative Article we required a majority of the elected legislators to pass any bill that went through there. In addition to that, this requires. . .

Mr. Deshotels That's not what your amendment says, is it?

Mr. Conroy Well I think it would have to be read in conjunction with the rest of the constitution. In addition to that, this would require that the voters in any given area approve that system for election of judges in their area before it would be effective. So any area that didn't want such a system applicable to their judges, would certainly not have to vote for it and would not vote for it.

Mr. Deshotels Mr. Conroy, one of your arguments for a Missouri Plan, as I gathered from your talk as you asked for favorable consideration, was that you had one judge in New Orleans that spend in excess of a hundred thousand dollars. Some people have quoted a hundred and fifty thousand dollars. Do you think that a man who will spend a hundred and fifty thousand dollars to get elected district judge for the state of Louisiana, has the judgement to be a judge? Do you really believe that?

Mr. Conroy Well I think it's. . . my point is that it's becoming a necessity to be elected. That's the whole problem, Mr. Deshotels. Perhaps they may not be the best candidates and that's why this system would permit another method of selecting such judges because we all have some misgivings about the necessity of spending so much money. I think your point is well taken, but it's a point in favor of this amendment.

Mr. Lanier Mr. Conroy, is it not a fact that in this poll of the Louisiana Bar Association that this merit plan for judges was disapproved in 29 out of the 34 judicial districts?

Mr. Conroy I think your numbers may be correct for trial judges. It was approved by more for appellate judges and that's why I emphasized the point of the necessity for this being on a local option basis, Mr. Lanier, because if you look at that same poll, as I pointed out earlier, the lawyers in the Orleans area were obviously out of step with what the lawyers throughout the rest of the state felt. But that's why it's important that it be on a local option basis, because we have a different problem from the rest of the state

in this regard, obviously, to me.

Further Discussion

Mr. Casey Mr. Chairman and delegates, I rise to urge adoption of this amendment. I would like to first of all clarify that this is not a New Orleans amendment at all as maybe some delegates might feel. It is merely an opportunity offered to the entirety of our state to permit on a local option basis, either in a single judicial district, an appellate district, a Supreme Court district, the opportunity, not today necessarily, but in the year two thousand, if in the year two thousand the merit system might be deemed the most appropriate system for the selection of our judges. To offer this opportunity on a local option basis, to offer to our people in our state, the flexibility to have this opportunity at some time in the future. I'm not going to pretend to tell you today that the elective process is not the best method and that the merit system is the best method but ten years from now or twenty years from now it may very well be the best method, not only in a single district, but for the entirety of the State of Louisiana. That's all that we're attempting to offer the delegates at this time and we hope that you give the people in Louisiana the opportunity to avail themselves on a local basis of the opportunity of using the merit system. Approximately 26 states have varieties of merit selection of judges. There must certainly be some merit to it but this amendment at least gives the legislature the opportunity to study it, and adopt it if it is good, and the people of a certain district the opportunity, if it is good, by a vote of those people to adopt this system of merit selection and that's all we're offering to you.

Questions

Mr. Denery Mr. Casey, do you know that I am in favor of this amendment?

Mr. Casey I didn't know that, Mr. Denery. I appreciate that.

Mr. Denery In addition to that would you accept, as one of the authors of this amendment, a clause in the beginning of it which says in effect anything in this section to the contrary notwithstanding?

Mr. Casey As far as I'm concerned I see no problem with the adoption of that language.

Mr. Henry Do you have a question Mr. Willis?

Mr. Casey I'll yield as long as he doesn't quote MacBeth of Shakespeare or any of the other. . . and doesn't refer to the half moon area of our state or the muddy Mississippi area. Is that fair, Mr. Willis?

Mr. Willis That is very fair sir but let me give you a little Shakespeare while you prompt me.

Oh what a tangled web we weave when first we practice to deceive." Here is my question, where is the best depository of power in this state? With whom? You want to quote the first three words of our constitution you've got there and say, isn't that right?

Mr. Casey It all depends on who's ox is getting gored, who has the most power at that particular time, Mr. Willis.

Mr. Willis Well, you dodge it nicely but I'll press you further with this question? Who appoints the appointers, this oligarchy of choosers of our judges?

Mr. Casey Mr. Willis, first of all we have to have a legislative act determining the system or method as to who are the appointers. It is up to the legislature to make that determination before it is

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even offered in a referendum. If the people in that district or area don't like the method they don't have to vote for it. Now, in other states it may be the governor with people representing the bar association and people who are also layman who are not attorneys. It's flexible, that's all I can tell you.

Mr. Willis That's it. It's flexible but I don't want that muscle to flex against me. That's the big question mark.

Mrs. Zervigon Mr. Casey, one of my reservations against the Missouri Plan has always been the same as Mr. Willis that I couldn't figure out a good way to select the selectors. Would you agree that one of the merits of your amendment is that in case anybody ever figures out a good way to select the selectors we have the Missouri Plan possibility open to us in the future with the referendum of the people in the area affected?

Mr. Casey Mrs. Zervigon, that's certainly a very good point and after proper and intelligent study by the legislature and other people who feed information to the legislature ten years ago, I think we may have a very good method whereby this commission could have good representation on a commission for the merit selection.

Further Discussion

Mr. Jack Mr. Chairman and members, I rise to open this amendment. Now before speaking, I figured this came from the state bar or part of the state bar and to verify that, I asked Mr. Conroy and that is true. He is the first author and it is true it comes from them. Now, I'm a member of the state bar. Every lawyer has to be. I'm sorry to say the state bar, who should be a big leader in Louisiana and who, I understand, Mr. Conroy as I told you is sponsoring this and is suggesting it, as being good for Louisiana does not have their annual meeting in Louisiana but over in Biloxi, Mississippi. Now that is a bad thing. I have twice gotten presidents of the state bar to have both to see if we couldn't have annual conventions in the state bar will be the one that have refused to allow the state bar is sponsoring this amendment. That's their idea. I got that from talking to Mr. Conroy. That is correct, is it not, Mr. Conroy?

Mr. Conroy Mr. Jack, the names on that amendment are the people who are sponsoring that...you asked me whether this was something the bar association was in favor of and I said "yes, that a committee of the bar association is in favor of it."

Mr. Jack That's what I want and I can't answer other questions, my time is slipping by. Now, if you want to get a method of selecting your judges the way where a so called nonpartisan commission submits three names for you to vote on when it doesn't even say the qualifications of the nonpartisan commission. They could be blacksmiths, laymen, I've got an idea they will be lawyers. I've got an idea the bar associations, and I belong to the city one, but I think if this ever gets the law the Shreveport Bar Association will be the one that will name the three. I'd rather the people name them. I've talked to all the district judges up there and they've talked to the others and we can't find a judge that believes in this or its cousin, the Missouri Plan. They are really twin brothers, if you ask me. Now another thing on this, it provides for this system that you vote in the Supreme Court district, the court of appeals district, the judicial district, for the electors to see whether you are going to have it or not. It says nothing about the city court district or the juvenile district so if you pass this thing automatically those three electors, I mean those men or women on the non-partisan commission, they will name three for city judge and three for juvenile judge. You as the voters won't even

get a chance to say whether or not you want this system as to those. Now this is a short house and I hope everybody will vote on it and it couldn't possibly pass if it had been brought up with a full house. I see a tremendous number of vacant desks and I'm saying this, let's kill this kind. This has not been drawn up with any view of submitting it to a committee. I don't even know that it went to the Judiciary Committee. If it did and anybody wanted it, why wasn't there a minority report. Let me tell you these serious things that are handed to us...

Mr. Henry Mr. Jack, you've exceeded your time sir.

Mr. Jack All right just read it and you'll see what I'm talking about.

[Quorum Call: 106 delegates present and a quorum.]

Further Discussion

Mr. Roy Mr. Chairman, ladies and gentlemen of the convention, I rise in strenuous opposition to this proposed amendment. I do spend a couple of days here reducing the terms of the Supreme Court justices of this state and the court of appeal judges of this state. Presumably I thought, to allow the people who in their wisdom think they need a change sometime which they haven't made since 1921 in any of these positions, the chance to do so and yet we are asked at this particular time to turn right around and give to the legislature in the year two thousand or some other time the absolute right to vitiate that which we have given to ourselves and to the people by keeping the branches separated and allowing for the election of judges. Now there are many reasons why I'm against it. Not the least of which is that every judge that I know is opposed to it himself. This argument about the cost of campaigning is just not so. How many judges in your judicial districts do you know who have ever been defeated? How many have even opposition? Now Rapides Parish, I hate to use specific examples for general rule but I think it applies just about everywhere. In this last two years we had two judicial positions created one by vacancy or death and the other the legislature saw fit to add another judicial or rather another...a judge to the Ninth Judicial District Court. One judge went in without opposition. There was a campaign for the other where only two people ran. The two other present incumbents went in without opposition. I know of no district judge except one in the state that was ever defeated and I just don't believe there is any need for it and if there are no other speakers I move the previous question on it.

[Motion for Previous Question withdrawn.]

Questions

Mr. Stinson Mr. Roy, you say you are against it?

Mr. Roy Very much so.

Mr. Stinson Do you know that I'm really pleased to hear that? I thought you would have been for it.

Mr. Roy Mr. Stinson, I have to be with you one time.

Further Discussion

Mr. Leigh Mr. Chairman, ladies and gentlemen of the convention, I'm not here to debate the merits of a system of merit selection of judges. That is not the issue as I see it in this particular amendment. The amendment if adopted would have no affect whatever upon our present system of electing judges. That is the system we voted for, the system we expect to retain for the time being. This amendment would simply be permissive and would

permit the legislature in the foreseeable or unforeseeable future to adopt a system of merit selection which before being put into effect would have to be submitted to and approved by the electors of the particular area involved at a referendum called for the purpose. The legislature would spell out the means by which the merit selection would be submitted and the electors would have to vote on it. It is simply permissive. It looks to the future to a time when a merit selection plan might be desirable, might be desired by the people in the particular area. Without this permissive language in the constitution that would not be possible. If this is put in there, it may avoid the necessity for a constitutional amendment at some later date and I urge you to adopt the amendment.

Further Discussion

Mr. Lanier Mr. Chairman and fellow delegates, I rise in strenuous opposition to this amendment in principle as it's drafted and because of the wishes of the people in the parish of Lafourche. I am categorically opposed from taking away from the people of the State of Louisiana the right to elect their judges. I do not even believe we should give them the right to take that right away from themselves which is what this is set up to do. As drafted, I am opposed to this thing. If you will read it, the last sentence says "no such system shall be effective for the selection of judges in a Supreme Court district" you would also have to say in a court of appeal district or in a judicial district. This means that we could have a merit plan for judges in two Supreme Court districts I would assume, and then have five elected in five other districts. Since we have one district that isn't split, I would assume we could have one of the judges appointed and the other judge elected. This would completely fracture the judicial fragment of our judicial system and it just doesn't make good sense to me. But finally, we conducted a poll in Lafourche Parish because we were quite concerned about this very point and our clerk of Court made a poll and we found that ninety-eight percent of our people are categorically opposed to this idea. Our bar association is opposed to it, our judges are unanimously opposed to it and we see no reason why this should be in our constitution. Thank you very much, Mr. Chairman, and I'll be glad to yield to questions.

Questions

Mr. Alario Mr. Lanier, when it says a little further down that no such system shall be effective for the selection of judges for the Supreme Court, court of appeal or judicial district unless first submitted to the people... How about justices of the peace? Would it allow the legislature to appoint the justices of the peace instead of them being elected as you read it?

Mr. Lanier Well, I think the legislature now has the authority to abolish the justice of the peace if it so sees fit with the thing that we have approved. Thank you, Mr. Chairman.

Mr. Flory Mr. Lanier, it has been stated that this was supported by the state bar association as being their position. Isn't it also true that the state bar's position is that the state bar would be the one to recommend the judge to be appointed? Isn't that really their position?

Mr. Lanier Quite frankly Mr. Flory, I am a member of the state bar but nobody has consulted with me on that particular point. I do have the results of the poll here and I can tell you that twenty-nine of the thirty-four judicial district bar associations have rejected this proposal.

Further Discussion

Mr. Burns Mr. Chairman, ladies and gentlemen of the convention, as a member of the Judiciary Com-

mittee, for weeks and weeks we heard research and experts from foundations endowed by the Rockefeller fund, foundations endowed by the Vanderbilt fund, other foundations, we had them from San Francisco, New York, Chicago and from other sections of the United States. They were uniformly... every one of them were in favor of the so-called Missouri Plan. The thing that concerns me, ladies and gentlemen, is these different committees just like the Judiciary Committee... we've spent weeks listening to testimony and researchers and experts before finally coming to a conclusion. Just as we did on this amendment that is before us now. I may be overly concerned about the approval of this constitution when we finally adopt it and when it is submitted to the people of this state for their approval, and I say to you in all sincerity without fear of contradiction, you mention the Missouri Plan whether this is it or not, it's so much like it you just as well call it the Missouri Plan but you mention the Missouri Plan to the voters of the State of Louisiana, at least in my section of the state, and right away you get them stirred up and their immediate response is given that they want no part of any Missouri plan. They want to elect their judges. So I say to you that let's defeat this amendment and retain the system that we now have in our state as to the election of judges by the people. We have voted on already this week. The judges of the State of Louisiana shall be elected by the people.

Further Discussion

Mr. Kilbourne Mr. Chairman, fellow delegates, I reiterate what Mr. Burns said as a member of the Judiciary Committee. We did indeed listen for weeks on end at the so-called experts from... there was a Harvard professor, there were representatives of the American Bar Association, there was a judge from California, there was a professor from L.S.U. that appeared before us several times... there were representatives of the State Bar Association. Distinguished gentlemen for whom I have the greatest respect that came before us three times with the same proposition and I'll tell you that is really one of the things that concerns me about this amendment and about this so-called merit system. If we have people, that I can't see what their concern with Louisiana will be coming here from all over the United States to tell us that we ought to adopt the merit plan. Really and truly, ladies and gentlemen, I think this amendment, this is what you call the foot in the door. Just get it started, just get it started anyway. Now I don't know what the great appeal for this thing is but we have it, we've had it from these experts, these people who... a lot of them have never practiced law, but it's good theory, I admit.

I think that once an amendment like this is put in here we have started to open the door it, is a foot in the door. After hearing all of that testimony, and we have I think twelve or thirteen lawyers on the Judiciary Committee, after hearing all that testimony and after all that consideration to it, ladies and gentlemen, there wasn't a single vote for it on the Judiciary Committee and yet you are asked to come here and put that in the constitution after you've had about thirty minutes times to consider it. I hope you have a little more confidence in your committee than that. I assure you that we've got all that consideration but there wasn't anybody for it to start with and when we... after we heard all that, there still wasn't anybody for it and my concern, my main concern, is these people that will finance these studies. It was financed by these tax free foundations many of whom I do not have any confidence in whatever, have urged this thing upon Louisiana. I urge you to reject this amendment and if there are no further speakers...

Questions

Mr. Stinson Mr. Kilbourne, isn't this... the way

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that as I read it after they get in office, ever would often they will be submitted as to whether the people approve them or not as to whether...not whether they would approve someone else more, but just one issue, isn't that correct?

Mr. Kilbourne The plan that was submitted to us over and over again the way it would work, the judge wouldn't run against anybody, he would run against his record. In other words, they would put a proposal on the ballot, are you in favor of Judge so and so. That's the only way you got to vote and you know what an election that would be.

Mr. Stinson If no one else voted but just judge so and so and got one vote he would still be continued, wouldn't he?

Mr. Kilbourne Exactly.

Mr. Stinson That's the way they in Russia, you can get to vote for one person on the ticket, isn't that sort of the same idea?

Mr. Kilbourne Well, I just don't want to compare this to Russia. Now I wouldn't go that far.

[Motion for Previous Question rejected:
16-69.]

Further Discussion

Mr. Gauthier Mr. Chairman, delegates, I want to thank you for giving me the opportunity to speak before Mr. Kilbourne was in district of the Judiciary Committee and we listened to a number of experts and I want you to know the definition that we've come up with of an expert. An expert is a man carrying a brief case who is further than a hundred miles away from home, and that is a definition of an expert. I am opposed to merit selection. I would oppose merit selection if it were offered in my district or area however looking at this amendment closely, it seems to me to accomplish two of the objectives that I came to this convention for. Number one, it alleviates the necessity of having a statewide amendment to do something that possibly one district wants. Number two, it brings back local rule. Let one district do what it wants to do. It has some attractive provisions such as...one of the objections I have to merit selection is the so-called blue ribbon board, the Missouri Plan, three laymen and three attorneys and they submit three names. Well, you give me that plan anytime and give me a governor in power and I'll tell you who every judge will be. But perhaps the legislature can come up with a better way of selecting and I don't think we should close the door this early. I think we are making a mistake if we do. We're not putting in the plan and I want to caution you, you're not voting for or against. You're saying that if a certain judicial district desires it, it can go to the legislature, they can come up with a plan that is acceptable to that district and put it in. Again it brings back local rule to me right on point, plus it also provides a very attractive provision that the federal system definitely does not. It requires that these people come back before the people of their district and submit themselves to the people on their record and then the people can decide. I say to you that that is giving the people a voice.

Questions

Mr. Tapper Mr. Gauthier, I'm just curious. I'm wondering how you voted on that referendum for New Orleans on consolidating those courts yesterday.

Mr. Gauthier Oh how I voted for New Orleans to consolidate the courts? I was in favor of the merger.

Mr. Tapper You were in favor of the merger but you were not in favor of a referendum allowing

them to make their own decision, were you?

Mr. Gauthier That's correct.

Mr. Tapper But now you've changed your position today, is that correct?

Mr. Gauthier Because I think we were dealing with two entirely different topics, Mr. Tapper.

Mr. Tapper Well of course I don't agree with you but let me ask you one other question. If we're going to do this, because in the future maybe someone might have a brainstorm as to how to come up with the selective committee or selecting committee, then why not put a provision, a catch all provision in the constitution authorizing this to be done in certain localities or in certain districts or certain parishes in all instances which are involved in the constitution, so that at any given time if the people...if the legislature wants to pass an act calling the referendum in a particular locality involving anything that is in the constitution. Why don't we do this? Would you be in favor of that?

Mr. Gauthier No I wouldn't. Based on this point, Mr. Tapper, merit selection has gotten a lot of attention from all areas and I think that it is being voted down right now because no one can come up with a good way of making nominations and in the future there may be a way developed.

Mr. Avant Mr. Gauthier, you live in a district, I think or at least there is a district in the greater New Orleans area from which two out of seven of the justices of the Supreme Court are elected. Is that not correct?

Mr. Gauthier That's correct.

Mr. Avant Well, that's almost one-third of the Supreme Court. Now don't you think that the people in the rest of the state have an interest in how those judges are selected?

Mr. Gauthier Yes, I do.

Mr. Avant And that the people in the rest of the state would be interested in whether or not they are elected by the people of those districts or selected by some sort of blue ribbon board which would probably be stacked with vested interest.

Mr. Gauthier Jack, my answer to that would be, I think the people in the rest of the state are vitally interested in judges as such and they are interested in getting qualified judges, and I suggest to you that if a judicial district in Shreveport comes up with a method that is acceptable and they get qualified judges, then the people of this state will have benefited by it.

[Previous Question ordered.]

Closing

Mr. Conroy I recognize the emotions involved in discussions of election of public officers. It is an emotional issue. It is one that should be emotional. But also is the quality of the selection of judges throughout this state. It is important in New Orleans to the court of appeals. Proponents of this system, of this concept are two judges that I know of. Judge Edwin Hughes has supported this and the foremost proponent that I know of is Judge Pat Shot of the court of appeals in Orleans. Judge Shot had appeared before the house of delegates of the state bar and also when he took his seat on the bench, he was just recently elected in New Orleans to the court of appeals, when he took his seat on the bench he made a speech. I was happy to be there when he made the speech and reiterated some of the things he had said earlier before the house of delegates of the state bar. He complained about the election process in New Orleans and I'm going to quote some of

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the things that he said. "So you are really in a position, gentlemen, of selling yourself as you sell soap or you sell cigarettes or you sell other commodities. You go on television with clever ads and you put ads in the paper and you hope that somewhere along the line you attract enough attention or you get enough of your message across so that when the public goes into the voting machine they vote for you and not one of your opponents. Now don't misunderstand me gentlemen, I am not criticizing the democratic process. I think it works fine for the mayor, or councilmen or for state representatives or alderman or whoever. But I can't do anything for my constituents after I get elected a judge on the court. I can't promise them that I'm going to be available. I can't promise them that I'm going to pave their streets or fix their lights. That is not why I was elected. All I can do is try to peddle, if you will, my professional qualifications for this position, and trying to do that in the traditional democratic process I submit to you, really begins to raise questions as to whether the typical process is as relevant to the selection of a court of appeals judge or a Supreme Court justice or a district court judge in New Orleans or Jefferson." He goes on at great length and I'm going to go to just pick up another part of it which I think is most important. "The main reason I was elected... this is a man who was elected as the judge of appeals in Orleans... the main reason I was elected, the main reason, was because I had the political support of friends, and I am very proud and very happy. I admire some of these people very much, especially the mayor of the city, without whose support I don't think I could have been elected. I don't want to sound ungrateful when I make this statement but this... I should thank the mayor, the councilmen or the representatives or the ward leaders, or the constable, or the sheriff, or the clerk of court, or this one or that one decide who your judges are going to be, and in the city of New Orleans they do decide it whether you like it or not. Now I'm asking you to permit us in this constitution to require us not to require it anywhere. I'm asking you to permit in this constitution the possibility of a different selection... method of selecting judges on a local option basis. It would not become effective until the people within that district decided they wanted it. They needed it. We don't have that situation right now. We're still electing good judges but we're on the brink of a real problem that this entire state does have an interest in and I ask you to give the people in these districts an opportunity to choose a better system of selecting judges. Thank you.

Questions

Mr. Fontenot Mr. Conroy, suppose in 1990, if this amendment is not passed today, suppose in my parish, in Evangeline parish, you have say twenty attorneys and the richest attorneys which are not your best qualified for judge but nevertheless in 1990 it cost so much to run for judge that only your richest attorneys would run. Suppose, as the people said, look we don't want to have a campaign between the two richest attorneys. We want to have the best qualified men to run. Would not the failure of your amendment keep those people in Evangeline Parish from doing exactly that, calling for it?

Mr. Conroy Yes, I think that other areas than the Orleans area which I have stressed may well find themselves with exactly that sort of problem in the future and this is designed to permit a way to correct any such problem as that.

[Record vote ordered. Amendment rejected: 26-75. Roll call. Motion for Previous Question on entire subject matter rejected: 29-76.]

Amendments

Mr. Poynter Amendment No. 1 [as Mr. Fontenot], on page 7, line 16, after the words "of a" and before the word "election" delete the words "general judicial" and insert in lieu thereof "regular congressional".

Amendment No. 2, on page 7, at the beginning of line 19, delete the words "a general judicial election of".

Explanation

Mr. Jenkins Mr. Chairman, delegates to the convention, this is strictly a technical amendment to make the Judiciary Article on elections conform with our Article in the Committee on Bill of Rights and Elections by deleting specific references to either primary or general elections. This makes no substantive change in the proposal by the committee and I understand the committee has no objections.

[Amendments adopted without objection. Previous Question ordered on the Section. Section passed: 106-3. Motion to reconsider tabled. Motion to adjourn to 9:30 o'clock a.m., Wednesday, August 22, 1973 rejected: 46-64.]

Reading of the Section

Mr. Poynter "Section 23. Retirement of Judges.

Section 23, paragraph A. A judge shall not remain in office beyond his seventieth birthday except as otherwise provided herein.

Paragraph B. A judge or judicial administrator in office or retired at the time of the adoption of this constitution shall not have diminishing any retirement benefits or judicial service rights including the right to remain in office as judge during his present term as provided under the previous constitution or laws, nor shall the benefits to which his surviving spouse was entitled be reduced.

Paragraph C. A judge taking office after the adoption of this constitution and a judge in office who so elects within 90 days of the adoption of this constitution by notifying the Secretary of State shall be vested and entitled to the following retirement benefits. Subparagraph 1. This subsection applies only to a judge... a court authorized by this constitution except mayors and justices of the peace.

Subparagraph 2. A judge with sixteen years of judicial service may retire at any age. A judge of twelve years of judicial service may retire with benefits commencing at age of fifty-five. On retirement a judge shall receive annually as retirement benefits four percent of his salary.

[Motion to waive reading of the Section adopted without objection.]

Explanation

Mr. [A.] Landry Mr. Chairman, members of this convention, under the old constitution or the 1921 Constitution, which of course is the present one, the mandatory retirement age is seventy-five. In our proposal we are reducing the retirement age from seventy-five to seventy. Under the present constitution, the retirement system for judges provides for full pay retirement for a judge retiring at the age of seventy with twenty years of judicial service, and if a judge who reaches the age of seventy-five can continue to serve until he reaches the age of eighty, or accumulates twenty years of service provided that when he reaches the maximum age of eighty and does not have at least twenty years of judicial service his retirement is based on the number of years served as related to twenty. A judge with twenty-three years of service may receive two-thirds pay at any age. A judge with twenty years service at age sixty-five may retire with two-thirds pay. Any appellate court judge may retire at age sixty-five with full pay if he has twenty-five years of

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judicial service. A mentally or physically incapacitated judge who retires receives at least two-thirds pay or what he would normally receive upon retirement at age seventy whichever is greater, and the judges pay nothing or contribute nothing to this retirement system. Or the proposed new article of the constitution allows judges serving at the time of the adoption of this constitution to continue under the present retirement system or to elect, within ninety days after the adoption of this constitution, to elect to come in under the new system, which is a contributory system. This system, the judges would have to pay in six percent of their salary and a judge with sixteen years of judicial service may retire at any age. One with twelve years may retire with benefits commencing at age fifty-five. A judge's retirement benefit is four percent of his salary times the number of years served, but not to exceed ninety percent.

The hundred percent under the present retirement, noncontributory, and here is a retirement at four percent, but not to exceed ninety, and they must contribute six percent of their salary. Of course it provides for a physically or mentally disabled judge to retire at two-thirds of his salary or four percent times the number of years, whichever is greater. That's to protect the individual. If I had said, twenty-five percent of his salary, four percent, he would get ninety percent instead of two-thirds. To be eligible for retirement benefits, a judge must contribute, as I said before six percent of his salary and of course it provides also for his surviving spouse and his minor children which the present system does not provide for. Now I realize there will be opposition to this, but remember the ladies and gentlemen, that under the present system the judges do not contribute a penny. Under this new system, if we take the judges who were elected in the last ten years, we will find that we have eighty-three judges out of a hundred and eighteen who I am sure will come into this new system and within the next twenty-five years they will have over thirty million dollars to this system. Now if you do not adopt this type of pension system and you retain the old system, then it's going to cost the taxpayers not only the additional thirty million dollars that they will put in the fund, but don't forget it will cost ten percent more if they all retire at ninety percent, because they will be retiring at one hundred percent. I feel that a lot of you are going to take the position that this does not belong in the constitution. We've heard that argument since this convention started. It all depends which side of the fence you're on. If you're for it, you want it in the constitution. If you're against it, it becomes statutory law. It doesn't belong in the constitution. That's the position many of the people have taken but I'm hoping one thing, that you vote favorably for this proposal for the simple reason that in Louisiana we should have three distinctive branches of government, the executive, the legislative and the Judiciary. I hope that you will examine your conscience and that you will vote for this proposal so that you can keep the judiciary separate and apart from the other departments. Mr. Chairman, thank you for your time and I will yield to any questions.

Vice Chairman Roy in the Chair

Questions

Mr. Jenkins Mr. Landry, on the mandatory retirement age of seventy, you know people are living longer these days, they are in a healthy condition much longer, we have no limitations from an age standpoint in the legislative or executive branch of government. Why is it necessary to have this in the judiciary?

Mr. A. Landry I think you have adopted some articles this morning, Woody, that would provide additional judges to sit when one of them dies, at least from seventy to seventy-five. And it was

felt by the committee when the retirement age was reduced that they would still be able to be used to help out in other courts, and this was the reason for the retirement to seventy.

Mr. Chairman, when this question comes up I would like to have a record vote, please, sir.

Mr. Roy There is no question yet, Mr. Landry. When it comes up, just move for it and you will get it. All right, sir.

Amendment

Mr. Poynter Amendment No. 1, these amendments offered by Delegates Gravel, Henry, Newton, Roemer and Pugh,

Amendment No. 1. On page 7, delete lines 22 through 32 both inclusive in their entirety, and on page 8, delete lines 1 through 31 both inclusive in their entirety, and insert in lieu thereof the following:

...the copies, I see the pages didn't have them. They are going to be passing them out right now.

Amendments offered by Delegates Gravel, Henry, Newton, Roemer and Pugh to Committee Proposal No. 21 by Delegate Dennis amending the reprinted bill in lieu of you.

Amendment No. 1. On page 7, delete lines 22 through 32 both inclusive in their entirety, and on page 8, delete lines 1 through 31 both inclusive in their entirety, and insert in lieu thereof the following:

"Section 23, the legislature shall provide for a retirement system for judges provided, however, a judge in office or retired at the time of adoption of this constitution shall not have diminished any retirement...."

Point of Information

Mr. Dennis Mr. Acting Chairman, how many amendments are there on this section?

I request a "Henry's huddle". I don't know why we should approach this one any differently than the other sections.

Mr. Poynter Judge Dennis, we have about six...one, two, three, four, five, six, plus...seven amendments plus the group of 111 amendments which have previously been passed out which I think constitute now seventeen or perhaps eighteen in number.

Point of Order

Mr. Burson Mr. Chairman, it's my understanding under the rules that as we have proceeded until this point, that we have considered amendments when there was not agreement reached among the various proponents as those amendments had been submitted and were received by the chair. Is that correct or incorrect?

Mr. Roy Run that by me again.

Mr. Burson It is my understanding that up until this time we have considered amendments in the order in which they were received by the chair, by the Clerk, unless there was agreement among the various proponents of those amendments. Is this correct or incorrect?

Mr. Roy I'd have to ask Chairman Henry because I am not personally familiar with what he's handling.

Mr. Poynter That's correct, Mr. Burson.

Mr. Burson Therefore, I would suggest that if we do not have agreement among the various proponents here, we should not depart from that practice here unless we have a vote of the convention to do so.

Mr. Poynter Mr. Burson, this is the order I received them, save for the Wall amendment, sir.

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Mr. Burson Well, why did we receive all the others yesterday and are just receiving this one now?

Mr. Poynter Because section by section the amendments are just passed out when we get section by section, save for the amendments which as I indicated when we passed them out, Mr. Wall asked us, Mr. Burson, to pass out.

Mr. Burson Why did we receive all of the other amendments today and are just receiving this amendment which we all know is being backed by a particular group in this convention at the last minute? That offends my sense of fair play and if that's the way we are going to proceed, from now on I think everybody ought to know about it.

Mr. Poynter Mr. Burson, those were not passed out by an error because the Assistant Clerk and I overlooked them when they were passed out....

Mr. Burson Well, I hope you don't overlook any of mine. Then, in the future or any of any of the other delegates here who happen not to be on the appropriate side at a particular time.

Mr. Roy Why do you rise, Mr. Jack?

Mr. Jack I was just suggesting, since this one, incidentally, this is not anything new. A lot of us, we had it drawn a few day ago and there was an error. Where it says "the benefits" in next to the last line, it had "he" there and it had to be rewritten.

But this thing was typed up and approved by a lot of us, including myself, three days ago. But I am going to suggest we don't have a huddle now because if we take up the Gravel, Henry, Newton, Roemer, Pugh and I'm supposed to be on it.... it doesn't matter whether I am showing or not.... I am for that and I told Gravel and went over it and made suggestions. This is going to pretty much settle this thing and it's different. The others... we ought to take this up, it's the first one and then do the huddling afterwards.

Point of Information

Mr. Rayburn Is the convention in session?

Mr. Roy Yes, sir.

Mr. Rayburn What's the huddle up at the front? Are we part of that or they in recess or....

Mr. Roy I don't know what they are huddling about but I don't intend to have a huddle. I think everybody knows what's going on....

Mr. Rayburn I think they are having one whether you intend to or not.

[Motion to recess adopted: 51-45.]

Recess

[Quorum Call: 102 delegates present and a quorum.]

Point of Information

Mr. AvantI seek enlightenment and information, Mr. Acting Chairman. I may have misunderstood the Clerk, but I understood him to say in response to Mr. Burson's question that we would take these amendments up in the order in which they appeared on the desk except for the Wall amendments.

Now, it's my understanding that we take amendments up in the order in which they appear on the desk, period, unless the amendments have been withdrawn by the authors. And I was also under the impression that the various amendments offered by Mr. Wall, or at least a substantial number of them, were the first amendments that have been offered to this section, from which I reason that

we will be given the opportunity to vote on those amendments before we vote on any other amendments. Am I correct or am I incorrect?

Mr. Roy I understood the Clerk to say that the Gravel amendment had been received by him before the others but not distributed. And the point I got was that we took up amendments as they were presented to the Clerk and not when the pages actually got the amendments out to the delegates.

Therefore, the ruling of the chair is that we will take up the amendments as they were presented to the Clerk and not when they were distributed.

Mr. Avant I understood the ruling, Mr. Chairman.

Mr. Roy I'd like to say at this time that we all know that this is a hot issue and when Mr. Poynter said he got the Gravel amendments first, the Chair is not in the position to tolerate state-ment's made with respect to Mr. Poynter being involved in any type of surreptitious activity. I don't think it was meant that way, but I want to make sure that we keep ourselves addressed to the issue here and not to any personalities up here with the staff.

O.K. Read the first set of amendments, Mr. Clerk.

Mr. Poynter Well, Mr. Vice-Chairman, you just got me in the box because all the parties have now just agreed they've got another set they want to go with first.

Point Of Order

Ms. Zervigon Mr. Acting Chairman, I thought it was the ordinary procedure of this convention to go with the amendments as they were received by the Clerk unless the huddle agreed otherwise. The authors of the amendments in a huddle agreed otherwise.

Mr. Roy You are absolutely right and I was not informed that the huddle had produced anything concrete....if I am wrong would you all please tell me.

Mr. Poynter We've got a set of amendments here that I think Judge Dennis and everybody in the huddle agreed to take first, which were the Womack amendments which will be offered in the name of Delegate Rayburn.

Personal Privilege

Mr. Avant I just want to make one thing clear, Mr. Acting Chairman. I cast no reflection whatsoever on Mr. Poynter who I think is doing an excellent job. I did not understand his answer to a question, and I wanted to make sure that I did understand it and what the situation was. And certainly no reflection is intended to be cast on anyone, particularly Mr. Poynter....

Personal Privilege

Mr. Burson Mr. Chairman, I just wanted to clarify in case anyone had misinterpreted my remarks that I certainly did not intend to cast any aspersions whatsoever on the staff who have done an outstanding job under trying circumstances.

It's just that I knew as everyone else did that we had about twenty-five amendments up there and it was conceivable that one had been received and had not been put first....which I happen to be interested in....which I am sure will come as no surprise to anyone and that's why I made the objection.

Personal Privilege

Mr. Wall I just wanted to state the point that my amendments, to clear the picture, I agreed and I even stated when I had them passed out that I wasn't going to consider them providing other amendments were adopted. But if they were

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not adopted, I was going to present them.

So, to clear up anybody that wants to get satisfied, the rules get technical...I'll withdraw mine, temporarily, but I want them put right back in there as soon as these first three amendments.... now I'm not really going to withdraw them, but if someone insists I would for that point....so I could abide by the rules if it was necessary.

Amendments

Mr. Poynter I want to say I love everybody, too.

"Amendment No. 1, on page 8, line 11, after the word, "benefits", and before the word, "percent", delete the word, "four", and insert in lieu thereof, "three and one-half".

Now, these are the Homack amendments offered by Delegate Rayburn.

Amendment No. 2, page 8, line 16, at the beginning of the line, delete the word, "four", and insert in lieu thereof, "three and one-half".

Amendment No. 3, on page 8, line 30, after the words, "a total of", and before the words, "percent", delete the word, "six", and insert in lieu thereof the word, "seven".

Explanation

Mr. Rayburn Mr. Chairman and fellow delegates, I had discussed these amendments earlier with Representative or Delegate Homack. We had the amendments prepared for several days and in his absence I did ask the Clerk this morning to put my name on the amendments where I could offer them.

What I am attempting to do here with this amendment is to reduce four percent down to three and one-half percent which is what the members of legislatures receive under their retirement system. I know of no system that has a figure as high as four percent and that is why I offer this amendment.

The third amendment will increase the percentages that the judges pay into the retirement system from six to seven percent. That conforms with teachers, state employees and practically all other retirement systems except the legislators. We do pay more than seven. And that's my purpose for reducing the four percent to three and a half to get it in line with what the legislators' retirement system consists, and I move the adoption of the amendments.

And I would like to suggest, Mr. Chairman, we have been here a long time, we've had an awful hard week. I don't think me or no other person in here is going to change one vote. I would like to suggest that we take these proposals up, vote on them, vote your convictions, and let's finish this business and go home.

Questions

Mr. Munson Sixty, let me say first I agree with the amendments. I am just asking for information on something that you just said, I agree with the three and a half percent rather than the four. Would you mind telling me the reasoning behind the judges paying only seven percent to get that three and a half percent per year and the legislature pay eleven-percent to get the same benefits.

Mr. Rayburn Well, Mr. Munson, my reasoning is this, that this system has not been funded in the past by contributions. It has been solely funded out of appropriations out of the general fund and I felt like, and some of the other delegates that I've talked with felt like that we could at least start them off at seven and maybe not hit them so hard at one time. I mean if you are going to put them up to ten or eleven percent, that's going to be a pretty big percentage and....

Mr. Munson Well, isn't it a fact then, Senator Rayburn, that the only way that either figure could be changed in the future since this is going in the constitution, would be by constitutional amendment?

Mr. Rayburn If this is adopted by the people and it is part of the constitution, you are correct, Mr. Munson.

Mr. Fontenot Senator Rayburn....you are proposing these amendments. Are you in favor of keeping the retirement system in the constitution?

Mr. Rayburn Yes, I am, because it is in the present constitution. I am not going to argue the merits of whether it should be there or should not be there. But it is there, Mr. Fontenot, at this time.

Mr. Fontenot Now Senator Rayburn, do you think maybe you are qualified to be able to argue three and a half versus four percent or six percent versus seven percent, do you think individual delegates are in a....are able and qualified enough to be able to judge whether it should be three and a half percent or four percent or seven or eight percent?

As far as I am concerned, I don't feel like this is a constitutional matter. I think it is a legislative matter. Do you think that this delegation is capable of making that kind of determination?

Mr. Rayburn Well, Delegate Fontenot, I think they are just about as capable of making this determination as they are on many other determinations they have had to make. That's my personal opinion.

And the only reason I'm trying to get this back down a little is to get it in line and I wouldn't want to cut it below three and a half when my own is three and a half. I'm just trying to get the judges on the same percentage retirement that the legislators have.

Mr. Jack Senator Rayburn, how much does a state trooper pay into his pension fund?

Mr. Rayburn Well, I think the state troopers pension fund is funded by a percentage of the revenue collected, Mr. Jack, from transfer of the title fees.

Mr. Jack Yes, but don't everybody...the person that belongs....pay in something?

Mr. Rayburn Yes, sir. And these amendments provide that the judges are going to pay in seven percent of their salary.

Mr. Jack All right. What does the school teacher pay in?

Mr. Rayburn They match what the state pays.

Mr. Jack How much does the state pay?

Mr. Rayburn Seven percent, I believe.

Mr. Jack And you are going to have a judge, I believe, Court of Appeals makes thirty-six thousand a year, and they'll pay the same as the school teacher....do we have any public school teachers making thirty-six thousand a year?

Mr. Rayburn I don't know of any teachers. You have some superintendents making that much or more.

Mr. Weiss Delegate Rayburn, this retirement program is apparently an annuity, and when any of us take out insurance policies, we like to be sure that the annuity is secure. What type of security does this six percent allow?

In other words, is this an actuarially sound operation?

Mr. Rayburn Dr. Weiss, I'm not qualified to tell you whether it is sound or not. But I think this. It'll be a little sounder as far as the people are concerned in the future than it's been in the past because in the past, it's been funded by, strictly by the general funds, the general funds of this

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state. And the judges will start contributing and it will be a little better funded in the future if these amendments in this proposal is adopted than it has been in the past.

Mr. Weiss How much will Louisiana citizens have to supplement this retirement fund by? What's the estimate?

Mr. Rayburn They have to supplement it by any amount that's drawn out of the retirement fund now by the people that are qualified by less seven percent of the judges salary throughout the state, and I do not have those totals at this time. But they will not have to supplement it in the amount that they are now supplementing it. It will be seven percent less of the judges contribution.

Mr. Roemer Senator, you made the statement that this would bring this retirement system in line with your own, is that correct?

Mr. Rayburn It will as far as the three and a half percent times the years of service. It will not as far as contribution, Mr. Roemer, and I stated that.

Mr. Roemer O.K. I didn't understand that. Second question. Is your retirement system in the constitution?

Mr. Rayburn No, sir.

Mr. Roemer Third question. This retirement system has been in the constitution, is that true? At what percentage rate of pay in by the judges?

Mr. Rayburn Goose egg.

Mr. Roemer Goose egg. We've been stuck with that for fifty years. Is that not true?

Mr. Rayburn That's true.

Mr. Roemer Has there ever been a constitutional amendment to try to change that to bring that in line with other retirement systems?

Mr. Rayburn Not to my knowledge, Mr. Roemer. There has been a lot of discussion in the legislature and it was the... the judges did... and in defense of the judges, they did at the past session of the legislature, meet with a lot of the legislators, I happened to attend one or two meetings, and they felt that they should agree to some type of proposal where they could contribute in to the retirement system and they so stated that to members of the legislature. But we have had a problem trying to work out the best procedure to use.

Mr. Roemer I understand that. Would you agree with the proposition that in regard to retirement systems and actuarial statistics that some flexibility is needed?

Mr. Rayburn I'm sure that's true and we have a legislative committee that's been studying that for some time and they have not reached a decision at this time, setting all retirement systems that are funded with state funds.

Mr. Roemer My point is, and I want to know your opinion as to it, if we freeze something in the constitution again, which we've done for fifty-two years now at an absolute zero rate, if we freeze it in, regardless of what rate we do, don't you think the chances in the future will need to change that rate? It has in the past.

Mr. Rayburn Well, it's highly possible it will need changing, Mr. Roemer.

Mr. Roemer Won't that require a constitutional amendment? The legislature can't do it.

Mr. Rayburn Yes, sir. It will if it remains in

the constitution.

Mr. Wall Senator Rayburn, in this percentage that you have here, are you going to increase the percentage that the judges are going to draw for all the years credit they have where they have not contributed?

Mr. Rayburn Representative Wall, or Delegate Wall, what I am attempting to do here is to decrease it. In the present language it has four percent. I am decreasing it by one-half of one percent.

Mr. Wall Well, now, this three and a half percent, are they going to get three and a half percent of credit for all the years that they have not contributed?

Mr. Rayburn Three and a half percent times the number of years that they have served as a judge. That's the language in the bill.

Mr. Wall Senator Rayburn, you know how it is in the legislature. Doesn't all retirement systems use other retirement systems as a wedge to get their retirement system's benefits increased?

Mr. Rayburn Well, I wouldn't say that's necessarily true. I don't know of any yet that have attempted to use the judges' retirement system as a wedge.

Further Discussion

Mr. Burson Mr. Acting Chairman and fellow delegates, I had said yesterday in the picketing that was going on around the floor here that I would just vote and not talk on this issue because I had mixed emotions. Well, my emotions got unmixed yesterday by some of the rhetoric I heard.

I rise today not in defense of the judiciary of this state which needs no defense, but in defense of civilized political discourse. It offends my sense of fairness to hear a whole group of dedicated public servants castigated in terms that I have not heard on the stump in thirteen years of politicking in St. Landry and Evangeline Parish, and I think those of you that know those areas will agree that we get about as rough as anybody on the stump.

I'm a lawyer and I'm a politician, and I'm proud of both. I speak to you both as an officer of the court and as a politician. I believe that ward politicians today are among the few people left in our society that humanize the bureaucracy that governs us in too many areas. And a true political professional does not get personal in debate. I yield to no man in the pleasure that I take in political debate, and I hold no grudges for those that oppose me in the strongest terms.

But in thirteen years of politicking from the back of pickup trucks and various stands, I've heard very few people call their opponents, or those they disagreed with, thieves. Those that I have were mostly defeated because the listeners felt properly that they meant it or were a friend of the wives and the children of the families of the men they were running against.

Now I don't think the children of the judges of this state like to read in the newspaper that they are thieves and that they are responsible or that their father is a scoundrel any more than mine would like to read of those of you here who are members of the legislature or who have been as I have, served on school boards or other public bodies during times of great turmoil, know that your children do read the newspapers. And I suggest to you that human life is too fragile and too short for us to devour each other in this fashion.

Now friend or foe alike, I don't recall a man I've met in politics who didn't have some admirable attribute of character. And in the end, we all will be glad of the Latin motto that "All speak well of the dead." The republic won't fall if the judges retirement system is not in the constitution, although I am here to speak that it should be, and

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in favor of the Rayburn amendment to bring it into line with other retirement systems. But the republic may fall if we cannot discuss our differences without discussing personalities. And I think in the end, above all, a constitutional convention should not be a forum for personal vendettas or to formulate against individuals with whom we happen to disagree. We have had Judges just as I'm sure we have had legislators or I dare say had constitutional convention delegates.

Judges are politicians to get elected. They have to be. But in the main, one can only judge by his own experience and I would say as a trial lawyer who has practiced and tried cases in twelve or fifteen parishes, the courts of appeal and the Supreme Court, and I haven't met more than one or two judges that I could honestly say I didn't like, although I'm quite sure that there were a number of them that didn't like me.

I have never met a judge on the bench of this state whose integrity or honesty I would question, although I've met quite a few whose judgment I would question. I've lost cases before judges whose decision I ardently fought for. I should have lost those cases. I long ago came to the sad realization that I am not always right. I think there is a significant difference between saying that a judge has to get elected through politics, and saying that he has to take political considerations into account in deciding after he is on the bench.

And I submit to you that I would be shocked and appalled to ever view the spectacle of a court of appeal or Supreme Court judge who had to call up and check with a political leader before deciding a point of law.

I submit to you that in the end, that the judiciary is the last refuge of the citizen who is put upon by his government. That the judiciary is the only organ of government that can call a legislative act unconstitutional or can call an executive act unconstitutional....

Mr. Roy Mr. Burson, you have exceeded your time. I was letting you go but Mr. Grier rises with a point of order.

Point of Order

Mr. Grierthe speaker's not speaking to the amendments. We're talking about four and four and six percent here.

Mr. Roy Mr. Grier, he has wide latitude. It's like cross examination.

Further Discussion

Mr. Burson I would just like to say finally, that it takes a strong man insulated to some extent from the normal pressures of politics to decide cases correctly. And it is on the matter of judicial independence that I take my stand in favor of the Rayburn amendment and in favor of keeping this in the constitution. I do not question the integrity or the motives of those who oppose me for good reasons and I trust that they will give me the same consideration. Thank you.

Further Discussion

Mr. Wall Mr. Acting Chairman, ladies and gentlemen, actually the reduction will be some help but now this retirement system is not like the legislators'. The three and a half percent, yes, but the legislators contribute eleven percent plus the fact the judges are going to get three and a half percent for all the years where they had not contributed anything where legislators contributed all of theirs. I'm going to vote for this Rayburn amendment because it is going to reduce it. I asked to be chairman of the retirement committee during the present session of the legislature because I could see so many flaws and I could see the cost of the retirement systems, what they are creating in this state. And there is like New York

City, the retirement system up there has practically bankrupted New York City. I had high hopes of trying to improve our retirement systems on the benefits and contributions to make them more actuarially sound. But remember this, each of the other retirement systems in this state, they come and they point to legislators, what you got, or what the judges have and when you get one out of line where the people are not contributing, getting all these years credit without contributing, it's not what you have to pay the judges because there are not that many of them. But the other retirement systems use that as a leverage which this, putting this in the constitution and giving the judges something which they have not earned and this big percentage, the people are not contributing of the revenues of this state. Now I'm not for taking any of the benefits away from the judges which they earned without contributing. I'm for them having all of those benefits and then I'm for them having any benefits from the day this constitution is adopted; beyond that, any benefits they want that they would contribute to make it actuarially sound. I would name their benefits just so long as you leave it flexible to where it can be actuarially sound. Thank you.

[Motion for Previous Question rejected:
34-66.]

Question

Mr. Warren Mr. Wall, I just want to ask this question. You mention the teachers and I am very close to them, in fact, the people. But can teachers do other jobs other than teach? When they leave their jobs can they hold more than one job?

Mr. Wall Yes, they can hold other jobs and judges can also have other business enterprises and some do.

Further Discussion

Mr. Lowe Mr. Chairman, delegates to this convention, I am going to try to keep my remarks short and germane to this particular amendment. When this entire proposition comes before this convention, I do want to speak to it. I did not intend to speak to this amendment but there were some questions raised that gave some indication that the judges may be asking for something that wasn't actuarially sound. That they were asking for something that some of the other retirement systems have. Well, let me tell you. I know as a fact that the judges have wanted to get under a funded retirement system for some time. They have begged to be under a funded retirement system. They are not the only ones who haven't been under a funded retirement system. The L.S.U. professors were not under a funded retirement system. They weren't happy with it and after considerable lobbying they were placed under a funded retirement system. Did they have to come up and make up all of the back contributions to assure that we were going to bring to Louisiana qualified educators like other colleges? Were we going to put ourselves on a competitive basis with these people? Well, I submit to you right now, that if every participant of the retirement systems of the state of Louisiana have to make contributions that would make it actuarially sound, we would just about put every employee of the state out of business. I can tell you that on June 30, 1971, the teachers' retirement system was \$1,000,000.00 in the red. That's actuarially sound. Now that's according to the actuarial report, \$615,000,000.00. The contributions that were left in the fund--there were only funds available to take care of the present retirees. If funds had been set aside to take care of the present retirees and every other contributor to that fund decided to withdraw, there would not be enough funds to repay the individuals that had made contributions. There were no state contributions left for the people that were in the fund

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that were not retired. So you can't tell me that you expect the judges all of a sudden to make their retirement fund actuarially sound when we in Louisiana today may be like Florida. Florida has an unfunded accrued liability in their retirement system of 1.8 billion dollars. The state of Louisiana, in just one system, has an unfunded accrued liability of \$615,000,000. We have thirty-eight retirement systems. I mentioned one system to you. We have thirty-eight we know of. Now at the present time the judges--it takes 29 percent contribution from the state of Louisiana, the general fund, to meet the benefits to be provided by the judges in the 1921 Constitution, 29 percent of compensation. The judges weren't satisfied with this. The legislators--it takes 18 percent of compensation to insure that there is an actuarially sound system. What are we saying? Put the judges on the same basis as the legislature, 18 percent to make it actuarially sound. But let the judges pay 7 percent. That brings it down to 11 percent that the state now has to fund. Now what is 11 percent compared to the present 29? We have reduced the cost to the state 63 percent. Now, there is much more I would like to say to you. I said I would keep it short. I wanted to give you a few facts, but if we are going to talk about making a fund actuarially sound, let's talk about other funds, too. You are not going to make any funds in the state of Louisiana at this time retirement funds, or not the majority of them anyway, actuarially sound. It may not be wise to have the retirement funds 100 percent funded. There are good arguments against it. I'm for this amendment. I hope all of you will be for it, because I say it's wise to do what we are doing here, to bring in a fund that the judges can contribute to and put them on the same basis as the legislators.

Question

Mr. De Blieux Mr. Lowe, I am complete---kind of puzzled by the statement you made about the teachers being that much in deficit in their retirement system. I am sure it has been around the legislature to know that there is not a session of the legislature that we haven't had amendments proposed to the retirement systems of various groups, particularly including the teachers and others. Now the statement that I question about you is, if you get your information right, because these amendments have always been proposed on the basis that they do not hurt the system. That they've got plenty of money there to pay the increased benefits or the increased retirement system to some person. Can you explain that?

Mr. Lowe Delegate De Blieux, I hope I can explain it in the couple of seconds I have left. I would say to you that as a Senator and a legislator I would see to it that any amendment that came before the legislature, adjusting retirement systems, would have a fiscal note attached to it by some independent actuary that would tell you exactly what it is going to cost the system and the state of Louisiana and that the best thing that you could do as far as legislation is concerned in connection with retirement systems.

Further Discussion

Mr. A. Landry Mr. Chairman, members of the convention, the committee is not opposed to the amendment. I want you to bear in mind that. At the present time it is costing you, the taxpayer, to retire judges. All they are asking you is to permit them to contribute something to save tax dollars. I hope you will vote favorably for the amendment.

Further Discussion

Mr. Aertker Mr. Acting Chairman and ladies and gentlemen, I rise for two reasons. One, to support the amendment and secondly, to give you some information. This subject has a deep interest for

we because you have a committee proposal from the Education Committee that does have a recommendation that the retirement system for teachers and public employees be included in the constitution that we are proposing to the people. Our proposal states that the legislature shall provide this retirement system and that it shall be on a contract basis and that the benefits could not be diminished or impaired and that finally, actually, the state would guarantee all benefits and the full faith and credit of the state would be behind it. I will admit that we do not have in there any reference to any percentages or any formula of distribution or anything but I think that the teachers and the state employees are in a different category than that of the judiciary. I think that we have been talking around here for the last few days about a basic principle and that basic principle is the so-called separation of powers and I don't believe that we are ever going to have a true sense of separation of powers when we move in the direction of including or making some branch of this government dependent upon another branch in order for it to get a retirement system. I think in order for the judiciary to move in that direction they have to have some security and some guaranty written into this constitution. I think this amendment which moves in the direction of providing a retirement system is a step in the right direction and it seems to me that it does preserve a basic principle that we've all been concerned with.

Further Discussion

Mr. Weiss Fellow delegates, it pleases me to see the consensus amongst us until the majority of the delegates and that is the judiciary should receive as many benefits as we have tried to give the executive and the legislative branches. However, I am very disturbed by we, the delegates, who are not too well versed in the process of insurance, attempting to write an insurance policy in the constitution. I much more favor the concept of an annuity and I am sure that the speaker before spoke of. However, I do not believe that they should be in the constitution. The point here is that we are voting percentages and trying to create what might appear to be an actuarially sound system. Let's remember, however, that we are dealing with only 150 individuals. I do not believe that they will break the state any time in the near future and heartily approve of any system which will include the judiciary retirement fund in the constitution. Not only for their own benefit to stand alone and be somewhat aloof from politics, but also it is important that this insurance concept be rendered actuarially sound, that this annuity concept be actuarially sound, as much as it can be given to the people of the state, seeing how much they are required to contribute to an annuity system of this type. Then if Mr. Wall's concept and floor amendments were to be heeded to, then the other divisions, some thirty-eight other annuity provisions for retirement, be observed and coordinated with the concept that the judges they have proposed to be incorporated in this. Now what the percentages should be is a very delicate thing and I do believe it might be best in the hands of the legislature. On the other hand, if there is any other type of security such as a contractual agreement as was mentioned for the teachers that might be written up as a compromise, I think this is a much more sensible approach than to fix figures in the constitution. I will of course vote for Delegate Rayburn's amendment, but I think there will be other amendments and we can go on and on ad infinitum trying to amend the percentages which only the experts in the field are presumably qualified to give us. They themselves, however, in speaking to Delegate Wall and the other experts in the field, Delegate Womack, they themselves are uncertain of the actuarial figures. No one can predict what the actual outcome of life expectancy will be in a series of individuals with accuracy.

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but I do believe that the judiciary should be included in some type of retirement system within our constitution that will act as a light-house, as a beacon of authority for the retirement system of this state. I plead with those knowledgeable people, Delegate Wall, Delegate Womack, Delegate Rayburn, to put their heads together and come up with something a little more sensible than these percentages and figures that lock themselves in the constitution and the amendment that might be passed out of futurity turning it over entirely to the legislature. Can't we do something to compromise in that regard? If we can, then I believe we will have contributed soundly to the solution of this problem. President Woodrow Wilson is attributed with saying that the courts are the peoples' forum. They are also the index of the government and nation's character. I think we can paraphrase that and say that it is the index of the government and the state's character in this case.

[Previous Question ordered. Referred to be ordered. Amendment adopted: 198-5. Motion to reconsider tabled.]

Amendment

Mr. Poynter The next set of amendments are the Gravel, Henry, Newton, Roemer, Pugh and Jack amendments.

Amendment No. 1, on page 7, delete lines 22 through 32 both inclusive in their entirety and on page 8, delete lines 1 through 31 both inclusive in their entirety, and insert in lieu thereof the following: "Section 23. The legislature shall provide for a retirement system for judges provided however a judge in office or retired at the time of the adoption of this constitution shall not have diminished any retirement benefits or judicial service rights nor shall the benefits to which his surviving spouse is entitled be reduced."

Explanation

Mr. Gravel Mr. Chairman, ladies and gentlemen of the convention, I believe that this is one of the most important issues, if not the most important issue that has come before this convention with respect to the judiciary article. I want to be sure that we all understand what we are doing here today. The issue is not whether you are for or against an adequate retirement program for judges. I think that every person in this hall feels that the judiciary---just a moment, I am not going to answer any questions for a while--- that every person in the judiciary is entitled to share in a fair plan actuarially devised by the Louisiana State Legislature. But I want you to stop and think for a minute before you go too far and understand what the committee proposal actually means. If you will look at page 8 of the committee proposal and the bottom of page 7, you will see that immediately upon the adoption of the constitution and within ninety days, within ninety days, that the judge of this state will be constitutionally vested and entitled to the benefits that are spelled out in the remaining portion of the section. Now ladies and gentlemen of this convention, it may be all right for a judge who has served two terms to resign his office and receive three hundred and ten thousand dollars. He lives out his normal life expectancy, but it's not all right to freeze that concept in the constitution. Ladies and gentlemen of the convention, it may be all right for a judge who is sworn into office one day, who dies the next day and who leaves a widow who is forty years of age, it may be all right for her to receive a hundred thousand dollars during the remainder of her lifetime, but it's not all right to freeze that concept into the constitution of the state of Louisiana. It may be all right to say that the judges shall contribute three and a half percent of their salaries or that they shall do other things that are spelled out here but it's not all right to do it in this constitution. Let me point out one thing to you.

If everyone of you on both sides of this issue has been lobbied just about as hard, I believe, as you can possibly be lobbied, with rare and few exceptions, the only expensive pressure that has been exerted upon this convention has come with respect to this particular proposal. There are those who feel that no provision of this nature should be in the constitution for how can we accord these massive benefits constitutionally to judges and then not do something more in the constitution for school teachers, for school bus drivers, employees of the State of Louisiana and other public officials. We can't open this gate and let others come before this convention and ask for less than we are giving the judges under this provision, if it is adopted. The only argument that I have heard, that the judges advanced to seek to justify their position in asking you to constitutionalize these benefits, is because it would tend to make them free from the legislative process. This article that has been prepared and sponsored by the Judiciary Committee, that is supported by the judges in large part throughout the state, believes that contention because the entire concept is based upon the salary payments that are made to the judges as provided by the legislature. There is no way to disassociate the retirement program from the legislative process. No way whatsoever. In the section itself, provisions all relate to the payments that are having to be made in proportion to the salary that is earned, a salary fixed by the legislature. In lines 26, 27 and 28 on page 8 of the proposal we find the sentence: "The legislature and the political subdivisions shall provide for the payment of these benefits." There is no disassociation between the branches of government. Ladies and gentlemen of this convention, keep that compact that you made with your conscience when you became delegates to this convention. Keep the covenant that you have with the people of the State of Louisiana, and keep out of this constitution those provisions that people seek to insert in the proposed constitution that rightfully belong in the statutes. If we don't do this now, if we don't draw this line here and now, there is no basis upon which we can refuse every single, solitary, legitimate request that any pressure group, that any single interest, may want to make before this convention. I urge you to adopt the proposal. Relegate to the legislature the retirement systems, not only of the judges, but of all those who are entitled to protection from the legislature and from the government of the state of Louisiana. I will yield now.

Questions

Mr. Lanier Mr. Gravel, I believe in the last session of the legislature a bill was introduced by Delegate Womack, House Bill No. 97, which was to provide for a retirement system for judges. Do you happen to know why that bill wasn't passed?

Mr. Gravel Yes, I do. Because it would have taken an initial payment of seven million dollars out of the state treasury, which funds were not at that time available. That's why.

Mr. A. Landry Mr. Gravel, have you figured how much money it is going to cost to retire all the judges who are presently in office if they are retained in the present system at a hundred percent retirement?

Mr. Gravel I've done it in a little left-handed way. If this proposal either becomes law or is vested in the constitution, more than half of the judges in this state could resign their offices and retire on more than 50 percent of their salary for the rest of their lives, if they were 55 years of age and if they had served twelve years. That's a very important concept that I want you to consider, also.

Mr. A. Landry Mr. Gravel, you didn't answer my question. My question was that under your amendment

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you are freezing in all the elected judges at the present time under the old system, where they contribute nothing. Have you figured how much it will cost the taxpayers to retire those judges when they reach retirement age?

Mr. Gravel Mr. Landry, we are not freezing them into a system. We are just trying in this amendment, in fairness to the judges who have been working under the present system, that nothing shall be done by the legislature to deprive the judges of the accrued rights that they have obtained under the present constitution. That is the effect of the amendment. That's the only effect that it has, too.

Further Discussion

Mr. Jack Mr. Chairman and members, I rise to support this amendment and I am one of the coauthors. Now first I want to mention that for years I felt the judges should be under a pension system set up by the legislature and not in the constitution. I think that having a pension system in the constitution, it's too hard to amend even if it happened to be fair at a particular time. We want these pension systems to be able to continue, none of them go bankrupt, and the only way you can do that is to have them actuarially sound and they are not, to the best of my knowledge. Now if they are in the constitution, it is too hard to amend them. Now I do not deal in personalities. Mr. Burson need have no fear of me mentioning names and those things. I don't know who it was directed at. I want to say--give you a little background of what I know on this whole subject. In 1942 when I went to the legislature, a district judge got 15,000. I'm almost willing to take an oath, the court of appeals, \$7,500. They were very low. I helped to get those salaries raised. I voted to keep a fourteen year term for the Supreme Court, a twelve year term for the court of appeals, and for all district judges to be six years. I did not think New Orleans should have a six year term, but I've always felt that the judges should not have their system in the constitution and a system in which they pay nothing into. I want you to realize because the judges, the ones who have been on there a good while, they will know what I'm saying here. Back in the second term of Governor Davis, I believe it was his second term, I don't try at the time to remember exact details and times because I speak from my heart and I don't know whether I will have to speak on a future date on a thing. But they requested, because of the finances, that nobody ask for an increase. It didn't have any affect, except the court of appeals judges did not ask for one and later on under Governor Davis and I was the main one that was moving we got them a good, fine increase to \$23,500 which was good in those days, and then it went on up. I have never voted against an increase for judges while I was down there because I wanted to raise them to a good level and keep them at a good level. And I wanted good judges, and I don't want them retiring after twelve years and I don't like that. Some lawyer sound like put that in there. A real judge should not retire after twelve years. We've got grounds for him if he is sick or can't function. The only time twelve years retirement, if you are going to have it, would be where he is defeated. I don't want them retiring at that. I want to elect good judges and keep them there for a long length of time, but if they lose out at the proper time and the proper present, and the legislature is the one to fix that, not in the constitution, to freeze it in the constitution. Now I talked, back when we got that to \$23,500, the late Judge Hardy was down there. He did a wonderful job. He was a wonderful judge. He worked himself literally to death and was a fine man. We agreed with me and those other judges, everyone I talked to, they belonged, their system controlled by the legislature and not in the constitution. And all these years, I felt they should not be in the constitution. I was not in the legis-

lature after that 1963 session, in 1964 when the republicans got my seat. Now I say, ladies and gentlemen, this is a fine amendment. I have not heard one word against this from any judge up in northwest Louisiana. No judge has come to me anywhere. I know certain of them want to be left here, but none of them have asked me how to vote. People know I am going to vote like I believe is correct, but my judges discuss things with me. They discussed with me about having these appeals still on the law in the facts, and I voted that way because I thought they were right. I used to believe in a civil case, appeal should only be on the law and not on the facts, I listened to them. But I'm telling you I'm proud to help the judges to have a fair, good pension system and let the legislature pass on it. They are not going to lose any rights they've already got and that's why Mr. Gravel has in this amendment that they retain all accrued rights. They would have that right under the law. You can't take away something that's already been granted to a person, so I say let's pass this amendment.

Further Discussion

Mr. Kean Mr. Chairman, fellow delegates, this is a rather awkward position to be in, to follow Mr. Jack and precede Mr. Keady. I am going to try to make the best of a bad situation. I rise to oppose the Gravel amendment because I view this as being an issue which goes to the independence of the judicial system of our state. I think that the provisions that are in the present constitution and which were in the constitution which preceded the 1921 Constitution, providing for retirement benefits for judges, were put in those constitutions for the purpose of maintaining the separation between the legislative and the judicial branches of our government. I think that the rights of the judiciary, with respect to question of retirement rights, must come from the people in order to maintain that independence that we need in our courts and in our judicial system. In today's times, where retirement benefits mean so much, individuals who look forward to an ultimate retirement with certain rights, I can imagine no greater hammer over the heads of the judiciary than to have their retirement rights dependent upon a vote of the majority of the legislature however sincere that vote might be. I don't have any hangup with this detail in this constitution dealing with the retirement rights of judges because, as I say, those rights ought to come from the people and if they need to be changed in the future, they ought to be changed by the people, and not by the legislature, and a mere majority vote at that. For those reasons, I oppose the Gravel amendment and request that you all vote against it. I think it is overwhelmingly vote it down so we can go forward with the business of this convention and complete our work.

Questions

Mr. Brown Mr. Kean, where do you draw the line? You talk about separation of powers. If you are going to stay consistent, would you agree then that you would put every retirement system that in any way involves the executive branch government, and of course that is where most of them are, would you put every one of those retirement systems in the constitution to keep separation of powers? How can you draw the line at the judicial and not also do the very same thing for the executive branch to draw your separation?

Mr. Kean Mr. Brown, in my opinion the courts of this state are the last resort that we have with respect to our rights and I believe that it is so essential to be maintained in an independent status that the retirement benefits of the judges must be in the constitution. I do not have that same feeling with respect to the executive branch or some of the others that you refer to.

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Mr. Brown You put the judicial branch above the executive branch in...

Mr. Kean I say that the branches are coequal. They ought to be separate and independent, but insofar as the judiciary is concerned, when it comes to their retirement benefits, I think those retirement benefits ought to stem from the people.

Mr. Burns Mr. Kean, we've heard so much about keeping the judges and the judiciary free and removed from politics. If this amendment would pass, would it not mean that the judges would constantly have to have their hat in their hands every time the legislature met?

Mr. Kean Well, I'm not so much worried about them having their hat in their hand, Mr. Burns, as I am concerned that legislative lawyer who is on the other side of the case from me and that judge knowing that he's got to go before him the next time the legislature meets to increase, protect or preserve his retirement benefits.

Mr. Reeves Mr. Kean, would you not also agree that the courts are the last resort of every other state within this Union, is the courts of those states? Would you not agree to that?

Mr. Kean The judicial system of any state is the judicial system of that state, yes sir.

Mr. Reeves Can you explain to me why, in this great United States of ours, that only one state in this Union, the State of Louisiana, presently protects the judiciary in their constitution in reference to the retirement system?

Mr. Kean I think that the history of our state is such that we need to have certain protection for the judiciary that perhaps other states do not have.

Mr. Reeves Then in your answer there, you are agreeing that the state of Louisiana's government is worse than every other state within this union.

Mr. Kean No, I didn't say that Mr. Reeves. I simply said that because of past experience I thought that this was an area which deserved constitutional treatment.

[Quorum Call: 105 delegates present and a quorum.]

Further Discussion

Mr. Planchard Fellow delegates, it seems to me that the reason we are here today is to write a new constitution for the State of Louisiana. I think we all are obligated to one purpose, and that is to do something for the people of Louisiana and to write the basic law which will be more important to them than the statutes that we pass every day, because it is the basic law. Now in this basic law, we are looking for a separation of power. We want three separate branches of government. We must subscribe to the theory of checks and balances. The reason I say that is just because we have talked a lot about the judiciary and in their problems as far as their retirement. That is not the issue to me right now. I feel very definite that the judges should have their retirement system different from the legislature, different from the school teachers and all other retirement funds. The reason I say that is just because of what Mr. Kean just said, the independence of this court. The judiciary system has to have a different place in this country of ours if we are going to survive. It's the last place that you have your property and your rights decided upon. These individuals who have been elected to the high position of judge are a selected few and a selected few that we want to make these decisions, the many, many decisions from day to day. In everything that we do, we want this selected few

to be of the finest caliber possible. I think we have taken care of the people today when we decided that all judges will be elected and I think that the people will go to the polls and make certain that we have the type of individual that we are all seeking. We must, we must provide for them a means by which they can depend upon to retire at old age, after they have been on the bench for several years. I think that this is mandatory, that this is mandatory from the people. Give it to the judges from the people because that's what we are doing in writing this constitution. We are talking for the people in this particular instance. Now you can leave it to the legislature. I am not saying that you could not come up with a legislative act that would be, as I coin a phrase, actually sound. I'm not saying that at all, but I am saying this. What happens if, when you say that the legislature shall provide for a retirement system for judges, and they don't. What are we going to do if they provide for a retirement system and it's below what the teachers have or what the legislators have? I submit to you that in order to keep them independent we must put this phrase into the constitution as far as their retirement system is concerned. These men run for office after fourteen, fifteen, twenty years of the practice of law. They are elected. They have to make a big decision whether or not to serve on the bench. Once they are elected and they are on the bench then what are they going to do if ten, twelve, sixteen years from today or even eighteen years under the present system, if for some reason they are not reelected? They are out to pasture. They have no place to go because all of the years that they spent in training for the position that they obtained, they cannot go back and just pick up where they left off as I as a lawyer can do if I don't go on the bench. I submit to you that you give up a lot when they go on the bench. We should provide for them in this constitution. I have no qualms of putting it in the constitution. It's no new words. It's better done. This committee has done a good job. They listened to all concerned and they determined it as best to put it in the constitution and I submit to you it is a good provision. I want to leave you with one thought and one thought alone. We must keep the judiciary at the highest level possible. There is too much today of people trying to equate the judiciary down to the level of all others but when I walk into court, and I am sure that when you go to court and ask for your rights to be defended, you want to be able to look up to that man and say, "Your Honor" and mean it. Thank you.

Further Discussion

Mr. Wall Mr. Speaker and fellow delegates, I've had a number of delegates to ask me two questions. I feel like I should straighten this impression up, possibly straighten up what I really meant that I made in reference to them. A number of delegates have asked me, "Shady, is it true that you and some judge or some judges have had a big run-in and that's the reason that you have this problem, this hang-up on judges?" I've told them consistently, no, but I just kept thinking. There has been a hang-up on judges, so I really forgot about them. One time the judge did do something I thought was incorrect. I went in his office and told him exactly how I felt. The next time he ran for office, I contributed money for his campaign, so there wasn't any hang-up there. There was another little misunderstanding with a judge and he and I talked that out, and I [...] him the next time he runs for office, so I really didn't take these as anything serious. The only hang-up [...] toward the legislature and it began the first time that I was in the legislature, in 1947. There is no judge that I know that I personally dislike or have any vendetta or anything else for. Judge on individual basis I think are great guys. All of the times I've ever met on individual basis have been great guys, so there is nothing that I, running, that I personally have had with judges, it's

been with judges' organization in public office. Second, there has been, "Is it true, Shady, that the chairman of the Retirement Committee, that you wouldn't permit a hearing on the judges' bill during the last session of the legislature?" Well, I have been told that some judges said that. Now, if some judges said that, they have misrepresented the truth; they have been misinformed or either they just outright lied. If they have said that, because the truth of the matter of the judges' bill last time---now I was opposed---there was a number of retirement bills that came out of the Retirement Committee. I was opposed to practically every one of them coming out, because the benefits, but they still came out of the committee. We had a hearing on them, a fair hearing, and some of them were killed later on and some of them were passed and enacted into law. Now on the judges' retirement bill here is what I was told in reference to a hearing on their bill. No, they have decided not to have a hearing on it because they think they can do better at the constitutional convention. I don't know whether that is true or not. That is what I was told. The author or none of the judges ever asked for a hearing on the retirement bill. Had they asked for it, they would have gotten it. I just wanted to make those two points clear. I think you know my position and it would be useless for me to go any further on anything else and I yield to questions.

Question

Mr. Dennis Shady, I listened to your explanation of what happened to the judges' retirement bill or what you were told. I don't quarrel with what you were told; I wanted to ask you this question though. I've been informed that the reason the bill did not pass was that before the session there was discussion with the governor and there was a commitment to fund the bill with some money to pay the back portion, but for one reason or another it was impossible to do that, the governor discovered once the session started, and that this was the reason that the bill was not moved is because it would have been meaningless without the appropriation to back it up. Is that correct or do you know of anything contrary to that?

Mr. Wall I have heard reports of that also, Judge Dennis, but the judges didn't at any time try to move their bill in Retirement Committee and the person or persons that are passing the propaganda that Shady Wall wouldn't give a hearing or permit a hearing are incorrect.

Further Discussion

Mr. Champagne Mr. Chairman, fellow delegates, I humbly submit to you that there are some delegates who apparently are missing the boat on this issue. There is in my opinion not a man or a woman in this convention worth his salt who would argue that judges are not entitled to a just, reasonable and adequate retirement system. I simply rise here to submit [...] some dissatisfaction with the legislature in the past, but I feel that we must have some responsibility in our offices, whether they be legislators, judges or what have you. I have some belief in them.

Question

Mr. Willis Since we've give the executive more power to reorganize, the legislature more time to work, don't you think we should give the judiciary something that they desire that would make them, perhaps, more efficient and less involved with the other branches of government?

Mr. Champagne We had numerous opportunities to do that and I gave them all that I could. But when we are dealing with money, sir, that is something that is provided for by the legislature which is responsible to the people.

Further Discussion

Mr. Willis Mr. Chairman, ladies and gentlemen of the convention, I am called out by my committee unanimously. I have a commission from each to talk for a day and I accept the challenge, to challenge the amendment under consideration and sustain that of Mr. Rayburn.

Let me throw a dash of distinction despite this impractical plan even if I have to put my spirit on parade again. There is a difference between the persuasion of power, and the power of persuasion. The former needs little thought or reason. The latter needs both. With the former, excuse suffices, the latter requires logic. Lead us to the problem.

This is the issue or the question to bluntly face, shall judges' retirement system be constitutionalized when no other system is?

To pose the question is immediately to pose another in one word, why? I will tersely tell you why with neither knots of harsh words nor in redemption of the friendship of any judge none of whom I fear or will ever fear as long as we have the rule of law and are allowed to speak English, or French. And I seek not the acrimony of such excellent friends and deserving patriots as those who favor the amendment. I am now envious, I am not envious of those who can move mountains to them, because I can achieve the same by walking to the mountains, and I can walk away with them with the same alacrity.

Every Sunday afternoon I journey to the farthest corner of the Willis Plantation where the grass is green and the breezes blow and where the birds alone converse. Last Sunday, my thoughts were on this question, why? The answer came to me from the teachings of history and government. It was Montesque and Alexis de Toqueville who launched us on the experiment of a tripartite form of government with three co-equal branches. He taught Madison, Jefferson and the others who confected our Federal Constitution in 1787, that the Fourth Article in its Fourth Section guarantees us a republican form of government which does not mean a government by republicans.

That's so, how do we achieve this co-equality pertinently put? Does this exclusive retirement system achieve that aim? I vow to you it does. And if Alexis was with us, he could prove my vow. In his absence, then, I must prove the point by a reasonable certainty if not by a reasonable doubt ---beyond a reasonable doubt.

What is a judge? We jest and say because he runs for office is a politician. To assume that seriously is to error grievously. Constitutionally, statutorially and by the rules of ethics, and there are many judges, in my way, by its officials are hog-tied to the bench. They may not practice law, they may not receive compensation from any outside entities which may be subjected to litigation. They may not hold any other office and so ad infinitum.

The legislature may handle its own and the relative systems of all other officials, legislative or executive, and these officials may engage in any other businesses. Aye, there is the difference. And thus the necessity for the distinction of constitutional treatment for the judicial branch.

Do it otherwise and you compel your judges to genuflect to the legislature continually. I shudder to contemplate the consequences of such a course.

And most importantly, I fear the great effect of the absence of such an article on judicial performance in Louisiana. I am anxious to have the best judicial image and so the best judicial performance possible in Louisiana.

One more sentence, Mr. Chairman. Independence and emancipation of our judiciary and its separation as a co-equal branch is imperative to raise and sustain our good government.

I move that the amendment be defeated and that of Mr. Rayburn be retained.

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Further Discussion

Mr. E. J. Landry Mr. Chairman and members of this delegation, I want to ask you for a favor, a very special favor. The other day you glorified a person for being absent. Today I only want to ask you for a special favor for having been present and voted on every proposition that you expounded on. Now this special favor has to do with a very important issue and that is for the privilege of just having you listen to me for just about five minutes. I'm independent, I gave up a trip, a world trip, in order to serve in this convention. I did it voluntarily. I'm retired. I'm Air Force retired and I have the privilege of flying all over the world free but my destination takes me into representing my people in order to be here right now to talk to you without any reservation.

I am aware that this is important. I know the difficulty of following my friend Mr. Willis. I know the difficulty of being against my good friend, Judge, and I have coffee and breakfast with him every morning. I know the difficulty of being against my good friend, Mrs. Miller. I was her campaign manager in this room. But fellow delegates, the time has come to be independent. I'm aware of the lobby, I know what's happened. I sit there quietly and listen and I feel sorry for the many of you who are obligated and can't be as independent as I am at this moment. And it's true, it's so true that you are about to consider violating a basic principle and that is the principle of independence that we came here to perform, and I hope that you will consider the reason for your being here. I hope that you will realize that you can break pledges sometimes to people that you are obligated to, for reasons other than for the benefit of this country.

This amendment provides the protection for these judges. I came here because this is a new Louisiana with new people, new representatives of the people to perform the functions. They will properly take care of these judges and don't you be afraid of it. I trust the legislature, I trust the people who are going to elect these people. I want you to trust them.

I have lived under the retirement system. I am well treated by the legislators. They will treat the judges the same. I understand the many problems of the lawyers here who have to face the judges. But that's not the problem. The problem is for you to be independent and vote your convictions. I thank you for this privilege and I know in my heart that you are going to take this out of the constitution.

Thank you for listening to me and you gave me the favor that I asked you for. Thank you.

Further Discussion

Mr. Leigh Mr. Chairman, ladies and gentlemen of the convention, I do not possess the eloquence that has been exhibited by the two speakers who have just preceded me. I rise against the amendment. I rise in support of the constitutional provision... constitutional protection for the judges' retirement. I want to suggest to you, gentlemen, I think as Mr. Champagne may have implied, that the judges would oppose the adoption of the constitution whether this is left in it or whether it is taken out. I don't think that we need to have any compunctions about that at all. But I do want to endorse the statements that were made by Mr. Keen with respect to the present position that the judiciary, it seems to me, occupies. I suggest to you that the judiciary department, the judicial department is different, does have a different standing from the other retirement benefits. And it seems to me that if we are going to maintain, that we can best maintain a free and independent judiciary by giving them the constitutional protection of a retirement system within the constitution and I ask you to defeat the amendment and retain a retirement system for the judiciary in the constitution. Thank you.

Further Discussion

Mr. Roemer Mr. Acting Chairman and fellow delegates, I rise, of course to support this amendment. I'd like to take issue, though not on a personal basis with one of the speakers that preceded me. He laid before us a banquet or words, but served only water for thought. He said that the... excuse me Mr. Chairman we've got a....

I'll begin again, Mr. Chairman. I was alluding to a previous speaker, not to take issue with him personally. I suggest that the plantation birds told Mr. Willis the wrong things. Perhaps he does not communicate well with the birds. Let's see what they told him.

The birds talked of Madison and the tripartite form of government, and yet those of the time that wrote the constitution that guides our lives here in this nation spoke not one word of retirement systems. The birds spoke of genuflecting continuously before a legislature and yet the judge birds have come but once and that last time, not continuously.

The birds spoke of independence, yet the birds fail to mention that retirement systems are based on salary levels. It is a fact and the salaries are set by the legislature.

The birds spoke of many things, but they seemed to make not one chirp about a constitution for all the people, not just for one segment of the people. If we open these gates now, how can we stand? How can you stand at home or here and not open the gates for people who need it far more, not less or equal, but far more.

I suggest to you that it's in the interest of the people we discuss here, that is the judges, that they are allowed the flexibility of a sound, actuarially proven futuristic desirable and economically feasible program. It is as simple as that. They come to us out of fear, out of fear of what? Out of fear of the people and they serve the people. When it is not election time, the legislature is the people, you know that.

I suggest that what we need here is independence. It comes awfully tough on issues such as this. I ask that we join together and write the kind of constitution that we can be proud of... not the kind that has little niches and pockets of sanctity. Not the kind that will be amended and amended and amended over again because if you put this in the constitution, it shall be amended or this program will fail.

I yield to a question.

Questions

Mr. Lanier Mr. Roemer, I note that you are one of the authors of this amendment and I am concerned with the second clause that says, "provided, however, a judge in office or retired at the time of adoption of this constitution shall not have diminished any retirement benefits or judicial service rights".

Would you agree that this protection would not apply to a judge who would be elected after the adoption of the new constitution?

Mr. Roemer That's correct. He'd be governed by the retirement system in effect then, which he would know about before he ran for the office.

Mr. Lanier But if this protection is not available to these newly elected judges, would not then the legislature have the authority to reduce that retirement benefit?

Mr. Roemer Could those... they could do... yes.

Mr. Lanier Why did you choose to give this protection to those who would be judges or retired at the times of the adoption of the constitution and not give this equal protection and right to the newly elected judges?

Mr. Roemer Well, for the simple reason that I felt they needed that protection.

Mr. Willis Mr. Roemer, you promise not to mention any names and because you mentioned mine, put a question to mark to this one.

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Didn't I say that I went to the farthest corner of the plantation where the birds conversed...alone? Did you under...I said alone, my dear sir. The word has only one meaning. Do you not know that you cannot communicate with birds and have you ever tried?

Mr. Roemer Well, I was under the impression that you couldn't. Mr. Willis, but you gave me a different one.

Mr. Willis I think you have the same impression of the amendment.

Further Discussion

Mr. Smith Mr. Chairman, I hate to cut off, but I think we've beat this dog to death. I think we've all made up our minds now. We're just talking to hear ourselves.

I now move the previous question.

[Previous Question ordered.]

Mr. Roy Mr. Gravel, you have the right to close.

Mr. Gravel Mr. Acting Chairman, I yield the right to close to Mr. Henry.

Closing

Mr. Henry Mr. Chairman, ladies and gentlemen of the convention, I realize it's late and we are going to get through in just a minute, if hope, but I think that this is the first real gut issue we have faced in the convention so far. People have asked us ever since we started the deliberations of this convention, can you withstand the pressure groups, and can you withstand the lobbyists?... and this is the first time that we've really been thoroughly lobbied, I think, on one particular issue as to whether or not it should be incorporated in a new constitution. We've been lobbied, and we've been lobbied well and hard and I suggest to you very properly, nothing wrong with these fine gentlemen coming down here and letting us know what they want in the constitution.

Just one difference on this occasion. You and I are the judges. We are going to have a decision of what goes in and what stays out. If we are going to continue to do it like it's been done for the last fifty-some-odd years, there's no sense in us wasting mine and your time and the people's money in going along with this thing. So this is the real gut issue, and if they're going to come again and again and again, it's not going to get any easier during the next few weeks and during the next few months.

I suggest to you that we are not talking about protecting the integrity of the judiciary insofar as judicial retirement is concerned. I suggest to you that we are talking about the integrity of the constitution. You can talk about integrity and judicial integrity all you want to. People tell me they are scared of the pressure they've gotten from the judges.

Well, if we have the kind of judicial integrity that I think we have, then you needn't worry about what the judges are going to do to you, if you don't vote the way you know to be right on this because they are men of integrity. If they are men of integrity, they are going to on and there and will be other instances and other times to dance and other times to walk.

But all of this verbiage does not belong in a constitution and judges of all people should know that this does not belong in the constitution. If we are going to start here, where are we going to stop? Well, we won't stop during this convention and we'll take this and we'll put it in, and we'll take that and we'll put it in and it will go on and on and on and yet we'll have another seven-hundred page plus constitution. I suggest to you that you don't want that, and I don't want that. And the people of this state don't want that in a constitution again.

As far as the judges are concerned, they can come across the street this spring and I'll make this pledge insofar as my one vote is concerned. I'll help the judges get the best possible retirement program.

Not a judge spoke to me this last spring about a judicial retirement system. Not the first judge. And I realize that there was some confusion. It was not the legislature's fault. The legislature will treat the judges fairly. The legislature will help insure the integrity of the judiciary. The judges come before the legislature for salary increases and for other matters and have done extremely well, and we are not going to penalize our judiciary because it's too important and it's too necessary.

We've talked long enough and perhaps we have talked too long, but judges should be equal. That's what I'm saying. Mr. Roemer said the other day some folks are equal but some folks are more equal than others. That's what we are going to be doing. And when we put this in, the school teachers are going to be down here.... "put us in the constitution"... and there are more school teachers than there are judges and it's going to get worse.

So if you want to draw the line, now, if you want to decide what the pressure groups and the lobbyists are going to do to us, well we are going to know when we leave this afternoon. If we can withstand it, we are going to find out right now and I ask that you adopt these amendments so that we can go on with the drafting of this constitution in the manner in which you and I know it should be done.

Questions

Mr. Dennis Mr. Chairman, you pointed out that the judges have been interested and have asked the convention to make a decision one way or the other, and that is correct. I'd like to ask you, weren't there some people lobbying on the other side, and who were they and who did they do it for?

Mr. Henry Some people lobbying on the other side of this amendment? Yes, sir, I was lobbying on the other side of this amendment and I was lobbying for the people of the state of Louisiana, that's who I was lobbying for, Judge Dennis.

Mr. Dennis Weren't there some other people lobbying on the other side of the issue, too, Mr. Chairman?

Mr. Henry I'm sure that there were a number of other people lobbying, Judge Dennis. Mr. Reeves raises his hand and he was lobbying. There were a lot of people lobbying. And that's what they're after...the judges have done an excellent job, and that's the great American way, but it's up to us to decide. And I say the decision is to adopt the amendment, Judge Dennis.

Mr. Wall Delegate Henry, I believe that you as Speaker of the House appoint the Chairman of the Retirement Committee. If there was a chairman of a committee, and particularly a retirement committee that wouldn't permit a hearing and give a fair hearing for judges' retirement, you'd exercise your authority and remove him as chairman, wouldn't you?

Mr. Henry About as fast as it could be done, yes, sir.

[Recess with orders. Custom calls for a Receptor (Speaker) and a quorum.]

Point of Order

Mr. Planchard I'd appreciate you making the announcement to not vote anyone else's machine on this particular instance.

Mr. Roy Yes, gentlemen, make sure you vote only your machine.

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[Vote on the amendment tied: 57-57. Vice Chairman Roy votes yea breaking the tie. Amendment adopted: 58-57. Motion to table reconsideration objected to.]

Point of Order

Mr. Nunez Point of order.

Did you announce the vote as fifty-seven, fifty-seven and then vote? I didn't quite understand you. There was a little noise. Would you recapitulate what happened?

Ruling of the Chair

Mr. Roy I announced that but I hadn't voted and then I voted.

Mr. Nunez Well how can you vote after the vote was taken?

Mr. Roy I'm in the Chair and the Chair has to break the vote....can break the tie.

Mr. Clerk, would you state what the motion is now?

Mr. Poynter Unless someone rises further, the amendment was adopted by the vote of the Vice-Chairman in the Chair, fifty-eight to fifty-seven.

Mr. Gravel has moved to reconsider the vote by which the amendment was adopted and table that motion to which Mr. Stinson has objected to the tabling of the motion to reconsider.

Point of Order

Mr. Burns When delegates have all voted and the final vote has been announced as fifty-seven to fifty-seven, can the Acting Chairman or the Chairman vote after the complete vote of the convention has been announced and completed?

Mr. Roy I'll have the parliamentary answer it. My answer is, yes, he may vote.

Mr. Burns How long would that time continue in which he had that privilege...ten minutes or an hour or half-hour or how long?

Mr. Roy Well, I don't know that the rules provide for it. I think I broke it within about a minute.

I have asked Mr. Poynter to read the rule to you on that.

Mr. Poynter As I appreciate it, the rule governing that, Mr. Burns, would be Rule 80 concerning tie votes which reads as follows:

"When the convention is equally divided, the vote of the Chairman shall be taken to break the tie provided that the Chairman in this event shall not have previously voted as a delegate on the question."

Point of Order

Mr. Perez Point of order, Mr. Chairman, and I'm not really addressing myself so much to this particular question as I am the following of the rules.

The rules state, "when the convention is equally divided the vote of the Chairman", not of the Vice-Chairman.

And I also refer you to Rule 78 which says, "When the yeas and nays are taken on any question, no delegate shall be permitted under any circumstances whatever to vote after the decision has been announced by the Chairman."

My point is first of all, under Rule 80, the tie votes only the Chairman can break the tie, not the Vice-Chairman. And after the vote has been announced, the yeas and nays, no delegate shall be permitted under any circumstances whatever to vote after the decision has been announced....

Mr. Roy The rule is that the Chairman may break a tie and that's what I've ruled....anybody in the chair.

Mr. Perez The Chairman has already voted and there is a rule which says the Chairman may vote but he may not vote but once.

Mr. Roy Why do you rise, Mr. Jack?

Mr. Jack Don't let anybody escape till this is all decided.

Mr. Roy Why do you rise, Mr. Fontenot?

Mr. Fontenot Mr. Chairman, I move the previous question.

Appeal from Ruling of the Chair

Mr. Dennis Mr. Acting Chairman, I appeal the ruling of the Chair.

Mr. Roy The ruling of the Chair has been appealed with respect to, I guess, my breaking the tie vote.

Therefore, I'll ask the parliamentarian to state the issue at hand.

Point of Order

Mr. Fontenot I just made a motion on a previous question to table a motion.

Mr. Roy An appeal is always in order, Mr. Fontenot.

Point of Information

Mr. Deshotels Mr. Chairman, point of information to override the ruling of the Chair, how many votes does it take?

Mr. Roy Sixty-seven or two-thirds of those present and voting, whichever is lesser.

Point of Order

Mr. Wall The motion to appeal the ruling of the Chair was not timely made. We had already, you had accepted a motion, you had accepted a motion for the previous question so the order to appeal the ruling of the Chair was not timely made. So the ruling of the Chair is out of order.

Mr. Roy You are out of order, Mr. Wall. An appeal is always in order.

Point of Information

Mr. Burson Under Rule 80 which states that when the convention is equally divided, the vote of the Chairman shall be taken to break the tie provided that the Chairman in this event shall not have previously voted as a delegate on the question.

Did the Chairman vote as a delegate on this particular question? The Chairman of the convention, I'm talking about.

Mr. Roy Yes, the Chairman voted on this...the Chairman of the convention.

Further Discussion

Mr. Stagg Mr. Chairman, when the Rules Committee wrote these rules, the delegate would pay attention to when a capital C is used on Chairman which then applies to the person who is elected to be Chairman of the convention.

We deliberately in Rule 80 wrote it with a small c in front of the Chairman because there are numerous instances when the elected Chairman of the convention is not seated at the upper podium.

The Rule 80 is that whomever is the Chairman where you now stand is the man who can vote to break a tie and that's what the Rules Committee wrote when they wrote these rules in January.

Mr. Roy That's what I did, Mr. Stagg.

Point of Information

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Mr. Rayburn If I was listening correctly immediately after the vote, Mr. Gravel moved to lay the motion on the table and Mr. Ford Stinson, Delegate Stinson objected. There has been no action taken on that objection and I am wondering what is before this body at this time?

Mr. Roy An appeal to the ruling of the Chair that I was entitled to break the vote.

Mr. Rayburn Can you take that before you take the motion with the objection? Does that have preference over any preceding motion that was made?

Mr. Roy Yes.
Mr. Poynter will state the motion.

Mr. Poynter After the vote was taken, the vote was 57-57, the person in the Chair broke the tie, made the vote 58-57, and the amendment stood adopted.

Mr. Gravel moved to reconsider the vote and lay that motion on the table. At that time Delegate Stinson objected to tabling. At that time Delegate Perez rose to a point of order and quizzed the Chair as to the interpretation under Rule 80 which reads that "when there is a tie vote, the Chairman in this event shall...and the Chairman shall not have previously voted, he may vote to break a tie." Delegate Perez sought a ruling of the Chair as to whether this rule was to be construed that any person in the Chair, not have previously voted, acting as Chairman would be permitted to break the tie.

The Chair ruled that such person would be able to break the tie.

Delegate Dennis has appealed the ruling of the Chair that any person, the Vice-Chairman or otherwise, acting in the chair may under Rule 80 vote to break a tie, which is the question before you at this time.

And under the other rules of the convention, the question to be put to you is to sustain...voting yes to sustain the ruling of the Chair, or no, the opposite to vote no, not to sustain that ruling of the Chair.

Point of Order

Mr. Stinson Then by manipulation on any issue that the speaker might be in, he can go down and have an assistant go up and his side can gain one vote. Isn't that so?

Mr. Roy No, the speaker...Mr. Henry cast a vote, and I cast a vote, and I was called upon to break a tie and I did it as Chairman of this convention at this time as Vice-Chairman and sitting in the Chair. I had not voted. I did not vote till after I had to break the tie.

[*Motion to appeal Ruling of the Chair withdrawn.*]

Motion

Mr. Planchard I'd like to make a motion, Mr. Chairman, I move that we adjourn until 9:30 on Wednesday, next week.

Mr. Roy The motion is in order and not debatable.
State the motion.

Mr. Poynter All right. We had after the adoption of the amendment we had a motion by Delegate Gravel to reconsider the vote by which the amendment was adopted and lay that motion on the table, to which Delegate Stinson objected.

A point of order was raised, the Chair ruled, there was an appealing of the ruling of the Chair now subsequently withdrawn.

As a privilege motion, certainly having privilege over the previous motion and as a substitute, Delegate Planchard has now moved that the convention stand adjourned until Wednesday at 9:30 if I understood you correctly, Delegate Planchard.

The vote will recur on the substitute motion by Delegate Planchard that the convention stand adjourned until 9:30 a.m. Wednesday next.

[*Record vote ordered.*]

Point of Information

Mr. Nunez If the convention votes to adjourn, what is the disposition of the last vote or the reconsideration vote to lay it on the table?

Mr. Roy Mr. Poynter, would you respond to that?

Mr. Poynter Of course the amendment would stand adopted with no disposition as to reconsideration and under the rules you have a right to reconsider on the day or the next legislative day. So it would be possible that if a delegate chose to do so, to renew the motion to reconsider at that time.

Point of Information

Mr. Fontenot Is there not a motion to reconsider and a motion to table and the previous question has been called on that?

Mr. Roy No, the...it was not...we never got to that point and the motion to adjourn takes precedence over any other motion.

Mr. Fontenot Mr. Chairman, I move the previous question on the motion to table so I know there is a motion to table and I know that adjournment takes precedence but when we come back Wednesday that ought to be first priority.

Mr. Roy Mr. Fontenot, you are out of order because even after the previous question is ordered a motion to adjourn takes precedence.

[*Motion to adjourn rejected: 39-7.*]

Point of Information

Mr. Gravel I would like to ask the Clerk to please state the position of the motion at this time, or what is before us now?

Mr. Poynter At this juncture what is before the floor. The proposed amendments by you, Mr. Gravel, have been adopted by a vote of 58 years and 57 nays. You, sir, have moved as I appreciate it to reconsider the vote by which that amendment was adopted and table the motion to reconsideration. Delegate Stinson has objected to tabling the motion to reconsider. Which motion of course the motion to table is not debatable.

Point of Information

Mr. Gravel As I understand it, Mr. Clerk, if you wanted to table the motion and that is to finalize the action that has just been taken we vote green and if not, we vote red, is that correct?

Mr. Poynter Those who wish to reconsider this matter would vote red to oppose tabling. Those who do not wish to reconsider this vote would of course choose to vote green so as to table the motion to reconsider and make it more difficult to reconsider this amendment.

Mr. Gravel Thank you. All right now, I believe I understand you correctly if we...

Mr. Roy No speeches, Mr. Gravel.

Point of Order

Mr. Burson If we are going to have a debate, let's go ahead. I think some other of us would like to talk to. Let's play the thing one way by the rules, that is all I am asking.

Point of Order

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Mr. Jack So there can't be any ifs or ands or mistakes and fellows that vote one way and say they meant another one afterwards, let us just say... do you want to vote for the Gravel amendment you vote a certain color, if you want to vote for the judges', vote another.

Mr. Roy Mr. Jack, you are out of order again.

Point of Information

Mr. Thompson I want him to restate what the vote is. And I want the crowd to quit clapping and whooping and hollering around you so you can hear us, too, along with that.

Mr. Roy I believe that is well taken. I am going to have Mr. Poynter restate the motion.

Point of Order

Ms. Zervigon Mr. Chairman, I thought I heard Mr. Fontenot move the previous question before the adjournment motion on this subject.

Mr. Roy That is what we are doing, Mrs. Zervigon, but we have to state the motion for the benefit of everybody.

I am going to ask Mr. Poynter to state the motion in read and green so that we can go on.

Mr. Poynter The amendment has been adopted by a vote of 58 yeas and 57 nays. Mr. Gravel has moved to reconsider that vote and then table the motion to reconsider. Delegate Stinson has objected to tabling the motion to reconsider. Therefore, when the machine is opened those of you who wish to reconsider this vote will vote no, those of you who are in favor of tabling the motion to reconsider, making it more difficult to reconsider, would vote yes or green.

[Motion to reconsider tabled: 58-54.]

Point of Order

Mr. Planchard I ask that no one vote someone else's machine and I think that one under me is Mr. Pugh. Now someone has voted Mr. Pugh green. But that vote should be taken over.

Mr. Roy Yes, sir, that point is well taken Mr. Planchard and we will take the vote over again.

Point of Information

Mr. Kean Was Mr. Pugh shown as voting in the original vote?

Mr. Poynter Mr. Pugh's machine was not voted, Delegate Kean. His machines was not voted on the amendment, sir.

His machine, however, as Delegate Planchard points out was voted on the motion to table the motion to reconsider. Delegate Planchard's point is correct as to that. His machine, however, was not voted on the amendment.

Mr. Roy We are going to revote on this once again since Mr. Pugh's machine was voted.

Further Discussion

Mr. Jack It is well known in all law if a change of vote where you claim there is a fraud is not going to change the outcome and since we are dealing with judges and they decide that. Since we won by four votes, why does the one happen and did anybody look to see if Mr. Pugh was under that desk and reached up and voted.

Mr. Roy Delegate Jack, you are out of order. I have ruled that we are going to revote.

Mr. Pugh's machine was voted on the motion to table the reconsideration of the passage of the Gravel amendment.

[Motion to reconsider rejected and a quorum. Motion to reconsider tabled: 60-52.]

Point of Order

Mr. Hardee Mr. Chairman, my vote was not recorded on the board. I want it to be recorded red.

Mr. Roy So record it. It does not change the vote.

Chairman Henry in the Chair

[Motion for recess rejected: 32-70.
Motion to revert to Morning Hour adopted without objection.]

INTRODUCTION OF RESOLUTIONS [I Journal 346-347]

Announcements [I Journal 347]

[Adjournment to 9:30 o'clock a.m.,
Wednesday, August 22, 1973.]

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Wednesday, August 22, 1973

ROLL CALL

[79 delegates present and a quorum.]

PRAYER

Mr. Alexander Most holy and eternal God, we come this morning in Thy presence to continue our toils and struggles to perfect a document for the emergence of Thy people. We pray, oh God, that Your presence will go with us, guide our minds, guide our hands, guide our bodies as we move. Teach us Thy ways. May whatever we do be consistent with Thy laws and Thy pronouncements of love, of humility and meekness. May we feel for one another. May we be so close so that one cannot fall for the other and when we shall have terminated our toils and struggles here, receive us into Thy presence where we shall praise Thee forever. In the name of Jesus. Amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

[Journal of first nine convention days formally adopted.]

INTRODUCTION OF PROPOSALS

[Journal 348]

RESOLUTIONS ON SECOND READING AND REFERRAL

[Journal 348]

PROPOSALS ON SECOND READING AND REFERRAL

[Journal 348-349]

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Mr. Poynter Committee Proposal No. 21, introduced by Delegate Dennis, Chairman on Behalf of the Committee on the Judiciary, and other delegates, members of that committee, which is a substitute for Committee Proposal No. 1, a proposal making provisions for the judiciary branch of government and necessary provisions with respect thereto.

The status of the proposal at this time: the convention has adopted as amended the first 22 sections of this proposal with the following exceptions: Section 18, dealing with juvenile courts and its jurisdiction was passed over and Section 20 dealing with preservation of evidence failed to pass. In addition the convention has had under consideration Section 23, retirement of judges. Of course, an amendment to that section was adopted on Saturday.

Amendments

Mr. Poynter Amendments sent up by Delegates Kean, Lowe and Zervigon.

Amendment No. 1, on page 7, delete lines 22 through 32 both inclusive in their entirety and on page 8, delete lines 1 through 31 both inclusive in their entirety.

Amendment No. 2, delete the amendment proposed by Delegate Gravel and others and adopted by the convention on August 18, 1973, and insert in lieu thereof the following: "the legislature shall provide for a retirement system for judges which shall apply to a judge taking office after the effective date of the statute enacting the system and to which a judge in office at the time of its adoption may elect to join with credit for all prior years of judicial service without contribution therefor, provided however, a judge in office or retired at the time of the adoption of this constitution shall not have diminished any retirement benefits or judicial service rights nor shall the benefits to which his surviving spouse is entitled be reduced."

Explanation

Mr. Kean Mr. Chairman, fellow delegates, I am not going to rehash the arguments of Saturday. I accept the vote of the convention with respect to the concept that we used in dealing with the problem of judges' retirement. My amendment, however, is designed to do several things which I think are important in order to clarify this particular issue before us. My amendment would provide that the legislature shall provide for a system, a retirement system, for judges which would apply to judges taking office after the effective date of the statute enacting that system. My amendment would further provide that a judge in office prior to the adoption of that retirement system and who has the protection of benefits under the existing constitution, which were further protected in the Gravel amendment adopted on Saturday, would then have the option of going into that retirement system with credit for prior years of service. The amendment would further carry forward the protective language of the Gravel amendment providing that a judge in office or one retired would have his benefits protected against reduction or diminishment. Under these circumstances, a judge in office at the time the legislature retires the retirement system for judges was enacted would, in effect, have the option of remaining under the present constitutional provisions until he was eligible for retirement and entitled to the benefits under those provisions or at his option coming in to what I would assume would be a legislative plan involving contribution by the judges, but having the benefit of prior years' service under the old system. In my opinion, it would not involve the state in any considerable amount of funds as far as prior years service is concerned, because if the judge who had this option stayed under the present system the state would be responsible for his retirement benefits in any event, and you would simply be granting him the option of coming into the new system in which he would make his contributions and have the benefit of prior years' service. It seems to me that this would be a reasonable approach to the problem. It gives the legislature the right to deal with the details of the retirement system; it protects, as does the Gravel amendment, the existing rights of the judges and retired judges and their surviving spouses; but give those judges in office the right to go into the new system with credit for prior years' service. I yield to any question, Mr. Chairman.

Questions

Mr. Weiss Delegate Kean, this provides for the judges currently in office, and would provide for a more independent judiciary you feel, is that right at this time? ... by virtue of the retirement benefits that should be.

Mr. Kean Dr. Weiss, I made my position, I think, clear with respect to the independence of the judiciary Saturday. I accept the decision of the convention as to a legislative retirement plan. I'm simply now trying to afford to the existing judges, a right to come into that plan with prior years' service.

Mr. Weiss My question is about the future judiciary and its independence by virtue of prior retirement benefits. Is there anything in here to include for that?

Mr. Kean It provides that the legislature shall provide for a retirement system for judges who take office after enactment of the statute. Under those circumstances, I take that as mandate to the legislature to establish the system.

Mr. Chatelain Delegate Kean, I'm a little lost at this verbiage that states the "statute enacting the system ... what's going to happen to the judge in office at the time this constitutional convention goes into effect. There's a gap there that I can't figure out. Would you explain that to me please?"

Mr. Kean Ah I appreciate it, Mr. Chatelain, both

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under the Gravel amendment of Saturday and this amendment, a judge who is presently in office and entitled to benefits under the present constitutional provisions is protected against a diminution or reduction of those benefits. He can stay in that category under this amendment if he desires to do so, but if he wants to get into the new plan that the legislature is mandated to adopt, then he would have the option of doing so and would get the benefit of prior years' service in going into that new plan.

Mr. Chatelain That's what your amendment is attempting to do then, is to take care of the future judges, is that correct?

Mr. Kean The future judges would be taken care of by the mandated retirement plan. My amendment is to bridge the gap by which those in the present... having present constitutional benefits which cannot be diminished or reduced can leave the program and go into the new program if they want to do so.

Mr. Chatelain Thank you.

Mr. Pugh Mr. Kean, given these set of facts, as I appreciate it from your amendment, he would be given credit for the prior years if he elected to come under the new system.

Mr. Kean That's correct.

Mr. Pugh Now, suppose he does not... I take it that he's got to elect that and they all make that election at one time and that would be shortly after the adoption of this constitution. Is that what you contemplate?

Mr. Kean Well, I think that it would have to be after the adoption of the legislative act setting up a judicial retirement system.

Mr. Pugh And it would be your thought that they would have a certain period of time in which to do that? I know that you can't speak for the legislature, but is that what you contemplate?

Mr. Kean Every retirement system that I have had any connection with or knowledge of where there were persons who were entitled to join it from another system, say, it always provided that they would have to do it within a specified period of time, and I think...

Mr. Pugh All right, as I appreciate it on your amendment, it would give them credit for the prior years, suppose they elect not to come under the new system and stay where they are and then down the road the legislature decides they are going to increase some benefits to them. I take it that the ones who stayed where they were would not have their benefits increased. Is that your appreciation?

Mr. Kean That's correct, yes sir. They would have the option of staying where they are or coming into the new system. If they stayed where they are, then they would not get the benefits of the new system.

Mr. Pugh All right, by the same token, if they elect to come into the new system and get credit for their prior years and there's an increase, then they would ride along with that increase. Is that right?

Mr. Kean That's correct.

Mr. Denney Mr. Kean, as I read your amendment, and this was also true in Mr. Gravel's amendment, there is no protection against future diminution of any plan which is set up for future judges, is that correct?

Mr. Kean Future judges would be covered by the legislative plan. It's my appreciation that until rights become vested under a retirement system that the legislature or whatever might be the creating body, would have a right to change those

benefits up and down.

Mr. Denney Thank you.

Mr. Le Bleu Mr. Kean, as I understand it, each judge who retires now is entitled to a hundred percent of his salary. Am I incorrect in this assumption?

Mr. Kean Except in certain instances where there is a disability situation, in which case he is entitled to two-thirds.

Mr. Le Bleu O.K. now, if a judge at his retirement age is in good health and decides to retire, he can continue to receive a hundred percent of his salary until the time of his death.

Mr. Kean If he stayed under the old program, right.

Mr. Le Bleu If I remember correctly, one of the amendments that was offered here the other day would require under the new retirement system, say a contribution of six percent and his retirement benefits would be computed on a four percent average. Now, it was my understanding that this amendment would reduce the amount that he would receive to, say, eighty-five or ninety percent of his original salary. Am I correct in this? The reason for my question is I can't understand the reason for this particular amendment when a judge could, at the time of his election to one retirement system or the other where he could now, under the present constitution, retire at a hundred percent of his salary, elect to take a payment under the new retirement system at a lesser amount.

Mr. Kean Well, I think it's a rather clear reason, in my opinion, why they might want to get in the other system, Mr. Le Bleu; as I understand the present system a judge, except for a disability situation, can't retire until he reaches an age of 70 and has to retire when he gets to be 75. Now, that means that a person who went on the bench when he was forty, for example, would have to stay on the bench for a long period of time in order to be eligible for retirement. Whereas, he might wish to retire when he got to be age 65 or after 20 years service at age 60, and if that kind of a benefit was provided for in the legislative retirement system, then he would elect to go from the constitutional system that he is protected with by this amendment into that system. That's one of the main purposes, I think, for wanting this option. Because, it would give them some flexibility with respect to retirement.

Mr. Casey Mr. Kean, I'm concerned about a hiatus that exists if this proposal is adopted as is and with your amendment... what would happen to an individual who became a judge between the time that the new constitution might be adopted and the statute would be enacted by the legislature. You could have, let's say, a six-month period, maybe ten new judges during that period of time, and it does not look like that particular... those individuals who become judges between that period of time are covered by the old retirement system. Is that not correct that there is that hiatus and that there should be something, someplace, even in a special schedule, which would cover this?

Mr. Kean I think that you would have to provide in some manner that if a judge took office between the adoption of the constitution and the enactment of this statute that he would be covered by the statute.

Mr. Casey That he would be covered by the statute or the old system, or would he have the option?

Mr. Kean I think that if the constitution is adopted no longer providing for those benefits, then I think he would have to come under the provisions of the statute because that would be the only retirement system to which he'd be entitled.

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Further Discussion

Mr. Jack Mr. Chairman, fellow delegates, I have always believed, and I want you to listen to this closely, that the judges should come under a retirement system created by the legislature. Mr. Chairman, can you get some order? There's still an awful lot of noise...

Now, I want to point out to you that I spoke for the Gravel amendment for which I am a co-author. I had in reservation with Mr. Tom Velazquez, another amendment in case it failed, to make it optional, which is very much like this. Since yesterday, rather last Saturday, I've studied this matter of our alternate one, Tom and ours, which this is just like. Now, here's the reason I'm going to support this amendment and I want you to listen carefully because the reason I'm supporting this should also be a reason why you should. Now, let's take the history of the pension system. This...the judges, has been the law for many, many years. I don't...it could have been in the 1921 one, I don't know...somebody should check it. But, when I first came to the legislature in 1940, the judges had this pension system. The judge got in 1940 five thousand a year. Many lawyers including myself at the time did not run for a judgeship because they were making more than that. Now, the pension system the judges had was an emolument of that office. It was a part of it as much as that salary of the small five thousand. Now, I cannot in good conscience vote against this amendment because at the time the judges were getting it, and every judge on retirement was under this constitutional pension system. Now, all other pension systems, and let me show you some; they began first outside of maybe the teachers, with the sheriff, then the assessors, legislators, all of those others. Now, they came at a time that it was completely new and expected that they were already in office. It was a gratuity. It was a gift to them from the state. It was not really an emolument of the office at that time. I hope that I make myself clear. This just came to me like maybe I was intended to think of those reasons and that is the reason...I've tried to place myself in the position and I think I did it, or I suppose I had been a judge any of those years beginning with 1940 because that's when I became familiar with mainly legislation, the constitution or those things. For that reason the judges that are now in office...that was an emolument of their office just as much as their salary. Many of them that are in there today would not have run for it if that hadn't been there. I've checked with some. I vote entirely like I believe. Now, if I voted against it, even though this is defeated and even though the Gravel amendment of which I am a co-author came into the new constitution, I in my own heart, would feel badly if the legislature did not come up with an excellent retirement system that gave the judges the same, affecting the judges that are in office now who run with this as a part of the emolument of that office. I want to make myself clear because I speak without reservation regardless of whether it's the judge or what. I also want to say that our judges have not discussed this with me, have not written me and bothered me about it or anything. So, I'll go along with the amendment.

Further Discussion

Mr. Gravel Mr. Chairman, ladies and gentlemen of the convention, I believe without any question, that on last Saturday when we adopted the amendment that simply provided that the legislature would provide a retirement system for judges and would protect the rights of the judges who are presently in office and would be in office at the time of the adoption of the constitution, that we did one of the most significant things to demonstrate to the people of the state of Louisiana our real concern for the kind of document they could receive the support of the electorate next year. I don't know of anything that has been done that has been more popularly acclaimed than the action

of this convention last Saturday. Now this proposed amendment, and Mr. Kean makes it appear that there is very little difference between what he proposes here, and what we did last Saturday. This proposed amendment seeks to half legislate with respect to judicial retirement for judges who are to be elected in the future. It goes further than that and seeks to require the legislature to prepare a certain kind and type of retirement system that will be applicable to judges in the future. I submit to you, ladies and gentlemen of the convention, that's basically wrong. We should not have statutory material of any kind in the constitution. As far as we can avoid it, we should attempt to do so. Let me say this, that I think judges above everybody else, ought to know and realize that this is not the kind of thing that the people of the state of Louisiana will support in a new constitution. What this amendment seeks to do in an adroit way is to say, in effect, that the legislature must make an appropriation in the future to take care of future judges under a retirement plan that has not yet been devised. The amendment that we adopted on last Saturday provides that the legislature shall enact a retirement system for judges. It protects every single solicitor judge who is elected at the time of the adoption of the constitution so that his vested rights will be maintained. The judges should expect no more than that, and we as a convention should do no more than that. Now I submit to you, that this is going to be the true test of whether or not we are going to provide a document in which the people of this state will give their full faith and credit. To permit this kind of an amendment hamstringing the future legislature, to me, is just bad constitutional law and almost as bad statutory law. I submit to you, ladies and gentlemen, that this amendment should be defeated and that we should maintain the position that we took on last Saturday.

Questions

Mr. Munson Mr. Gravel, in the cases of judges who have been on the bench for a number of years, is it your contention that rather than provide in the constitution, but in the statute that they should be treated by the statutory law, that we let them to have to come up with...let's say, a heck of a lot of money in order to join the new retirement system and pay that back, prior service? Do you understand what I'm talking about?

Mr. Gravel I don't know if I quite understand it, but I think I do.

Mr. Munson In other words, right now, the state is contributing one hundred percent.

Mr. Gravel That's correct.

Mr. Munson All right. When a judge joins this new system, the time he's been on the bench up until now is prior service. Would he have to go back and pay seven percent of all of that prior service?

Mr. Gravel Well, let me put it this way. I think that the legislature will have to determine and devise a total retirement plan for the benefit of any judges who want to come under the new legislative plan. The judges who are in office and who are elected now, will get the benefits under the amendment that we adopted last Saturday, of all vested rights that accrue to them under the present constitution. So all that a judge could expect would be that he would not be treated any differently in office or retired at the time of adoption of a greater benefits are accorded to judges, and I hope such a plan is devised, then the legislature should state upon what basis those additional benefits should accrue in the judges, and not this convention.

Mr. Lanier Mr. Gravel, under the amendment that was passed last Saturday, it provides that a judge in office or retired at the time of adoption of this constitution shall not have diminished any retirement benefits or judicial service rights. You

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indicated just now, I believe, that these were those that had accrued at the time of the adoption of the constitution?

Mr. Gravel That's correct.

Mr. Lanier Would it be accurate to state that under the present constitution that the rights do not accrue until there is 23 years service?

Mr. Gravel Under the present constitution, I think... Well, some rights don't accrue until there is 23 years service. There are other rights that have to do with respect to disability and the rights of the beneficiary in the event of death.

Mr. Lanier No, but what I'm getting at is suppose we have a judge like, say Judge Dennis, who is not disabled, who is on the bench, but doesn't have his 23 years. This gives no protection to that type of a judge. Would that be correct?

Mr. Gravel I think it absolutely would and I think the legislature is mandated under the amendment that we adopted to give credit for the time that has been served, under any plan that it would adopt. Thank you, Mr. Chairman.

Further Discussion

Mr. Lowe Mr. Chairman, delegates to the convention, I'm sure that one of the most emotional things that any convention can consider is the retirement benefits of someone that has worked their life to attain that position. We are not here working with a simple concept, but I think we are all here working to provide benefits to a group of individuals presently in our judicial system today, that have earned certain benefits. You know and I know that compensation comes in one big package. Compensation comes in one big package—the take-home pay that you get. It's the benefits that you get all of those fringe benefits, and it's the benefits you get upon retirement. There is not any of us here, that when we accept employment, don't take all of that into consideration. Now, I believe that the judges that are presently serving have served over the years and have taken into consideration the retirement that will accrue to them. I know when I get a tax case and the Internal Revenue Service comes in, they say there has been unreasonable compensation. They don't just look at salaries. They look at benefits, fringe benefits, retirement and everything thrown in. It's a known concept that compensation takes into consideration everything. Now some of the judges I have a judge in my district that in two or three years will have served 18 years. Now, if he's not reelected, he has no benefits that have accrued to him at all. Now I ask you, is that fair for a man that may have served 18 years to suddenly have to walk away from a career, his second career, because to get to his second career he has to have had at first, a successful first career. It is proper that the judges, probably most of them go into office at the height of their career. First of all, they have to have proved that they are professionally mature. They've had a practice, most of them, that they have to leave, that they've built up over the years. They sacrifice for this because they know that once they get into the judgeship, they do a good job, that they are going to end up being able to retire and support their family for the rest of their life. Now I think there is only a couple of issues involved here. All of us want to see a separation of powers and we've beat that dog to death and there is no use beating it any more. I know we'd get 132 votes if we voted for a separation of power. Now, in conjunction with that, we need to provide a judge that's going to leave a career that he's built up to go into the judgeship, an assurance that he is going to be able to retire with some reasonable benefits. Now let's stop right there. Are we saying that we here to stop are going to tell what those benefits are. No, we're not. We're doing what you want us to do.

We're saying let the legislature decide. So how can anyone come up here and say we're legislating. We're saying the legislature shall provide, and that's all we're saying. Now, we are making sure that we're not going to diminish any of the benefits that are presently there for judges and this is where it gets complicated. You hear Mr. Lanier ask a reasonable question. Has a judge that's been in for 18 years, and is 55 years old, does he have any benefits that have accrued to him legally? I would say probably not, but he does have benefits that should have accrued to him because if he can go to retirement age, he can retire. Now I submit to you that we have to come up with this particular provision. By coming up with this particular provision we are not doing anything, except granting to the legislature the authority to provide for a retirement system for judges. You're going to have people that are going to come up here and say look, we're doing something for judges we haven't done for anyone else. L.S.U., with all of the people that they have in their system, did not have a funded retirement system. They fought for years before the legislature asking them to give L.S.U. a funded retirement system where the professors, the employees, could make a contribution into that system and be assured that at retirement age they would get a decent retirement. Now there was no big hue and cry about all of the professors and all of the people at L.S.U. getting something for nothing. They could stay in the system that was there or they could join the new system. The concept is simple. Over the years, and many years ago, retirement systems were not the sophisticated, complicated things they are today. We're being locked in with the 1921 provision that was not sophisticated at that time. Retirement was not the big thing at that time that it is today. Now we have a complicated system for judges today. In many instances, a judge could serve 18 years and get absolutely nothing. You wouldn't want that for your family, and the judges didn't just start asking us to do something about it. I ask that you give your serious consideration to a serious problem that we can solve right here today.

Personal Privilege

Mr. Rayburn Mr. Chairman, I'd just like to make a suggestion that I vacate telephone booth five and ask Judge Tate to step in there and let all of them go to confession that wants to, and then we'll go ahead with our business.

Further Discussion

Mr. Hunez Mr. Chairman and fellow delegates, I rise in support of this amendment. I'll try to be as brief as possible, but I wanted to ask some questions and didn't have the opportunity to. I disagree with the statement that was made here, that the most popular thing that we did was to take the judges' retirement out of the constitution. Certainly I don't think it was the most popular thing that we can do ever did by 57 to 57 vote. The Chairman broke the tie, or the Vice Chairman. In fact, all I heard over the weekend is why did you take the retirement of the judges out of the constitution? It's been in there since 1921. Those judges that have run for judge ran with the idea that they would have that retirement and you took it out and you said let the legislature do it. Now the way I read this amendment, it just simply says, "The legislature shall provide for a retirement system for judges." But it goes one step further, and it protects those judges who might be, who might have a 15 or 20 year period as a judge. Let's take, for an example, the legislature provides for that retirement system and the legislature tells those judges, "Well you can join that system, judge, you can join it after... you've been in a free one all these years." Let's keep that in mind. The judges had a free retirement system. They did not contribute, but the state paid their retirement. The ones they tried to get into the constitution Saturday, they wanted to contribute. This goes a little further and it tells you, it tells the legislature that a judge who is

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ready to retire that has 15 years, that the legislature can't tell him, "Mr. Judge, you can retire, but you've got to come up with 15 years of back pay." Now don't believe that isn't possible because that's that they're trying to do. This is what this amendment protects. It protects that individual that has a vested retirement system. A free vested retirement system with the state. It tells him that he can have that vested retirement system if the legislature passes an act requiring judges to retire. What's so terribly wrong with that? What's so terribly wrong with that? I can't see anything that's so terribly wrong with putting it into the constitution, spelling it out that judges should have contributed seven percent and could retire at three and a half percent. Again, a separation of powers. Again, this almost... "you shall have a retirement system", but we're giving some protection to the people who are retired, by the way, and the spouses and the children of the people who are retired, and the judges who are about to retire. What's so wrong with this? You're just adding another paragraph to the constitution, and certainly you are maintaining that separation that everybody seems to want to maintain. So I ask you to go along with this amendment. I think it's a good amendment. I don't think it's as good as putting it in the constitution, but I think it's a good amendment.

Questions

Mr. Pugh You're not suggesting to this body that those judges who are receiving some benefits, that anyone can take those benefits away from them, are you? That's a valid, vested right that the United States Constitution would protect. There's nothing that can be done about those benefits.

Mr. Nunez What's your question?

Mr. Pugh Whether or not you're suggesting, you made the statement that we want to protect these retired judges and also the surviving spouses of those who have passed away, who are presently under the system. You're not suggesting anybody can take anything away from them?

Mr. Nunez Mr. Pugh, I'm suggesting... and I'm not suggesting, I've said outright, and I think this amendment protects those judges. Those judges who are not now retired and have 15 years and they might want to retire under the legislative program... I'm suggesting that the legislative program might tell those judges that you can retire if you've put up the additional funds that it takes to retire. That's the way I read the amendment. It protects those particular people. If you read it any different, I'd have to disagree with you. Yes.

Mr. Pugh Yes, I read it that whoever has a vested right up to this moment or until the adoption of this constitution has got it period, and nobody would take it away from them.

Mr. Tate Senator Nunez, did I understand your argument to be that the difference between the Gravel amendment providing for a legislative retirement and the Kean amendment providing for a legislative retirement, is that the Kean amendment provides that they must provide a means for sitting judges to get credit for past service?

Mr. Nunez That's exactly what I said, Judge. If I didn't make it clear enough, you certainly did. That's what I think is the whole argument and the whole point of the amendment. And that's what I think the whole argument and the whole point of why we should adopt this amendment.

Further Discussion

Mr. Smith Mr. Chairman and fellow delegates, I voted for the amendment Saturday. I think it's a good amendment. I don't think it should be changed.

In order to understand this amendment, you have to read them both together. Now looking here in the Journal, it says "The legislature shall provide for a retirement system for judges; provided, however, a judge in office or retired at the time of adoption of this constitution, shall not have diminished any retirement benefits or judicial service rights, nor shall the benefits to which his surviving spouse is entitled to be reduced."

I see nothing wrong with that. I think we should stay with it. This adds, in other words, it takes the "The legislature shall provide for a retirement system for judges..." Then it goes on to say, the new amendment, "which shall apply to a judge taking office after the effective date of the statute enacting the system, and to which a judge in office at the time of its adoption may elect to join with credit for all prior years of judicial service without contribution therefore, provided, however, a judge in office or retired at the time of the adoption of this constitution."

Well that's the difference of the two amendments. I don't see any need to add all that. I think it's taken care of. I'm afraid when you put too much verbiage in it, it might be dangerous. I think we adopted a good amendment Saturday. Let's stay with it and defeat this amendment.

[Previous Question ordered. Record vote ordered. Amendments adopted: 69-43. Motion to reconsider tabled.]

Personal Privilege

Mr. Womack Mr. Chairman and fellow delegates, I didn't take the floor, probably should have a little ahead of this, and it may be a little late now. I can see a number of bugs in this provision right now, and I want some of the legislators that's going to have to work out some of the details to be giving me some of the answers a little later because I'll probably have to help handle it, assuming I'll still be in the House, if something doesn't happen to me. But, this makes no provisions for the type of system you're going to have, number one. Number two is, I don't know how you're going to say when it's funded and when it's not funded because the judge is going to have the right to retire on a black horse if he's going good, or he's going to have an opportunity, at the last minute, to jump on the young new horse that's got ten years ahead of him. There's a many of thousand dollars and hundred thousands of dollars difference in that. Now if you are assuming that the state employees are going to accept this judicial system into theirs without several million dollars being put up, and the state employees' retirement system vote to adopt the workings of this constitution, I think you're kidding yourself because that system is going to be getting considerably further in the red if an additional several million dollars is not put into it. Then again, somebody had better start figuring out the responsibility that the state would have if the municipal judges in trying to incorporate a system, and also some answers to give the state employees if they decide to put the city employees in the state employees' system when they should go into another system. So there's many unanswered things in this. I just think that somebody that may know a good bit more about retirement than I do had better start pretty quick in trying to get some pretty solid answers because there's going to be a lot of questions asked, just prior to election, with reference to this particular item in this constitutional convention proposal.

Amendment

Mr. Poynter Amendment proposed by Delegate Zervignon to Committee Proposal No. 21.

Amendment No. 1. On page 8, between lines 31 and 32, insert the following: (Mrs. Zervignon, considering the adoption of the previous amendment, it would be well to say on page 7, immediately following the language added by the amendment proposed by Delegate Kean and just adopted, insert the following

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as a new paragraph) "The retirement benefits or judicial service rights of any judge shall not be decreased during the term for which such judge is elected, nor shall the benefits of their surviving spouse be decreased."

Explanation

Mrs. Zervigon Mr. Chairman and delegates, this paragraph would carry forward the philosophy that we put earlier in this article of the constitution when we said that the legislature couldn't decrease the compensation of a judge during his term of office. We said at that time that we thought that the judiciary ought to be as independent as possible, that we knew that they had to be dependent upon... It was handed out Saturday, Mr. Flory. We knew that they had to be dependent upon the legislature for their compensation, but they didn't want to be able to be pulled up and down like a windowshade during the legislative session if they sound themselves in the position of having to make unpopular decisions. This doesn't isolate a judge forever, but extends to the judges that will be sworn in after the adoption of the constitution, the same right not to have his rights tampered with as we've extended to present sitting and retired judges. I urge your adoption of this amendment in order to insure a judiciary that is responsive to the people through the six-year and ten-year terms that we have adopted, and yet independent of any pressure from the legislative arm of government. I'll answer any questions.

Questions

Mr. Anzalone Mrs. Zervigon, are you adding this to the Kean amendment or are you replacing the Kean amendment with this amendment?

Mrs. Zervigon No, we made a technical amendment to that effect. I'm adding it to the Kean amendment. I don't believe that it conflicts with the Kean amendment or the Gravel amendment, but adds one more idea to those two amendments.

Mr. Anzalone And this concept is in keeping with the constitutional provision that we have now that a judge's salary cannot be reduced during his term in office. Therefore, it should be right that his retirement benefits should not be reduced during his term in office.

Mrs. Zervigon That's the intent of the amendment.

Mr. Fulco I don't have a copy of the Kean amendment, but in the Kean amendment it did say that the judges can elect to go under the new system, if the legislature came up with one that showed an increase in the benefits. So your amendment, Mrs. Zervigon, would be a conflict with that, as I see it.

Mrs. Zervigon No, sir. Unless mine is improperly drawn, which is a possibility because I'm not an attorney, mine is to apply to future judges. Both of the amendments we've adopted to date, the Gravel amendment and the Kean amendment, apply solely to judges sitting now, sitting or retired in 1973-1974. I was worried what would happen to a judge sworn in, in '75, who made an unpopular decision in '76.

Mr. Fulco Well, your amendment covered newly elected judges and not the ones that are already on retirement systems?

Mrs. Zervigon The way it's drawn, it would apply to both, but the sitting judges are now already taken care of, so the only change that it makes is to extend this protection to future judges. I urge the adoption of this amendment. Mr. Chairman.

Further Discussion

Mr. Jack Mr. Chairman and fellow delegates, this amendment applies to future judges that are elected

after this constitution goes in effect, if it were. Now, this amendment, I'm against it. We've passed this last amendment which I think is fair, where the judge had already been in. That provision was in the 1921 Constitution and was a part of the emoluments of that office. You went along with that. Now a judge up until this amendment came in, he's in office when this is effective, he can choose which system. Now, we're getting back to the unfair stuff. Now the judges that elect to come under the new one, if they do, that are in office, or the ones that get elected after this constitution becomes law, they should be governed by the legislature and get out of the constitution and not have reserved here. This amendment, if passed will give to the future judges these rights that no other pension system has. I just can't understand this type of amendment. In simple, after adopting, a minute, a few minutes ago, an amendment getting rid of the Gravel amendment of which I was a coauthor, we gave a choice when this constitution becomes effective, if the people adopt it, of the judges in office then. They can come under the new one or they can stay under their present system. If new judges are elected after the effective date, they are going to come under the one the legislature passes. The legislature ought to have full authority on the future judges just like they do on all other pension assistance. This does not do it. I don't know what judges are suggesting this, but this is bad if any judge is doing it. I'm not arguing with authority, that's a different thing. She's got a right to introduce any of them. But the future judges, they should be just like us peons and everybody else, be in a legislative act. Take your chances, and at times, things are going to have to be decreased in legislation that sets up and carries out pension systems to be sure they are fiscally sound. So I ask you to defeat this. I want to keep the pension system sound in Louisiana, and not show favoritism to any group. This will be showing favoritism to the new judges that come in the office. The judges there now, it was a part of their salary like if they'd said to a judge back there when you ran, you have got a system in the Constitution of 1921, it's yours, you get it, so the legislature and the constitution says if you die, your wife, your widow is going to get so much. If you live, when you retire, you're going to get so much, which is a delayed payment of salary or emolument. But we're not dealing with that in this thing. This is for the new one, and let's defeat it.

[Previous question ordered. Amendment rejected: 18-67. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Tobias] in Convention Floor Amendment No. 1 proposed by me need to change it from Gravel to Kean, et al, and adopted by the convention on August 22, immediately after we need to strike out the words "after Section 23", make it read: immediately before the words "the legislature" insert "Section 23. (A)".

Amendment No. 2, in Convention Floor Amendment No. 1, proposed by Mr. Kean, et al, and adopted by the convention on August 22, 1973, immediately after the words "is entitled, be reduced" add the following as a new paragraph: "(B). A judge shall not remain in office beyond his 70th birthday except as otherwise provided in this section."

Explanation

Mr. Tobias Mr. Chairman, fellow delegates, the first amendment is to correct one technical error in the Kean amendment. It left out the section number, Section 23, that was in the Gravel amendment but it's not in the Kean amendment.

The second amendment is also in the nature of a technical amendment. It picks up the language that the Committee on the Judiciary had in Section 23 (A) which read, "A judge shall not remain in office beyond his seventieth birthday except as otherwise provided herein."

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Now this particular phrase would not affect any presently sitting judge. The reason is that under the Keam amendment, the phrase, "judicial service rights" would continue any judge in office until the age of seventy-five, or, at least, it would allow him to continue in office until that time.

The phrase, seventieth birthday, if we do not put this in, this would mean that a judge could stay in office forever and a day. There would be no age at which he could retire. Anybody could force him to retire. As far as saying that the legislature by an act, in the retirement system could say that a judge shall retire on his seventieth birthday, they cannot do this under our amendment that we adopted, the Keam amendment. And this would just continue this particular language that I believe was overlooked when we drafted or when we adopted the Gravel amendment and subsequently the Keam amendments.

Questions

Mr. Pugh Mr. Tobias, can we constitutionally provide for an election whereby the man would not serve for the full term? Would it not be more constitutionally sound to provide in his qualifications that if he would reach seventy during that specific term, then he could not run for the office?

Mr. Tobias Well, that is, in effect, what we have done if we adopt this amendment because if you read this along with the Keam amendment, the obvious conclusion is that a judge would only be running for a partial term, for example he was elected for a six-year term at the age of sixty-seven, he would only be running for a three year term. Assuming, this would only apply to new judges. It would not apply to any judge presently in office. They could continue until age seventy-five or under certain circumstances to age eighty.

Mr. Pugh What concerns me is that spelling out in the constitution that when a man runs for a six-year office, that when he becomes seventy automatically he loses that office or must retire and my question is, wouldn't it be more constitutionally sound to provide that if he is to reach his seventieth birthday during that term, he can't run for the office.

One of the qualifications would be that if it was a six-year office, that he be no older than sixty-four at the time he runs for it.

Mr. Tobias No, I think I...as I appreciate your question, I think I'd have to disagree with your statement because I think that a judge ought to be allowed to serve through his seventieth birthday and I wouldn't cut him off sooner than that.

Mr. Avant Mr. Tobias, the thing that disturbs me about your amendment is this. If the legislature in adopting this retirement system were to come to the conclusion that retirement could not be had after twenty years of service...if the legislature in adopting the system, which this provision as it now stands mandates them to adopt, in its wisdom should determine that twenty years would be the shortest period of time after which a judge could retire, then the effect of your amendment would be that no man who was over fifty years of age could ever run for judicial office with any hope of ever being able to retire, would it not? Wouldn't it limit the choice of judicial candidates to those persons under fifty years of age?

Mr. Tobias Mr. Avant, in effect I would have to say it's a possibility. But if you don't put it in, it means a judge could stay in office until he is a hundred years old if he lived that long. You've got to put some reasonable restriction in here, and if we don't then the legislature can't shorten it in effect, because we are not limiting to what age he can serve. He can keep serving, he just wouldn't be eligible for additional retirement benefits. That's the only restriction that the legislature can put on him.

Mr. Avant Well, Mr. Tobias, don't you think that under the language as it now stands, that "the legislature shall provide a retirement system for judges, etc., etc.", that the legislature can provide the age at that there shall be a mandatory retirement and that...you don't think so?

Mr. Tobias No, I do not.

Mr. Avant Well, I'm sorry, I just have to disagree with your interpretation of the provision.

Mr. Jenkins Max, I just don't understand what's so special about seventy. Why is it at age seventy the persons's supposed to apparently give up his occupation, go home, retire, do nothing, perhaps and die. Is that the idea?

Mr. Tobias Well, this is the age that the committee fell upon, the Committee on Judiciary, and the reason we chose age seventy was that at age seventy it will create a pool of judges, let's say between the ages of seventy and seventy-five, who would be...could easily be assigned to other courts in the state when a vacancy occurred or in such situations as that, and that was the reason we picked such an age.

Mr. Jenkins Well, they could at age seventy resign if they chose and participate in such a pool, anyway, couldn't they?

Mr. Tobias They could, but I think we've got to put a restriction against having a person say who is sixty-nine years old and runs for a ten-year term as judge, say to the court of appeal, and he would be seventy-nine, and now there are people who are seventy-nine who have...are completely sound in their part...

Further Discussion

Mr. Tate Mr. Chairman, Brother Delegates...Sister and Brother Delegates, I rise to speak in favor of the Tobias amendment. Mandatory retirement of judges is a common provision. Many judges of seventy and seventy-five are just as good a judge as they were at sixty-five. But many judges between seventy and seventy-five, tend to fail...tend to have lesser energies and lesser abilities and lesser ability to discriminate whether they themselves should retire.

Now, the virtue, since 1921, and before that I am sure, we had mandatory retirement provisions for judges for reasons similar to this. Due to the popularity, and it was seventy, I believe, in 1921, of Chief Justice O'Neill, it went to seventy-five and then to eighty. At that time, we had judges between seventy-five and eighty serving. I took the place in '58 of a very fine and distinguished man trying to save out his time past his time. The legislature in...submitted to the people an amendment that would have reduced the mandatory retirement age to seventy-five and provided for full pay retirement at seventy in an effort to move from active service into a retired pool, those judges over seventy.

As a matter fact, most judges love their work and will continue to serve. The question is, is it not better for the system to have a mechanism to move judges past seventy into a pool where they can be used rather than to have them continue to serve, sometimes on the average not as good a judge as they were when they were younger.

Now I want to point out to you. If you don't put it in the constitution, you'll be in the situation the federal judges are in right now. Under the constitution, they can't serve for all their life. They have judges past seventy, well past seventy and even though they have tried to make them retire, M. Avant, by a favorable retirement system, some of them don't want to retire. In California, they put a system that every year a judge served after seventy he'd lose one-third of his retirement benefits, or one-fifth, some figure. They've got two judges that kept serving past seventy whom most

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of the bar thinks should have retired.

I rise, and for what it's worth, if you want to take advantage of my...what little expertise I have on this thing, the national recommendations are to favor retirement, a mandatory retirement age in the constitution because otherwise they have an absolute right to serve so long as they are elected and until their death, no matter what.

I yield, Mr. Chairman.

Further Discussion

Mr. Dennis Mr. Chairman and fellow delegates, this amendment simply puts back into the provision the sentence that was originally adopted by the committee. As I recall, I don't remember any real serious opposition in our committee. We were pretty much unanimous in our agreement that this would upgrade the judiciary. It would require a definite date for retirement so that you wouldn't have to have judiciary commissions and other judges trying to decide whether a fellow judge was still mentally able or physically able to carry on his job; you would establish a retirement age at seventy which is not too early, we don't think, and this would require that all judges go into retirement. These judges could still be used as reserve judges to be assigned in cases of emergency until they no longer were able to serve.

So the committee adopted this almost unanimously. I think it is a good provision and we should put it back into the article that we are now drafting.

Further Discussion

Mr. Avant Mr. Chairman, fellow delegates, I must oppose this amendment and I'll tell you why. We have, in the first place, voted to adopt the concept that the legislature shall provide for a retirement system for judges. Now, if we are going to leave this matter to the legislature, I don't think that we can tie the hands of the legislature with a provision such as this.

The danger in this provision that I see is if the legislature in its wisdom decided that retirement should be based upon twenty years of judicial service and that's the system that they put in, then you are effectively prohibiting any man or woman who is over the age of fifty years from seeking judicial office with any hope of ever being able to retire, so you are eliminating completely from the pool of possible judicial candidates all persons who are over fifty years of age because anyone who enters the judiciary does so, I am sure, with the idea that someday, if they are a good judge and do their job properly, that they will be permitted to remain in office and ultimately will be permitted to retire.

Now, we have other provisions in this article which we will get to later, and which are in the law now, that do permit the retirement of judges, the involuntary retirement of judges who for reasons of health, either mental or physical, are no longer able to discharge the duties of that office and they can be involuntarily retired.

But we have elected, as I said, to leave this matter to the legislature with respect to those judges who would take office after this constitution became effective, if it ever becomes effective. And I think that it is...having made that determination, then the best thing for us to do is to leave the entire system to the legislature, both with respect to the age at which a person will be forced to retire, as well as to the other details of the system. But if you leave it to the legislature and the legislature desires to go to a twenty-year system, then you have effectively eliminated the possibility of any person over fifty years of age ever seeking judicial office.

Questions

Mr. Womack Don't you think that if an individual at fifty-six years old was elected judge and served until he was seventy under a mandated retirement system, that he could have accrued fourteen years of vested interest and if your percentage factor

was four percent, he'll have a fifty-eight percent retirement system.

Mr. Avant If that's the system that the legislature determined they wanted to come up with...but we don't know what the system is going to be, Mr. Womack.

Mr. Womack The question is, though, under this the legislature could go ahead and adopt a system and could say that you are going to get one percent for every ten years you serve, if you are going to go ahead and assume that.

What I'm saying is that the legislature has the authority to provide that he shall go on and get whatever benefits he's accrued, according to how many years he's served, and that the twenty-year factor is only a maximum benefit of eighty percent.

Mr. Avant That would be possible. I think, frankly, under the provision that we have as it is drawn, that the legislature can fix, under language here an age at which there shall be mandatory retirement and my primary argument is that having decided that this is something that the legislature should do, the entire concept of judicial retirement, when we should leave it completely to the legislature and all of its particulars.

Further Discussion

Mr. Jenkins Mr. Chairman, delegates to the convention, you will notice that there is no mandatory retirement age in the executive or legislative branches of government. We don't require that our governors retire at a certain age, we don't require that legislators do, we don't require that people in local government retire at a certain age, and in the federal system we don't require that judges retire at a certain age.

Why should our judges in this state be discriminated against in this one branch of government? If anything if we were going to have a mandatory retirement age, we'd certainly want to lift the age higher than it is at present, not reduce it, because people are living longer. Their useful lives are longer than they have ever been. Scientific advances in the near future are going to probably extend life spans much further than they are now.

I think the psychological effect of mandatory retirement age can be...retirement ages can be devastating on individuals. If we were going to pass some constitutional provision on this of any sort, I'd say we ought to have a constitutional prohibition against mandatory retirement ages in state employment of all sorts because there is no relation between a mandatory retirement age and the ability of person to continue to perform on a given job.

I just don't see how we can say to a person, "Because you have reached a certain age, and for no other reason, you can no longer serve in this position." That's completely arbitrary. There's no rationality to that. It's one single fact about an individual. It has nothing to do with his ability to do the job. If a man can't do the job, we have means for removing him from that position. But I don't see why we should automatically declare, "Your usefulness has ended," or at least, in the normal fashion as other peoples' usefulness is utilized, it's ended.

It's an unjust discrimination. And notice too, that it attempts to determine in advance, it asks you to determine here in this convention when people who are not even elected judges yet are going to retire, when they have to retire, without knowing anything about their particular situations or cases.

It's been said that the purpose of this is to put judges in a pool so that they can serve in their retirement years. Most of the people put in these pools are required to travel around the state, so you can see that the discouragement there is such that people who are older...if they have some physical infirmity are not likely to be able to travel around the state are going to be more and more precluded from serving in their job. Whereas,

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if they would be able to stay in their home district, they'd probably be much more capable in most instances of continuing to serve.

The point is, I want to retire at seventy and join this pool now he can. In the future he could if this weren't passed, but this will require him to retire and join this pool and travel around the state if he wants to continue to be a judge, rather than staying in his home district.

So there are really two basic issues I think we should consider. The first is the fact that the people should be allowed to decide who their judges will be. That's the first point. And if they desire to have a man who's seventy or eighty or whatever age, it seems to me that should be their choice.

The second point is that we should not make an arbitrary age discrimination in this constitution, completely unrelated in this instance to competency or ability to do the job. We shouldn't tell our people who get up in age, whether it's judges or any other position, that automatically their usefulness is ended, that they can't serve as normal functioning human beings simply because they have reached a certain age, so I urge the defeat of this amendment.

Questions

Mr. Dennis: Woody, I didn't get a chance to ask Mr. Avant this question. He ran out of time. He had indicated, I believe, that the legislature in the retirement... the statutory retirement program could provide for a mandatory retirement age for judges.

Don't you agree, that unless we put a mandatory retirement age in the constitution the legislature is not going to be able to force any judge to retire at any particular age?

Mr. Jenkins: Yes, I agree with that.

Further Discussion

Mr. Conroy: I rise in favor and in support of the proposed amendment to create a mandatory retirement age of seventy for judges. And that is the issue. I think it's become clearer from the questions since Mr. Avant spoke.

But the issue is whether or not you will have a mandatory retirement age for judges because if you do not put it in the constitution, I do not believe that the legislature could do it. It could try to entice judges out of office, but it could not force them out of office. Under the constitution we have prescribed the terms for which a judge will be elected. The legislature could not have the power to change that term of office. And a mandatory retirement age does change that term of office. It ends the term of office when the man reaches the age of seventy or whatever the retirement age is.

We have supported in this convention minimum ages, ages at which we think a man can run for judge and I think that we should also have maximum ages in which he can serve. And why do we need it for judges and not for others? Because judges as elected officials run in a different situation from other candidates for office. A judge who has been on the bench for fifteen or twenty years, even though he's old and might not have the energy going to be defeated in his campaign for reelection. He will be reelected and if he's running for a ten-year term, he will be seventy-seven or so before his term of office is over.

I think that it's desirable from the standpoint of the people who will come before judges, to insert in the constitution a mandatory retirement age. I think some of us have had experience in the practice of law, in practicing before judges who desire to stay on the bench. Most judges love their work and will stay on and on and on if they possibly can. But I think it important for the administration of justice within this state that you have a mandatory retirement age and that the age of seventy is a very reasonable one to impose.

I yield to any questions.

Questions

Mr. Avant: Mr. Conroy, referring to Section 25 on page 10, lines 7 and following, which deals with the judiciary commission, the provision "on recommendation of the Judiciary Commission, the Supreme Court may retire involuntarily a judge for a disability that seriously interferes with the performance of his duties and that is or is likely to become of a permanent character". Don't you think that that is ample protection against the senile judge, the judge who cannot take care of his duties?

Mr. Conroy: No, not as a practical matter. That carries with it a stigma that is not likely to be imposed on a judge who, while possessing some mental capacities, is not the kind of judge you want on the bench any more, Mr. Avant. You can realize that. It's the same difference between interdicting a person and suffering through the difficult time that they may have when they are really incapable of performing, but you don't want to put the stigma on them. And I think that particular section that you refer to would put a stigma, the intention of a mandatory retirement age is not getting into that area where you might begin to have that stigma.

[Previous Question ordered.]

Closing

Mr. Tobias: I'd just like to make three minor points in closing.

First of all, judges don't run generally for the retirement system.

Second, Louisiana presently provides by constitution that judges have to retire at the age of seventy-five.

Third, most states place restrictions upon judges' retirement, at the age at which they must retire. Some of them do it by reducing the benefits at which a judge can retire, for example, California does it by judges' retirement benefits. If he doesn't retire at the age of seventy, it will reduce fifty percent. And some states such as Minnesota wipe out all judges' retirement benefits if he doesn't retire at age seventy, which has the same effect as the amendment. So I urge the adoption of the amendment.

[Report vote ordered. Amendment adopted: 4-11. Motion to reconsider tabled. Motion for previous question on the action rejected: 14-98.]

Amendment

Mr. Poynter: The next set of amendments is sent up by Delegate Velazquez.

Amendment No. 1. This is a lengthy set, it has Delegate Velazquez's name alone on it.

Amendment No. 1, on page 7, delete lines 22 through 32, both inclusive in their entirety, and on page 8, delete lines 1 through 31, both inclusive and strike out Convention Floor Amendments No. 1 and No. 2 proposed by Mr. Kean and adopted by the convention on August 22, 1973. That need to be added now, in their entirety and insert in lieu thereof the following:

"Section 23. The legislature shall provide for a retirement system for judges, provided, however, a judge in office or retired at the time of adoption of this constitution shall not have diminished any retirement benefits or judicial service rights, nor shall the benefits to which his surviving spouse is entitled be reduced. Any judge in office at the time of the enactment of the statutory retirement system shall have the option of joining the statutory retirement system or remaining in his present system. The option to join the new system shall be open to a judge for one year after the enactment of the statutory system."

Point of Order

Mr. Dennis: Point of order, Mr. Chairman, isn't it the same amendment that we have debated and adopted

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and amended and now we are going back over what we went over on Saturday?

Mr. Henry No, it's a different amendment, Judge Dennis.

Explanation

Mr. Velazquez This is basically a very...a relatively simple amendment. It merely tries to put the retirement material for judges in one area in fourteen lines, as opposed to the present forty-four lines that were in the original...committee proposal. It states that anything that would concern retirement of judges should cover three points:

It should direct the question of retirement to the legislature.

It should preserve any and all existing benefits due judges and their spouses.

And it should allow an option to the existing judges.

This amendment does those three things. Any weaknesses that anyone thinks may be in here is amendable by the legislature itself. This will allow the legislature to set up a system of sufficient attractiveness for the active judges, so that they will leave the present free ride. I don't think the legislature wants to rob the judges, I don't think the judges want a free ride. I ask you to support this amendment.

Further Discussion

Mr. Dennis Mr. Chairman, fellow delegates, I rise very strenuously to object to both the amendment and the tactics being practiced in this amendment. Now we had a fair and full debate on Saturday and you decided not to spell out the retirement program that the legislature would enact in the constitution. And although it was a tie vote and had to be broken by the Acting Chairman, the proponents of that committee provision did not come right back with an amendment and try to put it back into the draft today. We accepted that defeat and we only ask for one thing to be salvaged.

And that was that if you set up a statutory program in the future, that you allow the present sitting judges to join that program and not be required by the legislature as presently the price for joining, paying ten or fifteen thousand dollars of back years credit which the judges don't have. We debated that question fairly and fully and you decided overwhelmingly that you would not put the present sitting judges in that position. And now Mr. Velazquez is coming right back and trying to take out of this draft the Kean proposal which gave that protection to the sitting judges. You are.

I don't think it's fair. I think we are wasting the time of the convention. I say let's go ahead and vote this down. We have already decided these issues. Let's move on and get through with this judiciary article.

Questions

Mr. Gravel Are you suggesting to this convention that the subject matter of Mr. Velazquez's amendment has already been considered and disposed of by prior action of the convention?

Mr. Dennis I am suggesting to you, Mr. Gravel, and you know very well---I think that you are probably a silent author of this amendment---you know very well that this amendment deletes the Kean amendment, which is the amendment that we debated and adopted. Yes, I am suggesting that you are going right back into something that we debated and decided.

Mr. Gravel Judge Dennis, have you let your law clerk look at this so that you could see that you were wrong?

Mr. Dennis I asked the question earlier to point out that it is going back into the same area. I am familiar with floor tactics to some extent; not quite as much as you are, but I do know at least that I

have watched several other people do it.

Mr. Vesich Mr. Dennis, didn't I understand that the other amendments were supposed to be technical when we voted against Mr. Weiss's proposal? I thought the amendments on the table were supposed to be technical. When Mr. Weiss moved for the entire subject matter, I voted against it because I thought they were technical amendments. Isn't that what you understood?

Mr. Dennis Yes, I understood that also, sir.

Mr. Vesich This is not a technical amendment, is that correct? They are not technical.

Mr. Dennis This is not a technical amendment. It defeats the amendment that was just passed by Mr. Kean.

Mr. Henry Judge Dennis, if it will help your feelings, let me make sure that you understood, and you stood there and heard me say that there were three sets of amendments, and I didn't say that any of them were technical when the motion was made. I followed the rules so don't drag me into this argument, Judge Dennis.

Mr. Dennis I apologize, Mr. Chairman. I was not referring to you and I will correct myself. I believe Mr. Jack said there was a technical amendment on the floor.

Further Discussion

Mr. Gravel Mr. Chairman, ladies and gentlemen of the convention, first of all I would like to say that I had nothing whatsoever to do with the preparation of this amendment, although Mr. Velazquez showed it to me several days ago. At the time that he did show it to me, I think Mr. Jack was the co-author. I rise now in support of the amendment because it is better, in my judgment, than anything that has been done up to the present time. If we don't adopt the Velazquez amendment, this convention is grinding into the constitution statutory material, special benefits for judges. In my opinion, there is an alternative to that and that's contained in the Velazquez amendment. I wish really that you would read it carefully because I don't see how anybody can successfully represent to you that this is not a fair approach for the judges of this state. Here is essentially what it does. I'm not going to yield to a question right now at all, Senator De Blieux. Mr. Chairman, may I have a little order because I do want to make this point very clear?

Now please listen to me carefully. Under the present constitution of Louisiana, the judges have certain constitutional retirement rights. Nobody else has that constitutional protection. Nobody else. What this amendment proposes to do is to authorize the legislature to devise and confer a retirement system for judges. That plan can and should be developed on an actuarial sound basis. This amendment says, and this is not what I believe an over simplification, this amendment says that the judges shall have the right to elect to come under the present system or to come under a new system. Obviously, nothing is being taken away from any member of the judiciary and those in the future will be fully protected in their right to make the choice. If you go beyond this, you are going to give a special interest group, the judges of this state, a statutory, monetary benefit that you are going to withhold from other groups. I urge that you support this amendment.

Questions

Mr. Burns Are you saying now, Mr. Gravel, that this is a better amendment than your amendment that was adopted Saturday afternoon?

Mr. Gravel If I didn't say it, I meant any amendment that was adopted today.

Mr. Burns Yes. I understood you further to say

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Just now that Mr. Velazquez showed you this amendment last week.

Mr. Gravel Yes, he did.

Mr. Burns Why did you not adopt this amendment in the place of the one we voted on Saturday evening?

Mr. Gravel Because my amendment came before this amendment and I still say that I think that the provision that we adopted last Saturday was a better provision. It did not have the alternate possibility that I don't think really ought to be in the constitution, but the alternate general possibilities are better than the specifics that have been adopted by the convention today in my opinion.

Mr. Burns You didn't answer my question. I asked you if you knew about this amendment before you proposed and we voted on your amendment Saturday afternoon, after all that battle and so forth. Why did you not substitute this amendment for the one that you sold the convention on Saturday evening?

Mr. Gravel I think I told you that, Mr. Burns. I think that the amendment that we enacted on Saturday was preferable to this amendment, but that this amendment is preferable to anything that has been adopted today.

Mr. Burns You didn't answer my question.

Mr. Gravel Well, I tried to, sir.

Mr. Tate Mr. Gravel, is this not similar, except for the fact that it gives the option to join the new system, to judges, exactly similar to the original Gravel amendment, is it not true the principal difference between the original Gravel amendment and the Kean amendment that we just adopted this morning, is that the Kean amendment provides that any legislative retirement system must give credit to sitting judges who join the system, for past service?

Mr. Gravel That's what the Kean amendment does say, without compensation, regardless of how much it costs, regardless of what benefits are provided, that's what the Kean amendment said. But this amendment...

Mr. Henry Mr. Gravel, you have exceeded your time.

Further Discussion

Mr. Jack Mr. Chairman and members, I'm not apologizing for talking so many times. These things are interwoven and you have to come to the floor as you do your duty. Now we passed the Kean, Lowe, Zervigon amendment, excuse me for mispronouncing your name, Ma'am, I'm not good at that, and it is entirely different in certain ways from Mr. Velazquez. The Velazquez amendment does give the right for judges that are in office at the time that the constitution goes in effect to decide whether they want to join the new one or not. It may be that they would like to, but the Kean amendment provides if they do decide to, he must be given credit for all prior years, which he should, without contribution. I don't see anything about them getting those rights under the Velazquez. Now I say we considered the Kean one very thoroughly. Before we considered it I had in a minor amendment, so somebody won't jump up when they get to my technical amendment. I had in mine, and didn't want to interrupt the speakers on it, of providing that the Kean amendment that the legislature should set up that pension system within two years, so I will have that technical amendment later. This thing has gotten out of proportion with name calling and personal fees, but as I'm trying to come up with a good thing and if they look at it in that atmosphere, the Kean amendment is the better of these two. Somebody was saying they are exactly alike. They are not exactly alike, but the Kean amendment which passed 69 to 43, in my opinion in practicing

law forty-one years, knowing the composition of the legislature and all, it is the fairest to it. I'm not going all over that but you remember I said a part of the emolument of the judge's office when he ran was in addition to his salary, he would get paid when he retired certain amounts, and if he died, his widow would. A lot of them wouldn't have run back there. Now Tom and I are coauthors of the one. We are coauthors of an amendment we withdrew which was a safety valve to allow, if certain things passed, to allow the judges not to come under the new one if they wanted to. Now I say let's go along with it and when my time comes, let me get through the technical amendment. It provides the legislature, within two years after the effective date of the constitution, will pass the pension thing as provided under the Kean amendment. Thank you.

Further Discussion

Mr. Lowe Mr. Chairman, delegates to the convention many times I stay away from this microphone because I know that often you have your time imposed on me and today I am going to keep it short. We deliberated an amendment and we deliberated it in depth, and I think we came up with a good amendment. Then we have delegates, and I know that Mr. Velazquez has an amendment that he believes is a good amendment. I happen to feel that it is not a good amendment. But then we have delegates come to the microphone and throw out big words like "actuarially sound." Now I don't believe that delegate knows what "actuarially sound" is. I'm here to tell you I don't know what "actuarially sound" is. I just spoke to Mr. Womack who has been dealing in retirement systems half of his life and talking to actuaries, and he and I on occasions have talked to actuaries, and they disagree on what "actuarially sound" is. So I don't think we need to get anything out of context because it is difficult if we start talking about what's actuarially sound. The thing I'm telling you is that we took L.S.U., that had no funded retirement system, and we put their employees and the professors, and Lee Hargrave is sitting here and he'll tell you one time the contribution to a retirement system because L.S.U. did not have a funded retirement system, was not actuarially sound. Whether it is actuarially sound today or not, I don't know, but when Lee Hargrave and the rest of the L.S.U. professors took the option to go under the funded system, they did not have to make a contribution for past services and we should assure the judges that they will not have to make a contribution for past services because that was part of their compensation as set up in the 1921 Constitution.

Questions

Mr. Gravel I have two questions, Mr. Lowe. Number one was the particular system for L.S.U. set up in the constitution or by statute?

Mr. Lowe It was set up by statute and the principle is the same and I'm sure it wasn't in the constitution because independence of the separate branches of government was not involved, Mr. Gravel.

Mr. Gravel It wasn't in the constitution. Number two, how much...

Mr. Lowe The separation of powers was not involved.

Mr. Gravel Second question, how much did the legislature have to appropriate in order to initially fund that particular system?

Mr. Lowe I didn't speak to you this morning but I walked around the chamber trying to find out how much they did have to appropriate, and I believe that in the process of making that appropriation they did the right thing because they brought problems to the state of Louisiana. They could believe that the compensation that they were being paid was one package, a retirement system, and the money they took home each week to meet the expenses that they had to meet. So the state had an obligation to fund that system when they brought them in, to give them credit for their prior service.

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Mr. Gravel How much did it cost the state, I asked you, Mr. Lowe? If you know, how much did it cost the state as an initial appropriation to fund this particular retirement program?

Mr. Lowe Mr. Gravel, I just told you that I made the rounds of the chambers trying to find out how much had to be appropriated. But I'll say to you right now...

Mr. Gravel Is your answer that you don't know?

Mr. Lowe Yes, sir. My answer is that I do not know...

Mr. Gravel Thank you. That's all I want to know.

Mr. Lowe I'll answer you a little bit further to tell you that I do not know how much the state would have to appropriate to make every other system in the state of Louisiana actuarially sound. I mentioned to you the other day that the State of Florida needed to make an appropriation of 1.8 billion dollars to make that system actuarially sound and fully funded. I also told you that on June 30, 1971 that the teacher retirement system needed \$615,000,000 to make it fully funded. I do know those figures. I'm telling you that we need to... the state needs to make many appropriations to make funds actuarially sound and fully funded.

Mr. Nunez Mr. Lowe, I know you just said you didn't know how much it would cost the state to fund the system. Would you be in a position to know how much it would cost the state if we do not go into a funded system where judges contribute?

Mr. Lowe Mr. Nunez, I spoke to Mr. Huval, who is the actuary for the State Employees' Retirement System, and I also read a report that he put out. It is now costing the state twenty-nine percent of the compensation of the judges today to meet the payroll of the retired judges. So it's costing the state twenty-nine percent of the compensation of the judges. Now, assuming that the judges went into the State Employees' Retirement System... I appreciate the legislators' cost to fund that system is now eighteen percent. If the judges are to pay six or seven percent or eight percent, we could say that it might be ten percent that it would cost to fund it under a new funding type system, so we would cut the cost down two-thirds to the state of what it is today.

Mr. Nunez That was my next question. Considerable savings to the state as they have proposed it. Isn't that right?

Mr. Lowe Mr. Nunez, I don't...

Mr. Henry The gentleman has exceeded his time.

Further Discussion

Mr. De Blieux Mr. Chairman, ladies and gentlemen of the convention, in answer to the question posed by Mr. Gravel, if I recall our figures correctly, it cost the state a million and a half dollars for the LSU system. I do not think that that system adequately funded the LSU system as a system within itself. But, yet when they were placed into the other retirement system, they were willing to absorb it on that basis. Now, let me state this about these two amendments--the one, the Kean amendment and the Velazquez amendment. One of them in my opinion does not require the judges to put up, and you might say, buy the time that they have already earned in the retirement system, that's the Kean amendment. These judges who have been elected or sitting have earned certain retirement benefits, provided that they can continue being elected enough to where that they will earn a total retirement system. Remember this, if a judge does not earn a total of enough time to retire during the time that he is sitting as a judge, he gets nothing under the present system. He gets nothing. He can serve for

eighteen years, be elected three times, and if he gets defeated on his fourth try, he gets nothing.

On the other hand if he is elected to that fourth term, and then he can retire with the benefits he will receive, it will cost the state a considerable money to pay him his retirement over the years that he may live, or if he should die, his surviving spouse. That's the difference in the system. What I am afraid of, under the Velazquez amendment, that it might force the judges to contribute to get the benefit of that years of service which they have earned by previous elections. I do not believe that's exactly right. To have an actuarially funded system, as Mr. Lowe spoke about, would initially cost the state a considerable amount of money for these judges. Over the long run the state will save a lot of money on the contributory program for the judges in the future. I do not believe the Velazquez amendment is a good one because of the jeopardy it puts the judges' retirement system in for those who are sitting judges now and have earned a certain amount of retirement benefits which the state would be obligated to pay, if they can continue being elected to office. That's the difference in the amendments. As to the question of whether or not you want your judges to buy this previous time, are you going to give them the same under the Kean amendment provisions, which I feel like the state is obligated to pay for them. That's the situation. You make your choice. I feel like that from the standpoint of the judges that the Velazquez amendment is a bad one. Therefore, I ask you to reject it.

[Previous Question ordered.]

Closing

Mr. Velazquez First, I want to say that this is not Mr. Gravel's amendment. I first had this thing written up last Friday and it was distributed on your desks last Friday. I showed it to Mr. Gravel. I also showed it to Mrs. Miller and to several other people. On this past Saturday when we voted on Mr. Gravel's amendment, I voted against Mr. Gravel's amendment because I felt this was a better amendment. It was due to come up second after Mr. Gravel's amendment, but this convention chose to adjourn Saturday. Tom Velazquez didn't choose to adjourn, the convention chose to adjourn. Today, when it came up with several others, I deferred to Mr. Kean to give him an opportunity to present his views. I still thought this was a better amendment. I think if you will check my voting record, you will see that I have consistently voted opposite from Mr. Gravel. I have never spoken in favor of any of the programs that Mr. Gravel has stood up on this platform and advocated. Nothing personal to Mr. Gravel... just a question of the way I felt about them. I feel this is still a good amendment. I think this will allow the legislature to set up a system of sufficient attractiveness for the active judges, so that they will leave the free ride. I think it's fair to everyone. I ask you to support the amendment. Thank you.

[Amendments rejected: 32-84. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendments offered by Delegates Jack and Velazquez.

Amendment No. 1. In Floor Amendment No. 2 proposed by Delegate Kean, et al, and adopted by the convention on this date, at the beginning of line 1, delete the word, "The", and insert in lieu thereof the following: "Within two years after the effective date of this constitution, the".

Explanation

Mr. Jack Mr. Chairman and fellow delegates, this simply provides this amendment to the Kean amendment, which I've mentioned before, states that within two years after the effective date of this constitution, the legislature... it goes on and tracks the Kean amendment... shall provide for a retirement

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system for the judges that hadn't been elected. In other words, the new judges, I'm not intimating, the legislature wouldn't do its duty. I've been a member of it. The Constitution of '21 said, "We in the legislature should reapportion every ten years", but we never did do it. This is just simply to make it mandatory that the legislature comply with the Kean amendment and giving them two sessions. It's just a technical amendment.

If there are any questions, I'll answer them.

[From the Journal of the House, Amendment adopted: 64-44. Motion to suspend tabled. Previous session ordered in the Senate. Section passed: 194-10. Motion to reconsider tabled. Quorum Call: 100 [delegates present and a quorum].]

Reading of the Section

Mr. Poynter "Section 24. Judges, Qualifications, Practice of Law Prohibited. "Section 24. A judge of the Supreme Court, court of appeal, district court, family court, parish court, or court having solely juvenile jurisdiction, shall have been admitted to the practice of law in this state for at least five years prior to his election, shall have been domiciled in the respective circuit or parish for at least two years immediately preceding election and shall not practice law."

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, the committee has proposed that the qualifications for judges be set forth uniformly for all judges in one section. Heretofore, different qualifications were set forth in the constitution for courts of appeal, Supreme Court and district judges. The committee is recommending that there should be no difference in qualifications for these offices. That the qualification should be simply that the attorney be admitted to the practice of law in this state for at least five years before his election, that he should be domiciled in the respective circuit or parish for at least two years immediately preceding the election. And that for the courts mentioned in this section, the judges not be permitted to practice law. These are the Supreme Court, court of appeal, district court, family court, parish court and courts having solely juvenile jurisdiction. The idea behind this is that these courts are of equal stature with the district court and the other courts in the state and the judges presiding over them should be full-time, full judges. They should not be placed in a position of having conflicts of interest, possibly created by their practicing law and then presiding over cases involving the same people that they have dealt with in their law practice. With those exceptions that I have noted, the provisions are similar to those contained in the present constitution. We have always had judges' requirements or qualifications in the constitution. We are simply trying to make them more uniform for the courts mentioned in this section in this provision. If there are any questions, I'll be happy to try to answer them at this time.

Questions

Mr. Abraham Judge Dennis, this is more or less technical in nature but in the other articles we've provided that the qualification of election shall date from the day of the qualification for office, and we are still saying election here. Do you feel that we should change this to qualification for office or let Style and Drafting change it or should it remain from the date of his election?

Mr. Dennis Are you talking about the five-year period of being admitted to the practice of law prior to the election? If you are, I don't think

we should change that. I think that provision should remain as it is.

Mr. Fulco Judge Dennis, I noticed you left the city courts out of this section. Can you tell me why?

Mr. Dennis Yes, sir, because many city judges in our state are allowed to practice law.

Mr. Fulco Do you know if they practice law in Shreveport?

Mr. Dennis I do not. I know they do not practice law in Monroe because I introduced the bill to prohibit them from this while I was in the legislature. But, nevertheless, there are many city courts where you might not be able to get a lawyer to take the office unless he were allowed to practice law.

Mr. Fulco Well, in Shreveport did you know that they say that that's the busiest court section there is? And the city court and the city judges are busier than other judges in other level of courts and they don't have time to practice.

Mr. Dennis Mr. Fulco, I appreciate what you are saying. Mr. Fulco, I would like to answer your question. The legislature by statute has prohibited some city court judges from practicing law. I believe possibly, your court is one of them. I know the Monroe city court judge is prohibited from practicing law. This was done at his request to try to upgrade his office. And that could still be done under this proposal in the future for any other court.

Mr. Fulco OK, thank you then.

Mr. J. Jackson Judge, basically I wanted to follow Mr. Fulco's question. In the parish of Orleans, all judges like the district judge, civil judge are not allowed to practice law but the city court judges do have the right and do by fact practice law. Do you see this as in keeping with the trend of keeping the judiciary of not allowing judges really to be subject to other kinds of political considerations? For example, for example, I have read in a book called Research on the Courts of Limited Jurisdiction and it points out that in the city of Orleans, that you can get up to... they have recorded I know a minimum of at least ten thousand cases. It seems to me that an inequity exists where judges are allowed, at different levels to practice law, whereby our other judges aren't permitted to practice law.

Mr. Dennis Mr. Jackson, I think you are right, if what you're saying is that we should strive for and work toward a system in which all of the judges are full-time judges. However, we have not attempted to mandate this or require it be done overnight in this constitution, because we felt that would be impractical. You would have to either replace all of the judges who are now practicing law or they would have to stop practicing law and that might be quite a difficult thing to do. So what we have done is to say that from the district court level on up, plus the family court, the parish court and courts having solely juvenile jurisdiction, that these judges cannot practice law and other judges may... we have left it silent as to other judges, which means that the legislature could, in time, prohibit all judges from practicing law and we could work toward a full-time judiciary that way. I hope that answers your question.

Mr. J. Jackson Just further, is it my understanding that the power to limit a judge from practicing law, particularly city court judges and other judges, can be provided by an act of the legislature?

Mr. Dennis Yes, sir. The constitution provides it for those listed in this section and the legislature could provide it for others.

Mr. Tate Judge, I think there is a typographical

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error and would you accept the technical amendment to line 6, when it says "shall have been domiciled in the respective circuit or parish" "respective district, circuit or parish". I have the amendment being prepared, I think this was left out. Because, otherwise it's ambiguous, for instance, whether a judge of the Supreme Court can live somewhere else or in the same circuit and so on. I think you need "district" in because district courts come from districts and so do Supreme Court judges and so do court of appeal judges.

Mr. Dennis I would have no objection and I think your amendment would be in keeping with the intention of the committee.

Amendments

Mr. Poynter Amendment No. 1 [by Mr. Tate]. On page 9, at the end of line 6, immediately after the word "respective" add the word "district".

Amendment No. 2. On page 9, line 7, place a comma after the word "circuit".

Explanation

Mr. Tate Mr. Chairman, this is strictly a technical amendment. I think in the process of typing the qualification that a "judge of the district court shall be from the respective district" or "judge of the Supreme Court from the respective district" was left out. It just says "circuit or parish" and that doesn't make sense when you are talking about, for instance, a district court judge. Would he have to be eligible to run for district court if he lived in a circuit and so on? Someone who speaks better English than me, want to ask a question if there's any doubt? It's a technical amendment, it carries out the intent. I think the typist left it out when we went to the committee.

Questions

Mr. Pugh Yes, it's not directed to your...well, I guess it'll have to be, now that you are there. What concerns me, is the possibility, if not the probability, of changing if not parish, at least district and circuit time to time. You have a real serious question raised here, where you changed the circuit line and obviously the fellow couldn't have lived in the area for two years because the circuit has not been there for two years.

Mr. Tate Mr. Pugh, would you accept this technical amendment before we address that question? Because that is a question that we should do.

Mr. Pugh It was for the last man, but I couldn't get up quick enough.

Mr. Tate Mr. Chairman, unless somebody wants further explanation, it's adding one word, "district", to the end of line 6. It's strictly a technical amendment unless somebody wants further discussion or the thing to be passed out. I move the adoption of this technical amendment.

Mr. Casey Judge Tate, I see we have the wording "circuit, district or parish" area where a judge must be domiciled. Does the word "district" also cover the Supreme Court district?

Mr. Tate Yes, sir. I have to admit that once we added "parish" we got into trouble. It originally had said "district or circuit". At the time we drafted the thing, everyone was elected either from a district of the Supreme Court, of a judicial district or a court of appeal and so on, or at large from a circuit, so district or circuit was very clear. Then we added this system of parish courts, we had district, circuit or parish. But if you go on back to the parallelism, I think it's plain enough what it means. But I have to admit, it's not as clear as it was before we added the word "parish".

Mr. Casey But it is intended to cover Supreme

Court districts?

Mr. Tate Yes, sir.

[Previous Questions ordered. Amendments reread and adopted: 111-9; Motion to reconsider tabled. Motion to pass over Section 24 adopted without objection.]

Reading of the Section

Mr. Poynter "Section 25. Judiciary Commission; Composition; Terms, Vacancy; Grounds for Removal and Powers

Section 25. (A). The Judiciary Commission shall consist of one court of appeal judge and two district court judges, selected by the Supreme Court, three attorneys admitted to the practice of law for at least ten years who are not judges, active or retired, nor public officials, selected by the Louisiana Conference of Court of Appeal Judges' Association or its successor, and three citizens, not lawyers, judges, active or retired, nor public officials appointed by the Louisiana District Judges' Association or its successor.

B...

[Motion to waive reading of entire Section adopted without objection.]

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, this section continues the Judiciary Commission in the constitution. The Judiciary Commission is a vehicle for removing, suspending or otherwise disciplining judges. The Judiciary Commission was established in our constitution in recent years and has worked well and served a good purpose. Before this time, it was very difficult to remove a sitting judge. It was found that the impeachment process, as we have already noted in considering another article, was rarely used. We have changed the total membership and the way the members are selected somewhat. The commission has been enlarged from seven to nine members, three of them are judges, one a court of appeal judge and two district court judges, selected by the Supreme Court. The members of the bar are to be three, rather than two as formally provided. It is also provided that one court of appeal judge shall be appointed, as with the case under the present law. Lay representation is increased from one to three members. The attorneys are to be appointed by the Louisiana Conference of Court of Appeal Judge's Association, rather than the Board of Governors of the Louisiana Bar Association, as is presently the case. The layman on the commission are to be selected by the Louisiana District Judges' Association, rather than by the Judicial Council as is presently the case. Also enlarged, is the range of sanctions which the commission can recommend, extending to censure and supervision with or without salary in addition to removal or voluntary retirement. The grounds for discipline have also been enlarged, the additions being "persistent and public conduct prejudicial to the administration of justice, that brings the judicial office into disrepute or conduct while in office which could constitute a felony". Deleted as a ground for discipline is habitual intemperance. New is the provision allowing the Supreme Court, on recommendation of the commission, to suspend a judge without loss of salary during the pendency of proceedings in the Supreme Court to discipline the judge. The actual procedures and rules for the operating of the commission are omitted from the constitution. The new document providing that the Supreme Court shall make rules to implement the section, including rules of procedure. The Supreme Court is also mandated to provide for the confidentiality and privilege of the proceedings.

Questions

Mr. Lanier Judge Dennis, I'm concerned about the language on page 10, lines 11, 12 and 13. It says the Supreme Court shall make rules implementing this

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section and providing for the confidentiality and privilege of proceedings. Am I correct in assuming that this "confidentiality and privilege of proceedings" applies to the investigation conducted by the commission prior to action being taken in court?

Mr. Dennis Yes, sir. The present constitution, as I'm sure you know, provides that all documents filed with and evidence and proceedings before the Judiciary Commission pursuant to this section are confidential. And the present constitution further provides that the record filed by the commission with the Supreme Court and proceedings before the Supreme Court are not confidential. It was with this in mind that we included this provision, thinking that the Supreme Court would probably continue the confidentiality of the Judiciary Commission proceedings.

Mr. Lanier But, it's not intended to mean that the Supreme Court can make confidential the formal proceedings in front of the court by which a judge would be disciplined?

Mr. Dennis No, sir.

Mr. Lanier Because it's certainly, at least for myself personally. Were you aware of the fact that I would not want to have a confidential proceeding in front of the court to remove a judge that I elected?

Mr. Dennis You're correct. And we thought that since the section pertains to the Judiciary Commission proceedings that this was clear. This was what the Supreme Court could make rules with regard to and not with regard to its own proceedings.

[Quorum Call: 105 delegates present and a quorum.]

Questions

Mr. Stagg Judge Dennis, as I read the proposal of the committee, there are going to be on the commission now, nine men—three of them are judges, three of them are lawyers and three of them are citizens, but all of them are appointed by presently existing judges or organizations of judges. As I understood it in the present constitution, the Supreme Court appoints four judges, the Bar Association appoints two lawyers who have had at least ten years experience, and then one citizen who is appointed by the Judicial Council, who's not a lawyer and not a member of the Bar Association. Now that's a complete change from what we have now and you didn't explain to us why the Committee on the Judiciary felt that this change was either indicated or necessary since the commission apparently is doing a real good job as it is presently constituted.

Mr. Dennis Mr. Stagg, I did not go into detail on that because Mr. Willis, who was the author of the amendment or the section on the composition, is going to speak on that in detail. However, it's my appreciation that the main things that moved the committee in this direction were: one, to give greater citizen participation and two, to allow the appointment to be made of the attorneys by the judges who know more about them than anyone else...

Amendment

Mr. Poynter Amendment No. 1 *[by Mr. Schmitt]*. On page 9, line 14, immediately after the word "law" and before the word "who" delete the words "for at least ten years".

Explanation

Mr. Schmitt This is a very simple amendment. All it does is remove those five words from the constitution and it allows the people who... whichever type of agency, board or commission or so forth, who appoints these people, to have the discretion of

utilizing people who have practiced for less than ten years of time. I don't see anything magic about a person who spends ten years in the practice of law, having any superior qualifications to judge whether or not a person is making a proper or improper decision. In fact, a lot of times you might get a much more objective position from an individual who has not had ten years in the field of law. Change, and some changes are good. I feel this will be a change for the better, in that it'll eliminate the probability that the person whom is appointed to this special commission will have dealt with this judge in some other type of capacity. Oftentimes, younger lawyers will be more bold in their ideas and thoughts and will hold the judge to a higher standard of care, than will an attorney who has practiced for a longer period of time. I don't feel there is anything magic about the ten-year term. I don't understand why it was placed in here, other than the fact that it existed in the past. I would also feel if no one else comes forward with any amendments, that the judges should not be the ones who appoint persons to watch over what actions and activities they make and determine whether or not these activities are proper or improper. I feel that some other type of group of people and I believe that lay people should have more of a say, in determining whether or not these actions are proper or improper. By allowing those whom are to be the accused or possibly accused to determine whom their judges are going to be, seems to me to set up a situation where many improprieties could result. I feel that in certain sections of the State of Louisiana we have problems with judges at the present time and if we had more lay people serving upon this review commission, this Judiciary Commission, we would have a much better chance of getting even more honorable people. Just by the simple fact of the existence of this commission, preventing people from making decisions that may not be in the area of either black or white but in the gray area, against the interests of the people. I therefore feel that we should adopt this amendment and eliminate the requirement of at least ten years of experience in order for a person, an attorney, to serve upon the judiciary commission.

Questions

Mr. Denny Mr. Schmitt, as I understand it you are not suggesting that the attorneys not be attorneys. You are merely suggesting that the length of time which they have practiced law be reduced?

Mr. Schmitt That's correct.

Mr. Denny I don't have the amendment before me, how much time?

Mr. Schmitt It would read, presently it reads, "three attorneys admitted to the practice of law for at least ten years, who are not judges," etc., etc. Subsequent to the amendment, it would read, "three attorneys admitted to the practice of law who are not judges." In other words, it would eliminate the requirement of them practicing law for ten years.

Mr. Denny It could be someone who has just been admitted the day before?

Mr. Schmitt It could be someone who had just been admitted or it could be someone who had been practicing law for fifty years. It would be up to the discretion of the appointing commission, whom they wish to appoint to this commission.

Mr. Denny And that Commission is the... that particular phraseology comes in with the appointment by the courts of appeal, is that who it is?

Mr. Schmitt That's correct.

Mr. Denny Well, do you think that many of the judges of the courts of appeal would know a lawyer who has just been admitted to practice?

Mr. Schmitt Than less than ten... I guess they

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would, they better.

Mr. Denney No, I mean someone who has just been admitted to practice who had never necessarily practiced before them, for example. I'm trying to find out whether...in other words, if the appointment is to be made by appellate judges...

Mr. Schmitt I'm not necessarily in favor of that. I just don't think there should be a restriction on here of saying "for at least ten years of practice." I don't think there should be a restriction upon whatever lawyer there is, by whom they ever are appointed, that they should be in the practice for at least ten years.

Mr. Denney Thank you.

Mr. Derbes Mr. Schmitt, isn't it true that without your amendment and taking into consideration the previous articles under consideration by this convention, that an individual could become a state senator at the age of eighteen, I believe, a state representative at the age of eighteen, governor at the age of twenty-five, but he could not effectively become a member of the Judiciary Committee until approximately his thirty-third year.

Mr. Schmitt Well, possibly even longer than that. In fact, he could have become a judge and just decided to quit and still not be able to serve upon the Judiciary Commission.

Mr. Derbes Thank you.

[Previous Question ordered. Amendment rejected: 38-68. Motion to reconsider tabled.]

PETITIONS, MEMORIALS, AND COMMUNICATIONS [I Journal 352-353]

Mr. Henry If you'll allow me while we wait on these amendments, I'm going to read a letter from Delegate Triche.

Dear Mr. Chairman,
Persons' business and family matters require that I resign as a delegate representing the public at large to the 1973 Constitutional Convention. I, at this date, tender my resignation to Gov. Edwin W. Edwards, who originally appointed me as a delegate representing the public at large. I have hope and confidence in the convention and look forward with a great deal of optimism to the new constitution which the convention will present to the people of this state. Please accept my sincere congratulations on the work of the convention thus far and I express my regrets to the convention that I am unable to continue to work with this convention.

This is from Delegate Triche, who resigned, effective today.

At this time it gives me a great deal of pleasure to introduce the new delegate who will replace Representative Triche, Mr. Paul H. Goldman, from Monroe. I ask that you welcome Paul at this time.

[With Officiary administered to Delegate Paul H. Goldman.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Denney], on page 10, line 13, after the word "of" and before the word "proceedings" insert the word "commission".

[Quorum Falls: All delegates present and voting.]

Explanation

Mr. Denney The purpose of this amendment is to avoid any possibility or a...of confusion as to whether or not the Supreme Court may make rules providing for confidentiality and privilege of proceedings before the court itself. When Mr.

Lanier raised his question of Judge Dennis, suggested to Judge Dennis the possibility of inserting the word "commission" before the word "proceedings" in line 13 so that there would be no such confusion. Judge Dennis has authorized me to say that he has no objection to this. I suppose you could call this a technical amendment.

Vice Chairman Miller in the Chair

[Previous Question ordered. Amendment adopted without objection.]

Amendments

Mr. Poynter Amendments submitted by Delegate Perkins as follows:

Amendment No. 1, on page 9, line 13, immediately after the semicolon and before the word "attorneys" delete the word "three" and insert in lieu thereof the word "two".

Amendment No. 2, on page 9, line 14, immediately after the word "years" and before the word "who" insert the following: "and one attorney admitted to the practice of law for at least three years but not more than ten years".

Explanation

Miss Perkins The only purpose of this amendment is to assure that there will be one younger lawyer on the commission. As we all know, during the course of practice of law many times we gain certain professional friends that...it puts us in a little bit more difficult position to cast a vote on with reference to disciplinary action. I certainly think that we need at least two lawyers with more experience. Therefore, I have left the provision in with reference to at least two lawyers having ten years experience and thereon let the third lawyer have at least three years. In other words, they will have been in the profession for some amount of time, but no more than 10 years. The difference between this amendment and the amendment submitted by Mr. Schmitt is that his amendment removing the ten years was...it left it discretionary as to whether we would have a young lawyer on the commission or not...whereas, this provision makes it mandatory that we have one young lawyer with no less than three years and no more than ten years experience.

[Previous Question ordered. Amendments adopted: 95-13. Motion to reconsider tabled.]

Amendments

Mr. Poynter Amendment No. 1 [Mr. Duval], on page 9, delete lines 9 through 27 both inclusive in their entirety and insert in lieu thereof the following: "Section 25. Paragraph A. There shall be a judicial commission which shall have the power and authority to investigate misconduct on the part of any judge. The structure of the judiciary commission under the previous constitution is continued until changed by the legislature. The commission shall establish its own rules of procedure."

The second amendment changes the letter "E" to "B" on page 9, line 28.

Also the third amendment, page 10, line 14, the letter "F" is changed to the letter "C".

Explanation

Mr. Duval Madame Chairperson, fellow delegates, I thought we'd put the issue right on the head right here one way or the other. It doesn't take a great deal of debate, I don't think; this amendment eliminates the statutory language contained in Section 25. I think most of us ran on a platform to keep our constitution free of statutory material so the people won't have to come back and vote on amendments constantly. Section 25 is replete with statutory language if it's read carefully. It structures the judiciary commission in detail, and if this structure, even us, this great body in our infinite wisdom, could possibly make a mistake. It is con-

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ceivable. If we do make a mistake in the structuring here, we're going to have to amend it. To amend it will require a constitutional amendment. There is no reason why all of this detail has to be in the constitution. If we structure the judiciary commission, why not structure every state board in the constitution. One of the great problems with our present constitution is the fact that so many things are structured in that document. I think this amendment retains the judiciary commission as it is and gives the legislature the right to subsequently change its composition. I think this is the way it should be and it's basically whether you want to put all of this detail in the constitution or whether you want to leave it out and only put a simple statement about the judiciary commission in the constitution.

Questions

Mr. Jenkins Stan, wouldn't one justification for putting the structure of the commission in the constitution be the fact that the commission has extraordinary power, namely the power to remove a judge from office and this is not the type of power that most agencies or commissions or boards have under law.

Mr. Duval I understand that reasoning, however, I feel that, of course, that the Supreme Court would have the ultimate removal power. Not the commission. I feel like all boards are important, but what's so sacrosanct about the way we structure it here? Why...the way it reads...three attorneys admitted to the practice of law for at least ten years. Now, there's one three years...appointments by the Louisiana Court of Appeal Judges Association...three citizens not lawyers. This is an unwieldy constitutional language. This, I think, should be our primary concern...to stop putting statutory language in this constitution, or we're going to have a great big monster like we have now.

Mr. O'Neill Mr. Duval, under this provision that you have here, the legislature could conceivably make a one man commission, right?

Mr. Duval Yes, sir. The legislature could conceivably pass an act saying that everybody under six feet has to live in the Gulf of Mexico.

Mr. Denney Mr. Duval, I notice you deleted lines 9 and 10. Will this not require an amendment to the constitution to put a title back in?

Mr. Duval I'm sorry, Mr. Denney, I can't hear you because of the tremendous attention that the delegates are giving me.

Mr. Denney I said I notice you have deleted lines 9 and 10, and I asked whether or not this will not require an amendment to the constitution in order to insert a title which is not in your amendment.

Mr. Duval Yes, sir. It certainly would. Thank you very much.

Mr. Poynter Mr. Duval, did you want to change that just to delete lines 11 through 27, instead of 9 through 27, which would leave the title of the section in?

Mr. Duval No sir, because then 'composition, terms, vacancy, grounds for removal and powers' wouldn't be applicable.

Amendment

Mr. Poynter Do you want to add a third amendment putting a title in?

All right, the gentleman withdraws the previous amendment, adds a new...resubmits them adding an Amendment No. 4, which would delete lines 9 and 10 and insert in lieu thereof 'Section 28. Judiciary Commission.'

Further Discussion

Mr. Burson I rise in support of Mr. Duval's amendment. I just want to say that this seems to me to be a classic example of the kind of detail that does not belong in the constitution. Certainly, I think, that if we can't trust the legislature to set up a proper judiciary commission we're in a bad fix, because we're trusting the legislature with an awful lot of things that are as important or more important than that. I would urge everyone here to support this amendment as one good way to shorten this constitution without doing violence to any important provision therein.

Further Discussion

Mr. Willis Madame Chairman and fellow delegates, in consideration of this amendment we are losing sight of the fact that the amendment does not give a decent burial to the old constitution. The argument that it should not be in the constitution is self-destructing, because you are in this new constitution referring to the old. It marries the new constitution to the old one. If you will look at the executive proposal, the legislative proposal and the judiciary proposal, you will see where... what we should constantly have in mind is kept in balance. Under Section 2D of the Executive article you will find that the executive branch has a right to take care of its members. Under Section 6A of the legislative proposal, the same power is given to the legislature. Under the article under proposal the judiciary takes care of its own kind, and in this manner the Supreme Court appoints three judges and who is better qualified to test the qualification of judges than the Supreme Court. The court of appeal chooses the three lawyers, and I assert to you that the court of appeal should be totally and very competent and perhaps the most competent body to choose the lawyers, and the district judges who are familiar with the citizenry and in close touch with the citizenry could choose the three judges. This would give a three, three, three; three lawyers, three judges, three citizens. Ultimately, the power of those nine men or ladies would be to make the accusation; the decision of whether or not that accusation is valid will be based upon due notice and hearing and be made in the Supreme Court where it should be. In other words, I am suggesting to you that the legislature should take care of its kind, the judges should take care of their kind and the executive officials should take care of their kind. That is the proper balance that I suggest and for that reason, though I loathe to do so on account of my good friend who sits before me, I shall have to oppose the amendment.

Questions

Mr. Roy Mr. Willis, disregarding all the other comments, I think you do favor this amendment if it were worded properly. Do you not?

Mr. Willis I hear you not well, sir.

Mr. Roy Don't you...if this amendment were worded properly, I think you'd favor the concept of it, and removing all this other stuff out of the constitution. Is that right? The present provision of the Judiciary Committee.

Mr. Willis Let's dissect what you say there to show how I cannot agree with what you say. That is, this amendment directs me to consult an old and dead constitution. So, we have two constitutional articles in one. We're just dodging the issue.

Mr. Roy Suppose the Transition Committee didn't fix the fact that the Transition Committee and that it implied in this amendment that it will be taken out of the constitution...it won't be in the new constitution, but it will become statutory law under the Transition Committee's work and therefore, what you are trying to avoid will not be met?

Mr. Willis I just don't agree with that because you are giving to the legislature something which is in its article which you don't give to the

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judiciary in this article in which you should.

Mr. Roy Well...

Mr. Burns Mr. Willis, in view of the fact that PAR has given the Judiciary Committee credit for reducing the present article from 30,000 words to 3,000 words, don't you think that we are entitled to use a few extra words, perhaps, in such an important commission as the present one that we are talking about?

Mr. Willis I am not married to all this big talk about simplicity. My fiber is not that sensitive that I want to put myself on a par with PAR. It would lower my par value.

Mr. Stagg Hi there, Mr. Willis; you said you don't want, in a provision of the constitution, to marry the old constitution and I think you said it twice. May I point out to you in Committee Proposal No. 21 that is under debate that in Section 4 it says the present districts and number of judges are retained. That marries it. In Section 9 it says the present circuits and districts and number of judges are to be retained. In Section B...Subsection B of Article XV the judicial districts existing at the time of the adoption of this constitution are retained. Now, as a member of the Judiciary Committee, have you already married the old constitution to the new one three times. Why do you find this one so objectionable?

Mr. Willis Well, I'm glad you asked the question. You said "you and the Judiciary Committee". If you say the Judiciary Committee, I would have no aversion to what you say as long as it is because it is obvious however. I find that there are very many invalid marriages in the judiciary article and though there were no shotguns they are still in my opinion invalid. I would with fastidious precision have printed the plan of what is what and this is what the article, we have, under consideration does. It sets out and delineates in that precision that I should like in a constitution and which would prevent me to refer to another one which is dead and buried to find out what the law is. By the way, I might add, that Dr. Pugh for whom I have the greatest respect suggests that those invalid marriages that you talk about should have been spelled out and I would have spelled them out, but I'm one of 16.

Mr. Stagg In the Committee on the Judiciary did you find that the old article of the Judiciary Commission was now unworkable and that you now have...

Chairman Henry in the Chair

[*Refrains question ordered.*]

Closing

Mr. Duval I really will be brief. There is a thing called a schedule. We cannot, in adopting all these provisions, say this is going to be in the schedule and this isn't, but something like this certainly can be placed in the schedule. I think we all know what the schedule is. It'll handle the transitional matters and it'll make it a lot more neat and clean. This is merely a way of handling it right now to the basic concept that the language in the present proposed section is statutory and we intend to delete it and to preserve the judiciary commission to however...constitution. Thank you.

Questions

Mr. Avant Mr. Duval, are you aware of the fact that the sentiment which resulted in this change from the present constitution was the fact that there were four judges on the present commission... two lawyers appointed by the bar association, I believe, and one citizen that the citizens who elected the judges and the citizens who were judged

by the judges had one voice out of seven on a seven man commission? The other six members being representatives of the judiciary and the bar association and that the sentiment which led to this modification was to give the citizens a greater voice on the judiciary commission. Are you aware of that fact?

Mr. Duval Yes, sir. I understand that but I think it points up that any structure, specifically of a board, in the constitution is subject to change and therefore should be statutory.

Mr. Avant Now, if your amendment is adopted the present one voice out of seven which the citizens have will continue unless and until it is changed by the legislature.

Mr. Duval That's right, yes, sir.

Mr. Avant And if it is changed by the legislature no one can predict what that change will be.

Mr. Duval Likewise true.

Mr. Burson Mr. Duval, don't you think that the legislature as the elected representatives of the people from single member districts will see to it that the general public is well represented on the commission?

Mr. Duval They better.

Mrs. Warren Mr. Duval, don't you think that we and a number of us like myself, we are elected members too, just like the legislature. We're from representative districts.

Mr. Duval Yes, ma'am.

Mrs. Warren All right, now I'm going to ask you one more question.

Don't you think it would be real simple if we would just say everything should be and leave it to the legislature and we could all go home and we could just sine die and be finished with it?

Mr. Duval No, ma'am. Because some things are constitutional conceptually, some things are statutory and in my opinion, this is statutory. We each have to make the decision what is and what isn't using reason, judgment and all the faculties that we might have at our disposal.

[*Record vote ordered. Amendments rejected: 51-64. Motion to reconsider tabled.*]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Landrum and Mr. Singletary], page 9, delete line 19 in its entirety and insert in lieu thereof the words "the governor."

Explanation

Mr. Landrum Mr. Chairman and fellow delegates, once again we're trying to involve the governor in this constitutional writing. I do believe that the appointment by the judiciary...by the judiciary commission...if all those appointments are going to be made by the judiciary I believe you leave a little hoax for the people. I think the governor should be able to make these appointments in order that somebody...a person who is not really involved in the judicial procedure...could be able to explain and to hear and interpret the simple man's point of view and when I say the simple man's point of view I mean the layman's point of view. I do not believe that the Supreme Court should make these appointments. Now, what I'm saying further and as I told you before I don't beat around about a thing. I tell you what I mean...There should be more black involvement in government...in every level starting with C.C./73, but if we are going to write a constitution that's supposed to affect the lives of all the people of this state without

involving all of the people of this state. Then, we're going to find ourselves wasting our time here. You think that the judges could stop the passage of this constitution. Some believe that the governor could stop the passage of it. I believe that black people could stop the passage of it, too. I believe that poor white people could stop the passage of it, because they want to have a voice in their government and we must give them a voice and we must give them a voice in our government. I'm answering no questions.

Further Discussion

Mr. Pugh Mr. Chairman, fellow delegates, though appointed by the governor to this body, I am opposed to this amendment. It is my understanding that prior to the time I was appointed to this body, that it had moved away from the concept of the governor appointing judges. Whether that be good or bad, I not now address myself to, however, I think that this is an evident instance where there should definitely be a separation as between our three points of government: the executive, the legislative, and the judiciary. For that reason, I oppose any appointment by our governor to the Judiciary Commission. Thank you.

Question

Mr. Landrum Mr. Pugh, yes, it seems as though there is an encroachment on the judiciary. But also, when you think of the Senate acting as a jury in impeachings do you think that is an encroachment on the judiciary?

Mr. Pugh I wouldn't suggest for a minute that there are not some encroachments by one of these as to the other. I say where it's possible to eliminate them, and have an active, viable form of government in Louisiana, I say let's do it.

Further Discussion

Mr. J. Jackson Mr. Chairman, delegates of the convention, I rise in support of this amendment. To some delegates, this seems like a replay of a previous amendment. I want to suggest to you that I rise in favor of this amendment, and I rise very strongly because I do believe, as the committee has proposed it, that whether consciously or unconsciously, the end results will be the non inclusion, the non inclusion, of a significant segment of this state. I want to suggest to you that as we go through these various articles and particularly as we have discussed other articles, that there is separation of powers, but there is also the concept of checks and balances. It seems to me that I heard one of the speakers mention earlier about, let the judiciary take care of the judiciary, the executive take care of the executive branch, and the legislative take care of the legislative branch. I want to suggest to you that that's known as inbreeding, and at a point, you have diminishing returns when you constantly have inbreeding among one particular branch of government. I want to also suggest to you that as Reverend Landrum has stated, I think that if this convention is concerned about the kinds of political consideration that it has to deal with, I would suggest to you that when you remove a significant segment of this population, that I don't see how we can say that we are preparing a constitution. Particularly in the area of criminal justice, civil justice of the entire judicial system where we, by right, in the constitution, remove meaningful input from the citizens of this state. I want to also suggest to you that a citizens committee, a citizen representation on this Judiciary Commission, it seems to me ought not come from the judiciary. It ought to come from a department that is not necessarily associated or identified with the judiciary in terms of hopefully some impartial input on the kinds of policy and decisions that this commission is going to make. I would as that you seriously consider this amendment. That we do not repeat what I have conceived, and I've

got to admit to you it is a very personal conception, that we do not repeat what I consider a very tragic mistake that we made when we removed appointive powers of the governor as related to the judges. I think that this request that's being made by Reverend Landrum is a request with much merit and that it does deserve your favorable vote.

Further Discussion

Mrs. Zervigon Mr. Chairman and delegates, I rise in support of this amendment. First let me tell you that I opposed the amendment that would have given the governor the power to appoint judges and then allow those people to run for that office, on the basis of separation of powers. But I think you can get to a place where you have the powers too separated, and any one branch too inbred. It seems to me that this is a very serious decision we are making, that we really need to think about it. But bear in mind, that when it comes to judges of courts of record, the citizens have no input on the removal process. No one outside the judicial branch really has meaningful input on the removal process because there is no recall and because of the other removal processes that we put in the executive department and the legislative department section don't apply to judges of the court of record. So that the argument that the people that are lay people on this commission ought to be appointed not by the District Judges' Association, which means that they would know about judges, be known by judges and be more or less inbred into the process, but be appointed by the governor and that we remove from the process, hopefully, and look at it with a more impartial eye, is a compelling argument. I urge you to support this amendment.

Further Discussion

Mr. Alexander Mr. Chairman and delegates, I can't blame some of you, possibly, for feeling a little disgusted, a little chagrined when we continue to raise these questions, these questions of exclusion. May I cite one little statistic to you that I think will bring out what we are talking about, especially our problem? There are some four or five hundred judges sitting on the various benches in the State of Louisiana. Only three of those are black. I submit to you, delegates, that with us, those of us who are black, that is a problem. That is a problem that will be with you, that's a problem that's going to be with us, and I find myself in this predicament. That I can't change my color. If I live another thousand years I will still be black. There is no way to change that condition. But that's one thing I am determined to change, and that is those conditions which restrict me because I am black. Now we have the solution by which this problem can be solved. We don't want to solve it in the courts. We don't want to solve it with bricks and rocks and guns, but we want to solve it within the framework of this democratic process that we have in this state. We want to solve it in a way that citizens should solve these problems. Now I submit to you, delegates, that you may be a little disgusted sometime when we raise these questions, but bear with us. Remember, we could also be a little put out when we look on boards and commissions, when we look on the various benches in the State of Louisiana and see no blacks in fact, this convention itself is an example of our problem. We are thirty percent of the population of the State of Louisiana and only twelve delegates serve in this convention, which is just about twenty percent of the delegation of 132. We must solve this problem. I ask you to vote this amendment. Don't vote on the basis of you and you no blacks in the same conditions or the subterfuges or the unusual conditions that you have cited, but vote on the basis of fair play and justice to it will be possible that we can change the posture of this state so that black citizens can participate in government on all levels. Thank you.

[Previous question on page 2, Amendment 1 - see page 11-12. Motion to reconsider tabled.]

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Amendment

Mr. Poynter Amendment No. 1 [by Mr. Schmitt and Mr. Hayes]. On page 9, delete lines 11 through 19, both inclusive in their entirety and insert in lieu thereof the following: "Section 25 (A) The Judiciary Commission shall consist of nine citizens of the State of Louisiana who shall be appointed by the Supreme Court. There shall be one citizen appointed from each congressional district and one from the state at-large."

Explanation

Mr. Schmitt This is a very simple amendment. Primarily what it does is it requires that each area of the state of Louisiana be represented upon this commission. It allows for one area not to be prejudiced by the interest of another section of the state. It prevents the stacking of the commission against any one section of the state of Louisiana. I feel that in other sections we have attempted to do different people across the entire State of Louisiana and we should continue in this vein. We were elected, many of us by the people, for the purpose of protecting their interests. This would spread the power around. Why should we allow certain urban areas to have the advantage of stacking this commission with members from their districts? I don't feel that the present article is restrictive enough with reference to representation of all the areas of the State of Louisiana. The primary purpose of this amendment is to protect the people from the stacking of the commission by whichever group might attempt to stack it, and to prevent wholesale politics upon this commission.

Questions

Mr. Abraham Earl, your amendment simply states that it shall be composed of nine citizens. Now, everyone being a citizen, this allows the Supreme Court then to appoint judges, lawyers or whomever it wants to it, does it not?

Mr. Schmitt That's correct.

Mr. Abraham So they could either have the same distribution of three, three, and three or they could have nine judges, or they could have nine civilians, lay people?

Mr. Schmitt That's correct. They can vary it according to whatever the needs are at the time.

Mrs. Zervigon Mr. Schmitt, aren't the members of the commission going to find themselves feeling rather awkward when they are considering whether to recommend dismissal of a Supreme Court Justice?

Mr. Schmitt What's that?

Mrs. Zervigon Aren't they going to find themselves in an awkward position if the justice under consideration is a Supreme Court Justice?

Mr. Schmitt Well, I think they'd find themselves under that situation if it would be an appellate court justice, if you have three people recommended by the Louisiana Conference of Court of Appeal Judges. I mean it doesn't make any... I don't know of any instance in which they have attempted to do this in the past, but I can understand your problem.

Mrs. Zervigon I've got another problem with it. What, if for some reason we end up in the State of Louisiana with seven congressional districts or nine congressional districts, what does it do to the composition of your board?

Mr. Schmitt It changes the composition of the board because the amendment states that there shall be one from each of these districts.

Mrs. Zervigon It says there shall be one from each of the districts and one at large, and the

total shall be nine. If for some reason we lost a district or gained a district, what does it do to your provision?

Mr. Schmitt It makes it kaput.

Mr. Burns Mr. Schmitt, if the Supreme Court would have the authority to appoint all nine members of the commission and they in turn would make the recommendations to the Supreme Court, there would be no purpose in having a commission. Is that right? Because the Supreme Court would make the final determination anyway.

Mr. Schmitt The Supreme Court members do not have time to be involved in the investigations of these individual judges. That's the reason for the establishment of the Judiciary Commission.

Mr. Fulco Delegate Schmitt, you're talking about nine citizens. Nine citizens. Is a judge or a lawyer or a lay person a citizen?

Mr. Schmitt "Citizen" has been defined already. Any person eighteen years of age or older.

Mr. Fulco Well, I understand, but can't a lawyer be eighteen years or over?

Mr. Schmitt I hope so.

Mr. Fulco Are you trying to keep attorneys off of this, or judges off of this commission?

Mr. Schmitt No, sir.

Mr. Fulco You're not?

Mr. Schmitt No, sir.

Mr. Willis Well, I'm afraid for my children if those under eighteen are not citizens of the United States and the State of Louisiana.

[Previous Question ordered. Amendment rejected: 19-93. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Pugh]. On page 9, line 15, after the word "nor" and before the word "public" insert the word "elected".

Explanation

Mr. Pugh Mr. Chairman, fellow delegates, this is technical in nature. This takes it out of the present constitution, and provides "elected". The difficulty with the section as it now reads, it provides that insofar as attorneys are concerned, that they may not be public officials and serve on this commission. Ninety-nine percent of the members of the Bar of the State of Louisiana are notaries public, and they are public officials unless we amend the section to provide elected public officials, then they would not be able to serve on this Judiciary Commission.

[Previous Question ordered. Amendment adopted: 100-8. Motion to reconsider tabled. Previous Question ordered on the Section. Section passed: 107-5. Motion to reconsider tabled. Motion to revert to Section 24 adopted without objection.]

Amendments

Mr. Poynter Amendment No. 1 [by Mr. Pugh]. On page 9, line 6, after the word "shall" and before the word "domicile" delete the words "have been" and insert in lieu thereof the word "be".

Amendment No. 2. On page 9, line 7, after the word "parish" delete the remainder of line 7, and at the beginning of line 9, delete the portion of the word "inn election," and insert in lieu thereof

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the following: "at the time of qualification for election."

Explanation

Mr. Pugh Mr. Chairman, fellow delegates, sometime ago in the State of Louisiana, the legislature was reapportioned and thus new districts were created. In that connection, I had the pleasure of representing a client who had not lived in his home for a two-year period of time, and who wanted to run for the legislature. I was of the opinion that since the districts were newly created, that the two-year provision could not be possibly applicable to any of the districts, much less that of the client who wanted to run from, in that connection, the matter was argued before the District Committee of the Democratic Committee, the district court twice, and the court of appeal twice before we were through with it. I suggest to you that there is a change in our law that's occurring insofar as residency requirements are concerned. As most of you are presently aware, a person may vote, having lived for a very short period of time, I believe it to be thirty days, in the area in which he's casting his ballot. I think that's a good sign. In my opinion, it will be a relatively short period of time before there will be drawn into question whether or not you must live for something like two years in an area before you can run for office. For that reason, I submit this amendment, and perhaps more important, I submit this amendment to you, because as you have already learned insofar as the various courts of appeal are concerned, the case load work of some is greater than that of others. That has caused the election of at-large Judges, another matter which at some time may be constitutionally questioned again. I suggest to you that we will be changing district lines, it's possible we'll be changing parish lines, and for sure we will be changing these circuit lines. You would find yourself under the section, as it presently reads, you could easily have one of these court of appeal Judges who had served you faithfully for many years in that district or a circuit line was changed, and then he couldn't run for the new court thought he had served successfully and faithfully on the court of appeal in the past. I suggest to you that by this amendment that the two-year requirement, I can see that some people may feel that a person ought to live somewhere for a long period of time before he runs for public office. I say that if a fellow can move in an area and he can be elected to that public office, all well and good. The primary purpose of the amendment is to provide for what I know is coming, the changes in these circuit lines, so that our good and faithful Judges can continue to serve you and not be prevented from running.

Questions

Mr. Burns Mr. Pugh, I'm sure, I don't know, you may not have been here then, in Section 15 (B) it provides "the judicial districts existing at the time of adoption of this constitution are retained. The legislature, by a majority vote of the elected members of each House with approval and a referendum in each district or parish affected before a judicial district can be changed." And this has only to do with judges, not Representatives or Senators.

Mr. Pugh Yes, I appreciate that. I do understand that in Section 5, Subparagraph A, B and in that section relating to the Supreme Court, there is a provision whereby these same districts or areas or circuits can be changed by a two-thirds vote of the legislature. I think you will find the same provision in the court of appeal. It's for this reason that I think the two-year requirement ought to be eliminated.

Mr. Burns Mr. Pugh, and this is the basic reason why the committee, after a long discussion, put this two-year residency or domiciliary requirement in there. Do you think that a person, we'll say,

from south Louisiana, and we're talking about judges now, who has a personal appeal and puts up a good front should move to north Louisiana and because of some emotional situation, within six months should qualify and be elected judge up there?

Mr. Pugh I put a lot more faith in the electorate than the possibility of someone being elected to the bench who is a total misfit. There may be a partial misfit, but I don't think we're going to have a total misfit.

Mr. Lanier Mr. Pugh, is it not true that the federal court decisions have failed to apply the one man one vote test to judicial reapportionment?

Mr. Pugh Yes. The statement I made was that it may well be retested at one time. The Supreme Court has held that insofar as the judiciary is concerned, the one man one vote does not apply.

Mr. Lanier Secondly, with reference to this term that you have, "at the time of qualification for election". Are you aware of the fact that there is jurisprudence in our state that says that the qualification for election is the time that a person is sworn into office?

Mr. Pugh Yes, I'm familiar with that jurisprudence.

Mr. Lanier Is that what you intended when you...

Mr. Pugh No, I intended for this to be that when the person actually qualifies for the election...

Mr. Lanier For candidacy.

Mr. Pugh Yes, that's right.

Mr. Smith Mr. Pugh, can't a man move in the district and then run the next day? One day and run the next day?

Mr. Pugh Yes, he can run for judge the day after he moves in the district insofar as this is concerned. By the same token, if he lives in the same house and he's been living there thirty years and they change the district line and put the district where he is now in another district, that will prevent him from running from the one he had been on, and also prevent him from running from the new one.

Mr. Smith You think that's a good thing?

Mr. Pugh Do I think it's a good thing? I think that if one of our Judges had faithfully served us for years, and the legislature, by a two-thirds vote, change the lines to keep him from running for office, it would be a tragedy. I say we can avoid that by eliminating the two years.

Further Discussion

Mr. Roy Mr. Chairman, ladies and gentlemen of the committee, rise in support of this amendment, notwithstanding the hypothet given by Mr. Burns about people from south Louisiana, and the response of Mr. Pugh that he thought the electorate would have better sense than to elect some misfit, is not quite appropriate. I am a Cajun, but I think that we go back to fundamentals in our democracy when we talk about the right of a qualified person to run for judge in an area in which he is domiciled. Now I just can't understand why so many people get worried about allowing the local gentry the right to elect whom they choose if that person is qualified. I don't see why we have to worry about keeping a person in a district for two years for him to sit as a city judge, or as a parish judge, or even as a circuit judge. I think that in essence, without this amendment, a particular area could find itself in somewhat of a problem. Suppose, for instance, a small town finally gets a city judgeship and there are only five attorney there who are natives of that place, but have only been

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practicing in that area for one year, having lived elsewhere and practiced at other places. It seems to me that you could reach the position that you would not have anybody qualified with respect to having lived there for two years, eligible to seek the office. I just don't see what two years qualification has to do, that is living in an area, has to do with having the people decide that they will elect you whether you are Cajun or a coup rouge. So I rise in support of this amendment. I think it's good. I think you ought to get away from this idea that we have to elect somebody from the immediate area because he seems to be or should be smarter than a Rhodes Scholar from elsewhere.

Questions

Mr. Burns Mr. Roy, you've cited an example of a city judge. This section doesn't apply to city judges, does it?

Mr. Roy Well, it does too, because it says "family court, parish court or courts having solely juvenile". Well, not necessarily a city court, but any other court. That wouldn't change my opinion in any event, whether it was just city court or not.

Mr. A. Jackson Mr. Roy, is it your opinion that this language in this section places certain restrictions and prohibitions against qualified electors?

Mr. Roy It certainly does.

Mr. A. Jackson Secondly, Mr. Roy, is it your opinion that this language conflicts with some of the sections and propositions in the elections article?

Mr. Roy It does that too. I want to say one more thing, Mr. Jackson. I'm glad you reminded me of it. We're not talking about equal representation, one man one vote, at all. I can buy the notion that what we have done in the Legislative Article. I just saying that there is no plan for one man one vote in the election of judges. I supported the idea that the Supreme Court of Louisiana should have two people from north Louisiana, irrespective of the population there. I still believe that. But I don't think that we should say that the people in the local area or parish should say that you cannot be elected judge there unless you have lived there two years. Because I think there are a lot of competent attorneys with maybe ten or fifteen years of practice who move from one place to another because of various reasons and you would preclude them from running for two years. It's the citizens' choice.

Mr. Anzalone Mr. Roy, isn't this that same snake that we killed when we were talking about the legislature, and residence as opposed to domicile?

Mr. Roy What, the amendment or the...

Mr. Anzalone Yes, sir.

Mr. Roy No, I don't think we killed this thing.

Mr. Anzalone We didn't discuss this in the Legislative Article where a man had to live in his legislative district?

Mr. Roy Yes, well the difference there is that if there is a change brought about by redistricting, you have the option of running in either, if you run for the legislature. But here, we're imposing another restriction as a qualification for judge that I don't think should exist. We're saying that you have to live in an area for two years. There is no exception. What Mr. Pugh pointed out is correct. You could be redistricted out of a circuit court district and under the Judiciary Committee Proposal, not be able to run for that circuit court district, whereas in the old legislative

provision, you could make your choice but you'd have to move before you took office, if you ran.

[Previous Question ordered.]

Closing

Mr. Pugh I yield to questions.

Questions

Mr. Abraham Mr. Pugh, I'm in favor of this amendment. Are you aware of the fact that in the Legislative Article, and we did put the provision in, that they must live there one year, we made provisions for incumbents to run in either district if there was a redistricting that took place?

Mr. Pugh I'm now aware of it because the last gentleman suggested it. But unfortunately, I wasn't here at the Legislative Article.

Mr. Abraham All right. Now isn't it also a fact, right now, that we do have this redistricting upon us because in Section 9, we amended the article to say that after January 1, 1975, no judge shall run at large from an appeals court district which means that there is going to have to be some redistricting in 1975?

Mr. Pugh No question but that we're going to have a lot of redistricting. That's what disturbs me.

Mr. Abraham So we must either handle this situation now by saying that an incumbent can run from any district after redistricting or we allow him to run in the district in which he resides.

Mr. Pugh By my amendment he could run wherever he resides at the time the election is called. It's a very serious question.

Mr. Kilbourne Mr. Pugh, did I understand you to say when you were up at first under your amendment a person could move into a district one day and qualify, you said, actually qualify, that is to file his papers for the office, the next day. Is that what you said?

Mr. Pugh Yes, I say by my amendment, residency requirements are removed.

Mr. Kilbourne Now Mr. Pugh, wouldn't that open the possibility, say you have got an incumbent judge and he is... the people in his district are well satisfied with him, but he has decided the case against some lawyer out of district, that lawyer could move in there the day before qualification time just to get even with the judge and run against him without any idea of winning, but just to give him trouble, now that could happen under your amendment, couldn't it?

Mr. Pugh As far as I am concerned anybody who can pay a qualifying fee can run for office in this state.

Mr. A. Jackson Delegate Pugh, isn't it true that the whole question of residential requirements is now being litigated in the court and we would be making a serious mistake by constitutionalizing such a restriction because the trend is toward the abolition of residential requirements period?

Mr. Pugh There is no doubt about that the United States Supreme Court has already abolished that insofar as for all intents and purposes, electors are concerned. I give them a short period of time before they are going to abolish it insofar as the people who run for office are concerned. I think it is a forward step we would be taking.

Mr. A. Jackson I agree with you, did you know...

Mr. Avant Mr. Pugh, isn't it a fact that under this proposal, if your amendment is adopted, I could

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move into another judicial district, run for judge and wouldn't even be qualified to vote in the election?

Mr. Pugh From a practical standpoint the answer is no. Technically, it could occur.

Mr. Avant Isn't that actually what would happen under the present state of the law, don't we have a residential requirement of a certain number of days before you can vote in a precinct?

Mr. Pugh I believe it is thirty days. I think the qualification time versus the time for election is never less than thirty days. Therefore, if you were living there, to qualify, you should have the thirty-day requirement. I think the only reason that we have got thirty days insofar as people being able to vote is concerned is a mechanical requirement to put them on the roll.

[Amendments rejected: 26-80. Motion to reconsider tabled. Previous Question ordered on the Section. Section passed: 113-5. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter "Section 26. Department of Justice; Composition; Attorney General; Election and Assistants.

Section 26. There shall be a department of justice, consisting of an attorney general, first and second attorney general, and other necessary assistants and staff. The attorney general shall be elected for a term of four years at the state general election, and the assistants shall be appointed by the attorney general to serve at his pleasure."

Motion

Mr. Vick Mr. Chairman, I would respectfully move at this time that the convention dissolve itself into a Committee of the Whole for the purpose of hearing the attorney general, for one-half hour.

Mr. Nunez I believe that possibly it would be more palatable to the delegates if we invited the attorney general and the representative of the president of the District Attorneys' Association, so we can hear both sides if there are two sides.

Mr. Henry Well, could we just make that a motion to hear each one of them for fifteen minutes. Don't you believe Senator that if they want to talk that anything they have got to say they can say in fifteen minutes apiece and you are going to make that...

Substitute Motion

Mr. Nunez That is what I am saying, but you... the motion was to hear the attorney general. Some people... I make a substitute motion that we go into a Committee of the Whole to hear the attorney general and a representative of the District Attorneys' Association.

Mr. Henry I understand the motion. Let me state the motion, and then I will recognize you.

Mr. Vick has moved that the convention resolve itself into the Committee of the Whole for one-half hour to hear the attorney general. To which motion a substitute motion was made by Senator Nunez that the convention resolve itself into the Committee of the Whole for one-half hour. Fifteen minutes of which we will hear from the attorney general, fifteen minutes of which we will hear from the representative of the District Attorneys' Association.

[Substitute motion adopted: 85-24.]

Committee of the Whole

Vice Chairman Miller in the Chair

Mrs. Miller The convention having resolved itself into a Committee of the Whole, what is the pleasure of the convention?

Mr. Vick.

Motion

Mr. Vick Madam Chairman, I move that we hear from the honorable president of the District Attorneys' Association first.

Substitute Motion

Mr. Munson I make a substitute motion, that we hear from the attorney general first.

[Substitute motion adopted without objection.]

Mr. Guste Madam Chairman, Mr. Speaker, and delegates to Constitutional Convention '73 and friends. First of all, I would like to express my appreciation for the opportunity to meet with and discuss this very important aspect of a new constitution with you. I recognize the difficult task which you have and I also recognize how difficult it is to try and write articles of a constitution, in effect, from the floor of a convention, such as this. I also recognize that among men of goodwill there can be real and serious and honest differences of opinion about what words mean and what they are intended to mean. As I understand the present constitution and as I read it, it gives to the office of the attorney general, to the attorney general, the power to initiate, intervene in, and prosecute any civil or criminal matter on behalf of the people of the state. It gives to what is to be the supervising district attorneys... I have met at length with the district attorneys to discuss just what is the meaning of those words as they relate to the district attorneys themselves. I really believe that as far as philosophy is concerned, that there isn't one bit of difference between my point of view as attorney general, and the point of view of the district attorney. To what is to be included as a matter of intent in the article in the constitution. I would like to say, that I was very, very concerned with the terminology, as I read it, as reported to the convention floor by the Committee on the Judiciary. Because, since it left out the word "criminal" in giving jurisdiction to the attorney general, I believe that it was an attempt to weaken the power of the attorney general. If that power was weakened he would not have the right to investigate into criminal matters that were pending as in original jurisdiction. He would not have the right to look into matters of public fraud, of contract fraud, of public corruption of any sort where a district attorney was wanting to act in original jurisdiction. I have talked at length with the district attorneys on this subject and I am not so sure that they also don't agree that we don't agree together on this philosophy. First of all, that the district attorney has, or should have, primary responsibility for prosecution and, with the grand jury, for investigation and indictment of criminal matters. That is his primary responsibility. The attorney general should have the right to watch him do that, to supervise as it were, him do that. Now the word "supervise" might be a bad word. Perhaps we ought to find a better word, but at least the attorney general should have a right to see what is going on in the investigative process, first the grand jury proceedings and finally if he determines that the matter is not being handled in the best interest of the state, for cause and only for cause, to supersede. Now as I have discussed this, I really don't believe, in philosophy, there is a basic difference between the viewpoint of district attorneys and Mr. Ware will address himself to that. If we can incorporate in some way into an article in the constitution... But I am not certain yet that the way the article is presented by the Committee on the Judiciary it accomplishes that purpose. As I understand the viewpoint of the district attorneys

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who have been meeting, they believe it does establish that purpose. I therefore, come to the conclusion, that there is necessity for more study of this article. I would like to continue our meetings with the district attorneys in hopes that we can jointly suggest to you words that might accomplish that philosophy and I will repeat it. One, that the district attorney has prime responsibility for investigation and charges and, with the grand jury investigation and indictment and prosecution of criminal matters. If the attorney general has the power to watch what he is doing, to review it, and if necessary, for cause after judicial review, to supersede him and do those things which a district attorney can do. If those powers can be spelled out succinctly in the constitution, I don't believe there will be one bit of difference between the attorney general's office and the district attorneys. So today, I wanted to clarify this with you and suggest that perhaps there need be more time for discussion of this article because I don't believe the nuance of meaning can be properly analyzed as quickly as it would seem they should be analyzed. We have been meeting just...well, I have had discussions on and off with the district attorneys for several days now, trying to talk about words and what those words have led us to is I think, a meeting of the minds on philosophy but not on words. I would hate to see this convention floor attempt to cope with those words until we have had an opportunity for additional review of the subject. So Mr. Chairman, if that...that is all that I have to say at this moment unless...and I would be glad to answer any question from any delegate from the floor for whatever additional time I may have.

Questions

Mr. Lanier Mr. Attorney General, with reference to the cause for which the attorney general should be authorized to supersede a district attorney, do you think that that should be such cause as may be determined by the court without any further definition, in which event we could only develop what "cause" is by the jurisprudence, or do you feel that this cause should be established by the legislature?

Mr. Guste Well, let me just say this. I feel it ought to be determined by judicial review. I think if you attempt to write it into the constitution there would be no end to the things that you might...the conditions on which you might place the matter. I think the court understands words like "for cause." In tort cases they are constantly interpreting what "proximate cause" means. In other cases they are interpreting what "reasonable cause" means, what... general terms of that kind have been coped with and the law will make a decision, the court will make decision. I think it is adequate for the court to determine what is "cause."

Mr. Lanier Well, do you feel that this would be in the best interest of say, someone like me as an individual citizen. How would I know what cause would be sufficient for me to go to the attorney general and ask him to intervene in a proceeding by my local district attorney?

Mr. Guste Well, remember now, we are writing a constitution. The present posture of the law is, that an attorney general, without cause, cannot supersede. That is the leading case law. In the case of Stanley vs. Kemp, Eugene Stanley, an attorney general, tried to take over a case from a district attorney and the lower court said, "wait a minute, you didn't assign any reason for this, you gave no cause, and without cause, you can't do it." That is what the law presently holds. That is why the Committee on the Executive and why, I believe, the Committee on the Judiciary wrote that the attorney general "for cause", which is a positive statement of that which was written in the case in the form of obiter dicta in Kemp vs. Stanley, wrote in a positive way that only "for cause" could

he supersede. I believe that the courts are capable of making a determination of that matter.

Mr. Lanier I have here a copy of the decision in Kemp vs. Stanley. Is it your opinion that this case said that the attorney general can supersede "for cause", or that the attorney general can only intervene with the consent of the local district attorney?

Mr. Guste It is my view, reading that long decision which is many, many pages, that the precise holding of the case is that an attorney general can't supersede...the fact...a district attorney, but the facts of that case were that the attorney general in that case assigned no cause. I have always been of the opinion, and I am talking about my opinion, and I have discussed this with some of the delegates here who are lawyers, and since the facts of those cases gave no cause that if you read the constitution, which makes the attorney general the chief legal officer of the state, with power to initiate and prosecute any criminal or civil case. That if there had been a cause that he could have done so. That is the way I interpret it.

Mr. Lanier Would you concede that perhaps a reasonable person reading this opinion could also reach the conclusion that the present law is that the attorney general cannot intervene without the consent of the local district attorney?

Mr. Guste Yes.

Mr. Anzalone Mr. Attorney General, the decision reached in Kemp vs. Stanley or Stanley vs. Kemp, did not allow the attorney general to supersede, is that correct?

Mr. Guste Yes.

Mr. Anzalone Now under your philosophy as to the powers of your office, you are asking this convention to give you the authority to supersede for cause.

Mr. Guste Yes.

Mr. Anzalone ...this is something new...

Mr. Guste Under my interpretation...it is, if you interpret the constitution as the preceding speaker suggested it could be interpreted.

Mr. Anzalone The Constitution of 1921 did not give you the authority to supersede a district attorney?

Mr. Guste It did not. It only gave the authority to supervise.

Mr. Weiss Mr. Guste, you made reference to an agreement between you and the district attorneys where there apparently is some conflict now between the two offices. How long would it take you two to resolve this matter to your satisfaction and theirs so that we may act upon your and their decision?

Mr. Guste I don't know the answer to that. I simply say, that I would think it would be well if we both could have more time to actually discuss the article.

Mr. Weiss We lay delegates have learned that a politician must be both expedient and prudent. We would appreciate all the information, but we will have to act and now is your turn.

Mr. Guste Yes. I would hope that if we could defer this, hopefully a day, that we may be able to thrash this matter out.

Mr. Weiss You think twenty-four hours would give you an answer?

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Mr. Guste I would certainly...at least we would have had a good faith opportunity to pursue it.

Mr. Weiss Thank you.

Mr. Guste Madam Chairman, I would just like to close with one remark. I would like to say that we have enjoyed a very good relationship with the district attorneys. We have tried to work very closely with them and in this discussion there is no animosity or ill will. I appreciate their efforts, they are doing a good job towards trying to enforce the law in their respective communities. We are here to write a constitution which is a franchise for government and for government officials and we are trying to work out an article which would accomplish the philosophy on which I believe both the district attorneys and I agree. Now with that, there was one other question, I believe.

Question

Mr. Newton Mr. Guste, would you if you could in the time remaining, could you tell us what your supervisory responsibilities over the district attorneys are, please sir?

Mr. Guste Well, specifically right now by act of the legislature, they deal with gathering crime statistics in the event that a...and this probably addresses itself to what... a former question. If a citizen comes to us and says "I don't think I got justice down there in that case, that the district attorney was handling" we will then review the matter, investigate the matter, get full knowledge of the district attorney, to find out what was done and if it were necessary, we would urge him to act and ask him to act which we have done. We have never had occasion to supersede anybody because in each case where we have made the request, they have either gone ahead with a review of the matter or they have insisted to handle it. That is the practical way in which we have worked it in the field day by day.

Well I want to thank all of you for this opportunity and I appreciate your kind attention.

Mrs. Miller Thank you, Mr. Attorney General, we appreciate your coming.

Mr. Ware, are you going to handle this?

Mr. Ed Ware, the president of the District Attorneys' Association.

Mr. Ware Madam Chairman, members of the Constitutional Convention '73. On behalf of the district attorneys of Louisiana, we appreciate very much the opportunity to be allowed to respond to the remarks made by the Honorable William Guste, Attorney General. I was somewhat at a loss, however, to know how to take the remarks that he made about the agreements that have been reached between the attorney general and the district attorneys. I am at a loss to understand the good faith efforts that have been made by his effort to work with the district attorneys in arriving at some understanding as what would be best for the people of this state, to be incorporated in this constitution. The first time the district attorneys knew that General Guste was dissatisfied with the language as adopted by your Judiciary Committee was when we read his news releases and saw him on television. It was over a week before there was any contact between General Guste and the district attorneys. Until today, there really has been no discussion between the district attorneys about what the language should be. I think General Guste made a very good statement of what the law presently is, as interpreted by the Supreme Court, and the district attorneys are satisfied with the law as it presently is and we think that the Committee on the Judiciary has done a good job in drafting an article for the consideration of this convention. The district attorneys are willing to submit this matter to this convention for your good judgment, following the hearings that have been held by your Committee on the Judiciary in arriving at a satisfactory solution

as to what the language should be. We think as Attorney General Guste just admitted to you, under the present law as interpreted, he does not have the authority to supersede and we would like to leave it that way. He says that the article as proposed is going to do a number of things and he wrote you a letter. Now gentlemen, we must take issue with the conclusions which he reaches in this letter. First of all, the article as proposed does not weaken in any way the present authority of the attorney general. In fact, the district attorneys cooperated with him in 1972 and went to the legislature and got him authority that he didn't have to appear before grand juries. We got him authority to investigate, that he claims that he did not have before. Nothing, in any of the articles as presently written or proposed in any way diminishes this authority which has been given to him legislatively. Nothing is in conflict with it. He says that the district attorneys shall have the primary jurisdiction to prosecute criminal cases and with that we agree and we think the article should so state. He says that the district attorneys should have the prime authority to investigate and with this we disagree. The district attorney should not be an investigator but a prosecutor. It is only when the sheriff or the city police or the local authorities fail in their investigative responsibility that the district attorney has to come in with investigators of his own and perform their job for him. In closing, let me say this, we do not have a super sheriff in Louisiana, we do not have a super assessor in Louisiana. We do not have a supervisor for the other elected officials in Louisiana and when the district attorneys should be singled out for a supervisor and someone to supersede him, I do not know. Let me ask you this question. Who are you going to provide as a supervisor for the attorney general and certainly, in the memory of most, we have had attorney generals who have not carried out the functions of their office as they should have carried out in the future can look for the same thing. This is not making any reference to Mr. Guste personally. Mr. Guste will not always be the attorney general and there will be others. With this, gentlemen, we submit the matter to this convention for your consideration.

Questions

Mr. Newton Mr. Ware, would the district attorneys have any objection to giving the attorney general power to exercise supervision over the several district attorneys and, upon the request of district attorney, advise and assist in the prosecution of criminal cases and then go on and leave the third article in here allowing him to supersede for cause shown?

Mr. Ware The language in the present constitution gives the attorney general the right to supervise district attorneys. No one has ever satisfactorily explained to any of us what that means. If you will spell out what you mean by supervision, I'll be glad to give you a definite answer.

Mr. Newton Thank you.

Mr. Derbes Mr. Ware, apropos what the attorney general said earlier, then reflecting on your remarks do you think any useful purpose would be served in our moving to pass over this matter at the moment? That would give you and him an opportunity to discuss this further.

Mr. Ware In all deference to Attorney General Guste, I think that is a question which should be addressed to the committee of this convention on the Judiciary. They are the ones who have studied this problem and made a recommendation. Whether or not something further should be done, shouldn't come from me, the district attorneys or General Guste, but should come from that committee.

Mr. Derbes Would you have any objection to doing

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that?

Mr. Ware I have no objection to anything that that committee and this convention decides should be done.

Mr. Derbes Thank you.

Mr. Weiss Mr. Ware, I just would like to make it clear in my own mind and that is, the attorney general seemed to think that twenty-four hours would lead he and you perhaps, and who you represent, to come to some type of recommendation that would be acceptable to this body. On the other hand, from the tone of your presentation there seems to be an impasse. Are you suggesting now, that we make the decision or will you be willing to meet with the attorney general and try and resolve this?

Mr. Ware In response to that question, let me say this. The attorney general has had ample opportunity in the last two weeks to come to the district attorneys for the purpose of discussing this and attempting to work it out. If a solution had not been done in two weeks, I don't know what another twenty-four hours would accomplish.

Mr. Weiss Thank you.

Mr. Abraham Mr. Ware, I realize that the language in the present constitution has caused or has caused some problems in the past and the attempt was made here to clarify some of them. But is there any real quarrel with the present language in the constitution that says "that the attorney general shall have charge of all legal matters in which the state has an interest with the power and authority to institute and prosecute and to intervene in any and all suits or other proceedings, civil or criminal, as they may deem necessary for the assertion or the protection of the rights and interests of the state."

Mr. Ware As interpreted by the Louisiana Supreme Court in the case of Kemp vs. Stanley, no sir, we have no objection to that language.

Mr. Abraham Well, then...but I notice that the recommendation of the Judicial Article does take out the reference to criminal proceedings. Does this clarify it any further or simply confuse it more?

Mr. Ware Well the position that the district attorneys take is that the language, as interpreted by the Louisiana Supreme Court in that case, gives the district attorneys the sole authority to institute criminal proceedings unless there is cause established by the attorney general and we have no quarrel with that.

Mr. Duval Mr. Ware, the committee proposal provides that "for cause" when authorized by the court of original jurisdiction, subject to judiciary review, the attorney general can supersede any attorney representing the state. Do you think that the committee proposal is merely setting forth "cause" and leaving it up to judiciary review is sufficient, or should we attempt to clarify this, as the legislature attempted to clarify this, by spelling out what "cause" is?

Mr. Ware I think the word "cause" has a sufficient legal meaning among judges to not require any further clarification.

Mr. J. Jackson Sir, you mentioned earlier...as one...as a part of your objection is that there were no super assessors, no super sheriffs. It is not true that there is no one comparable to a... no one person on a statewide level that is elected statewide that is comparable to, let us say, a sheriff or an assessor. Also that on the other side of that coin, where we do have parish registrar of voters that they are accountable to some

extent to the secretary of state.

Mr. Ware The registrar of voters are not elected. They are appointed by police juries. So that takes care of the elected part of it. Insofar as there being no person on the state level that would correspond to the attorney general with regard to sheriffs, there is not a thing in the world that would prevent this convention from so establishing such an office if they felt that people other than the district attorneys needed supervision and supervision.

Mr. J. Jackson Well, I guess I raised that question because as I appreciate it, unless we go back to the Executive Department Proposal then what you say about super assessors or super sheriffs as comparable to the district attorney then maybe that is something that we ought to...maybe we ought to consider having one statewide assessor or maybe one statewide sheriff to perform the role.

Mr. Ware But you see, you run into difficulty when you tell a person "you must go to the people to obtain your job as an elected official," but then make him responsible to somebody other than the people.

Mr. Burson Mr. Ware, in correspondence that we have received from the State District Attorneys' Association, it has been indicated to the delegates here that the district attorneys of this state were satisfied with the language of the Judiciary Committee Proposal as is. Is that still correct?

Mr. Ware I think that would be a fair statement, sir, yes.

Mr. Juneau Mr. Ware, don't you think that since January up until the present time that all parties concerned, including the district attorneys, have had an ample forum in public meetings you know to make their views known to Judiciary Committee?

Mr. Ware Yes, we have. We have not only been invited but encouraged and a great many district attorneys have appeared and testified before the Judiciary Committee and I know I did, I don't know whether others did or not before the Executive Committee dealing with this subject matter.

Mr. Juneau Don't you think with the passage of six months and deliberations that this convention should have at least reached the stage where we can make a determination on this article at this time?

Mr. Ware I would like to defer the answer to that question if you would, to the Judiciary Committee because they are the ones that did the deliberating.

Mr. Juneau Thank you very much.

Mr. Rayburn Mr. Ware, is it not true that the district attorneys and the attorney general have met on several occasions in an attempt to work out this so-called problem.

Mr. Ware No, sir, that is not true. We met at the Prince Murat today, the board of directors met, and we talked for just a few minutes just prior to coming here.

Mr. Rayburn You did not reach any agreement?

Mr. Ware No, sir.

Mr. Rayburn Thank you.

Mrs. Warren Mr. Ware, one of the questions I wanted to ask, I think you partly answered it and second part to it was, first of all I wanted to ask you, since you said you didn't know anything about it until the attorney general was on television, then I was wanting to ask you if you had

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any discussions, then you said you had had a slight discussion. I would like to know some of the things that you discussed.

Mr. Ware We discussed the proposal of the Judiciary Committee, the Executive Committee, the present constitution, the authority of the attorney general under the legislation that we help get him passed in 1972.

Mrs. Warren You didn't say anything especially on this particular proposal concerning the attorney general and the district attorneys?

Mr. Ware Yes, we did, but we did not reach any agreement or meeting of the minds.

Mr. Stovall Mr. Ware, what language would you suggest for the constitution which might enable the people to deal with the situation where a district attorney is derelict in his duty and might need to be superseded or supervised by someone?

Mr. Ware There is any number of languages or words or phrases or provisions that could be used, sir. What do you do when a sheriff does not do his job. You don't supersede him, you file a malfeasance charge against him or you file a civil suit to have him removed from office or you circulate a petition to recall him. You don't call in a super sheriff and say, "all right, now we want you to supersede him and in the meantime we want you to supervise him."

Mr. Burns Mr. Ware, would not this answer to Reverend Stovall's question, what would the people do if a district attorney just arbitrarily refuses to perform his duty or the law enforcement breaks down in the district? The attorney general comes in and shows cause and gets the authorization of the local court and he supersedes the district attorney?

Mr. Ware As proposed by the Judiciary Committee that is exactly what would happen, Mr. Jimmie. It sure would.

Mr. Burns Isn't that for the protection of the people?

Mr. Ware Yes.

Mrs. Miller Our time has now expired under which we went into the Committee of the Whole.

Mr. Ware, we appreciate your coming, did you want to conclude your remarks very briefly.

Mr. Ware I only wanted to express to you, and to this convention, our thanks for listening to us, thank you.

[The Committee then converts to Business Resumed.]

Chairman Henry in the Chair

[Unanimous Call: All delegates present and a quorum.]

Mr. Kilbourne Mr. Chairman, I understand that we are on Section 26, am I not correct?

Mr. Henry That is correct.

Explanation

Mr. Kilbourne I think that most of the talk that we have heard or all of the talk we heard was on Section 27, but we are on Section 26 at this time which is essentially the same as the present constitution. It just says "there shall be a department of justice consisting of an attorney general, first and second" and I believe there was an error there, I think that should be "first and second assistant attorney general and other necessary assistant and staff. The attorney general shall

be elected for a term of four years at the state general election and the assistant shall be appointed by the attorney general to serve at his pleasure." That is all I believe that is before the convention at this time, as I understand it. I think it is self-explanatory. I don't perceive how there could be any particular question about it. It is a very simple statement, but I will be glad to answer any questions, if anyone has any on that section.

Questions

Mr. Denberry Do you think that there is any conflict between the language in this section regarding a first assistant, and the language in the executive department proposal which requires that the first assistant be confirmed by the Senate?

Mr. Kilbourne Do I think there is any conflict between this section and the executive... apparently there is. I haven't looked at the executive proposal recently and I really can't answer your question.

Mr. Denberry I'm not sure that there is as a matter of fact. The executive department proposal, the section which we adopted provides that the first assistant for each of the statewide elective officials must be confirmed by the Senate. I don't want that this conflicts with it, and I just wanted to get your opinion on that.

Mr. Kilbourne Well, I think there would be some conflict there because the article that we have here does not require that the assistants be confirmed by the Senate. The language is almost exactly as it is in the present constitution.

Mr. Denberry Mr. Kilbourne, do you think that we should have an amendment to the effect that the first assistant must be so confirmed?

Mr. Kilbourne Frankly, Mr. Denberry, I don't feel that way. I think the attorney general should have a right to appoint his assistants and I do not see any reason why they should be confirmed by the Senate. I've never thought about it really. It never has been that way and I've never given it any consideration, but my present feeling is that it isn't necessary.

Mr. Denberry Well now, the first assistant attorney general would succeed to the office of attorney general in the event the attorney general vacates that office for any reason. Is that correct?

Mr. Kilbourne That's correct. Yes, sir.

Mr. Denberry That was the reason in the executive section, as far as all statewide elected officials were concerned, we required that the first assistant be confirmed.

Mr. Kilbourne This particular matter didn't ever come before the Judiciary Committee. It was never discussed, to my knowledge.

Mr. Stinson Mr. Kilbourne, this does not prohibit it. Therefore, when the other requires it, there wouldn't be any conflict whatsoever. To be a conflict, this would have to say he would name an assistant who would not have to be. This being silent on that, would be governed by the other. So really, it wouldn't be any conflict at all, would it?

Mr. Kilbourne I believe you are right, Mr. Stinson. Like I say, I just hadn't thought about it, but I believe you are right.

Mr. Lebbe Mr. Kilbourne, I was concerned about the words "necessary assistants and staff." In 1972, the budget for the attorney general has been increased substantially, and even though this is the same language as set forth in the 1921 Constitution and allows the attorney general to hire the necessary staff and assistants, I just wondered if it was

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necessary to put the word "necessary" in there. It seems that that might be a binding term on the, not only the Budget Committee, but the Appropriations Committee and the whole Legislature as well.

Mr. Kilbourne Well, Mr. LeBleu, that just gives him... spells it out that he will have that authority. Of course, he is going to always have to clear these things, as far as his budget is concerned, with the legislature. I feel, and the Committee thought that it should be like that.

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Lanier], on page 10, line 20, immediately after the word "first" and before the word "attorney" delete the words "and second" and insert in lieu thereof the word "assistant".

Explanation

Mr. Lanier Thank you, Mr. Chairman, fellow delegates, the purpose of this amendment is to delete reference to the second assistant attorney general. By the previous discussion, you realize why we have already constitutionalized the first assistant, because he will succeed to the attorney generalship if that position is vacated by the attorney general. I see no necessity to constitutionalize the position of second assistant attorney general. The deletion of this language will do no violence to this provision and, although I will concede this is the language in the present constitution, I think this was copied from the language in the present constitution from a style point of view. There is no necessity for us to constitutionalize the second assistant attorney general, anymore than it would be for us to constitutionalize the second assistant anything else. For that reason I offer this amendment. I will be glad to yield to any questions, Mr. Chairman.

Questions

Mr. Stinson Mr. Lanier, don't you think the reason is that if the first would succeed the attorney general, then automatically the second one would step in his place. Don't you think that is the reason it is outlined? I believe this is the way it is in the present constitution.

Mr. Lanier But I think he would then be the first assistant attorney general just like anyone else in any other chain of succession in any other position that we've created constitutionally, so I see no need to constitutionalize the second assistant.

Mr. Henry Does that complete your remarks? Justice Tate. Injustice Tate, I should say.

Mr. Tate Injustice Tate. Just saying for the committee, I think this is in the nature of a technical amendment that I am reasonably sure that no one on the committee has any objection to. I think that was our intent.

[Previous question ordered. Amendment adopted; 1-0-8. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mrs. Zervigon], on page 10, delete lines 17 through 24, both inclusive in their entirety.

Explanation

Mrs. Zervigon Mr. Chairman and delegates, the purpose of the amendment is to delete this section because I believe that, considering the language that we have already put in the executive department section, it's unnecessary. Section 8 in the executive department section now reads, "There shall be a Department of Justice, headed by the attorney general who shall be the state's chief legal officer."

Section 1 of that article now reads, "Each statewide elected official, except the governor and lieutenant governor, shall appoint a first assistant, subject to confirmation by the Senate, and so on. It seems to me that takes care of the mechanics that this section of the judiciary article is trying to take care of. I think the language is unnecessary. I can see no reason to repeat it in two places in the constitution and I urge your favorable consideration.

Questions

Mr. Bollinger Mrs. Zervigon, did not we delete the provision that the attorney general would be elective in the executive article?

Ms. Zervigon We deleted the attorney general's name in a list of statewide people belonging to the executive branch. However, when we came later on to outline the various departments within the executive branch, we left the Department of Justice in there.

Mr. Planchard Mary, in the executive department, did we take care of a four-year term for the attorney general?

Ms. Zervigon I believe that we said that all statewide elected officials have four-year terms, but I am not certain of that.

Mr. Stinson I don't believe we have adopted the executive. We may end up not having one, so don't you think we better leave it in this?

Ms. Zervigon No sir, I really don't because if we don't adopt the executive article, we don't have a governor either. I think without a governor our constitution hasn't much chance of acceptance by the people.

Mr. Stinson Well, don't you think the attorney general, Mr. Guste, would make a good governor?

Ms. Zervigon You didn't specify a year in that question, Mr. Stinson.

[Previous question ordered. Amendment rejected; 42-68. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Staggs and Mr. Denney], on page 10, delete lines 17 through 24, in their entirety, and insert in lieu thereof the following: ...You had the intention, Mr. Staggs, of deleting the previous amendment with this. Is that correct, sir? I add appropriate language: "Section 26. Powers and Duties of the Attorney General. Section 26. There shall be a Department of Justice headed by the attorney general, who shall be the state's chief legal officer. As may be necessary for the assertion or protection of the rights and interests of the state, the attorney general shall have authority to: 1) institute and prosecute or intervene in any legal actions or other proceedings, civil or criminal, 2) exercise supervision over the several district attorneys throughout the state, and 3) for cause, supersede any attorney representing the state in any civil or criminal proceeding. He shall have such other powers and perform such other duties as may be authorized by this constitution or provided by statute."

Explanation

Mr. Staggs Mr. Chairman and fellow delegates, when the Committee on the Executive Branch was deliberating and trying to design an executive branch of government, it was the feeling of that committee, one, that the attorney general ought to be considered to be of the executive branch of government, since he was the state's chief legal officer. In the

second instance, the committee, over a period of several hours, debated what ought to be the powers that would adhere to that office for him effectively to be able to be the state's chief legal officer, to guard the rights of all of the people of the state, without having him so much authority that he might become more than just the state's chief legal officer. The purpose of the effect, the thrust of this amendment is simply to allow this convention, in the collective wisdom of the delegates to this convention, to have the opportunity to examine the two languages side by side; that proposed by the Committee on the Judiciary and that proposed by the Committee on the Executive Branch. There are strong feelings among the delegates to this convention as to what ought to be the proper powers of an attorney general. Somewhat unfortunately, as in the case of other elected officials in the executive branch, personalities of the occupants of those offices at the moment have been intruded into the argument. I have tried completely to divorce the personality of the incumbent from the duties that the constitution would give to an office of state government. I think that was what the Committee on the Executive Branch sought to do. There have been, in your memory and mine, several instances in recent history, in isolated instances I will admit, where in a given parish infractions of the law were done by the district attorney for reasons felt by him to be sufficient unto themselves.

[Quorum Call: 100 delegates present and a quorum.]

Explanation continued

Mr. Stagg The root cause of the disagreement among delegates of this convention occurs in the Subparagraph 3. The language reads, "for cause, the attorney general may supersede any attorney representing the state in any civil or criminal proceedings." We laid great stress by the words "for cause" and "supersede" in the language contained in the case of Kemp against Stanley in which a district attorney was thought to be superseded by an attorney general for purely political reasons and not for cause. It was the feeling of the members in the Executive Branch in the discussion that if a proper case brought forward to the Supreme Court, where sufficient actual cause did exist, that the case of Kemp against Stanley would not be the basis of an unfavorable ruling by the Supreme Court on the powers of the attorney general. For that reason, after strong debate, we inserted the words "for cause" so that an attorney general who was feeling his oats couldn't go storming around the state and causing disagreement among and between district attorneys who were lawfully exercising the duties of their office. That's the argument, that's the basis of the argument in this convention at the moment. The purpose of the amendment is to settle the argument. Mr. Chairman, I move the adoption of the amendment.

Point of Information

Mr. Kilbourne Mr. Chairman, I understood we were on Section 26 and what Mr. Stagg is really addressing his amendment to is Section 27.

Mr. Henry Well, of course, while you may be right insofar as you are right insofar as what you say, he has apparently chosen to attack Section 26 in this manner and it will be up to the convention delegates to decide.

Questions

Mr. Pugh Tom, what gives me grave concern about this is the same language that you say is the salvation, this "for cause." Your explanation suggests that the cause may be judicially determined. You also said that that might ultimately be judicially determined by the Supreme Court. The section, as devised by the original redactors, set forth a solution for that "cause" problem by order of a local

court. With this amendment, would this not perhaps delay what might otherwise be rather serious civil and criminal proceedings, while we are trying to decide who is going to handle them?

Mr. Stagg Mr. Pugh, if you would read carefully the language contained in the Judiciary Committee's article, you will note that it states "that when a judge before whom a proceedings is being carried on. Now, for there to be proceedings before a court, a district attorney must have brought in a bill of information or a grand jury must have indicted, and the problem would arise, in my mind, when a district attorney did not bring in a bill of information and did not move for a grand jury indictment and there would be no proceedings before the judge on which the judge could then rule. That's the failure of the language in the judiciary article, as I see it. There is no proceedings until one has actually been brought into a court and then the court could say whether there would be proper intervention by the attorney general. That language is insufficient, in my opinion.

Mr. Pugh Well, it says, "for cause, supersede any attorney representing the state in any civil or criminal proceeding." Does that not contemplate the existence of some proceeding at that point?

Mr. Stagg Yes, sir, but if you will read back in the Judiciary's first provision on where a district attorney can supersede, if I had my yellow copy in front of me I would read it to you. Wait just a minute, Bob. At the top of page 11 under Article... Subparagraph 3, "For cause, when authorized by the court of original jurisdiction in which any proceeding is pending." A failure to act by a district attorney would prevent there to be any judicial proceeding and a court to act, and that's why we thought that for cause...from the very beginning if a district attorney, for some reason, failed to act, there would be no proceeding as envisioned in Article Subparagraph 3, in line 3 on page 11.

Mr. Pugh Well as I read your proposed amendment, it contemplates the existence of a civil or criminal proceeding. That's what it says.

Mr. Stagg That's right.

Mr. Pugh Therefore, you've already got a proceeding under your amendment, to get to that point.

Mr. Stagg That's correct.

Mr. Pugh However, your illustration is where a district attorney fails to act. If he fails to act, then there wouldn't be any proceeding, would there?

Mr. Stagg But Bob, in paragraph 1 of my amendment it says that the "District attorney can institute, prosecute or intervene in any legal action or other proceeding," so his intervention could bring that proceeding into court and, having brought it into court, if the district attorney wouldn't act then he could supersede him in that action.

Mr. Pugh Well then, under your thesis insofar as this amendment is concerned, you would contemplate the attorney general going into a parish and instituting some proceedings before it's judicially determined that he ought to be there? That this cause has been determined?

Mr. Stagg That's correct, Bob.

Mr. Fajard Mr. Stagg, the way, and correct me if I'm wrong, the way I read your proposed amendment, is it not true that under Paragraph 1, the attorney general could institute and prosecute any legal action, including a criminal action? He would have direct authority to do this under your amendment, would he not?

Mr. Stagg Yes, he would.

Mr. Fajard He would have the authority, under your

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amendment, to do this whether or not he was requested to do so by a local district attorney, would he not?

Mr. Stagg Yes, sir.

Mr. Fayard Reading Paragraph 1 of your proposed amendment, in connection with Paragraph 3, would not the attorney general be the sole and primary person responsible for the institution, the prosecution and the actual trial of any criminal proceeding? Could this not be interpreted this way?

Mr. Stagg No sir, that is not correct. The district attorney would still...

Mr. Henry You have exceeded your time, Mr. Stagg.

Further Discussion

Mr. Burson Fellow delegates, I rise in opposition to the amendment. The primary reason is in the discussion of philosophy that I have heard on this question thus far, there is one major underlying philosophical interest that I have heard discussed at all. That is the interest of the average citizen in having the system of criminal justice as much as possible be an instrument of local government rather than the central government. Now under our United States Constitution, Amendment 6 to the federal Bill of Rights, guarantees each citizen of this country in a criminal matter a trial in the district where the crime shall have been committed, by a jury of his peers. A clear constitutional interest is expressed there that a man be tried in criminal matters, where his life or liberty are at stake, by people in his community. I submit to you that the same sort of interests lie in the area of determining who will be the lead in criminal prosecution. No most of the remarks that I have heard in advancing the power of the attorney general to supersede local district attorneys seem to assume that a statewide elected official will be inherently more virtuous than a locally elected official. I challenge that assumption.

There is nothing on the record in the history of this state to support that assumption. I submit to you that in recent history there is evidence to the contrary. It seems to me that it is just as likely that we will have an attorney general who will not want to do what he was elected to do, as it is that we will have a district attorney who will not want to do what he was elected to do. But the only difference is that in the case of the district attorney, since he is a locally elected official, he is much more responsive to the thoughts, the cares and the concerns of the local citizenry than any statewide elected official could ever be. I submit to you that maintaining local prosecution in criminal affairs humanizes the whole process of criminal justice and that when you move to permitting the central governmental authority to take charge of criminal prosecution, you move inexorably, in my view, eventually toward a police state, something that none of us want. Now the remarks that I make in no way impinge upon the man who presently holds the office of attorney general in this state, for whom I have the highest regard, but I think in the end, it is a matter of principle. I submit to you that there are other technical objections to this amendment that have not been brought out. For instance, when we say, "for cause, the attorney general could supersede any attorney representing the state in any civil proceeding," we present the possibility that the attorney general could supersede the attorneys of the Public Service Commission in a rate-making case. The attorneys for the Public Service Commission, who are career people, have a special expertise in this field, which I do not feel could be duplicated by any assistant attorney general who received a temporary assignment on a particular case involving utility rate-making. I suggest to you that the powers that are set forth in this proposed amendment go much further than the superseding of local district attorneys in criminal matters. I urge all of you, be-

fore you vote on this question, look at the present Section 56 of Article VII of the Constitution of 1921, and you will see, if you do look at it, that the language there provides for supervision of local district attorneys and not for supersession.

Further Discussion

Mr. Roy Mr. Chairman, ladies and gentlemen of the convention, I rise in opposition to this particular amendment. I know that Tom and Moise have tried to accomplish something and have us meet the issue head-on, but it just does not, in my opinion. The reason is that the first...number one of the amendment says that, "The attorney general shall have authority to institute and prosecute in any civil or criminal proceeding..." Now let's just stop right there. Once he has that authority, then number three is automatically negated. He doesn't have to wait to do anything for cause. If you give him the authority to institute and prosecute in any civil or criminal proceeding and he jumps in at first, you will never get to the cause issue. For that reason, I just don't think that the amendment does what they sought to do, which was to give you the option of viewing this amendment with the present section. That's the reason particularly that I rise in opposition to it, because you just as soon eliminate number three altogether.

If there are no other speakers, I move the previous question.

Further Discussion

Mr. Denny Mr. Chairman and delegates, I think we should first look at the present constitution to see what it says and then compare it with the two proposals before you. According to the present constitution, "The attorney general or one of his assistants shall attend to and have charge of all legal matters in which the state has an interest, or to which the state is a party, with power and authority to institute and prosecute or to intervene in any and all suits, on the proceedings, civil or criminal, as they (and the words "as they" refer back to the attorney general or his assistants) may deem necessary for the assertion or protection of the rights and interests of the state." Now both of the proposals before you remove the language "as they may deem necessary" and requires for the attorney general to first institute and prosecute or intervene that it be necessary for the assertion or protection of the rights and interests of the state. That is a matter which is not within the discretion any longer of the attorney general under either of these proposals, but it must be determined by a court, if there is an objection to it, that it is necessary for the assertion or protection of the rights and interests of the state. Now the first section of the Stagg-Denny amendment states that the attorney general under those situations shall have the authority to institute or prosecute or intervene in any legal actions or other proceedings, civil or criminal. The judiciary article leaves out the criminal, so that under no circumstances could the attorney general ever institute a criminal proceeding. Now we have known in this state of instances where the local district attorneys, for one reason or another, have refused to prosecute when everyone who knew prosecution should be instituted. In those situations, our amendment would give the attorney general the right to come in and prosecute. It would not, as Mr. Roy stated, that would not negate the right of the attorney general, under Section 3, to supersede, for cause, an attorney representing the state in any civil or criminal proceeding. The first permits the attorney general to institute or prosecute, or intervene, but if a suit has been filed, or if a prosecution has been commenced, the intervention does not give the intervenor control of the case. He must take the case as he finds it and the attorney general would not have the right to supersede, for cause, in those instances. So that the two sections do not conflict with each other and one does not cover the other. It seemed

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to us on the Executive Committee, those of us who voted for this section, that it was essential to continue the right of the attorney general to institute and prosecute civil and criminal actions. We believe that is quite necessary, if it is necessary to protect the state. Furthermore, we think that for cause, he should have the right to supersede a district attorney. Now both of those, in other words for the interests of the state and for cause, are matters which would have to be decided by the court because we must assume that if he did this, the local district attorney would probably object, and that it would be up to the courts in each instance to reach a determination. So we believe that the local citizenry who were mentioned by Mr. Burson would have ample protection. There is nothing in here which would permit the attorney general to prosecute elsewhere than the location where the crime was committed, so that he would be tried before a jury of his peers. We believe, Mr. Stagg I believe, that it is essential for the orderly prosecution of justice in the State of Louisiana, to have a provision such as this in the constitution. Thank you.

Questions

Mr. Burns Mr. Denney, do you see anything in this amendment under your number three, where it refers to the local court having a hearing or authorizing and determining whether cause has been established?

Mr. Denney Mr. Burns, I should think if an attorney general would intervene or try to supersede an attorney representing the state that the attorney representing the state would have a perfect right to object before the court.

I don't think we have to put that sort of language in the constitution. I think it is self-evident.

Mr. Burns Well, you don't think that that's very sacramental for the protection of district attorneys to give the attorney general the unrestricted authority or decision to determine what is the cause or if a cause exists?

Mr. Denney I don't believe it is within the power of the attorney general or the district attorney to determine what is...

No, sir.

The cause would have to be determined by the courts, Mr. Burns.

Mr. Burns But there's nothing in this amendment that says that.

Mr. Denney No, I think it's self-evident from the amendment.

Further Discussion

Mr. Kilbourne Mr. Chairman, fellow delegates, I ask you to vote this amendment down. This amendment, under the guise of amending Section 26, Mr. Stagg and Mr. Denney have actually come in and amended Section 27 which we are not even on... I mean the committee proposal. And if you vote this amendment down, we will go ahead and get on Section ... and pass the Section 26. Then we will get on Section 27 and I will attempt at that time, if and when that happens, to give you somewhat the background and the history of what happened in the past and why I think, and why the committee, the Judiciary Committee thought, this language that we have in the Judicial Committee article, relative to the powers of the attorney general was necessary. But because of this manner in which Mr. Stagg, under the guise of amending one section, has attempted to amend an entirely different section. We are not on that section nor can we go into that matter at this time.

And I just simply ask you to vote this down and then we can debate Section 27 when we properly get to it, not by any back door method like it's being tried here.

Any questions?

Questions

Mr. Fayard Mr. Kilbourne, do you agree with me in reading this proposed amendment that the attorney general under Subsection No. 1 could, by bill of information or indictment, just institute a legal proceeding without the knowledge or without the consent of the local district attorney?

Mr. Kilbourne I think there certainly is a possibility. And as I said, I would go into that at length if we get on the proper section. What they have done here is just absolutely taken the exact language as Mr. Guste has suggested and attempted to put it in the amendment... where, in a section where it doesn't belong.

Mr. Fayard Well if my interpretation of Subsection 1 is right, then would that not shift the burden of proof and the actual burden to the local district attorney to then contest the action?

Mr. Kilbourne There is no question at all about it.

[Previous question ordered.]

Closing

Mr. Stagg Mr. Chairman and fellow delegates, in closing I only want to point out to those who have the amendments before them, the first amendment is on Section 26. Immediately following this amendment is a further amendment to take out Section 27. All we have done is to substitute our amendment for number 27 that's in here. Number 26 has already been covered in the Executive Branch Article and Mr. Chairman, I move the adoption of this amendment and I think we can go on and vote. It has been fully discussed.

[Rolls were considered. Amendment reinserted: 24-97. Motion to reconsider tabled. Previous question ordered on the Senate. Section passed: 186-7. Motion to reconsider tabled.]

REPORTS OF COMMITTEES

[1 3/4 PM, 1973-8-22]

Announcements

[1 Journal 198]

[Adjournment at 9:00 P.M. Clock 1973-8-22. 1973-8-22, 1973-8-22]

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Thursday, August 23, 1973

ROLL CALL

[106 delegates present and a quorum.]

PRAYER

Mr. Willis Omnipotent, omnipresent and omniscient God, author for men of good will of the perfect constitution, etched with celestial fire on tablets of stone, some two scores of centuries ago on a mountain called Sinai, instill within us the principles, precepts and tenets of Your Son, crucified well-nigh a score of centuries ago on another mountain called Calvary. We implore You to implant in our hearts that which is helpful, and to remove that which is harmful. By the constraint of Thy mercy, we implore You to suppress the persuasion of power for wrongfulness, falsity and ugliness, and to supplant that inclination with the power of persuasion for righteousness, verity and beauty, to the end that the constitution we shall author will be acceptable to our people and posterity, so that we may enjoy the blessings of liberty, egalite, fraternite, justice and all the freedoms, thereby entitling us to the most noble enterprise of mankind and its greatest pursuit, to wit: the pursuit of happiness.

So be it, Sir Henry.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

REPORTS OF COMMITTEES

[1 Journal 359]

PROPOSALS ON SECOND READING AND REFERRAL

[1 Journal 359-360]

SPECIAL ORDER OF THE DAY

Mr. Poynter Committee Proposal No. 4, introduced by Delegate Staggs, chairman on behalf of the Committee in the Executive Branch, and Delegates Abraham, Alexander and other members of that committee.

A proposal providing for the executive branch of government, for the filling of vacancies in certain public offices, and with respect to dual office holdings, a code of ethics and impeachment. Of course, the status of this proposal is that it has been reconsidered, up for final passage again at this time. The bulk of the sections heretofore have been adopted, as amended.

Amendment

Mr. Poynter Amendment proposed by Delegates Henry, Munson, Staggs, Abraham, Stovall and many others. Amendment No. 1, On page 11, after line 23, add the following: Section 23. Appointment of Officials. Merger; Consolidation of Offices and Departments.

"Section 23. After the first election of state officials following adoption of this constitution, the legislature shall elect a reasonable number of two-thirds of the elected members of each house provide for appointment in lieu of election of the state superintendent of education, the commissioner of insurance, the commissioner of agriculture, the commissioner of elections or any of them. In such event, the legislature shall prescribe qualifications and methods of appointment. It may, by similar vote, provide that any such offices, their departments and functions be merged or consolidated with any other office of department in the executive branch. No action of the legislature pursuant hereto, shall reduce the term or compensation of any elected official. By a vote of two-thirds of the elected members of each House, the legislature may reestablish any of such offices as an elective office and in such event, shall prescribe qualifications".

Explanation

Mr. Staggs Mr. Chairman, delegates to the convention, when I first came to this microphone on the day that the debate opened on the Committee Proposal No. 4, I expressed a considerable pride in those delegates that had been assigned to and had worked so hard on the proposal of the Committee on the Executive Branch. We had, at great length, debated and discussed and argued among ourselves about how the executive branch ought to be composed. We had as a starting point, the provisions of the composition of the executive branch in the Constitution of 1921. We had sought advice and we had studied the executive branch composition of a large number of the states of this Union. And we conceived of a streamlined, fully operational executive branch and a method of amending the sprawling executive establishment in this state, could be consolidated and operated more efficiently, more effectively and more responsibly to the needs of the people of Louisiana. As has happened in the legislative branch and as we are currently embroiled in the judicial branch, the delegates to this convention found that in some respects, our work did not reflect their views. Perhaps some of you will remember, that when we were under debate on the matter concerning the commissioner of elections, where we were hung up on an amendment that was being endlessly debated, some of us changed our long-held positions and voted in order that that amendment might finally be adopted and the work of this convention might continue unabated. At that time, I told you that one of the younger delegates of the convention did ask what our direction was. My answer to him was, that we were moving circular, and indeed we were. When it came to final adoption and sixty-seven votes were needed, a sufficiently large number of delegates felt that the article as finally presented for final adoption did not merit the support that I thought to have because so many delegates voted no, that we failed to get sixty-seven votes and final passage. That I regret. But I understand the feelings of those who voted on either side of that question. I understand it all too well. This morning, I am more concerned with the image that we have projected to the people of Louisiana, than I am concerned with what we should have held feelings that we should have of the executive branch of government. In every political arena, you are often faced with the ultimate necessity of compromise. To some people, the issue of compromise and its necessity is faced with great disdain. They say, no not me, I will not compromise. When a man tells you he will never compromise unless he is talking about a deeply-held personal philosophical feeling akin to his religion, if I may, then I think there are points where there is room for a man to say to you eyeball-to-eyeball, "I will not compromise." But in the ordinary context of this convention, when one set of feelings is faced eyeball-to-eyeball with the other and in order to achieve the greater good, one who might otherwise be inflexible in his position, might have a lesser goal by compromise. That's where we are this morning, this twenty-third day of August. We have had this same problem on judicial retirement and a compromise was adopted. We had this same argument on split sessions of the legislature and a compromise was adopted. I think that's where we are this morning, in the executive branch. We are struck with the problem which I read my Sunday morning paper of last Sunday in Shreveport. There was a cartoon on the editorial page and it was a picture of a sick limousine. On the side of that limousine it was emblazoned CC '73. But the trouble with the picture in that cartoon was, the hood of the limousine was lifted up and the engine was missing. And that was that cartoonist's idea of asking this convention appeared to him to be, all dressed up and no motor to make it go. That's where we are this morning. The amendment that I am going to urge you to adopt, might not put back an in-line-8, super-hep engine in this limousine, but it's a good solid, foursquare, four-cylinder workhorse, that will make our conversation here ahead of me asking this convention, this morning, to consider the adoption of the amendment that is before us, which is not too different from the convention's work in 1921 and I'll read you from Article V of your present constitution,

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in part. Where it says "the legislature shall have the authority to consolidate any of the above offices, except governor or lieutenant governor, treasurer or secretary of state." And in a 1956 amendment, they added "commissioner of insurance and custodian of voting machines." If you want a citation, it's in Article V, Section 1 of the 1921 Constitution. That's what this amendment does, it permits the legislature by a two-thirds vote of the members of both Houses to provide for an appointment in lieu of election and it provides for the functions of those offices if the legislature so wills it, to be merged or consolidated with any other office or department in the executive branch. Gentlemen, this may not be exactly to your liking, but if it is viewed by you as I view it, as a reasonable compromise and a means by which this convention can move forward, then I hope that you will vote with me. I urge you to adopt the amendment.

Questions

Mr. O'Neill Mr. Stagg, this will preclude the Committee on Education from coming back with anything relative to the superintendent of education, just about, will it not?

Mr. Stagg Mr. O'Neill, if you will remember when we got to Section 1, Article 1, of the Executive Committee Proposal No. 4, this convention was faced with that same argument. This convention named in its Article 1, Section 1, that the superintendent of education would be a fully elected, statewide elected state official. If you do anything with the superintendent of education, you will have to undo Article 1, Section 1, before you start, as a place to begin. So this amendment does not place the superintendent of education position in any worse position than it is already, by having been voted on by this convention to be a statewide elected officer; that we will have to undo, when we get to the article on education. I will be back at the microphone, after the governance of education has been concluded by this convention, to decide with you, then, how shall that job be viewed. I do not think this would preclude it. He is in no worse position under this amendment, as he is under Article 1, Section 1 of Committee Proposal No. 4.

Mr. O'Neill Well, I beg to disagree with you because under this amendment, the legislature could provide that the governor appoint the superintendent of education.

Mr. Stagg I think, Mr. O'Neill, that this convention will deal with the superintendent of education in conjunction with the article on education, both fully and completely.

Mr. Gravel Mr. Stagg, as you know, some of the members of the Executive Committee examined this article and it's just been pointed out to me, that there may be a technical amendment required for clarity. Let me call your attention to the beginning of the third line, which is in the center of the page on the far right, where the words "it may" appear. And after that, I think it was intended for clarity that we insert the words "after such election". To make sure that any merger or consolidation would not be effective - could not be effected until after the election. Are you willing to accept as a technical amendment, so that we can get the point of time correctly set forth, the words "after such election" after "it may"?

Mr. Stagg Yes, sir. I certainly agree that would be a clarifying amendment.

Mr. Gravel May that be done, Mr. Chairman, please.

Mr. Henry We will have to withdraw the amendment and then make the change. Can you do that on the amendment there, Mr. Clerk?

You want to withdraw it and make the technical change?

Mr. Gravel Yes. Mr. Stagg, says he's willing to accept that and I think we ought to do that for clarity. So there won't be any misunderstanding about the time.

Mr. Henry What is it you want to say there?

Mr. Stagg That at the end of line 7, Mr. Chairman, where it says: "it may by similar vote provide that any such offices," etc. It should have said: "it may after such election," that is the election of 1976 "it may after such election by similar vote provide any such..."

Mr. Henry Now, Mr. Stagg, you might not wish to withdraw your amendment and make that technical change if Mr. Roemer is going to make an issue insofar as his amendment being second here.

Mr. Stagg Well, Mr. Chairman, then if that's the parliamentary situation, I'm not going to withdraw this amendment.

Mr. Henry Well, I just wanted to apprise you of that.

Mr. Roemer, are you going to object to that? You're going to object to it, even though we have done it every day during the convention?

Mr. Stagg Mr. Chairman, I'm not going to withdraw this amendment. I'm not going to now amend it. I want it to become a matter to be voted upon and after it has been voted on, if it then requires amendment, further amendment, then I'll have it added by separate amendment.

Mr. Roemer Point of personal privilege. If you're going to make that kind of comment, Mr. Chairman, about what we have done in this convention, I might have the opportunity...

Mr. Henry Mr. Roemer, I didn't recognize you on a point of personal privilege now. All I was doing was apprising the man you were jumping up and down there waving and I just wanted to let him know what was going to take place.

Mr. Aertker Mr. Stagg, are you all aware that the Education Committee has adopted a proposal that the state superintendent would be appointed and that that state superintendent would be appointed by an elected state board of education?

Mr. Stagg Mr. Aertker, I was aware of the first time your committee made him appointed and then your committee changed and made him elected. Then your committee changed the third time and made him appointed. I have followed each of those swings of your committee with a great deal of interest. I have agreed with your first position and your third position, every time you have taken it. But the convention in Article 1, Section 1, before your last amendment, or last change, made him a statewide elected official. And that's where we are hung up right now, we're going to have to change it all when we get to the committee on...

Mr. Aertker Mr. Stagg, you are aware that the final action that they took was the recommendation that it would be an appointed superintendent by the State Board of Education, which is an elected body.

Mr. Stagg I'm aware of it and I'm proud of it.

Mr. Jack Mr. Stagg, I have this question. After the first election, the state officials, when the legislature can then try this business of voting by a two-thirds to make the appointment instead of elective. If they fail at that session, they can keep on trying in every session ad infinitum, is that correct?

Mr. Stagg I would presume that this is a constitution we are writing for the age, Mr. Jack. And to answer your question, it is certainly yes.

Mr. Jack Alright, that's what I want, is yes and

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no.

Point of Information

Mr. O'Neill This amendment is drawn to amend the previous article. I just want to know, for clarity's sake, is it going to take a suspension of the rules to go back and reconsider this matter, since it is amending the article itself?

Mr. Henry It adds a new section to the Executive Committee proposal as I appreciate it, Mr. O'Neill. It will take a sixty-seven vote, a majority of the delegates to add this section.

Mr. O'Neill OK, thank you.

Mr. Juneau Mr. Stagg, as I appreciate this amendment, we could have the unusual situation where the legislature would retain, for example, the commissioner of insurance. Then the legislature by another vote could consolidate the functions and we would have an elected official with no functions to perform, isn't that right?

Mr. Stagg And they can do that now, in certain offices in the state government, too.

Mr. Juneau Well, of course, you could do that under the 1921 Constitution, but that was deleted in the legislative article, was it not, that consolidation provision?

Mr. Stagg No, sir, it was not.

Further Discussion

Mr. Bollinger Mr. Chairman, fellow delegates, I rise in opposition to this amendment and the Roemer amendment. I agree that compromise is good. I see the necessity for compromise, especially in the executive article. But this in my opinion, is not good compromise. I don't say compromise is only good when it's on my side. But just look at what we are going to have if this is adopted. Article IV, Section 1, is going to spell out the members of the executive branch. Article IV, Section 3, is going to spell out who's going to be elected in the executive branch. Article IV, Section 23, is going to say the legislature can do away with everything 1 and Section 3, at least the ones under consideration. We were sent here to do a job, to decide. This is a cop-out. If we are going to do what we came here to do, let's go back into the article. Let's hash out these offices in question. Let's decide what's going to be elected, what's going to be in the executive branch. This is what we are here to do. I agree, Mr. Stagg, the present constitution has provisions such as this. But if the present constitution was all that good, we wouldn't be here. There are many faults in it and this is one I feel is a fault. Any strong governor, and you'll all know that, any strong governor who wishes to make these offices appointive or consolidate them, will have it done, and immediately after 1976, won't let the two-thirds vote fool you. I would think everyone who is in favor of a cabinet form of government is going to support this amendment. Because what it does, it provides for a cabinet form of government. However, everyone who wishes to spell out additional elected officials, I would advocate they vote against this amendment. Thank you.

Further Discussion

Mr. Jack Mr. Chairman, fellow delegates, I'm against this amendment. I'm against the Roemer amendment. I can smell the aroma on both of these amendments. That was a pretty good one, wasn't it? Alright. Mr. Stagg, this is not a compromise. You're a lawyer, when you win a suit all the way through and you get a judgement in favor of your client, you don't compromise after you've won it. You don't compromise a law suit [lawsuit] without asking your client. Now, we've passed twenty-six articles, all of those in the executive proposal.

We had to have sixty-seven or better votes to pass each one of them. We got as high as eighty-five on one of these to be elected. We got substantial majorities on all of them. Let's look back and see what happened when they took up the whole proposal of the executive. You had one hundred and nine people voted, fifty-nine voted to pass the proposal, fifty voted against it. There is one hundred and thirty-two delegates. It was a short House, we missed approving the whole proposal by eight votes. But we had passed all twenty-six sections of that proposal by majorities of better than sixty-seven. Now this is not a compromise. It don't just, somehow call a spade a spade. It don't just, somehow or another, seem fair to the people to compromise, as he says, their rights without their consent. I don't call it a compromise, when we have won all twenty-six of them. What it looks to me like it's doing is after passing each of those twenty-six sections, it's like a man who got a grievance against another man, say a twenty-four year old boy, young man rather, excuse me for calling them boys, I'm a boy. Now, suppose that man or boy if you want to call him, had a grievance against another fellow and go fight him. He shouldn't beat up, not only that fellow, but also his papa, his mamma, his little brother, his little sister and everybody. Now that's what happened with the short House when you had that proposal on final passage. After we had passed by a good majority all twenty-six articles, you failed there. You were taking off, for one specific thing, about these elected officials and you caused the shortage of the majority by fifty-nine to fifty vote on the whole proposal. Now that isn't fair. Now, let me tell you, I spoke before for these to be elected, everybody I've talked to in my district, I went around and talked to worlds of people to find out, and I have not heard from them and they don't even know about this so-called compromise or whatever you want to call it. And I don't speak one way down here and another one when I'm talking to those people up there. Let me tell you, this thing of appeasement and all that memory is short. There was a man in England when Hitler was started on it. He appeased and compromised and look what happened. Now let me tell you. It's good and well if they want under these rules. We ought to defeat these. Then at the proper time, if they want this kind of thing or they want the Roemer one, then they can have an alternate for the people to vote on. But, in telling you here and now, the people are not going to pass something with a lot of alternates. Now ladies and gentlemen, you do what you want to. I'm going to stick with what I voted. I cannot see how, when eighty-five of you voted for a certain office to be elected, you can turn around now, in this little short period of time, and do a flip-flop and do a monkey stringclimbing act, or whatever you want to call it.

Further Discussion

Mr. Munson Mr. Chairman and delegates to the convention, as Mr. Stagg has said, this is a compromise. As far as I'm concerned, the only thing to compromise. Mr. Jack is correct in his statement that we adopted section by section by better than sixty-seven votes. The problem was, we got less than a majority on final passage of the entire proposal. This is what brought about the need for compromise. I want to make it very plain. That I'm standing before you this morning, even though this amendment mentions other offices, the commissioner of education, insurance, state commissioner of elections, I'm speaking for agriculture. What you see in this amendment before you, is under consideration now, has been agreed to by those people in this state who represent agriculture. The one thing in this amendment that I'd like to point out because several have expressed concern to me about it and that is, the consolidation, the sentence on consolidation. In that regard, I believe it was Mr. Stagg that said, Article V of the present constitution, Section 1, provides that the department of agriculture may be consolidated by a majority vote. This amendment makes it by a two-

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thirds vote. The amendment, or the proposal, a new section that was proposed to us approximately two weeks ago as you will recall, stated that the legislature may after 1976, by a majority vote, make these elective offices appointive. This requires a two-thirds vote. Which, in my opinion, gives the people of this state a great deal more to say about whether they want these offices appointive or elective. As far as agriculture is concerned, and I voted, of course, for the elective office, because my people said "this is the way we want it at this time." As far as I'm personally concerned, I have had some concern from time to time, that the day may come when I, as a farmer, might want the commissioner of agriculture appointed from a list of people submitted by people in the farming business. This gives me an option, as a farmer. For these reasons, I ask that you adopt this amendment. Thank you.

Questions

Mr. Womack Mr. Munson, don't you think that in the future years the responsibility that agriculture has to provide food and fiber for the state, nation and the world, needs whatever flexibility that we can write into it, in order to make the necessary changes as time goes on, to keep abreast of the needs?

Mr. Munson There's no doubt about it whatsoever, **Mr. Womack**. There is also no doubt, that in numbers, people producing this food and fiber, is decreasing. Consequently, their influence in the legislative halls is decreasing, votewise, yes sir.

Mrs. Warren Mr. Munson, on the Natural Resources Committee this subject came up. You were one that said that the people wanted the commissioner of agriculture elected.

Mr. Munson That is correct. Mrs. Warren, the commissioner of agriculture under this amendment is still elective unless a two-thirds vote of the legislature changes that. As I pointed out, this does give us an option.

Mrs. Warren I understand that...

Mr. Munson I am still for an elective commissioner of agriculture.

Mrs. Warren Well, this was my reason for wanting to know why you had made the change. Under this amendment, he could be either appointed or elected. In most cases, I feel he would be appointed. Now I have no strong feelings on the commissioner of agriculture, have strong feelings on other things. But since you represented agriculture and you said this is what the people wanted, I am really concerned as to why you have changed your mind.

Mr. Munson Mrs. Warren, I do not feel that I have changed my mind. As I've said the delegates to the Farm Bureau convention in Monroe in July, voted to keep the office elective. It is still elective at the next election. I do not feel that I have changed my mind on this position at all.

Further Discussion

Mr. Hayes Mr. Chairman, ladies and gentlemen of the convention, really I had a question for Mr. Stagg and that's how my name got on to the mike. So I guess I'll come up and make the statement anyway. I guess the only way to get out of this dilemma is a compromise. But my problem with the compromise is that, why did they leave off the treasurer, the secretary of state and even probably the governor in that case. I can't see any fair compromise being worked out, leaving out some of the offices that would make up the cabinet of the governor. Now in some cases, I've seen where the governor was even appointed in one of our constitutions. But this group is supposed to be compromising. Now I hate to be wishy-washy and I know we will have to come out of here in some kind of way,

but I'd like to see all of the offices included, in order to vote for the compromise. That is the question I really had for Mr. Stagg, but the time ran out.

Further Discussion

Mr. Smith Mr. Chairman and fellow delegates, I was one of the ones that voted to make all these positions appointive in the beginning. I still would like to see them appointed.

I went along with the Executive Committee to make it that way. But now it seems like that's not going to be possible. We need to come up with some kind of constitution. And I feel like this amendment is a good amendment, the best we can come up with.

I might add, too, that I have not been lobbied, no one has talked to me about this particular thing. In fact, when I once make up my mind, I don't change it. But I feel like, too, the people of my district want it elected. However, I hope when the education proposal comes up to make it appointive, this is one of the main ones I would like to see appointive is the superintendent of education. I will vote for that and I hope it passes to make him appointed.

I still would rather see these positions made appointive that we voted for, but it looks like we've got to come out with some kind of compromise. Being an attorney, I have compromised. I never try to... I always try to compromise right. I think this is a good amendment in that towards that end. So I think we should come up with this amendment, go on with the work of the convention.

And at this time, if there is one else wishes to speak, I move the previous question.

[Motion for Previous Question Withdrawn.]

Further Discussion

Mr. McDaniel Mr. Chairman, fellow delegates. As you will know, I am not real accustomed to speaking up here. If this convention allotted time on the basis of the number of delegates, I have a lot of time coming. But if there is, indeed, anybody in this convention hall that's undecided or are weighing the alternatives, the remarks that I have are aimed at you.

I voted to keep these offices elective. A majority of the people in my district, in fact, want to keep it elective offices. But I would point out to you that we have had majority votes in the past on both sides of this issue. I think this offers a reasonable alternative to our problem and for that reason, I reluctantly get up here this morning to use a part of my time to try to urge those of you that are undecided that may have some questions in your minds to come on and let's join in this amendment. I think it's a reasonable amendment.

When I talk from a rural district such as mine, naturally, being a farmer myself and from a farming area I speak more for agriculture than I do for some of these other offices. I think that this alternative amendment here meets the requirement of agriculture. I think we can keep this office elective as these others can be.

This does provide, however, that in the future, if the elective office for each of these proves to not fill the bill of the future, we can have an avenue in the legislature to set up requirements for the job, and as far as I am personally concerned as this is written.

When it says they do become appointive, that qualifications shall be, qualifications shall be set for the office. And to me this is pretty important. Last week I resisted the scare tactics that were being used that we would have a consumer representing agriculture in the future. I think that this appointed deal with qualifications for the office takes care of these sorts of things.

Then let's look at this two-third vote, the super majority that has been discussed from time to time in this convention. When you consider that only a third of either house of the legislature could prevent an appointive group of officials.

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Isn't this, in effect, a good protection for the people, for the proponents of keeping these offices elected because of this super... this small group, this one-third in either house can keep it like it is. But it does provide that when there does get to be increasing problems, that the office no longer responds to the needs of the times, there is an avenue for change.

I think it is a reasonable alternative. We will keep our offices elected, but at that time that we do make a change, this thing of qualifications, and that last sentence that's down there, if you did go to the appointive route, you've found you have made a mistake, you could come back at a later day with the elective process.

Rural people are vitally concerned in keeping all these offices elective, and I share that concern. But as time changes, and it does change, we do have a way in this amendment to provide for it.

In closing, I would urge the adoption of this amendment.

Question

Mr. Nunez I wanted to ask this one of Mr. Munson and since you mentioned some of the same things and we are talking about change and keeping up with the changing times.

Evidently we might be assuming that we are not going to allow the people to amend the constitution just like we have in the past, and I think that we make a mistake, and don't you agree, that the people can make those changes by a two-thirds vote of the legislature submitted to the people, if the times have changed enough so that don't you believe that the people—if that's what we are concerned about, can make this same identical change that we are going to put into this constitution. To say that if the legislature may, in 1972. Can't we do the same thing by submitting a vote to the people?

Mr. McDaniel I think you could. But this article here as it is written does not necessarily eliminate the possibility that before doing this but what it could, indeed, go to the people. But I think you've got the protection here that the people really need, sir.

Further Discussion

Mr. Drew Mr. Chairman, ladies and gentlemen of the convention, I have to get up and express an opinion which possibly may be a position that a lot of you find yourselves in on this particular issue.

I was rather surprised that Mr. Stagg would use a cartoon from the Shreveport Times as an argument for or against this amendment because that cartoon represents approximately fifty percent of the coverage this convention has as reported in the Shreveport Times, and if the Morning Advocate and State-Times will not send them a subscription free, I think I shall buy a subscription so they can find out what's going on in Baton Rouge.

Now Mr. Stagg further remarked that compromise is a way of government, that compromise is necessary and with that, I have to get up and express your own ideas, I would agree. But let me make this very plain and very clear. Not only in my district but in my entire area of the state, I have a hundred percent mandate from my constituents and the people of that area to vote for elected officials. So when you start talking about me compromising, if it was my principles, my ideas that was compromising, that I would be at liberty to do so. But I am not at liberty to compromise the will and mandate of my constituents and I do not intend to compromise. They want the right to elect their officials and I shall so vote as I did before.

As I said, if it was only mine, maybe I would have the right to compromise. But in this particular instance with such a strong mandate, I have no such right and I do not intend to usurp that power. As Mr. Nunez, Senator Nunez said, this is one particular facet, one particular issue in this constitution that I think rises in importance and above every other thing that we have or will consider.

And I think it is something that the people would never criticize this convention or the legislature for letting them express their will at the polls.

We can offer a constitutional amendment and see. There will not have to be the numerous amendments that we have under the constitution, and amendments that we are operating under now. With the provisions of the Local and Parochial Proposal, I think you will find that constitutional amendments will be a rarity. But this is one item that I think is adequately important to let the people decide. I shall continue to vote for elective officials and I must vote against the amendment because I do not take it and will not take it upon myself to compromise the mandate of the people of my district.

Thank you.

Questions

Mr. Lanier Mr. Drew, looking at this amendment, would you agree that if this amendment were to happen to pass, that it would leave us with a Commissioner of Elections who is the head of the Department of Elections, however, who would not be the chief election officer of the state of Louisiana, who would not have the responsibility of administering the election laws, who would not promulgate the election returns and who would not prepare the ballot. Is that correct?

Mr. Drew Under the provisions as adopted, that is correct, Mr. Lanier. But let me add, if you listen to Mr. Ambrose Landry, and I will certainly take what the clerks of court tell me that the system we have now, with the Commissioner of Elections presently called the Custodian of Voting Machines, dividing the control with the Secretary of State as head and shoulders above any other system in the United States.

Mr. Ullo Mr. Drew, would you agree that the proponents of this amendment talk about compromise? Would you agree that this is more the old back-door approach that is traditional in Louisiana politics as our supermen, and would you also agree that if this amendment passes that it could possibly put this constitutional convention, the work of this constitutional convention, in grave jeopardy?

Mr. Drew Doctor, I don't like to use terms, but if there ever was an occasion where you could define something as a bitter pill with sugar coating, that's what this is.

Further Discussion

Mr. Lowe Mr. Chairman and members of the convention, I rise to oppose both of these amendments and basically I think I can give you a story that will strike close to home as to why do I oppose them and I think I will give you that in my statement. I'm not here to make a passionate plea to any of you because I think that the minds of almost everyone is made up on this particular issue.

I rise, primarily, for the record. I said that whenever I felt that the issue of independence was before this convention, that certainly I would rise to at least make a statement. Now as I make my statement, I'm not talking about the governor, and I'm not talking about the legislature. I'm talking about a governor, any governor that could come along, and I'm talking about a legislature any legislature that could come along.

In 1966 the big issue was the two-term amendment. And there was a lot of window dressing necessary to bring forth that issue of the two-term amendment. Now the powers-that-be at that time had to think what was the most important issue to the people of the state of Louisiana if we are going to window dress a little bit and try to sell this two-term amendment. Do you know what I believe they came up with? They came up with reducing the powers of the governor. That was the big system that had to be done. Everyone knew that. To reduce the powers of the governor, they played on the big issue of taking away the appointive powers of the governor. He shouldn't be appointing mayors and he shouldn't be appointing police jurors, and he shouldn't be

appointing city councilmen. And so we were led to believe that if we were to take away some of these powers, we would weaken the power of the governor and then we would not get a governor in for two terms because he would not be all powerful.

Now we turn around today and the governor has two terms. And now they tell us today that this isn't important any more. And we are not talking about down at the local level, but we are talking about some of the highest officials that we have in the state of Louisiana. Now if we have a glimmer of independence left, I appeal to you that the independence that's left is in the ability of the people to elect some of their high public officials. I'm not concerned about the governor being able to get a two-thirds vote. A governor can usually get a two-thirds vote and I really don't quarrel greatly with the ability with that fact. I think a governor should have power at times to do what has to be done for the state of Louisiana.

But if we give him that power, should we also weaken the other branches of government? Should we weaken within the executive department the checks and balances? I say we shouldn't. And step by step, we are taking away some of the independence that the folks have.

Now Mr. Roemer has asked me to say one thing because he felt that he might not get to the mike. He feels this is a bad amendment, as many of us do. He said if this amendment is defeated that he is going to withdraw his amendment. He has his amendment up because he feels at least it's a better amendment than we have before. I agree with him, but I still agree that I'm against his amendment for the reasons that I've given you. At least if we can do nothing else, I hope that we can give an alternate proposal to the people to vote this particular issue when they go to the polls in a referendum vote.

I would like to settle it among the delegates because we know what the people want. I think they want independence. I hope we'll vote to keep our elected officials. If we don't, at least I hope we give them the option.

Further Discussion

Mr. Asseff. Inasmuch as the chairman is going to close, I rise reluctantly to oppose the adoption of both amendments. I would like to correct a few statements that have been made.

One, the Committee on the Executive Department of which I am a member did not discuss the matter in such great detail, and we heard only one side of the question, and I opposed it. I am considered a governmental expert. We heard only one side of the experts so let us get that point straight no matter what this convention decides to do. More than agriculture is involved. We have the superintendent of education, the commissioner of insurance, the state commissioner of elections. There is no restriction on who appoints or anything. It is not an alternate proposal. If it were, my attitude would be different. This is not an alternate proposal which would be submitted to the voters for decisions. I worked for the legislature for some thirteen years and any governor willing to pay the price, can get a two-thirds vote without any effort.

Any by a two-thirds vote, it can be submitted to the voters so why don't we submit it to the voters for their decision. It is not a compromise. If it is, a compromise with whom? They certainly did not discuss the matter with me and I opposed it from the beginning. I heard about it this morning. It is not a compromise.

I urge the convention to reject the amendment and after all of the articles are adopted by this convention, then let us consider alternate proposals. At that time, I would be more than willing to submit an alternate proposal of this type for the voters. If you are so sure the voters will be blind you and you trust them so much, why not submit it to them for their decision as an alternate proposal? If you were willing to do that, I would withdraw my objection.

Thank you, Mr. Chairman and delegates.

Question

Mr. Stovall. Dr. Asseff, are you a Ph.D. in political science?

Mr. Asseff. Ask your question, Mr. Stovall, it's quite apparent what you are going to ask and you will not embarrass me. I have been doing this for over thirty years.

Mr. Stovall. Dr. Asseff, do writers in political science and good government recommend many, many elected officials?

Mr. Asseff. Mr. Stovall, I quoted to this convention which you did not listen to, that the authorities are not in agreement. The authorities do not agree that appointment is superior to election. It is a matter of opinion and I am one of the authorities that do not agree.

Mr. Stovall. Dr. Asseff, don't most of the authorities recommend that the constitution should provide flexibility?

Mr. Asseff. No, they require it be basic but I don't think necessarily flexibility and again, Mr. Stovall, who defines flexibility? You? Who decides what is good government? I've spent over thirty years in this field, and our committee didn't even ask my opinion one time, despite the fact I am considered that. They at least could have asked a question. I served the legislature thirteen years. I never was criticized and the legislature always supported me and I was always objective in my advice. I didn't try to tell them what to do. I am not trying to tell this convention. I am simply telling you this if you adopt this proposal, if you want my personal opinion, you will place this constitution in grave jeopardy before the people of Louisiana.

Further Discussion

Mr. Anzalone. Ladies and gentlemen of the convention, my brother from Caddo Parish got up while ago and talked about compromise. He said that a man should be willing to compromise in cases, except in cases of a philosophical nature or possibly of his religion. Then he should be willing to compromise.

I submit to you that the people of the state of Louisiana hold the question of the election of their officials almost, if not as important, as their religion or their basic philosophy. I say to you as my brother from Caddo has said, eye-ball to eye-ball [eyeball-to-eyeball], this is not a fair compromise. By no stretch of the imagination can it be a fair compromise. I think we all agree that the governor and the lieutenant governor should be elected officials. But yet we have entrusted unto this constitution three remaining officials. Why not include them in this particular article as Mr. Hayes has said? All of your elected officials should be on equal footing. The 1921 constitution provided that they could be merged and consolidated, and they were wrong. If we do it here, we are going to be wrong. No system of government as we have been proposed so far is perfect. The appointment is not perfect and the election is not perfect. But, ladies and gentlemen, I will submit to you that something that is ninety-five percent good is not all bad.

Mr. Stagg spoke of the image that we are portraying to the people of the state of Louisiana. I want you to take a good, good look at that image because three weeks ago, with no less than seventy-five votes on each one of these issues, we have elected someone. This week I am told, that vote may be in jeopardy. We are beginning to play flip and flop and I wonder what the people of the state are going to think about that? I want to echo the words of Mr. Drew. You do not have the right to compromise the basic philosophy of the people that you represent. You do not have that right.

I urge you to reject this amendment, and I'll answer no questions.

Further Discussion

Mr. Jenkins I think if we look at our own history and the history of other countries, we'll see that the election of public officials is not a mere technicality or formality, it's not something people can disagree about particularly. The election of public officials involves some basic principles. Many countries in the world don't allow their public officials to be elected. Or, if there is an election, it's an election in form only, not in practice.

We are fortunate in this state insofar as we've had real elections, true elections, a contest of personalities and ideologies in many instances. I think that's the principle, the principle of having elected officials—but I don't think anyone here is against that principle.

Yet there is another principle we ought to look to and that is the principle of dispersing power in government. For even if you elect your officials, if you put all of the powers in the hands of one man or a few men, you are going to have the sort of centralized government that tends to perpetuate itself in power and which tends to flaunt public will and public sentiment. And we know in this state already we have one of the most powerful executives in this country. Not the man in office now but the position because of his tremendous power of appointment, his tremendous control over budgets, his tremendous influence over public projects. In fact, this whole situation this convention finds itself in illustrates that. Why are we standing here debating this? Because one man, the governor, not the people, one man, the governor, wants to have a lot of appointed officials instead of elected. That's why we are here right now. A majority of the delegates right here want these officials elected by the people in the state want these officials elected. One man wants them appointed. And so, for that reason, some of us are willing to buckle, there's no need to buckle. We have the votes right here. When this thing came up before, there was a short house and people knew it could be reconsidered. Now if we are worried about that, let me suggest to you this, if this amendment passes, there will be some other people who are going to vote against this article. And I am one of them. You might have trouble getting sixty-seven votes if this amendment passes. Don't think because it passes you will get it. I wasn't chosen for this convention to represent the governor, and I know in my district I haven't had one single person tell me he wanted any of these officials appointed. The only thing they've told me has been just the opposite of that. They want to elect their officials. We don't have any reason to compromise.

Now people have said that well, this special interest group, like the farm bureau or some other group, they are willing to go along with compromise. Well, maybe the leadership is. I'll tell you what, the farmers aren't. The farmers voted unanimously up in Monroe to have the commissioner of agriculture elected, unanimously, not on the decision of the legislature, they want it in the constitution. And because the leadership gets a little wishy-washy, gets scared at the last minute, it can't affect how the farmers feel. And I'll tell you what. The teachers don't want the superintendent of education appointed, and they don't want the legislature to be able to decide that he would be appointed, either.

Just because one person starts putting pressure, starts talking to people, starts making compromises, we are going to withdraw and we are going to fall back. We are going to buckle. Well, we don't need to. Our people don't want us to. We have the votes not to. And that's a decision we have to make. Talk about special interest groups on the judges? I voted to delete that on the judges, I had mixed feelings about it. But I voted to delete that section. But let me tell you, if you think that was an issue, that's no issue at all compared to this when one individual can flout the will of the people of this state to have their people in public office elected, that judge issue was no

issue at all compared to this.

So let's make a decision. I think we know what the people want. The principles, the philosophical principles of elected officials and avoiding centralized power, those principles are with us. What more do we need? All we need is your red vote on this amendment and then your green vote on this article.

Further Discussion

Mr. Alario Mr. Chairman, members of the convention, I stand to oppose this amendment and to oppose any attempts whatsoever to make these offices appointive rather than elective and that's what you are really doing here. As we are deciding on that one issue, an issue that we have decided over and over in this convention that we wanted by a vast majority to have these various offices elected. And now here we come with a so-called compromise after we have defeated them, come with a compromise now that would allow these offices to become appointive. Oh, yes, it says by two-thirds vote of the legislature. Let me tell you about the two-thirds vote of the legislature in the little while that I've been a member of the legislature.

I haven't seen one time when the governor of this state was interested in a particular program, where two-thirds vote stopped anything. Whenever there is a tax that's been needed in the past, the governors of this state have been able to rustle up a two-thirds vote and that's very, very difficult to do for a legislator to vote for a tax. But they have been able to do it.

The only thing the two-thirds vote does is to allow for more wheeling and dealing to go on. I suggest to you it's going to be a lot easier for a legislator to vote to make these offices appointed than it is for him to vote for a tax and able to get the two-thirds vote for that. We are not taking away the right of the people to decide. And some day and time, if that's what the feeling is, to make these offices appointed, and I think you can do this simply by going to them with a constitutional amendment and say letting them decide. These offices belong to the people of the state, doesn't belong to the governor of this state. It belongs to them to decide whether they want to have it appointive or elected. I would have no objection whatsoever to letting them vote on that issue. I do have bad reservations, though, in letting the legislature decide by a two-thirds vote as to what's going to be the fate of these offices.

The present constitution says that, Mr. Stag pointed out, the legislature has that authority to consolidate certain offices except the offices of governor and lieutenant governor, treasurer, secretary of state, commissioner of insurance and custodian of voting machines, except those offices. If you allow the office, for instance, of insurance commissioner to become an appointive position, you may be opening the pocketbooks of the people of this state who are now paying too much for insurance.

And let's not kid ourselves, who's going to get the appointment for these jobs? Somebody's going to buy them. Somebody's going to have to have that commitment made way ahead of time that that's the job he wants and that the job he's going to get. I ask that you defeat these amendments and any attempt whatsoever to have these offices made appointive.

Further Discussion

Mr. Juneau Mr. Chairman and fellow delegates, I'm not going to get into the discussion at this time with regard to elected or appointed officials. I want to talk about this particular amendment. We are talking about putting language in a constitution and I want to clarify something that appeared... or that was discussed earlier.

If you will look in your black books, Article III, Section 32, right here. It provides in the 1921 constitution for merger and consolidation, and in essence what that said was that the legislature could by two-thirds vote change and merge a constitutionally created office. We got rid of that in

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the legislative article and that was not passed and that is not what is before you today.

Now, how does that relate to this amendment? This amendment as I read it is very clear. It has put back into the constitution Section 32. And that to me means that you as a constitutionally created body are asked to say what is in a constitution. You are then abrogating your right as to what you think should be the basic form of government, and I submit to you that election or appointment is the basic form of government. And you are saying we are going to abrogate that right to a two-thirds vote of the legislature. That's what you have done by this provision.

Now let me tell you what could happen. You could have an elected commissioner of agriculture, you could have a commissioner of elections, and then by a two-thirds vote if it be the will of the governor as administration in administration, that they want to... we are not going to affect him personally, but we are going to strip him of his powers. That's exactly what you could do. I'm telling you that that's bad. That does not make sense.

Secondly, as this amended is drafted, it provides in essence that after the first election of state officials... would be elected but he can come up and by two-thirds vote of the legislature be changed to an appointive position by the same body the next year, at the regular session, the legislature could abolish the duties of that job. That's ridiculous.

Now, I'm telling you this, I can't understand, and this is what's unbelievable to me, I frankly have mixed emotions about the whole provision in this regard. I'm caught in the dilemma between appointive and elected officials. I personally feel that the commissioner of agriculture should be elected. I personally feel that since we are not going to give the duties to the commissioner of insurance that he ought to be appointive. I personally feel that the commissioner of elections, since we didn't give him election responsibilities, should be appointed. But that's not the issue before you. I submit to you that if there is any controversy we are in, we... I respectfully submit to you we have faced the first true issue which should be an alternate on the ballot.

I'm not willing to abrogate that decision to the legislature in 1974 or 1978. I think that that's a constitutional issue and it's beyond me why we want to go through the back door in say two years from now, or seventy-six or seventy-eight or eighty. We want the legislature to decide that. If it's that important and we are that split, let's vote on the section and I guarantee you that there won't be any problems whatsoever in submitting this as an alternate to the people. What's so sanctimonious of discussing that we should not have an alternate on the ballot? I think in thinking in terms there is going to be some of those issues. And I submit to you that that's one issue.

In conclusion, I'll tell you about this amendment. When an amendment is faulty and when it's bad, and when we are talking about the constitutional mandate, it should be voted down. When something is of the magnitude of just what the people of this state are going to determine the form of government, well then I submit to you, let's put it to the vote of the people and let's don't talk about the back door. Let's face the issue, let's vote on it, let's stick with it like we have, come back when we get the provision on an alternate ballot and let the people decide it. I'm not willing to make that choice.

Thank you very much.

Further Discussion

Mr. Roemer Mr. Chairman, and ladies and gentlemen, of course I oppose the what is it? The Henry Munson, Stagg Abraham, Lovell amendment. Let's talk about the games people play, and the games we're playing here today because this amendment is a game. It's a game that couldn't be won on the playing field. It's a game that couldn't be won in regular time. It's a game that couldn't be won by the rules that you and I were elected by. It's a new game. It's called "I didn't get what I

wanted when it was time, so now I'm going to get it in the back door."

You know the issue here is a simple and clear one, elected versus appointed. Now, in America, can people stand before me and say in the name of efficiency "I want to reduce elected offices?" In the name of efficiency and team work, I want to deny the people's constitutional, American, historical right to vote, and that's what we're talking about.

Now some of you say, "well, Roemer, you've got an amendment right behind this that does in effect, the same thing. True, that's another game. I hate to play them, but if we pass this one then I surely will bring mine before you, because it's a bad game to [too] but it's just a little bit better. Now, some people talk about compromise. I can't quote Shakespeare, my good friend Burton is not seated here, maybe he could help me. Yes, Burton, thank you. But I can quote rock and roll. I'm more expert on that than Burton is, probably. There's a song out by Paul Simon. It says "with all the crap I learned in high school, it's a wonder I know anything at all, but at least I learned enough to know to read the writing on the bathroom wall." That's what this compromise is. Hell, I'm no fool. I can read the writing on the wall. I know the telephone calls. I was here all day yesterday. You're not going to fool me, not on this point. I know where the votes are, and that's the reason I have my amendment here, because I have a fear, an absolute fear, that this first amendment will pass. Now look at it and read it close. It's got superintendent of education in it, the reason to be there. We needed to discuss that on the floor when education is brought up, you know that. It's got merger and consolidation here, and doesn't even put a time limit on it. They could do away with these offices before the next election, not only after, not only after.

It's a bad amendment. Now, they talk about the Farm Bureau. Why they bought this I'll never know. Why they were taken in like this, I'll never know, but I ask them, when they go back to those farms in Louisiana and they read what they have done, I tell you they will regret the day, they will regret the day that this ever took place.

Now, the governor, in his wisdom, wants this. It's been made over and over again by the proponents of this amendment, and no man here can take a front seat before me in admiring, respecting, and dedicating myself to our governor. I voted for him three times, if I could have voted for him more, I would have, I like him, I respect him, I think he's a good governor, but you know there's a time for leadership. It passed the state Leadership changes to demagoguery when the time is wrong, and that's what we have here. Brinkmanship, crisis, demagoguery. It is wrong. No way to justify it, no way at all. Now, I'm going to say that I'm willing to compromise on one point. Let the people decide, let's make it an alternative. Now there's a compromise, and you know the don't want to do that. They don't want to do that, and I can tell you why. Because they know what the people would say; the people will say, and I can guarantee it. "We want the right to vote". Thank you.

Further Discussion

Mr. Roy Mr. Chairman, delegates of the convention, I rise in support of this amendment. I've heard a lot of rhetoric, and what I've just heard has been some of the best. I want to tell you how I feel as just a plain old Louisianian. Nobody here, in my books, who's more of a Jacksonian democrat than I am. I don't believe in the rights of the people to vote and elect their officials, but that's not without some limitation. I came here with the idea that the only person who should be elected, besides the governor and the five named previously by the Executive Committee, was the superintendent of education. I'm still, to some degree, committed to that viewpoint. I was not for the commissioner

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of agriculture being elected. I would have spoken against it, but for the fact that my farmer friends came and suggested that that's what they wanted, that they needed it. Notwithstanding, I believe that Schmitt was right when he said that the farmer is in jeopardy, and four years from now when a consumer oriented person is elected, I voted for the commissioner of agriculture to be elected. I think I did my farmer friends a disservice, but since they wanted it so badly, I thought I had to go along with them. I now am happy to know that the Farm Bureau will support this amendment.

I don't agree with Senator Nunez and that we can leave this matter up to the people and that strictly it's a matter of constitutional reform that they can amend the constitution in the future. In my opinion, these offices do not belong in the constitution, in the first place, to that extent. If they don't really belong there, then there's no real compromise by saying that we're going to allow the legislature by two-thirds vote, later to change it. I disagree with the good friends, Mr. Drew who said he was elected to represent intally, the views of the people in his district. I respect the people of my district. I respect their views, but they didn't elect Chris Roy to come down here and evoke the view of the most banal and least intelligent member of that group, not that any of them are necessarily that way, but they elected him. I was elected you, I believe, to vote what you thought was the best thing after considered discussion and debate, so I don't believe that I must vote exactly like my people say, and I have not done so. Now, let's look at the practical matter. Do you mean to tell me that if anything is so un-one-sided that thirteen Senators or thirty-five Representatives cannot be gotten to vote against it, then the people don't want it. Are you really afraid that a legislature would, in the year 1980, just arbitrarily say we're going to appoint these officers when merely thirteen Senators or thirty-five Representatives could kill it? That's the protection that I think the superintendent of education will have on the teaching side. If they elect me, it's strongly that he should be elected. But if the teachers of this state can't convince a disinterested legislature, or even a biased one, that thirteen Senators or thirty-five Representatives should vote against consolidation, then obviously those Senators and Representatives must be doing what the people of this state want.

Now, several years ago, I'm going to close by saying this, when John F. Kennedy was receiving a degree from Yale University, he said that "now I have the best of two worlds, a Harvard education and a Yale degree." I say, let's give Buddy Roemer his Louisiana education with his Harvard degree.

Further Discussion

Mr. Robinson Mr. Chairman, delegates, I too, would like to see the problem that we've had with this Executive Article resolved, and soon, because if it isn't, all this sound and fury may indeed signify nothing. Whatever the final decision of this convention, I shall try to accept that decision with good grace. I note that this proposal has been advanced as a compromise and it now includes the superintendent of education, although that office was not a part of the amendment previously offered to the Article on the Executive Branch, the rejection of which led to this impasse, and I do wonder why. I understand that this particular compromise was discussed thoroughly with the governing board of the Farm Bureau, and that this has led to some sort of consensus so far as they are concerned. I have not had this opportunity to discuss with my own governing board, the issues raised in this particular proposal, and so whatever I say today is specifically for myself alone. I have already expressed myself on the issue of whether that superintendent of education should be elective or appointed. I think public education needs an advocate in the political arena. I think that an elected superintendent is a much better advocate than a hired hand. I think that the people want to vote for one person who can be identified as responsible

for leadership in education, and who can be held accountable, incidentally, along with all the other public officials every four years. I voted this way, the convention voted this way, I thought matter settled, and apparently it is not so because the superintendent of education is in this proposed compromise. Now, I'm not sure, and I don't think you can be sure, what the effect of this particular proposal will be on the public school system. It does appear to me that at least it means this, after the year 1976, the office of superintendent will no longer have constitutional status which we, only a short time ago, agreed that it should have. It will not have constitutional status in that the character of the office after 1976 would be a matter for legislative determination although by a supermajority vote. Many delegates here, I know, from conversing with them, feel that there should be a careful allocation of power and responsibility between the State Board of Education and the State Superintendent and that both the manner in which the board is selected and the allocation of these responsibilities should be determined after the basic decision is made on whether the superintendent is to be elected or appointed. There is absolutely nothing in this proposal before us which says anything about the State Board of Education, and it does appear to me that if the office of Superintendent of Education is to be subject to legislative determination, then it follows that the composition and functions of the Board of Education should be made subject to legislative determination as well. If this is done, I point out to you, that the whole governing structure of elementary and secondary education is out of the constitution, and I ask you, is this what we want.

There are many other unanswered questions about this particular amendment. If this compromise is adopted, will it end our controversy or will we again fight it all over again in the consideration of the Article on Education. In other words, I'm wondering just how meaningful this alleged compromise really is, anyway. We saw already heard today that one delegate from the legislature indicated that it will not, in fact, end this controversy. What will this do to the stability of the governing structure of public education in the future? Will it tend to bring the school system into unrelated political struggles? Will it lead to a constant harassment of the State Superintendent of Education? I don't know, and I don't know if any examples of this exist elsewhere which we could cite as a possible model. We have heard a whole lot about conflicts between the board and the superintendent. Will this arrangement encourage conflict, and will it in fact, transfer that conflict to the legislature? Would the superintendent be appointed by the governor? The question has been raised but it cannot be answered. I don't know if you do or not.

As I read the present constitution, it provides for the consolidation...the proposal, anyway...it provides for the consolidation of all the officers named and their department. This means to me that the Department of Education could be put directly under the governor in the division of administration. The authority for this is not in the present constitution in the Article on the Executive Department. As I read this amendment, it is not a compromise, it is as has been indicated by other speakers, a capitulation, and I shall vote against it.

[Motion for Previous Question

rejected: 14-9.]

Further Discussion

Mr. O'Neill Ladies and Gentlemen of the convention, I won't be so vain as to think you voted that way to hear me speak, but I'll proceed anyway and thank you for letting all of us speak.

There are so many things that have been said here, and so many more things that could be said. I first want to make reference to that long black limousine that we heard about in the Shreveport paper. Well, you know a long time ago, Huey Long believed that if you showed those old country folks enough glitter and glamour, they would go along with

anything, but I don't think those old country folks are going to go along with this. I don't believe they will because Mr. Stagg failed to tell you that the governor is sitting on the fence, and he's driving it and no matter whether or not it has an engine or not, he's still driving it and it's still going to take him where he want's [wants] to go. Do you honestly believe that the governor has enough personal charm, charisma, to carry this constitution over to the people, even if we allow these elective offices to be taken out? I don't believe he does. We hear that he has a mandate to come in here and have a cabinet form of government, and I hear, as delegates, we are supposed to come in here and fulfill that mandate. Well, I disagree. The only thing that I was mandated to do was to come here and protect the rights of people, not to take any rights away. I believe that when you have two democratic candidates running on the platform of constitutional reform, and one of them happens to win by a few thousand votes, that's not a mandate, and I don't think you think it is either.

We've heard so much about compromise. They would lead you to believe that compromise is the honorable thing in every situation, and perhaps sometimes it is. But you don't really realize that, perhaps, compromise isn't so honorable after awhile, and that perhaps there has to be a line drawn somewhere at sometime. We had fifty-nine votes to pass this entire article, and I rise with Mr. Jenkins in saying that if this amendment is tacked on, I'll work just as hard to defeat it as the governor did the first time and I'll ask you to join with me in doing that.

We received a letter on our desk this morning from Mr. Guardnard, the head of the Farm Bureau. The Board of Directors of the Farm Bureau has decided for some thirty thousand odd members, that they can go along with this compromise. They can compromise the commission of elections, the insurance commission, the superior court, and education. They've decided this for us, and you agriculture people were weak enough to go for it. You were weak enough to fall out of the boat. If you used to watch "Our gang" on t.v., their motto was "One for all and all for one". Well, agriculture, we stood with you and stood with you for a long time. Those of us in the city who don't have to stand with you, did, but you won't stand with us. You've got what you think you want, and you've gotten what you think will make you happy. Well, it won't be all for one and one for all anymore. When we get to the legislature in future years, believe you me, that governor is going to get his two-thirds vote. We's got you in this position right now. I put before you that this is a more tenuous position than in the legislature. If he's so hell bent on having it here, then he's going to be just as hell bent in having it in the legislature. I submit to you that the people don't want the black limousine, no motor, governor, driver or any of it. They want something a little bit simple, something they can understand, something they can take and give their rights away from them. We stood with you agriculture, but you left us. If we ever have the chance to leave you, we're going to think twice about whether or not we're actually going to stand with you or not.

Vice Chairman Miller in the Chair

Further Discussion

Mr. Alexander To the Chairperson, delegates, I would like to put the whole question back in perspective. For the last twenty-five years, I have been hearing throughout the State, that the trouble with our constitution is that it is too long; (2) there are too many elected officials contained within it. Now the people of the State do want to reduce the number of elected officials. May I answer one or two of those persons who have been facetious in their remarks. Somebody said, suppose we then include the secretary of state, the treasurer, the lieutenant governor, and the notary. There is an amendment on our desk to that effect. I submit to you that that is the height of facetiousness.

If we are going to be facetious, why not say let us elect the heads of all departments. All two hundred and eighty-three of them, or three hundred of them. Then we would be elected ridiculous. Now let me see what our position is. We have talked about compromise. I submit to you, ladies and gentlemen, that the fundamental way of life in this country, has been compromise. We compromised those of you who migrated from the Old world because of religious reasons. You compromised and came to America and for over two hundred years we have lived in America with complete religious freedom. I submit to you that was compromise. Because as a Baptist, I have little in common with a Catholic, but I tolerate his religion and he tolerates mine, because that is the fundamental way of life in America. Now what do the people want? They want a change. They want the constitution constricted. They want it shortened. They want it readable and understandable. They want fewer elected officials. Now I submit to you if there is any one group out there who can, if that group wants to, impose its will on this convention and say to us, "we are not going to compromise", it is those people who represent agriculture. They have the votes to do it. I don't know if they will, but they can do it. But compromise ladies and gentlemen, is not a dirty word. I submit to you that from my youth, I have always wanted a Rolls-Royce in one driveway and a Cadillac in the other. But I don't know how many cars I have owned, but have owned a Model A Ford, a beat up Oldsmobile, a Pontiac, but never a Cadillac or a Rolls-Royce. I do not wish to own a Rolls-Royce. So every time I have bought an automobile, I have to compromise. Every time I've bought a used car I was compromising. I say to you that everyone who lives in America and who belongs to a church, he compromises. Because I dare say that of one hundred and thirty-two delegates here, almost all of us represent some other denomination. Don't let anybody call you a compromiser unless you permit me to be here. I compromise when I listen to some of the rhetoric that I have heard here. May I conclude, by appealing to those of you... by appealing to your good judgement and to your good sense, by saying that the earliest the affects of this resolution can be implemented would be 1980. It doesn't matter what it goes for, or when it goes. It means that the earliest anyone or all of these officials could be elected would be 1980. It may never be implemented. It means that it's open end. It may be 1984, 1988 and ad infinitum. I appeal to you ladies and gentlemen, vote for this amendment. Thank you, Madame Chairman.

Further Discussion

Mr. Stinson Madame Chairman, members of the constitutional convention, I wish to join those who have appeared here prior to me speaking for the rights of the people, the inherent right of our form of government to express your wishes as to whether you want to govern by the rule of law or by setting up a dictatorship, whether he be a board, or governor, or who he may be, to say this man is going to run your affairs. I am again a compromiser. I personally think it's a bad word. It's a trade out, or a sell out or a surrender of principles. You never gain when you compromise. If you go into it honestly and try to do it as good as you can, not going to be as equally honest as you, you're going to be in the same situation as our government is in the East. I have heard repeatedly, that there is a mandate that we are supposed to rewrite and shorten the constitution and change every thing in it. I have never seen that mandate and I don't know where the false idea is that we have been mandated to do this. The last time the people voted on whether they wanted to revise the constitution, they overwhelmingly voted it down. They have not had the opportunity to vote on whether they wanted this constitution rewritten. The fact that you were sent here, wasn't a mandate that they wanted to rewrite it. They said we want someone there to protect our rights. As another speaker said, we get rid of things that may be wrong or rewrite what may be in there, that's good. But no plan have we

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been told, at any time, that we are supposed to change our principles as in the constitution at the present time.

Questions

Mr. De Blieux Mr. Stinson, as a lawyer, haven't you heard of the old adage that a bad compromise is better than a good law suit?

Mr. Stinson I don't follow that adage, you may. I'm not the same type of lawyer as you, Mr. De Blieux and we usually vote different on every issue, if that answers you.

Mr. De Blieux Do you mean to say, as a lawyer, you have never compromised a case?

Mr. Stinson Only if I was going to gain by it and someone else was foolish enough to let me take advantage of them.

Mr. Roy Mr. Stinson, are you aware that the Constitution of the United States was founded because some big enough people accepted the fact that we would have two United States Senators and a House of Representatives based on the total population of each proposed state? And was that not "the great compromise"?

Mr. Stinson I wasn't present at that convention. Mr. Roy Gentlemen, this is an attempt to bypass the people of the State of Louisiana. If these compromises were honest, they would say, let the legislature by two-thirds vote pass it and then submit it to the people. They got a little devious statement in here, that if it doesn't work out, then by a two-thirds vote the legislature can change it. But they don't point out the fact that if they try to change it after it's a disaster, that the governor can veto that, even though it's passed by a two-thirds vote. So the governor can control it by his veto. I belong to the Farm Bureau and I haven't been contacted. My Farm Bureau in my parish hasn't contacted me. I think this is another example of the little dictatorship down here, trying to tell us what to do and mislead the people. They voted at their convention by our representatives and delegates there, to be for an elected, and as far as I'm concerned for the Farm Bureau and the farmers of my parish in my district, they are for elective and that's what we want and keep it that way. I'm also against the attempt here to pass the buck to the legislature. This issue is too hot. The governor can't control enough here, so let's pass the buck to the legislature and the governor then, possibly, can control and get it. But if there is going to be a change in the constitution, the legislators have the right to change it. They haven't seen fit. We are supposed to write it and we are putting it in here and handing it back, saying it's too hot a issue. We can't do it, you do it. Now, I don't think they are any wiser than we are. Let's settle the issue once and for all, then they can have a constitutional amendment without the right of the governor to veto it, and let the people change it. Now you say, they may argue that the people will have a voice in this. But that's ridiculous. It's all tied in here with many, many other things. No issue in here on that one issue can be clear cut, when there's only one voice and an alternative issue. Now I would like to say that we don't wish in my parish to make these appointments. The legislature could come up and say the commissioner of agriculture would be appointed by the mayor and the city officials of Orleans... We have no control, let's vote this down and leave it as it is in the present constitution. Thank you.

Further Discussion

Mr. Warren Madame Chairman, and fellow delegates, I rise and oppose this amendment. In the Times-Picayune this morning, it stated that we were going to consider the Executive Branch Proposal. It did not say anything about extending it. I was under the impression that we will probably take a revote

on it and see if we could get enough votes to pass it. When I came on the floor, Senator Gravel, came around with his amendment and he asked, if we could support this amendment. He said that the governor wanted to get this thing on the road. Now I'm not pro anybody. I think that the governor has a right, as much as any other individual, to come at this table and say to us what he would like to see in this constitution. The state attorney general has been here, we had Attorney General Guste here yesterday and others. I think he has the same right and he should express himself, if this is what he wants. I am an elected delegate. I did not spend one dime when I ran for office. I had mail-outs, bumper stickers, flyers and volunteer help. The two positions in here, some are dwelling on the agriculture commissioner. The Louisiana Farm Bureau is roiling along with this amendment. The teachers, parents and others did not know that this was coming up this morning, so they are not here. But I assume that the commissioners of the Farm Bureau were appointed to this commission, so they are informed as to what is happening this morning. In the morning, and a few days ago, there was a big plaque. On this plaque it read, "When your ass is bogged down in alligators, it is hard to remember that your original purpose was to drain the swamp". This amendment, a compromise. I'm not going to get bogged down in it. I promised those people who expressed themselves as wanting an elected state superintendent of education and a commissioner of insurance, that I was going to vote their convictions and not mine. If they had not given me this mandate, I don't hardly believe that I would want to go, but I might be able to be persuaded a little bit, because I'm not pro anybody. But when we stop and think about Watergate and those appointed executive officials which thought that no crime was to be had for them and in order to get their president reelected. Who does one owe his loyalty to when he is elected? His self preservation is the first law of Nature. So I might want that interest of the people, but I'm going to think about my vested interest because I was appointed to this position. So I'm not going to ask you to vote one way or the other. I'm going to ask you to vote your convictions, because each time that I come up to this microphone this is what I am going to do. But just vote your convictions. If there is any questions, I will be glad to answer them.

Further Discussion

Mr. Rayburn Madame Chairman and fellow delegates, once again I come here and ask you to defeat this amendment. You've heard a lot said about a compromise. I wonder where the people were at when that compromise was made. My people were at home. My farmers have not said one word to me about a compromise. I was at an auction sale Monday where hundreds of them were at, and they said, "stay with us old boy, don't take our right away from us to vote." I said, "I will not, and I shall not." I pledged to my people, and I'm going to live up to my pledge. I haven't had any pressure put on me. I've heard a lot of criticism pointed at the governor here. I want to say here and now that I think that's undue criticism. I think the governor of this state has got a right to his opinion the same as I've got a right to mine. If he wants to voice it, certainly he should have that right. But I personally know that he hasn't contacted me on this matter, and I think we're good enough friends that, if he'd been staying up at night worrying like some of them said, he'd at least call me. But he hasn't. If he had, I'd have told him what I'm fixing to tell you. I would have told him the same thing.

I believe that when you tell the people of this state that you are going to vest their rights in the members of the legislature, you're going to take away a privilege they have had year in and year out, that you are making a grave mistake. I have no doubts in my mind that what a governor that wanted to could muster two-thirds vote. I've seen it happen, and if I don't pass away, I'll see it happen again. It might not be on election. It might be on some other matter. It can be done. It has been done and it will be done...just remember that. Let me say here and now, you're fixing to make a

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decision that will live with you the rest of your life. You're fixing to deprive the people of our great state of an honor, of a privilege and a sacred right they've invested in a handful of legislators. Maybe you want to do that. I don't want that on my conscience. I don't want to take away the rights of the humans of this great state invested in me, as a legislator, to tell them that they can't vote for any more elected officials, or they can't elect their officials. Just elect me, and let me run it for them. For that I don't believe you're really for that. It might work and it might not work, but I want the people of this state to say whether they want to try it or not. I'll support a proposition to leave it up to the people. They sent me over here. They didn't...no handpicked group sent me over here. The people sent me here with their vote and with their ballot. Maybe we could have said, "Just let the legislature write this constitution." But we didn't want to do that. We wanted to let the people elect some of you and send you over here. Think a long time before you take away that sacred right.

Nothing in here sets up qualifications. Of course, I've got a little different opinion on what it takes to qualify for one of these appointed jobs, than most people. The best qualifier I've ever seen is them big round marks on it. I'll guarantee you or when I'm in a hard campaign and a fellow hits me with a little greenback, I just feel a little better about him. I said "you know, that's a pretty good old fellow, isn't he?" Sure is, sure is. It doesn't mean anything to me, you. I don't know what it is, and the more they lay down there, the better qualified they get, the quicker they get qualified. I don't think I'm no different than nobody else, and I'm going to admit mine. I'm going to tell the truth. 'Cause they start putting that greenback on you and you're scared. About that I don't know what you've got a chance to win or not. I'll tell you, they look better every time they lay another one down, they just look better. That's my definition of qualification because I've seen it work. It has worked and it will work. But I'll say this, I don't know if I'll ever come back to the legislature anymore or not. If I stay fooling around over here very much longer, I'm pretty sure I won't. But I want to say this to all you youngsters, and all you newcomers that's hanging out there looking and waiting for an opportunity to run for the legislature, and I know some of you got it on your mind. I can kind of tell when I see the way one's acting what they're thinking about. If you get in the running in '76, you're going to have the dagged-down time you've ever had of trying to please fifteen different groups or whether you're going to vote to elect them or whether you're going to vote to appoint them, and I'll tell you what, they're going to have you in a nightmare. You'll be meeting tonight with a bunch that will say the superintendent of education ought to be appointed. The next morning you'll meet with somebody that will say they ought to be elected. Where are you going to be? Dodging and ducking, trying to figure out what to do or what to say. I'll tell you what I'm going to be, where I'm going to be, I'm going to take my chances with the people like I've always took it, like they've always had a chance to vote for me or against me. I'm not going to deprive them of one of the few sacred rights they have left. To all you who changed overnight, because of the Farm Bureau. Do you know what the Bureau was? I heard it down here yesterday...about five or six fellows. They saw the light. I don't know how they saw it so quick, but I don't have that good a vision. I just can't see the light that quick, you guys they did, but no one had called me. We've got a few members over in my country where I come from. Hadn't heard from a one of them. Let me say this. I hope we don't make a mistake here today that will defeat the final work of this convention. I hope we don't. I may be making one. I don't believe I am. I'm going to stay with the people.

Further Discussion

Mr. Stovall: Madame Chairman, ladies and gentlemen of the convention, we have seen here this morning and during these past two months, democracy at work. Citizens this might make light of what we have been doing, but during these months and here this morning we have had open and meaningful debate. We have had free and responsible individuals expressing their differences. We have expressed our differences, we have voted on them, we reached an impasse. Last week we voted to reconsider. Here this morning we are trying to do it through the best approach to this impasse. I submit to you that the amendment which is presently before us, is a reasonable solution to the impasse which we have reached. For this amendment does not change the election of our officials. It simply gives to the legislature, the possibility of responding to a need which might arise at some future time. I submit to you this morning that to pass this amendment will be an act of faith on our part. Fear causes us to want to box everyone in and control every possible situation. But faith gives to us courage to leave a door open, to permit us to respond to changing possibilities and situations. This amendment would be on our part, a simple act of faith. To believe that the legislature or our elected officials of the future might respond to whatever the situation might demand. I submit to you this morning that what the people of Louisiana want is not necessarily "X" number of elected officials. What they want is good government. I don't think any of you here this morning would say that because we have had eleven elected officials in the past, that we have had good government. To the contrary, we have oftentimes had competing power structures which has prohibited good government in the state. What we are pleading for in this amendment is the privilege of some future legislature providing a possibility whereby the governor of the state might administer the affairs without the competing power structures. This amendment does not take away the people's right. After all, the elected legislature is the representative of the people. We have a representative form of government. Any change that might come in the future would be brought about by these elected representatives of the people. I submit to you this morning that we are here because the people of Louisiana desire something better. We are the midwife for that which is seeking to be born in Louisiana. Namely, a new structure and a new political atmosphere. This amendment is simply a small part in bringing about that new possibility. I encourage you, then, to vote favorably for this amendment, that we might move forward in the important work of this convention. Thank you.

Chairman Henry in the Chair

Question

Mrs. Warren: Reverend Stovall, wouldn't you say that this amendment would lay to the people, you have the right to elect your superintendent of education and others provided the legislature does not give this power to someone else? Isn't this what this amendment says?

Mr. Stovall: Yes.

Mrs. Warren: Thank you.

[William Stovall: *Deo Gratias* pro merito et a quoque.]

Further Discussion

Mr. Womack: Mr. Speaker and fellow delegates, I would take about thirty or forty minutes for me to cover what I think ought to be said at this time. Of course, naturally, I don't have but about seven, assuming I get the same overrun that some of the others have had. But I've heard up here what I think is kind of deplorable when the first speaker gets up and runs down the legislature, the next one runs down the governor, the next one down the system, the next one indicates we're all going to [. . .] and it's got me thinking quodness that I'm

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put up at the front, because I'd be a little bit smaller target up there than I would in the back. I'm amazed to see why any of this is all that bad in this amendment, when you have primarily the same thing in the constitution today that's been there since 1921 and hasn't cause any problem. As far as the feeling of the people back home, I have one of the largest districts in the House, percentage-wise, because I'm on the high side of the average. I went back and talked to my people, and both of them that I talked to said it didn't make a lot of difference. I would say now, that fifty percent of the people back home don't know you're doing here. Fifty percent of them don't know what you're here for, and twenty-five percent don't care. Then you talk about what all the people want. I think agriculture is going to make progress. I think education is going to make progress. Sometime they have to do it in spite of us and not along with us. But for fourteen years, I've operated in the legislature as Chairman of the Agriculture Committee and we've had fine Agriculture Committees. They've done an outstanding job of trying to look after agriculture. They are still doing it. During this period of time, we have consistently operated with an administration that said we are going to help agriculture, but don't care anything for the individual. The individual says we don't care anything for the governor, I can't tolerate him. I don't know that that's altogether worked in the best interest of agriculture because I've seen some things agriculture needed, that was turned down because the working relationship was not what it should be. If you have an appointed man, the working relationship is usually not as reasonably good. As far as saying that it's that bad, it isn't that bad. Let's look at agriculture. There will never be a day that every major candidate for governor would not make a commitment that I will appoint a good man with education and experience background in the field of agriculture. We will try to have a good constitution in that field. What else can you ask for?

As far as Mr. Robertson is concerned and I'm always reluctant to call names up here, because if I call a name, it's going to be a pretty good friend of mine and one that I have had many hours of pleasure working with, and Mr. Robertson is no exception. I know that the people in education, today, are very much concerned we won't elect one. But let me tell you what the ones I've talked to back home have said, "we put him in there, we want the right of vote because we want the privilege of taking him out." Maybe they ought to have that right. If you go back and look at what the people want on election day, just check. About five hundred, six or seven hundred of them didn't want a Representative because they walked in the booth and didn't vote for him, in my district. Don't say they didn't know because I've been pretty controversial. There's no in between. They're either for the no-good rascal or he's good. I don't have many contacts. They either respect the fact that they think I'll do a good job, or he's so hardheaded it don't do any good to talk to him. Still, five, six or seven hundred of them doesn't even go to the trouble to vote for a Representative, and that's right there at them. Literally thousands and thousands of them didn't vote for superintendent of education that voted for other offices. The same proportion didn't vote for commissioner of agriculture, and voted for other offices. So don't tell me about what all the people want. I would say this, if you went back today and prepared a questionnaire and submitted ten key questions, and submitted it even to the intellectuals and knowledgeable ones, and the ones in that field that had special interests and after asking them ten loaded questions on each side and say are you convinced beyond any question that this is better, I'll lay you even money that at least half of them would say no.

RECESS

[Liturium 19:15 107 delegates present and 1 quorum.]

Mr. Henry. Follow delegates, it gives me a great deal of pleasure today, to welcome back one of our colleagues, Delegate Harvey Commis. As you know, he has been out with a heart attack. Harvey, we are glad to have you back, partner.

Further Discussion

Mr. Chehardy. Mr. Chairman, fellow members of the convention, first off, I would like to state that I believe this amendment is a good one, and I believe it accomplishes basically many of the points that both sides of the issue have attempted to bring forth. However, in arguing against this particular amendment, I believe the most important thing brought forth is the necessity to face up to certain facts. Now for example, we have had it said by one of the delegates that spoke, that there are efforts to bypass the will of the people and that we have a dictatorship down here trying to tell us what to do. Now at this point, let me state that I am an appointed delegate. I have been appointed in my lifetime to office, and I have been elected. In one election, I believe I hold the distinction of probably one of the highest votes ever, 94.75 percent out of seventy thousand votes. So I've felt sweet victory, I have felt defeat, and I have felt the effects of appointment and otherwise. I do not consider myself a blind follower. Yet, when I accepted this appointment, it was in my mind that I was going to do what I felt was best for the people of the state, but was also going to be obligated to put into effect a program which I had already accepted and believed in. Otherwise, I would not be here. We have heard what I first said by Mr. Stinson. Then Mr. Jenkins got up, and Mr. Jenkins said that this flaunts the will of the people. Then Mr. Roemer said, and Mr. Roemer, who has the same amendment, no matter what he says, coming up right after this amendment, and he refers to such language as writings on the bathroom wall, refers to rock songs that talk about bad defeat, and he says that the amendment is the same as passing, yet he proposes the same. Mr. O'Neill talks about the governor's black Cadillac. Of course, I've always thought it was a Lincoln. Now he might know more about automobiles than I do. He says the governor is not mandated by the people. Now I had two choices, to sit back and keep swallowing this stuff, I am carrying, or I could stand up and be elected or you're appointed, the reason you have a constitutional convention is 'cause you've had a governor and a legislature willing to put it before the people and bring it to task, and to give us this chance to propose a constitution. If it was not for Governor Edwards, none of us would be here today to bring to the people a new constitution. There's nothing to me more despicable than to see some of these new people, newcomers to politics, who may mean well, many of whom are the most sincere young people I've ever seen. But there are four or five who are vicious in their every attack. As far as I'm concerned, the governor ran on a platform. He ran on a platform promising a constitutional convention. He ran on a platform talking about his cabinet form of government. All he is trying to do is give what he was mandated to do, if he has suggested it to anyone. As far as I'm concerned, I will, till the last day that I sit in this convention, will do what is best for the people. I have never once, I don't believe one appointed delegate or elected delegate has been pressured by the governor. But I, for one, consider him the leader of this state. I, for one, wish that he was even more vocal and was more outspoken so that we would have much more of the leadership we need in this convention. As far as I am concerned, I think that the delegates that I have referred to, in their remarks are completely out of order. Besides that, the governor should stand up in this convention, and I believe that he has brought this state forward and is bringing it forward, despite people who try to undermine his every action and the action of the people who believe him to be a leader of the people. I, for one, know in many of the fields that have not yet come before this convention, that he has taken steps for the people that

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no other governor has ever had the guts to do in many a generation. He gave the people of this state a homestead exemption, for the first time, that is not dependent upon refund of monies to the parish. That was Constitutional Amendment No. 2, which passed just last year. He did away with the constitutional requirement for one hundred percent assessment. So, when you talk about you're for the people, and that sort of thing, the governor of the State of Louisiana, in my opinion, is a man of the people and is a man for the people. His appointing me to this position has been the greatest part in the fact that I set it up for us to participate in and to bring the people of this state a constitution. I'm doing this on my own. I hope it does not displease the governor because I don't think he'd even approve of my taking the floor to say this. But I'd be less than a man if I didn't say what I truly thought of one of the greatest governors in my opinion, we have ever had.

Further Discussion

Mr. Champagne Ladies and gentlemen, lend me your ears for one brief moment. I come to you as a disciple of brevity and a student of compromise. But there is simply no compromise here that I can stomach. I consider this a compromise of principle, and as such, I cannot indulge. We hear that the farm bureau is endorsing it, and I tell you that I represent a parish which is the strongest farm bureau representation of any parish in this state. I represent a great portion of a parish which has the largest cattlemen's association in this state, and those people have told me that they are in favor of electing their officials. I do not tell you that I am assured that they are right, but I do tell you that we should make examples of each and every one of these officials and decide, to a man or to a woman, if they want to elect them or appoint them. I suggest to you that if we cannot make that decision, we have to decide to be an alternative, to the people we represent. I submit to you that I am in no hurry to compromise my principles and those of the people who sent me here. Neither am I here to criticize Governor Edwards or to particularly endorse him. But for the record, I want you to know, that in St. Landry Parish I stood up for him when there was a question as to whether he ever be governor of anything. I come up for him at that time, and I come to you not as a "Johnny-come-lately", but a longtime friend of the governor. He has not approached me on this issue. He has not advised me, and I don't think he would. But I tell you that I submit to you, that if you, yourselves are not willing to stand up to elect or appoint, which I am ready to do, individual position by such, then you submit it to the people and let them decide.

Further Discussion

Mr. Buras Mr. Chairman and fellow delegates, I am going to be very brief. In fact, I would not come up here but for the fact that I want to make my record or my stand on this position very clear. As you may know, I was one of the staunchest advocates of the elective system of these four state officials. I have not changed one iota in my opinion. Yet, I must tell you that I tell you that I came here this morning thinking perhaps that this would be, perhaps, a good opportunity for a compromise. I'm not against compromises, as such, but as I sat there by my lunch table, the thought and conviction came more and more to me that this was not a proper question, this was not a proper subject matter for us to have now. There is things that you can compromise properly, and things that you cannot compromise. You cannot follow God and you cannot follow the devil. There is no middle ground, there is no compromise in between them. If you were in favor of elective officers when we voted on these matters several time before, this amendment today is not a proper subject for you to refer to as a compromise. Don't try to give your conscience and don't try to fool yourselves on this

basis, that this is a good compromise. It's not. If you change your vote, and I have no criticism of you if you see fit to, but don't do it under the guise of a compromise. Just say you've changed your mind and you're going to vote the other way. I tell you why I'm going to stick by my original vote and my original views on this subject. My own father taught me two things in life, and I've found, throughout the years, that neither one of them has ever proven wrong. The first one does not apply to the question here that we are debating. But, inasmuch as he had two, I'm going to repeat both of them. He told me that if you ever see a man going around and telling everybody how honest he is, you better watch him because he's getting ready to pull off something. An honest man takes it as a matter of fact, and he doesn't think about it as being a virtue. The other one, and this is why I'm not changing my vote. He said to so conduct yourself throughout the day that when you go home at night and you want to get a good night's [night's] sleep, you so conduct yourself to where you have a clear conscience and you won't have any trouble laying down and going to sleep. Based on that, tonight when I go to bed, I'm going to have a clear conscience.

[Motion for Previous Question
rejected: 9-9-73.]

Further Discussion

Mr. Nunez Mr. Chairman and fellow delegates, I have had my right because I thought that it was time to vote. We have been on this for a considerable time and I know we have a lot of business to conduct, and I know everybody wants to conduct that business and get on with that business. I came within a hair of being a coauthor of the amendment, because like everybody else here, I wanted to do something that would move us out of this deadlock we are in, but I wanted to get us rolling along and get this black cloud of the executive department over our head, that's been hanging here, and move on. Because it is hanging and it is a black cloud, and the public knows it and we know it, but it's there. We have to dispose of it. I voted consistently, consistently to elect officials. I tell you why. It looks like this is sort of confusion time, we all get accused of being browbeaten. I wasn't browbeaten, I wasn't approached, I didn't talk to anybody. Certainly, I've talked to delegates. Delegates, I think, have an interest and they should talk to each other. I include Mr. Graves in that. I think...he's asked me several times and I've told him my position and he's told me his. I know it and I know he does a good job. I've worked very closely with him in the legislature and I admire him the way he operates, very effectively. But, in 1970, I was the chairman of a charter commission, a charter commission in St. Bernard Parish, that was going to change the form of government in that parish. We did a tremendous amount of work just in the summer, we worked in and day out, night and day. PAR worked with us, every good government group. We spoke with the president of the Jefferson Parish Council, Plaquemine Council, every form of government imaginable. But we got cute. We wanted to appoint some people. We wanted to put some people that the people had no say so about how they got there. We were going to allow them to be appointed in some capacity. To make a long story short, that charter was defeated. Defeated fifteen thousand to two thousand. Tremendously embarrassed, I was the chairman of it, fortunately the people didn't hold it against me and they thought I had done a job and I did a good job, but I was just wrong. I didn't want to be wrong, so many times and I don't want to be wrong again, because when I ran for this spot, and I'll say this in a manner, I hope you accept it in the spirit of what's going on. One of my main platforms, as you might call it, and I ran hard because I had no opposition for the Senate and I didn't want to get caught in a lot of other legislators and talk it if you wanted to, but I had a hard time to elect me because I was a legislator. Many of them

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aren't here today and I see some of you who ran against them, that are here. So I ran hard, and I ran on several platforms. I can name them to you: Property tax reform. That's a big issue down in my area. We have high millage and low assessment. We got hurt severely on the revenue sharing, about a million two hundred thousand dollars to one parish, or my other parish gained, and my parish in Jefferson lost. St. Bernard lost a million, too. Plaquemines gained a hundred thousand dollars, which wasn't much, but that was one of the issues. Another issue was things like metropolitan income tax, metropolitan government and a strong issue that I advertised in my local paper daily, was elected officials. Elected officials, well, I'll be a little braggadocios on my part. I hope you don't presume it is, but I did win by a considerable vote in my representative district I ran in, eleven thousand people voted. Eleven thousand people, rounded off. For seven opponents, I received almost ten thousand votes. I got a mandate. I don't think there's too many mandates that was given in this state, and I think I got a pretty representative type of parish. It's independent, or parishes, let me say. They are independent. I don't think this business about the people want this is correct. I think if you listen to some of the people who I consider sort of grass roots in this convention, I think they have the same attitude. I think Senator Rayburn is attuned to his people, I reflected in the fact he's come back time and time and time again. I just hate to mention him as an example, but I think he's a good example. I'm not a good example, this is my third time in the legislature, but I don't think the people want us to appoint their officials. I just don't believe it. It's to my heart and in my soul and in my mind, I don't believe it, and I don't believe you believe it, and I don't believe this convention ought to be put in the position of trying to make us do it through the backdoor. I would have been glad to vote, I would have been tickled to death to vote ...

Mr. Henry Senator, Senator, you've exceeded your time.

Mr. Nunez Let me say one more thing, Mr. Chairman.

Mr. Henry Senator, we've just got to abide by the rules, sir, I'm sorry. Thank you.

Further Discussion

Mr. Fulco Mr. Chairman and fellow delegates, Mr. Chairman thought I had gotten lost in this storm that just preceded me. So now we have the calm. I'm for the elected officials. That's why I voted against the committee proposal the other day, and that is why I am for this amendment that's before us now. Now let me tell you, this amendment clearly specifies that we are to elect the commissioner of agriculture, the commissioner of insurance, the commissioner of elections, and it also states that we are to elect, and this is very important, the superintendent of education. That's what the people want. Because the people want it, I want it. I've represented the people for many years in the legislature and because of that position, I had been returned, election after election, to the legislature. Now, if the people should want to change in the future, don't you worry, the people can get a two-thirds vote of the legislature. But if they don't want to change, the people want it, I want it, elected officials to continue being elected, don't you worry, the legislature will never provide a two-thirds vote to quit the election of these officials and make them appointive no matter who the governor is or how strong he may be. There was a time in the past when previous governors could get two-thirds vote of the legislature. But because the people demonstrated, recently, that they don't want such governors as that in the future, and because they were determined to get the rascals out of the legislature, with the exception of me, they demonstrated in that way that it will be very difficult in the future to get a two-thirds vote, no

matter who the governor is. I think because they would be elected if this amendment is adopted and because they will be elected if the people vote this constitution, I don't think the legislature, in future, will get two-thirds vote to stop the elections and make them appointive again, regardless of who the governor may be. Now, this amendment makes it possible to, and I believe this convention will make it possible for an alternative to be offered on the ballot when this constitution is submitted to the people. That will give the people the opportunity, then, to take one or the other. I've been assured by members with whom I've been in conversation that the alternative provision will be submitted at this convention, and I believe you will vote to allow the alternative to be put on the ballot. So I say to you, give the people the right to elect the officers of this state. Vote for this amendment.

Question

Mr. Stinson Mr. Fulco, you know it breaks my heart for you to refer to me as a rascal.

Mr. Fulco Well, Ford, I also put myself in that category because you and I are no longer there, but we were exceptions.

Further Discussion

Mr. Arnette There have been many statements made by people in the heat of debate here that I think are totally unwarranted. The first is that people supporting this amendment are the governor's men. The governor is the only one that wants this. I can't think of any more ridiculous statement than any I've heard here. These are not the governor's men. These are people representing the people. I don't represent the governor. I represent District 37. Anybody can ask, that's who I represent. I don't represent the governor at all, and I'm voting for this amendment. I voted for deleting certain elected officials because I think they didn't belong there. I think that this is a good compromise on my way, and I think it's a good compromise on everyone else's part. The second thing is that people have come up here and said that this is not what the people want. Well, when I ran I told the people... I said, "I'm here for constitutional reform and when I come up there I'm going to do away with unwarranted statewide elections." I'm not going to take away your right to vote on reasonable things, no. We're not taking away anybody's right to vote. We're merely getting rid, or would like to get rid of certain statewide elected officials which do not warrant statewide elections. I'll give you an example, Commissioner of Insurance. We have said that this man will be elected statewide. That sounds great to the people except we didn't give him any duties. He has no power. He is presently elected statewide and has no power. He can't do anything. Why elect a man if he doesn't have any way to do anything. We might as well elect the elevator operators at the state capitol. You're just holding out a false promise to the people of the state of Louisiana when you tell them "look, we're going to let you elect your officials statewide and they are not going to do a damn thing". That's what you're telling the people. You're holding out a false promise to them, and I don't think we ought to do this in this constitutional convention. Thank you very much.

[Proceedings of the 35th Louisiana General Assembly, Volume 1, 1973, 124. Amendment adopted: 1973, 124. Section 1, 1973.]

Amendment

Mr. Poynter Amendment No. 1 (to be added) on page 11, after line 33 add the following... and Mr. Roemer you want to have some technical language deleting the previous amendment added...Section

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23..." I think that Mr. Roemer has revised the amendment somewhat.

Section 23. Appointment of Officials

Section 23. After the first election of state officials following adoption of this constitution the legislature may by a two-thirds vote of each house prescribe the qualifications to provide for the appointment in lieu of election in the office of commissioner of agriculture, the commissioner of insurance and the state commissioner of elections or any of them. No action of the legislature pursuant thereto shall reduce the term or compensation of any elected official. By a similar vote of two-thirds of the elected members of each house the legislature may reestablish any such offices as an elected office and in such event shall prescribe qualifications."

Explanation

Mr. Roemer This is the same amendment that we just passed with two exceptions. I'll keep it brief because I know you want to proceed. I think these two exceptions are important. I'll point them out. The only difference in this amendment and the one we just passed is as follows: Number one, I have deleted the superintendence of education from any reference in my particular amendment. I think it's the consensus of this convention, at least as I understand it and it's my personal opinion of what the consensus is to discuss the superintendence of education when the Education Committee's report is submitted to us. There seems to be a controversial area. I don't see any need for locking it in here, one way or the other. The second thing that I deleted is the sentence on merger and consolidation as presented in the arguments of the first amendment, the one we just passed. They admitted that it was poorly drawn and that it has no reference to time and in effect the legislature might try to merger or consolidate prior to 1976, and I don't think anybody here wants that. In addition, after 1976 I think that the merger and consolidation sentence as presented in the amendment that we just passed allows the legislature to back-door an issue that they are going to refuse to face up directly. The issue is, of course, appointive versus elective. Those are the only two changes I make. I'd like to ask you to support it. I come up here with half a heart, not in what we're trying to do here, but because I wish we could have defeated the whole thing. I think I've made my position clear on that. But, since we didn't defeat the whole thing, at least let's come with an amendment that says what we feel, and I hope mine does that. I'll submit to questions if there are any.

Questions

Mr. Roy Buddy, is your amendment that same dirty little game you talked about earlier that you want us to vote for?

Mr. Roemer Yes, it's kind of like finding yourself on the wrong ball field and what you have to do is do the best you can, Chris.

Mr. Roy Where did you learn to play that?

Mr. Roemer That was Bossier High School, not Harvard.

Mr. Goldman Mr. Roemer, didn't you leave a third thing out of here? The element of...no, you didn't. I'm sorry.

Mr. Roemer I think I only left two things out, Paul. I tried to.

[Previous Question ordered. Revised vote ordered. Amendment rejected 46-72. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Weiss], on page 11, in Convention Floor Amendment proposed by

Mr. Henry and others, and adopted by the convention on August 23, 1973, on line 7 of the text of Section 23 added thereby, immediately after the words and punctuation "it may," insert the following: "after such election,".

Explanation

Mr. Stagg Mr. Chairman, fellow delegates, in the debate on the previous amendment before last it was pointed out that consolidation might take effect under the language of the amendment before another election took place. I have asked this amendment to be prepared to make it very clear that no such consolidation could possibly be had before another election has intervened. This is the purpose of the amendment. I move its adoption.

[Amendment adopted without objection.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Weiss], on page 11 in Floor Amendment No. 1, proposed by Delegate Henry and others and adopted by the convention on August 23, 1973, on line 3, after the words and punctuation "of each house," and before the words "provide for" insert the words and punctuation "and approval by a statewide referendum,".

Explanation

Mr. Weiss Fellow delegates, the decision of this body to add Section 23 has not been overwhelming. It has been a coalition of minority groups and for any of you that are interested in politics and the mechanisms of its action and studying it as I have done during the past few months you can now see what five or six votes can do. To bring together those who feel that their principles have been compromised with the majority, I offer this amendment. What is the question before us now? Has this compromise in Section 23 been a fair one? Have we truly learned the principle of compromise or have we compromised principle? I submit to you that those of us who are neophytes at this time in this process, but willing and anxious to see that it goes on effectively and efficiently, have learned the principle of compromise and will not sacrifice the compromise of principle. This principle is elected versus appointed officials. The issue before us is truly that, elected or appointed officials. This is paramount. Arguments are rational and have been presented ad infinitum in this regard on both sides, both rational and emotional and I will not continue it here, but what is the answer and how do we get this compromise? The answer is this floor amendment, I submit to you. I submit that the final decision of this extremely difficult problem must in the final analysis be submitted to the people for statewide referendum. It is only then that we know that the actions that we have taken, and that we are here delegated to take, can be effective. Nobody and no constitution and no piece of paper is any better than the power of the people behind it to enforce it. Let us not make a mistake today and let us reflect the true voting of the majority of the people of the state. Those who will choose to elect rather than have their officials appointed. I ask that this floor amendment be accepted by you as a true compromise. If you are interested in compromise you will vote for this amendment. This is the compromise amendment; the other, perhaps, is a delay.

Questions

Mr. Roy Are you aware of the fact that the only thing that is being proposed is that we will vote an amendment to the constitution which we may always do at any time?

Mr. Weiss Do you fully represent the people of Louisiana, Mr. Roy?

Mr. Roy Let me ask you this, do you realize that a referendum, a statewide referendum, after getting

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a two-thirds vote through the legislature if nothing more than the amendatory process that the Bill of Rights has just enacted?

Mr. Weiss I have sat on the Committee of Bill of Rights and Elections with you. I have spent over 30 days and am well aware of the process that I here recommend that this body accept.

Mr. Roy Don't you think it's unnecessary and that simply we can always amend the constitution without a bunch of referendums being thrown in?

Mr. Weiss I have learned that if we have anything to say, it should be in the article we are now passing.

Mr. Guarisco Dr. Weiss, I think I've seen it all now. Isn't it true what you're doing is that you're proposing a constitutional amendment at the constitutional convention?

Mr. Weiss No, I would not say that. It is a referendum of the people by the legislative approval and I think the constitutional amendment article will be presented by our committee which will be discussed by this body at a later date, hopefully.

Mr. Alexander Would you propose that this referendum be held simultaneously with the election to adopt the constitution?

Mr. Weiss No, this is only when the legislature moves in the direction that they move, either to eliminate a particular official or group of officials, then the referendum would be submitted to the people. The action of the legislature will determine when the referendum would be determined.

Mr. Alexander Which election, gubernatorial, congressional or special?

Mr. Weiss It does not specify; it could be at the option of the legislature. A special election, or the next gubernatorial election, after it is passed whatever election the legislature so desires to have it included in.

Mr. Jenkins Dr. Weiss, isn't it true that the way the section stands now, would allow the legislature by a two-thirds vote to abolish these offices whereas your amendment provides that there will be two requirements. First, the vote by the legislature and second, approval by the people in a referendum? Isn't that correct?

Mr. Weiss This is correct, Mr. Jenkins, and I think this is what the argument is all about, that the final decision rest with the people and I think the legislature and the people that will be running for office for the next many years will be plagued with this problem of where they stand and how they vote and it will create havoc in my mind until the people of the state decide in their own mind how this will be settled.

Mr. Jenkins Well, you must agree then without your amendment to this section it would allow the legislature to circumvent the public will and that there would be no opportunity for the people to vote on this issue unless we have your amendment.

Mr. Weiss Absolutely, and as a student of history and a believer in one aspect of Delegate Rayburn's concept, we have yet to see what will come, and he has seen, and I have seen, and most of you have seen, what a dictatorial individual can do to groups, to legislative bodies, and therefore, I think that it is highly important that this be included recommend accepting of this floor amendment.

Mr. Stinson Doctor, isn't it a fact that without your amendment, what we are putting in the constitution just adopted prohibits the legislature from submitting it to the people, even if the legislature wanted to?

Mr. Weiss Exactly.

[Proceedings Question 35-48-1]

Closing

Mr. Weiss I have only this to say in closing. Those of you that vote against this amendment are legislators and are legislating. Those of you that vote for this amendment are constitutionalists. I hope we will have a fine majority of constitutionalists favoring this floor amendment.

[Record vote order]. Amendment recorded: 7-19. NITC 73 218 ns. det tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Jenkins], on page 11, in Floor Amendment No. 1, proposed by Delegate Henry and others and adopted by the convention on August 23, 1973, on line 4, after the words and punctuation "of section of" delete the words and punctuation "state superintendent of education, the".

Explanation

Mr. O'Neill Mr. Roemer's amendment did two things and this amendment does only one: it deletes the words "superintendent of education". I think that that is an issue that we do need to vote on. Many of you felt that the superintendent of education should not have been included in the executive article. By including it in this amendment it requires that we have to come back two times if we want to remove it from the executive department article, and we feel that we're precluding the Education Committee from coming in with any proposal that might change something in the executive department article. Were I on that committee, I would feel very frustrated knowing that three times in the executive department article, a superintendent of education is going to be elected, and I would feel that we could come back with all kinds of things to the contrary. I think it's a simple issue. It simply deletes the superintendent of education from this amendment which we have adopted. My second reason for wanting to take it out of this is that the legislature could provide that the governor appoint the superintendent of education. Even though I believe that the superintendent of education should be elected, I would find it more palatable to me for an elected board to appoint a superintendent of education rather than the governor and the amendment which we have adopted would allow the governor to appoint the superintendent of education and I remind you of the 1972 legislative session in which the governor almost did get the chance to appoint the superintendent of education, but it was barely blocked and it took a two-thirds vote then. I ask you to adopt this amendment.

Further Discussion

Mr. Jenkins Mr. Chairman, I think it's unfortunate that we haven't devoted more attention to the office of superintendent of education. The reason that we haven't before, I think, is because it was thrown into this last amendment that was passed and very little attention was given to it. This is probably the second most important job in our state government. Certainly, the second most powerful. With a budget of seven or eight hundred million dollars for which he is directly or indirectly responsible. Our superintendent of education has probably more direct contact with the people than anyone else because he has ninety percent of the children of this state under his care. If we were to ever reach the point where the people of this state did not feel that they had control over the office of superintendent I think you would find it even more difficult to pass bond issues to finance public education. I think you'd find public support for the public education system deteriorating. As to

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whether or not the legislature would ever use its authority to abolish this position by a two-thirds vote, I think that is quite a danger, if we leave state superintendent in the amendment that was passed earlier. And, I'll tell you why: we have seen the way the governor can change things right here in this convention in the last two weeks on this issue. Now, I think that there will be few bodies that are less political that ever meet in this state than this convention, and yet, the governor has had significant influence in this body on this matter. I submit to you that if a governor wants to get a two-thirds vote in the legislature and he makes that one of his leading issues, he won't have a bit of difficulty, because when it comes time to pass out jobs and appointments and roads and public projects, those things sometime start looking awful good compared to one little statewide office. State superintendent of education is very powerful. It is very important. It deserves to be directly responsible to the people, not indirectly through the governor or somebody else. The people need control of this office. Now, someone may say that the incumbent superintendent wanted it appointed and it's true that everybody who campaigned for state superintendent pledged that, so the public has never had a chance to vote on that. One of the wonderful things about our system of electing state superintendents of education has been the fact that we have been able to turn out people that the public didn't particularly care for. We saw in the last election that a state superintendent of education was turned out of office because the people were dissatisfied. We saw that an attorney general was turned out of office because the people were unhappy, and we saw the commissioner of insurance turned out of office for the same reason. Now, I just wonder, if we get an appointed superintendent in there and the public gets dissatisfied with him, is he going to be turned out of office? Will the people have a say-so? Well, we don't know. All we can do is guess. All we can do is put more faith in a governor or someone else who does the appointing. Let's don't take that chance. If the people had an opportunity to vote on this issue of elected state superintendent of education versus appointed, it would be overwhelming in favor of election. Let's don't do this now. This is a very important position, so let's adopt the amendment that eliminates state superintendent from this section and allow him to remain in the constitution by election of the people, so that he won't be under the control and domination of other officials. I urge the adoption.

Questions

Mr. Stovall Mr. Jenkins, do you believe in an elected board of education?

Mr. Jenkins Do I believe in an elected... yes, sir. I do.

Mr. Stovall The Committee on Education is recommending such, are they not?

Mr. Jenkins Well, sir, I have a lot of difficulty keeping up with their latest recommendations.

Mr. Stovall Mr. Jenkins, in case there... we have an elected board of education and this matter should come before the legislature would you vote for the board of education, elected by the people, to appoint the superintendent of education or would you vote for the governor to appoint the superintendent of education?

Mr. Jenkins Well, certainly, if I had that choice, I would not vote to have him appointed by anyone ...

[Motion for the Previous Question of the entire subject matter rejected 16-98.]

Further Discussion

Mr. [A.] Jackson Ladies and gentlemen, I promise you that I will be brief. As an individual who has been a part of the professional educational enterprise of this state for more than 20 years, as an individual who has some expertise in the field of education, having studied the problems that we have in this state and this nation as it relates to educational experiences for all of the children of all of the people, I'm compelled to come here and point out some rather important facts for your consideration and hope that they will enable you to vote against this amendment. I ask you to vote against this amendment because it is not in the interest of the children of this state that we have an individual elected as state superintendent of education. It is not in the interest of providing educational excellence to have an individual who is not schooled in educational administration. What we need in this state today to provide for all of the children of all of the people is a creative, trained, experienced educational leader and administrator. We have no assurance of getting this type of individual when we have to resort to the election process. Now, you have heard people stand here and tell you that we ought not to consider this because this deprives the Committee on Education from making recommendations. I tell you that the Committee on Education is recommending an appointed superintendent, and I tell you that it is in the interest of this state that we would follow the recommendations of this committee that has studied the problems; that recognized that we have a serious dichotomy existing between an elected board of education and an elected state superintendent of education and that we have stalemate after stalemate and inefficiency after inefficiency simply because we have the impasses resulting from the fact that we have ... that an individual elected, and an individual board in opposition oftentimes to each other. Somebody suggested that if we do not elect the state superintendent of education that we can't pass bond issues and tax millages for education. You all know that that's hogwash because bond issues and tax millages are not determined by who is superintendent of education. It's determined by the people at the local level. That's who makes the decisions about whether or not we have bond issues passed and tax millages passed. Now, the full consideration here is whether or not we want to solve serious problems that we have in terms of providing creative humane educational experiences for all of the children of this state. I submit to you that we have not been able to do it in the past and we ought to change the system and I recommend that you would defeat this proposition that's before you by way of this amendment. I'll yield to questions.

Questions

Mrs. Warren Mr. Jackson, you said the Committee on Education recommended the appointment. How did that vote go?

Mr. [A.] Jackson I am not privileged to the records of that committee. I simply know that the committee has voted favorably to recommend to this convention that the state superintendent of education would be elected...

Mrs. Warren It really could have been only one vote margin.

Mr. [A.] Jackson I don't think that that's significant. I think that we've made important decisions in this convention by one vote

Mrs. Warren Yes, I understand.

[Previous question of the entire subject matter rejected.]

Closing

Mr. O'Neill I believe that we have three alternatives to choose from at this point in time. One of the alternatives is an elected statewide super-

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intendent of education. Many of us feel that that's the way it should be. The committee alternative, the Committee on Education, and I think we should give them the courtesy of waiting to hear their proposal, would propose that an elected board would appoint a superintendent of education from among their membership. But, by killing this amendment, it would provide the third alternative that possibly the governor would appoint the superintendent of education. Those are the three alternatives. If you vote this amendment down, you are giving the governor a chance to appoint the superintendent of education. The issue is as simple as that. I really believe that we should give this committee the opportunity to come back. If they do come back, and we choose to hear them, we are going to have to have a two-thirds vote to reconsider all of this, and I think by adopting this amendment we will give the committee a better chance of coming back and perhaps allowing them to open up this executive department article. Three choices: elected, appointed by a board, or possibly appointed by the governor. If you vote for this amendment, we'll have two choices: appointed by a board as the committee proposal recommends or elected in a statewide election. Yes, the issue here is appointive versus elective, but it's appointed by a board or appointed by the governor and I don't think many of us want that to be appointed by the governor or give the legislature the power to allow it to be appointed by the governor. I think it would be a courtesy to the committee that we adopt this amendment and that we do proceed then with other orders of business.

[Record vote ordered. Amendment rejected; 44-70. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Alarico], on page 11, after line 16, insert the following: "Strike out Convention Floor Amendment No. 1 proposed by Mr. Henry et al and adopted by the Convention on today," and add the following: "Section 23. Appointment of Officials; Merger; Consolidation of Offices and Departments

Section 23. After the first election of state officials following the adoption of this constitution, the legislature, by a majority of two-thirds of the elected members of each house, provide for appointment in lieu of election of the state superintendent of education, the commissioner of agriculture, the state commissioner of elections, or any of them. In such event, the legislature shall prescribe the qualifications and method of appointment. It may, after such election, by similar vote, provide that any such offices, their departments and functions, be merged or consolidated with any other office or department in the executive branch. No action of the legislature pursuant hereto shall reduce the term or compensation of any elected official. By a vote of two-thirds of the elected members of each house, the legislature may reestablish in the state any such offices and in such event, shall prescribe qualifications."

Explanation

Mr. Alarico Mr. Chairman, members of the convention, all this amendment implies does is to allow, or to take out the wording in the Gravel amendment that referred to the commissioner of insurance. I feel strongly that the commissioner of insurance position should remain elective and that he should have to answer to the insurance-paying public of this state and to maintain his office so that he might supervise and look over these things and report and answer strictly to the people of this state. We have already provided now in the constitution that the governor, lieutenant governor, secretary of state, treasurer and the attorney general could not be tampered with by the Legislature, by a two-thirds vote, and that the only way you could eliminate their offices is to have a constitutional

amendment. Therefore, by taking out the insurance commissioner, we would allow the people then to decide when the legislature felt that the job should be appointive, they would do it by a constitutional amendment.

[Previous Question ordered. Record vote ordered. Amendment rejected; 31-84. Motion to reconsider tabled.]

Amendments

Mr. Poynter Amendments proposed by Delegate Drew to the committee proposal as follows:

Amendment No. 1, in Floor Amendment No. 1 proposed by Delegate Henry et al and adopted by the Convention on August 23, on line 7, after the word "appointment" delete the following: "take out the period, the words it may," and insert in lieu thereof the word "and".

Amendment No. 2, in Floor Amendment No. 1 proposed by Delegate Henry et al and adopted by the Convention on August 23, 1973, on line 8, "after similar vote," and before the word "provide" insert the word "may".

Amendment No. 3, and this is not on there, but we need a technical amendment to delete Floor Amendment No. 1 proposed by Delegate Staggs to the Henry amendment and adopted by this convention today.

Vice Chairman Alexander in the Chair

Explanation

Mr. Drew Mr. Chairman, ladies and gentlemen of the convention, I call your attention to the manner in which the amendment that was adopted by this convention a few moments ago would very probably permit the legislature to merge or consolidate these offices prior to the time that they would make them appointive. I do not know, but I do not think it was the idea or the purpose of the authors of this amendment to permit the merger or consolidation of elective offices. What this amendment will do, it does not change the basic structure of the amendment. It leaves it just like it was except for this one thing. It will provide, as these changes are made, it will provide that these department heads or these departments cannot be merged or consolidated until such time as they are made appointive offices. I do not think that we should permit the legislature under any circumstance to merge and consolidate elective offices to where their powers could be completely stripped of them. I ask for your adoption of the amendment. It does not harm the general purpose of the amendment. It's just a little protection for the elected officials.

Questions

Mr. Gravel Mr. Drew, as I understand it, with your proposed amendment, the sentence would read as follows, let me see if I have it correct: "In such event the legislature shall prescribe qualifications and method of appointment and at such election by similar vote, may provide that any such offices..." and so forth. Is that correct, sir?

Mr. Drew That is correct, Mr. Gravel. In other words, if the...

Mr. Gravel Mr. Drew, would you believe I think you've improved the language, and I think it does clarify the sentence and certainly should be acceptable to the author. Thank you.

Mr. Drew If there are no other questions, I ask for the adoption of the amendment.

[Previous question ordered. Amendment adopted without objection. Motion to reconsider rejected; 34-78.]

Chairman Henry in the Chair

[Laurum auri:] 118 delegates present and a quorum.]

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Point of Information

Mr. Burns Is the vote on the entire executive article? I mean the vote that's coming up.

Mr. Henry No, sir. The vote that's coming up is on the section that has been added today, as to whether or not it will be finally adopted.

[Previous question ordered on the Section. Section passed: 79-39. Motion to reconsider tabled. Previous question ordered on the Proposal: 90-26. Proposal passed: 82-36. Motion to revert to Unfinished Business adopted without objection.]

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Mr. Poynter Committee Proposal No. 21, introduced by Delegate Dennis, Chairman, on behalf of the Committee on the Judiciary, and Delegates Avant, Bel, Bergeron and other members of that committee.

The proposal is a substitute for Committee Proposal No. 6.

A proposal making provisions for the judiciary branch of government and necessary provisions with respect thereto.

The status of the proposal is that the Convention has adopted, as amended, Sections 1 through 26 of the proposal, save for Section 18, which was passed over, dealing with juvenile courts, and Section 20 dealing with preservation of evidence, which failed to pass. We have now under consideration Section 27.

[Motion to waive reading of the Section adopted without objection.]

Explanation

Mr. Kilbourne Mr. Chairman, fellow delegates, I believe we omitted the reading of this section 27 which we are on now, Committee Proposal No. 21. Perhaps I had better read it.

"Section 27. Attorney General; Powers and Duties; Vacancies

Section 27. (A). The attorney general shall be the state's chief legal officer as may be necessary for the assertion or protection of the rights and interests of the state. The attorney general shall have the authority to: 1) institute and prosecute or intervene in any civil action or proceeding, 2) advise and assist, upon request of the district attorney, in the prosecution of a criminal case and, 3) for cause, when authorized by the court of original jurisdiction in which any proceeding is pending, subject to judicial review, supersede any attorney representing the state in any civil or criminal action. He shall have such other powers and perform such other duties as may be authorized by this constitution or provided by statute."

gentlemen, the Judiciary Committee has attempted in this particular provision to clarify the powers of the attorney general, particularly with reference to the office of the district attorney. You heard General Guste and you heard the representative of the district attorneys here yesterday, which I agree might have been somewhat confusing, because this is actually the section they were talking about. The present provision of the constitution on this subject is Article VII, Section 56. This reads, "The attorney general and the assistant shall be learned in law and shall have actually resided and practiced law as duly licensed attorneys in the state for at least five years preceding their election and appointment. They, or one of them, shall attend to and have charge of all legal matters in which the state has an interest or to which the state is a party, with power and authority to institute or prosecute or to intervene in any and all suits or other proceedings, civil or criminal, as they may deem necessary for the assertion or protection of the rights and interests of the state. They shall exercise this provision over the several district attorneys throughout the state and perform all other duties imposed by law."

Now ladies and gentlemen, in the past there has been a great deal of trouble with that section of the constitution, as to just what the powers of the attorney general are. Our committee has tried to clarify this problem, and if this Convention can come up with something better to clarify it, then that would certainly be fine. In order to acquaint you with the problems that have occurred in the past, I think it is going to be necessary for me to relate a little past history which involves this particular section of the constitution, and particularly in regard to the decision of the Supreme Court in the case of *Kemp vs. Stanley*. The difficulty encountered with this section, in the instance of the case I am referring to, began back in 1934 when the legislature, by Act 24 of the first extra session of 1934, put this provision in the law. I will just read the part that's pertinent, "provided further, that the attorney general shall have power to relieve, supplant and supersede the district attorney in any criminal proceeding, when he may deem it necessary for the protection of the rights and interests of the state, with full power to institute and prosecute criminal proceedings, and the discretion of the attorney general under this article shall not be questioned or inquired into by any court." Now that was a 1934 act. At that time Eugene Stanley was district attorney of Orleans Parish. In 1935, he undertook to prosecute a man named Major for carrying concealed weapons. Mr. Major claimed to be a state inspector and entitled to carry firearms. The then attorney general, who was Mr. Porterie, thought that the gentleman did have the right to carry firearms and that Mr. Stanley should not be allowed to prosecute him, and so he wrote the district attorney a letter and told him he was removing him from the case, superseding him. Mr. Stanley took the matter to the Supreme Court, and in that case he alleged that this particular law was unconstitutional because it exceeded the powers given the attorney general by Section 56 of the Constitution of 1921. But the Supreme Court ruled that the law was constitutional. That was the status of the situation in 1940, I believe it was, when Mr. Stanley became the attorney general. So, thereupon, Mr. Stanley, using this section that he had previously claimed was unconstitutional, undertook to supersede the district attorney over the state of Louisiana, and in some instances it was almost an institution of a reign of terror. Up in Rapides Parish, the district attorney was superseded by the attorney general's office who took over the grand jury and returned some two hundred and forty-six or seven indictments against various state officials including a number of indictments against the mayor of the city of Alexandria. In that circumstance, the attorney general's office had actually completely superseded the district attorney and was advising the grand jury. Now these matters were pointed out by the Supreme Court in the later case of *Kemp vs. Stanley*, but it developed that none of these charges against these officials were actually prosecuted. They were purely political. After Mayor Lamkin was defeated in the ensuing election, Mr. Stanley dropped all the charges against him. In fact, none of the people who were indicted in that parish were ever even arraigned. Over in Sabine Parish, the attorney general himself superseded the district attorney and filed a bill of information against the sheriff of Sabine Parish, charging him with public bribery, with having accepted a bribe from two bootleggers. The case was not brought to trial, but the sheriff insisted on being tried, and he was acquitted, in very short order. The grand jury then indicted the two bootleggers for perjury on the testimony that they gave in the case against the sheriff. An assistant attorney general appeared in court to defend these two bootleggers who had been charged with perjury and succeeding in having all... filed motion to quash and had all the charges against them thrown out of court.

Mr. Henry Mr. Kilbourne, you've exceeded your speaking time, sir.

Mr. Kilbourne I'm sorry. I wanted to go into this

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but I see I'm not going to have time, gentlemen, but I thought it was important. I thought I had a little more time than I did.

Questions

Mr. Chatelain If a district attorney in my parish needs help, he has to ask the attorney general to come in our parish to assist him in any problem he may have there. Is that correct, sir?

Mr. Kilbourne He has that power, he would have that power under the proposed article that we have here.

Mr. Chatelain All right, then. In line 5, you say that "supersede any attorney representing the state in civil or criminal action." Would you dwell on that a little bit, please? I'm not quite clear on that.

Mr. Kilbourne You mean under the proposed section that we have here?

Mr. Chatelain Yes, sir.

Mr. Kilbourne "For cause, when authorized by a court of original jurisdiction." In other words, this provision was put in there in an attempt to take care of a situation which possibly might arise where a district attorney absolutely would not perform his duty in a particular case. In such instance, the attorney general would then have the power to come in and apply to the court where this question was pending and, with leave of the court, he could supersede the district attorney. We could take over this matter, and in such instance, of course, either side would have the right to ask for a review by the Supreme Court of Louisiana.

Mr. Chatelain Well, as it is now, the attorney general can go into a parish and take over without any authority from anyone. Is that correct?

Mr. Kilbourne Well, that is one of the questions that is not settled, Mr. Chatelain. If my time had not run out, I was going to try to explain to the delegates why that question has never been settled. It has not been settled by the Supreme Court and the vagueness of the language of the present constitution, I do not know how that would turn out if the attorney general attempted to go in and just take over from a district attorney. It says in the present article that he can intervene and possibly, if he intervened, why the district attorney would more or less have to defer to him. I am not clear on the language. I have studied it a lot, and I don't think any one [anyone] knows what it means.

Mr. Chatelain Thank you.

Mr. Burns Mr. Kilbourne, didn't the Supreme Court hold in the Kemp case that the attorney general could not go into a district without it showed legal cause?

Mr. Kilbourne Mr. Burns, I studied the case quite carefully. The Supreme Court, and I didn't get to this in my explanation, but the Supreme Court in *Kemp vs Stanley* only held one thing, and that was that Act 34 of the Special Session of 1934 was unconstitutional, and that is actually all they held.

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Gauthier et al.], on page 11, delete lines 3 through 6, both inclusive, in their entirety.

Explanation

Mr. Gauthier Mr. Chairman, members of the delegation, it's no secret that there's been a lot of controversy evolving about whether or not the attorney general should have the power to supersede the local district attorney. I want to begin by

telling you that this is nothing personal. I supported our present attorney general. I think he is doing a fine job. However, I have to ask myself this question, and I wish you would ask yourself this question. Is there a super assessor, is there a super sheriff and is there a super clerk of court that can come into the parish or judicial district and supersede that local governing body, and I say to you there is not. Now there has been some confusion about Section 56 of the 1921 Constitutional Convention, which says or implies, that the attorney general can, in certain cases, supersede the local district attorney. In 1934, the legislature enacted an act saying that he could. In *Kemp v. Stanley*, the Supreme Court said that the attorney general did not have this power, that that constitutional act was unconstitutional, or the legislative act was unconstitutional. Justice Fournet, in concurring with that opinion, put it in this word to Lord [...] axiom which says, "Power corrupts, and absolute power corrupts absolutely." I suggest to you that the court did not want to provide for a situation where the attorney general could intercede over the local district attorney, or supersede. Now, what does this amendment do? I'll tell you exactly what it does. It deletes (3) entirely and it gives the attorney general the present powers he has. Mr. Lanier, a beautiful gentleman, and Mr. Chatelain, I think this will answer your question. Mr. Lanier, when questioning Attorney General Guste yesterday, established by Attorney Guste's own admission, that with the deletion of (3) he would have the present powers he possesses, the present powers, if you delete (3). So if we delete (3), we are not taking away anything from the attorney general nor are we giving anything to him. So what we are saying, we are saying explicitly what we mean, what the people in 1921, the redactors of that constitution didn't do, and that's why we are in this present shape. Now (3) says "for cause", and it has been asked what is cause, and who is going to determine it, the legislature or the judiciary? I suggest to you, let's remove the future problem now and delete (3) and simply give the attorney general the present powers he now has. If I may get your attention for a minute, I would like to tell you a little joke that this reminds me of.

We had a young man that was in the seminary, and he was a real radical, always making changes. People became afraid that he may lose some parishioners, so they sent him up north where the district wasn't populated with a lot of Catholics. In no time at all, the attendance tripled; the cash flow tripled. The Bishop was delighted, and he sent down a young man to inspect it, to see what was going on, another priest. So the priest talked with the young Father and he said, "Father, I'm going to go back and talk with the Bishop and find out if all of these things are all right." So he went back and he checked with the Bishop, and he came back and he talked with the young Father, and he said, "Father, the Bishop said the bucket seats are fine; the psychedelic choir is fine; the gold spittoons are fine and the drive-in confession is all right, but Father, that big neon sign out in the front saying, "Toot and Tell" on top, I don't want to get to go."

I say to the attorney general, "You can stay, but Section (3) has got to go." It is going to cause a problem. It has caused a problem in the past. Let's alleviate that problem right now. Let's not make the same mistake the redactors of the 1921 Constitution made and then have to have the Supreme Court come in and decide what we meant. Let's spell out what we meant, and what we mean is that we do not want the attorney general to supersede over the local district attorney.

Vice Chairman Casey in the Chair

Questions

Mr. Lanier Mr. Gauthier, is it correct in your address that you indicated that there was no super assessor in the state of Louisiana?

Mr. Gauthier That's correct.

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Mr. Lanier Does not the governing authority of each parish sit as a board of review of the assessments in that parish?

Mr. Gauthier A board of review, right.

Mr. Lanier And does not the Louisiana Tax Commission have authority over these matters, also?

Mr. Gauthier Right, and it spells out "for cause—"

Mr. Lanier Right. And were you aware that I favor the committee proposal as written?

Mr. Gauthier No, I was not, Mr. Lanier. I was well aware of the fact that your line of questioning established that if we delete No. 3, the attorney general would have the present powers that he has. No more and no less.

Mr. Giarrusso Mr. Gauthier, under... if we approve your amendment, would a citizen have legal recourse available to him if he is being harassed by a local district attorney?

Mr. Lanier [Mr. Gauthier] Yes, Joe. Joe, I answer it in this way, in the same way he would against the sheriff, an assessor, or a clerk. He could file malfeasance charges or you have recall and impeachment.

Mr. Giarrusso And who would review the malfeasance charges?

Mr. Lanier [Mr. Gauthier] By the court.

Mr. Giarrusso Would they not have to be submitted to the district attorney?

Mr. Lanier [Mr. Gauthier] You are correct there, but it would come in... also, the attorney general could file the malfeasance charge.

Mr. Giarrusso But my question is that, you know, would a citizen have available to him some legal mechanism wherein he could apply for what he feels are his rights?

Mr. Lanier [Mr. Gauthier] Recall or impeachment.

Mr. Giarrusso I'd say that's rather difficult, wouldn't you?

Mr. Lanier [Mr. Gauthier] I disagree with you. I think he has all the rights in the world if he's afraid of the attorney... the district attorney abusing his power. I see no problem.

Mr. Giarrusso Well, is it not conceivable that a district attorney could call you or anyone else before a grand jury on a weekly basis and then I ask you, what would be your recourse?

Mr. Lanier [Mr. Gauthier] Let me ask you this, Joe, how do you see that number 3, "for cause when authorized by the court of original jurisdiction," would give that citizen any more rights? I don't understand your question in connection with my amendment which would delete three.

Mr. Giarrusso Well, I don't pretend to really understand it too well myself, but when you talk about the original court of jurisdiction, are you in reference only to charges? Is this the only way that a district attorney can intimidate or harass you, is the fact that you have been officially charged? Does he not have other legal means available to him to do it?

Mr. Lanier [Mr. Gauthier] I still don't follow you, Joe.

Mr. Giarrusso Well, it's real simple. He's the legal advisor to the grand jury, isn't he?

Mr. Lanier [Mr. Gauthier] That's right. And presently the attorney general has the right to sit in

with the district attorney on the grand jury. A right that was just given to him in 1972, a right that he did not have before.

Mr. Giarrusso That's true. The only thing I'm saying is that it's very difficult if the district attorney, the judge... we're just being practical about it, is that if they are together, it is very difficult for a little guy to have available to him some legal relief if he so seeks.

Mr. Lanier [Mr. Gauthier] Right. Joe, I could agree with you on that. You have no argument there. But I suggest to you that three doesn't alleviate this. By number 3, we are causing a problem that was caused in 1940 in the Kemp cases and before, there were a lot of Bills of Indictments issued, in fact against a hundred and fifty public officials where the attorney general superseded, for political reasons and issued indictments. Most of those cases were not-prosessed, some of them were never brought to trial, and those that were brought to trial, were brought to trial at the insistence of the defendant.

Now, I suggest to you that number 3 will accomplish this. If you have an attorney general that is so desirous to do so and oppose a certain attorney, district attorneys in a section, six to seven, eight weeks before an election he can file petitions to supersede in several criminal matters in that court. And then the judge is put in a situation where no matter which way he rules, it can be used against that district attorney.

Mr. Giarrusso I'll end it on that. I don't quibble about what you are saying, as that I am against too much power for anyone. That goes for the attorney general or anyone else. What I'm trying to seek is some type of balance, not for the attorney general, but for the relief of the citizens that live in that particular parish or community. That's what I'm addressing myself to.

Mr. Lanier [Mr. Gauthier] I agree with you a hundred percent, Joe, and if we take just one and two and delete three, that's exactly what we have, the power you just spoke of. Enough and not too much.

Mr. Casey Gentlemen, I'd ask those asking questions to confine their questions in question form rather than carrying on a private conversation with the gentlemen at the podium.

Mr. Sinigletary Mr. Gauthier, have you ever had corruption in your parish where the district attorney refused to do anything?

Mr. Gauthier No, Alvin. We are well pleased with our district attorney in our parish. We have no problems there, and we would not like to see the attorney general be given the right to supersede. I see no need for it and I say to you that if you put in there "for cause," you are establishing a problem that we now have with interpretation of the article. If we are going to write something, let's be explicit, let's say what we mean and get it over with. That's what's wrong with Section 26 of the 1921 Constitution. They did not spell it out. Consequently, you have the problem we presently have.

Mr. Vick Mr. Gauthier, you contended that the attorney general said yesterday that if you deleted three, he would have all the powers he has presently. Is that correct?

Mr. Gauthier That's correct.

Mr. Vick All right, Mr. Gauthier, I call your attention to lines 31 and 32 on page 10, and I call your attention to the omission of "criminal" where it says, "institute, prosecute or intervene in any civil action or proceeding," as you know, I think, in Article VII, Section 56, it says, "criminal and civil," does it not?

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Mr. Gauthier Right, Mr. Vick, so right you are, and the Supreme Court later declared that that was not what the redactors of 1921 meant, that that was meant for the attorney general to have supervisory powers and not the ability to supersede over the local district attorney.

Mr. Vick What case was that?

Mr. Gauthier Kemp vs. Stanley.

Mr. Vick I suggest that you reread that case, Mr. Gauthier.

Mr. Gauthier Mr. Vick, I have it right in front of me and if you'd like I'll read you part of the concurring opinion.

Mr. Vick No, no. My question to you is, does or does not Article VII, Section 56 of the present constitution have "criminal" in it, as well as "civil"?

Mr. Gauthier I say, "sure it does," and I say further that that's what led to the problem we presently have, until they spell it out.

Mr. Pugh Sir, are you aware of the fact that at least the section as this committee has drawn it locks in this specific power. That if this Sub-section 3 is deleted, then the legislature has the right to provide anything they want to relative to that power.

Mr. Gauthier That's correct. I realize that, Mr. Pugh.

Mr. Kilbourne Mr. Gauthier, you are aware that, as I understand it from the document I received yesterday, that the District Attorneys Association favors the committee proposal?

Mr. Gauthier I think there's been a lot of confusion over what they favor, Mr. Kilbourne. I saw an amendment going around, it possibly could be a joke. But it had "for cause, the president of the district attorney's association can intercede over the attorney general." It was naturally done in humor, but it made me stop and think.

Further Discussion

Mr. Avant Mr. Chairman and fellow delegates, I'm not as adept as my friend, Mr. Willis, in citing authority for the things that I quote, but at one time somebody said that "fools step in where angels fear to tread," and that may well apply to me now. But I have to say what's on my mind.

I oppose this amendment. This was a matter that was given great consideration by the Judiciary Committee. This particular provision that you have before you.

Now what I have to say is not said as a criticism of any attorney general past or present, or any district attorney past or present, but it's said in defense or in behalf of a principle. Now there are those who feel that the locally elected district attorneys should remain in absolute power as in all cases, inviolate from any disturbance or interference of supervision by the attorney general who sits in Baton Rouge.

There are those on the other hand, who feel and espouse the view that the attorney general as the chief legal officer of the state, head of the department of justice, should remain in absolute power as he sees fit to supersede or interfere with or assist the locally elected district attorney.

I submit to you that neither one of those propositions in sound, and I submit to you that this provision, while it may in the minds of some people be called a compromise, is not a compromise in my mind because it is the right way to go. We have operated in this state for years and years and years upon the premise that responsibility for law enforcement, prosecution, is basically left up to local authorities. We have locally elected sheriffs, locally elected district attorneys, locally elected

judges and we do not operate on the system that the federal government operates on, when all of these decisions are made in Washington and the local United States attorney is subject to the whims and commands of the department of justice. Yet we must recognize that there are bound to be times when situations arise, and I'm not saying that any have ever arisen in the past, but they will arise where a district attorney may not be discharging his duties and we are faced with the problem of what are you going to do in that situation.

I submit to you respectfully, that what this Judiciary Committee has proposed is the real answer to the problem and I simply ask you to look at this provision and read it and see what it says and then make up your own mind. But if you will look at those three subparagraphs, one, two and three, which gives the attorney general authority to do certain things, you will see that they are limited first by the language that precedes it, "as may be necessary for the assertion or protection of the rights and interests of the state," the attorney shall have authority to do these things...not just any time he wants to, not just because he decides that's the thing to do, but it must "be necessary for the assertion or protection of the rights and interests of the state."

Now, then, what are the things that he can do? He can institute and prosecute or institute in any civil suit. He can advise and assist the district attorney when the district attorney requests him to do so, but then we come to the final and the most important provision. He can "for cause and when authorized by the court of original jurisdiction in which any proceeding is pending and subject to judicial review," supersede a district attorney. I ask you to vote this amendment down and any other amendments and vote for the committee report.

Further Discussion

Mr. Arnette For starters, I'd like to get the record straight. I don't know how many of you have read Kemp vs. Stanley. But Kemp vs. Stanley merely held that the attorney general could supersede a district attorney on his own opinion, when he thought necessary. He did not make any decision about superseding him for cause. It made no decision whatsoever about that.

The second thing is, this amendment would prevent the attorney general from superseding a district attorney if the district attorney was not doing his job. I think if a district attorney is not doing his job, someone ought to step in, someone ought to take care of the people of that district. If there is organized crime in the area, if there is crime that is not being prosecuted, someone ought to step in and have the power to prosecute it. That is all this would allow if the district attorney was not doing his job.

There are safeguards to this. There is judicial review. If the district court holds against the district attorney, he can appeal it to the appellate court and then you have writs to the Supreme Court. There are writs that you can go to the Supreme Court and have them decide whether it's right for the attorney general to supersede a district attorney or not.

But this, let me point out to you and I want to make it very clear, this provision only allows supersession if it's necessary, if the district attorney is laying down on the job, or is doing a bad job. I think we need to wake up and realize one more thing. That it's time for the federal government to quit coming in and cleaning up our state for us. It's time for this state to start cleaning itself up and this would be one step that would allow such a thing.

If you adopt this amendment you could have a district attorney in a judicial district refuse to prosecute crime in that particular district and no one could say anything about it and those criminals would never get prosecuted. And I think this is a bad situation. And you are going to have the federal government coming in and prosecuting those people under some federal law, and I don't think is the way it ought to be. If they are committing

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a crime, let the state handle it's own problems. People have talked a lot about home rule. I think it's time that the state started taking care of its own house. And this is one way to do it. Let's defeat this amendment.

Further Discussion

Mr. Jack Mr. Chairman, ladies and gentlemen, I rise to oppose this amendment. In this, I don't think some of the arguments are pertinent. Here you have the protection of the court. It has to be shown cause when authorized by the court, he can come in there and supersede.

Sometimes you find this necessity. You hope it does. Now I have an amendment that is added on that'll take care of situations where if the district attorney didn't bring any suit but where with authorization of the court, you could...the attorney general could come in and perform a necessary duty. Now most all public officials are good, but we all know that at times, corruption does occur. And if we had by some chance a lot of corruption and we didn't have the law that would allow the attorney general to supersede a district attorney in a pending case, my amendment that's coming afterwards to file and prosecute cases and intervene, then what would you have? You would just suffer the consequences of the district attorney who had turned out bad. That's the safety valve that you have. Now, this is a subject that has come back in the late thirties and the prosecutions that were filed and it wasn't completed, it looked like the state was coming apart at the hinges at that time. In times of crisis lot of things are done that may be wrong. And that's all the more reason when we are sitting here in a clam atmosphere without any crisis, to get out at what is going on. There's no crisis here at all. We are just simply here discussing these things in the cool atmosphere. And I say that you ought to defeat this amendment and adopt that Subparagraph No. 3.

Further Discussion

Mr. Burson Mr. Acting Chairman and fellow delegates, you will recall yesterday that I took a very strong position in favor of local law enforcement and stressed the point that the processes of criminal law should be kept close to the people in order to avoid a centralized administration of justice that is subject to tyranny. However, in my view, the committee proposal is entirely consonant with the views that I expressed yesterday. And I am up here to speak against the amendment and in favor of the committee proposal. I think the committee proposal is thoughtfully drafted, and I think it meets the fears of those who worry in situations where local law enforcement officials might, for some reason or another, not be in a position to protect the citizens they should protect the individual citizens in their area, and it gives those individual citizens an ultimate authority to which they can appeal for help.

I draw your attention to the fact that Section 3 provides for judicial review beginning in the court of original jurisdiction, which the local court involved. And it also provides for further review by either the district attorney or the attorney general in case a decision of the local is unsatisfactory to either party. And I think that a judicial remedy in matters where rights of the private citizen in criminal prosecution are involved is appropriate. I cannot speak for all of the district attorneys in this state by any means. I can say that I have been authorized to speak for the man for whom I work, the District Attorney of the Twenty-Seventh Judicial District, St. Landry Parish, who is in favor of the committee proposal. I can also state that I have received correspondence from the District Attorney of the Fifteenth Judicial District which is Acadia, Lafayette and Vermillion Parishes, and he also is in favor of the committee proposal.

I asked intentionally yesterday a question of Mr. Ware when he was testifying what the official position of the association was and as I recall his

answer, it was that the Association of District attorneys in this state were in favor of the committee proposal.

I submit to you that these men are in favor of the committee proposal for the very good reason that they know that they will do their job and they have no reason to fear anyone seeking this type of remedy against them in the court from the attorney general's office. And they are all well aware that the ultimate court to which they have to answer is the court of public opinion in the elections held every six years for this office. And as you will recall, that court of public opinion has seen fit in the most recent election to make a number of changes in the most important office of district attorney.

I urge you to reject this amendment. There will be one future amendment that I think deserves consideration. I think Mr. Toomy will offer an amendment which will make it clear that the statutory powers which may be given the attorney general must be consistent with and consonant with the provisions of the constitution. I would urge you to support that amendment when it comes up and I am doing so now in order to avoid having to speak again on this subject.

Thank you.

Further Discussion

Mr. Stovall Mr. Chairman, ladies and gentlemen of the convention, I hesitate to speak on this particular subject because it is not in an area in which I feel especially qualified. And yet the issue here seems to be very simple and I think I might express it this way.

We believe in a system of checks and balances. We believe in the separation of powers. We believe that we must prevent power and authority from being given to anyone or any person or any group where it cannot be challenged. Now it seems to me that if you go along with this amendment, you are saying that the district attorneys have power where there is no check or no balance or no question can be raised. This seems to me that we are getting away from one of the basic things of our understanding of what our government should be, that namely, all power should have some check or some balance. And, therefore, I encourage you to reject this amendment.

Another point for our consideration is that we believe in the role and the rule of law. Now if we adopt this amendment, we are saying that laws can go without being obeyed in different districts and the district attorney or the attorney general or no one else can step in and call a district attorney to accountability. And it seems to me that you who are attorneys, who believe in the law, should certainly be opposed to this particular amendment.

And let me remind you again of what Mr. Jack Burson said just a moment ago to the district attorneys, Mr. Ware being their spokesman yesterday, says that he is happy with the recommendations of the Judiciary Committee. And, therefore, I encourage you to reject this amendment and to proceed to give approval to this recommendation from the Judiciary Committee. Thank you.

Questions

Mr. Perez Reverend, you have stated that you are in favor of checks and balances. Did you know that with respect to a district attorney that under the legislative article he may be impeached by the legislature? He may be removed from office and he may go unrecalled. Do you consider that to be sufficient checks and balance?

Mr. Stovall I do not consider that, Mr. Perez, to be an adequate check and balance. All of those processes take a long period of time and they place the responsibility for having adequate evidence to impeach recall or to file charges of malfeasance. It is not dealing directly with the rights of the human beings who might be concerned in a given case.

Mr. Perez Would you then be in favor of a superior sheriff who could supersede a sheriff who has the

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primary responsibility of law enforcement, or the super assessor who might supersede an assessor who may be alleged to have not been conducting his business properly, or a superior clerk of court, or some other super... why do we pick out just the district attorney to supersede as opposed to all other local officials?

Mr. Stovall I think there are checks and balances on all of these of whom you speak.

May I conclude with this remark? This is not a question of whether we favor district attorneys or the attorney general. This is a question of whether or not we believe in law and order and whether or not we believe in a system in our state, of enforcing the laws that are passed by the legislature. In Jefferson Parish we have the finest district attorney in the state. He's done a great job. I'm very much in favor of him. But I think there should be an attorney general who in some cases, as this provision says "for cause," should be able to enter into deliberations. And, therefore, I encourage you to reject the amendment that is before us at the present time.

[Previous question ordered.]

Closing

Mr. Gauthier Mr. Chairman, I'll make it real brief. There are three points that are worth mentioning:

Number 1 is I fail to comprehend why people are so bent on giving the attorney general the power to supersede over a local district attorney elected by local people. I suggest to you that this is telling the people of that district that they cannot do their job. And they want to do their job. What recourse do they have? Elections. If a district attorney does not do his job, I suggest to you that he will not be reelected. Checks and balances were brought up. What better check can you have than the people voting in or voting out an incompetent district attorney. Don't provide that the attorney general come down and supersede, and then have no super officer for the sheriff or the clerk of court.

I suggest to you further that the redactors of the 1921 Constitution made the same error in that they were not explicit and that's why we presently have the situation we have. Nobody's sure whether he presently has or does not have, but it's been interpreted that he does not presently have the power to intercede or supersede local district attorneys. I, therefore, ask you to make this section clear, eliminate number three and stand with the rest of the section as is. Thank you.

[Coauthors added to the amendment.
Amendment reje ted: 45-71. Motion
is reconsidered tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Newton and Mr. Roy] on page 11, delete lines 1 and 2 in their entirety and insert in lieu thereof, the following:

"(2) Exercise supervision over the several district attorneys throughout the state and, upon the request of any district attorney, advise and assist in the prosecution of any criminal case, and".

Explanation

Mr. Newton Yes, this adds to paragraph two the right of the attorney general to supervise the activities of the district attorneys throughout the state. I am sure somebody's going to jump up here in a minute and ask me what exercise supervision means, and I'm not sure I can answer that. That is the language that is presently in the constitution. We've lived with it for a long time and I think, in light of Mr. Toomy's amendment which I agree with, which says "the legislature can provide functions not inconsistent with the provisions of this constitution." I think it's necessary that we grant the attorney general the right to supervise. And I

think that scope of the supervision will have to be determined by the legislature.

And the reason I put this in here is because under today's law and the present constitution, the attorney general can require of the various district attorneys reports as to the activities of their office so that the attorney general in the state, and law enforcement agencies can be apprised of the type, number of cases that are being held by the different district attorneys and the disposition that's being made of these cases. I think it's a simple amendment. I don't think it deserves a great horsewhipping.

I'll be glad to answer any questions.

Questions

Mr. Lanier Mr. Newton, am I correct in that your primary reason for putting in this supervision proposal is so that he can require these reports from the several district attorneys?

Mr. Newton I think that would be in my mind, the uppermost point.

Mr. Lanier Are you aware that the requirement to furnish these reports is presently in the statutory law?

Mr. Newton I think that if we don't put this... I understand it's in the statutory law. And I think that this requirement of supervision would have to be done not inconsistent with statutory law. And I think that if we adopt the Toomy amendment which I support, that legislation concerning the attorney general's office shall not be inconsistent with the provisions of the constitution, and I think my amendment is necessary to allow this.

Mr. Lanier Well, but my point is, is if the district attorneys are presently required by statutory law to furnish this information which I believe they are, and if my understanding is correct, that just got reenacted in 1972, would you agree that really this is unnecessary?

Mr. Newton No, I wouldn't because I think that if you put "not inconsistent with" and you don't have some provision in here for supervision, I don't think this... the statute would be constitutional.

Mr. Abraham Autley, throughout all this discussion here there has always been the questions come up, "but what does supervision mean? And you yourself made the statement you are not really sure. Wouldn't we simply be confusing the language of the constitution by putting this back in there? It's been left out by the committee and wouldn't it be better just to remain silent on that?

Mr. Newton I really don't think it would be or I wouldn't be up here with this amendment, and especially in view of the amendment that Mr. Toomy has coming behind it. I don't believe that.

Further Discussion

Mr. Burns Mr. Chairman and fellow delegates, I was going to wait until after all of the amendments were offered and my few remarks, but I can see, that by voting on the amendments as they are presented it might be a conflict to the remark that I would like to make and to the observations that I would like to make.

I first want to say that for those of you that don't know it, I served as district attorney for twenty-four years and I retired from that office in 1960. I want you to know that what I'm going to say, I hope you will find it very impersonal, and has nothing to do with personalities or with present officeholders.

But I want to ask you at this time to reserve your vote, that is not to vote on any of these amendments that you will later find that's in conflict, if you are satisfied with the proposal presented to you by the Judiciary Committee. On

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yesterday afternoon, a speaker from another committee told you that his committee had spent several hours on the functions and authority of the attorney general. Well, I say to you the Judiciary Committee spent several weeks...several weeks in discussing the powers and functions of the attorney general as opposed to, as opposed, as compared with the authority of the several district attorneys. We drew up several drafts and the proposal that is submitted to you this afternoon was the culmination of what we thought was the most fair and equitable to both the attorney general and to the district attorneys. And I think the best evidence, the best proof of the fairness of this proposal is the remarks that the attorney general made to you yesterday afternoon from this podium.

If you will recall, the only fault that he found was in the interpretation of words between he and the District Attorneys' Association. You will remember that he very readily conceded that the district attorneys had the primary responsibility for investigation of crime, number 1, for the presentation of charges before the grand juries and number 3, for the prosecution of criminal cases in his district. And the only thing different between he and the District Attorneys' Association was with reference to the construction put on different wording of the article...of the proposal.

Now I don't know what words the word, but perhaps it was with regard to the way we were trying to think what word that was...anyway with reference to one or two words. But outside of that which he thought could be resolved, he found no fault as far as I could understand with the present provision of...present proposal as prepared by the Judiciary Committee. Now the reason I ask you at this time, because in my opinion the present amendment as proposed, I believe, by Mr. Arnette, in my opinion definitely conflicts with the committee's proposal by adding the word "supervision" in there. Even he said, I believe, that he doesn't know exactly how far-reaching that is, exactly what it would carry with it.

But I submit to you that this provision, this proposal by the Judiciary Committee is to give to the district attorneys and it's fair to the attorney. And I want to say at this time without any fear of successful contradiction, that this Judiciary Committee does not weaken the authority or the power of the attorney general in anyway. We've heard a lot about it that it did, but you didn't hear the attorney general himself, when he was standing right where I am now, say that this proposal weakened his authority in any way. It gives him the right to go into any district where the district attorney has deliberately refused or has let the law enforcement in that district break down. Or where he himself has been guilty of any illegal acts. It gives the attorney general unrestricted authority for cause as established before a court of that jurisdiction with the right of appeal to go in there and supersede the district attorney. Now what could be more fair for both sides, the attorney general and the district attorney than that...?

Mr. Arnette I would just like to point out that I had nothing to do with this amendment that is now on the floor that Mr. Burns put my name to. He put my good name on the line here as saying I didn't know the...

Mr. Casey Do you wish the floor, Mr. Arnette?

Mr. Arnette No, I'd just like to make a correction.

Further Discussion

Mr. Kilbourne Mr. Acting Chairman and fellow delegates, I rise to oppose this amendment and I heartily endorse what my former friend and co-district attorney, Mr. Burns, was saying. We were both district attorneys at the same time, I mean at one time we were both in office and I thoroughly agree with what Mr. Burns says. If you put this supervision back in this article, you open up the same can of worms that we've been...the committee is trying to

get rid of. Exactly what this word "supervision" means is just up to anybody's guess, that is, not subject to definite interpretation. And in the case of Kemp vs. Stanley, the Supreme Court wrestled with the word "supervision" that's in the present constitution. And they didn't come up with a definition, they just quoted some definitions. One of them was, they said, supervise and here was the definition they quoted. "Supervise: to oversee for direction, to superintend, to inspect with authority, also, to exercise supervision over." And then they said supervision and they defined that, the quotation, as "act of occupation of supervision, inspection."

Now, I say if that is put back in the constitution we are going to have the same kind of problems that we have been trying to get rid of, and I don't know what future legislature might try to come in and put something in like they did in 1934, if this supervision provision is put back in the constitution and I think it would be a bad mistake to put it in there. And I ask you to vote it down. Thank you.

[Previous Question ordered. Amendment rejected: 16-94. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendments sent up by Delegate Jack to Committee Proposal No. 2) by Delegate Dennis.

Amendment No. 1. On page 11, between lines 6 and 7, insert the following: "(4). For cause when authorized by the court of original jurisdiction, subject to judicial review." And the comma and the word "investigate", which will appear on your copy, have been deleted from the amendment by its author. So it reads: "subject to judicial review, institute and prosecute, or intervene, in any criminal action or proceeding".

Explanation

Mr. Jack Mr. Chairman, ladies and gentlemen, in Section 3 on page 11, that provides for "with cause" for the attorney general to intervene in a pending suit to supersede the attorney representing the state in any civil or criminal action. Now this (4) that I'm adding, is not the attorney general's amendment. It's nobody's amendment except the people's amendment, for their protection. I'm not going to get into any row about past history. I don't know all that happened way back then. I'm a young man prematurely gray. I dye my hair to look dignified. Now what I want to say is this...listen, if you will, a minute...I want Mr. Bob Pugh to listen to this because you are good on these things. Bob, and this is an important thing, this is necessary regarding Section 3 on page 11, that I'm considering, (3) is for cause when authorized by the court, where the proceeding is already pending. Now, (4) is to take care of a situation and we hope these things don't happen. But they can happen. You have sixty-four parishes. You have numerous district attorneys, in every judicial district and some of them some of them are in trouble. Now (4) would be in an instance where there was not a proceeding pending; (3) takes care of superseding where you have a proceeding that's pending in court. But (4), this amendment, reads this way. It's just so short, I'm going to read it again. "For cause when authorized by the court of original jurisdiction, subject to judicial review, institute and prosecute, or intervene, in any criminal action or proceeding". Suppose there's no proceeding and there were a lot of bawdy houses in a city near your home. You say that can't happen, but I saw it happen in a certain parish in Louisiana and it wasn't my parish. Now if the district attorney didn't do anything about that, criminal or civil, then the attorney general, if he wanted to, he could file into court and show cause why he should not be able to institute and prosecute a case on that. Now this has nothing to do with embarrassing anybody, the court would pass on it. It would be subject to appeal, which is judicial review. I just

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think that you should have some way of getting a prosecution if a district attorney did not do his duty. Four years to wait, or whatever it is to the next election, would be not the proper thing and of course one man couldn't go out and defeat people. You ought to have safeguards and if you're going to have three, which apparently we are having, you certainly should have four because the worst person is the one that won't act at all, which (4) takes care of and (3) takes care of where the action's been filed but he needs to be superseded because he's not proceeding properly. So I ask that you adopt this amendment. If there are any questions, I'll be glad to answer them.

Questions

Mr. Burns Mr. Jack, I understand your problem. Do you not, sir, agree that the filing of criminal charges is the first step in a criminal proceeding?

Mr. Jack I don't follow. To begin with, I don't have a problem. Not on this. I may have other problems, but not on this. This is the people's problem that may arise.

Mr. Burns I understand, Mr. Jack. What I'm asking you in our Section 3, for cause for the attorney general it refers to original jurisdiction in which any proceeding is pending. I'm asking you, do you not agree that the filing of a criminal charge is the first step in a criminal proceeding?

Mr. Jack Well, yes. Why? What's that got to do with it?

Mr. Burns Well, is there anything to prevent an attorney general in a situation about the bawdy houses or any other similar situation, is there anything to prevent the attorney general from going into that parish and filing a criminal charge against the violators and thus set in motion the criminal proceeding?

Mr. Jack Well, there certainly is. Read (3). These are things where he can act, because "when authorized by the court of original jurisdiction, in which any proceeding is pending". In other words, the proceeding has to be pending before the attorney general can come in and ask the court to authorize him to supersede that district attorney. That's the trouble with it. If it covered my amendment, I wouldn't be standing up here with it.

Mr. Burns Now tell me what is to prevent an attorney general or his investigator from filing a criminal affidavit against anybody?

Mr. Jack Because he don't have the authority.

Mr. Burns He doesn't need authority to file a criminal affidavit. Any citizen can file a criminal affidavit...

Mr. Jack He can't try the case, I'm talking about trying it. Certainly, if he got hit over the head in your parish, so he could go file, what I'm talking about, from the people. Now in Section 1, over there at the bottom of page 10, he has the right to institute and prosecute, or intervene, in any civil action or proceeding. But he don't in criminal ones. And he has on 10, the right without even showing cause to the court in the civil one, over under 10. So I was his, over in my amendment, if there is no proceeding filed and it's a criminal one, if the court says there's proper cause for him to file that because the D. A. isn't doing it, then he should be allowed to file it. And he don't have a right without this.

Mr. Burns One question. Could you not come into my parish or could not go into your parish and file a criminal affidavit against any person I saw fit?

Mr. Jack Look, Mr. Burns, you know well enough, after practicing law as a district attorney twenty-

four years, what I'm talking about. O.K. Certainly if the attorney general, like any citizen, gets assaulted or whatnot and can file like any other citizen. But I'm talking about him prosecuting it. You can't if you get hit over the head in Caddo, and the district... well I won't even use it, because our district attorney won't do it. But suppose you get hit over the head in Mr. Burns' next parish. You can have a warrant issued, you can do all of that. You can testify. But you can't go up there and prosecute. You would be the prosecuting witness, but you couldn't prosecute. You would have to have authority if you're attorney general. If you didn't have it, I wouldn't have it here.

Further Discussion

Mr. Dennis Mr. Chairman, fellow delegates, I rise in support of this amendment. I think it is a good amendment and it clarifies the provision that has been proposed by the committee. I don't think it adds anything beyond what the committee intended. I think the committee intended all along to make certain that where there was an abuse and the district attorney was not doing his job, that the attorney general could go to the court and ask for a court order and initiate a prosecution. I don't see why there should be any objection to spelling that out in clear language, because, frankly, our Paragraph 3 to my mind, leaves something to be desired. It says, in a pending proceeding or in a proceeding which is pending. Now I have been told that I don't have anything to worry about there. That a private citizen can file an affidavit and so forth and get it done. Well, if we're all in agreement that the attorney general should be able to go to the court and get a court order to start a prosecution, where this is needed, why don't we go ahead and spell it out like Mr. Jack has done, and I think he has done a good job of it. So I ask you to support his amendment.

Questions

Mr. Avant Mr. Dennis, I'm sure you don't mean it this way and I don't imply that you do. But just to clarify the air, you are speaking for Judge Dennis and not the Judiciary Committee. Is that correct?

Mr. Dennis I'm sorry. Maybe I should have pointed that out. I am not speaking for the committee but this is my interpretation. Mr. Avant, of what the committee intended all along. I don't think the committee intended, by unclear language, to make it impossible for the attorney general to come and get a court order and start a prosecution. And that's what I'm afraid he might not be able to do if we leave it without Mr. Jack's amendment. But the committee... I am not speaking for the committee in supporting Mr. Jack's amendment. I'm speaking for myself personally.

Chairman Henry in the Chair

Mr. Roy Judge Dennis, in other words, if a person comes out, I mean, a question about in a D. A. for one reason or another, did not see fit to bring a bill of information against him or present it to the grand jury and that case were prescribing, that is, if he weren't charged within so many years after the commission of the crime, he could never be charged, and obviously was guilty, and because of political influence one way or the other was keeping it out. Then the attorney general for cause shown by going to court and getting permission, could actually file a bill of information and prosecute that particular person. Isn't that what it does?

Mr. Dennis Yes. He, "by a court order". The protection here of the D. A. is the fact that the attorney general has to go to court and get the court order before he can start the prosecution.

Mr. Roy And the other provision that the Judiciary Committee came out with, would not allow that to

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happen unless the D. A. had chosen to institute some type of proceeding.

Mr. Dennis Mr. Roy, I'm afraid it might be subject to that interpretation. I have asked some D. A.'s about this and they say, "no, you don't have anything to worry about, because a private individual can file an affidavit and so forth and so on". But I'm saying, "well, let's make it crystal clear that the attorney general can, after he gets a court order, start a prosecution where one is warranted". Let's don't leave it in doubt.

Mr. Roy The filing of an affidavit may not necessarily amount to a proceeding being in existence, is what you're saying. Isn't that true, sir?

Mr. Dennis Yes, sir....

Mr. Arnette Would a district attorney, such as the one we have in our district, who is doing a good job, have anything to fear from this particular amendment?

Mr. Dennis I don't believe so, sir.

Mr. Pugh Mr. Dennis, is it not true that a citizen can, in fact, file an affidavit? But the D. A. has no obligation to act on whatever the citizen has filed?

Mr. Dennis I believe you're correct, Mr. Pugh.

Further Discussion

Mr. Kilbourne Mr. Chairman, fellow delegates, I want to say this. The Judiciary Committee of which both I and Judge Dennis are members, wrestled with this problem at great length and all these matters were discussed in the committee. The committee, by a... I don't remember the vote, but it was a substantial majority surely, decided upon the language which we have in the article. Now I'm not sure I know just exactly what this amendment means, but I do know this. Insofar as Mr. Jack fears are concerned, it is certainly true that any citizen can go before a justice of the peace or the district judge of a district and file a criminal complaint. At the moment that is done, that is a proceeding. It is a pending proceeding. I don't think, in my experience, I just don't think there can be any question about that. Now, if a district attorney just arbitrarily refused to take any action or perform his duty, I think under the Committee Proposal under Paragraph 3, the attorney general could go into court and take the necessary action. Now, gentlemen, I want to say this. I think it ought to require an extreme case for an attorney general to intervene and take over the duties of a district attorney. A very extreme case. I don't think it ought to be allowed, just on a whimsy or somebody that had a political axe to grind. Now when I was district attorney, I had a few cases where there were citizens who for one reason or another, didn't think that my action was proper. They made complaints to the attorney general and they were referred to me and I did my utmost to get them satisfied. But I assure you, the district attorneys can't always satisfy everybody. I really would like to see this convention go along with the committee proposal. I have the utmost confidence in it.

Questions

Mr. Lanier Mr. Kilbourne, I believe it's correct that a misdemeanor criminal proceeding can be commenced with an affidavit, is that not true?

Mr. Kilbourne That's correct. Any criminal proceeding can be commenced with an affidavit.

Mr. Lanier But would it not also be true that with reference to a felony, you must commence the proceeding by a bill of information or an indictment?

Mr. Kilbourne That is not correct, Mr. Lanier.

In my practice, any proceeding was always commenced by an affidavit first being filed by someone. In the case you mentioned, it was usually filed by the sheriff or a deputy sheriff. And that was the beginning of the proceeding. I think that is the way it is handled in most places. A district attorney can file an information alright without that. A grand jury can return an indictment without an affidavit being filed, in which case, such bill of information or such bill of indictment would be the commencement of the proceeding. But it is also true, that in any case, a person having knowledge can make a sworn statement and can go before the attorney general or a magistrate and secure a warrant for a person's arrest. When that is done, the proceeding has been instituted. At least that's my experience, my opinion, based on the experience I have had.

Mr. Dennis Mr. Kilbourne, don't you agree that it was the intention of the committee to enable the attorney general to go to a court and show cause, and if he could show cause and get a court order, to start a criminal prosecution.

Mr. Kilbourne Well, Judge, I think if that had been the committee's intention, it would have been no trouble for us to put that in the proposal. We did not do it and certainly....

Mr. Dennis Also, you don't think that's the committee's intent.

Mr. Kilbourne I think the committee's intention is just exactly like it's expressed in the proposal, that is, the intention of the majority of the committee. It certainly was my intention.

Mr. Dennis Well, if that's not expressed in the committee proposal, don't you think we ought to put it in there with this amendment to make it clear, that where there is something wrong in a parish, badly where there is an attorney general can go get a court order and start a criminal prosecution, if the court finds that he shows cause.

Mr. Kilbourne In my opinion, Judge, with the section that we added paragraph....

Mr. Henry Mr. Kilbourne, you have exceeded your time. Is there any further discussion?

Further Discussion

Mr. Burson I think that it's important that these delegates who have not been involved in criminal proceedings understand, that in most cases, in fact in all cases that I know about in my parish, before an arrest is even made, a private citizen comes and swears out an affidavit, to show why a person should be charged with a crime. Now when Mr. Jack first broached this idea, I couldn't see where it did any harm. But then when I looked at it, and looked at the language there, it says that the attorney general, as he said, could institute, investigate and prosecute a criminal proceeding without ever having had a complaint filed by a citizen of the parish involved. Now I got up and spoke for the committee proposal. I still feel that I'm in favor of the committee proposal. But I am not in favor of the attorney general being able to institute a criminal proceeding without even having a complaint from a private citizen in the parish of the district involved. Now that doesn't make sense to me. I think that opens up the kind of dangers that I spoke against yesterday. That is, it would permit some individual, certainly I don't think the man who is in the office now would do it, but we have had cases in past history in Louisiana where it was done. Where an attorney general would take on the political enemies by going in and instituting criminal proceedings against them. I think that's a clear and present danger that we don't want to put in our constitution. I think if you've got a complaint made by a private citizen in that parish, that his rights have been violated and that a warrant should be issued, whether it's a felony or misdemeanor, that you clearly have a criminal pro-

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ceeding started. Once that complaint is filed, then under the committee proposal the attorney general is free to come in. But I do not think, that the attorney general ought to be able to decide that question for himself. In my view, that puts us right back in the Executive Committee Proposal that I spoke against yesterday. I must take that position.

Questions

Mr. Goldman Sir, is it true that a district attorney now has the power to quash even an indictment, brought out by the grand jury of someone who he knows and the grand jury knows and that person who made the complaint knows, of complete guilt, if the district attorney so desires?

Mr. Burson Yes, sir.

Mr. Goldman And if that's true, what recourse has the person who made the complaint to get the case into court, unless he could complain to the attorney general and then the attorney general would go to the court and ask for a review and see if he can get the thing prosecuted.

Mr. Burson I don't see any reason at all why that can't be done simultaneously. What I'm saying is, that you ought to have at least one individual in that parish concerned enough about it to file a complaint, simultaneously with the attorney general applying to the court for the authority. I don't see any reason at all why that couldn't be done.

Mr. Willis Mr. Burson, what disturbs me is the "show cause hearing". We have to put the parties in proper perspective. It would be the attorney general versus the district attorney, wouldn't it?

Mr. Burson Yes, sir.

Mr. Willis Now, at that "show cause hearing" the prospective defendant to be prosecuted will be tried in absentia. Isn't that correct?

Mr. Burson Yes, sir.

Mr. Willis Now, suppose the attorney general prevails. Then this defendant who has not had his day in court will have been proved guilty by inference. Isn't that correct?

Mr. Burson That is exactly the reason why I cannot see how you can possibly permit this power without having an affidavit and a charge filed by some private citizen in the parish.

Mr. Willis Additionally, the word "investigate" was stricken. How can the attorney general with surety and security, endeavor to supplant the district attorney if he has not investigated. If "investigated" is left in, that would allow him to forage his way in each judicial district to investigate. Isn't that correct?

Mr. Burson Yes, sir. I don't see what you can investigate until the charge has been filed.

Mr. Willis Precisely. So as I take it, would you agree with this statement? That this amendment suffices invisible virtue in a visible issue?

Mr. Burson Yes, sir. I think I understand what you meant.

Mr. Rayburn Mr. Burson, could you state for my information, it says "for cause when authorized by a court of jurisdiction, original, jurisdiction." How what would be the cause? What are they talking about, say "when cause"? Could the attorney general of this state come into my parish and say, "Judge, I just want to go look over old Rayburn. I believe he has been doing something wrong". What are you talking about when they say "cause"?

Mr. Burson Senator Rayburn...

Mr. Rayburn Would they have to prove that the local D. A. has failed to do his duty? I'm just trying to get the definition of "cause" that would mean anything in my mind and I'm not an attorney.

Mr. Burson I think this is certainly going to have to be defined. But you put your finger on another thing that's wrong with this amendment. You say "for cause when authorized by the court of original jurisdiction." I don't see how you can have a court of original jurisdiction when no charge has been filed. Because how do you know what court it's going to be filed in. Some charges can be filed in either city court or district court, for instance.

[Proceedings continued on page 3.]

Closing

Mr. Jack Mr. Chairman, ladies and gentlemen, the reason I fixed this amendment, I'm not criticizing the committee, our committee is going to do the same. Paragraph 3 was not clear. As I repeat, this is not aimed at any district attorney. It's not the attorney general's amendment; it's the amendment. Paragraph 3 don't cover the situation and I thought it needed amending and that's why I did it. I saw in the legislature and I'm not speaking against district attorneys, I love them. We've got one of the finest going, John Richardson. It's like I'm a great admirer of the governor; I don't agree with him on some things we were talking about this morning. But that's over we are down here for, is to come up with as good a constitution as possible. These things are not personal to me. If you don't want this thing in here, it's not going to offend me, whatever you put up there. But I'm telling you, I'm just trying to protect the people from a horrible thing that could happen. District attorneys have more power in Louisiana than any state in the Union. I don't know of another state in the Union, where a grand jury can indict a man for murder and the district attorney can nol-pros that case even if that happened in front of ten thousand witnesses at a football game and they captured the killer on the fifty yard line. If he wanted to, he could nol-pros that case, if there were eighty thousand witnesses. That's a lot of power in one man. When you got not one man, but you have a district attorney for every judicial district, you ought to have some way, if things are not proper, that the attorney general for cause, shown to the judge there. Are you going to think your judges are crooks, if they are going to let the attorney general just come into your parish and your judicial district and do things to your district attorney? Of course not. But situations do arise and prescription runs against any crime in Louisiana except murder or a capital offense. If the district attorney don't act, they are elected for six years, most any kind or type of felony is prescribed in that length of time. So I say, you have a necessity for this. Whether you ever have to use it or not, is another question. It's up to you. I just present things...if you want to clarify (3) and have protection if you ever need it. It's just like having a pistol at your house. You hope you never have to shoot anybody, but if somebody is trying to mess you up, you're darn glad you had it. Thank you.

Questions

Mr. Anzalone Have you given any thought to... I know you have given some thought to the nol-pros authority by the district attorneys. But have you given any thought to what would happen in a case where the attorney general, who was about the same caliber of a fellow that you were talking about, that would nol-pros that murder that happened in front of ten thousand people, decided that he was going to get on somebody, when he really didn't have any cause, and the publicity that would be given to the trial, or the hearing, to show cause,

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why he should not be able to attack a particular individual. And this individual would not be there. Don't you think this is slightly unfair?

Mr. Jack You're going to have to assume, sir, that not only are we going to have a crooked district attorney or crooked attorney general; you've got to assume you're going to have a crooked judge that holds these... the attorney general has cause. I just can't assume everybody's crooked.

Mr. Anzalone Well, aren't you assuming that the district attorney is?

Mr. Jack I'm not assuming. I'm saying if it turns out he doesn't do his duty, we need (4). If you uphold the committee, you've already assumed that he wouldn't do his duty and that's why you have (3), which is worded the same as mine, because when authorized by the court of original jurisdiction. The only thing is the committee certainly didn't supersede a D. A., where the proceedings are already filed. In other words, you approve it where the D. A. has filed it, but is not doing his duty. Well, that to me is ridiculous. Why not if he won't even file the thing, let them by showing cause to the judge, let the attorney general file the thing and prosecute him. This committee certainly didn't intentionally do something that would be ridiculous. They want to cover the whole situation. The whole thing is to correct a district attorney that won't do his duty, once he's filed it, that's (3), (4) is where he hasn't filed it.

[Amendment rejected: 40-74. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Toomy]. On page 11, at the end of line 9, delete the period and insert the following: "not inconsistent with the provisions hereof."

Explanation

Mr. Toomy Mr. Chairman, fellow delegates, as you and I know this convention and particularly the Judiciary Committee, has spent quite a bit of time on this particular section. I other this amendment regardless of what powers and duties this convention finally provides concerning the office of attorney general. The enumerated constitutional powers and duties that we do provide should remain intact, as this convention intends them to, not to be diminished or impaired by future legislation. This amendment is in no way intended to limit the powers and duties that we set out in this section, but simply is offered to assure the retention of these powers and duties as set forth by this convention. Mr. Chairman, I'll answer any questions they may have.

Questions

Mr. Arnette I just have one question, Joe. I don't understand. Do you think there could be a statute passed that could be inconsistent with the constitution and be upheld as constitutional?

Mr. Toomy It may not directly contradict the constitution. But it seems to me that it may in some way impair or hamper the performance of the duties and functions that we provide for. Also, there's been some question, as some of the delegates asked, as to the significance of these statutes which are provided for by the constitution. Whether this may be in some form of superstatute or something. If you notice, we provide that the attorney general have such other powers and functions, as provided by statute. There has been some question as to the significance of what these powers may be.

Mr. Arnette Well, the only reason I was asking this is because we did this on no other elected officials' duties and I saw no reason to do it here. Because if it's inconsistent with the constitution,

it's [it's] unconstitutional.

Mr. Toomy Myself and a number of other delegates had misgivings after looking back at when we did provide that in other sections. It may well provide that we go back and look at that in the other sections.

Mr. Roy Joe, I hate to talk against it, in a sense. But, I'll ask you a question. Why do we need that? If something is inconsistent with a constitutional provision or act, it's unconstitutional. If it's not contradictory to a constitutional provision, then it's constitutional. So why do we have to go around and start adding this little phrase every time somebody gets a notion that it doesn't say that? Any law that's inconsistent is unconstitutional.

Mr. Toomy Well I just think, Mr. Roy, that if you notice, we just provide in three cases here to enumerate three powers or duties and leave it open for additional powers and duties, which I am sure will be forthcoming in the future. It's just that whatever the legislature does provide, that these would in no way impair the duties and powers that this convention provides, just to clarify it.

Mr. Pugh Sir, as it presently reads in the committee proposal, it has reference to other powers. That means that the powers not enumerated in (1), (2) and (3). The legislature can give it additional powers. Is that not correct?

Mr. Toomy No, it can give additional powers.

Mr. Pugh It cannot?

Mr. Toomy It can, I said.

Mr. Pugh Yes, that's what I'm saying. It can give it additional powers. But by legislative act, it can't do any of these existing three powers. Is that what you're concerned about?

Mr. Toomy We just want to preserve whatever powers we do retain in this (1), (2) and (3), whatever they might be.

Mr. Pugh You don't think the phrase "other powers" takes care of that?

Mr. Toomy No, sir. Especially if you notice this is a separate paragraph. I have some misgivings as to when you refer back to the beginning of the statement. I just want to make it perfectly clear that whatever powers and duties we provide for would not be infringed in any way by the legislature. You're correct that the legislature would expand on these powers and functions and enumerate additional powers and functions, but in no way impair or hamper the powers and functions that we provide for here.

Mr. Pugh I may be in error, sir, but it would have seemed to me that they could touch on one of these three powers. That would be my interpretation. I take that side of it.

Mr. Toomy I just thought this amendment would make that perfectly clear.

Mr. Perez Mr. Toomy, isn't it true that you have a specific authority on line 7, which says, "he," meaning the attorney general, "shall have such other powers and perform such other duties as may be authorized by statute." Unless you put these words "not inconsistent with the provisions hereof," that it may be interpreted to be able to give unlimited authority to the attorney general, in spite of the provisions which are in the constitution.

Mr. Toomy There was the misgiving, Mr. Perez, that myself and some other delegates had had with setting this out as a separate paragraph, as it's worded presently.

Mr. Jenkins Joe, do you feel that unless we adopt

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this amendment that the legislature might well be able to authorize, in a case where.... Subparagraph (3), the attorney general to go in and supersede any district attorney, even when there was no cause, as limited in Subsection 3. In other words, do you think your amendment would protect against in some-how diminishing the limitations set forth in those first three paragraphs?

Mr. Tooley I don't think it would any way diminish the powers and duties we set forth. But it would provide that there would be no legislation contrary to these powers and duties that we set forth. Contrary, I mean, not only directly but any thing to impair the performance of these powers and duties.

Mr. Jenkins Well, I'm talking not so much about impairing the powers, but do you think that without your amendment that the legislature might....

Further Discussion

Mr. Tobias Mr. Chairman, fellow delegates, don't be confused. This is not a technical amendment of any sort whatsoever. This amendment is an attempt to go in the back door, what they haven't been able to get in through the front door. What does it do? Well, as I read it, it would just provide, in effect, wipe out any statutory powers that may be delegated to the attorney general, no matter how minimal. It's surplus language also, because any statute that would be enacted, that would be in conflict with the provisions of this section, would be invalid. I urge its defeat.

[Previous question ordered. Amendment rejected. 30-9... Motion to reconsider tabled.]

Amendments

Mr. Poynter Amendment No. 1 [by Mr. Perez]. Page 11, line 3, after the word "for" and before the word "cause" insert the word "proven".

Amendment No. 2, Page 11, line 3, after the word "by" and before the word "the", insert "a majority of the judges of".

Explanation

Mr. Perez Mr. Chairman, and ladies and gentlemen of the convention, I know that there has been a great deal of question about the words "for cause". There are many of us who do not know what that means, but one of the things that concerns me and many of the delegates is, could that be "alleged cause" or "proven cause." I believe it would be well for us, it is technical in nature as far as I am concerned. I believe all of us would understand that it would be "proven cause", but that it would be well to include and insert the word "proven" in order that it could not be interpreted to mean "alleged cause." With respect to the second amendment, I have discussed this matter with some of the members of the committee. Some have told me that when they say that "for cause and authorized by the court" some would say, "well, they mean a majority of the members of the court; and others would say, well, they don't know what it means, and others say that it means one member. I would like to suggest to you that because this is a most unusual proceeding, that before such a supersession would be authorized that it should be authorized by a majority of the members of that court rather than by just one judge. I submit, I ask for favorable adoption of the amendment.

Questions

Mr. Gravel Mr. Perez, are you familiar with the fact that the words "for cause" as they are contained in this amendment are also the basic words that are used in the civil service law and that as a consequence there have been no real judicial problems with that.

Mr. Perez Well, I am only addressing myself to

this time as to "proven cause" not "alleged cause". I just would believe that it would be better for us to make it clear that what we are talking about is the fact that the attorney general must prove that cause and not just allege it. I am concerned about the interpretation with respect to whether it would be an "alleged cause", that is, if he alleges in a petition that there are certain causes, whether that would be sufficient or whether he would not have to prove that cause.

Mr. Gravel Well, isn't that fully taken care of by the other provisions that submit the "for cause" concept to full judicial review by the courts?

Mr. Perez No, I don't believe so, sir. Because nowhere does it say what "for cause" is. And of course I have a lot of question [questions] about that, but when you just say "for cause", it just gives me concern that it is possible that that all the attorney general has to do is allege his cause and not prove his cause.

Mr. Gravel But, by first question...very quickly is this. That "for cause" are the two words that are used both in the civil service law and in the Civil Code I believe. I know in the civil service law in the constitution and the court has had no difficulty in interpreting that to mean "for just cause" it has been proved. I think what you are suggesting is unnecessary.

Mr. Perez If you know the interpretation that has been given by the courts in "for cause" in the Civil Code particularly, is very, very varied, and if all of those causes of the least of causes sufficient consideration is included, then it might be just the minimal of causes which would give the attorney general the right to supersede.

Mr. Hayes Mr. Perez, when you say, "a majority of the court" are you talking about a judge in a district where you may not have but one?

Mr. Perez Yes. We are talking about a judicial district here. Now when you are talking about in the original, when the case is filed originally, in some jurisdictions there may be only one judge in which a majority would be that one. In many jurisdictions there may be four or five or six district judges. I am suggesting to you first that the meaning of these words now when it says the "court", it may mean even all of the court or a majority of the members of the court, but in my judgment before such drastic action is taken it should at least require a majority of the members of that district court.

Mr. Hayes Where there is one judge, that is one; if it is more than one, then a majority....

Mr. Perez If there are three, for instance, two out of three would have to agree.

Mr. Hayes If it is two, then what?

Mr. Perez Well if there are two, then of course you would need both in order to have a majority.

Mrs. Warren You answered one of the questions, Mr. Perez, but I wanted to know that since Mr. Jackson's amendment was defeated, how would the attorney general prove that word proved, how would he prove that "for cause"?

Mr. Perez Well, Mrs. Warren, I don't believe that any of us had the intention of allowing the attorney general to just come in and to allege that the district attorney has not been carrying out his duties and just by virtue of barely alleging it, come in and take over the functions of a district attorney and supersede him. That is the very thing that I was so concerned about, that he must come in and not only allege but also prove the causes for which he would supersede a district attorney.

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Mrs. Warren Well, that is what I wanted to know because I don't appreciate that word "allege". I think in all cases it should be proven.

Mr. Perez Well, by "allege" I mean that he would state in his petition what it was that he was complaining of, but, in addition to that, he would have to prove it.

Mr. Roy Mr. Perez, is there any other place in the Law where a district court has to have an en banc, or all the judges sit to hear anything to rule on it?

Mr. Perez I can't answer that offhand, but I do say that this is such an unusual proceeding and we are for the first time giving under certain circumstances the right to the attorney general to supersede a district attorney that I do believe that it should require more than one judge of that district in order to authorize the suppression. It should be a most unusual proceeding and therefore, a majority of the members of the court should be required before an attorney general could supersede a district attorney.

[Motion for Division of the Question.]

Further Discussion

Mr. Pugh Mr. Chairman, and fellow delegates, it is a matter of grave concern to me insofar as Amendment No. 2 is concerned. That if for any reason one felt justifiable cause to exist that we would in effect shut down an entire criminal district for the purpose of the resolutions of this criminal problem. I am told that there are eleven criminal judges in Orleans. Meaning no reflection, but it is inconceivable to me that all the criminal business in Orleans will be shut down while this one proceeding is being handled and that as I read the amendment, it necessarily follows that it must be an en banc. I don't have time to hear. Obviously, it wouldn't be a problem in a parish that had only one judge. We have five, I would hate to see ours shut down. Unfortunately, in every parish but Orleans, when a judge sits as a criminal judge, if you sit all of the judges as criminal judges, you are not only going to shut down all the criminal work, you are going to shut down all the civil work. I don't believe that that is justified in view of the fact that if the attorney general is successful in the district court by appellate review, it necessarily follows, you will have many more than one judge among the three that would be sitting on the question. The criminal case probably the Supreme Court could have all seven of them sitting on it. I therefore rise in opposition to amendment No. 2 as proposed by Mr. Perez.

Question

Mr. Vick Mr. Pugh, I didn't hear that you made any reference to Amendment No. 1. It is a fact that "for cause" is a term of art in the law that is well known to lawyers and is amply defined in the jurisprudence of our country and this state?

Mr. Pugh I think the phrase "for cause" is acceptable; however, I didn't want to take issue with both of the amendments because I felt so strongly about the second amendment, and the first one is one of structure and it is neither going to hurt or help as far as I am concerned.

[Previous question ordered.]

Closing

Mr. Perez Just briefly again I would remind you that this is a most unusual proceeding and that before such an unusual proceeding should be allowed to occur, the suppression of the district attorney, it should require a majority of the judges of that judicial district, and in my judgment it is possible that's what the present provision means, but I think we should clarify it. I ask that you vote favorably

on this amendment.

[Record vote program. Roll call of the Question recorded. Amendment No. 1 read and adopted. Motion to suspend the rules and suspend the amendment No. 2 recorded and adopted. Motion to suspend the rules.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Dennis] On page 11, line 4, immediately after the word "proceeding" and before the word "is" insert the words "or affidavit".

Explanation

Mr. Dennis Mr. Chairman, and fellow delegates, during the discussion on Mr. Jack's amendment, Mr. Burson and others said that under Paragraph 3 of the committee proposal, that an affidavit would constitute a proceeding. That the attorney general, if a private citizen filed an affidavit, would be able to come and "for cause" get a court order to conduct the prosecution. I am not sure that affidavit is clearly included within the word "proceeding". It may be, but I do not think that is clear, and I am afraid that it might be interpreted otherwise, so in order to make it clear I am offering this amendment to say that for cause when authorized by the court of original jurisdiction in any... in which any proceeding or affidavit is pending, and that the attorney general could, after showing cause and subject to judicial review, come in and ask for an order to supersede the district attorney.

Questions

Mr. De Blieux Judge Dennis, wouldn't this amendment permit the attorney general to come into a case or where some complainant has files an affidavit and the district attorney just refused to do anything about it?

Mr. Dennis It would permit him to come to the court and ask for a court order, and if the court decided that he had shown cause could grant the order.

Mr. De Blieux Yes.

In other words it would keep... from just absolutely passively resisting an affidavit that had been filed in that case. He would have to show cause why he didn't want to prosecute.

Mr. Dennis Well no, the burden would be on the attorney general to show cause why he should be allowed to step in and conduct the prosecution.

[Previous question ordered. Amendment adopted. 10-19. Motion to suspend the rules adopted.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Dennis]. On page 11, delete lines 10 through 13, both inclusive, in their entirety.

Explanation

Mr. Arnette This is just a technical amendment, ladies and gentlemen. No, truly it is a technical amendment; it has exactly the same language and not quite as much detail as the Executive Article that we have already passed. We have already provided for the attorney general's first assistant to take over until the election of a successor. So this language is no longer needed, and it is just technical in nature. I talked to Judge Dennis about it, and he said that it is the same thing and he is in agreement with it.

[Amendment adopted without objection. Previous question recorded on the

12-10-73 11:45 AM [unclear]
 12-10-73 11:45 AM [unclear]

[unclear]

Reading of the Section

Mr. Poynter Section 28. District Attorney [unclear]
 Title; Qualifications; Assistants

"Section 28. In each judicial district a district attorney shall be elected by the qualified electors of the district for a term of six years. He shall have been admitted to the practice of law in the state for at least five years prior to his election and shall have resided in the district for the two years immediately preceding election. A district attorney may select his assistants and other personnel and prescribe their duties."

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, this is the first section relating to the office of district attorney. This office is presently included in the Judiciary Article of the 1921 Constitution. We are here continuing the substance of the same provision except that, the experience requirement is increased from three years to five years for the district attorney, and we have deleted the experience requirement for assistant district attorneys. The reason for this latter is that it is becoming increasingly difficult to get young attorneys to go to work for the district attorney's office after they have had three years experience or more and we thought that it would be desirable to open this field for young men one or two years out of law school to go to work for district attorneys. They have always proven capable in other legal positions that they have filled, and we felt like they would do a good job here. So that is the reason for these changes. I believe there was a provision about the district attorneys retirement system in the original article, but since they have this taken care of elsewhere, we have not included it in this section.

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Lanier and Mr. Davis]. On page 11, line 22, immediately after the word "select" and before the word "other" delete the words "his assistants and" and insert in lieu thereof the following:

"Such assistants as may be authorized by law and".

Explanation

Mr. Lanier Mr. Chairman, fellow delegates, the problem with the present provision as drawn is that it seems to give the district attorney constitutional right to select as many assistants as he wishes. Now that is not the present law. The present law is that he has such assistants as are established by a statute or by law. The reason you need to put this language in here "that he shall have such assistants as may be authorized by law," is because in most places the assistants are paid both by the local governing authority and also by the state. There is a basic salary established by statute which is a contribution from the state. Various judicial districts around the state have authority to supplement this salary by various amounts. If you put in the constitution that the district attorney has a constitutional right to select as many assistants as he wishes, this could create a very dangerous situation where he could select assistants in great numbers which could impose a very great financial burden on the state as well as the parish. Or it could create a sort of a crisis situation if these agencies did not choose to put up the money to pay for the jobs. In order to maintain the present law, which has worked quite well, I have included the language that he may select such assistants as he may be authorized by law which brings us in line with the present law. If there are any questions, Mr. Chairman, I will be glad to try and answer them.

Mr. Henry Are there any questions?
 Apparently, there are none, Mr. Lanier.

Amendments

Mr. Poynter Amendment No. 1 [by Mr. Lanier and Mr. Davis]. On page 11, line 14, after the word "qualifications;" add the words "duties and functions;"

Amendment No. 2. On page 11, line 16, after the word and numeral "Section 28." add "(A)"

Amendment No. 3. On page 11, between lines 23 and 24, add the following:

"(B) A district attorney has the entire charge and control of every criminal prosecution instituted or pending in his district, and shall represent concurrently with the attorney general the state in all civil actions instituted or pending in his district.

(C) The district attorney shall be the representative of the state before the grand jury in his district, and shall be its sole legal advisor.

(D) A district attorney shall perform such other duties as may be provided by law."

Explanation

Mr. Kelly Mr. Chairman, ladies and gentlemen of the convention, this amendment does nothing more than add the respective duties and responsibilities of a district attorney. Looking back over the past few weeks, I think we can say that for all constitutional offices we have tried to at least spell out some duties, functions, and responsibilities, that this particular officer will carry out. Now, in the old constitution, or in the present constitution that is, that we are operating under at this time the district attorney is set forth as the constitutional officer; yet, nothing is stated therein concerning his powers, duties and responsibilities. I think that we should go ahead and add the powers, duties and responsibilities of this office. The Judiciary Committee saw fit to add and set forth the powers, duties and responsibilities of the attorney general; they have set forth those of the sheriff, they have set forth those of the clerks of court and this does nothing more than give the district attorney in the constitution the powers, duties and responsibilities that he has been exercising over the years. To break it down as best I can, of course Amendment No. 1 would do nothing but add the words "duties and functions" to the title of Section 28. Amendment No. 2 would make the first paragraph as set forth in your yellow copy there to read "(A)" and then we would add the language which has been read to you which in effect does nothing but set forth the duties and responsibilities that are now included within the statutes of the State of Louisiana. The "B" part a district attorney has the entire charge and control of every criminal prosecution institute or pending in his district and represent concurrently with the attorney general the state in all civil actions instituted or pending in his district, and shall be the representative of the state before the grand jury in his district and is its sole legal advisor. It is my understanding that this tracks totally R. S. 16:2. Then, of course, a catch all [catchall] phrase at the end saying "a district attorney shall perform such other duties as may be provided by law." leaving any other duties, powers, and functions to be set forth in statute by the legislature. Now, one of your first questions might be, well now, in Paragraph 8 in the amendment, does this in fact cause a conflict with the attorney general provision which was just adopted? I think we can safely say, it does not. Because under Section 3 of our Paragraph 3 of Section 27, powers and functions to be set forth by the attorney general. Of course, this Section 28 would have to be read in conjunction with it. I think it is inherent that a district attorney has entire charge and control of every criminal prosecution instituted in his jurisdiction. Yet, if he

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fails to meet the obligations as apparently this convention expects him to meet, then you would of course revert to Paragraph 3 of Section 27 which would give the attorney general the power to come in and for cause proven or shown supersede and intervene in any criminal case or, for that matter, any civil case that was pending in that particular judicial district.

Questions

Mr. Lanier Mr. Kelly, don't you agree that in order to bring your Subparagraph B in line with Paragraph 3 in Section 27 that you would have to add the language "except as otherwise provided in Section 27 of this article"?

Mr. Kelly I don't see that it would make that much difference, I really don't, because we are talking about in Section B, we are talking about a district attorney having entire charge and control of his prosecution, so to speak. I think that must be read in conjunction with 3. It simply says I think when you read them in conjunction 3 as it now is stated and as adopted because when authorized by the court of original jurisdiction in which any proceeding is pending, subject to judicial review, supersede any attorney representing the state in civil or criminal action. Now that is plain to me. I mean it may not be to you, sir.

Mr. Lanier Well, do you think that where one provision says that the attorney general may supersede the district attorney for cause and another provision says that the district attorney with no exception put into the provision has entire charge and control of every criminal prosecution instituted or pending in his district, that there is no conflict between these two provisions. Is that your position?

Mr. Kelly Well, that is my position. I will say this, that is not the intent of this particular amendment. I mean if you feel like that a technical amendment would be necessary, then I have no objection at this particular point to a technical amendment. But you ask me my position on it, and it is my personal opinion that there is no conflict; however, I will have.... I would not be objective to your preparing a technical amendment to that effect if you so desire.

Mr. Lanier Do you think that the same problem might also be created with reference to the language "that the district attorney shall be the sole legal advisor of the grand jury"?

Mr. Kelly No, once again, in my personal opinion, I do not see any conflict there.

Mr. Lanier Then it would be your position that if it were necessary for the attorney general to go before the grand jury in a judicial district and supersede the district attorney, that this provision "that the district attorney is the sole legal advisor" would no longer be applicable.

Mr. Kelly No. That is not our position. In other words our position is, at this particular time.... let's take first things first. I think ordinarily we think in terms of the district attorney of a particular judicial district as being the prosecutor, so to speak, in that particular district. Under the present law, that district attorney, it is my understanding that C tracks R.S. 16:2 also verbatim. At the present time, that district attorney is the sole legal advisor to that particular grand jury. Now the exception to that would be.... be under the powers and auspices of the attorney general's office under Subparagraph 3 of Section 27. Of course if the district attorney... if the attorney general comes into court, proves cause for superseding the district attorney, I think that then the provisions of Paragraph C under proposed Section 28 would no longer be applicable. In other words, he would supersede the district attorney in all respects.

Mr. Stagg Mr. Kelly, are you familiar with the provisions of Act 409 of the 1972 legislature, which said that the following persons may be present at the sessions of the grand jury and that act passed last year allows the attorney general or an assistant attorney general to be present and that in Act No....

Mr. Kelly But, may I answer that at this particular point, please sir. It is my understanding of that particular act that you are referring to the presence of the attorney general in the grand jury proceedings. Subsection C here says "that he shall be the representative of the state before the grand jury in his district and shall be its sole legal advisor". Now I do make a distinction between the permissibility of appearing with or being present in the grand jury proceedings than usurping the power of being the grand jury's sole legal advisor.

Mr. Stagg How about the... action...

Mr. Henry The gentleman has exceeded his time.

[Quorum Calls: 180 delegates present and a quorum.]

Vice Chairman Roy in the Chair

Further Discussion

Mr. De Blieux Mr. Vice-Chairman and ladies and gentlemen of the convention, there are three parts to this amendment... as I read this. I am not a criminal lawyer. I don't practice very much criminal law, but sometimes I think that I might be able to read and understand some things. As I read this... this first portion B would just about allow the district attorney to supersede the courts and tell the courts what to do in criminal cases. In other words he would determine the trial dates or whatever that he wanted to do. I think it's bad from that standpoint. In addition to that, we had a discussion quite sometime ago about the supervisory powers of the attorney general over the district attorneys. I think that, now, particularly in the parish of East Baton Rouge, in the capital, where you have many actions pending by the attorney general in the state, would allow the district attorney to supersede the attorney general in many of those cases. I just think it's bad from that standpoint. Now, going to Paragraph C, I have known of cases to where that there has been certain members, citizens who have served on a grand jury, who thought that they should seek outside legal advice sometimes. They felt like they were not getting the advice from the district attorney. This would absolutely prohibit them from ever seeking any advice from anybody else other than the district attorney in any case or matter pending before them. I don't think this is right. I certainly think that they ought to have some leeway to where that if they wanted to get some outside legal advice, they could do so. (D) portion is the only part of it that's worth the paper it's written on. The rest of it is bad and I ask you to vote it down and let's have an amendment to allow the legislature to determine the duties and responsibilities of the district attorney. I ask you to reject the amendments.

Question

Mr. Lanier Senator De Blieux, with reference to this part (D) where it says that, "the district attorney shall be the sole legal advisor of the grand jury." Are you aware of the fact that we have laws on the books now that require the judge to advise the grand jury of their duties?

Mr. De Blieux Well, that's what I'm talking about it would absolutely take away the judge's authority to instruct the grand jury. It's a very bad amendment.

Further Discussion

Mr. Pugh Mr. Chairman and members of the convention,

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I rise in opposition to this Amendment No. 3 for these reasons. As stated by Senator De Blieux, there is a problem. In most of the districts the judges themselves determine when cases will be tried, criminal cases will be tried. For that reason it would in effect allow them to supersede the authority that the judges are going to take and have taken for year . . . In addition to that Subsection (B) provides that he must act concurrently in civil actions with the attorney general. I am of the opinion that that means the attorney general must necessarily be in every civil action along with him. That is to say, that both the attorney general and the district attorney must appear in these civil actions in his district. Insofar as (C) is concerned, he may or may not be aware of the fact that by this provision the district attorney is the only one who may represent the state before the grand jury. In addition to the problems already raised, obviously in most of the districts, the assistant district attorney also handles matters before the grand jury, and that's not herein provided for. As to (D), I call to your attention that the district attorney, obviously, ought to perform his duties or he shouldn't be there. Therefore, we don't need that subsection.

Question

Mr. Arnette Mr. Pugh, would this amendment in effect do away with the previous section? In other words, it would completely undo what was done in the previous section?

Mr. Pugh In my opinion it would gut the previous section.

Further Discussion

Mr. Avant Mr. Chairman and fellow delegates, I rise against this amendment, Part (B). That's the part that concerns me and only one part of that concerns me, the language and spirit represent concurrently with the attorney general the state in all civil actions instituted or pending in his district. Now, what that means is simply this. In any suit in which the state is a party, a civil suit, an expropriation suit, a damage suit against the Department of Institutions, a damage suit against the Department of Highways, that then all of these state agencies are in most cases represented by their own counsel who happened to be a special assistant attorney general. It would give the local district attorney a constitutional right to be in that suit and to act concurrently with that attorney. He would be given a constitutional right to do that and I just submit that that's just not good sound policy. I ask the defeat of that portion of the amendment if it stays like it is.

[Amendments withdrawn.]

Amendment

Mr. Poynter The next set of amendments are offered by Delegate Gravel.

Amendment No. 1 On page 11, line 22 immediately after the word, "personnel" insert a period and delete the remainder of the line, and delete line 23 in its entirety.

Explanation

Mr. Gravel Mr. Chairman, ladies and gentlemen of the convention, as this sentence presently reads, that's the sentence beginning on line 21 and ending on line 23. It gives to the district attorney the authority, constitutionally and exclusively, to prescribe duties of his assistants and other personnel. This would prevent the legislature from prescribing such duties. In the event they were in conflict with those prescribed by the district attorney. Now, I've talked to the representatives of the District Attorneys' Association who are here today, Mr. Mamoulides, Mr. Salter. They have no objection to this amendment. I think it's a whole lot better to take this out of the constitution

because it could cause very, very serious conflicts with respect to statutory laws that will be adopted. I move the adoption of the amendment.

Questions

Mr. Willis Mr. Gravel, it seems that if we do what you ask us to do, it would make the provision limp. It would read, "a district attorney may select such assistants as may be authorized by law and other personnel."

Mr. Gravel That's the way it stands as a consequence of the amendment. I think that that authority should be given to the district attorneys. They shall do the hiring and firing.

Mr. Willis I understand that sir. But if it's, "as may be authorized by law and other personnel," Don't you see....

Mr. Gravel Mr. Willis, the problem that I have is with giving to the district attorneys....

Mr. Willis I embrace your problem. I understand it, but I'm saying the sentence to me limps. It would mean that the personnel and the law would authorize. Don't you see? It needs a little cleaning up, it seems to me.

Mr. Gravel Well, I think we would have a Style and Drafting problem after we delete the words, "and prescribe their duties". I think it could be clarified. But I'm very concerned about this language....

Mr. Willis I agree with you.

Mr. Gravel Thank you, sir. I hope that by this amendment we can at least delete that. Thank you very much.

[Amendment adopted without objection.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Arnette]. On page 11, line 19 immediately after the word, "least" and before the word "years", delete the word "five" and insert in lieu thereof the word "three".

Explanation

Mr. Arnette It's a very simple.... I'm offering this amendment just simply to keep the present provision as it is in the 1921 Constitution, and keep it the same in this new constitution. It had been three years in the '21 Constitution and it was increased to five, I'm told, just to keep it even with the judges. I think we need to keep it just as it was, to allow a person with three years experience to be the district attorney. It's been a good provision in the past, and I think it will continue to be a good provision. Thank you.

Further Discussion

Mr. Dennis Mr. Chairman, fellow delegates, I must rise in opposition to the amendment. The reason the committee changed the experience requirement from three years to five years was that we had instituted this requirement for an attorney before he could become a judge. We feel that an attorney must be equally qualified to be a district attorney, because it is an equally important position in our state government. So, I ask you to reject the amendment.

Questions

Ms. Zervigon Judge Dennis, has there been a lot of problems with inexperienced district attorneys fumbling the ball across the state in the past years under the '21 Constitution?

Mr. Dennis No, as I said, the sole reason for this was, we had already arrived at the five year

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experience requirement for a person to become a judge and we felt that the district attorney office should be treated on an equal basis. That is the only reason.

Ms. Zervigon No particular abuse that you were trying to correct?

Mr. Dennis No, not that I know of.

Ms. Zervigon Thank you very much.

Mr. Arnette Judge Dennis, in your committee's proposal did you not reduce the requirement of practicing law for an assistant down to nothing?

Mr. Dennis Yes, sir.

Mr. Arnette Don't the assistants handle cases that the district attorney handles at the same time.

Mr. Dennis Yes, but under his supervision.

Mr. Arnette Doesn't it seem kind of odd to you that you would reduce an assistant who is qualified to handle any criminal case down to no experience at all and yet, you raise the requirement for the district attorney himself?

Mr. Dennis No, sir. Once you accept the fact that a man should have practiced law for five years before he becomes a judge, I think that you should then follow through and say that he should practice five years before he becomes a district attorney. Perhaps if you are going to have men only one year out of law school as assistants, perhaps you should require a greater amount of experience in the head man in the office, the district attorney.

Mr. Toomy Judge Dennis, had the committee reconsidered its position on this age since the convention adopted the provision in regards that the attorney general must have practiced law for four years? I believe the convention lowered that from five to four years in regard to the attorney general.

Mr. Dennis It's still five I'm informed. In any event we have not reconsidered this matter since we reported the proposal to the committee.

Mr. Pugh Judge Dennis, was there any reason for requiring the district attorney to be a resident and all of the judges to be domiciled in an area? Was there an attempt to draw a distinction between the two?

Mr. Dennis I hesitate to answer because I'm a little foggy on this, but I believe it was because of the problem peculiar to Supreme Court justices who must leave their homes and live in New Orleans, and allow them to maintain their domicile in the district from which they come. I hope that Justice Tate will correct me, but I believe that was the reason for the different treatment.

Mr. Pugh Of course, in addition to the Supreme Court all of the judges are required to be domiciled. I notice that the district attorneys only need be a resident. I just wondered if there was a reason for that distinction other than what you have mentioned on the Supreme Court?

Mr. Dennis I know of no other reason for the distinction.

Further Discussion

Mr. Tobias Mr. Chairman, fellow delegates, I rise in support of this amendment. The present 1921 Constitution provides that a district attorney need only practice law for three years. This has not been a problem. Under our present draft an assistant district attorney need have not one day's experience. Being a district attorney entails a lot of power. It has a lot of power. Most of the offices in the state are near autonomous, completely autonomous. Three years has worked. The provision

for three years practice has worked in this state. Now, the attorney general we require five years for. He has to have practiced law for five years. But that's a statewide office. That can be justified on that basis, but on a local level three years is quite adequate. I urge you to adopt this amendment.

Further Discussion

Mr. Lanier Mr. Chairman, fellow delegates, I would ask that you support this amendment. Right now, the day after a young attorney is licensed to practice law in the State of Louisiana he can defend a capital case. That is a pretty serious responsibility. So it would seem to me if there is no objection under our law in that circumstance, except with reference to the indigent defense board, then it would seem to me that three years is certainly a long enough time to require him to practice before he can be an assistant district attorney, who would be under the supervision of the district attorney. For that reason I would urge the adoption.

Thank you, Mr. Chairman. If there are any questions, I'll be glad to try and answer them.

Question

Mr. Derbes Mr. Lanier, correct me if I am wrong, but isn't there a requirement in the Code of Criminal Procedure which in fact does require that an attorney representing a person charged with capital crime be...

Mr. Lanier My understanding of the law, Mr. Derbes, and I make an exception in my comments, that with reference to an indigent defense board... in order to get an appointment under the indigent defense board system, you cannot be the main counsel of record unless you have five years experience. You can be a co-counsel but you cannot be the main lead counsel, unless you have five years experience. With reference to hiring a man's own attorney, a man has an absolute right under the law to hire whomever he wishes to defend him in any case. I know of no prohibition in Louisiana law against a young attorney coming out of law school and defending a capital case.

Further Discussion

Mr. Kilbourne Mr. Chairman, fellow delegates, this provision was placed in the proposal by the committee after some thought and some discussion and some testimony. I would like to say this from my own experience, I really think that a district attorney has to make really some very important decisions affecting people's liberty and their property and their rights. I just cannot think of anything better than experience. He has to make the same kind of decisions that a judge makes very often. I believe it would be a wise thing to have... to keep the provision as it is in the committee proposal, at five years. I certainly have nothing against young men becoming district attorney. In fact it's a young man's job, but I really think that five years would be a wise thing to keep in there. I urge the defeat of this amendment.

[Previous Question ordered.]

Closing

Mr. Arnette This will be very short. I'd just like to point out to the convention, first of all you have reduced the age requirement for the governor from thirty down to twenty-five. For the lieutenant governor from thirty to twenty-five, for the other elected officials you have reduced the age. You have reduced many age requirements and I think this is a good step forward. Yet, this committee proposal has increased, not remained the same, increased the practical requirements for the district attorney. The committee chairman himself admitted there has been no problem with the district attorneys in the past under the present provision which is three years. I think we ought to keep it at three years. This amendment would do just that.

I urge your support for the amendment.

[Revised vote ordered. Amendment retracted: 51-68. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. De Blieux]. On page 11, line 23 after the word and punctuation, "duties," add the following: "the district attorney shall have such powers and duties as may be prescribed by law".

Mr. De Blieux Mr. Chairman, I might say that since Mr. Gravel's amendments deleted the word "duties" that maybe we ought to add this after the Gravel amendments.

Mr. Henry Mr. Clerk, check and see if technically his amendment is correct. If it is not, let's see if we can technically make it correct.

Mr. De Blieux Mr. Gravel eliminated the word, "duties".

Mr. Poynter Let me check it. Just a second. I'll fix it for you, Senator.

Explanation

Mr. De Blieux Mr. Chairman, and ladies and gentlemen, at the present time in the section there are no duties prescribed for the district attorney whatsoever. To be sure that we have the right... that is that the legislature will have the right to set his duties. They cannot deny that right. I just added that one clause. It's more in the nature of a technical amendment, to the effect that "the district attorney shall have such powers and duties as may be prescribed by law." That's all this does. I think it would therefore, set the way for the legislature to tell him what he ought to do and how he ought to conduct his business. It's a technical amendment.

Question

Mr. Denny Senator De Blieux, I understood when we went through the relative Article that anything that the legislature wasn't prohibited from doing they had the right to do. So do you conceive that this amendment is actually necessary? In other words, doesn't the legislature have the right to prescribe the powers and duties of a district attorney?

Mr. De Blieux Well, I would certainly think that this would mandate the legislature to prescribe his duties for him. It's more in the nature of a mandate to the legislature to prescribe his duties, and it will not be left hanging in the air as to where his duties and responsibilities will come from.

[Previous question ordered. Amendment retracted: 42-66. Motion to reconsider tabled.]

Amendments

Mr. Poynter Amendment No. 1 [by Mr. De Blieux]. On page 11, line 20, after the word, "election" and before the word "shall" delete the word "and," and insert in lieu thereof a comma."

Amendment No. 2 On page 11, line 21, after the word, "election" change the period to a comma and add the following: "and shall not engage in private practice of law".

Explanation

Mr. De Blieux Mr. Chairman and ladies and gentlemen, this is a very technical amendment. I believe here in East Baton Rouge Parish, and I'm sure there may be some other districts as well, that the district attorney whose salary is more than that of the judge. Now, we do not permit any judge to practice

law. But we have permitted in the past, district attorneys to do so. I just feel like under the circumstances, particularly where the district attorneys have assistants, after assistants, after assistants... the very nature of the types of cases that come before them in which there may be civil cases of damages, etc. in that way. He should not be in a conflict of interest in that respect and therefore, he should not engage in the private law practice at all. It may somewhat sometimes color his actions in the way that he prosecutes a criminal case because of the possibility of a civil action drawing out of it. Therefore, I urge you to adopt this amendment and let's treat the district attorneys who are elected for the same term, drawing sometimes more money, as the same way we do the judges. I ask you to concur in the amendments.

Question

Mr. Stinson Mr. De Blieux, does this have the endorsement of the District Attorneys' Association?

Mr. De Blieux I am sure it would have the endorsement of the Judges' Association, Mr. Stinson. I don't know about the district attorneys.

Further Discussion

Mr. Jack Mr. Chairman and gentlemen, this is a serious thing. This is an excellent amendment. Now, you have district attorneys in Louisiana that make thirty thousand dollars a year. Will you get some quiet, please, Mr. Chairman?

Mr. Henry Mr. Jack, I'll get you the mike, but I can't make them listen. Just a minute.

Mr. Jack Well I wouldn't want to be impolite and say "shut up," but I sure would like to be heard. I'll answer any question when I finish.

Now, ladies and gentlemen, this is a serious amendment. It's not directed at any person, but a district attorney is well paid in this state. To my knowledge, some of them make as high as thirty thousand dollars a year. That is thirty thousand with no overhead. That is with a fine retirement system. Now, I say to you, when you let a district attorney practice law, you are opening the doorway for all kind of things to happen. For instance, suppose the district attorney, and lots of them do, they handle damage suits. The criminal end of those auto wreck cases come to the district attorney's office. They are not in a position to take part in the civil end of an auto accident where you ought to be checking out to see if somebody ought to be prosecuted in the criminal action. Now I'm not going into personalities, but all over the country there's been a lot of people figuring that it ought to stop. I don't know what happened to the Alabama bill they had in the legislature to stop district attorneys from practicing law. Now you have in here they can't practice criminal law, but it's just as bad for them to practice civil law as it is criminal law because sometimes it winds up doing the same thing. If they are employed in a damage suit and the accident is a question of whether it's going to be somebody ought to be prosecuted criminally, there's a temptation not to prosecute the person if that person will cooperate with them. It's not fair to place them in that position. I could go on and show where, by this type of thing, it's gotten prosecutors in trouble throughout the United States. Now I know, the district attorney is the emperor in a lot of parishes in south Louisiana, and I don't know whether Mr. De Blieux's amendment will get to first base. But I'd feel reams in my duties if I didn't get up here and say something about it. When people are paid these excellent salaries for full-time duties as a district attorney to protect the peoples' rights in that criminal district court and the attorneys for various boards and all that, that's what they ought to be doing instead of having a big civil practice. This is a good amendment and I hope you'll vote for it.

Further Discussion

Mr. Pugh Mr. Chairman and fellow delegates, I rise in favor of the amendment. I recognize in doing so that perhaps there are some parishes who would not pay thirty thousand dollars to a district attorney. I, therefore, recognize that this alone is not the answer, that perhaps there should be some additional provision relating to either a monetary amount or based upon population of the area that the man represents. However, predetermining those questions, since they are not before you, I do rise in favor of the amendment and I think that its passage will go a long way to resolve some of these other problems we've been debating all day long.

Further Discussion

Mr. Hayes Mr. Chairman, ladies and gentlemen, I guess more out of confusion than anything else, this Judiciary Article has confused me more than anything I have ever heard basically, because it appears to be really a private social club. There are all kinds of requirements that appears to keep the average citizen out of everything. They want the attorney general, number one, they've got to practice law for so many years, they've got to go to school so many years, they've got to hang out a shingle which guarantees nothing, you've got to hang it out for five years whether you practice law or not. All of these things, pretending to be the law that you're guaranteeing them something, when, in fact, the district attorney gets his practice on the floor practicing. That's where he gets his five years practice. It isn't that he practiced out there. You might have a shingle out there hanging for five years and never get a case. When you really get your five years is when you're on the floor. So they defeat it three years when you could have gotten five years practice, and that's what you need. That's the reason why the people require five years for an attorney to practice against a district attorney, is because a district attorney has been practicing for some time. Now we come up with all kind of requirements. We don't want the judge to practice the law. We give him six years, they cut everybody's term down to six years. You have an honorable person and I don't see why you should prohibit him from practicing if you're only giving him six years. What is he going to do when you kick him out? We got rid of our district attorney in the last election and what do we plan for him to do now? So, okay, we act as if when you elect a person, you elect him for life. Well, it appears that way, but it's not true if you only elect the person for six years. He serves six years, when he gets out of office what is he going to do? Now I'm not a lawyer, but I can't understand how the lawyers treat each other like they do. A person who goes to school all these years and then they come out and they say you serve in the D. A.'s office six years and then you say you're going to kick him out of the profession forever, I don't understand it. You all got to keep in mind that all these various commissions and various boards he serves six years, you shouldn't throw him out for life. You should let him practice. I think he ought to be ethical enough not to practice under himself. So this is why I don't know whether I'm for... I suppose I would support this amendment to let a person practice. I think he should be ethical enough to know where to practice, and I think a judge should know where to practice also.

Further Discussion

Mr. Avant Mr. Chairman, fellow delegates, I speak against this amendment. Now, I want to tell you that this was a matter that was specifically considered by the Committee on the Judiciary. I hesitate to say that this is what the committee thought. All I can tell you is that I think they thought and what the reasons for this being written as it was are. Point number one, in many of the judicial districts of this state where you have a district

attorney, you do not have the workload on that district attorney that would require a salary which would be an appropriate salary, because the workload is simply not there. For that reason, if you prohibit a district attorney in those areas of the state, particularly some of the rural areas, from practicing law, you're going to find that competent, qualified attorneys will not seek the office of district attorney. So what it simply means is that if you put this in, you are going to raise the cost to the taxpayers of the state because they are going to have to come up with a salary which will justify the right, qualified man to seek this office. Now, in the second place, as far as any abuse of the system is concerned, it was my understanding of the consensus of the Judiciary Committee that in those cases where there is abuse, that there is ample authority and responsibility and power for the Supreme Court, through the disciplinary procedures that exist now, to do something about it. So those are the things that we did consider, plus we are aware of the fact that in the larger metropolitan areas where there are full caseloads and much work to be done, that the district attorneys don't have time to practice law and don't practice law. Another consideration that we considered was the fact that if it is a problem, that there's nothing in this language that will prohibit the legislature in fixing the salary of a given attorney in a given district where they feel that it's a full-time job, that he needs to be in the district attorney's office all the time, and because of the salary and the workload he should not be practicing law. There is nothing to keep the legislature, when they fix that salary, from saying but that this district attorney shall not practice law. So those are the things that we considered. I speak for the amendment. I feel, and I think I speak for the consensus of the committee, that this amendment is an ill-advised amendment and I ask you to vote against it.

Questions

Mr. Chatelain Delegate Avant, aren't districts equated with people? Aren't districts designed to take in so many people?

Mr. Avant No sir, not necessarily. I'll give you an example. The Twentieth Judicial District, I believe it's the twentieth, but it is composed of East and West Feliciana, as I told you the other day, and I think they have in that entire district, about thirty or maybe forty thousand people and East Baton Rouge Parish is a judicial district, the Nineteenth Judicial District, and we have approximately three hundred and fifty thousand people in that judicial district. So, the size of a judicial district is not necessarily equated with population.

Mr. Chatelain One more question, please. You would be willing for a district attorney, on the one hand working for the public, on the other hand he could be working for... practicing law as a private attorney. Is that correct?

Mr. Avant Well, legislators do that, city councilmembers do that, many public officials do that, Mr. Chatelain.

Mr. Chatelain But you must remember the district attorneys, sir, I mean the attorneys have, they have assistants for these district attorneys. They have assistants.

Mr. Avant They have a what?

Mr. Chatelain They have assistants.

Mr. Avant Assistants?

Mr. Chatelain Where the population is high enough for it. Very few district attorneys don't have assistants, sir. Is that correct?

Mr. Avant I think some don't. They are probably few in number.

Further Discussion

Mr. Burson Mr. Chairman, fellow delegates, I take the floor with some reluctance here because it is certainly obvious that my remarks may be interpreted as being motivated by a personal interest. However, I am an assistant district attorney, not a district attorney, and I do not read this amendment to in any way affect the situation of assistants. It seems to me, however, that I would be remiss in my duty as a delegate if I did not express an opinion which is grounded in my own experience. That opinion would be this. That there are, certainly, valid justifications for differentiating in the treatment of issues like this between rural areas and urban areas, and we cannot make that kind of differentiation in a constitutional treatment which would be a blanket prohibition against the private practice of law for all district attorneys. It seems to me, as Mr. Avant has previously pointed out, that this is peculiarly a matter that can and should be handled by statute. Moreover, I would submit to you it seems to me that this would be unfair by a floor amendment that has not been considered by the Committee on the Judiciary as part of their proper duty. The testimony could be taken from the parties who are concerned, as testimony has been taken from parties who have been concerned on other issues. In fact, we've even heard people speak here on the floor of the convention, that this would be a rash action, and would be an ill-considered action. Now I would have to say that I am most disturbed by the testimony comments that have been made alleging improper conduct on the part of some district attorneys who, of course, remain unnamed. Now it seems to me that that's the kind of comment with a scatter-gun, where you say that all district attorneys are subject to improper influence because they practice law, that can be said in a scatter-gun way about all legislators. You know, and I would never say that kind of thing because I think it's unfair to ever brand a class of individuals in that way. If you've got an indictment to level against an individual, do it as an individual, don't tar everyone who is doing his duty with the same brush as you do one individual that you happen to know about who is not doing his duty. I submit to you that in my experience operating in the rural areas, that it is very unfair to prohibit a group of public officeholders from handling even private family business, such as successions, estates. I want you to realize that if you pass this amendment which says they shall not engage in the private practice of law, that you mean that if the district attorney in my parish has a grandmother who dies, that he can't handle her estate. Now if that's what you want to do, well vote for that amendment. But I suggest to you, that the problems that have been raised by the proponents of this amendment can be well handled by statute and should be handled by statute. I hope you will vote against this amendment.

Question

Mr. Flory Mr. Burson, in following your statement, do I understand you correctly that if you pass this amendment then, supposedly, and I'm sure it would follow one to prohibit the assistants from practicing law, that what you're really talking about in the way of increasing the salaries of the district attorneys and the assistants and also their retirement, that amount that the state pays, you're talking about cost to the state somewhere in the neighborhood of a million dollars?

Mr. Burson I would think you'd have to at least double these salaries and it certainly would come to that.

[Motion for the resolution pending in the anti-ambush matter resumed. 6-84.]

Further Discussion

Mr. J. Jackson Mr. Chairman, ladies and gentlemen of the convention, I'll be very brief because

I think if we would just kind of reflect on what Mr. Jack has said, that he laid the foundation for a support of this amendment. Someone raised the question that legislators and councilmen are allowed to participate in the practice of law, but they also failed to mention to you that as legislators, we cannot, by code of ethics and by rules of the House and the Senate, cannot vote on legislation that we are personally going to gain from. I want to also suggest to you that this has only been allowed to continue because persons in the past have not decided to challenge it. I think that it has been brought to light and this is the forum by which we ought to make the necessary changes, not against the D. A.'s but primarily in the interest of the taxpayers. I could foresee, as Mr. Jack mentioned, that you could have conflict of interest, conflict of interest that would arise in cases where by the district attorney, at one point would be the prosecutor but in another division of the courts could be a defendant. At the same time, for those who are concerned about the sanctity of the judiciary and keeping some sort of independence and diminish and decrease the kinds of political ramifications, then you ought to be in favor of this amendment because, if we don't, if we continue to let district attorneys to practice law, at the same time serve as chief prosecutor for a particular parish, then it allows for the introduction or the increase of political manipulation. Finally, let me in closing just suggest to you that there has been some concern about taking away the powers of the attorney general or diminishing his effect upon district attorneys. I want to seriously suggest to you, and I don't think I could say no more than what Mr. Jack and other proponents of this amendment have said, but I want to seriously suggest to you that the district attorney's office ought not be allowed to continue to practice law and at the same time receive, in effect, dual compensation which ultimately may result from taxpayers coming to the prosecutor or an individual taxpayer as being the defendant in a lawsuit. I would urge your favorable adoption of this amendment.

Chairman Henry in the Chair

Further Discussion

Mr. Kibbourne Mr. Chairman, fellow delegates, I rise in opposition to this amendment. Now I recognize that this is a problem and I certainly admit that there is merit to what the proponents of this amendment have said. When I was district attorney it was a problem, but I ask you to remember this, that this would keep a district attorney from even so much as examining a title to property in his spare time. In the rural areas, it would certainly be a considerable problem, and I feel certain that if this amendment is passed that there will be a clamor for increased salaries for many district attorneys, especially those in the rural areas who are dependent and have to have their salaries paid by local police juries which can only be done by authority of the legislature. Now there are, for instance, many city judges that practice law. I don't know where this thing would stop, but I really feel that this is a statutory matter. The legislature could, at any time, prohibit district attorneys from practicing law. So far they have not done so. I believe, Mr. DeLoach, that in the legislature, has on occasions introduced such measures. They have not passed and I would ask that this question not be such an amendment as this not be passed by this convention on such short notice without any more consideration than we have had time to give it. If the legislature, after consideration and in their wisdom, decide that they wish to stop the district attorneys from practicing law and decide that they want to raise their salaries to compensate for their loss that the district attorneys, particularly in the rural areas, would suffer, why that would be the thing to do. I really think that this will create some serious problems and I just feel that it ought to be left to the legislature. If they want to do it, why they can do it. But if they would have to be prepared, at the same time,

to increase the salaries of these district attorneys. It is a serious problem and I certainly don't think we ought to half-cock on it, which we would have to do if we pass this amendment today. I'll answer any questions.

Questions

Mr. Shannon Mr. Kilbourne, you made reference to the district attorney, just now, in his "spare time." I thought a district attorney ran for a full-time job as a district attorney. Why should he have spare time?

Mr. Kilbourne Well it so happens that in the rural areas, particularly, they do have spare time, and I don't think that is true in the large urban areas where they have very large offices as, for instance, here in Baton Rouge. I don't think they even have time, I don't think they have any spare time. I don't think any of them do practice law, but they are paid a normal salary which is not the situation in the rural parishes.

Mr. Shannon Do you have any parishes in the state where they do not have an assistant, one or more?

Mr. Kilbourne I don't believe... I don't think there are any parishes in the state where the district attorneys do not have at least one assistant. But I ask you to bear in mind this, that there has been a vast increase in the...

Mr. Shannon Yet you refer to them as "spare time." That's what I wanted explained to me, this "spare time."

Mr. Kilbourne Well I'll explain it this way. When I was district attorney, at times I worked at night and I figured that was my time and I wasn't on state hours.

Mr. Rayburn Mr. Kilbourne, if I read this amendment right, in the event... I don't think it's got a chance to be adopted, but in the event it is adopted, my D. A. just got reelected a little over a year ago and if that was adopted by the people, that would mean for the next five years he ran for a six year term, that he couldn't practice law. When he ran for the office, he ran with the full understanding he could practice law. Am I correct?

Mr. Kilbourne You are absolutely correct, Senator Rayburn, and I think that's a real good point. For all of those who were just elected under the present situation where they can practice law if they can find the time.

Mrs. Warren Mr. Kilbourne, what is the minimum pay for district attorneys? What is the lowest paid district attorney's salary?

Mr. Kilbourne The state pays the district attorneys, when... I was, I just can tell you what I was paid. I don't know about the others. The state paid me fifteen thousand...

Further Discussion

Mr. Gravel Mr. Chairman and ladies and gentlemen of the convention, just to answer Mrs. Warren's question; the state pays district attorneys now, twenty thousand dollars a year, if that has any particular bearing on this issue. I'd like to make it very clear that in principle, I certainly support the concept behind Senator De Blieux's amendment. Not insofar as it would apply to district attorneys, but insofar as it would apply to assistant district attorneys. I don't believe that we should, however, put this kind of a provision in the constitution. If the principle, which as I say I think is a good one, does become, and I hope someday that it does, does become the law of the State of Louisiana, it's going to have to come about as a result of a full comprehensive legislative study of the role that is played throughout the state by each district attorney, and by the assistants that

are authorized by law. We're going to have to make into consideration jurisdiction, salaries, retirement benefits and whether or not it's feasible to get district attorneys in certain parts of the state and assistants in certain parts of the state, particularly in rural areas, who can comply with a mandate from the legislature that they shall not engage in the private practice. We're going to have to make sure that the district attorneys and the assistant district attorneys, if this restraint and restriction is put on them, is adequately, are adequately financed by the legislature. So I agree with Mr. Jack and with Mr. Jackson and the others who support this concept, but I certainly can't agree that it should be in the constitution. Senator Rayburn has made a very excellent observation, and that is that this would be unfair to those district attorneys who have been elected to office, to those throughout the State of Louisiana who ran for office under the impression that they would have the right to practice law. Hopefully, the same kind of support that I think may exist with the delegates here will be maintained in some effort to get the legislature to implement this concept. I urge, only for the reasons stated, that the amendment be rejected, but not that the cause be terminated.

Questions

Mr. Jack Mr. Gravel, while you haven't served in the legislature, you are familiar with it.

Mr. Gravel I've been there, yes sir.

Mr. Jack Isn't it true that the district attorneys have the most powerful lobby and the legislature would never pass any law like we are asking here, and it's been before them?

Mr. Gravel Mr. Jack, I don't think that with the kind of legislature we've got now that that's necessarily true. No, I can't agree with that.

Mr. Jack When did we get it?

Mr. Gravel Principally, I think, from the single member district change that was effectuated just recently.

Mr. Jack One other question. I think some statements were made incorrect by a speaker a while ago. Isn't it a fact that on all district attorneys now, the state pays twenty thousand? All right, I want everybody to hear that loud and clear. Every district attorney gets twenty thousand from the state.

Mr. Gravel That's correct.

Mr. Jack So the people that say some of them get just ten thousand a year all total, they are wrong. Isn't that right?

Mr. Gravel You are absolutely correct. Let me say this... let me just... The district attorneys get twenty thousand dollars from the state, and I don't think there's any question but that they get some additional amount, and it varies from area to area, from the local governing authorities.

Mr. Jack That's right. In other words, they get in addition to that twenty thousand, they get from the police jury an appropriation, from the parish.

Mr. Gravel Every one of them to my knowledge. Thank you.

Mr. Jack My heart bleeds...

Further Discussion

Mr. Roy Mr. Chairman, ladies and gentlemen of the Convention, I rise in support of this amendment. I don't believe that justice is served when there is any indicia of money involved at all. Now let me give you the history of district attorneys. Many years ago district attorneys got a commission,

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actually, on the number of people they convicted and the amount of fines that were brought into the parishes. Finally, after years and years and years of this abuse, the legislature decided to pay them a living wage. Twenty thousand dollars free and clear of library books, typewriters, secretaries, and even investigators, is a lot of money sometimes. I know of no district attorney that needs to have a civil practice going. What does that breed? It breeds a lot of conflict of interest cases. It breeds cases where the district attorney happens to be consulted by a woman to represent her in a divorce claim against her husband on a civil matter, and subsequently, the husband finds that he has been charged with criminal nonsupport on the criminal side of the court. I know there is a conflict of interest and I'm sure Mr. Avant is going to say isn't that unethical? Shouldn't he not do that? The answer is yes, but it is done. Until the attorney for the husband, if he gets one, happens to file a motion to recuse the district attorney, then he may proceed. But sometimes the recusation of the D. A. takes place on the criminal side because he can't serve both masters. He can't serve justice on the criminal side, for justice is best served when justice is done by representing the state against the husband. He can't serve his client of course, who has an interest in the outcome of the case. So if he recuses himself, then maybe you'll have to get someone else to represent the state in the criminal proceedings because the D. A. has chosen to select the civil side of it. Now there's no need for this rhetoric about not enough pay from the state. Several years ago, the thirty-third Judicial District Court was added to this state. The D. A. in that parish, I understand, will naturally make twenty thousand dollars from the state, plus whatever the legislature gives him. There is an assistant there. I know of no parish that doesn't have an assistant. Avoyelles Parish has now two assistants and the parish, and in 1960 to '66 it had one D. A., and it's got the same population. Maybe there are more cases. Maybe they're having to defend the school board more, I don't know. But it appears to me that if you're paying assistants at least a thousand dollars a month, that you could lump that in with what the D. A. is making and give him a salary that would allow him to be full-time, just like a judge is full-time. He's got extra time because he doesn't have enough D. A. work to do, then he can go fishing. But he need not get in the conflict that necessarily arises as a result of being able to represent both sides. So I rise in support of this because the issue is justice. The issue is whether a person can really serve two sides. The D. A. in the big cities don't need this and the D. A.'s in the country don't need it if they get the salary that they are getting plus, instead of having an assistant who does really just a little extra work that the D. A. could do himself, he could be making the money I'll yield to any questions.

Questions

Mr. Avant: Mr. Roy, in this example that you gave a while ago, isn't it a fact that if that was proven and not just rumored or innuendated, that the district attorney would also, most likely be disbarred?

Mr. Roy: No, it's not a fact. He has to make a choice. It's a question of ethics, and he has to recuse himself, Mr. Avant. Look, I know of too many; it's not done.

Mr. Avant: All right, now question number two isn't it also a fact that there's nothing in the world that would prohibit a lical

Mr. Henry: The gentleman has exceeded his time, Mr. Avant. I'm sorry.

Explanation of Vote

Mr. Foyard: Mr. Chairman and fellow delegates, my remarks will be very brief. Although I was nominated to this podium by Delegate Anzalone, I did

not choose to come up here and speak in favor of this amendment. However, I'm not going to speak against it. My main purpose in coming to this podium is to ask that the Legislative Institute be held when the roll is called on this, to remain as abstaining, because I do not choose to either vote in favor of or against it. I have a personal interest. I would urge that the delegate of this convention, when items come up that affect me personally, they do the same. But let me tell you a little bit about my experience in my short time as assistant D. A. Now I've been appointed now for some four or five months and I have not had any flow of gold into my office. As a matter of fact, I consider it more than a full-time job. I spend more than eight hours a day as assistant D. A. when it's averaged out. I further submit to you, that if you want to govern what district attorneys do on a basis of a forty hour week, you better multiply that by about two or three times. As far as the salary paid district attorneys, twenty thousand a year, sure they get benefits from the police jury, from other sources, but I don't have any typewriters and secretaries, and cars, and items of that nature in my office. That comes out of my office operating expenses account. Now if you're going to pay me for that, that's fine, and I would probably choose to serve as assistant district attorney if I was compensated for the time that I spent and for the expenses also, that I have to pay to keep my office going. I do not understand exactly what the proponents of this amendment are trying to do other than that the fact of forcing me to rely on a professional system by which district attorneys would be paid comparable to the work that is performed. Now if the state is ready for this, that's fine. I'm going to let the delegates of this constitution make a determination of this issue. But I further submit to you that you have to reach a happy balance here or are you going to prohibit assessors from owning property that they levy property taxes against property. So you have to try to draw an analogy here. In my experience as assistant D. A., we represent the school board, the police jury and we prosecute criminal cases. I have not had the experience that Mr. Roy pointed out. Perhaps as time goes along, maybe I'll encounter that, but I hope not. I believe I should not allow myself or anyone else in my office to practice law or perform any duty of my office that would conflict with the district attorney's work. I can't imagine a district attorney who has been elected by the people allowing this to happen. As a matter of fact, you have law firms which have assistant D. A.'s that are appointed in a particular law firm, maybe one member will be an assistant D. A., and it's my understanding that the entire firm is prohibited or at least on their own merits, do not practice any type of conflicting interest work with the D. A.'s office. So I haven't run across this. I feel sorry for Mr. Roy and the unfortunate experiences that he must have suffered to make him get up here and say what he did. But I would ask that each delegate review this amendment and if you want to carry out the intent throughout the constitution, I would say that it would be a real good theme. As you know, I proposed an amendment to have legislators be paid on a full-time annual salary. Also, I think we would come back, perhaps, and clear up the proposition that where some city judges can also act as judge and practice law. Let me carry out the theme in my closing remarks, Mr. Chairman, and I would like to ask that the Clerk be ordered to be absent, but as abstaining from this vote. Thank you.

Point of Order

Mr. Hunez: After ten hours in here you got a little dizzy and a little incoherent. It's the same amendment that you had ordered the previous question, no objection. Mr. Hake said way in the back he hadn't spoken and wanted to speak, and then some body interrupted this thing from the back and we are still on it. If this is the case and, I'm a little faint, we need law I working.

Mr. Henry: Yes sir, that's the same one.

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Mr. Nunez Why don't we bury it once and for all. Does it take the previous question to get to the vote?

Mr. Henry Yes sir, it does.

Motion

Mr. Nunez Well I move the previous question, if there are no further speakers.

Mr. Henry There are two other speakers, Mr. Stinson and Justice Tate. Do you insist on your motion, sir?

Mr. Nunez No, if there are others, but I think it...

Mr. Henry Mr. Perez, why do you rise?

Mr. Perez I would just like to suggest that possibly these speakers might want to waive the right to speak and then we could move the previous question.

Mr. Henry Mr. Stinson?

Mr. Stinson I've been trying to ask a question. I don't want to speak.

Mr. Henry I'm sorry. I thought you wanted the floor.

Mr. Stinson No. I want to ask a question. I don't care about speaking on it.

[Previous Question ordered.]

Closing

Mr. De Blieux Mr. Chairman and ladies and gentlemen, I just want to tell you, there are district attorneys in the state of Louisiana that are making more salaries than the judges under which they have to prosecute their cases. There is not one single district attorney in the state of Louisiana who does not have an assistant and I tell you this, if he's got an assistant, he should be a full-time district attorney. If he's got an assistant, he shouldn't have the time to practice law on the side. Let me tell you, the lowest paid district attorney in the state of Louisiana still makes, in the lowest places I'm sure that's way out in the rural sections, at least \$23,500 and up to \$37,400. That's what the salary of your district attorney is and if any of you want to know what it is in your judicial district, just ask me the question and I can tell you. As long as they are making that type of money, as long as they have assistants, why treat them different than you do the judges under which they prosecute their cases. I want to tell you one thing else. They are already going to retire and pay up their benefits of retirement on that pay, so Mr. Flory, don't worry about it increasing their retirement. It's not going to do that. They are already getting the maximum amount now. One thing else I want to tell you before I close this matter. You know and I know as long as the district attorney has clients appearing before him in matters to be prosecuted, he is going to be prejudiced and biased in that respect. He has to be, so why not eliminate that conflict of interest. Yes, it could be taken care of by the legislature, but I doubt if it will. This is the place it ought to be taken care of and I ask you to vote for this amendment and do what your conscience knows that we ought to do here at this particular time. Let's don't play favorites. Let's put the district attorneys on the same basis that we do the judges. I ask you to vote for this amendment.

Questions

Mr. Gravel Senator De Blieux, did I understand you to say that the lowest paid assistant district attorney made \$23,000 per year?

Mr. De Blieux No, I said the lowest paid district attorney. The lowest paid district attorney in the state of Louisiana makes \$23,500 per year. That's his salary. It goes from \$23,500 up to \$37,400.

Mr. Gravel I misunderstood you. I'm sorry.

Mr. Nunez Senator De Blieux, you are a public official. You are in the legislature. What is your salary? What do you make annually?

Mr. De Blieux My salary. What do you mean, as a public official?

Mr. Nunez Yes, sir.

Mr. De Blieux About the same as you do, Senator Nunez.

Mr. Nunez Well I'm asking a question, if you would like to answer it.

Point of Order

Mr. Stovall I think that is a personal question that Senator Nunez really doesn't have the right to ask concerning Senator De Blieux.

Mr. De Blieux I might say this. If he wants to find out what I make, he can go down to the Clerk of Court's office. I file my income tax every year.

Mr. Stovall My point is, I don't think he has the right to ask that kind of question of the Senator.

Mr. Henry Well he doesn't have to answer it, you know, so proceed.

Mr. Nunez Senator De Blieux, I asked you as a public official... we are knocking around... it's been mentioned how much district attorneys make and assistant district attorneys make. Legislators, I'm not asking you personally, what do legislators make? I think it is public records, Mr. Stovall, and I'm just asking a question. We've talked about everybody else's salary. I don't know why we can't talk about legislators'. Is it sacred?

Mr. De Blieux I believe that legislators will average about \$9,000 per year, between \$9,000 and \$10,000.

Mr. Nunez Question No. 2, you are an attorney? You practice law?

Mr. De Blieux Yes, I do.

Mr. Nunez How much time do you spend as a legislator?

Mr. De Blieux I spend a whole lot more than I get paid for.

Mr. Nunez That's questionable.

Mr. Chehardy Senator, wouldn't you say that the whole concept you have may be all right, but it is an issue of whether or not a man can afford it? Now in my particular case, the day that I took the oath as assessor eight years ago, on that day I gave up the practice of law because I could handle the job without the practice. If I didn't have extra income, it would have been a mighty tough thing to do, so I think that what you are not looking into is, you may have a good concept, if a man can afford it. That's what I'm asking you.

Mr. Henry The gentleman has exceeded his time.

[RECORD OF PROCEEDINGS, AMERICAN LEGISLATIVE SERVICE, INC., NEWTON, MASSACHUSETTS, 02459.]

Personal Privilege

Mr. Stovall Mr. Chairman, I simply wanted to

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apologize to Senator Nunez. I misunderstood the question as he asked it a moment ago.

Personal Privilege

Mr. Nunez Maybe I should explain. I didn't certainly mean to be personal with Senator DeBlieux, but I thought since we were comparing and everybody was saying what everybody else made, it is public record what legislators made and I just tried to make the point that legislators work other than being legislators and I just couldn't see why other people couldn't.

Point of Information

Mr. Anzalone Mr. Chairman, as a point of information, I would like to ask the Judiciary Committee, according to the article that they have written, do we not have a district attorney and we have not given him anything to do.

Mr. Dennis Yes, sir. This is substantially the same provision that is in the 1921 Constitution, under which the district attorneys have operated very effectively for fifty years.

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Kilbourne, Mr. ...], on page 11, line 14, after the words "qualifications" add the words "duties and functions".
Amendment No. 2, on page 11, line 16, after the word and numeral "Section 28" add "(A)".

Amendment No. 3, on page 11, between lines 23 and 24, add the following: "(B). A district attorney shall have charge and control of every criminal prosecution in his district and shall perform such other duties as may be provided by law."

(C) The district attorney shall be the representative of the state before the grand jury in his district and shall be its legal advisor.

Explanation

Mr. Kilbourne Mr. Chairman, fellow delegates, it is a fact that we have provided, I think, for the duties of every constitutional officer except the district attorney. This matter wasn't considered by the Judiciary Committee at all and I really believe that it might be a good idea to have something in the constitution about what the duties of district attorneys are. That problem was discussed in the case that we have talked about many times, *Rem vs Stanley*, and the Supreme Court had to go looking all around to find just what the status of district attorneys are because the present constitution does not have such a provision. Now what this amendment provides is precisely what the law is, that the statutory law as to the duties of the district attorneys is, at the present time. I really don't feel that it is controversial but I have felt that way before and it was. Without any further talk by me, I will be glad to answer any questions.

Questions

Mr. Champagne Mr. Kilbourne, in view of what we just went through, and some people don't want you all to even practice law, aren't you afraid maybe they might do away with the job at all, if you keep bringing this up?

Mr. Kilbourne Well it is a bad time, I agree with you, but I hope that won't happen.

Mr. Kean Mr. Kilbourne, did I understand you to say that the language of this amendment is now in statutory law?

Mr. Kilbourne It is, Mr. Kean. That is substantially what is in the statute at the present time.

Mr. Kean That's been the basis on which the district attorneys have operated over the years.

Mr. Kilbourne That is correct.

Mr. Kean Why do we need it in the constitution?

Mr. Kilbourne Well, I don't know that we do particularly need it, but they are constitutional offices and we've got them hanging there as constitutional offices without giving them any duties at all. I really think it would probably be wise to have something in there.

Mr. Pugh Is it not true that the existing constitution of 1921 has a section providing that anything the district attorney can do, the assistant district attorneys can do. I pose that question... as you recall some time ago when I was at the time, I objected on the premise that you state that the district attorney will represent the state before the grand jury. I have serious doubt whether or not an assistant can do it under this existing language. If we had put it in the constitution, would it not be preferable to indicate that the district attorney and his assistants shall do it?

Mr. Kilbourne I don't really believe that would be necessary because in whatever an assistant does, he is always acting for the district attorney and under his charge. I just thought it would be wise to have something in the constitution, Mr. Pugh. This may not be the best language in the world, but I thought it would be a good idea to have something in there and not just leave it vacant.

Mr. Pugh I have no quarrel about the presence of it in the constitution.

Mr. Fontenot Mr. Kilbourne, I think I understood you to say that this was somewhat of an oversight in your committee proposal. Is that correct?

Mr. Kilbourne As far as I can recollect at this time, it just was never discussed. We discussed so many things. As far as I am concerned, it was an oversight. I don't know about the other committee members. It really was an oversight as far as I am concerned because I do feel that there should be something in the constitution on that.

Mr. Fontenot So, in other words, if the committee would have taken it up and would not have overlooked it, then possibly in the committee proposal there would be a section on district attorneys. Is that correct?

Mr. Kilbourne I feel that there is a possibility. I can't speak for the committee on that, of course, but I would have urged it if it had occurred to me. I'll be very frank with you, it did not occur to me.

Mr. Lanier Mr. Kilbourne, don't you think that this amendment might get us into the same problem that we had with the Kelly, Deshotel's amendment, in that since it doesn't specifically provide that except as otherwise provided in section 27, that these things would be true? Don't you think that gets us into the same conflict that we had with that amendment?

Mr. Kilbourne The problem with the Kelly amendment, as far as I was concerned, was that it had something in there about the district attorneys representing, with the attorney general, all these civil suits, was the question Mr. Avard raised, and it was completely unworkable. I don't see any problem with having this simple language here in the constitution. I may be wrong, Mr. Lanier, I'm not an expert on it. It's never been in there and I presume that is the reason we just never thought of mentioning it in the article, but I feel that it probably should be in there. I can't say, I wish I might be able to answer all your questions satisfactorily and I certainly haven't given it a lot of thought until the amendment came up, the previous one that was withdrawn by Mr. Kelly.

Mr. Lanier Is expand in the next brought out by Mr. Pugh, which quite frankly I thought was a good

one, is it not true that in the present Code of Criminal Procedure it provides that the assistant district attorneys shall have the same powers as the district attorney, as are set out in the Code of Criminal Procedure in Title 16 of the revised statutes.

Mr. Kilbourne That is I think just a procedural matter because certainly the assistant district attorney could not act otherwise than he was instructed by the district attorney.

Mr. Lanier Then, would it not be true that if we provide in the constitution that the district attorney shall be the representative of the state before the grand jury, that unless we put that identical language in the constitution, that that Code of Criminal Procedure provision would be unconstitutional?

Mr. Kilbourne I can't answer your question. I don't think that it would, Mr. Lanier, but I may be wrong.

Further Discussion

Mr. Tate Mr. Chairman, fellow delegates, I hesitate to differ with my good and sincere friend, Dick Kilbourne, but I call to your attention that before our committee, it never occurred to Mr. Kilbourne or the other representatives, that you needed to spell out in the constitution, the duties of the district attorney, nor did it occur to the framers of the Constitution of 1921, who let us operate for fifty years without any undue constitutional complications through spelling out unnecessary detail. May I also point out for instance, should we go back now and say the judge has the duty to decide every case brought before him, and so on, and so on? Shall we go back and say one thing and another? That's the first reason I'm against it. I think it is unnecessary. The second reason I'm against it, I'm afraid of it. I'm afraid of it at this hour of taking in something and putting it in the constitution saying and that Mr. Lanier has pointed out some of the problems. "A district attorney shall have charge and control of every criminal prosecution." That's what our statute says, but what if it's ever interpreted to mean, for instance, I'm not going to talk about what we talked about earlier, about the difference between the attorney generals and district attorneys, because they are both excellent officials, etc., but what if it for instance means a judge in a district can't say, "All cases ready for trial, I ask you to set them for trial within three months, or six months, or nine months" and the district attorney says, "I don't have to prosecute. I can hold [hold] overhead. I don't have to nol-pros. I can try it or not try it, like I want." I think he has the right to nol-pros, but I think you are going to open up problems we don't need to put in the constitution. Let the legislature worry with those. It's needed for fifty years. It's worked. It's unnecessary and I'm afraid that it is going to raise legal questions we can't conceive of, adopting it at this hour. Therefore, Mr. Chairman, I respectfully rise in opposition to this well intentioned amendment.

Questions

Mr. Anzalone Judge Tate, I can understand your saying that you did not think it was necessary to include in the constitution powers, duties and functions of the district attorney, but could I ask you, sir, in Section 31, why was it considered so necessary to exhibit in detail the powers, duties and functions of the clerks of court?

Mr. Tate In my opinion, perhaps, it is not as necessary because we continued the provisions of the Constitution of 1921. Perhaps we shouldn't have. I would say for instance, we didn't say on the legislators, each legislator, each Representative and Senator, that each be elected and vote honestly and conscientiously, etc., etc. There are certain obvious things you just don't want to

clutter the constitution with.

Mr. Anzalone Judge Tate, you know you are answering my question, aren't you?

Mr. Tate I will, if my good friend, Ambrose Landry, thinks fit. We would consider an amendment to that provision if and when it comes.

Mr. Perez Judge, in line with the same question, every other office that I see here, you've got the attorney general, his duties set up. You've got the sheriff with his duties set up. The clerk of court with his duties set up. I just can't understand why it is that you would oppose just this one.

Mr. Tate All right. For instance, in the case of the attorney general, his duties were set up by way of limitation, as we will know. Who are the other officers? The sheriff?

Mr. Perez The sheriff and the clerk of court.

Mr. Tate It was to work out responsibility for law enforcement within the parish, to clarify any differences in tax collection, and so on. There was a reason, a reason in every instance.

Mr. Goldman Judge Tate, why does the district attorney have to be a constitutional officer to start with? Why does he have to be in the constitution?

Mr. Tate Because he always has been, I guess.

Mr. Goldman I mean is that the only answer?

Mr. Tate No, no. I think he is a very powerful office that should be recognized but you have a not completely frivolous point, Mr. Goldman.

Mr. Stinson Judge Tate, you refer to the fact that this might interfere with the district judge ordering the district attorney to go to trial. Well, I didn't know the district judge had anything to do with the trials of the criminal docket. That's prepared, isn't it, by the district attorney. The only time the judge comes into the picture is if the defense counsel files some motion, they want to force a trial. The district judge doesn't have anything to do with the trials on the criminal docket, does he?

Mr. Tate In the long view ahead, I think the legislature should have the power to provide for some control of the criminal docket.

[Amendment withdrawn without objection. Previous question ordered on the motion. Motion passed: 109 - 10. Motion to amend under tabled. Motion to amend on minority held: No. A dispute without objection.]

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INTRODUCTION OF PROPOSALS

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Announcements

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Point of Information

Mr. Rayburn I wonder if there is anyway we could get kind of a rough idea of what time we plan to adjourn tomorrow. Some of us would like to make a few plans. I made some last week and I couldn't live up to my word, and I did it honestly and sincerely. I don't want to get caught in that trap again, if I can help it.

Mr. Henry Yes, sir. We want to keep you as honest and sincere as possible and I honestly and sincerely I'll tell you, we've got about fourteen or fifteen amendments to these sections. If we follow as we've

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been going, we'll have probably twice that much, before we get through. So we will work until late tomorrow afternoon.

[Adjournment to 10:00 a.m. Monday,
August 24, 1973.]

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Friday, August 24, 1973

ROLL CALL

[81 delegates present and a quorum.]

PRAYER

Mr. Abraham Our Father, we thank You for all Your Blessings. We ask Your guidance in our deliberations today. May our minds be pure, may our hearts be pure, and may we do things that are beneficial to the people of this state. Amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

INTRODUCTION OF RESOLUTIONS

[I Journal 373]

RESOLUTIONS ON SECOND READING AND REFERRAL

[I Journal 373-374]

PROPOSALS ON SECOND READING AND REFERRAL

[I Journal 374]

REPORTS OF COMMITTEES LYING OVER

[I Journal 374]

UNFINISHED BUSINESS

THIRD READING AND FINAL PASSAGE

Mr. Poynter Committee Proposal No. 21, introduced by Delegate Dennis, Chairman on behalf of the Committee on Judiciary, and other Delegates, members of that committee, which is a substitute for Committee Proposal No. 6.

A proposal making provisions for the judiciary branch of government and necessary provisions with respect thereto.

The status of the proposal at this time is that the convention has adopted as amended Sections 1 through 28 of the proposal, save for Section 18 which deals with juvenile courts and their jurisdiction, which was passed over, and Section 20 dealing with preservation of evidence, which failed to pass.

The next section is Section 29. Defense of Criminal Prosecution; Removal.

Reading of the Section

Mr. Poynter "Section 29. No district attorney or assistant district attorney shall appear, plead or in any way defend or assist in defending any criminal prosecution or charge. A violation shall be cause for removal."

Explanation

Mr. Dennis Fellow delegates, Section 29 simply prohibits a district attorney or assistant district attorney from defending or appearing in any respect in the defense of a criminal case. This represents no substantial change except to simplify the language from the 1921 Constitution.

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Velazquez], on page 11, line 25, immediately after "Section 29" and before the word "no" insert "(A)". Amendment No. 2, on page 11, between lines 28 and 29, add the following: "(B). Any defendant in a criminal proceeding, the results of which may be imprisonment with or without hard labor for a term exceeding six months (and the amendment is incorrect there. Strike out the words 'and for' and insert in lieu thereof 'and/or') and/or fine of five hundred dollars or more, shall have the right to retain counsel and if indigent shall, upon his request therefor, be appointed competent counsel for his defense. The legislature shall provide for a uniform system for securing such

counsel, including compensation."

Explanation

Mr. Velazquez Mr. Chairman, fellow delegates, I feel that basic to the overall concept of justice and basic to the American concept of justice for all, is the concept of a fair and adequate defense. In the case where the defendant is indigent, an additional problem arises. Can the poor, the blacks, and the outcasts of society receive adequate representation? I don't believe anyone here wants to railroad anyone to Angola, but the law itself is a complex mechanism. Often an ordinary citizen isn't capable of coping with it. The need for adequate counsel should extend beyond an attorney dragged into it. This preserves the rights of the accused and it protects an ordinary citizen who might be accused of a crime which he did not commit. Notice that there is no attempt here to delete Section 29 as written. This is an attempt to give uniformity to a situation where now there is no uniformity existing. It is an attempt to allow the legislature itself to provide for a uniform system of securing such counsel, including compensation. If there are no questions, I urge your passage of this amendment. Thank you.

Questions

Mr. Burns Mr. Velazquez, don't you think that should be under the Bill of Rights?

Mr. Velazquez No, sir. I believe it belongs here as a balance to show that in Louisiana we try to balance justice for all. We try to balance the prosecution against the defense. That's why I place it here, Mr. Burns.

Mr. Burns I agree with your purpose, but I think it should be under the Bill of Rights.

Mr. Velazquez I don't feel that that's an adequate reason to vote against it. If this is not the precise spot, the arrangements can be made through our Committee on...our technical committee that's going to handle this thing under the good judge over there.

Mr. Pugh I note in here that you indicate that a defendant has the right to retain counsel. Is there anything to prohibit him from doing that?

Mr. Velazquez If you go on to read, the key point to this is that I want to give the legislature the authority to provide for a uniform system. I think the need is for a uniform system. Knowing that particular thing...it should be stated.

Mr. Pugh Was there any reason that you require that counsel be appointed only if the prospective sentence would be in excess of six months?

Mr. Velazquez Yes, sir, there was. I'm trying to keep out peripheral cases.

Mr. Pugh Do you know that on June 12, 1972, the United States Supreme Court held that they were entitled to a lawyer for indigent cases as well as those where there were felonies?

Mr. Velazquez I didn't catch that complete statement.

Mr. Pugh The United States Supreme Court held on June 12, 1972 that they were entitled to counsel on misdemeanor cases as well as the others.

Mr. Velazquez I think that's wonderful.

Mr. Denney Mr. Velazquez, the only thing that bothers me about this is the last sentence says, "The legislature shall provide for a uniform system for securing such counsel, including compensation." Now don't you think that refers to the entire first sentence? The way it's written it appears to me

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that the legislature shall provide for securing counsel, including compensation, for all defendants whether they are indigent or not. I'm sure that was not your intention, was it?

Mr. Velazquez No, it was not.

Mr. Denney But do you agree that it might read that way?

Mr. Velazquez I would be very happy to put in a technical amendment such as you suggested.

Mr. Denney Thank you.

Mrs. Warren Mr. Velazquez, would you mind me being coauthor on that amendment with you without me having to come to the rostrum to speak on it? I agree with you one hundred percent.

Mr. Velazquez Thank you, Mrs. Warren. I thought that you were a coauthor. I thought you and Mr. Jack were supposed to be listed as coauthors on this particular piece of material.

Mr. Pointer That is correct, Mr. Velazquez.

Mr. Duval Tom, is it inherent in your amendment that the legislature might contemplate some type of public defender law?

Mr. Velazquez I never try to tell the legislature what to do. I feel that in their infinite wisdom they will provide for a uniform system of securing such counsel, including compensation. Public defender laws vary from area to area. There is no uniform type of public defender system. I personally approve of the concept of public defenders, but I don't think I should hamstring the legislature by telling them exactly how they should do it.

Mr. Newton Mr. Velazquez, did you know that your amendment does not give to indigents all the rights to which the Supreme Court of the United States says they are entitled, and did you know that if you will withdraw this amendment and provide for an indigent defender board, I'll support you?

Mr. Velazquez I think this is Louisiana and this is 1973. I don't think that this convention would pass an indigent defender board, so I think that the best thing we should do is give the legislature the authority to set a uniform system. If you, personally, want a public defender board of any type or another, go to your legislator and get him to introduce it. I will do what I can in New Orleans to get you some support for it. I do appreciate your bringing that concept up. Mr. Newton, I think it is one that should be brought up and should be openly discussed and openly debated. I'm sorry that I don't have the adequate background to bring up an indigent defender fund, the type that you are speaking of.

Mr. Weiss Delegate Velazquez, did you know that the proposed Bill of Rights, Section 12, reads as follows: "At any stage of the proceedings in reference to the rights of the accused, at any of the stages of the proceedings, every person shall be entitled to assistance of the counsel of his choice, or appointed by the court in indigent cases, if charged with an offense punishable by imprisonment."

Mr. Velazquez Mr. Weiss, when this convention finishes with that Bill of Rights Article, they are liable to bring back slavery.

Mr. Weiss Well, I think not, and I think your proposal is unnecessary at this time and should be in the Bill of Rights. We shouldn't utter the institution with that.

Mr. Velazquez Mr. Weiss, don't put me in a position

Mr. Jack Mr. Chairman and ladies and gentlemen, I'm a coauthor of this bill. When Mr. Velazquez first drew it, quite a while back, he asked me about it, would I coauthor it, and I told him I would be glad to. When we discussed it, I wanted to be sure it would not be a public defender because the concept of public defender was all right and fine for New Orleans and the big enough cities, but for most places, the district is not big enough. The same goes about any indigent defender board. Now this amendment purposely, I want you to get this, does not apply to misdemeanors. It applies, like it states, where the imprisonment, with or without hard labor, for a term exceeding six months and for a fine of five hundred dollars or more. What we are driving at here is to have the legislature provide for a uniform system for this appointed counsel, including the state paying them, in cases where there can be a jury trial. Now you've got to assume in this whole system of appointing lawyers to defend people, that if a man is innocent, it is very important that he be properly represented so he wouldn't be convicted if he is innocent. You cannot assume ahead of time that a man is guilty. The law reads just the opposite. Now, in the smaller districts, where there are only a few lawyers, with the situation where they are not even paid anything, it puts a terrific burden on them going to defend a lot of people and not being paid. I am not saying it will, but it could keep those people, and the innocent people maybe, from getting as full a defense as if they were a paid counsel. That's just human nature. Now when you get to the misdemeanors, the Supreme Court, as someone asked, certainly has ruled, any lawyer that keeps up with it knows, that an indigent defendant is entitled to counsel. That is very important. Like in Shreveport, they appoint one lawyer for the whole month for all of the indigent defendants in these misdemeanors and these city court type of cases. That is the misdemeanors under six months. Most of those people simply need legal advice, so that can be handled very simply. What is the problem, is with the cases where you could get over six months, where I would like to see that. This is an excellent amendment. It doesn't keep, later on to have a public defender or indigent defender board, if you later decide, the legislature, if they do. Thank you.

Further Discussion

Mr. Roy Mr. Chairman, delegates to the convention, I rise in opposition to this amendment. I am not, of course, at all opposed to what Mr. Velazquez is trying to accomplish but, number one, it is redundant because it should be covered in the Bill of Rights and it is covered specifically in the proposed Bill of Rights by Section 12, as Dr. Weiss pointed out. Now let me tell you two things that I don't want to see in this amendment. The first thing that I don't want to see is that it implies that unless you are going to be sentenced to a term exceeding six months or a five hundred dollar fine, you may not be entitled to an attorney, even if you hire him yourself, because it says when you will get that, then you are entitled to retain counsel and if you can't pay for it, the court will appoint counsel for you. This of course implies that up until that time you may not be entitled to counsel, which of course would be contrary to just common sense and the laws of the United States, as well as this state at this time. The second thing it does, in my opinion, when it says that you are entitled to counsel, if you may be sentenced to punishment, with or without hard labor, it necessarily speaks in my opinion, addresses itself only to relative felonies, which are those crimes for which you may be sent to Angola. Because when you talk about with or without hard labor, you are automatically talking about a sentence which requires, at the usual discretion, sentencing to the state penitentiary and not sent to the parish jail. So there are some crimes where you may be sentenced to the parish prison or the parish jail for two years and not to Angola and of course it would not cover that particular

Further Discussion

area. Section 12 of the Bill of Rights covers this much better, in much better language, and I urge the rejection of this amendment as being out of place and poorly worded.

Questions

Mr. Flory Mr. Roy, your concern is not the fact that perhaps you couldn't qualify under this for appointment?

Mr. Roy I don't practice criminal law, Mr. Flory. I am not competent, if that is what you are talking about.

Mrs. Warren Mr. Roy, I disagree with that last statement. I think that you are competent and you are saying what is wrong with this amendment, and I agree with you. Mr. Velazquez is not an attorney. I think he did the best he could, being a lay person. I am wondering if you would help him put something together that you feel would be good in this case and let us coauthor it with you.

Mr. Roy Mrs. Warren, I would be happy to....

Mrs. Warren Thank you. Thank you.

Mr. Roy It's in Section 12 of the Bill of Rights and when the Bill of Rights comes up you make sure that you are up there saying what you're doing right now. Thank you.

[Previous question ordered.]

Closing

Mr. Velazquez This is basic, this is a basic constitutional protection, giving everyone who requires it adequate counsel. I am not going to go to any great extent. I am just going to say that we have some perfecting amendments coming along to knock out one or two slight errors that we have discussed in this, but I am going to go ahead and ask you for your support on this amendment. Thank you.

Questions

Mr. Alexander Mr. Velazquez, is it not true that there is a line in your amendment which states, "shall have right to retain counsel," which has reference to everybody and proves that Mr. Roy's interpretation was incorrect?

Mr. Velazquez Mr. Roy's interpretation was quite incorrect, but I don't want to get into personalities.

Mr. Alexander Well, I think we are trying to bring out the truth. Mr. Roy said that under your amendment, even one who had the ability to retain counsel could not do so, and here it states directly that everyone has the right to retain counsel and, if indigent, then, you know, the conditions will prevail. Now the second question...yes.

Mr. Velazquez It's very early in the morning, you know, and Mr. Roy probably hasn't warmed up sufficiently to be able to read and understand what's here.

Mr. Alexander I see. Now the second question, Mr. Velazquez, is it not your aim to prevent indigents from possibly having a case end up in the Supreme Court that could have been settled right in the district court level somewhere, without going through all of these problems, et cetera, and something that we can do here in Louisiana rather than going to the Supreme Court, going to the federal court? Don't you agree?

Mr. Velazquez Reverend Alexander, you have made a very key point. You know, often the only reason people have to go all the way to the Supreme Court is because at the lowest level of government, some-

body doesn't want to do his job. Thank you.

[Amendments related: 81-501 Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [Law Mr. Pugh], on page 11, between lines 28 and 29, insert the following:

"(B). Any defendant in a criminal proceeding, the punishment for which may be imprisonment, if indigent, shall have competent counsel appointed for his defense. The legislature shall provide for a uniform system for securing such counsel, including compensation."

I have added as a second amendment the same language you found on Amendment No. 1 on Delegate Velazquez's amendment, on page 11, line 25, after "Section 29" and before the word "no" insert "(A)."

Explanation

Mr. Pugh Fellow delegates, good morning. This amendment will accomplish the purposes of the last person who proposed an amendment. It will however, in my opinion, comply with what the law is today. It will require the appointment of competent counsel for the defense of any defendant in any criminal proceeding, the punishment for which might be imprisonment. That is what the United States Supreme Court stated on June 12, 1972, and it is that proposition that we, at the Bar, have followed since then. I know that there is some sentiment that language such as this could best be placed in the Bill of Rights. I have no quarrel with that proposition. I think the man had a good amendment. I think in this form it will accomplish his purposes and I submit it to you for your consideration.

Questions

Mr. Tapper I just wondered, will the effect of your amendment be that the state will have to appropriate the money for the attorneys representing indigent defendants?

Mr. Pugh No, I don't think that all legislative acts require the payment of monies from the state itself. Most of your local home rule complaints are that the legislature can require a parish to make certain payments.

Mr. Tapper Your amendment provides that the legislature shall provide for a uniform system for securing counsel, including compensation. To me that means that there would have to be an appropriation in the legislature. Right now, did you know that in many of the parishes we already have this set-up, and it is paid for out of local funds which comes out of fines and forfeitures?

Mr. Pugh The legislature can so provide. They can provide that such assistance shall have its payments made in that fashion. They may also be paid by court costs.

Mr. Tapper But isn't it a fact that your amendment makes it mandatory that they provide it? It doesn't say that they may provide it, it says they shall provide.

Mr. Pugh That's a mandatory word, yes.

Mr. Velazquez Aren't there any federal funds that are available to the state for this purpose, if the state had a stipulation to the effect that there would be a uniform system?

Mr. Pugh There are in existence some grants, but I don't believe we can assume that the present system of making grants for purposes such as this will outlive our constitution. I hope not.

Mr. Staggs Mr. Pugh, it has been suggested by some previous questions to Mr. Velazquez that this article

properly, though in the section on Bill of RIGHTS
do you not consider that it more properly belongs
in the section where we set out that the district
attorney shall be the prosecutor and we ought to
in the same paragraph, provide for some form
some plan for criminal defense, equal or inferior
scheme, perhaps equal with that of the private citizen

Mr. Pugh: I think from a pure constitutional point
it might better be in the other section. I
do know that I have heard much criticism about
the Judiciary system, they are talking about law-
yers and judges, and no one else. Obviously,
that's what you would have there. This, I think,
allows a situation to exist where everybody has
something in the Judiciary article.

Further Discussion

Mr. Dennis: Mr. Chairman, fellow delegates, I
like to resolve this amendment. Not the substance
of it, but oppose considering it at this point.
Mr. Pugh, himself, has stated that even he, the
author of the amendment, considers that it should
more properly go in the Bill of Rights Section. I
agree with him and I think if we adopt this here,
we will be doing something that will be detrimental
to the progress of the entire convention because,
as everyone in this constitution we are drafting,
it may affect fundamental individual rights, and
if we stay and consider the rights that are to be
affected at that point, we will be taking piecemeal
all of the Bill of Rights sections before we get
to it. Now the Bill of Rights Committee has con-
sidered this and if you will look at Section 13
of their draft, rights of the accused, you will
see that they have not only provided for this, but
for other protections of accused. In fact, it
uses much further than this amendment that Mr. Pugh
is offering and I would like to just read it to
you.

When a person has been detained, he shall
immediately be advised of his legal rights and
of the reason for his detention. In all criminal
prosecutions the accused shall be precisely informed
of the nature and cause of the accusation against
him. At all stages of the proceedings every per-
son shall be entitled to assistance of counsel of
his choice, or appointed by the court in indigent
cases, if charged with an offense punishable by
imprisonment.

Now I'm not suggesting to you that this is better
than what Mr. Pugh has offered or that it should
be adopted in preference to it, but I am suggesting
that the Bill of Rights committee has considered
more aspects of the problem of indigent defendants
from the beginning of their arrest until they go
into court. Since they have considered this fully,
we should say that the respect of waiting until
their article comes before us next week and consider
this matter at that time. I ask you to reject
this amendment solely for the reason that it comes
prematurely and it should be considered during the
debate on the Bill of Rights Article.

Question

Mr. Amara: Isn't title and drafting going to
take care of putting these particular sections in
the article where they are applied to and where
there are distinctions, won't they ask them to
our attention?

Mr. Dennis: Mr. Amara, the title and drafting
committee have already probably had more than it can
handle and I don't think we should give it any
more tasks, because it has a tremendous job ahead
of it. If we can decide that something belongs
in the Bill of Rights Article in the future, I think
we should put it there instead of sending it to
the Bill of Rights, and may, you do it.

Further Discussion

Mr. Amara: Mr. Chairman and delegates, I would
like to mention at this stage during the conven-

tion, because of my fear that some of the delegates
are taking me, who I don't want to be the Bill of
Rights. Well, until we debate this section and then
when we get there and we find certain provisions
there, they are going to say this should have been
in some other section over which we have jurisdiction.
This should be something of a... I am concerned
about the subterfuge. I am concerned about the
attempts to end run this question, and to appeal-
ing to you to possibly peace and divert from that
attitude. Now let me finally say that in the
courts of New Orleans there is a kind of Wedge
of laws and procedures relative to indigent
cases. For example, there is no lack of New Orleans
Legal Assistance Program which is federally funded.
But it is a civil program. However, it only
handles civil matter. Then there is the Legal
Aid Program which handles more or less criminal
cases and in most instances a capital case what used
to be capital cases. Then there is the work of the
Release on Recognizance Program and all of these
operate more or less independently. There should
be some kind of program in Louisiana to which the
federal government would merge its program and
possibly make it possible to defend all indigent
from the misdemeanor level up to the capital case
and there we would eliminate the possibility of
crowding up the courts with all the appeals...
with all of these attempts to circumvent the law
and the guilty would be punished and the innocent,
naturally, would not be punished.

I'm asking that you support the amendment
and Style and Draft can place it in its proper place
as this is not the proper place for it.

Further Discussion

Mr. Derbe: Ladies and gentlemen of the convention,
I would just like to make a technical point here
which I think is very important.

As I understand the Bill of Rights proposal
that's being currently considered, it says that
an accused individual shall have, or shall be en-
titled to counsel. As I understand the Pugh
Amendment which, in substance, I support, it says
I shall have competent counsel. This means as I
understand it that a defendant in any criminal
proceeding must have counsel. That goes... that
runs the gamut from the minor misdemeanor in
municipal and city courts to serious felonies,
and what this effectively does, is it prohibits
an individual from waiving counsel and entering
a plea of guilty. Now I am in favor of a uniform
system for appointed counsel. I am in favor of
guaranteeing to every individual who is placed in
a criminal proceeding, a right to counsel.
But I am, also, in favor of providing that people
who wish to waive counsel, and not necessarily
take the benefit of an appointed counsel, may do so
and unfortunately, although I first wanted to rely
in support of the Pugh Amendment, I have to now
oppose it because it says very clearly, any de-
fendant in a criminal proceeding shall have compe-
tent counsel appointed for his defense.

Question

Mr. Jackson: Sir, two points. One you say that
it's mandatory, but doesn't it say "if indigent"?
And besides, the sentence that says "that the leg-
islature shall provide..."

Mr. Derbe: Well, wait a minute, and I answer
the question.

Mr. Jackson: Sir,

Mr. Derbe: Look, Volney, it says "any defendant
in a criminal proceeding, the appointed counsel which
may be imprisonment, if indigent shall have compe-
tent counsel appointed for his defense." Now a
lot of people are in a criminal case in a criminal
case who are indigent and who are in the courts.
Well, I don't want indigent... I don't want
stand as result... voluntarily, knowingly waive
my right to have a lawyer appointed for me.

essentially a simple matter of administering justice.

Mr. J. Jackson Yes, but the last sentence says that "The Legislature shall provide for a uniform system for securing such counsel, including compensation". Could not the legislature in terms of providing the unified system also provide for the right of a defendant to waive such counsel?

Mr. Derbes In my opinion as an attorney, I think there's a great amount of doubt. And I'm not trying to be an obstructionist here. What I'm trying to tell you is that a judge looking at this amendment, if this amendment becomes constitutional, could very easily say, "I cannot permit you to waive counsel. I must appoint counsel for you." I think that is a reasonable construction. And I think that would be terrible for the administration of the system of criminal justice. So I support the Bill of Rights Proposal, and I really support a unified system for appointment of counsel to indigents, but I can't support it as it's drawn.

Mr. Schmitt Could this problem be taken care of by changing the word "shall" to "may"? Could there be a subsequent amendment to that effect?

Mr. Derbes Well, it really should be more than that "J", it should be "shall be entitled to competent counsel and may appoint application, or something like that and shall appoint application, therefore, be appointed counsel for his defense....

Mr. Schmitt Are you preparing an amendment to this effect at this time?

Mr. Derbes It just.... it caught me by surprise, and if somebody will prepare it, I will be glad to support it. But I have to oppose the amendment as it is drawn.

Further Discussion

Mr. Stagg Mr. Chairman, fellow delegates, I rise in support of this amendment and I'd like to explain to you my reasons. There is not in this state a uniform system of criminal justice. In each of the parishes of this state, you heard yesterday we have a well-paid system of prosecution with a district attorney and a number of assistant district attorneys in every parish prepared to prosecute for criminal violations.

Now all citizens, all delegates to this convention, particularly all lawyers and all judges and all district attorneys, are or ought to be interested in our system of criminal justice. I ask for your particular attention to what I think are the failures of our system of criminal justice. I believe that the defense of a criminal action ought to be on a par with the prosecution. In September of 1965, I was appointed by the court to defend one of four men charged with the capital crime of rape. I had never in twenty years of practice before that date ever defended a capital case. I had never engaged in the jury trial of a serious crime. Yet on September 17, 1965, I was launched into the middle of it. As a practical matter, I had to shutdown the other things I was doing in order to learn what I ought to do to try to save the life of the man I was charged with defending. I bought a lot of books on criminal defense. I bought books on the laws of arrest. I studied the records of previous trials in our parish and I filed every motion that I could think of on bill of particulars to quash the indictment, to quash the evidence, to move to sever my client from the other three. It took six weeks to dispose of the case. It took the six weeks to pick a jury and to try the case. It took two trips to the Louisiana Supreme Court and one trip to the United States Supreme Court before the capital offense of rape and death sentence was finally reversed. I was not a defense counsel, but I was by our system charged with attempting to defend the man and to save his life if I could. My defense was not the

equal of the prosecution because of the nature of our system in this state of criminal justice.

Beginning with *Gideon vs. Wainwright* and *Arnesender vs. Florida*, the United States Supreme Court has said to every state that men, charged, and women charged, with crimes for which they have no counsel and for which they might face imprisonment, shall be punished by the state with a counsel. In many instances in our state that is an appointed counsel who may not be practiced in criminal defense as you know the district attorney is practiced in the art and the science of prosecution.

One of the speakers at the microphone said what do you do when a man says I waive my right of counsel. True, he can do so. But I hope that it would be an intelligent waiver, one where he was advised of what might happen to him if he waived his right of counsel, waived any defense and stood before the bar to be sentenced. If he had the advice of a practiced lawyer in the art of criminal defense, his waiver of those real rights would be an intelligent waiver. What we do now when a man is charged with a crime and is indigent and cannot hire a lawyer, we send him into the list, we send him into the battle, many times with an amateur defense counsel faced with a professional prosecutor. In this constitution, we ought to prevent that from happening to the degree that we can....

I urge the adoption of the Pugh Amendment and let's put defense somehow on a par with the prosecution.

Further Discussion

Mr. Weiss Fellow delegates, I rise to oppose this floor amendment. I welcome the opportunity that we take the discussion of these vital issues to the floor, but not at this time until we reach the Bill of Rights.

The Bill of Rights after thirty days' study with five eloquent and most understanding and moderate, have with the remainder five members of the committee created what we think are a fine Bill of Rights. Not that any one of us agree with all of it by any means. But we are concerned as Reverend Alexander, Delegate Alexander and others, with intent and subterfuge and other matters which may remove from the individuals of this state their rights. There are several questions here which are most important and Delegate Roy has called to our attention repeatedly the use of the word "shall and may," what one word can do to an amendment. You speak now of removing this temporarily and substituting another word, "may." What about the word "competent"? All of these matters have come before the Bill of Rights' Committee. What is a competent counsel? Suppose it be the counsel of choice of both indigent or those who can well afford one in another section of the state? How long will justice be delayed until that competent counsel is employed?

Other problems arise. What is a uniform system? A uniform system, perhaps could be defined as one which.... in which the parish would pay the fees for the indigent. Now are some parishes in a position where they can pay the large number of fees that would be necessary? And what would be an indigent case? How would that be defined? There are multiple complications in this floor amendment and I trust that you have noticed that this could well go in the Bill of Rights Section. I would suggest if Mr. Pugh would, that he withdraw this amendment at this time and let us consider this in the section where it rightly belongs and not clutter this constitution with a great deal more verbiage than is necessary. I would withdraw this amendment. If no one follows me, Mr. Chairman, I then call the previous question, if it's in order.

[Previous question agreed.]

Closing

Mr. Pugh I won't delay you on the vote. I just call your attention to the fact that the cases are legendary. This is a due process right, that the person has the right to knowingly, willingly, and intelligently waive this if he wants to. There is nothing wrong with the language as it now exists in this amendment under every constitutional case that I am aware of.

Thank you.

[Revised to order. Amendments 26 to 31: 49-67. Motion to amend tabled. Previous Question in the Question Section passed: 5-4. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter "Section 3D; Sheriff; Duties, Tax Collector—
Section 3D. In each parish a sheriff shall be elected for a term of four years. He shall be the chief law enforcement officer in the parish, except as otherwise provided by this constitution, and shall execute court orders and process. He shall be the collector of state and parish ad valorem taxes and such other taxes and licenses as provided by law.

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, this is the first section we will take up pertaining to the sheriff.
The sheriff, as you all know, performs three basic and very important functions in our parishes. First of all, he is the major or chief law enforcement officer in each parish. He is a tax collector, and he is the executive officer of the court, meaning that he serves orders of the court and enforces them.
The 1921 Constitution inadequately stated the duties of the sheriff. It only states that the sheriff is a tax collector. As we all know, the sheriff performs these other functions and these other functions are equally or even more important to the citizens in each parish. Therefore, the committee thought it best to clearly state these three basic duties of the sheriff in this section. Except for that change, that clarification of the sheriff's duties, there has been no substantive change from the 1921 Constitution.

Questions

Mr. Alrajan Judge Dennis, in the committee deliberations, was any consideration or discussion held on whether or not you should include the language that he shall be the collector of the taxes, with the thought in mind that possibly this should be statutory and that would provide the flexibility that in case there might need to be a change in the system of collecting taxes in the future, they would not be tied down to the sheriff? There might be other means of collecting taxes other than the sheriff?

Mr. Dennis We discussed this problem generally. It was the basic feeling of the committee that since this has been in our constitutional law for so long and there is much statutory law and case law based upon the 1921 provision which grants the authority to the sheriff to collect certain types of taxes, that we should not take it out, but should continue it substantially as it is in the 1921 Constitution.

Mr. Duval Judge Dennis, just attempting to get some information when you say the sheriff shall be chief law enforcement officer in the parish does that imply, you and the committee discuss whether he should supersede the police, the municipalities, the police chief, for instance?

Mr. Dennis I think I am expressing the feeling of the committee when I say this. In the present

law, there is no statement at all as to who would coordinate efforts of law enforcement agencies in the event of a major catastrophe or a major event requiring all the law enforcement agencies to be in line. The legislature could do this, but it has not done that.

This does not attempt to spell it out in detail but simply establishes a policy that the sheriff will be the chief law enforcement officer and leave up to the legislature, if it should have to do so, and we haven't had to do it in fifty years, if it should have to do so, to spell out in detail the procedures for law enforcement agencies in a parish.

Mr. Duval One other question, judge, you say that sheriffs shall be the tax collector for the parish. Would that imply sales taxes, also, rather than ad valorem, in addition to ad valorem taxes?

Mr. Dennis No. It clearly says he shall be the collector of state and parish ad valorem taxes and such other taxes and licenses as provided by law. So whatever is provided by law at the present time would continue until the legislature changed that.

Mr. Duval Do you mean where the collection.... it's a little unclear to me and it would imply that he could collect sales taxes cause that's a tax provided by law.

Mr. Dennis But the collection of sales taxes is provided by law, also. In other words, the legislature has said who will collect each particular sales tax in the sales tax acts. And that it is our intention, that whoever is designated there will continue to collect those taxes until the legislature changes it. We, by saying that these taxes and such other taxes and licenses as provided by law, I think we clearly stated that.

Mr. Duval So it is not your intention that the sheriff collect taxes that are otherwise provided now by statute to be collected by someone else.

Mr. Dennis That's right. Now I think our provision states that clearly.

Mr. Burns Judge, just to bring it out a little more clearly. Did we not discuss at length with reference to the sheriff being the chief law enforcement officer, that we definitely did not intend to keep out the state police or interfere with the city police chiefs or city police, but merely to, as you stated just now, that this would be a coordinating agency and not by any means diminish or interfere with the authority of the state police or the city police?

Mr. Dennis That's correct, Mr. Burns. Thank you very much.

Mr. Hayes Judge, does this prohibit anyone else from collecting taxes? Does it prohibit anyone else from collecting taxes in a parish?

Mr. Dennis No, it does say that the sheriff will be the ad valorem tax collector. Beyond that, the legislature could change it and appoint other people as tax collectors.

Amendment

Mr. Poynter Amendment No. 1 (Mr. Poynter, Mr. Al-J., in page 12, between lines three and four insert the following:
"This section shall not apply to the parish of Orleans."

Explanation

Mr. Hayes Mr. Chairman and delegate, unfortunately, the historical differences that have existed between Orleans and the other sixty-three parishes in the state, under this new constitution is

creating some difficulties that...whereby we must under certain circumstances except the parish of Orleans. I would prefer not to use the parish of Orleans if that be possible...to use that wording. But unfortunately, we are unable through all the staff research that we've been able to develop on this, there's no other way of accomplishing this.

If you'll note, under Section 30 first of all, the wording of the article says that a sheriff shall be elected for a term of four years. First of all, we have two sheriffs, a civil and a criminal sheriff. That's no as serious a problem, however, as the next two sentences which say that the sheriff shall be the chief law enforcement officer. Under our local charter, our home rule charter, the mayor is charged with that responsibility and he delegates that responsibility to the superintendent of police and we have as one of our delegates, a former superintendent of police who can certainly vouch for that.

The major and main problem that Section 30 creates for the parish of Orleans is in stating in the third sentence that the sheriff is the collector of state and parish ad valorem taxes and such other taxes and licenses as provided by law. We have in the parish of Orleans as a municipality, completely and wholly under the municipality, our own tax collecting system for all taxes. We have our own revenue department just as does the State of Louisiana. And that is the most urgent reason why we must absolutely except the parish of Orleans from Section 30 because at this time, neither sheriff, whether he be the civil or criminal sheriff, in anyway has anything to do whatsoever with the tax collection system in the parish of Orleans.

I would urge acceptance of this amendment.

Questions

Mr. Abraham Tom, would it be better language to say that the section would not apply where a home rule charter or something provided otherwise? That way you would not be spelling out a specific parish and in the future you may have other parishes under the same provision.

Mr. Casey Mack, if that were possible and after the proper research may be made, might could be developed, I would hate to affect other parishes, though. I think we would affect, possibly, the... let's say the parish of East Baton Rouge. Maybe the parish...the charter of the city of Lafayette. I hate to affect anybody else's municipality or parish. That's why I'm making an honest attempt just to handle the problems as simply as possible in the parish of Orleans.

Mr. Planchard It is my understanding that you are not opposed to the first part of this section, only the second sentence pertaining to the collection of the taxes.

Mr. Casey Well, in going through the three sentences I tried to point out the difficulty that we are confronted with. The most serious problem is certainly the last sentence and that's the entire tax collecting system in the city of New Orleans. The others affect us, but maybe to lesser degrees. But I would hate to completely put into a turmoil the law enforcement system in the city of New Orleans. We have enough problems as it is right now.

Further Discussion

Mr. Champagne Mr. Chairman, ladies and gentlemen, I shall be very brief. I had hoped when this convention gathered and these great minds of which I take no credit for, there would be some possible reason by which in this constitution, for the entire State of Louisiana, for all people, for all parishes, for the present and the past, would not have to signify the differences by raising red flags or whatever flags or whatever indications you would, and announce to all people by names of parishes, that this

parish is different from all the rest.

I agree with those among us who say there is a difference, and I am the first to admit that such is the case. But throughout this state there exists people who are not willing to live with the idea forever and see spelled out to them, that this difference does exist. For that reason, I would hope that there is enough ability in these one hundred and thirty-two delegates to find a means somehow, somewhere that we would not have to identify and list by names, individual parishes in this constitution. And for that reason, I have prepared an amendment which would say, except as otherwise provided in this constitution, refer it to Section 35, and those great minds would get together and somehow say there is a difference but we don't have to signify by mentioning any individual parish by name in this constitution.

Questions

Mr. Valezquez Wouldn't you say it might make... don't you think you are making a mistake to assume that Section 35 is going to pass?

Mr. Champagne Mr. Valezquez, there has been a number of reasons and people who have said that there shall be an attempt to destroy. If you can find a way, if you can find a way not to mention the parish of Orleans by name, but to simply say those conditions which existed or those differences which did exist in the constitution at the time of the adoption or some other way, sir, I guarantee you that I shall speak in favor of its adoption.

Mr. Velazquez If everybody else has a horse and you've got a mule and somebody makes a law against mules, who's getting hurt?

Mr. Champagne Let me tell you that any mule or any horse can tell the difference including any jack.

Mr. Velazquez You say so.

Mr. Dennis Mr. Champagne, are you saying, sir, that if we will say, except as otherwise provided here and then in Section 35, we can provide for the Orleans' institutions of government, that you would not object to mentioning Orleans in Section 35. I'm just...this is for information cause this is a knotty problem that we wrestled with for several months. And if that's what you're saying, I would be agreeable to it. But if you're saying you can't mention Orleans at all anywhere, sir, that is an impossible task, I believe.

Mr. Champagne What I would say, sir, and we are fighting with this problem in Revenue and Finance in which we have great variations in all the parishes. But we have managed to not mention any parish by name in the final say, with one exception, which we are going to take out. But...if we...

[Quorum Call: 408 Delegates present and a quorum.]

Further Discussion

Mr. Alexander Mr. Chairman, and delegates. I come to you at this time in a very peculiar way because I find myself along with the delegates from the city of New Orleans to be somewhat strange animals because we seem to be the exceptions.

Let me see if I can possibly talk with you as is said in the scriptures, let us reason together. Let us reason together. Number one, the city of New Orleans and the parish of Orleans are the only parish and city in the State of Louisiana where the parish and the city are coextensive. Now that condition has existed in our state long before any of us here, I think, were born. I know it was in the 1921 Constitution and I don't know how long before that. But there is no parish government in the city of New Orleans. There is

only a government. Now in all the other parishes, including Caddo, that I distinctly remember and even East Baton Rouge, there is the parish and a city government. New Orleans is the only city in the State of Louisiana which has a law enforcement group of more than fifteen hundred persons. Now I submit to you, ladies and gentlemen, that our condition is similar to that of a Wilt Chamberlain who wears a size 14 shoe and is seven feet two inches tall. He can't sleep in a normal bed. Now if you are going to compare us as I think I heard the delegate say yesterday, with East Feliciana or Cameron where the population is sixteen thousand, we just can't operate that way.

Now Orleans Parish has both a criminal and a civil sheriff. The criminal sheriff has no law enforcement powers whatsoever outside of parish prison. The civil sheriff is not the tax collector. He handles civil matters only. We have a registrar of conveyances, a register of mortgages, three clerks, four clerks, five clerks of court. Now I submit to you, ladies and gentlemen, that... I'm willing to go along with the ideas of Mr. Champagne. I think his ideas are wonderful, that maybe we should not mention the city of New Orleans. But to disrupt and throw into chaos the whole legal and operating system of a parish or city of six hundred thousand people, I don't think it's fair to those of us and to those people of the city of New Orleans. And I want you to understand this, that we are not just trying to be different. It's just that New Orleans has a larger population than other parishes and especially when these laws were enacted, the other parishes were small, the other cities were small Louisiana while New Orleans was large because it's a seaport city.

I, therefore, appeal to you to adopt this language and then let's adopt this amendment and let's sit down with some of the people like Mr. Champagne and see if we can put something together that will permit New Orleans to operate normally just as we will permit other parishes to operate normally. Thank you so much. Please support the amendment.

Further Discussion

Mr. Conroy While I sympathize with the position of the city of New Orleans, I oppose this amendment. I think that if exceptions are to be made, they should be made in a broad enough sense that other parishes could take advantage of them or the cities could take advantage of them if they need them. I don't see that New Orleans is that unique.

In this regard, I think either amendment is unnecessary if you have a home rule charter provision, you can say that that overrides the other provisions of the constitution as far as the designation of officers or elected officials or what their functions will be. But I do not see any reason to designate New Orleans as being different from the rest of the state in this particular section.

In further regard to that, if the system in Orleans Parish is good, why shouldn't other parishes be able to adopt it? If it's bad, why should they want to continue it?

I urge your defeat of this amendment

Questions

Mr. Bergeron Dave, who collects the taxes in your parish? Who is the tax collector in your parish?

Mr. Conroy In Jefferson Parish, the sheriff's.

Mr. Bergeron And who is the law enforcement officer in your parish?

Mr. Conroy The sheriff

Mr. Bergeron Do you realize that this is not the case in New Orleans parish?

Mr. Conroy Yes, and if it's a good system, I

think that Jefferson Parish should be entitled to adopt this same system, if it's a good system that Orleans has. Why single out one parish and say they are entitled to have a different system from any other parish?

Mr. Bergeron But you do realize that an amendment of this nature is necessary to allow the parish of Orleans to continue operating as it has operated?

Mr. Conroy No, I don't think an amendment of this kind is necessary. I think either in the Local and Parochial Government section or in Section 35 you can spell out that notwithstanding other provisions of this constitution, so forth and so on, will be true in Orleans. But it can be done in one place.

Mr. Denney Mr. Conroy, you suggested that the home rule charter provisions could govern this. Do you believe that the home rule provisions, which are from municipalities, would permit municipalities to collect parish taxes?

Mr. Conroy Mr. Denney, I think that the wording of the home rule charter provisions, in the Local and Parochial Government Section, could be broad enough to cover this problem.

Mr. Denney Well, I suggest to you then and do you not agree, that if those provisions are subsequently inserted, then the Style and Drafting can remove it from this section? If by chance...

Mr. Conroy I'm sorry, I can't hear you.

Mr. Denney I say, I suggest to you and I ask if you do not agree, that if provisions such as you speak of are contained in the home rule section, then Style and Drafting can remove this. But, on the other hand, if they are not so contained, would you not agree that this type of provision is necessary?

Mr. Conroy My point, Mr. Denney, is that it is in the area of local government, and the local and parochial government area, that we should address ourselves to the extent to which exception should be permitted to the other provisions of the constitution, dealing in all of these state officials, and not have, except for New Orleans, along with each one of these provisions as we go along.

Mr. Champagne Mr. Conroy, are you aware that there will be a subsequent amendment that this section shall not apply to any parish in which there may be a provision in the home rule charter to the contrary, which would allow not only the parish of Orleans to do just as they are doing now, but allow other parishes that possibility?

Mr. Conroy I was not aware of that amendment. But I think it's a far better way to handle it than the provision that's presently before us.

Further Discussion

Mr. Zervigon Mr. Chairman and delegates to the Constitutional Convention, I rise to tell you something that you know already. But it isn't the first time it's happened and it will probably happen again. New Orleans is different, it's odd, it's peculiar. And what's more, the citizens of Orleans Parish like it that way. All throughout deliberations we've tried to save things in the parishes as they are and to provide for orderly change, should that change become necessary. Orleans hasn't got any justices of the peace, but we didn't vote against other people. If we did, it speak against other people having justices of the peace. We haven't got a mayor's court. I didn't come up here and ask you to abolish everybody else's mayor's court, just to bring them into uniformity with Orleans. I think we need to look a little bit at this concept of uniformity. If

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we go completely to the end with this concept of uniformity, we go to abolish the city of Monroe's school system. We go to abolish the city of Bogalusa's school system. Everybody else got parish school systems. Why should they be allowed to be different? We go to abolish the tax levy by the port of Lake Charles. All the other ports are funded differently. We can't let Lake Charles be any different. We go to abolish the five percent, the five-mill alimony tax in Jackson Parish. Every other parish has a four-mill alimony tax. Why can we let Jackson Parish be any different? Ladies and gentlemen I submit to you that uniformity is a false concept for us to follow all the way to the end. If anybody in this convention can prove to me that Richard Thompson is uniform in any way, shape or form with Boyssie Bollinger, I'll eat my project. If anybody can tell me that Ford Stinson and Chris Roy are uniform, I'll read my project. If anybody would go and tell the citizens of Orleans Parish and the citizens of Caldwell Parish that they are alike, that delegates life wouldn't be worth a nickel in either of those parishes. So I beg of you, don't change. Now we thought of trying to draw this amendment so that it said parishes over four hundred thousand. The problem with that is as Jefferson, as Caddo, as East Baton Rouge get to that level, we've changed them, and we're really not asking anybody else to change. We just want the right to remain as we are. We thought of saying in parishes where the city is coterminous with the parish boundaries. But Baton Rouge is trying to become coterminous, over the long haul. It may take generations. They would find themselves in a spot where we had completely redefined the job of sheriff, and that isn't really what they are aiming for. They just want a unified government in that parish only. So it seems to me, the way straight forward way to handle this is to say Orleans Parish excepted. That's where the difference is. There's no use changing anybody else or pretending that we are affecting anybody else. These offices are not covered in our home rule charter. Our home rule charter has not been amended by the people for twenty years. The only thing that we do to our home rule charter because I believe they are afraid its going to get to the point like the '21 Constitution, where you pass amendment after amendment and each amendment breeds more amendments. So, when the delegates come up here and tell you, well just let them amend their own home rule charter to take care of this. They are asking you to do a very difficult thing to the city of New Orleans. So I ask you, let us remain peculiar. Let us remain as Reverend Alexander said a strange animal. It's not hurting you any, it's not affecting you any. But to change the duties of our sheriff so radically would affect the city, would radically affect the school board, who will levy a parish tax, not a city tax, collected by the Department of Finance in New Orleans. I really don't think that that's what you came up here intending to do. I will yield to any questions.

Question

Mr. Weiss Delegate Zervigon, you make your point very well. Did you know that I agree with you certainly in the concept of uniformity and the difference between New Orleans and the rest of the state? However, I would like to ask, is this the way to do it? Particularly with the alternative floor amendment, which is proposed by Mr. Champagne, I see, and that is excepted as otherwise provided in this constitution and then write this in Section 38. Would you have any feelings one way or the other about that?

Mr. Zervigon Dr. Weiss, I feel that the place to make an exception to a provision is in that provision itself, so that anyone reading the constitution knows that the only section applies to what. I think we must do it....

Mr. Henry You have exceeded your time, Mrs.

Zervigon.

Further Discussion

Mr. Dennis Mr. Chairman, fellow delegates, we are getting into a problem that the Judicial Committee wrestled with long and hard. We started off with the idea that we would try to make the court system and all of the related officials in the state as uniform as possible. But we very early, you will notice, adopted the position that we were not going to force a change overnight in any parish. We weren't going to make East Baton Rouge Parish give up a family court or Caddo Parish give up a juvenile court or any parish give up a city court. But what we were going to do, instead, was to establish a basic system and then allow the legislature the power to change and work toward uniformity, where there were differences. We started off trying to do this without saying the word Orleans, because there are some different institutions of government and many different courts in Orleans Parish. We didn't want to make them change overnight either. We found we just tied ourselves in knots in avoiding that little word "Orleans". So we backed up, finally after seven months of wrestling with the problem, you will notice in Section 35, we finally decided that the simplest, most honest and straight-forward thing to do would be to back up and create an Orleans Parish exception. However, this is not necessarily a permanent exception. You will notice in Section 35, it allows for changes in the Orleans courts and other offices by the legislature with a referendum vote in the parish. Now you may or may not like the referendum vote, but at least it will allow for change without amending the constitution. When we get to that section we can talk about whether there should be a referendum vote. But right now the problem is that that there are two sheriffs in Orleans Parish. Their duties are different from those in the rest of the state. One of them isn't even a law enforcement officer. It's my understanding, all he does is take care of the jail. So I'm going to ask you to go along with Mr. Casey's amendment and accept Orleans here, because we are really dealing with substance at this point. If it's possible when we get this article into the Style and Drafting Committee, if it's possible to say what we have done and not say Orleans as many times, I promise you as a member of that committee that we will work toward that end. But I think it would be much simpler at this point to go ahead and except Orleans from this provision. Then when we get to Section 35, if we can agree upon a reasonable way to allow Orleans Parish to continue their different institutions until changed by the legislature and/or by referendum or whatever way you decide. If we accomplish that goal perfectly enough in Section 35, then we can come back and take these exceptions out in other sections. But until we get there, let's at least give this assurance to Orleans Parish, that we are not overnight going to make them get rid of one of their sheriffs, take away law enforcement functions from their other departments and change everything overnight. So I ask you to put some faith in what the committee I admit the members of the committee have learned through seven months of wrestling with this problem and go along with Mr. Casey's amendment.

Vice Chairman Miller in the Chair

Further Discussion

Mr. J. Jackson Mrs. Acting Chairman, ladies and gentlemen of the convention, I rise in support of this amendment. I find myself really weighing the issues involved. As most of you recognize that when it came to the problem of New Orleans, I was one of the first who suggested about the uniformity throughout the state. As a person I admit to a large degree that there are and there is need for room for exception, as so ably pointed out by Mrs. Zervigon. I would suggest to you that this is a problem that we in New Orleans could, over a

period of time, attempt to resolve. This is a problem that we do not feel, at this point, of going to provide those proponents of wanting to merge or wanting to consolidate in those oppositionist who wants to not do it. I don't think it is going to provide out of segment of this convention, with the kinds of desired results that we want. For those reasons and by the reason pointed out by Mrs. Zervigon, Representative Casey and particularly Judge Dennis, I would ask that this convention will consider and give favorable adoption of this amendment.

Further Discussion

Mr. Tapper: Madame Chairman, fellow delegates, I rise in support of the amendment. I'm not going to be too lengthy, although this is a very, very serious matter that we have before us this morning, as most of the matters that we discuss here are. I've heard the word uniformity mentioned, the word equality and of course I agree with both. But ladies and gentlemen of this convention, to have uniformity merely for the sake of uniformity, and risk the loss of the entire document, to have uniformity merely for the sake of uniformity and change a system that has been successful for so many, many, many, many years, to have uniformity just to say that we are doing to the same thing in one parish as in another. I think we are kidding ourselves. I can't add too much to what Mrs. Zervigon said because we can take our special interest all over the state. And if we begin to do this, I will guarantee you one thing, this constitution will never be adopted by the people of this state. Now the choice is yours here. I think we are right at the turning point in our discussions and our deliberations. If you decide not to go with this amendment or not to do something that will continue the form of government, the type of operation that is in the City of New Orleans today, then ladies and gentlemen, you will have defeated the constitution. Thank you.

Questions

Mr. Anzalone: Mr. Tapper, all of this abolition of these useless jobs that we have been talking about for the past few months, is a civil sheriff, criminal sheriff and tax collector. Don't you think we ought to carry this reorganization down into the parish as well as the state?

Mr. Tapper: I don't know if I understand your question, Mr. Anzalone. Would you repeat it again?

Mr. Anzalone: Yes, sir. I'm talking about merger and consolidation. Don't you think we should try this on the parish level as well as the state?

Mr. Tapper: For the sake of merger, just as I said uniformity for the sake of uniformity, we shouldn't get into merger merely for the sake of merger. No, I don't believe you are correct. We should, if it will serve a useful purpose, and I believe the consolidation of state offices, the appointment of some state offices serves a useful purpose. But you are not serving a useful purpose if you do this to the type of government that you have in the City of New Orleans. We are not looking at a small parish here with just a few fifty, sixty, seventy thousand people. Mr. Anzalone, you know what we are talking about. I don't agree with you. I know your position, it's been very apparent throughout all of our deliberations on the committee on executive, you and I have differed and we will continue to differ.

Mr. Anzalone: Mr. Tapper, do you know that I urge the adoption of this amendment for the people of New Orleans?

Mr. Tapper: Thank you very much, sir.

[The speaker is not identified in the original document.]

Mr. Burns: Mr. Tapper, regardless of the individual delegates feeling about accepting the City of New Orleans, do you agree that at this particular time and under this particular article, that we have no alternative but to support this amendment?

Mr. Tapper: I would hope so, Mr. Burns. I think you are correct.

Mr. Burns: One more question. If we did not accept the City of New Orleans in this particular section, would it not throw the collection of taxes in the city until some other, in the future system be set up into a state of chaos?

Mr. Tapper: Complete turmoil, yes sir, Mr. Burns, thank you.

Further Discussion

Mrs. Warren: Madame Chairman and fellow delegates, it just appears that every time the name Orleans is mentioned it sounds like a dirty word. Orleans is not a dirty word. It might be a little bit different as someone stated. I couldn't put this any better than Mrs. Zervigon has put it. You are going to hear some other exceptions if things go like it has been going in our Natural Resources Committee. It has been suggested in our Natural Resources Committee that land assessed in the country would be assessed at the usage and then would be assessed different in the cities. So that means uniformity for uniformity's sake is not good. You have just a uniform, but if it doesn't fit, you're in a bad fix. So let's don't throw us into chaos.

[Previous question remains. Amendment adopted: 264-26. Motion to reconsider tabled.]

Personal Privilege

Mr. LeBlou: Madame Chairman and fellow delegates, I realize the problems that we are going to be faced with a situation that arose pertaining to the last amendment, not only for the parish of Orleans, but other parts of the state as well. I voted for it because I realize a lot of these problems. I think we should give more consideration to solving some of these problems in our committees, rather than by using the words except Orleans Parish or whoever it pertains to and for this particular reason. One of the big objections that I've heard to the present constitution is from people who dislike going to the polls and having to vote on amendments that pertain to a different part of the state. I don't know what this convention will finally decide on how the new constitution will be amended. If the convention decides that the amendment process will require a vote of the people statewide, when we provide these exceptions in the new constitution, we are going to be at the same problem that now exists in the old constitution. I just wanted to bring that to your attention. I wanted to question one of the speakers, the time ran out but I would ask you to maybe give this a little bit more thought. See if there is any possible way that various committees before they come up on the convention floor. Thank you.

Amendments

Mr. Foynter: These amendments are sent to Mr. Schmitt. They have been distributed, but there are some changes he's made.

Amendment No. 1. On page 18, between lines 1 and 4, insert the following: "This section shall not apply to any parish in which there shall be a provision in a city or parish home rule charter or plan of government to the contrary." Amendment No. 2. Strike out Amendment No. 11 proposed by Delegate Casey.

Explanation

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Mr. Schmitt This is just a minor technical amendment. It's like so many others, I guess. The main thing this amendment does, it allows a chance for versatility in the future. I realize that this might be stepping on the toes of many of the sheriffs across the State of Louisiana. But I feel, in the constitution, there should be room for flexibility in the future. I don't believe that we should freeze into the constitution something that might not be adequate ten years, twenty years, thirty or forty years from now. We have seen the parish of Orleans has come forward with a special exception to the parish of Orleans. What happens, some time in the future when another parish wants to come forward? Will it be necessary, at that time, that there be a constitutional amendment? If it is necessary, it should require two-thirds vote of both Houses plus a referendum of the people. I feel we should have the flexibility built into our constitution, so that we shall not need amendments in the future. I realize this touches upon many of the parishes of the State of Louisiana. But the goal is to allow the flexibility that they may need in the future. I don't see anything so sacrosanct about the sheriff being the person allowed to collect taxes in any particular parish in the State of Louisiana. What gives him such great qualifications that he has the ability to do this? I don't think this should be frozen into the constitution. I think that we should have the ability and capability to change these different forms of government, if the people want to change, but not having to go and get the permission of the rest of the State of Louisiana in order to do it. If the parish of West Baton Rouge or East Baton Rouge wishes to have their taxes collected in a different manner, I feel they should be the ones who have the right to decide this. I don't believe this should be an issue which must be decided by all the people of the State of Louisiana, because this doesn't relate to all the people of the State of Louisiana. This relates to those individual people. I feel this would grant the individual parishes the chance to modify and to change and to be responsive to the problems of the future.

Questions

Mrs. Brien Mr. Schmitt, I'm a little worried about that. Are you sure the home rule charter provides for this?

Mr. Schmitt Which home rule charter?

Mrs. Brien Well, you said in your amendment....

Mr. Schmitt Well, it's not necessary that they do provide for it. However, if they do want to provide for it, why should we prevent them from doing that in the constitution? If a parish up in North Louisiana wishes to have someone other than the sheriff collect the taxes, why shouldn't they be the ones to decide this? Why should we, right now, establish the method of collection of taxes for the next fifty or sixty or hundred years in the State of Louisiana, depending how long this constitution lasts.

Mr. Silverberg Delegate Schmitt, are you familiar with the length of time it took the committee that proposed the original section and proposal to arrive at it's conclusions?

Mr. Schmitt No, sir. I'm not familiar, but I presume it took a long time. I know we have been fighting Revenue, Finance and Taxation for a long time.

Mr. Silverberg Are you familiar with the fact that they worked on this proposal for seven months and they explored the type of proposal, this type of amendment to avoid the desantizing of the article?

Mr. Schmitt I know that that particular committee

had a lot of special interest groups on it, they had probably more. They did have at least one sheriff on there. Am I not correct?

Mr. Denney Mr. Schmitt, suppose there were a parish in which there were two municipalities, each of which had a home rule charter. One of those home rule charters provided for collection of taxes, for example, by the municipality. As I read your proposed amendment, this section shall not apply to any parish in which there may be a provision in a home rule charter to the contrary. Therefore, if either of these municipalities adopted a provision which called for the collection of taxes, then this section of the constitution would not apply to that parish. Is that correct?

Mr. Schmitt I'm willing to strike out city or parish and just may be a provision in a home rule charter or plan of government to the contrary.

Mr. Denney I beg your pardon. I didn't quite follow that.

Mr. Schmitt I said that I think it would be adequate to say that there may be a provision in a home rule charter or plan of government to the contrary.

Mr. Denney Now, do you believe that a home rule charter should govern parish governments, municipal home rule charter should govern the parish government?

Mr. Schmitt Well, presently it's my understanding that there are six or seven methods presently allowed for individual parish to set-up its own home rule charter if it wishes to do so. This is presently regulated through the statutes.

Further Discussion

Mr. De Blieux Madame Vice President and ladies and gentlemen of the convention, I support this amendment, because I believe that it does not do harm to the present provisions which you have, it will take care of the Orleans situation. It will take care of several of the other situations and particularly allow the flexibility in the future, if there should be some other area that wants to change their system. They will have to be changed by a vote of the people. It cannot be changed except for that. If you don't have a provision like this, it's going to require an amendment of the constitution. We will be right back in the local categories where we were before, where you had to have a vote of the people of the whole state in order for a local subdivision to make this change. I certainly think if you can go ahead and do it now, we will prevent all of these local amendments, about the future, not just think about the present, because I'm hoping that we will have a constitution that will last a whole lot longer than the one we are presently living under at this particular time. It will aid the New Orleans situation, it will take care of them. It will take care of any future consolations that the local government might want in years and years to come. I've heard some talk about our own local government here in East Baton Rouge Parish. They're talking about that now possibly we will go to a parishwide system at some time in the future. And it might be there would be some suggested changes that could be made if this amendment is adopted. Otherwise, we might have to have a whole new amendment to the constitution, just for the parish of East Baton Rouge. I certainly ask you to vote for this amendment. So it will eliminate those constitutional amendments in the future.

Questions

Mr. Dennis Senator, how can you say that this will take care of New Orleans? It's my understanding that this will delete the amendment that Mr.

Case) just had adopted. It's also my understanding that New Orleans has no home rule charter, that their government provisions are in the constitution.

Mr. DeBlieux. Mr. Dennis, as I understand the situation in New Orleans, operating under a constitutional grant of authority or powers, it may have a local plan of government. Since it pertains to a local plan of government, I don't think it will affect them at all. That is, what I mean is, it will allow them to do what they are presently doing down there now and that is the whole purpose of the amendment. If you have some information to the contrary, then I'll retract as how it's going to do any violence to the present New Orleans situation.

Mr. Dennis. Well, my problem is, I don't know exactly what a home rule charter is going to be under the new constitution. Don't you think this term leaves something to be desired in how it's defined in present law as well as how it's going to be defined in the new constitution? Are you sure that it would include the Orleans....

Mr. DeBlieux. In my opinion, it does include the New Orleans area. It will permit them to continue their government, just as they have it now. Now if there is somebody that knows a plan of government in New Orleans and can tell me something to the contrary, I'd like to hear it. I'm just wondering and surprised why that this particular provision wasn't included at the time this section was drafted, because I certainly see...you've probably recognized that they had a different situation in Orleans Parish than the rest of the state.

Mr. Denney. Senator DeBlieux, are you aware that the home rule charter for the city of New Orleans provides only that the department of finance shall collect taxes, etc., receivable by the city or any of its offices? And for it to collect anything that may be receivable by the State or any public office, department or board subject to the provisions of this charter, it requires authorization by law. So that the city of New Orleans has no right, at the present time, to collect these other taxes unless this provision remains in the constitution.

Mr. DeBlieux. But in other words, Mr. Denney, you think that this particular provision would not allow Orleans Parish to continue its existence as it is now? That is what I want to find out.

Mr. Denney. If you are asking me a question, I will be glad to try to give you the answer. The amendment that you put in is talking purely about sheriffs. That is all that I am talking about. Obviously, a home rule provision will permit the city of New Orleans to remain under its home rule charter, but it will not remove from the constitution the provision that the sheriff shall be the tax collector.

Mr. DeBlieux. Well, we don't want to remove that provision that the sheriff...uh...has a plan of government subsequently adopted would change that system.

Mr. Denney. Well, I don't understand that it reads that way, Senator. The way I understand it reads is that any municipality which adopts a home rule charter will have out the collection of parish taxes by the sheriff and I don't believe that is what you intend, but that is what it says.

Mr. DeBlieux. No, it says unless this provision in the home rule charter to the contrary. Otherwise, they would still be the tax collector. That is what we want their type.

Mr. Velazquez. Senator, don't you think that it would be best to withdraw this particular amendment at this time and rewrite it to take care of some of these many significant objections that have been arisen. Don't you think that would improve the

amendment your amendment passed. If you were to request that Mr. ... our good friend, ... would withdraw this amendment at this time, by rewriting to take care of these many problems that seem to have arisen, upon (possibly) perhaps.

Mr. DeBlieux. Well, you might be right, Mr. Velazquez. Maybe it might be better that we just pass over this particular section and see if that can be done.

Mr. Velazquez. Perhaps it might be better, ... would you not think it would be better to request a two minute recess so that Mr. Schmitt could ... over this thing and knock out some of these obvious problems that otherwise would require us to go into an extended debate on this topic.

Mr. DeBlieux. I would like to get a good a provision as we possibly can come up with for this particular section and take care of the situation in New Orleans and so forth. I am hoping that we can. As far as I am concerned, that, of course, it is Mr. Schmitt's amendment. If he wants to withdraw it at this particular time and if the Madam Chairman will allow a two or three minute recess to put it in the proper form, it would be all right with me.

Mr. Velazquez. Thank you.

Mr. DeBlieux. Madam Chairman, if there is no objection, I would just like to ask for about a three minute recess for that purpose.

[Amendments withdrawn.]

Recess

Chairman Henry in the Chair

[Quorum Call: see House Record Proceedings, August 24, 1973.]

Amendment as Reubmitted

Mr. Poynter. On page 12, between lines 1 and 4, insert the following: This section shall not apply to any parish in which there may be provision in a parish home rule charter or plan of government to the contrary.

Further Discussion

Mr. Dennis. Mr. Chairman, I believe that it may have, but if this... I don't believe at any point in the debate it has been brought out that we are interfering here with more than just tax collection. Our provision is based on three main ideas. If the sheriff is going to be the law enforcement officer of the parish, he shall execute the orders of the court and enforce them and he shall collect ad valorem taxes. Now if I read this provision, it would open up a situation where a sheriff could come to the legislature and get a home rule charter saying that he doesn't have to execute the orders of the court or that he has not the law enforcement officer any more. I think that this is doing violence to a good proposal that we arrived at after much study and listening to the sheriff and other people involved in law enforcement and in court work. I think that if you put this exception in, you are doing violence to what I think should be a statewide policy. That is, that the sheriff shall execute the orders of the state courts, and I strenuously object to doing violence to that policy because I think it is essential to the operation of the court system.

[Proceedings continued.]

Adjourn

Mr. Schmitt. This amendment does not eliminate the prior amendment which relates to the parish of Orleans. If that is the desire that you wish

nate the prior one, you may do so, so it doesn't really adversely affect, because of Orleans. But what it does do is: it allows other parishes in the State of Louisiana to have the same chance, the same right that the parish of Orleans presently does. Furthermore, I don't think that it is a true statement that the sheriff can come to the legislature and get something passed in the form of a home rule charter, because a home rule charter must be approved by the people of the individual parish involved. I don't think that these were exactly correct statements; I believe that the people should be the ones with the right to decide in that the individual parishes should have the right to decide whether or not they desire to be under the present system or some forty or fifty years from now they should decide to be under a different system. I don't think that we should forever lock them in so that they don't have this right to change.

[Amendment rejected: 17-96. Motion to reconsider tabled. Previous Question ordered on the Section. Section passed: 120-1. Motion to reconsider tabled.]

Personal Privilege

Mr. Champagne Mr. Chairman, ladies and gentlemen, delegates all especially not excepted Orleans. I just want to make abundantly clear that this happened to be the first case brought to the convention's eyes in which a parish was specifically mentioned by name. As you noted, I voted for this section, and if you are willing to join me in telling my people that 132 delegates with all of their ability and intelligence and efforts was unable to present to the people of this great State of Louisiana a constitution which recognized differences among people and parishes but was unable to prevent us from listing those parishes by name whether they be Orleans, St. Landry, Lafayette or what, then I join you. I admit that with all that ability we were unable to do so, and I hope, I earnestly solicit your efforts in the continuation of this constitution, to please come up and devise means whereby we can recognize differences without mentioning of names. I thank you.

Reading of the Section

[Motion to waive reading of Section B adopted without objection.]

Explanation

Mr. Dennis Mr. Chairman, and fellow delegates, this is the first section pertaining to the clerks of court, Section 31.

Under the present law the approval of the district judges is required to appoint a clerk and appoint his deputies. The present section is re-phrased to require the approval of the judges only with respect to minute clerks, these are the clerks who sit in the courtroom. Subsection B requiring uniform office hours for clerks of district courts is a new provision. Otherwise, the section is substantially the same as presently contained in the 1921 Constitution. If there are no questions, I ask for its adoption. I do have...what I hope will be a noncontroversial amendment which I will offer after any others, Mr. Chairman.

Questions

Mr. Toomy Mr. Dennis, could you explain the reasoning for having a Subsection B, whereas on lines 10 and 11 you say "the clerk shall have such other duties and powers as may be prescribed by law"; that wouldn't cover the problem in Subsection B? Is it still necessary to enumerate here that the uniform office hours?

Mr. Dennis Well, I agree that the legislature could do that; however, it was the view of the committee that the legislature should be required

to establish statewide uniform office hours.

Mr. Singletary Judge Dennis, would you give an explanation for requiring the approval of the judges for the hiring of deputies? If you did, I missed it.

Mr. Dennis The...this takes away from the judges the right to approve all deputies...it does continue the right to approve minute clerks. The reason for this is that these people actually work in the courtroom and help the judge run the court. If they are going to do that, it was the viewpoint of the committee that the judge should have something to say about who they are.

Mr. Singletary Well, wouldn't you say that this gives a minute clerk two bosses?

Mr. Dennis Well, Mr. Singletary, maybe I am not making myself clear. Section 67 of the 1921 Constitution said that, "the clerks of district courts may appoint with the approval of the district judges, deputies with such powers as shall be prescribed by law". That gave the judges the right to approve all deputies. Now we are here saying that the judge has the approval only of the deputy who works in the courtroom. Yes, I guess it does give him two bosses, but the judge has got to have some authority over that person in the courtroom; otherwise he can't run his court.

Amendments

Mr. Poynter Amendment No. 1 [by Mr. Assess]. On page 12, line 6, immediately after "31" and before "in", strike out "A".
Amendment No. 2. On page 12, strike out lines 16 and 17.

Explanation

Mr. Assess Mr. Chairman, delegates, I have no objection to a uniform law for clerks and I understand the reason why. I am not arguing that point. I simply feel that it is in the best interest of a constitution. I would prefer leaving it to the legislature of Louisiana. I have heard many delegates come to the microphone and say: it is statutory; let's leave it to the legislature; let's trust them. Well, if you are going to trust them, let's continue to trust them. I simply feel that it is statutory. I have no objections to uniform laws. I have not seen this done to any other office. So, why pick on the other offices? I urge that you adopt the amendment and reject what is obviously statutory from the constitution.

Further Discussion

Mr. DeBlieux Mr. Chairman, ladies and gentlemen, I rise in opposition to this amendment. I am going to make my remarks very short on it because I see Mr. Ambrose who knows a whole lot more about this than I do, but I can tell you at the present time, we have got all types of closing hours throughout the state for clerks of court. So as a general rule you don't know whether the clerk's office is going to be open when you get there or it is not going to be open. If you have a case it might prescribe on a Saturday, you don't know whether you have to go there and file a suit on a Saturday or it can be filed on a Monday, because you don't know whether or not the clerk of court's office is open on a Saturday or not. This amendment I think is good because we ought to have one system for the clerks throughout the state so everybody will know when they have to file their suits and when the clerk of court is going to be there. I ask you to vote against this amendment.

Questions

Mr. Stinson Mr. DeBlieux, to be a little bit more explicit, and if you don't file it on the date that it is supposed to be, then you lose your right and the people suffer, don't they?

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Mr. DeBlieux That is right. Your client suffers as the result of that because if the clerk of the court's office is open on a Saturday and you don't get there, you have lost your right forever to that case.

Mr. Stinson Not only are they closed now, but they also would authorize the legislature, wouldn't it, to say what holidays they would have, in other words, whether they would be closed or not.

Mr. DeBlieux That is right.

Mr. Arnette How uniform are the legislature's hearings on public matters? On matters before the legislature?

Mr. DeBlieux The legislature always allows the party to come before the committees to state their views on whatever legislation comes up. That is the purpose of the committee hearings but like they are here in the constitutional convention.

Mr. Stovall Senator DeBlieux, don't you realize that the question is not whether or not you should have uniform hours. The question is whether or not this should be in the constitution. Now can you ever feel that this should be in the constitution?

Mr. DeBlieux Well, in this way, it is just the same as the constitution says you shall have judges, that you shall have sheriffs, because this will mandate the legislature to make those particular provisions. I think that this is one of the things that the judiciary committee came up with that is worthwhile, in my short sentence, because it will mandate the legislature to have these uniform hours.

Mr. Stinson Mr. DeBlieux, when I was speaking before, don't you think that this amendment possibly should say hours and days because the days are very important too. Especially they have changed so many holidays. Then try to put everything on Monday. I believe the legislature said last time, well, November 11 is still... November 11 is not on a Monday, etc. Is that possible...

Mr. DeBlieux I think the wording of the particular proposal as it is now will take care of that situation, Mr. Stinson.

[Continued on page 37]

Further Discussion

Mr. A. Landry Mr. Chairman, members of the C.C. Association, I happen to be the only clerk of court in this convention. When this proposal was placed on the judiciary committee, I contacted the qualified clerks in the area and asked them to comment on the article as it was proposed. There does seem no objection to placing in the constitution the fact that we should have uniform office hours. I think that this is a step forward. I don't know if you know this or not, but we have different office hours throughout the state. We would love to have uniformity as far as hours are concerned, so that when you have a trial to be filed, that your attorney would know at what time that office will be closed, so that prescription will not set in. This is important to the litigants of this state. It is important to the people who have a trial, especially in an accident case, when you wait after the date of the accident for a lawyer to file that suit or make prescription get to the hospital, they leave his office thinking he will not get there before these clerks are closed, and when he finds that in his parish his office closes at 4:00 when he gets to the neighboring parish, that office has already closed at 4:00 in the afternoon. We would like to have uniformity so that the committee can give us the best of it if you don't, it is not going to create any burden on

the clerk's office. I urge you that this article, as proposed, has the majority of the qualified clerks Association. I like in association to this amendment and to all other amendments that say as proposed. If you have any questions, I'll be glad to try to answer them for you.

Conclusion

Mr. Landry Mr. Landry, do you believe the Clerks Association would have any objection to providing for uniform office hours for clerks by statute?

Mr. A. Landry We would have no objection except that I would like to explain to you the problem that we have had in the association. You've had some clerks who close in Saturdays. Some do not close on Saturday morning. Some remain open a half a day. It is pretty hard for that clerk to be in a parish with any amendment unless somebody mandates him to do it. He will have an excuse to say, "well, the constitution provided this and I have to go along with the legislature whether I like it or not." At least you would have uniformity throughout the state as far as office hours are concerned. I think it is very important. For instance, in my parish we open up at 8:30 in the morning and we close at 4:00. My neighboring parish opens at 8:00 in the morning, closes at 12:00, opens at 1:00, and close at 5:00. I don't think it's right. I think we should have uniformity throughout the state because if it deals with prescription, if that office is not open, your attorney may not be able to file that suit and interrupt prescription.

Mr. Stovall Mr. Landry, the point is this: Don't you think that if the Clerks Association request the legislature to pass such uniform laws that the legislature would respond and do it very happily?

Mr. A. Landry That is correct, sir. If six or three clerks could get along and say we would agree on one hour, it would be fine.

Mr. Fontenot Mr. Landry, these people who advocate putting it in the statutes, couldn't you run into a problem, perhaps, with the legislature trying to enact some kind of uniformity as far as the clerk of court's office hours are concerned? Wouldn't you run into a problem, perhaps, with some clerks coming up here and trying to get exceptions from the general law concerning the state? Wouldn't you run into that problem unless it's in the constitution?

Mr. A. Landry You'd have the same problem that exists now, Mr. Fontenot.

Mr. Fontenot You'd have clerks coming up here and saying, well, give me an exception.

Further Discussion

Mr. Tupper Mr. Chairman and fellow delegates, I hate to rise in association to Mr. Landry but he said the Clerks Association is for this, I don't know that my clerk is in St. Bernard, however, this cannot a question of just one clerk or another, but a question the majority of some of the smaller parishes, the smaller parishes, to make sure that employees to stay open, especially, those who are in the morning until 11:00 in the afternoon and then a half a day in Saturdays. The Fellowship, the Institute, don't think they should try to have personnel on duty a long as Mr. Landry's office on Monday. I have to think what is the real law that the legislature can do. He says the legislature is going to be responsible for that. That would be the problem, that the majority of some parishes cannot afford to work a little earlier. As far as membership in connection, and Mr. Landry knows that, and the fact with a clerk in a deputy clerk or some 100,000 member of the state bar of Louisiana, the state bar will try to be in his office in the morning, the state bar will and I believe they will be in the constitution.

It's legislative and it doesn't belong there.

Questions

Mr. Willis Mr. Tapper, I enjoy a different opinion of the law than you do... that you can file up until midnight on the day of prescription. I own the view that according to law in your parish, St. Bernard, that if you go beyond the hour of 4:00 to your clerk's office, and that is the last day upon which to file that suit, you done been prescribed.

Mr. Tapper You are exactly wrong, Mr. Willis. I hate to tell you.

Mr. Willis Well, I'll have to learn some new laws. This is my last question.

Mr. Tapper Please, don't quote any Shakespeare because I'm not too familiar with it anymore.

Mr. Willis Well, Shakespeare didn't know any clerks. He called them scribes. Isn't it a fact that the clerk's office has a monopoly on all the business of recordings mortgages, conveyances and suits, filing suits... a monopoly in the parish?

Mr. Tapper It depends on what you call a monopoly. I wouldn't call....

Mr. Willis That is the sole depository to record authentic acts affecting property or persons.

Mr. Tapper If that's what they call a monopoly, you're correct. Yes, that is the sole place. But, let me say this, Mr. Willis, I've never had any problem with any clerk throughout the state. I don't know whether you have.

Mr. Willis Well, I'm not talking about problems. My only problem is that the legislature does not deal uniformly with the clerks or the people of Louisiana. Some offices like yours in St. Bernard open at 9:00 and close at 4:00, and mine opens at 8:00 and closes at 5:00. That's service to the people.

Mr. Tapper Probably mine does a lot more business than yours.

Mr. Willis That, sir, is an erroneous statement.

[Previous Question Orders, Amendments rejected: 28-91. Motion to reconsider tabled.]

Amendments

Mr. Doyner Amendment No. 1 [by Mr. Abraham and Mr. Schmitt]. Page 12, line 10, after the word "acts" and before the words "and shall" insert the following: ", may appoint deputies, may appoint, with the approval of the district judges, minute clerks".

Amendment No. 2. Page 12, line 11 after the period, delete the remainder of the line and delete lines 12 through 15, both inclusive, in their entirety.

Explanation

Mr. Abraham This amendment simply simplifies the language in this section. If you will notice on line 10, it says, "and shall have such other duties and powers as prescribed by law". Line 12 says, "such duties and powers as may be prescribed by law". Line 14 says, "such powers and duties as may be prescribed by law". All I have done is taken the appointment of the deputies and the appointment of the minute clerks and inserted them up there into the previous sentence, so that we only have to say, "powers and duties as prescribed by law" one time.

Questions

Mr. Stinson Mr. Abraham, yours is one... yours and Mr. Schmitt's here?

Mr. Abraham Right.

Mr. Stinson But you just explained the first part. You sort of slipped in that second amendment, didn't you?

Mr. Abraham Well, the second amendment deletes lines 12 through 15. What I've done is taken the appointment of the deputies and the appointment of the minute clerks and inserted them simply as another duty on line 10. He can be the parish recorder of conveyances, mortgages, etc., and he can appoint deputies and he appoints minute clerks as prescribed by law. You see?

Mr. Stinson Oh, your last one doesn't delete the request of the legislature to make the hours?

Mr. Abraham No, it doesn't delete Paragraph B.

Mr. Denney Mack, if you make this change, don't you change the sense of that sentence which you deleted? In other words deputies have powers as may be prescribed by law, minute clerks may have duties and powers as prescribed by law. When you take that out and put it in the first part, all you say is the clerks shall have powers and duties as may be prescribed by law, and you omit deputies and minute clerks from that.

Mr. Abraham But the legislature in providing for the powers and duties of the deputy could also provide....

Mr. Denney No, but you didn't give it the power to provide those duties. That's what I'm asking you. Haven't you really changed the meaning of this by making this change?

Mr. Abraham I don't think so, Moise, because the law can still prescribe what those powers and duties of those various people are going to be.

Further Discussion

Mr. A. Landry Ladies and gentlemen of the convention, we debated this thing for seven months in committee, and if there is a question for Style and Drafting, they will take care of it. We want the Judges to take care of our minute clerks. We want them to go along with our appointments on those particular gentlemen because we feel that they have to work with the Judges, and we certainly don't want a deputy who is not going to cooperate one hundred percent with his district judge. He will be under this supervision while he is in court. I ask you to defeat this amendment. If there are any questions of Style and Drafting, I am sure that that committee is capable of doing it. I ask you to vote no on the amendment.

Questions

Mr. Abraham Mr. Landry, don't you realize that this does not say that these minute clerks will be appointed without the approval of district judges. It says it may appoint deputies and may appoint, with the approval of the district judges, minutes clerks. It is exactly the same language that you have in the section.

Mr. A. Landry But you are deleting the power of the minute clerks and also the deputy clerks.

[Amendment withdrawn.]

Further Discussion

Mr. Dennis Mr. Chairman, fellow delegates, although we worked long and hard for several months on this section, the delegation from Lafourche Parish has called to my attention that we completely overlooked a peculiar situation in their parish.

And, as I have talked to other members of the committee, and we unanimously, with one possible exception, are presenting this amendment to you to cure this peculiar situation. I ask the clerk to read the amendment.

Amendment

Mr. Poynter. Amendment No. 12, Mr. Chairman, is as follows: [line 17 and 18, delete the following. Paragraph 12, notwithstanding any other provision of this constitution to the contrary, the clerk of court for Lafourche Parish shall be appointed by the delegates of the Constitutional Convention of 1973 from Lafourche Parish, provided, however, an incumbent shall not be eligible for reappointment. But, he may retire at the same rate as a member of the Board of Commissioners of the Bayou Lafourche Fresh Water District. The clerk of court of said parish shall be the recorder of mortgages and mortgages and shall have no other duties.

If you are interested, your real friends that offered this up are Messrs. Bollinger, Lanier, and Silverberg, if you want to tuck that back.

Mr. Henry. Are there any further amendment on the . . . We are going to open the machine for co-authors.

Mr. A. Landry. The only thing I can say is that Joe Silverberg and Walter Lanier, Jr. will not eat too well next week if this amendment passes. I can tell you that.

Mr. Dennis. Mr. Chairman, in sympathy to Mr. Lanier and Mr. Silverberg, I withdraw the amendment.

[The following amendment is offered by Mr. Henry. It is not printed in the official record.]

Reading of the Section

Mr. Poynter. Section 32. Coroner; Election; Term; Qualifications; Duties. Section 32. In each parish, a coroner shall be elected for a term of four years with such qualifications and duties as may be prescribed by law.

Explanation

Mr. Tenny. Mr. Chairman, fellow delegates, this is the section pertaining to the coroner. With certain changes, this is the same provision that is in the present constitution. The changes are as follows: first of all, we have deleted the provision requiring the coroner to be a physician if one is available. We have deleted the provision that he be ex-officio parish physician, and the provision that he shall fulfill the duties of the sheriff, besides filling of a vacancy. The reason we have made these changes is, in some of our parishes, we have been unable to get physicians to perform the functions of coroners and have had to rely upon other persons. For example, in my parish, our coroner is a pay consultant. We could not get a M.D. to take the job.

Amendment

Mr. Poynter. Amendment No. 13, Mr. Chairman, is as follows: [line 21, place a period after the word year; and delete the remainder of line 21, and delete line 22 in its entirety, and insert in lieu hereof the following:

The shall be a licensed physician and qualify with other qualifications and positions which duties are prescribed by law. The legislature may modify the qualifications. However, if no licensed physician is available for the office . . .

Explanation

Mr. Henry. Fellow delegates, this is the amendment which we are offering this evening, in the case

of an applicant who is a physician, however, as I have referred to the office of a coroner, I think you are familiar with the importance and the strength that a coroner holds. As a matter of fact, the coroner is the only one in the parish who can put the sheriff to rest. As you know, any governor was committed through a coroner. The former committed governor Long at one time. If you recall, this man is highly respected, and he must have a great deal of technical ability, and he will not spend your time unnecessarily, except to mention a few examples of why a physician is needed. For example, we have now in medicine forensic pathology which does nothing but study cases which are involved in criminal activities. For example, a man who is not trained in medicine would be unable to know ballistics, just remove a bullet from a part of a body that enters a leg and ends up in the back. Or if a bullet is not in the back and then the bullet is found on his side, there are significant ballistics points, points which should be taken care of by a physician and one who is well-trained to understand the matter. There are other instances of aggravated assault or murder which require forensic examinations, technical medical examinations, which neither than a physician is neither qualified for nor should do. The inquest of the coroner himself, the coroner's inquest, is highly significant. I was amazed in a civil . . . in a run that we had for civil defense when we had a practice doctor and supposedly 100 people were killed in a certain area. When I asked, is a physician in charge of this civil defense practice exercise to have these bodies removed and brought to the morgue, the police would not move these bodies theoretically. And the reason is that the coroner must see the removal of a body. This is highly significant as far as the point of entry or exit of a bullet. In other words, many technical aspects to assure proper facts being obtained in any judicial proceeding in the hands of a coroner and a coroner's inquest is highly significant that they be a physician. The present constitution calls for it. The only objections are in the area where there is no coroner, and I understand there are three parishes in the state, and after three months of study and approximately a week and a half on this particular amendment, I think I have finally come up with the answer and have several delegates who approve of it. And your copy indicates those which have gone along, co-sponsoring this, and that is that those areas where there is no licensed physician available, then the legislature will provide for this function in that given parish. In all your adoption, I think it is a simple amendment to maintain a very, very important factor in qualification of coroners. We have qualified attorneys, or rather judges, who have had to be five years in the practice of law, and there is certainly very important reason to have your coroner a licensed physician, if you want justice practiced.

Questions

Mr. Roemer. I have no question available with the intent, but the second sentence says the legislature may provide the qualifications. However, if no licensed physician is available for the office . . .

Mr. Henry. Right.

Mr. Roemer. If two candidates exist for the office, and one is a doctor, then it would be wrong would be no licensed physician available for the office. What do we do then?

Mr. Henry. I did not understand that. Would you repeat that last part?

Mr. Roemer. If two non-physicians exist for the office, and one is a doctor, then we must do it myself physician available for the office. (Laughter)

Mr. Henry. That is correct. That is what I mean.

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legislature is to provide for. There is no licensed physician available and, therefore, the legislature prescribes that in that given parish, he may be other than a licensed physician. That is what the present constitution calls for.

Mr. Roemer But, what I am saying is, would you agree with the idea that your amendment does nothing if it allows non-physicians to run, only non-physicians run, and non-physicians wins. Then, what have we done?

Mr. Weiss Not at all, no, in those parishes where there are licensed physicians and they are available for office, they will be qualified for coroner. No one else will be. In those parishes where there are no licensed physicians available, then there are people who may run for office. And the legislature will provide for their qualifications.

Mr. Roemer But, what if no physician wants to run for the office? Then what have you got?

Mr. Weiss Then there is no physician available in that parish, and therefore the legislature will provide for the qualifications of that individual. I understand in some parishes, or in one, there is a sociologist. I do not think a sociologist should examine for a rape case. However, that sociologist, I believe, calls in a competent physician to help him, although he himself is the coroner.

Mr. Roemer But, my point, and I will end it here, Doctor, you understand the problem is, if there is only one physician in an area, he may or may not want to run for the office, he is going to get it by default, if he happens to want it.

Mr. Weiss No, no.

Mr. Roemer Well, who else can get it? If he wants to run for the office, and he is not elected by the people, yet he's the only physician available; then he gets it, and the people have no right to vote, in effect, the vote didn't mean anything.

Mr. Weiss He may refuse the office. If he has refused the office, he has not accepted.

Mr. Hayes Dr. Weiss, do we still have the coroner's inquest and the coroner's jury that you mentioned, I believe? Do we still have that?

Mr. Weiss A coroner's inquest, but I don't think they have a coroner's jury. No, they have a coroner's inquest.

Mr. Hayes The coroner can call in experts at his request and at state expense if he has to, right? ...if he is not a doctor, or he needs help or additional assistance.

Mr. Weiss It is my understanding, yes, he has that authority.

Mr. Pugh Doctor, under your amendment, you still contemplate that there must be an election, is that not correct?

Mr. Weiss Absolutely, they must be elected. They are parochial officers in a parish, and they must be elected for four years.

Mr. Pugh Even the legislature could not provide for an appointment?

Mr. Weiss No, it provides only for qualifications.

Mr. Pugh That is the way I read it.

Mr. Weiss Absolutely.

Mr. Brown Doctor, what concerns me is the fact that you might have the situation where no one qualifies. The legislature's role strictly deals

with qualifications of the man to get the job. It deals nothing with the legislature...the way I read it, it prohibits the legislature from setting up mechanics to pick a man if no one qualifies.

Mr. Weiss Now, what do they do if a judge does not qualify, may I ask you, Mr. Brown, or Delegate Brown?

Mr. Brown If no judge qualifies?

Mr. Weiss If no judge qualifies.

Mr. Brown For the job?

Mr. Weiss Right.

Mr. Brown That is a good question.

Mr. Weiss Well, then don't ask me that question, please.

Mr. Brown It is not a bad question, because in my own parish nobody qualified.

Mr. Weiss It is a bad question, because it won't happen, I assure you.

Mr. Brown Well, no one qualified in my parish in the last election, Doctor, so you are wrong; it does happen. What I'm saying to you is the way your amendment is drafted, there is no provision for the legislature to appoint someone or let someone else fill the office.

Mr. Weiss No, it does require that a coroner be elected from each parish.

Mr. Brown What if no one qualifies?

Mr. Weiss Well, I don't know. If judges don't qualify for office, what are we going to do?

Mr. Brown Let's talk about coroners now.

Mr. Weiss Well, let's talk about judges because we have the same situation here. We've only required the judges be attorneys for five years. I simply state that the coroner should be a licensed physician. I don't think your argument is valid, if you can't apply it to judges.

Mr. Brown I think we can.

[Probus Question ordered.]

Closing

Mr. Weiss Simply to answer the question, the hypothetical question, which I think is a poor one, the coroner who is presently in office will be maintained. So, I don't think there is any problem here. The laws we write are never perfect. There is always the exception and this is minutia. We're talking about law-enforcement in the city of New Orleans, in the city of Lake Charles, Monroe. We're talking about the state as a whole, which represents sixty-four parishes of which sixty-one have a coroner today who is a licensed physician. I think we should vote this amendment favorably, and I ask you to vote green, please.

Questions

Mr. Gravel Because I'm a coauthor I was going to ask you in view of the arguments that have been made which I think are valid, would you be willing to withdraw the amendment at this time to see if we can't prepare something that would meet a couple of the valid objections?

Mr. Weiss As I said, thank you, Delegate Gravel.

Mr. Henry Why don't we just go ahead and kill the amendment and pass the petition and go to lunch

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Mr. Weiss No, I don't think it is wise to yield at this time, because the issues are three things, we have an elected coroner which is in this, that this coroner be a licensed physician, that, where available, he always be a licensed physician, where not available, some provision is made and the legislature makes that provision. I think this is clear in this amendment, and I hope that you will vote it favorably. Anything else is simply, after a considerable period of study, I think, going to be difficult to satisfy everyone

Personal Privilege

Mr. Gravel Personal privilege, Mr. Chairman, just a moment. I'd like to withdraw as an author of this amendment.

Questions

Mr. Weiss Mr. Gravel, you care to withdraw as cosponsor?

Mr. Gravel Yes, I do, because I think we need to straighten it out.

Mr. Weiss I think it is as well as can be done.

Mr. Jack This thing has been talked over so much it's dead. The clock's running. I'm reading to you from the qualification... on the constitution, and then I'm going to ask you a question. If the present law says the coroner of each parish shall be a doctor of medicine, regularly licensed to practice, and shall be ex-officio parish physician, now listen closely, provided this article shall not apply to any parish in which there is no regularly licensed physician who will accept the office. Why don't you withdraw your amendment, put it in line with that, move that we go to lunch, and when we get back, take your amendment up? I think it's going to be a dead duck unless you do.

Mr. Weiss I accept your suggestion and move that we move to lunch after answering Delegate Rayburn.

Personal Privilege

Mr. Payburn Mr. Chairman, I just want to suggest that we not allow Delegate Gravel to remove his name and suggest that in the future he get Mr. Roy to read those things before he puts his name on them.

Mr. Henry Senator Rayburn, your point is well taken, and this is about the third time a lot of a sudden, we've come up here and wasted fifteen or twenty or thirty minutes on this sort of confusion. Then people either withdraw the amendments because they are haphazardly drawn, and they're ill-conceived and hurriedly done. The previous question has been ordered. Therefore, when the machine is opened at many of you as are in favor of the adoption of the amendment...

Mr. Weiss Mr. Chairman, a point of personal privilege. I am compelled to answer to your charges.

Mr. Henry We are on the previous question.

[AMENDMENT REPEALED BY SENATOR WEISS AT SENATOR HENRY'S REQUEST.]

Personal Privilege

Mr. Weiss Before the motion for recess for lunch, I just want to answer a very significant point that our chairman has brought to our attention. Believe me, I have worked on this darn amendment for two weeks and at least four hours, and I just happen to involve Mr. Gravel or anyone else in my error. He was simply trying to help me, and I would have gone to Mr. Ray and gotten the table straight, according to those delegates. Mr. Chairman.

Mr. Henry Oh, really, with the kind of help Mr.

Gravel gave you on this, you didn't need an amulet.

Recess

[RECESS TAKEN AT 12:00 P.M.]

Personal Privilege

Mr. Gravel Mr. Chairman, ladies and gentlemen of the convention, I would appreciate it very much if you will give me your kind attention on this issue of personal privilege that I would like to discuss briefly with you. Earl Long taught me a long time ago not to argue with the man who's got the microphone. I guess I should have learned my lesson. I want to admit that not only today but on other occasions, I have made some mistakes, and I have tried to correct them. I used to recite a little nursery rhyme to my children that went something like this: "There was a man from our town and he was wondrous wise. He jumped into the bramble bush, and he scratched out both his eyes, and when he found his eyes were out, with all his might and main he jumped back in the bramble bush and scratched them in again." Now perhaps, I'm in that position very often. I wish Senator Rayburn was here to hear me, but I understand that probably the third seed from the second olive had a little trouble with his dentures. He might not have been able to get back after lunch as quickly as most of us can. I've... I know I've made some mistakes. A lot of people would say I made a mistake when I supported Speaker Henry, in the background, for chairman. I don't think I did. A lot of people said I made a mistake when I just practically twisted poor old Governor Edwards' arm to help Sixty stay on as chairman of the Budget Committee. I don't think I made such a mistake. I've had a real problem though, trying to work with Chris, and the suggestion that has been made that he does my writing for me would ordinarily be okay, except that Chris told me a while ago that he's spending all of his time writing briefs on applications for rehearing in the court of appeal. I've solved the problem of making the mistakes, and I want to thank the chairman, my good friend, and Sixty Rayburn. They won't happen again. Mr. Henry is going to lend me his ghost writer, Max Killen, and Sixty Rayburn is going to lend me one of his retired judges. So, I think from now on we will be able to avert the errors that I got you all involved in this morning by trying to get off an amendment that I thought was wrong. I really am being facetious. I didn't get enough laughs for me to realize whether you were taking it that way, I...

Mr. Henry I don't think they understood it. That's been the problem with this convention up to this point, you understand.

Mr. Gravel Seriously, though, I'll try to do better, but, please, please, don't name me with Chris with my mistakes. He makes none of his own.

Mr. Henry Mr. Gravel, of course, I don't think I have to say this, you are one of the finest bald-headed men I know.

Mr. Gravel Mr. Chairman,

Mr. Henry You're talking now. I intend to vote. You listen come far into my life... as the Lord of Avon once said, "The false face must hide what the false heart doth know." Most people will believe that and some people won't. You know I know it's not exactly true, but if you will take your seat, we will get started with the afternoon festivities.

Mr. Gravel You were rather generous there. I want you to know that I get this... I mean I get this out of your... I mean I get this out of your... I mean I get this out of your...

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Mr. Henry They've said about you since the fifties that you were far ahead of your times, and I think that was right. I hope that in some of these things that are coming up now, that they'll say in the eighties that you were ahead of your time.

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Weiss].
On page 12, line 21, place a period "." after the word "years" and delete the remainder of line 21, and delete line 22 in its entirety, and insert in lieu thereof the following:

"He shall be a licensed physician and possess such other qualifications and perform such duties as are provided by law; however, the requirement that he be a licensed physician shall not apply to any parish in which there is no licensed physician who will accept the office."

Explanation

Mr. Weiss Mr. Chairman, fellow delegates, the previous floor amendment having been subjected to the constructive, collective criticism of this body and its members and having failed, at this time I now propose a revised floor amendment to Section 32 that should meet with everyone's approval. I hope it will now pass by virtue of its merits as discussed rather than on its author or previous cosponsors.

Questions

Mr. Jenkins Doctor, the thing that concerns me about it, suppose that there's only one licensed physician in an area who's willing to accept the job, but also suppose that for some reason or another, he's sort of an unsavory character. He might be someone with an alcohol problem. He might be someone who otherwise would be undesirable. Wouldn't this give him the sole claim to this office simply because he's the only licensed physician who's willing to take the job?

Mr. Weiss I think your point is well taken. However, I think the legislature has a way out and that the people, if they made the mistake of electing a drunk physician, then it was their fault. However, I know the story, in a Texas town, a man was coming through and in critical condition as a result of an accident. The emergency room said would you like to have our doctor or do you want us to send you elsewhere? He said well, of course I want your doctor. They said, well, he's drunk. However, he's better drunk as a physician than anywhere we can send you within a fifty mile radius.

Mr. Jenkins But, what I mean is in some rural areas, there may be only one or two or three licensed physicians in the area, only one of whom would be willing to take the office, and that person may be an unsavory character. Wouldn't this mean that the people would have no other choice? No one else could run other than that person.

Mr. Weiss No, I think they perhaps would have another choice by appealing to the legislature, refusing to elect that position, and requesting, as the last section points out, that no licensed physician if available, if no licensed physician is available, then the legislature may establish how this parish will select this coroner.

Mr. Perez Doctor, I'm in sympathy with the purpose of your amendment, but I want to be sure if we adopt something, it is correct. I'm trying to determine how it will be determined under our election process when this last clause would apply. However, the requirement that he be a licensed physician shall not apply to any parish in which there is no licensed physician who will accept the office. How, when and where do we determine that there is no licensed physician who will accept the office under our election procedure?

Mr. Weiss Well, I think the process of applying for coroner, that is, registering, calls for qualifications; and if a man meets these qualifications, then he can run for office. If he doesn't then of course you do not have a qualified coroner in the sense of a licensed physician, and other law as determined by the legislature will therefore apply.

Mr. Perez The problem that I have is, is that there is a deadline for filing as a candidate for office. Until the time is past for the qualifications for candidates for office, you do not then know whether there is or is not. Once the time for qualification is past, no one else may qualify. As I'm saying, I'm in sympathy with your proposal, but I want to be sure that what we adopt is correct.

Mr. Weiss I think you're absolutely correct. Do you know how the present law applies in a situation like this?

Mr. Perez Yes, I would say that the present law, until such time as the qualification for a candidate for offices passes, you would not know whether, in fact, there was a candidate who was qualified. If you wait until after the time for qualification, then no one else can qualify. That's why I have a problem with your last clause.

Mr. Weiss This is no different than the present law is my appreciation.

This is no different according to Judge Dennis who feels that this too is a safe amendment at this point.

Mrs. Warren Dr. Weiss, I'm interested in this question for more than one reason. Could you tell me of any parish in the State of Louisiana that does not have a physician in their parish?

Mr. Weiss I understand there are three such parishes of the sixty-four that do not, at this time, have a licensed physician.

Mrs. Warren Would you tell me which parishes they are?

Mr. Weiss I don't know. Judge Dennis' is one, I believe Delegate Brown's is another, and I don't know. . . You'll have to ask the other parties, but those are two that I know of.

Mrs. Warren But that's something I'd like to know, not only for this amendment. Thank you.

Mr. Stinson You mean they don't have a licensed physician in Monroe? That's where Judge Dennis is from. Do they have any good lawyers over there?

Mr. Weiss According to Judge Dennis, I understand there is no licensed physician who would accept the position in Monroe.

Mrs. Warren Oh, well I mean, that's what I wanted to know. I wanted to know if we had a parish that didn't have a physician that could take care of the sick. That's what I wanted to know.

Mr. Weiss Who would not accept the position.

Mr. J. Jackson Dr. Weiss, as presently, in some parishes, the option is open that preferably I can see merits in your amendment about the physician. But at the same time as I appreciate it, I understand that coroners are allowed to hire certain staff, which could very well be a physician. Is it not true that in some parishes, the option is open where a person could either run if he is a physician or a lay person? That in most cases that a physician probably would win out in an election, but that it doesn't restrict it only to being a physician.

Mr. Weiss No, the present law requires a licensed physician. This law is no different than the present law. I think the important thing here is to

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Remember that one must be qualified to conduct a coroner's inquest. One must be qualified to render a bullet from the body of a dead person and know where it struck it. Also, one must be qualified to evaluate a situation at the time. Many times death may occur at two or three in the morning, the physician is on call, the coroner pronounces the individual dead and therefore is in a position to evaluate the coroner's case, as we recognize them. This is highly important.

Mr. Riemer: Doctor, I notice that in the amendment as written, it says "licensed physician" in not three what that means. For instance, is a dentist a licensed physician?

Mr. Weiss: This is legitimate criticism in your mind, but if you look in the dictionary, a physician is a practitioner of medicine. You qualify a physician with a dental physician or a veterinarian physician or the like.

Mr. Riemer: So a veterinarian is a licensed physician, a dentist is a licensed physician. Correct?

Mr. Weiss: No, a physician is a medical doctor, but you may qualify the term "physician" with the word "veterinary," "dental," or the like.

Mr. Riemer: All right, look. Make an assumption that I'm not too bright, and you'll be ahead of the game. Explain it to me again. That is, what does your definition of licensed physician as used in this amendment mean? Would a dentist apply under your amendment?

Mr. Weiss: No.

Mr. Riemer: Okay, thank you.

Further Discussion

Mr. Jack: Mr. Chairman and members, I'm against the amendment. It just won't work. The present law, it's true, does read that way like the amendment, but you could have, as someone stated, a situation where in a parish there were no doctors, or one doctor. Suppose there was just one. He might be the type of man, as someone said, an ambulance. He could be incompetent. But most I'd be afraid if he would want to be devoting his main part of this time to his own medical practice and make the coroner's salary and office secondary. Now I found, under the present system, in certain parishes, the coroner, and all of them are doctors, spend very little time in these investigations. It wasn't very thorough. I found in Caddo where it was full time, and they spend a lot of time at work. Now I don't know the answer, but this is very simple the way this reads in the material here, in the yellow sheet, in each parish, a coroner shall be elected for a term of four years, with such qualifications and duties as may be prescribed by law. The legislature has time to do this that they've neglected it if the need be. Now you know this day and time, you don't have doctors, or country doctors, the doctors out in the country like you used to have. They love to other states. They want to be in the big cities. I'm not blaming them. But if this law might have been in the present constitution, workable in it, it isn't workable today. Now I feel, for example, if the need be, we worked so hard, we'd have a parole in and he operated on his patient here before we went to dinner. He's been treating him since, but it looks to me like his patient has died. I hate to do it, or Weiss, but I have to be against it and let the legislature get a new patient and we put into all the treatment and treatment this thing out.

Questions

Mr. Weiss: Delegate Jack, are you familiar with the medical liability insurance which is in our today?

Mr. Jack: I don't believe I know what that is.

Mr. Weiss: Well, I've written in my opinion in the past two weeks, and I think that the health care in this speak in its own value. It's difficult to get words in legalese, average, particularly medical attorneys as you.

Mr. Jack: No, it's not that, Dr. Weiss. It's a thing that has to be studied. Your wording is all right for what you're trying to do. I've never showed you the present constitution, but in further thought, I don't believe the present constitution takes care of it. The point is raised that if you have just one coroner he would be the only one, he would be the only one and he would be your coroner, even though he might not fit it. That's the bad situation and I think the legislature needs to study it. You've got it drafted fine. Chris Rhy couldn't improve on the drafting.

[Previous Questions and Answers]

Lossing

Mr. Weiss: Fellow delegate, we're discussing the Judiciary Article. Nothing is more important than justice. To have justice, one must have facts. These facts must be gathered, untarnished, and presented by knowledgeable people. You attorneys and judges should know more than anyone else that it's necessary to have the facts before you can make a judgment. It's been said that one's judgment is no better than their information. I ask you to put in this constitution, that which has been since 1921, and perhaps before, and is not changed one iota in essence, in context or in writing from the present constitution, that which is so vital to our own self interest, and that is justice by determination of facts by individuals who can bring those facts before a grand jury or before a jury or whatever source of justice is being sought. The coroner can do this. I think the man should be trained. There are certainly exceptions to every rule. Let's not create a situation throughout the state that will impede justice.

Questions

Mr. Stinson: Dr. Weiss, Mr. Jack got up and said I suppose there is only one doctor and he's a drunkard and so forth. Don't you think Mr. Jack is very jealous that he wanted to keep in there that a judge would have to be a lawyer? He wouldn't want a non-lawyer being a judge and couldn't there be some drunk lawyers or maybe one drunk lawyer that would end up being a judge the same as possibly a drunk doctor would be a coroner? It's the same question, isn't it?

Mr. Weiss: I think you are right, sir, and I believe in the past there has been a saying that there are more drunk... there are more old, drunk judges than there are old, drunk doctors or old drunk.

Mr. Derbes: Dr. Weiss, have you ever heard the expression "sober as a doctor"?

Mr. Henry: That's sort of a "loaded" question, Mr. Derbes.

Mr. Weiss: Your attorney are taking me near the chair and I accept the responsibility, as a delegate to this convention. But I know one thing, that we people must stand up for our rights and the folk back here asked us to bring them a constitution they could understand. Believe me, sometimes I don't know what your fellow are talking about. I'll tell you how what I mean to say. Ask I have you I vote green.

Mr. Dennis: Mr. Dr. Weiss, do you know that attorney, your remark, I think you've made a real good effort to put this back in the old language, the old provisions as it is in the present constitution and that I'm in agreement with you in doing so.

noting to vote for your amendment.

Mr. Weiss Thank you, Mr. Chairman of the Judiciary Committee.

Mr. Duval Dr. Weiss, do you know that Justice Tate wants you to sing "Melancholy Baby"?

[Amendment adopted: 79-34. Motion to reconsider tabled. Previous question ordered on the Section. Section passed: 112-0. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter "Section 33. Vacancies. Section 33. When a vacancy occurs in the following offices, the duties of the office, until it is filled by election as provided by law, shall be assumed by: in the case of sheriff, the chief criminal deputy; district attorney, the first assistant; clerk of a district court, the chief deputy; coroner, the chief deputy. If there is no such person to assume the duties at the time of the vacancy, the governing authority or authorities of the parish or parishes concerned shall appoint a qualified person to assume the duties of the office until filled by election."

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, this is the section dealing with the filling of vacancies in several of the offices contained in the Judiciary Article. This represents a change in the constitutional provisions at present. We have deleted the power of the governor to fill the vacancies in the office of sheriff, district attorney, coroner and clerk of court. We have placed in the section a new provision providing that the chief assistant of these officers shall assume the duties of the office when the vacancy occurs, until an election is held. If there is no chief assistant, the governing authority or authorities of a parish or parishes concerned will temporarily fill the vacancy, until an election is held.

Questions

Mr. Brown Judge Dennis, there has been a number of sheriffs, and I don't say a great number, but in my own case, I've had a sheriff in one of my parishes that's gone to jail, my clerk of court up there, a couple of years ago, went to jail. In many instances, you're going to have the problem where the chief deputy is just as involved as the man involved himself. If you have corruption or theft, something of that matter, involved. So that being the case, what is the reasoning behind letting the chief deputy take over the position. I could see it if there was a death, but what about when there is an indictment or a conviction, something of that line. You might have the chief deputy just as involved as it has happened on many, many instances around this state where there has been convictions of elected officials. Do you think that this gives a safeguard against something like this?

Mr. Dennis Mr. Brown, the committee, I think, had in mind a vacancy occurring because of natural causes. We didn't draft this article based on the idea that there would be many vacancies because of what you are mentioning now. We proceeded on the theory that most vacancies will occur because of death or illness or something of this nature. For smooth operation and continued efficiency, it would be better for the chief assistant to take over until an election is called. An election should be called and will be called under other provisions within a six-month period, I believe.

Mr. Willis Judge Dennis, projecting Senator Brown's question a little further, don't we have the presumption of innocence in Louisiana? That a man is innocent until proved guilty beyond a reason-

able doubt by competent evidence?"

Mr. Dennis I'm certain that we do now, and that that will be continued under whatever constitution we adopt.

Mr. Tobias Judge Dennis, I'm reading Section 33. You stated in an answer to Senator Brown's question that the election would be called within six months, but would refresh my memory where this provision is? I know we provided that for judges, but I don't see anything that we've adopted so far that would apply to other offices. As far as I read this, when a vacancy occurs in say, for example, the district attorneys office. If, for example, the district attorney was just reelected and then he resigned, you could have, immediately after his election, you could wind up with a district attorney who was not elected by the people. In other words, he's passing the office along to one of his colleagues, his first assistant. He would be in office for over five years, almost six years.

Mr. Dennis I believe you are correct, Mr. Tobias. I did have in mind specifically the judges provision. However, the convention adopted our thinking there, which is basically the idea that the governor will no longer fill these offices and that elections will be held within a very short period of time. So I think that somewhere else in this constitution, or the legislature by statute law, will follow this policy and will provide for elections to fill vacancies within a short time after the vacancy occurs.

Mr. Tobias Do you think that permissible when we say that the . . . "when a vacancy occurs in the following offices, until filled by election as provided by law", shall be assumed that this would allow the legislature to specifically say that within six months that this office shall be called by election?

Mr. Dennis Yes, sir. "Until it is filled by election as provided by law," I think specifically authorizes the legislature to do exactly what I am talking about.

Vice Chairman Roy in the Chair

Personal Privilege

Mr. Asseff Mr. Chairman, delegates, I would not interrupt, except that I am gravely concerned about the constant reference by the delegates, over and over again, "leave it to Style and Drafting". When they know there has been an omission, when it is an obvious error which they concede, they say, "leave it to Style and Drafting". I am a member of the Committee on Style and Drafting. We have more than we can do. It is my opinion that it is your duty to put in each section and each article what you want there, and to be clear and specific. It is our duty only to attempt to catch errors, inconsistencies, overlapping and that type of thing. I, for one, favor making as few changes as possible just to tighten it up, but avoiding changes that may be substantive in nature. You and you alone can make that determination. You have spoken, and whether I agree or disagree, I have no right to make any change that has even a slight chance of changing the meaning. Right now the committee has over two hundred and eighty amendments to consider to the Legislative Article. I urge you to please, when you catch an error either of omission or if it's an error of phraseology, to ask for a recess and correct it at that time. Otherwise, you might find our committee debating it for three hours, submitting it to you, and then you'll debate it for two or three hours. Our committee is very badly divided, six to five, and the approach that should be followed. So I urge you to do your duty and give us the document as you want it in red. That will keep our duty at a minimum. I don't want to take a chance of changing your meaning, so I urge you, please, put it in

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the form that you want. You know what you mean. I'm not so sure that I will know. Thank you very much.

Amendments

Mr. Linder. I have amendments at this time submitted by Delegates Perez, Burson, Chatalein and many others.

Amendment No. 1. On page 12, delete lines 24 through 32, both inclusive in their entirety, and on page 13, delete line 1 in its entirety and insert in lieu thereof the following:

"Section 33. (A) When a vacancy occurs in the office of district attorney, the duties of the office, until it is filled by election as provided by law, shall be assumed by the first assistant. If there is no such person to assume the duties at the time of vacancy, the governing authority or authorities of the parish or parishes concerned shall appoint a qualified person to assume the duties of the office until filled by election.

(B) A vacancy occurring in the office of sheriff, clerk of a district court, or coroner shall be filled by appointment by the governing authority of the parish until it is filled by election as provided by this constitution.

Explanation

Mr. Perez. Mr. Acting Chairman and delegates, as Chairman of the Committee on Local and Parochial Government, it is my responsibility to submit to you, this amendment because of the fact that the committee on Local and Parochial Government has provided in its article or in its section the provision for vacancies which calls for local government, the governing authority of local governments, to fill these interim vacancies. Instead of a line of succession. If you will notice the way the section is prepared, paragraph (A) deals with the district attorney. The reason that no proposal was made with respect to the district attorney, other than that which was submitted by the Judiciary Committee, is because of the fact that in many of the judicial districts throughout the state, there is more than one parish affected and it would be a very difficult thing to work out the mechanics of the method by which the parishes would get together. I recognized that in the Judiciary Article and in the proposed amendment, there is some question as to how the vacancy would be filled in the event there was not a first assistant district attorney because of the fact it would require the governing authorities of the parishes concerned to appoint a qualified person to assume the duties until it is filled by election. But, however, we did not attempt as far as local government was concerned, to correct that particular problem. The main part of the amendment exists in paragraph (B), which provides that a vacancy occurring in the office of sheriff, clerk of court or coroner shall be filled by appointment by the governing authority of the parish or parishes until it is filled by election as provided by this constitution. The members of the Local Government Committee was that the governing authority of the parish more properly represent the people of the parish, having members elected from all throughout the parish and that, therefore, they would be in a better position to appoint a qualified person to assume the duties until it is filled by election. I am sure that we have to differ with our local governmental officials with respect to this particular proposal. One of the things that we have to zero in on, and I've discussed this with our people back home in our area, is that a sheriff's duty may be an exceptionally important one in terms of having an adequate sheriff, but we make a very, very poor sheriff. The question that was raised by Senator Brown (and I think that I can say also, that under certain circumstances where one of those officials may be removed from office, we may be going from the frying pan to the fire) is to remove one elected official from office and putting in his place, the first assistant, who

in all probability, would have been in contact with the fellow who was killed and who is likely to be that the proposal by local government is not necessarily that it would be truly representative of the people of the particular parish of the local governing authority of that parish filled the vacancy temporarily instead of having that vacancy filled on a succession basis. Therefore, I urge you to adopt this amendment which was approved originally by the Local Government Committee by a vote of 17 to 1. On our meeting of yesterday, fifteen members of our committee have joined in this proposal.

Questions

Mr. Ourso. Mr. Perez, by any chance, you wouldn't have any personal interest in this, would you? Strictly personal interest.

Mr. Perez. I'm the president of Plaquemine Parish, sir, and I would be one of those who would appoint the vacancies. But I can assure you in Plaquemine Parish we get along real well anyhow, and it really wouldn't make that much difference in Plaquemines.

Mr. Ourso. Good, I understand that. Now, on the district attorney, I see where you want his first assistant to succeed him. Is that correct?

Mr. Perez. Yes, sir.

Mr. Ourso. Who is the district attorney in your parish?

Mr. Perez. My brother is the district attorney.

Mr. Ourso. Oh, but it's all right for your brother to succeed, have his succession, but not the sheriff to have their cronies. Is that correct?

Mr. Perez. No, Sheriff I explained it earlier. If district attorneys were elected from one parish, we would have put a similar provision in with respect to district attorneys. But the problem we have is that we have many judicial districts throughout the state which have more than one parish. For that reason, as a district office, we thought it was inappropriate to have the office filled by the local government. But if you can figure out a way it can be done where we can all get together, I'd propose that also.

Mr. Ourso. I think if you'd talk to Judge Dennis and the Judiciary Committee, we went over that and it doesn't make much difference where a man resides, the same as the district attorney. If he's the district attorney for four parishes, what difference does it make where he resides, and if the first assistant resides somewhere else, he's going to still be the district attorney after something happens to the district attorney. So a district attorney is a district attorney regardless of where he resides.

Mr. Perez. I understand that. The problem is the method by which you would fill the vacancy, and as I pointed out in my earlier remarks, I really don't know what the provision means where I lay in. In the case of a district attorney, the governing authority was not together. In our district, for instance, we have two parishes involved. Suppose we decide on one and the other parish decides on the other. How is it going to be solved? Really don't know what it really is a problem and that's why we did not attempt to tackle the answer to that question in our Local Government Committee.

Mr. Linder. Mr. Perez, the rationale of the Judiciary Committee in facilitating this line of consideration was based primarily on the desirability of the person who would succeed, or create, under our proposal, in the office of a court, we put the chief justice. Now don't you feel that it would be better to have an experienced judge

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clerk taking over the duties of that office rather than someone appointed by the police jury who might have no experience in running that clerk's office?

Mr. Perez Well, I can answer the question this way. No, I do not agree with you. I think in all probability if that chief clerk has been a good person and one who deserves to be appointed, I believe the local government would probably appoint him anyhow. But we do have the possibility that that person may not be properly qualified as clerk, although he might have made a very good first assistant clerk. But there's a great deal of difference between being an employed assistant of some kind and having the judgment to be the chief of an office.

Mr. Stinson The last provision says "by election as proposed by this constitution". In the constitution, it says "election as provided by law." Don't you think they conflict and maybe there should be . . .

Mr. Perez No, there is no conflict, Mr. Stinson. The reason for this is that in our Local Government Article we have a provision for calling of special elections in the event of a vacancy, and we very advisedly put that provision in to say "by this constitution" to make it in line with our local government provision.

Mr. Hernandez **Mr. Perez**, I notice that you did not mention the assessor. If you have already explained why you didn't mention the assessor, I extend my apologies. If not . . .

Mr. Perez No sir, I did not. The only reason is we dealt only with those offices which are included within this article.

Further Discussion

Mr. Burson Mr. Acting Chairman, fellow delegates, if we accept either the committee proposal or the amendment which has been offered by most of the members of the Local Government Committee, it will be a change from the status quo, because under Article VII, Section 69 of the present constitution, the governor made appointments in the offices of district attorney, clerk of court, coroner or sheriff, if and when a vacancy occurred. So it seems to me that you simply got to decide whether you think it is better in foregoing the system where the governor used to make the appointment, to depend upon the fortuitous circumstance of having a capable assistant at a given time in the office or injecting into this question, some judgment on the point of locally elected officials. Now I submit to you that the real issue is a question that has been raised earlier that we wanted an experienced man to fill this position, that under the committee proposal there would be nothing to keep a sheriff or a clerk who is going out of office from appointing a new chief assistant the day before he goes out of office, who might never even have served in the office a day. But under this provision, he would be, would have to be, the successor to the office. Now if you can't imagine circumstances, I can imagine a few from my experience in local politics, where the sheriff or the clerk might find that the most capable chief assistant that he should appoint the week before he goes out of office would be his son, or his brother, or his brother-in-law. Now this is the kind of succession that you want to provide for these very important local offices? I don't think so. I think it's a good stopgap. I think it's a good check to have the local governmental authority that's thoroughly familiar with the characters and the abilities of the people who will be considered to fill the vacancy to make that kind of a decision. Now we've heard a lot of talk here, most of which I have gone along with, about how we ought to have confidence in the legislature, who are the elected representatives of the people. I submit to you we ought to

have confidence in the police juries or the parish administration council, or either forms of parish government who are the direct elected representatives of the people to make a decision of this nature. We should not rely on the whim, possibly, of a man who is going out of office, perhaps under a cloud, perhaps not. But just as Mr. Perez has pointed out, I think if most of you will reflect on your own experience in local government, you will undoubtedly be able to think of at least one or two instances where a man might be a dandy chief deputy, might be an outstanding chief deputy clerk, but would not be the man that you would want to run the office. So I urge you very strongly to adopt favorably the amendment as proposed.

Questions

Mr. Anzalone How come we're going to not allow the sheriffs, the clerks and the coroners to have their whims, but we're going to let the D.A.s have their whims?

Mr. Burson Mr. Anzalone, I would be for the same provision for the D.A. if there is any way how we could figure out where you had two parishes, which one would govern in the charter. And that was the reason why we left that alone.

Mr. Nunez Mr. Burson, would you envision that if we adopted the committee proposal as such, that you would have a lot . . . especially in the fact that . . . and the question will come in a minute, that this takes place: if a man wants to resign, it means that automatically his chief deputy or criminal deputy or clerk or what have you, don't you envision the fact where the dynasties can be perpetuated on by putting his son or his brother or his father or his mother, whoever he wanted to succeed him, in that office, and then resigning?

Mr. Burson I don't think there's any question about that. I think if a man had been in office for twenty years and he thought he had a son who was a real fine . . . would make a real fine sheriff, that would be very easy for him to resign and to leave his son to take the position, or his brother-in-law or anybody else, and in effect name his successor or give him a tremendous advantage at the next election.

Mr. Kean Mr. Burson, as I understand this amendment, it would provide that this filling of the vacancy would only last until the vacancy is then filled by an election, as provided by this constitution. It is my understanding that that refers back to the provision in the local government article which will require an election to be held within a relatively short period of time.

Mr. Burson Yes, sir, that's correct. Within less than a year.

Further Discussion

Mr. A. Landry Ladies and gentlemen of the convention, I rise in opposition to this amendment. Even though I think I enjoy wonderful relations with my police jury I just feel that as this proposal of the committee is drawn up, if you read the first line, "when a vacancy occurs in the following offices, the duties of the office, until it is filled by election as provided by law," which means that the legislature can provide that the election will be held within six months if it so desires. Now this reason that this change has been made, I believe, is for good government. This will . . . if this proposal of the committee is adopted, it will force the public officials to appoint a man or a woman as their chief deputy who has the capabilities to be able to carry on the work of the office if something would happen to the public officials.

In the case of the clerk of court, continuity in office, or continuity in government I should

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Jay, is terrifically important, because remember that the clerk can sign special orders, can render judgment, and immediately upon the death of that clerk, automatically his chief deputy would take over and would insure continuity in office. It may take two weeks before the police jury meets in order to be able to appoint an individual. And when they do, they may appoint a politician, not necessarily a public servant.

And I'm asking you today to please defeat this amendment and go along with the method of succession that the judiciary committee has come up with.

Questions

Mr. Zervigon Mr. Landry, I'd like a point of clarification, please.

Earlier in this constitution when we've had the first assistant to any official take over his job in his death or indillment or whatever, this has been the first assistant that's been confirmed by some other body and not just selected out of hand by him. Isn't that correct?

Mr. A. Landry That is correct, but it's not necessary that we have to live in the past. Let's look toward the future.

Mrs. Zervigon Well, I'm talking about the past two weeks.

Mr. A. Landry Mary, what has happened in the past may not have been good either, and we are looking at this point that, for instance, I am going to make sure that if this constitution passes....

Mr. Zervigon I'm not talking about the past history of the state, Mr. Landry. I'm talking about the past articles that we've confirmed. Isn't it so that the first assistants that take over that are specified in the executive department are confirmed by the Senate and in our discussions, we said that one of the questions that ought to come up before the senate is: is this person fit to succeed to the office?

Mr. A. Landry That's correct, but let me explain to you something else that you may not know, that the police jury has no authority to tell me who to hire in my office, either.

Mr. Zervigon No, I understand that, Mr. Landry.

Mr. A. Landry And I think this. I think that if you had a chief deputy who would succeed as I mentioned before, you would have continuity in the office, continuity of government, because the sheriff's office is quite different than some of the other offices that you speak about.

This office has to continue. It has to have someone. For instance, only my chief deputy has the right, when I leave the office, to sign judgments and other papers involving the court. And, therefore, if my chief deputy is not available, I have to designate someone to act in my place if I leave the office.

Mr. Zervigon Thank you.

Mr. Kelly Mr. Landry, do you not agree that this amendment would imply set up a process of whereby you'd have a miniature election when a vacancy occurred with that election being run by the local politicians?

Mr. Roy Thank you, Mr. Landry, you've exceeded your time.

[Amendment withdrawn. Amendment withdrawn in the Senate. Section passed by 10-0. Motion to reconsider failed.]

Amendment

Mr. Poynter Amendments are sent up by delegates Alario, Nunez, B. Geronimo, Tolia and others.

Amendment No. 1, on page 13, line 27 after the word "deputy" delete the semi-colon and add the following:

Except in the parish of Jefferson, the parish assessor shall assume all duties of the sheriff whenever the sheriff is out of the parish.

Mr. Roy Take Mr. B. Geronimo's name off of that amendment.

[Amendment withdrawn. Amendment withdrawn in the Senate. Section passed by 10-0. Motion to reconsider failed.]

Reading of the Section

Mr. Poynter Section 34, Reduction of Salaries and Benefits Prohibited.

Section 34. No attorney general, district attorney, sheriff, or clerk of district court shall have his salary or retirement benefits diminished during his term of office.

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, this is a standard phrase or standard provision that is usually adopted to protect public officials during their term of office. It simply provides that none of those listed shall have their salary or retirement benefits diminished during his term of office.

Questions

Mr. Anzalone Judge Dennis, how does this differ from the retirement system that we have set up for the judges, if there is any difference?

Mr. Dennis Well, there was a provision in the committee proposal to give this protection to judges. However, that was deleted and, as of this time, the judges do not have this protection.

Mr. Anzalone Then you would say that these are greater benefits than we have given to the judges?

Mr. Dennis No, it was the committee's intention to provide this in Section 23, I believe, for judges, but that was one of the sections that was deleted with the amendments that were adopted. I don't know whether it was intentional. I think it may have been an oversight.

Amendment

Mr. Poynter The following amendment sent up by Delegate Conino.

Amendment No. 1, page 13, line 4, immediately after "general" delete the remainder of the line and insert in lieu thereof the following:
Judge, district attorney, sheriff, coroner, ..

Explanation

Mr. Conino Mr. Acting Chairman, ladies and gentlemen of the delegation, if you will look at Section 34 to read as follows now: "No attorney general, judge, district attorney, sheriff, coroner or clerk of court shall have his salary or retirement benefits diminished during his term of office." What we are doing in this amendment is putting in the coroner. The coroner has been declared a constitutional officer and we've omitted the judges. As far as the future judges are concerned, in the Jack amendment, as you remember, we stated that the legislature shall within two years after the effective date of the constitution propose a retirement plan for the judges. This retirement plan, when it would go into effect, would be for the judges in office at the time of the adoption of the constitution, so there is no provision for the incoming judges.

The amendment would make the judge and the coroner have the same status as the other constitutional officers which are listed: the attorney

general, the district attorney, the coroner, the clerk of court and the other constitutional officers; that we have in the judiciary section.

Questions

Mr. De Blieux Mr. Conino, do you know at the present time that just about all the coroners in the state of Louisiana work on a fee basis rather than upon a salary?

Mr. Conino No, I didn't.

Mr. De Blieux Well, I believe if you will check that out you will find that they are paid by fees rather than a straight salary, and I believe if you put this particular provision there it would eliminate the possibility of going to a salary basis upon them. And I don't think it'd be good for us to put that amendment in there at this particular time since they are paid by fees rather than salaries. It might absolutely prohibit the legislature from ever changing it, even if the coroners wanted it changed.

Mr. Stinson I am wondering about the provision that their retirement will not be reduced while in their term of office. Suppose that something happens to the retirement fund and it should go broke. The state can then be called on to furnish all money necessary to bring it up so that it would not be diminished?

Mr. Conino Well, this retirement fund, it will be set-up by the legislature and it would be just like all the rest of the retirement funds no matter what they are, school teachers or bus drivers or whoever has a retirement system within the state.

Mr. Stinson Well, does that same provision cover all of them? It will not be diminished? I know after they start rejoining...in joining it can't be reduced, but this is while they are attempting to earn it.

Mr. Conino Well this, this particular provision says salary or retirement benefits.

[Previous Question ordered. Amendment adopted: 53-51. Motion to reconsider tabled. Previous Question ordered on the Section. Section passed: 102-12. Motion to reconsider tabled.]

Reading of the Section

[Motion to waive reading of Section 35 adopted: 85-21.]

Point of Order

Mr. Jack I think he ought to read it. You know somebody might not can read down here.

Mr. Roy Mr. Jack, we voted on it and it carried 80 to 20. You are out of order.

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, we have already alluded to this section several times in coming through this article. As I told you earlier, the basic theory of the committee is that we will not force any parish or any community to abolish or change their present court system or other local government offices overnight by this constitution. We think that the effects would be disastrous in those areas. Orleans Parish, as you know, has more situations which are peculiar or different in their parish pertaining to the courts, the clerks, the sheriffs, and other offices than any other parish. So we tried to write a uniform constitution and preserve their courts and other institutions in this section.

However, this will not maintain them in constitutional status as they are today. This section

provides that although they are retained, just as other peculiar courts throughout the state, or peculiar offices, that they can be changed in the future by the legislature with approval of a referendum in the parish. This provision is a product of many months of debate. It represents a compromise. We don't feel that it will compromise a principle because we have in the article established a uniform system of courts, from the district court on up and we have a lot of other parishes to maintain their courts and their offices which are different, subject to legislative action. But we are not doing anything that different for Orleans here. And we arrived, as I said, at this solution after struggling with the problem for many months. So we are now asking the convention to adopt this and to go along with some understanding of the difficult problem with which we were grappling.

Questions

Mr. Fontenot Judge Dennis, in Section 15 where we discussed and provided that the district, parish, city, family, and juvenile courts existing at the time of the adoption of the constitution are retained. Now, in that particular section, the legislature may abolish or merge these different courts and in this particular section the legislature can change them, plus a referendum in the parish. Do you think that New Orleans should be treated different as far as the people voting by referendum, and not the rest of the state?

Mr. Dennis Mr. Fontenot, I will try to answer you this way by giving you what I think was the consensus and the view of the committee. The committee started off trying to treat everybody the same, as I said earlier. However, because of the tradition and history in Orleans Parish, we wanted to continue those courts. Some of us wanted to submit it to a simple legislative vote to change, I admit that. However, the feeling was so strong because of the history in the past, there had been some instances in our history of punitive measures being practiced against the parish of Orleans, that they desired and asked for the added protection of a referendum of their people, before their courts and their other offices could be changed by the legislature, and the committee granted that extra protection.

Mr. Fontenot But you do...would you admit that this is somewhat inconsistent that this parish or this area has a local referendum whereas the rest of the state does not have a local referendum to go along with the legislature, to be able to change these courts. Would you agree with that?

Mr. Dennis Well...it is different, but as has been pointed out before, Orleans is different and in the history of the state, there have been some instances in which punitive measures have been taken against Orleans because it was a big city and was not like the rest of the state. This is the same thing that caused these institutions to be placed in the constitution to begin with. And we of the committee felt like this was a reasonable compromise. It would not take amending the constitution to change this, but it would take a vote of the referendum of people, by the people in the parish of Orleans.

Mr. Roemer Could you refer to lines twenty-six through twenty-nine of that particular Section 35 that deals with the judicial expense fund of Orleans Parish. Is there any other judicial expense fund in the constitution?

Mr. Dennis I don't believe there is, Mr. Roemer.

Mr. Roemer I don't believe there is, either. I think we can hear that up.
Why is this one in there, No. 1...

Mr. Dennis Mr. Vesich says there is, I'll let

answer for that later

Mr. Roemer: K. Fine. Now, assuming that there is no there isn't, regardless, why do we have a two-thirds vote provision to protect it as is? What is so important about it? What is the judicial expense fund? How much money does it amount to? Has it ever been audited by the legislative auditor in this state?

Mr. Dennis: Well, you've asked me about three questions.

Mr. Roemer: Well, let's take them one at a time. What is it, and how much is it?

Mr. Dennis: First of all, I don't know how much it is.

Mr. Roemer: Well, it is one million seven hundred and ninety-four million dollars....

Mr. Dennis: I believe it is a fund which is similar to other funds that have been established by statutory law in other parishes, whereby extra filing fees are charged, and out of that court reporters and other expenses are paid.

However, you really have got me into details that I don't know fully, and I think there will be other speakers like Mr. Vesich who can explain in detail what the judicial expense fund consists of in Orleans Parish.

Mr. Roemer: O.K. I'll defer my question. He is going to come speak on that particular section? Is that agreeable?

Mr. Velazquez: On this referendum...on the referendum point. Didn't this convention vote down extending the referendum privilege to all the other parishes in the state? Wasn't that voted down by this convention?

Mr. Dennis: I believe the provision we had requiring a referendum for changing judicial districts was deleted by the convention.

Mr. Velazquez: So doesn't that present the point of view that most places in the state don't really want a referendum on issues of this type, wouldn't you say? They don't seem to want referendums on issues of any type, it would seem to me.

Mr. Dennis: Well, I don't know why the members of the convention voted that way. They may have felt that there was no need for that added protection outside of Orleans.

Mr. Velazquez: Wouldn't you believe then that because basic people don't want a referendum, the probability exists that it might be somebody who wants, somewhere in this state, who might want a referendum?

Mr. Dennis: Yes, I'll admit to that possibility.

Mr. Velazquez: Thank you, very much, Judge

[Unintelligible]

Chairman Henry in the hall.

Personal Privilege

Mr. Roemer: Mr. Chairman, I would want that the bill which was presented to you by Mr. Stopy had somewhat worked out, as a result of the convention, I would like to thank Mr. Stopy for his past thought and appropriate gift.

Mr. Henry: Mr. Roemer, take your seat. You are completely out of order, as usual. You lose again.

Amendment

Mr. Roemer: This is the last SEC. 35. I would like to offer by Delegate Casey

Amendment No. 1, on page 13, delete lines 1 through 28 both inclusive in their entirety and insert in lieu thereof the following:

"Section 35. Except for provisions relating to terms of office as provided elsewhere in this article and notwithstanding any other provision of this constitution to the contrary, the following courts and officers in Orleans Parish are continuing subject to change by a vote of two-thirds of the members of each house of the legislature. The courts are: criminal district courts, the city, municipal, traffic and juvenile courts, the clerks of the civil and criminal district courts, the civil and criminal sheriffs, the constables and clerks of the first and second city courts, the register of conveyances and the recorder of mortgages.

Explanation

Mr. Casey: Mr. Chairman, old delegate to the convention, unfortunately, as was pointed out in Section 30 in the section pertaining to sheriffs, New Orleans had some special problems and its own tax collecting system. Under Section 35 we see now also that we have a fairly elaborate, but very good and excellent court system with many specialized courts, and I think the committee indicated that by whatever vote the house had on their committee, that they decided to permit us to retain basically that system that exists in the parish of Orleans today.

We have been discussing this section for many days now, trying to work out some of the problems that we had, trying to, if possible, maybe revise Section 35 if that be the case. It was felt by the members from Orleans Parish on the judicial committee that they wished to proceed with Section 35 as it was drafted and as it came out of the committee. But, and I would like to have your attention on this but, I know that many of the delegates felt and were agreeable to the wishes of the members from Orleans Parish to have the judicial committee. But we have a very gradual problem with Section 35 to this extent; that Section 35 as worded, as worded, would require not only a majority vote of the elected membership of each house, but also a referendum for us. For instance, to add another traffic judge if one becomes necessary, to add another civil judge, to add a judge if one becomes necessary, and ever at this time, the judicial administrator in his recommendations has already indicated a need for additional judicial assistance in the parish of Orleans.

So, rather than saddle and lock into the parish of Orleans the necessity of having a referendum each time we make any change in our judicial system, I would hope that the membership of this convention would permit us to do it by a vote of two-thirds of the elected membership of each house.

Also, my amendment as drafted, delete the reference to the judicial expense fund of the parish of Orleans which was retained by the committee and subject to change by a two-third vote of the elected membership of each house. I personally honestly feel that the judicial expense fund is another fund in other parishes, rightfully a statutory material, and I cannot dispute some of the hesitation that any of you had on that paragraph. If there are any questions, I will be glad to yield.

Questions

Mr. Roemer: Representative Henry, wait up so I know, or maybe I should say, do you know that I am in sympathy with what you are trying to do, but I particularly understand that judicial expense fund. I applaud your taking it out. I think it would be best.

However, I would like the two things to come have in your legislation, and two items was a result of our funding. I don't know whether you knew or not that in section 30 of this same article we fought that article out, and we did win. With the possible other changes, but we have a majority

vote of the legislature. You did know that, did you not? Isn't this a change from the rest of the state?

Mr. Casey It is definitely a change from the rest of the state, Mr. Roemer.

Mr. Roemer I see, why would Orleans require a two-thirds vote for such change and the rest of the state would not, Tom?

Mr. Casey Mr. Roemer, the political process is filled with negotiations, compromise, arbitration, discussion, etc. In an attempt to honestly work out the problems that existed on Section 35, I personally have no hesitation to rely on the judgment and prudence of the legislature in making its determination and guiding not only your judicial system but mine. It may be preferable that even yours should be protected by a two-thirds vote of the elected membership of each house, and if that's your wish, you would have my support. It would be preferable to many of the members of our delegation that we would have that protection, also. That's why it exists in here as drafted.

Mr. Roemer Well, I understand that point, but do you understand the point that I'm not worried so much about protection as I am the ability to change. And don't you agree that the two-thirds vote will make quite difficult any changes, even those necessary perhaps, by the city of Orleans or the parish of Orleans.

Mr. Casey Let's just go one step further. It's a much more turbulent issue on the parish of Orleans solely when you discuss, for instance, the very existence of civil courts as distinguished from criminal courts, which you in your area do not have that problem. The difference that exists in Orleans between the civil and criminal sheriff, which you do not have that problem. And other differences that may exist between, for instance, a clerk of court, the register of conveyances and recorder of mortgages. It's more controversial, it's more difficult, it's more political, to be very frank with you, and I would merely ask you, in your wisdom to abide by the wishes of the Orleans, or many members from Orleans parish, I can't say all of them, and I'm only speaking for myself right now, that you at least yield to our wish in this regard.

Mr. Roemer Well, I'll make three brief questions, one at a time.

Did you agree that the Orleans system is more complex than the rest of the state?

Mr. Casey Unfortunately, Mr. Roemer, it's much more complex. Our difficulties are compounded many times beyond possibly those existing, for instance, in Caddo Parish. It's a peculiar situation where, as Mrs. Zervigon said this morning, we're a different kind of animal and possibly if in your wisdom you see fit to give us this two-thirds vote, we would certainly appreciate it.

Mr. Roemer Can I take it your answer is yes to the question of complexity?

Mr. Casey I think I answered that question.

Mr. Roemer O.K. Would you also agree that any machinery that is more complex than its next door machinery is more apt to break down and would require some modification and changes over time.

Would you agree to that statement?

Mr. Casey There is no doubt about it, and I am the first to admit that twenty years from now maybe we ought to consolidate everything.

Mr. Roemer Well, then, aren't you freeing in, Tom, with a two-thirds vote, a piece of machinery that's complex and will break down and need modification?

That's my question.

Mr. Casey But we're still leaving that responsibility to the legislature, Mr. Roemer, to correct a situation which creates difficulty in the city of New Orleans at a later date.

Mr. Fonteno Mr. Casey, I'm not exactly sure on what the make up of the legislature is. What percentage of the legislature is from the New Orleans metropolitan area?...or say Orleans Parish.

Mr. Casey Of the one hundred and five members in the House of Representatives, we have, let's say, fifteen full members and three additional people who have split districts that may represent parts of, let's say, St. Bernard Parish and Orleans Parish, part of Jefferson Parish and Orleans Parish, so let's say roughly, seventeen people.

Mr. Fonteno Close to a fifth, would you agree?

Mr. Casey Close to a fifth, but less than a fifth. Yes.

Mr. Fonteno In the Senate, the same thing?

Mr. Casey I would say proportionately it's approximately the same.

Mr. Toomy Mr. Casey, your amendment in the opening wording, it says "except provisions relating to term of office as otherwise provided in this article." In the committee proposal they include term of office and qualifications, I believe. Is it your intention that the city of New Orleans would have different qualifications for similar offices than other people in the state?

Mr. Casey Well, we're accepting the provision relating to terms of offices because I think the convention has expressed its wishes very loudly to indicate that New Orleans judges should run for six year terms as your judges do and all the judges from the...all the district judges from throughout the state. So this merely clarifies the fact that they, too, have six year terms.

Mr. Toomy Some of the qualifications we also provided for up there, for instance for juvenile judges, and there are certain qualifications we provided for for all the judges. Are you making exceptions for the ones for New Orleans?

Mr. Casey I don't think we're making exceptions. The only exception we are making is the term of office because, unless you feel that our judges should run again for twelve years, I would certainly accept that if you wish.

But I think the convention has decided otherwise.

Mr. Arnette Tom, I can see the problem with trying to merge the New Orleans courts now or something like that, or trying to make them the same as the rest of the state in the constitution. But the only thing that bothers me is that in Section 15 that we've already approved, everywhere else in the state the legislature may abolish or merge trial courts of limited jurisdiction by majority vote. Why should this be different in Orleans Parish? Why is there a two-thirds vote needed? I don't understand.

Mr. Casey Mr. Arnette, in my discussion and question and answer session with Mr. Roemer we had mentioned...discussed that. I know Mr. Roemer is against it, but I think it was brought out in that question and answer period that Mr. Roemer and I had that due to the complexities and controversy involved in these offices and courts in Orleans Parish, that it is not the usual type of situation that may exist in many other parishes. We have a great complexity in our court system, and it is different.

Further Discussion

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Mr. Burson. Mr. Chairman, fellow delegates, I rise in support of Mr. Casey's amendment. The famous justice of the United States Supreme Court, Justice Holmes, once said that a page of history is worth a volume of logic. This amendment deals with a historical problem. We cannot, it seems to me, ignore the history of the hundreds of years of history in this state in which the city of New Orleans has developed as a unique governmental entity. And it seems to me we would be making a drastic mistake to attempt to ignore the reality of this situation.

I submit to you that if this were the best of all possible worlds, and everybody trusted everybody else, we could probably have come in here and convened this constitutional convention and left in a week and just adopted the model state constitution. But it's not that easy. We have to take into account special local problems. I address your attention, if you will, to the digest of the present law that was prepared for us in connection with this proposal. And if you will refer to that digest, you will find listed there a multitude of special constitutional provisions that exist in the present constitution establishing these various special courts and so on in the city of New Orleans. Now these constitutional provisions are there. We cannot just wish them away. And if we do not make some provision in the constitution that we are writing, then I submit to you we will have courts hanging there, with no root either in constitution or in law.

It seems to me that the provision by reference such as is contained in the Casey amendment is a realistic way to deal with the problem. Now Louisiana is not unique in this. I have a copy of the constitution of the state of Illinois when I became a delegate, because Illinois constitution is held out as the paragon of modern state constitutions in the reading I've done. And in the judicial section, I'm looking right now at a sentence which says, Cook County, Chicago, and the area outside Chicago shall be separate units for the selection of circuit judges.

Then two pages later when they are talking about local government, they've got one way that the members of the Cook County Board are elected and then everybody else is elected a different way. In selecting sheriffs and other local officials, they do it one way in Cook County and they do it another way in all the rest of the state of Illinois.

So we're not alone in Louisiana in having to deal with the unique political history. And it seems to me that a short provision of this nature which permits these peculiar local institutions to maintain their operation until such time as the legislature can work out an orderly transition to what we hope will be in this case a uniform system of courts is a reasonable thing for this convention to do.

As far as the two-thirds vote, I can only point out that prior to this time, nine all of these institutions for the most part are established by constitutional provision, it would have been necessary to obtain a two-thirds vote by a constitutional amendment. And a constitutional amendment under the present law requires a two-thirds majority vote in both houses of the legislature before it can be presented to the people. It seems to me that, in any case, we should adopt this provision and then if we want to change it, the two-thirds vote is a barrier, you would consider another amendment to do it. As five years if I would be in favor of it with the two-thirds provision.

Further Discussion

Mr. Hennig. Mr. Chairman and fellow delegates, I would certainly appreciate your attention in this matter, because I think it very important and can be confusing. The history of this thing was this. I had filed an amendment to delete Section 15. I met with a lot of the people who were concerned with this problem and it was pointed out to me that that would cause problems for Orleans

Parish. I admit that I have withdrawn the complete deletion of Section 15. We do not want to prejudice. We do not want to hurt or harm Orleans Parish. Mr. Casey's amendment is fine. I have an amendment which will follow his amendment which is identical in language with his amendment. Mr. Burson, it takes care of the problems you are talking about. But if you vote for Mr. Casey's amendment, what you are doing is establishing something that is unfair and unequal. More specifically, the key word, the only words, that's going to change in the two amendments are this, but it is important. Mr. Casey says that for Orleans Parish it will take a two-thirds vote, but for the other sixty-three parishes in this state and the rest of the people in the State of Louisiana, you don't get that super majority, people. You get a majority vote. I want someone to get up here and explain the logic of that. We have taken care of Orleans Parish. They have problems and we want to retain that. The language which I said in the amendment which will follow is identical, no change. It won't affect their courts, but it will put them on an equal par with the other sixty-three parishes. Some reference was made to the fact that Orleans is a different kind of animal. Well, I think the people in this state have two arms, two legs and one head. I cannot justify, and I don't think you can justify, telling the people in Lafayette and Caddo and Ouachita Parish and Bossier Parish that in your parish it only takes a majority, but in Orleans a two-thirds. I submit to you that we have taken care and have recognized the problem in Orleans Parish. We've done that, and rights so. But I plead and implore you to reject this amendment. The next amendment that comes up will be the identical language with the same intent, and I sincerely hope that you cast the vote which will be consistent with the one consistent vote we have made in this convention; that is, that all judges are on a six year term. I submit to you that the same principle should apply here. Thank you very much.

Further Discussion

Mr. Jack. Mr. Chairman, ladies and gentlemen, direct your attention to Section 15. Now in that section, that provided the legislature by a majority vote could abolish juvenile courts and city courts and other courts of lesser than district court jurisdiction by a simple majority of the legislature. In that "15" it had reference to "35" which is the New Orleans one, where in "35" it would take a referendum to abolish their courts. I've talked about and other things. In "15" we deleted reference to "35" on two lines. Everybody would talk... say we're going to take care of the rest when we read the law. Let's take care of it. In "15" you an abolish the city court and the juvenile court of Caddo Parish by a simple majority, and the juvenile court, the city mayor courts and all those things anywhere outside of Orleans Parish. Now, when would we pass the Casey amendment allowing New Orleans, in order to abolish their, it has to be two-thirds vote of the legislature. That's what they mean. They know how it is, trying to get sixty-seven or two-thirds of those voting and then go back to Section 15. You don't know how certain people are going to vote. No use putting your hand up. I'll answer it if I have time left. Oh, excuse me. Alright, now we have one hundred and five members of the legislature. New Orleans has nearly a fifth of them. If two-thirds, if they get that through, it will be almost impossible to get two-thirds of both houses of them. It would be very simple, maybe, if New Orleans, I'm not saying they make a deal, but I have heard of compromise yesterday and I have heard of deals and wheeling and dealing and compromise. I don't approve of that stuff. If we ought to have some way with a constitution that we think is the best, we not going to compromise wheel or deal or make any deals. I'm going to do what I think is best. I think that what New Orleans

has, whether it's two-thirds or a majority, the rest of the state ought to have. I don't care what two hundred and fifty years of history, as somebody said, in some fancy poetry that was said. It's time New Orleans was governed by the same laws as the rest of the state. Now I understand that we have another amendment coming up. You just heard the Speaker tell you, that's going to cover all this, just like Mr. Casey's got, except it's going to take that two-thirds out and put in the word "majority". Then I think when New Orleans is whittled down to the same size as the rest of the parish, if they try to abolish the city court and juvenile court in Caddo Parish and the rest of the state, we'll have the help of those eighteen delegates or members of the House, down in New Orleans and those Senators, and we will have security. Frankly, if we don't defeat Mr. Casey's amendment and adopt Mr. Juneau's, taking the thing and making everybody have to have just a majority, I'm afraid what's going to happen to us. New Orleans may join one other and get a majority and throw out Caddo's juvenile courts, Caddo's city courts, and those and the other places that have J. P.'s, juvenile courts and this three-tier court will go into existence. Now I say let's defeat that and move onto Mr. Juneau.

[Motion for Previous Question rejected: 26-77.]

Further Discussion

Mr. Tobias Mr. Chairman, fellow delegates, as I understand it, Mr. Juneau has the identical amendment as the one before us, except it provides "majority" in place of the words "two-thirds". What? Exactly what is holding us judicial reform in this state? The judges of the several district courts of the parish of Orleans... nothing else. There's justification for having a separate civil sheriff, a separate criminal sheriff, a separate clerk of the criminal district court, a separate clerk of the civil district court, a recorder of mortgages, a recorder of conveyances, but there is no justification for having those two courts, the civil and criminal district courts. They are the only people, who are standing in the way of judicial reform in this state... the only people and don't ever kid yourself.

Further Discussion

Mr. Schmitt I don't know what side Mr. Tobias is on in this amendment, but I don't favor this amendment. I think it's a bad amendment. The reason I think it's bad is because of the fact that I don't think that we should be treated any differently in the parish of Orleans than they are throughout the State of Louisiana. This does not aid the civil and criminal district court separation which presently exists. However, it does require a two-thirds vote in order to have it changed. I feel that it only should require a simple majority vote in order to have it changed. Why should the people of Orleans be given any different type of treatment than people from other parts of the State of Louisiana? I really feel that Mr. Casey's amendment is in actuality an application for the right of secession from Orleans from the State of Louisiana, because when Mr. Casey came forward, he feels that the things which benefit New Orleans, or allegedly benefit New Orleans, should be given greater protection than for other areas of the State when I really feel that they protect them. I don't feel that we should give any greater protection to the parish of Orleans than any other section of the state. I'm from Algiers, which is on the West Bank of the city of New Orleans. We were incorporated into the city of New Orleans many, many years ago. We have certainly benefited greatly by the East Bank of the city of New Orleans. But we haven't asked for any special type of protection, to protect us from the East Bank of New Orleans. We have consistently tried to get along with the

people on the other side of the river. We have worked in this direction. It would be no more fair, in this situation, for us to have the right to secede from the parish of Orleans, as it is right now for the parish of Orleans to attempt to secede from the State of Louisiana. Discrimination in favor of the parish of Orleans is unfair to the rest of the state. Discrimination in favor of the parish of Orleans may or may not hinder judicial reform in the future. I don't know. But I do know that what's good for the goose is good for the gander. I do feel that the people in Orleans should be given the same rights and the same protection as the State of Louisiana. If you wish to make it two-thirds for the parish of Orleans, it should be two-thirds for the rest of the state. If you want a majority for the parish of Orleans, it should be a majority for the rest of the state. I think that this is just a question of simple fairness and equity to all the people of the State of Louisiana. There should be no discrimination. Our delegation has continually requested that we be treated the same as other parts of the State, when we were in areas which might allegedly hurt the city of New Orleans. Yet, when it comes to something which they believe may to some extent protect certain interests, they come forward and want to be treated differently. I don't think that's the way the ball game should be played. I believe we should be fair. I think we should defeat this amendment and go forward and pass the other amendment, which is the same except requiring a majority vote.

Questions

Mr. Landrum Mr. Schmitt, why is it that two days out of every year in the city of New Orleans there are more people than the entire State of Louisiana? More people visit New Orleans two days out of every year than the entire sixty-three parishes in the state.

Mr. Schmitt I guess Mardi Gras is a little bit better in Orleans than any other place. I don't know.

Mr. Landrum Why is it that if the railroads, if the ships in New Orleans, if airplanes stop flying in New Orleans, if they were topped, why would the rest of the state be tied down, that they could not even do anything? One more question. Why is it that if the cattle that the gentlemen spoke about last week, what they needed in other parishes, that I voted along with about fencing and all of that, if those cattle would walk down the streets of New Orleans, why they would be killed in New Orleans and not in some other parish or in the country?

Mr. Schmitt Let me say that I know you didn't agree with the first secession, and I don't think you should agree with this one either.

Further Discussion

Mr. Juneau Fellow delegates, in your seats and out of your seats, I rise, perhaps a little bit, merely to emphasize two points. I know that some of you intend to vote for the two-thirds amendment and then vote for the majority amendment. I urge you to vote against the two-thirds amendment and vote for the majority amendment for the following reasons: if the two-thirds amendment, Mr. Casey's amendment, is adopted, you will open a Pandora's box in every parish in the state. Some of their representatives are going to introduce amendments wanting them to have a two-thirds... we are going to be beleaguered and plagued with other amendments. I suggest to you, if you reject the amendment and adopt the majority amendment, we will have uniformity in the state and I think express the will of this convention. A further reason is that you are being unfair to the people of New Orleans by allowing a two-thirds vote, because then the city of New Orleans can not effect necessary change because of an extraordinary vote required by

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particular sentence which you refer to changed the language to read that "the legislature may abolish or merge trial courts of limited or specialized jurisdiction?"

[The word "trial" and "specialized" is deleted and "limited" is added. However, the word "limited" is not added.]

Amendment

Mr. Casey Mr. Tobias, I would say specialized jurisdiction would be juvenile courts, city courts having jurisdiction under a thousand dollars, parish courts with jurisdiction under a thousand dollars, or family courts in East Baton Rouge Parish and courts of that type.

Mr. Poynter Amendments are being passed out at this time.

Amendment No. 1 [by Mr. Juneau]. On page 13, line 8, in Floor Amendment No. 1 proposed by Delegate Casey and adopted by the convention on August 24, in line 5, delete the word "two-thirds" and insert in lieu thereof the words "a majority".

Explanation

Mr. Abraham Tom, doesn't Section 15 (B) also say that "the judicial districts existing at the time of the adoption of this constitution are retained? The legislature, by a majority vote of the elected members in each house, with approval in a referendum in each district and parish affected, may establish, divide or merge judicial districts subject to the limitation of Section 21", so that takes care of the district courts.

Mr. Juneau Mr. Chairman and fellow delegates, I won't take up much of your time, but there was apparently a lot of confusion about this matter. I won't rehash the matter but just to tell you what this does is change the word "two-thirds" to "majority". I respectfully submit to you what that is doing, is merely putting on par the other sixty-three parishes of the state with Orleans Parish. It has not affected the Orleans Parish and all we are doing is saying when you affect and make a change in your courts of limited jurisdiction, what you're going to do, is do that by majority vote just like the other sixty-three parishes will have to do it and which this convention voted on in Section 15, that's simply what it is. I think it's fair, it's equitable. Orleans Parish is protected, but it gives equality and it's consistent with the previous votes of this convention.

Mr. Casey That's absolutely correct and I would submit to you that the district courts in New Orleans, criminal and civil, are similar to separate districts. The rest of the state has a referendum affecting their particular judicial districts.

Questions

Mr. Dennis Mr. Casey, I may have misunderstood you, but don't you recall we deleted referendum with regard to changing judicial districts?

Mr. Champagne Mr. Juneau, do you agree with me that some of these delegates are voting for this two-thirds idea with the presumption that they are going to come back and change what we have done already? Don't you think they are just whistling in a lost hope? I mean, you know and I know, I think, that we are not going to go back and change that majority to a two-thirds on what we have done already.

Mr. Casey Judge Dennis, I don't recall it. Somebody just mentioned it as I left the microphone. If that occurred, that is quite possible.

Mr. Juneau My answer to that, Mr. Champagne, the wisdom of this convention has gone over Section 15 and let's don't fool ourselves; that's how it's going to stay.

Mr. Dennis So there are no referendums in this article anywhere.

Mr. Champagne That's correct. Now... Let me ask you one more question. Don't you think the scare tactics that I heard from that podium, that the people are going to reject this constitution, works in two ways? It works the other way too, you know. Can you imagine, sir, what might happen to some individual, who is determined to wreck this constitution, going through the state and saying, those folks in New Orleans can do it or require two-thirds, but us poor people in the country got to get a majority. Do you agree to that?

Mr. Casey There may not be; apparently there are not. But I'm still referring to Section 15 (A), which refers only to courts of limited jurisdiction.

Mr. Juneau Mr. Champagne, my answer to that is that I think the people of Orleans and the people of all sixty-three parishes would be content if they know that the provision equally applied with regard to merging the courts of limited jurisdiction. I, unquestionably, think the people feel that a majority is fair for everybody because they will know in Orleans Parish that we have not disturbed per se the system of courts that they now have.

Mr. Juneau Tom, I'm a little confused. We have courts of limited jurisdiction throughout the southwestern part of the state. As I appreciate Section 15, that would only take a simple majority. In Orleans, according to your amendment, it would take a two-thirds in that case, so there is a distinction, is there not?

Mr. Tapper Mr. Juneau, I just want to ask you if this is the same amendment you had before, was it redrafted to conform with the Casey amendment except for the majority?

Mr. Casey There is certainly a distinction between our courts of original jurisdiction, which are civil and criminal district courts, where a two-thirds vote is required, whereas in Section 15 (A) my understanding of that article is that it refers only to courts of limited or specialized jurisdiction. Is that not correct?

Point of Order

Mr. Juneau My amendment, Mr. Tapper, is identical in language with Mr. Casey's amendment. It protects Orleans Parish, but it changes the words "two-thirds" to "majority".

Mr. Avant The point of order would be to clarify any confusion that may exist in anyone's mind, particularly mine, if my memory is wrong. I think we do have a referendum provision in this article, as it now stands with all amendments. When it comes to changing the lines of the judicial districts, I do not believe that was deleted. In response to what Judge Dennis stated a moment ago, I want to get a clarification on that. I'm sure that's the way it is; you still need a referendum in each district or parish affected if you are changing the lines of judicial districts.

Mr. Bel Mr. Juneau, didn't you have the oppor-

Mr. Henry We are rapidly trying to find out so we can resolve your problem, Mr. Avant. I think you are correct.

Mr. Avant To be more specific on my point, Mr. Chairman, I think it was removed, and I asked if it was not removed from 15 (A) but maintained in 15 (B).

Mr. Henry Your point is well taken, sir. You are absolutely correct, Mr. Avant, a ~~most~~ always, sometime.

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tunity under Section 15 to have a two-third vote, if you wished.

Mr. Juneau I don't want a two-third vote, Mr. Bell.

Mr. Bell You had the opportunity, though, didn't you?

Mr. Juneau My answer to that, Mr. Bell, not only did I have it, but this whole convention had it, and this convention voted for a majority for the sixty-three parishes of this state.

Mr. Bell We felt in the committee, the recommendation after many, many months of work, that it was agreeable to the people in the country the way they wanted it and the agreement was the way the fifty boys in the City of New Orleans had asked it to be passed.

Mr. Juneau The only answer I could tell you, Mr. Bell, I abide by the wishes of this convention. The wishes of the convention in Section 15 was to the effect that a majority would prevail. Now that we are at the appropriate section, I think the same would be applicable in Section 35.

Mrs. Warren Mr. Juneau, I'm a little bit disturbed that you would propose this amendment and then you say you don't want it. You are proposing this amendment and you say you didn't want a two-thirds. Or did I hear you right?

Mr. Juneau My amendment, Mrs. Warren, is to make it a majority, so obviously I oppose a two-thirds. I'm saying a majority.

Mr. Roy Mr. Juneau, in response to Mr. Champagne's comment, do you realize that I for one voted for Tom Casey's amendment and I am not about to vote to repeal Section 15.

Mr. Juneau I understand it after you said it, Mr. Roy.

Further Discussion

Mr. Arnaud Ladies and gentlemen, I don't think this is a matter to be taken lightly. What we have done here, in effect, is set up a double standard. This is wrong. We recognize the fact that you must provide for these various offices in the city of New Orleans. We have done this by enumerating them, but to set up a double standard and say that in one instance it requires a majority vote and the other instance it requires a two-thirds vote, I think it's just dead wrong. I urge you to vote for the new amendment. All we are doing here is making the legislature perform in a uniform manner throughout the state. What's wrong with the majority vote? I have heard many of you get up here and preach on this vote. I got up in the majority, I believe in the majority, which I think, you want it, when it didn't fit, you don't want it. I don't want to go back and over to Section 15. We made a decision on that. I think we ought to leave it lay. I can not understand how this convention can have the one third vote we want a majority vote and for the very same thing in the other place we want a two-third vote. I ask you to deal this. Juneau doesn't want.

Personal Privilege

Mr. Burns Mr. Chairman and fellow delegates, re-appearing before the committee and the merits of the legislation will be discussed in how it affects the rest of the state. We are read with you. Let's not bring up completely the committee on the floor of this legislature about this situation until every detail about the bill is completely worked out. I would prefer to see the committee report. I think it would be better if we were better informed before we were going to take it. At the same time, we are not going to take it until we are better informed.

with you a we issue this legislation, I don't take any sides at this time. What I would like to say is, but just plead with you not to make any more of an effort if we keep as it, we are going to get it in the kind of the people where it is going to be hard to handle when the time comes.

[Mr. Chairman, I have a motion to amend the...
Amendment...
Section 36...
Reading of the Section

Mr. Royster Section 36. Jurors qualified under the Exemptions
Section 36. The Supreme Court may provide for qualification and exemption of jurors.

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, Section 36 represents a change in our law. We have deleted the requirement that jurors be competent and intelligent. We have deleted the requirement that women cannot serve on juries unless they file a certificate requesting that they be allowed to serve. We have deleted the requirement of the number of jurors who must concur to render a verdict. The new part of this provision is that the Supreme Court shall provide for the qualification and exemption of jurors. The reason we adopted this is that exemptions from jury service have really become such too much of a political matter as handled in the legislature. Interest groups have gone to the legislature and have gotten exemptions from jury service, so that now many of our most qualified citizens are exempted from jury service by law. We have adopted exemptions for all kinds of people. Therefore, the committee decided that a body less subject to lobbying pressures should decide upon the exemptions. If we don't do this, we are in danger of all of our better qualified citizens being exempted. We have placed this decision in the hands of the Supreme Court. Since the jury serves the court and is a part of it, then judicial qualifications are really a judicial matter. We feel this would be the most workable way to handle the problem of granting exemptions to persons for jury service.

Questions

Mr. Stinson Judge Dennis, by doing this aren't you putting the judiciary over the legislative branch? That is a legislative function not a judicial function?

Mr. Dennis No, as I just said, the committee felt it was a judicial function to delete upon exemption. We are now faced with the exact situation, I think, where a judge can't excuse a man who has lost a one-man business and yet he has to excuse a volunteer fireman who may not have any real good reason to be excused. But by statute, he's excused, he's exempt.

Mr. Stinson In other words, you don't agree with the wisdom of the legislature then?

Mr. Dennis In this regard, don't think it's been wisdom. I think it's been folly, because we have exempted by law a large group of our better qualified people from jury service. This is not our personal opinion. I think it is a good idea to be subtle in our regard. We are not making people that jury service with. I think we should have been a qualification of our community, that is, the jury should have been larger.

Mr. Stinson Judge Dennis, a gentleman just asked me to read you this article on the exemptions, and that is for information, where qualifications shall be as provided in Section 36 of this statute.

a little bit confused. Maybe I'm just woozy. But is that correct?

Mr. Dennis: You're talking about in Section 37?

Mr. Kilbourne: Yes, sir.

Mr. Dennis: Well, we haven't reached that section yet, but that is a typographical error in Section 37. It should refer back to Section 36 instead of Section 6. We have a technical amendment to change that when we get to it. If there are no further questions, Mr. Chairman, I move for adoption of the section.

Amendment

Mr. Poynter: Amendment No. 1 [by Mr. Pugh and Mr. Gravel]. On page 13, delete lines 31 and 32 both inclusive in their entirety, and insert in lieu thereof the following:

"Section 36. (A) A citizen of the state, who is [The amendment has been changed. Strike out the word 'residing' and insert in lieu thereof 'domiciled']. A citizen of the state, who is domiciled within the parish in which he is to serve as a juror and who has reached the age of majority, is eligible to serve as a juror. The legislature may provide additional qualifications. (B) The Supreme Court by rule shall provide for exemption of jurors."

Explanation

Mr. A. Landry: Ladies and gentlemen of the convention, on yesterday I circulated an amendment on which fifty-two of my fellow delegates cosigned with me. It brought to my attention, however, that there might be a possibility that it would be wrong for the Supreme Court to set the qualifications. So I have decided to go along with the Pugh, Gravel amendment, because this is more explicit. Now I think that for the non-lawyer delegates, I think I should explain to you the process of jury drawing so that you would understand it and see the problems that we, in the various parishes, have in selecting a jury of men or women for jury service. First, the amendment would do this. It would permit every person upon reaching the age of majority, to be eligible for jury service, which means not only male, but also female would be eligible; under the present constitution only the male can serve on the jury except the female can do it by an affidavit with the clerk. However, by statutes, the Louisiana Legislature has permitted women to serve on civil juries. Now in order to secure jurors, it is necessary for the jury commissioners to get up a list of individuals and it is usually selected, not selected, but it is taken from telephone books, from lists of high schools, from the list of the names of persons who have reached the age of eighteen. You have to take it from the city directories. You have to take a list from, in my parish, from the water district, which is all the water meter in the parish, and also all of the registered voters of the parish, which means you have approximately fifteen to twenty thousand names in the large parishes. You cannot separate the women from the men and then, when you draw a criminal jury, you must draw them at random. In my parish, I use the capsule type of drawing where the jury commissioners do not even know what name they are drawing. Only last week, in order to supplement the jury venire list, we had to draw over four hundred names and put in six hundred and fifty names in the jury venire list because winner kept cropping up. Now this would eliminate that situation. They would be eligible to serve both on criminal and civil juries. The legislature would set the qualifications. At the present time, the qualifications to serve as a juror, under the present criminal law, is that you must be a citizen of the United States and have resided within the parish for at least one year; be at least age 18, of course that's been changed to

eighteen; three, be able to read, write and speak the English language; four, not be under interdiction or incapable or serving as a juror because of a mental or physical infirmity; and five, not be under indictment for a felony nor have been convicted of a felony for which he has not been pardoned.

Now, that doesn't create a problem to qualification. What really creates the problem for jury service is the exemption. If you look at the statutes you will find under Article 403 the exemptions from jury service. They include, of course, the governor, the lieutenant governor, the state omnitriller, the state treasurer, the secretary of state, superintendent of public education, their clerks and employees, the members of officers and clerks of the legislature, the judges and active officers of the civil courts of this state. Two, any other public official if jury service would seriously interfere with the performance of the official duties. Three, attorneys at law, their legal secretaries and employees, peace officers, ministers of the gospel, physicians and dentists actively engaged in the practice of their profession, school teachers, school bus drivers, pharmacists, members of paid and volunteer fire departments, and persons who are required to travel regularly and routinely in the course and scope of their employment. Four, persons who became of age, sickness or other physical infirmity would suffer serious detriment if required to serve as a juror. Five, persons who have served as grand or petit jurors in criminal cases or as trial jurors in civil cases during a period of three years immediately preceding their selection for jury service.

When we omit all of these people, ladies and gentlemen, what do you have left to serve on the jury? Let me show you an example. There is no Teeway in the practice of what we do restrict jury when he calls a venire in for a criminal case, where a man or a woman operates a one-man business. When that person comes into court and asks the court to excuse them for the simple reason that they would have to close their business for maybe a week or two in order to serve on the jury, the judge looks at the statutes and says, "I'm sorry, I cannot excuse you, even though I know it will be a hardship on you and your family." Right afterwards, another person gets up and he walks over to the bar of the court, and he says, "Your honor, I'm a volunteer fireman and I would like to be excused." The judge, under the statutes, has to excuse him. If we continue the way we are going, pressure groups, next time, is going to be the American Legion, the Veterans of Foreign Wars, and somebody else is going to be excused. We want to protect the accused in this state. We want to give them a jury. We want to give them a jury of their peers, ladies and gentlemen. If a school teacher is charged with a crime under the present statutes, there might not be one school teacher that would be willing to serve on the jury and I think under the constitution you have a right to be judged by your peers. This does not permit it and I'm asking you that you vote this proposal in the constitution, thereby permitting people to serve on jury so that our accused can get a fair trial.

Questions

Mr. Kean: Mr. Landry, your Subsection B which provides "the Supreme Court by rule shall provide for exemption of jurors." If the Supreme Court took no action with respect to the rule and someone had a death in the family and wanted to be excused by the district judge from serving on the jury, where would he go?

Mr. A. Landry: I'm sure that this could be set by rule easily with the Supreme Court. Mr. Kean, it would provide for hardship cases which the statutes do not provide for at the present time.

Mr. Kean: But at the present time, the district judges have the right to excuse, do they not?

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Mr. A. Landry Under the statute, set forth, but they are limited

Mr. Keen This would take away the right from the district judges to elect in the absence of a rule by the Supreme Court

Mr. A. Landry It would not, sir, because I am sure the Supreme Court is familiar with that situation and they would put that in their rule.

Mr. Deshotel Mr. Ambrose Landry, I'd like to first of all preface my question by saying I kind of feel like Willis and Gravel with that amendment that Gerald Weiss had. I was a coauthor on your amendment too, as you realize. My question is this: Why are you supporting now, a proposal that has partial qualifications in it? You suggest leaving the qualifications up to the Legislature, let you have a partial delineation of qualifications in the amendment. Why is that?

Mr. A. Landry Because of the fact that under the present statute and the present constitution, women cannot serve on a jury except if they file an affidavit with the clerk. I personally feel that women should be eligible to serve on a jury.

Mr. Deshotel I agree with you on that. But by question 1, in reference to the phrase, "Who is domiciled therein in the parish in which he is to serve as a juror." Why do you have that particular phrase in there?

Mr. A. Landry Because this tracks the old constitution and says you have to be a resident or domiciled in the parish.

Mr. Deshotel A resident or residing in the parish

Mr. A. Landry That's correct. And sets the age and sets majority also. If you remember in November of 1972, there was a constitutional amendment in the ballot to provide women to serve on a jury. Of course you know what all amendments happened in November, 1972. People were just against amendment, period. But I think the women of the state of Louisiana certainly would like to have the opportunity, not only to serve on civil jury, but also on criminal jury. That was the reason for our amendment.

Mr. Deshotel What's the difference between residing and domiciled, Mr. Landry?

Mr. A. Landry Personally, I don't see such difference, Mr. Deshotel.

Mr. Deshotel Do you know what domiciled is?

Mr. A. Landry You could look into the parish if you want to and declare your domicile. I that correct, Mr. Deshotel?

I don't see much difference between domiciled and residence.

Mr. Billy Mr. Landry, I'm a little confused. You're a member of your original amendment. I don't mean that the latter if a bill is supposed to be the last way to abandon the bill rather than the first man.

Mr. A. Landry We don't need any bill.

Mr. Deshotel Mr. Landry, I'm not sure that under the law, especially the Louisiana Civil Code, that there is a well-defined definition what domicile is and that this would would then have a legal meaning under the provisions of the Civil Code.

Mr. A. Landry Not being a lawyer, Mr. Deshotel, I would think you are probably correct as you are an attorney.

Mr. Stinson Mr. Landry do you remember in all of these years, 1968-69, interest on offshore group trying to exert any influence on the Supreme Court instead of the Legislature in the future, or do you think

Mr. A. Landry I see a whole lot less problems with a man who is elected, or a group of people who is elected, for ten years than persons who are elected for four years.

AMENDMENT NO. 12, 1973. WHEREAS, the present constitution of Louisiana provides for the election of the members of the Supreme Court for a term of four years.

Vote Chairman Roy for the Chair

Amendment

Mr. Poynter The Stinson amendments. Amendment No. 1. On page 1, immediately below line 32, add the following paragraph: "Notwithstanding any other provision of this constitution, no woman shall be drawn for jury service unless she shall have previously filed with the clerk of the district court a written declaration of her desire to be subject to such service."

Explanation

Mr. Stinson Mr. Chairman, member of the amendment, it is with great seriousness that I introduce this amendment. It is a matter that through the years, at least the last three or four sessions that I was a member of the Legislature, the same issue came up. The position I take today is the position that I took at that time. This amendment is not in any way to discriminate, is not in any way to state that the ladies of this State are not qualified to be jurors, but it does say that they have their choice. It's no different from saying that a school bus driver is exempt or a fireman is exempt, or a dentist, or a doctor, or so forth. There are many exemptions. As you know, the exemption that will be set up under the last amendment that was adopted is an exemption that you do not have to claim. You can waive it. When they call the person's name as a prospective juror, they have to claim the exemption. This is an exemption for the ladies of Louisiana, without them being required to leave the jury boxes or jury or wherever they may be, to file in court to claim the exemption. However, the right is given to any female that wishes to serve, to file the intention or desire with the clerk of court, which is in the present constitution. This merely tracks and places in this constitution that provision that was in the 1921 constitution. I think it has worked well for a short while. There was a question whether or not the female could serve and as a practicing attorney, I know that the great, great agricultural thimble that were laid out and asked and begged to get off because they don't want to be forced to serve as a juror. There are many, many ladies and gentlemen who would jury service in their own homes. It is not that the lady is to serve on a jury and take on the destiny or life of her fellow citizens. I feel that that is a thing that our women should not be forced to do unless they wish and desire to do it. As I said before, I am not really with the amendment against them, but I think that is wrong. I say that if they want to, they have the right and they can sit in the jury box, and the jury of the father and will not agree with this, but if there was any way we could take an individual girl, I would be willing to bet anything that the greater percentage of our female citizens of Louisiana would be in favor of not being forced to serve on a jury. As you know, our jury system has been a good one and I would not want to tamper with it. I would like to thank you, Mr. Chairman, for your leadership and for your leadership in this matter. I am sure that you will be able to get this amendment passed.

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it can be one, and two, and three weeks that a jury would on a case be sequestered. In other words, forced and required to stay together day and night during the duration of that trial. That is a burden that I don't think should be placed on the women of Louisiana. I would like to urge you, let's continue the provisions of the constitution that have worked, in my opinion, well and fairly since 1921.

I want to point out again that this is not denying anyone, anything. It is giving a freedom of choice, a choice to serve if you wish. I urge you to let's place this back in the constitution and leave it as it has been through the years. If there are any questions, I'll be happy to answer them.

Questions

Mr. Smith Mr. Stinson, aren't you for equal rights for women?

Mr. Stinson Yes sir, all women would have the same equal rights under this. Yes sir.

Mr. Smith Well, don't you think this discriminates against them?

Mr. Stinson What is that, sir?

Mr. Smith Don't you think it discriminates against the women, not allowing them to serve on juries if. . .

Mr. Stinson This is not denying them. This is preventing them from being discriminated against by being forced to when they don't want to.

Mr. Smith You're not mad at the women, are you?

Mr. Stinson No sir, I love the women. Always have and I hope I always will.

Mr. Hayes Mr. Stinson, do you know how this is handled in other states? Do ladies serve on jury duty in any other states that you know about?

Mr. Stinson To my best knowledge, in most of the states, now I could be wrong, I haven't researched it, I think they've had like we have where it's optional if they wish to qualify for that.

Mr. Hayes Do they serve in the federal system here in this state?

Mr. Stinson They do, yes.

Mr. Hayes They do serve on the federal courts?

Mr. Stinson Yes, sir.

Mr. Hayes They don't have the option.

Mr. Stinson No, sir.

Mr. Burns Mr. Stinson, you've stressed the inconvenience of ladies serving on juries. If they want equal rights, don't you think they ought to take the bitter along with the sweet?

Mr. Stinson No sir, I think they are too sweet to serve on the juries, in answer to your question.

Mr. Shannon Mr. Chairman, I believe we were ready to vote on this thirty minutes ago and I think everyone knows how they are going to vote now. I move the previous question on the entire subject matter.

[Previous Question ordered. Roll call vote ordered.]

Personal Privilege

Mrs. Brien Special privilege, Mr. Chairman. I just would like to ask everybody, do you believe

what was told the lady back there?

Mr. Roy Mrs. Brien, Mrs. Brien, the previous question has been ordered and there is no objection. I just don't think I can let you speak on it. If you want to oppose the previous question and want to speak, I can, but we'd better go on forward with this. Okay?

Personal Privilege

Mr. Stinson Mr. Chairman, in view of the fact that I believe in freedom of, especially the ladies, I'd like to answer the question. I think you can get in your argument by a question, please ma'am. I yield to the question.

Question

Mrs. Brien I'd like to ask you, do you believe what was told to Lady Macbeth? 'Woman, thy name is frailty.' So do you think we are too frail to act as Jurors?

Mr. Stinson No ma'am, I thought what they told her was to go put here clothes on.

Closing

Mr. Stinson I'll imitate Mr. Jack. I won't take much time but I would like to urge, as I said, I'm not being frivolous, I'm not belittling the ladies in any way. I'm giving them a freedom of choice. The different groups like to have their option as to whether they should serve or not, and under this, any lady that wants to serve can serve. It's been the law. We've debated in the legislature, and fortunately the wisdom of the legislature in the past has been to let it as it is in the present constitution. So I urge you, let's vote here and give the ladies the freedom of choice because there are a lot of ladies that don't want to serve. Your wife, more than likely doesn't want to serve. If she wants to serve, let her go register and serve. Your daughters and different ones. This is a freedom of choice which I think nowadays most everyone has decided is very important. Don't put the burden on the ladies if they don't want it, but give them the right, they who wish to do so. I'd like to urge you to adopt this amendment. I say it's freedom of the ladies not in any way discriminating against them or doing away with their rights. They are certainly not frail enough. . . I'll tell you the last case I had, jury case, before they knew it I had four ladies on the jury and I accepted them. I won the case and they were good jurors. But still, I don't want to force it on those that do not want to. This is giving them the right and the privilege. In thanking you, I'd like to urge you to please vote favorably for this amendment.

[Amendment rejected: 11-02. Motion to reconsider tabled. Previous question ordered in the Section. Section passed: 110-2. Motion to reconsider tabled.]

Chairman Henry in the Chair

Mr. Henry I told Mr. Roy that wouldn't be a tie vote, but he wasn't certain and he wanted to get up here.

Reading of the Section

Mr. Poynter "Section 37. Grand Jury. Section 37. There shall be a grand jury or grand juries in each parish whose duties and responsibilities shall be provided by law and whose qualifications shall be as provided in Section 6 of this article. The secrecy of the proceedings, including the identity of the witnesses appearing, shall be provided for by law."

Explanation

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Mr. Avant: Mr. Chairman, ladies and gentlemen of the convention, the purpose of this provision is to clarify the language of the present constitution to make it clear that more than one grand jury may be impaneled at the same time in a parish. There is a very good reason for that. I think before I continue with me, but I think that we should read to you the present provision in the constitution on grand juries. I would like for Mr. DeBeauvoir to call particular attention to it. I read this:

Article VII, Section 44 provides that a grand jury of twelve, nine of whom shall constitute a quorum, and must endeavor to find an indictment shall be impaneled in each parish twice each year and remain in office until a succeeding grand jury shall have been impaneled, except in the parish of Orleans--now, not Orleans--in which at least one grand jury shall be impaneled each year. The district judges shall have authority to try at any time misdemeanors and when the jury is waived by the defendant, all cases not capital or necessarily punishable as hard labor and to receive pleas of guilty in all cases less than capital.

Now this provision as it is drafted makes it clear that there may be more than one grand jury in a parish at a particular time because it has been the experience, and I know firsthand in this parish in the past in the last few years, that on two occasions when the grand jury had to consider a particular matter for several months on end, which prohibited the grand jury from attending to the regular matters that it would have been attending to during that period of time. So this does not necessarily provide that there will be more than one grand jury, but it leaves it up to the legislature on those particular cases where it is necessary, on occasions, that you have more than one grand jury, to provide a mechanism whereby that can be accomplished. Now no reference is made in this provision to the number of jurors who must serve on the grand jury removed in mention of those cases in which grand jury indictments are necessary. Also deleted was the provision of the impanelment of grand juries, and such matters shall be as provided by law. Now new is the mandate to the legislature to provide for secrecy of the grand jury proceedings, including the identity of witnesses appearing before the grand jury. The present requirement that grand jury proceedings be secret is contained in the statute, this provision having to do with the secrecy of the grand jury proceedings, was raised to constitutional status and placed in this provision which the Judiciary Committee is suggesting to you to take care of what is, I respectfully submit to you, one of the greatest evils of injustice that occurs in this state, and can occur in this state, I'll tell you, and I do not think that I'm able to think when I consider this particular provision of this constitution. Any delegate to this convention, this is a hypothetical question, but any single delegate to this convention could go to his district attorney and tell that district attorney, I think, I know a crime that has been committed in this parish, but I believe that the people involved and the personalities involved are not going to get on a white horse and go spreading down the street and spread the news. But if you will subpoena me before the grand jury, I will tell you what I know, under oath, so he does that. The very next thing that happens in the paper, on the radio, what is existing, is that one has been subpoenaed before the grand jury. Time after time, in the hands of the vast majority of the public, you see, is a wrong. He is affected with a stigma that he will never be able to get off of his back. If you don't believe that that's true, you just sit down and think about it. It is the purpose of this provision to make it possible that the present secrecy of the grand jury proceedings which is provided by statute, be placed in the constitution with the further qualification that the identity of witnesses appearing before the grand jury shall remain secret. The district judges shall provide a procedure by which that shall be done. Now obviously there won't be any more a serious former session when the

case is tried, when the grand jury indictment has been returned and witnesses are in court and testify, then the whole truth will come out. But the purpose of this provision is to prevent people being stigmatized, who are perfectly law-abiding and good citizens and only doing their duty as citizens, to lay before the proper authorities evidence of crime that they have, and who are put in the public light as having been subpoenaed before a grand jury. It does make a great deal of injustice from occurring. I'll be happy to answer, now, any questions that anyone may have about this section.

Questions

Mr. Arnette: Mr. Avant, just a couple of technical questions. On line 5, shouldn't that be Section 36?

Mr. Avant: Yes. There is a technical amendment that will follow to correct that, Mr. Arnette.

Mr. Arnette: There is one other technical amendment that should be put in also. After the rest of the word provided in line 5, shouldn't it have for in there as provided for in Section 36 of what Article 7? Because the qualifications are not in Section 36, but merely provided for.

Mr. Avant: ... for in Section ... I agree with you, yes sir.

Mr. Stinson: Mr. Avant, under the present law there can only be one grand jury at a time in any parish, isn't that correct?

Mr. Avant: That is correct.

Mr. Stinson: Now, the grand juries themselves are very independent, they can call themselves into session, can't they, they can investigate anything they want to. Now if you have three or two, ... say two grand juries, suppose one is the ... is investigating me and the other one decides they want to investigate me on the same charge and they one no-bills me, and the one indicts me, what is going to happen?

Mr. Avant: Mr. Stinson, I don't think that is going to happen. I am concerned and the logic behind this provision was, those situations, which we had two occur in this parish in the last three years, are very serious matters, extremely serious matters, which required the grand jury to be in session investigating a particular matter for months on end. During that time the grand jury was unable to attend to the regular ordinary day-to-day business of the grand jury, we are not setting up the machinery in this provision, we are simply providing a mechanism whereby the legislatures in those unusual cases, can provide for special grand juries to consider special matters that, because of the public importance involved should be able to be considered, without disrupting the ordinary functions of the regular grand jury.

Mr. Stinson: But don't you think that there is a possibility that the district attorney that you wish to have one grand jury and the district attorney that I have and he says, "Mr. Stinson, you are not going to indict anyone. I am going to draw up a grand one and maybe I'll get more indictments. Don't you think that he is going to see it for that purpose?"

Mr. Avant: No, sir, I don't think it will be used for that purpose, and that is, I think that you agree on a readily be corrected.

Mr. DeBeauvoir: Two questions, Mr. Avant. First of all, don't you think that in the hypothetical situation that Mr. Stinson just asked that if one grand jury had subpoenaed a witness and that witness would be subpoenaed to appear then for another grand jury

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come along and find a true bill on another grand jury. It seems to me that it would certainly be a good argument there.

Mr. Avant Mr. Burson, I am not overly experienced in the criminal law. I think that that is probably a result if you... a man who has much more experience in the criminal law than I do, feel that way, I wouldn't be in a position to argue with you.

Mr. Burson Secondly, with regard to your point about the secrecy of the identity of the witnesses. Isn't there an additional motivation which you have not stated behind this, that is, to protect witnesses from possible coercion in certain cases?

Mr. Avant Yes, sir, that is an additional consideration.

Mr. Silverberg Jack, in regard to this same question about secrecy of witnesses, how far does this secrecy extend, would you get in a little detail on that?

Mr. Avant Mr. Silverberg, I think that it is of necessity must end when there is an indictment and a trial.

Mr. Silverberg I am speaking of prior to the time of indictment, talking about when the witness is first called or volunteers, when he approaches the grand jury room, is there such a thing as inhibiting the use of his name or her name prior to the proceedings?

Mr. Avant Those details were matters which we felt should best be left to the legislature under this constitutional mandate.

Mr. Perez Mr. Avant, in view of the provisions which we adopted in Section 36, which sets forth the specific qualifications of a juror and then the next sentence says, "the legislature may provide additional qualifications", and when we in Section 37 would say "whose qualifications shall be as provided in Section 36 of this article," don't you feel that there is a possibility that the interpretation could be that only those specifically set forth and not those which may be provided additionally by the legislature would be the qualifications of a grand juror?

Mr. Avant Would you repeat that, sir. I was unable to hear you. I have a slight hearing problem and then I had some distraction.

Mr. Perez In light of what was adopted in Section 36 which materially changed Section 36, wherein we have specific requirements or qualifications of a juror and then we refer later saying that "the legislature may provide additional qualifications." Because of the language in Section 37 which says "whose qualifications shall be provided in Section 36 of this article", isn't it possible that the courts might interpret the verbiage in Section 37 to mean that only those qualifications set out specifically in Section 36 would be the qualifications of a grand juror, and not the additional qualifications which the legislature may establish under the permissive provision in Section 36?

Mr. Avant No, sir, I don't think that it is susceptible to that interpretation. I think that it means that the qualifications for grand jurors and the qualifications for jurors will be the same.

Further Discussion

Mr. LeBlou Mr. Chairman, and fellow delegates, I just wanted to let you know as the reason Cameron was in the 1921 Constitution is an exception, was at that time the only way that people who lived in the north part of the parish could get to the south part of the parish where the courthouse is, located was by a stern-wheel steamboat. Mr. Avant brought this to my attention, but it just goes to

show you that the committee has done a good job because just by changing the language of their proposal, compared with the 1921 Constitution, they still allow the Cameron grand juries to be impaneled in the same manner and to provide the same service and that is the point that I was trying to bring to you this morning. Thank you.

Personal Privilege

Mr. Tate Mr. Chairman, I rise to end any flattering questions about who sent me these flowers and a point of personal privilege. "Justice Tate, please place these on the tomb of our fourteen year terms. Be assured that we will always remember you for the results you have accomplished. Your Brothers on the Bench, Amen".

Amendments

Mr. Poynter Amendments sent up by Delegates Pugh and Perez.

Amendment No. 1. On page 14, line 3, after the word "whose" and before the word "duties" insert the word and punctuation "qualifications."

Amendment No. 2. On page 14, line 4, after the words "by law" and before the words "and whose" insert a period and delete the remainder of the line at the beginning of line 5, delete the following: "The portion of the word "vided in Section 6 of this Article."

Explanation

Mr. Pugh Mr. Chairman, fellow delegates, Mr. Perez and I suggest to you that the word "qualifications" should appear before the words "duties and responsibilities" in this Section and that they all be as provided by law, the balance of that sentence be deleted. We have previously changed Section 36 and in doing so, have provided a mandatory requirement that for qualifications of a juror the person be of the age of majority, that he be a citizen of the State of Louisiana, that he be domiciled within the parish in which he is called to serve as a juror. We are of the opinion as we go on and say, that they can make such additional qualifications, the legislature can, that there is a possibility of suggesting a limitation in 37, if we merely refer to 36. That the only qualifications for a grand juror are that he be of the age of majority, a citizen of Louisiana and domiciled in the parish. With this change, the legislature can, as it could in the previous section, add additional qualifications. We suggest the adoption of this amendment.

Question

Mr. Sandoz Mr. Pugh, the effect of your amendment would then permit the legislature to continue to grant the exemptions that we attempted to avoid in the previous section, would it not, sir?

Mr. Pugh No, sir, I never said a word about exemptions, I said qualifications and there is a distinction between the two. I haven't dealt with exemptions at all. However, in this amendment my previous amendment.

[Previous Question ordered. Amendment adopted: 92-1. Motion to Reconsider failed.]

Amendment

Mr. Poynter Amendment sent up by Delegate Kean. Amendment No. 1. On page 14, line 6, after the partial word "ceeding" delete the remainder of the line.

Vice Chairman Casey in the Chair

Explanation

Mr. Kean Mr. Chairman, and fellow delegates,

This does not in my opinion make any substantive change in the sentence in question. The sentence in question, after the amendment would read: "The secrecy of the proceedings shall be provided for by law." I offer the amendment without clarification, so that we, by the inclusion of this specific mandate, impose upon the legislature an impractical and impossible task of legislating to prohibit the identity of witnesses appearing before the grand jury without any guidelines as to what we mean. We are simply plugging into the constitution an effort at statutory language without clarification as to the extent that the legislature could carry out its assigned task. For example, up to the point in time, secrecy of the grand jury in Louisiana has always been purely legislative. If we leave in the sentence as amended, as I recommend by this amendment, we would be placing more in the constitution with respect to the secrecy of the grand jury than presently exist. Under those circumstances, it seems to me that if we mandate that the secrecy of the proceeding shall be provided for by law, then it is unnecessary for us to go further and mandate the legislature to do something which is impractical and impossible, in my opinion. First of all, what do we mean by including the identity of the witnesses? Does that mean those who have been there, or does that mean those who are going, does that mean those who have been to go to the courthouse, or just what is the meaning? In final analysis it seems to me, it raises the question of whether or not we are affecting a first amendment right. For those reasons, and since it does not affect the substance of the sentence, I ask that you support the amendment.

Further Discussion

Mr. Avant: Mr. Chairman, ladies and gentlemen of the convention, I rise to oppose Mr. Keary's amendment. Mr. Keary is not correct when he says that there is nothing in the present constitution about the secrecy of grand jury proceedings. It is a feature of the statutes. But, the legislature has never been fit to make any provision for the secrecy of the identity of witnesses who appear before a grand jury. The substance of the testimony is secret, but it is true, but it is not a protection insofar as the identity of the witnesses themselves who appear before that grand jury. I am not going to belabor this point because I think it is perfectly obvious to you. But you know, and I know, that if you were aware of criminal activities in your parish or your city, that involved public officials or other people of whom you naturally would not, get out and spread that like that on the street. But if you want to hear district attorney said, "look, there is something that the grand jury ought to know, there is something that you ought to know, I am a citizen, I want to do my duty, you subpoena the grand jury and the grand jury will tell you about it." The very next day wide newspaper headlines to the fact that you have been subpoenaed before the grand jury and in the eyes of the public you are a bad man. You are a bad man, when in fact you are merely doing your duty as a citizen. You will work for years to eliminate that stigma that is attached to you. As Mr. Burson pointed out that this also would apply for the protection of witnesses and that you have been subpoenaed because they have appeared before the grand jury and testified with respect to criminal activity of which they have knowledge. I frankly view the reputation of the individual, and I will tell you this, and I am not saying that any district attorney has ever done this, but if I was a district attorney and I wanted to get rid of my criminal witness, I would know them and their friends before that grand jury week in and week out, week in and week out until I had accumulated my business, when I knew full well, I knew full well that the grand jury would ever tell them. But I would have accomplished my purpose. You are all intelligent men and women, I think you will see

nothing, I ask you to reject this amendment question.

Mr. Tobias: Ask, I have this question. Do you believe that we could restrict the power of the press to report who goes in and out of the courthouse?

Mr. Avant: Do I personally believe that it can be done?

Mr. Tobias: Yes.

Mr. Avant: Yes. ...Constitutionally, are you talking about the grand jury or who goes in or out of the courthouse? Yes.

Mr. Lanier: Mr. Avant, I have several questions. I would like to ask you, but the first one is, "Are you aware of the fact that I support the committee proposal?"

Mr. Avant: I was not aware of that until you told me, Mr. Lanier. Thank you very much.

Mr. Lanier: But I would like to bring out a couple of points. Is it not a fact that under the public records law of the State of Louisiana that there has been jurisprudence which has held that the subpoena of the grand jury are not matters of public record?

Mr. Avant: I am not aware of that fact.

Mr. Lanier: Is it not also a fact that under the present Code of Criminal Procedure that there is a provision that says that all matters pertaining to grand jury proceedings are secret and cannot be revealed by those persons who have privilege to them?

Mr. Avant: Yes, sir, I am aware of that.

Mr. Lanier: Despite this, has it not been a fact that very often the names of people come out, regarding these investigations?

Mr. Avant: In certain particular cases, must not verbally so.

Further Discussion

Mr. Burson: Mr. Acting Chairman, fellow delegates, I know this is going to surprise some delegates that a law-and-order man would want to speak in favor of what I deem to be a very important personal right. But I am against the amendment because I think that the language that Mr. Avant has advocated and apparently been successful in convincing the Judiciary Committee, should be included in the proposal is a tremendous step forward and derelict constitutional. I am because I am not aware of any greater abuse of personal rights in the field of criminal law than the over-investigation, whether by federal grand jury or state grand jury, of the identity of people who testify before a grand jury. Now we are all grown men and women here and we all read the newspaper. We all know that the federal institution says that you are presumed to be innocent until proven guilty. I will be here to tell you today, as a man who has practiced both as a defense lawyer in criminal cases and as a prosecutor, that the only presumption in the world of anybody in the criminal courtroom is "the guy is guilty" or he wouldn't be in there. If the same token, the only presumption in the popular mind that attaches when they hear that representative go and see what the grand jury went down to testify before the federal grand jury or the state grand jury that is investigating corruption in government is, well, what account we involved in something or he would be down there to testify. Now if we are involved in something, the grand jury is going to find the true bill and it will be in there, they know

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is going to get a chance to know about it at the proper time. But if he is not, then it seems to me that it is a rank injustice, as Mr. Avant pointed out for him to have this name spread all over every paper in the state, simply because he went to testify and do his duty as a citizen. Now, I am also very much aware that as a practical matter a good reporter is going to be outside that courthouse and certainly nobody can stop him from reporting who goes in and out. But there are many things in the law, there are many things in the Bill of Rights that we know we will never have perfectly, such as freedom of speech. We can't have perfect freedom of speech. But we should aim for as much as possible some degree of perfection in those areas where rights are important. I think that taking the history of the grand jury proceeding back from its origins in Great Britain, that is the greatest weapon that we have today in investigation of public corruption. I submit to you that the language of the committee proposal only furthers that aim by protecting the confidentiality of witnesses. It is also not important to note, that there are cases where the identity of witnesses should be kept secret because you want to protect them from possible coercion. This is very important in cases where you may have one or two star witnesses who make your case. So I would urge you, for these reasons, to reject the amendment.

Questions

Mr. Vick Jack, I am sympathetic with your views, but do you really believe that this would pass muster under the first amendment, Freedom of Press?

Mr. Burson That thought occurred to me and this may be one of the many areas where highly privileged rights come into conflict. I wouldn't want to predict what the outcome of that would be.

Mrs. Zervigon Jack, I am in sympathy with you as well, but I am confused as to how the law passed by the legislature in compliance with this would read. Would it require that the district attorney maintain an unmarked car to go pick up people at their residences? I don't quite understand how it would...what the mechanics of it would be, how it would work.

Mr. Burson Well, I think, as Mr. Lanier has already pointed out in his question, the present law states that subpoenas for grand juries are not public records. You already have provisions in the present law that tend to do what this would do. But there may be other things that need to be done and, more important than that, I think it is important enough to deserve constitutional status, and that is why I am for keeping it in there.

Further Discussion

Mr. Stinson Mr. Chairman, delegates, hearing this presentation, it seems to me like the main person has been overlooked and disregarded. We are worrying about an embarrassment of the fact that a person goes before a grand jury, but what about the poor defendant? Now, those of you that are no lawyers, this defendant, he doesn't even know he is being investigated and he is innocent from all contention. The first he knows is when they come out and arrest him and take him to jail. If he can't make bond and if he doesn't have the money, then he goes in jail. He can't hire a lawyer, they are going to keep him there until he goes in court and then maybe they will appoint a lawyer. He has no way to protect himself. He doesn't know what is taking place. It is embarrassing him to be arrested and put in jail and he gets the publicity. But his life and his freedom is involved, not just the fact of embarrassment. Do you mean to say that if...Brother Stalliv would go down before the grand jury, they wouldn't...people wouldn't come out and say, "well, they are going to put him in jail because he went down

there and stole money from the Baptist church or something like that. He is an honorable gentleman. They are not going to discriminate against him and criticize him because he went before the grand jury. But we have got to think of the defendant, the person whose rights are being involved. Now under this, if he can't hire a lawyer when he goes up for arraignment, then he will be furnished a lawyer. Our lawyer mind you, the district attorney with his staff, his investigators, the police force, the sheriff's force, and everybody against this one lone defendant and his one lawyer that the court has appointed, and you mean to say that he has no right...he doesn't have investigators, he doesn't have any money and he doesn't have a right to know who said he was guilty of something... How can he build up a case if you don't know who is going to be the witnesses, if they are kept secret and brought into court and presented, how are you going to build up an alibi if he has an alibi? We have got to think of the right of the person who is being charged, the person who we say, "is innocent until proven guilty." But we take away all the mechanics for him to prove his innocence. There is nothing wrong with him knowing who said that he committed some crime. He should have the right to go...when they said harassment and go out and cause some trouble. Well, if you are going to be a witness to try to send someone to the penitentiary or to the electric chair, you should be as honest as you can be. Now I am the one, I am willing and I want to see justice and you should tell anyone what you know". I don't believe in secrecy like this. When there is secrecy of this type there is not justice. There is nothing wrong with it being made known and so you can see who is going to be against you, and question them. If that is justice, I hope I never get any injustice done to me.

Questions

Mr. Bollinger Mr. Stinson, as a defense attorney, are you obliged to give the prosecuting attorney the names of your witnesses?

Mr. Stinson No, we are not required to. Because my witnesses are not going to testify that any crime was committed. But his had all the investigation, he had the chance, he had the officials. I am glad you asked that Mr. Bollinger, I overlooked that. Can you imagine a district attorney, they say, well, he is supposed to be impartial, but can you imagine a district attorney if there are five witnesses at the scene of a shooting and two said that the defendant did it and three says he didn't. Who is going before the grand jury. The two that said he did it, the three are not going there in most cases. The defendant has no way of knowing who was present until he goes to trial and he asks the two witnesses... "you, sir, who else was there?" They say, "well, John, Tom and Joe". Well, they may be in California or you don't know where, it is too late to get a continuance, you have already started, you have no way of knowing...you, one lawyer and your poor defendant, with all the cards stacked against you, trial and he asks the two witnesses... "you, sir, who else was there?" The only excuse... the opposition is, that the witness might be embarrassed. Well, I think that if he is a person responsible enough, there would be no embarrassment whatsoever. In justice of the defendant, I ask that you please, let's vote this amendment.

Further Discussion

Mr. Kilbourne Mr. Acting Chairman, fellow delegates, my friend, Mr. Stinson, has totally misinterpreted the purpose of the Committee Article. Now in the many years that I was a district attorney, I consistently refused to give... to make public the identity of witnesses, or of anyone who were going to be investigated by the grand juries. I had some arguments with the local people on that very subject and I convinced them that I

was right. Now Mr. Stinson is talking about this poor accused person, this poor innocent person and that is one of the very persons that the provision is intended to protect. It so happens that there often are innocent persons investigated for criminal activity by grand juries. If he is innocent, as it happens often that he is, he would be an injustice to him to publish the fact that he has been investigated by the grand jury and it would be a very serious injustice to him. I think that it is most important that these matters are kept secret. It facilitates the grand jury, which is merely an investigatory and accusatory body and not a trier of cases. It facilitates them, it protects the people, as Mr. Avant has pointed out. It protects the people from the stigma... that some would give to being called before a grand jury. I would like to remind Mr. Stinson and you delegates, this business about... an accused knowing who the witnesses are... Mr. Stinson is an experienced attorney and I am confident he knows very well that under the sixth amendment to the Constitution of the United States, every person charged with a crime is entitled to be confronted by the witnesses for him and to have the right of compulsory process for his own witnesses. But remember this, a grand jury investigation is not a trial. I believe that he would be certainly in the public interest that these matters be kept as secret as possible until there is... now once there is an indictment, of course it becomes a matter of public record and everybody is entitled to know about it, including the names of the witnesses. But what is bad, what is bad... and I have known district attorneys to do this, in which I always thought that they were wrong, they would give statements to the press about certain people who were going to be investigated by a certain grand jury and I do not think that that ought to be permitted. I think that the committee's article would certainly help to prevent that kind of thing happening. Now you... all of you read... have seen the recent example of these things in the case of Vice-President Agnew. Now whatever you may think about title-President Agnew has nothing to do with the matter, but certainly it wasn't fair for a... a U.S. Attorney to give the publication, give the information to the press that Mr. Agnew was being investigated and what he was being investigated for and that was a grossly unfair thing and it would be grossly unfair to do that to anybody. That is what this committee proposal is attempting. Those are the kind of people that they are attempting to protect because in the public mind, it certainly is true... regardless of the innocence of anyone. Once the public finds out that he is being investigated, they immediately assume that he has done something wrong. Now you may think it sounds funny coming from a former prosecutor these words, but I feel strongly about this thing and I always have, and it has always been my policy. I hope you will vote down Mr. Yeon's amendment.

[Continued] 39 Indulgences granted and 24 returned

Further Discussion

Mr. Tapper: Mr. Acting Chairman and ladies and gentlemen, I'll be very brief. I rise in support of the amendment. I don't think, as Mr. Vick said, that this could be enforceable in any way. I hope we form the indictment of an individual in the eyes of the public of this state and throughout the nation is tantamount to guilt, whether or not he is acquitted at a trial. I'm very doubtful whether we should continue the antiquated system of the grand jury but if we're going to, at least I'll allow those people who are being damaged or who are damaged by the opportunity to speak about what goes on there as much as someone who sits in the grand jury and who has attempted to indict them. Ladies and gentlemen, I think that in addition to this, we should also require or authorize any person to have counsel with him when he

goes before the grand jury. I hope that you support this amendment, in order to protect the interest of the people in the state.

Question

Mr. Stinson: Mr. Tapper, you heard Mr. Kilbourne, and of course he was an exceptional district attorney, but he says that the district attorneys keep it secret as to who is going to be investigated. Well, isn't it a fact that the district attorney in Monroe was elected because his campaign promise was that he was going to investigate the mayor and city council and try to put them in the penitentiary. Isn't it a fact that here in Baton Rouge that the agriculture commission or those... I didn't see any secrecy about Mr. Pearce being before the grand jury and all. If that's secrecy, I would like to see some publicity sometime, wouldn't you?

Mr. Tapper: I don't know the politics in Monroe, Mr. Stinson. If you say that happened, I've never doubted you before; however, my main interest is to protect the innocent, not the guilty.

Mr. Stinson: Also, Mr. Kilbourne says the constitution says he will be confronted with the witness, but in that confrontation when the jury has been selected and the man is put on the witness stand and there you are with no chance to investigate anything, isn't that so?

Mr. Tapper: That's what I've been told, that sometimes, that little example you gave is true, Mr. Stinson. Sometimes those who are seeing it the other way don't appear before the grand jury. I move the previous question.

[Previous question ordered. Remainder vote ordered. Amendment read and adopted: 33-74. Motion to reconsider tabled.]

Amendments

Mr. Poynter: Amendment No. 1, [by Mr. Perez, et al.], on page 14, line 2, between "Section 37" and the word "there" insert (A).

Amendment No. 2, on page 14, between lines 7 and 8, insert the following:

"B. Except as otherwise provided in this constitution, a district attorney, or his designated assistant, shall have charge of every criminal prosecution in his district, shall be the representative of the state in his district before the grand jury, and its legal advisor. He shall perform such other duties as may be provided by law."

Point of Order

Mr. Conroy: Point of order, Mr. Chairman. This proposed amendment is to a section that deals with the grand jury, and except for one phrase in this amendment, deals with the duties of the district attorney. I raise the question as to whether this amendment is germane to the subject matter of the section.

Ruling of the Chair

Mr. Casey: Mr. Conroy, I would have to rule the amendment is in order. As I understand, it refers to his duties in relation to the grand jury, and I would have to rule that the amendment.

Mr. Conroy: It only partly deals with those duties. The charge of the prosecution in his district, of every prosecution in his district and the performance of other duties as may be provided by law. Those limitations have absolutely nothing to do with his functions before the grand jury. It does in part deal with his functions before the grand jury, but it certainly goes far beyond that.

Mr. Casey: Mr. Conroy, there's certainly some merit to your objection, however, inasmuch as it

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does refer to the grand jury, I must rule that the amendment is in order.

Appeal from Ruling of the Chair

Mr. Conroy I will appeal the ruling because I think this will set a very bad precedent if by just referring the part of what's before the convention on a given section, we can then go far beyond it and tack a lot of other things into a given amendment, and I appeal the ruling of the chair.

Mr. Casey Mr. Conroy appeals the ruling of the chair that the amendment is germane.

Point of Information

Ms. Zervigon Mr. Chairman, would you have the Clerk read to us, the part that tells what sort of vote it takes to overrule a ruling of the chair.

Mr. Poynter It takes the same vote, Mrs. Zervigon, as it takes to suspend the rules, 67 votes or two-thirds present and voting, whichever is lesser.

[Previous question ordered. Record vote ordered.]

Motion Restated

Mr. Poynter Delegates Perez, Gravel and others have sent up floor amendments at this time to the section. Mr. Conroy rose on a point of order and inquired of the chair as to whether the amendments were germane, as required under the rules.

The chair ruled that the amendments were germane. Delegate Conroy appealed the ruling of the chair, therefore in accordance with the rules of this convention that require that appeals be affirmatively put, the vote will recur on the motion to sustain the chair.

Those of you who are in favor of sustaining the ruling of the chair will vote yes, those opposed to the ruling of the chair, with Mr. Conroy, would vote no.

[Chair sustained: 63-41.]

Explanation

Mr. Perez Mr. Acting Chairman and delegates, if you will recall the question of the duties of the district attorney has twice before appeared on the floor of the convention and there were certain objections made and at the time the objections were made, the authors of these proposals withdrew the amendments and this is an attempt on the part of many delegates to satisfy all of the worthwhile objections, and still include within this article a most important duty of one of the most important district offices in the state. I realize that we will be accused of coming in the back door, but the only reason that this is being done at this time is because of the fact that it was withdrawn earlier, it was never voted upon but was withdrawn earlier in order to attempt to satisfy the various objections. If you will follow the amendment with me, it would provide "except as otherwise provided in this constitution." The purpose of including that phrase is to make it possible for the attorney general, when he supercedes a district attorney, to have charge of criminal prosecutions. There was another objection raised that the original amendment which was introduced did not provide for a designated assistant to appear before a grand jury. That objection has now been satisfied. I submit to you that the duties of the clerk of court, the duties of the sheriff, have been included in the constitution, and that the district attorney of this state, as one of the most important officers in the district level, that his duties should be included. There have been many cases in which the question has been raised as to what the constitutional authority of a district attorney is, because he is referred to in the constitution and yet his duties are not covered, and on the

other hand, we would have the duties and responsibilities of a clerk of court or of a sheriff. The only other officer whose duties were not set forth in this entire article were that of the coroner, but we did require that he be a doctor.

I submit to you that we should include in this article, a provision for the duties of a district attorney. I am satisfied that we have taken care of all the major objections, and I, as a member of Style and Drafting, would move to move this particular provision back where it should be at such time as Style and Drafting meets on this particular amendment, if it's adopted.

Chairman Henry in the Chair

Question

Mr. Anzalone Mr. Perez, if we do not give to the district attorneys of this state some constitutional authority, would it not be possible for a simple act of the legislature to leave us with one prosecuting attorney in the State of Louisiana, that being the attorney general?

Mr. Perez That's perfectly not only possible, but highly probably it could happen, and it could completely take away the whole theory of local law enforcement, instead of being on a statewide basis.

Further Discussion

Mr. Tate Mr. Chairman, fellow delegates, this is probably the last time I am going to address you, and you may have a sigh of relief, on any substantive issue. We are leaving the area of my expertise but I come to you at the last minute, by the back door, and with no reflections on anybody, we are met with an amendment which has implications beyond what seems immediately apparent. I want to point out to you that this is a continuing struggle on the issue that this convention, I think, equitably settled regarding the rights of local law enforcement and the potential expansion of state interest in law enforcement in the years ahead. I don't mean right now. With regard to the personalities involved, I want to say, I admire Attorney General Guste, but I don't know him well. I've met him five times. Some of the D.A.'s are my closest personal and political friends. My former law partner was a D.A. for eighteen years. I am not speaking against the D.A.'s. I am speaking for the future. For instance, we say that the attorney general's... the district attorney's powers aren't spelled out. Neither are the judges, you heard this yesterday. We went through this yesterday or the day before. Neither are the legislators. The district attorney, you know, is the most powerful individual officer in our state. He can affect more people, for good or for bad, than the governor can on an individual basis, and it is as it should be, probably, because these district attorneys are a great and powerful office of local law enforcement, and there are very fine men filling it. But I do not want to say that we in 1973 should freeze out patterns of law enforcement to what we think now is best.

For example, this says the district attorney shall be the representative of the state before the grand jury. Who knows in the years to come where they might not want a statewide grand jury going after organized crime in local chapters, you want to know, and who knows that we should not have, representing the state, the attorney general with special expertise and statewide resources I am saying to you, I think right now, this is statutory material, this is the way it is regulated by statutes. I see no reason to change it right now but I am asking you to look ahead. Look ahead just like we do, throughout this. Let's not freeze our ideal on twenty, thirty and forty years ahead. Let's let the future have a chance to explore other methods and better methods perhaps, in the newer situations that arise in the years to

case, and with that I probably am going to address you for the last time on any substantive issue.

Question

Mr. Lanier: Mr. Justice Tate, the thing that I'm concerned me right here is the relationship between the powers of being the chief administrative officer and the administrative powers that we have given to the Supreme Court in its relationship with the district attorney if we do not assign any duties or control over criminal prosecutions. In your opinion, if we do not provide that the district attorneys shall have control of criminal prosecutions in his district and be the representative of the state, in your opinion, could the Supreme Court and the chief justice, through its either supervisory power or administrative power, either control the criminal docket or control the authority of the district attorney to enter non-pros?

Mr. Tate: In my opinion, it could not control his authority to enter non-pros which is conferred on him by statute. In my opinion, if you will look at the procedural powers, they are subject to general law, to the law of the legislature. I'm willing to trust the legislature of the future. The legislature of the future may think the powers of non-pros should be limited. I don't think so. I think he should have unlimited carte blanche power. Now, with regard to docket, the legislature of the future may think that perhaps we should have some minimum time in which cases may lie pending before they're either non-pros or tried. I don't want to freeze into the constitution any interpretation that says a particular local officer could defeat a general law endeavoring to improve law enforcement in the trial in the administration of criminal justice. Is that in answer to your question?

Mr. Lanier: Well, the point I'm getting to is not with reference to a statute that would be enacted, let's assume the absence of statute. In the absence of statute, would the Supreme Court under its administrative authority have the power to control the criminal docket in the absence of a provision like this?

Mr. Tate: If there were no statutes, and I point out to you, there is a statute, the court of criminal procedure....

Mr. Henry: Justice Tate, you've exceeded your time. Justice Tate, I think it was evident that you were against the amendment.

Transcript for discussion on the proposed amendment.

Further Discussion

Mr. Kelly: Mr. Chairman and members of the convention, we've seen similar amendments come before this house before, and I'll be real honest with you and I say this was a bad amendment. I did not get disturbed about anything in this convention until I saw some of the reaction concerning this little amendment right here. The Perez, Gravel amendment has tried to meet with every objection which was raised well before this convention yesterday by the amendment that myself and Mr. Melton had placed up here, and I say this was a bad amendment. It will turn out with an amendment and later pulled its own amount of olive from. Now let's analyze this thing. All it says is, except as otherwise provided in this constitution... That has got to be specifically referring to, I believe it was Section 10, while we're dealing with the power and the duties and responsibilities of the attorney general. It says that the district attorney or his designated assistant will have charge of all criminal prosecutions in his district and shall represent the state before the grand jury, and law its representative. That that's the statutory language that should be... (further discussion follows)

ability which says "he shall perform such other duties as may be provided by law." Now what you tells me, is we've got a constitutional office here so important as a district attorney office, and I might add that I'm not an assistant district attorney, I am not a district attorney, and I don't ambly of being one, but why, why are we so afraid to give such an important office such a limited constitutional power? This makes me wonder, and I did not worry until several speakers have shown so much concern about giving our district attorneys or our local government, let's put it on that basis, our local government, the right to give some powers and supervisory over the law enforcement within their respective district... I wish to remind you that I think that the advocate who are promoting the defeat of this are doing nothing but trying to come to a streamlined, centralized law enforcement program which will come to you straight out of Baton Rouge. I ask you to think about this. Think about how your own little community is operated. Think about how your district attorney operates. Is he doing a good job? I dare say most of them are. We have given the attorney general the extended power to even supersede district attorneys in cases where he has failed to carry out his duties, and once that attorney general has come into contact with that court that he has caused to supersede, I heartily ask you to endorse this amendment. We need this amendment. We've got to protect the rights of local law enforcement, and I think this is the way we can do it, and yet at the same time we will not jeopardize the rights which have already been passed of the attorney general or those who advocate central law enforcement to come and attend to something that a district attorney seems to have neglected.

Further Discussion

Mr. Jank: Mr. Chairman, ladies and gentlemen, I rise to oppose this amendment. The reason I don't want this in here is the whole purpose of being here is to draw a constitution where we won't be called on, except in exceptional case, to offer amendments. I've said that before. This belongs in the statutes. The thing that bothers me with this, this is the statute and they put it in the constitution. Why, I don't know, but I know this, that in Louisiana, and the only state, know of that has this power, a district attorney is king, an emperor. A grand jury can indict people for felony, murder, anything, robbery, rape, manslaughter, if they want to. I'm not saying whether they do it, if they want to, they can non-pros that indictment... means throw it out. All other states we've heard of, once the person is indicted for a felony, the district attorney has no right to drop that case without permission of the court. In my opinion, if this is passed, the legislature decided they wanted to pass a law saying once an indictment was found, the district attorney could not non-pros it, throw it out himself, without the consent of the court, then you would have that situation where you would be under that law, an violation of this amendment if the legislature passed such a law. Now that's one of the things that worries me. Judge Tate is worried about what may come up in the future and this is a serious thing what I have mentioned, and I've talked to people about it before, and I didn't see what, unless there is some reason, like I just said, a grand jury attorney is not satisfied to operate on a statute that like this wording, so I say you should defeat the amendment.

Further Discussion

Mr. Jank: Mr. Chairman, fellow delegates, rise in support of the amendment. As Mr. Jank has pointed out, it has very little to do with grand juries, which is what this is about. It is about Mr. Perez has admitted, with Frankly, it's coming to the next door. Mr. Kelly has admitted it's statutory language that they've

attempting to put in the constitution. I ask you why, if it's so badly needed, the district attorneys have not to my knowledge in the past fifty years, attempted to put this statutory language in the constitution and I want to point out to you that if we do put it in the constitution, it is freezing it. It means the legislature can't change it. Now, I don't know whether the law needs to be changed or not, but if you ever do want to think about, in the next fifty years, of allowing the courts to have something to say about not-prosces or if you ever, in the next fifty years, have a congested docket situation, you want to give the court a little more power to move criminal cases after they get into court, and I think a court should have at least something to say about a case after it gets into court, then I'm suggesting to you, you won't be able to do it if you adopt this amendment and freeze the statutory rules in the constitution, so I ask you to vote down this amendment.

Further Discussion

Mr. Kilbourne Mr. Chairman, fellow delegates, now I want it understood, that as far as I'm concerned, and I'm one of the sponsors of this amendment, as far as I'm concerned there is no ulterior motive here. There is no back door tactics intended here. Yesterday, late yesterday afternoon, it seemed to come up late, but late yesterday afternoon when everybody was tired, but an amendment in to try to take care of this situation. That amendment was prepared by some district attorneys, and as so often happens, a defense lawyer found some serious defects in it. As you know, we went on with the section we were on and voted on it, so we got the defense lawyer very kindly, Mr. Gravel is one of the co-authors of the amendment and he assisted in getting those defects fixed. I would like to call your attention to what the present posture of this article on district attorneys is if we do not have this amendment. All we say here is that there shall be a district attorney and where he shall have resided, and that he may elect his assistants and other personnel. We don't even say that he shall have certain duties as prescribed by law. Now, as I said yesterday, this is a very serious omission in this article and I really do not know how it occurred.

Now, Justice Tate was on the Judicial Committee. Judge Dennis was the chairman of that committee, and I don't know whether they recollect or not, but I certainly don't recollect how this thing happened, but I certainly think it would be a very bad omission in this constitution to set up an important office like the district attorney's office and not even say "he shall have such duties as prescribed by law." Really, I'm just at a loss to understand the objection of Judge Tate and Judge Dennis to this amendment other than they say that "freeze it in the constitution. Well, we certainly froze it." He said we didn't provide anything for the judges. Well, we certainly went to great detail to freeze the jurisdiction of the Supreme Court and of the court of appeal and the district judges in the constitution. I wouldn't imagine that Judge Dennis and Judge Tate would want to unfreeze that. I just simply don't know. Justice Tate said something about a state grand jury. I don't know what he was referring to. I've heard some allusion to that before, but I say, "heaven forbid."

Now gentlemen, this is a most serious matter. I certainly apologize that it has had to come in this way, and I feel that it has been my error as much as anyone else's. But I think the entire Judicial Committee just simply made a very serious oversight and it was certainly unintentional. I believe, as far as I know all of them, but certainly by the majority of them, and it certainly was an oversight on my part, and I certainly hope the convention will adopt this amendment and take care of what I feel is a most serious omission. Now, Mr. Jack has referred to....

Mr. Henry You've exceeded your time, Mr. Kilbourne,

I'm sorry.

Further Discussion

Mr. Anzalone Ladies and Gentlemen of the convention, Justice Tate spoke to you a few minutes ago, and almost wanted you to believe that of all the constitutional officers that we have provided thus far, they were only given their powers, duties, and functions by statutory law. I beg to differ with that statement. Mr. Justice, if you will look at Articles V, X, XI, and XV of the Judiciary Proposal, you will see constitutional authority for the judicial system. If you will look into the Executive Department Article you will see constitutional authority for each and every elected official, save one or two. Ladies and gentlemen, Mr. Justice told us to look to the future. I submit to you that what he is talking about is a change from what we have now. I submit to you that if this change is to come, then let the people decide whether they want this change or not. This is too important an issue, I believe, to leave to statutory law. They have said, "Oh, it's been this way for fifty years." I have a feeling the next few years are going to be a little bit different than the last fifty. I urge you to give constitutional authority to your district attorneys.

Further Discussion

Mr. Burson Mr. Chairman, fellow delegates, I want to begin my remarks by expressing my astonishment at the fact that two esteemed members of the Judiciary, for whom I have the highest respect, could get up here and tell you that the duties of the district attorney don't deserve constitutional status when they told you three or four days ago that the Judges' Retirement System did deserve constitutional status. I spoke for them when they took that position, and my only regret is that it did hurt that the power of the district attorney and local law enforcement are not as important in their view as the Judges' Retirement System, as far as constitutional status is concerned. That strikes me as a slight anomaly, to say the least. Now moreover, I think the cat is out of the bag on this debate, and again, I have the highest respect for the two judges who expressed their views on this, but I disagree totally with their views. In Section 6B that we have adopted here, we said that the chief justice of the state Supreme Court is the chief administrative officer of the judicial system of the state, not subject to law as was said by an earlier speaker, but subject to rules adopted by the court. Now, I supported that power and I got up here and spoke for it, because I believe in efficient judicial administration, but fellow delegates, I don't think that we ought to turn over the whole system of law, civil law, criminal law, and everything else to the Supreme Court. I believe we've given them about all they need to do and you have heard both speakers that adverted to this, talk about the needs of the future to take over the decision as to whether a case should or should not be not-prosced. Now, I submit to you, it is the function of the judiciary to conduct fair and impartial trials and decide on guilt or innocence when there is not a jury. It is not their function to decide whether or not a case should be prosecuted. You talk about a king; well, if you want a king, then you take that power away from an elected representative of the people and give to the same man who decides on guilt or innocence, the power to decide whether or not a case should be prosecuted at all.

The district attorney represents the people of the State of Louisiana in criminal prosecution, and I submit to you that if you're worried about an efficient criminal docket.... In the Soviet Union, they have a very efficient criminal docket, and I suspect they get their cases to trial, probably within a month or two, but the only thing wrong is, they don't have a locally elected official in charge of criminal prosecution. If you want to dehumanize the system of criminal prosecution

in this state, then you join hands with those that want a centralized law enforcement system and value efficiency above local control of rights, and the cat is out of the bag. That is the way the opponents of this issue have phrased it. I submit to you, at the outside, that no one here will doubt, we've heard some people say, "he's the most powerful local official." Well, if he is, for goodness sake, why don't we want to state in the constitution, the rudimentary functions that he performs when we've done that for the clerks of court and the sheriffs? It simply doesn't add up. I ask you in the strongest possible terms to support this amendment.

Further Discussion

Mr. Crave: Mr. Chairman, ladies and gentlemen of the convention, I think that this amendment is needed in the constitution. We have designated, for all practical purposes, in this constitution, that the district attorney be the chief officer representing the state within his district. With that designation, of necessity, we must give him the powers and duties, and the functions that go with that designation. Let me point out one thing to all of you at this time. Also in this constitution, we have provided, specially, that in all criminal cases that the appeals shall be only on the law and there are literally hundreds of cases on the books, wherein the Supreme Court of this state has held, that convictions of persons must be sustained if there is a mere scintilla of evidence upon which such conviction might be justified. This provision is necessary in the constitution in order that the district attorney can make the determination from the facts in the case as to whether or not prosecution should be conducted. He is charged with the responsibility of making the investigation, handling the grand jury, and reaching the final and ultimate conclusion as to which charges should be brought in the name of the State of Louisiana. Which criminal charges. Now let's bring this issue down to really what it is, and believe me, this is important. Do you want the district attorney to have the authority to determine which charges can and should be initiated in the district court where criminal offenses are involved, or do you want to leave that authority in some hazy state to the attorney general or to the judge? Somebody's got to exercise it. Somebody's got to exclusively exercise it, in order for the right to be properly exercised. That's a decision you've got to make. Whether or not a charge should be brought, whether the charge should be reduced, whether or not action should be taken in criminal cases, depending upon all of the facts is a determination which only the district attorney can make. I submit to you, that you will run into a dangerous situation in the future, and I fear more than Judge does, the possibility that those who don't know the facts who don't know the case, will be trying to run the criminal sections, and the criminal division of the court. I submit to you that the authority to handle prosecutions should be left constitutionally, with the district attorney. Thank you very much.

[Previous question withdrawn. Amendment withdrawn. Motion to suspend the rules.]

Amendment

Mr. Pointer: Amendment No. 1 [See Mr. Tapper], on page 14, between lines 7 and 8 add the following Paragraph and insert Paragraph 10:

At all stages of grand jury proceedings, anyone testifying in such proceedings shall have the right to the advice of counsel while testifying.

Explanation

Mr. Tapper: Mr. Chairman and fellow delegates, this is exactly the same wording that is in the

proposal on the bill of rights. I feel, however, that it should be with the grand jury section, and this will allow anyone who is testifying before the grand jury to have the advice of counsel if he so chooses.

I ask for your favorable support of this amendment.

Question

Mr. Lennox: Mr. Tapper, did you know that I think this is a good amendment.

Mr. Tapper: Yes, sir, you told me that, so, thank you.

Mr. Arnette: Mr. Tapper, do you realize that I will probably vote with you for the first time this week?

Mr. Tapper: I knew you'd come around....

[Previous question withdrawn. Amendment withdrawn. Motion to suspend the rules.]

Amendment

Mr. Pointer: Amendments sent up by Delegate Burson.

Amendment No. 1, on page 14, in Floor Amendment No. 2 proposed by Delegates Perez and others, at the end of line 3 after the word, "district," add the following:

"In which the district court has jurisdiction.

Explanation

Mr. Burson: This is in the nature of a technical amendment. It was pointed out to us by some friends of the amendment that passed a while ago that read in its present form the amendment that was passed might lead to the interpretation that the district attorney could usurp the functions of prosecutors in city courts and this was not the intent of the amendment at all. This simply makes it plain that you say "in which the district court has jurisdiction".

Now it occurs to me immediately that some matters are the concurrent jurisdiction such as juvenile matters, but I think that that would be implicitly provided for, that if it's concurrent, of course, you could go with the district attorney power.

But we want here to make it very plain that we do not intend to give the D.A. any power with regard to prosecution of city ordinances and things like that.

Question

Mr. Perez: Mr. Burson, isn't it true that as author of this amendment and others who are authors have agreed with this amendment.

Mr. Burson: Yes, sir.

Further Discussion

Mr. Dennis: Mr. Chairman, I believe we had better slow this thing down a little bit. I don't think it's just an amendment to Mr. Perez's amendment. It's hard to follow and I believe it may possibly be hard to raise a question like this, but it may possibly take away the district attorney's authority to prosecute in city courts. All that the purpose of it? And parish courts, also. I'm going to have to oppose the amendment because I think we are, we may be

[Amendment withdrawn.]

Personal Privilege

Mr. Champagne: I was just wondering, is this what the people at home said that I'd have trouble

with the lawyer about?

Amendment

Mr. Poynter Amendments sent up, now we may not have quite enough copies yet to pass out to everybody but they are still running them and they will get them to you.

Amendment No. 1, on page 14, in Floor Amendment No. 2, proposed by Delegates Perez and others, on line 3, after the word "prosecution", and before the word, "in", insert the following:
"by the state".

Explanation

Mr. Burson Fellow delegates, first of all let me apologize for the untoward delay. I'm not as adroit at Shakespeare as Brother Willis, but I believe in Richard IV, there is a line in which somebody says the first thing when we do, when we take over the state, we'll kill all the lawyers. Any maybe those of you who are not lawyers feel that way right now.

But the purpose of this amendment is to take care of an objection that was raised to the early amendment that we passed to make it plain that we are referring in the district attorneys' powers only to state prosecutions and not to municipal or city prosecutions for violation of city ordinances. And so we are simply adding the words, after the word "prosecution", we add the words, "by the state", because all prosecutions handled by the district attorney would be styled State of Louisiana vs. so and so, and municipal or city prosecutions would be the city of New Orleans and so on vs. the defendant.

[Previous Question ordered. Amendment adopted: 97-0. Previous question ordered on the Section on section passed: 39-4. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter Section 38. Fees, Orleans Parish Section 38. The judges of the civil district court and the city clerk of Orleans Parish shall set the fees for civil cases filed in their respective courts.

Explanation

Mr. Bel Ladies and gentlemen, Mr. Chairman and ladies and gentlemen of the convention, I didn't want my horns to get any longer than they are. I don't want them clipped. There will be an amendment coming to delete this section and which has approval. I'm the one that introduced it and I ask you to delete it.

Further Discussion

Mr. Dennis Mr. Chairman, if Mr. Bel is agreeable to it defeat, perhaps I could shorten the matter by simply moving for its defeat and moving the previous question.

[Section 38 tabled. 4-97. Motion to reconsider tabled.]

Personal Privilege

Mr. Denny Members of the convention, on Tuesday in connection with the portion of the proposal dealing with the judiciary commission which is section 25, and you will see on page 8, Mr. Pugh, Delegate Pugh introduced an amendment by putting the words, "non elected public officials", on line 15.

I discussed this with Mr. Pugh and Mr. Pugh recognize that the purpose of his amendment, although it was served, the amendment goes beyond that purpose for which he intended. He intended to exclude notaries public who by law have been declared to be public officials.

The way the amendment now reads, the way the section now reads, it would permit non-elected public officials who are lawyers appointed by the Louisiana Conference of Court of Appeal Judges' Association, to serve on the judiciary commission. I understand from Judge Dennis that this was never the intention of the Committee on the Judiciary and it was always their intention not to have any public officials on it.

It is, therefore, my desire to introduce an amendment which would, after the word officials delete the comma and insert the following: other than notaries public", and delete Delegate Pugh's amendment.

Now Delegate Pugh has agreed to this. Unfortunately he is not here. In order to do this it is necessary for me to ask that the convention call from the table the motion by which Delegate Pugh's amendment was adopted on Tuesday. This, of course, will require eighty-eight votes. It is in the nature of a technical amendment, but I would very much appreciate your voting with me on this.

[Motion to reconsider Section 2.]

Point of Order

Mr. Nunez Could we define just the amendment or would it be open to any amendment. I didn't hear if he said that or not. I think....

Mr. Henry Senator Nunez, of course when we get back and reconsider, the whole thing would be fair game. I would think, though, that it would... we would have to do this sort of on an unwritten ladies and gentlemen's agreement that this is the only purpose, and I am sure that's what Mr. Denny has in mind. That would be the only purpose for which we are doing it, just to resolve this technical problem, sir.

Mr. Nunez Well my point was that if someone held someone else... another delegate had a proposal or was against something, anyhow wanted to put something in there, is it open for that, also?

Mr. Henry Once we reconsider and open it up, it could be. I would certainly hope that no one would try that. But you're right, it could happen. I wouldn't think that it would.

Mr. Nunez I'm certainly not. I'm just bringing this to the attention....

Mr. Henry I know you're not, Senator, you just don't look like the type.

[Section 25 reconsidered with or without amendments.]

Point of Information

Mr. Jack How much vote does it take them to get this off the table?

Mr. Henry He got it off with two-thirds of the membership with eighty-eight votes because there was no objection to it, sir.

Amendments

Mr. Poynter Amendments sent up by Delegate Denny as follows:

Amendment No. 1, on page 9, line 15, delete amendment No. 1 proposed by Delegate Pugh and adopted by the convention on August 27, 1973.

Amendment No. 2, on page 9, line 15, after the word "officials", delete the comma and insert the following:

"other than notaries public".

Explanation

Mr. Denny Well, what it does is remove the "and" which the purpose that Delegate Pugh wanted in order to avoid calling notaries public, public officials, and at the same time it leaves the statu-

If the language as originally proposed is in order

(Government's motion withdrawn, upon which
the motion is withdrawn. RE: Mr. [Name] [Name]
[Name] [Name])

Point of Order

Mr. [Name]: I have an objection, rather to words
expressed or to the approval, Mr. [Name], but
inasmuch as only sixty-seven votes is required for
a quorum and eighty-eight votes to grant consent,
don't you think it advisable that it should have
been a majority vote in how that he received the
sixty-two--eighty votes? That is the only question, sir.

Mr. [Name]: Well, there was no objection, don't
you know, and it showed....the roll call before
showing that there was substantially more than that
here. Of course, under certain circumstances you
may have been correct, but as someone else pointed
out, Mr. [Name], you are probably right.

Personal Privilege

Mr. [Name]: Mr. [Name], fellow delegate, one
of the delegates during the week referred to when
concerned about alligators. I wanted to give her
one to take home with her. Mrs. Warren, if you
will come forward I believe I've got an alligator
for you.

Personal Privilege

Mr. [Name]: Mr. [Name] and fellow delegates,
with the greatest of pleasure I receive this dele-
gate.
I had a rough day to me here, for you to stand
what you are in you've got to have the hide like
an alligator.
I just believe I do, to thank you for this
alligator.

Announcements

(1:15 PM) [Name]

(Government's motion withdrawn, upon which
the motion is withdrawn. RE: Mr. [Name] [Name]
[Name] [Name])

37th Days Proceedings—August 28, 1973

Tuesday, August 28, 1973

ROLL CALL

[96 delegates present and *in quorum*.]

PRAYER

Mr. Smith Gracious, Heavenly and Merciful Father, the Giver of every good and perfect gift, we worship Thee as a revealer of a good and perfect life. Guide and direct us this day. We thank Thee for Thy love and Thy mercy and Thy many blessings. Help us, O Father, today to walk humbly to do justly and to love mercy. Be with us today as we deliberate. May everything done here be pleasing to Thee. May the words of our mouths and the meditations of our hearts be accepted in Thy sight, O Lord, our strength and our Redeemer. Amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

INTRODUCTION OF RESOLUTIONS

[1 Journal 388]

RESOLUTIONS ON SECOND READING AND REFERRAL

[1 Journal 388]

UNFINISHED BUSINESS

Mr. Poynter Committee Proposal No. 21, introduced by Delegate Dennis, Chairman, on behalf of the Committee of Judiciary, and Delegates Avant, Bel, Bergeron, Buis, Deshotels, Drew, Gauthier, Kelly, Kilbourne, et al.

A substitute for Committee Proposal No. 6, a proposal making provisions for the judiciary branch of government and necessary provisions with respect thereto.

The status of the proposal at this juncture is that the committee has adopted Sections 1 through 38 and another proposal as amended, with the following exceptions: Section 18, dealing with juvenile courts and their jurisdiction was passed over, and in addition, Section 20, dealing with preservation of evidence, and Section 38, dealing with fees in Orleans Parish, failed to pass.

Mr. Henry Let's go back and pick up Section 18.

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, at this time I would like to explain to you the reasons behind the committee proposal relating to juvenile courts jurisdiction. The present constitution, the 1921 Constitution, contains several sections which are long and detailed, spelling out what a juvenile is, when he can be tried in juvenile court, when he must be tried in adult court, and many other detailed provisions. The committee proposal takes all of these provisions out of the constitution and leaves the matter up to the legislature. There are very good reasons for this action. This action was not taken quickly. It was a considered, deliberate move by the committee, and it is based upon the fact that today, in 1970, we are in a time of great ferment and change regarding how young people should be handled with regard to the criminal laws of our state. This is not only taking place in our state, in recent years which have required the states to change their procedures in the handling of juvenile cases. As a result of all of these influences on the handling of juvenile cases, and I guess as you would expect, the experts are in disagreement as to which way to go. We have people who don't think that fifteen-year-olds should be tried for murder and aggravated

rape, as they presently are under the 1921 Constitution. Yet on the other hand, we have people who think that they should be tried for more adult type crimes. We have people who think that a minor under the age of eighteen should be handled in the juvenile system and others who think that minors younger than seven should not be handled in the juvenile system, but should be handled in the adult system. We have experts who have recommended that the courts be given the power to classify certain juveniles as incorrigibles, particularly where they have committed two or three very serious crimes, and transfer them to the adult criminal justice system. We have posed to those experts, those who would not transfer any juvenile from the juvenile system to the adult system. Because of all of this contrary thought and opinion and because we are living in a time of flux and change, and because there may be differences even in different parts of our own state with regard to these problems. For example, in some parts of our state we have a separate, independent juvenile court. In most of the other parts of the state, however, the district judge who handles adult cases also doubles as the juvenile judge. In many places, the city judge is the main juvenile judge. So because of all of these differences, and the complexity and the sensitivity of these problems, we felt that this was something that the state had not really made up its mind on yet, and it was something that would change from time to time, and therefore, that we should let the legislature be free to fashion the best possible juvenile system for the state as the time demands. So for that reason, ladies and gentlemen, what is a very simple provision here which says the jurisdiction of a juvenile court shall be as provided by law, is really based upon much thought and discussion by the Judiciary Committee. We have decided, after all of that discussion, that this is a subject matter which should be left in the discretion of the legislature. So, we ask that you reject the amendments which would change this basic policy and adopt the committee's proposal as it is provided in Section 18. Mr. Chairman, if there are any questions, I will be happy to try to answer them.

Questions

Mr. O'Neill Judge Dennis, up to this point this Convention has allowed the legislature great latitude in many areas. Do you agree with that?

Mr. Dennis It has in some, and in others it hasn't, but I believe this is one in which we must leave it to the legislature rather than freeze into the constitution a rule that may not fit every area of the state. It may not fit 1975; it may not even fit 1970.

Mr. D'Neill I agree with you, Judge Dennis, and I was just going to ask you if you believe that your committee proposal was consistent with the philosophy of allowing the legislature great latitude.

Mr. Dennis Yes, it is an expression of that philosophy.

Mr. Stovall Judge Dennis, did the recent session of the Louisiana Legislature deal with this question of juvenile delinquency?

Mr. Dennis Yes, it did, and you are probably more familiar with it than I am, Rev. Stovall.

Mr. Stovall You want this to be left to the legislature. Were you pleased with the way that they dealt with this at their recent session?

Mr. Dennis Rev. Stovall, as I said, you are probably more familiar with it than I am. I do not know the details of what they came up with. However, I know one thing. It could have been changed the next year if it wasn't a good rule, but if we take something which I consider to be very de-

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late and very busy and attempt to write it up for the convention today, it may not be the next thing for our juveniles next year. I believe that something we should leave to the good common sense of the legislature and to the people who tell their legislators what they want in a juvenile court system.

Amendment

Mr. Winter: Amendments proposed by Mr. Johnny Jackson, Mr. Warren, Mr. Roy, Mr. Pugh and Mr. Gravel.

Amendment No. 1, on page 6, delete lines 15 through 17, both inclusive in their entirety, and insert in lieu thereof the following: "Section 10. Juvenile courts; Family courts; Jurisdiction

[A. Except as otherwise herein provided, the juvenile courts or family courts shall have exclusive original jurisdiction of cases of the state in the interest of persons under eighteen years of age brought before the court as delinquent or neglected children. The court shall also have jurisdiction of all cases of desertion, or non-support of children by either parent or non-support of a wife by her husband, and the adoption of children under eighteen years of age. The family courts shall have such additional jurisdiction as is possessed by the family courts in existence at the time this constitution is adopted or as otherwise provided by law.

[B. The legislature shall have the power to establish juvenile courts or family courts for any parish, or group of parishes, and designate the title and domicile of said courts, upon petition of the police jury or other governing authority in the parish to be affected. The jurisdiction of any family court established subsequent to the adoption of this constitution shall be the same as the jurisdiction vested in family courts in existence at the time of the adoption of this constitution.

[C. The district courts in the parish of Orleans and the several district courts in the other parishes of the state, however, shall have exclusive jurisdiction of the trial of all persons over the age of sixteen years who have been indicted by a grand jury for the offenses of murder, aggravated kidnapping, or aggravated rape committed within their respective jurisdictions."

Explanation

Mr. Jackson: Mr. Chairman, ladies and gentlemen of the convention, first let me say that I appreciate and I extend my gratitude to you for allowing me to present this amendment for your consideration. Let me suggest to you that the principle for this amendment comes particularly from the fact that the juvenile court, as currently provided by the committee on the judiciary, that I saw that we had provided for one jurisdiction of the supreme court. We went even further to talk about what kind of cases can be appealed to the supreme court. Secondly, I noticed that we had provided for the jurisdiction of the supreme court of appeal. In almost the same fashion we provided for it. Thirdly, I saw that we had provided for the district courts and that we went further to provide for its jurisdiction and for the type of cases that it could hear. My concern became apparent when I noticed when we got to section 10 that we did not provide in any form nor fashion for the jurisdiction of any juvenile court, but I suggest to you that when at least a third of the population is subject to civil or criminal prosecution, then we ought to provide in the constitution for the protection of our just juveniles. We really got the attention of the future of this state. I would like to bring to your attention the fact that we had to talk, where it talks about the district courts, it was very clearly spelled there in law that the district courts should have exclusive jurisdiction over all matters over all civil and criminal

matters affecting the state. Now that is very broad. That says that, unlike the present constitution that did have some exceptions, that it is very clearly that no matter what the legislature did that you still have a problem, because it clearly says in this section that district courts should handle all case of civil and criminal matters. What I have attempted to do is to present to the convention an amendment, an amendment that I assume will probably become a working paper for you members of this convention to react to. But I feel strongly about this matter of whether we should provide constitutional protection for the courts that handle our youngsters. I think, and I will directly go into amendment, suggest to you that during the last session of the legislature, indicative of the kind of legislation that came out, that if we leave the committee proposal as such, I will suggest to you with a large degree of assuredness that you will probably see similar sorts of legislation coming out without any intensive study or any adherence or any recommendation, not only on the state level, but the national level.

Now, the amendment. The present constitution provides for not only the jurisdiction of the juvenile court, it talks about the procedure. It talks about the process. It talks about the judge. It talks about the salary. It talks about certain courts that should have certain jurisdiction, where there is no juvenile court. Now, what I have attempted to do is not to go into the lengthy details about the procedure, the process, those sorts of things, but to really spell out the jurisdiction, as in the present constitution, of the juvenile courts. The first thing that this amendment does is one establish that constitutionally the jurisdiction of the juvenile courts. Secondly, it raises the age from seventeen to eighteen those cases which the juvenile court can hear, with the exception that youngsters sixteen years and older can be tried in criminal court for, as I have heard the comments concerning this article, certain heinous crimes like murder, armed robbery, aggravated rape. I want to suggest to you that the reason that we changed it from seventeen to eighteen is that there is a hiatus that exists presently in the constitution. Youngsters over seventeen years but not eighteen cannot either be tried in juvenile court and can only be tried in criminal court if they commit a crime. Deleage Newton brought it to my attention that you have youngsters who have violated the state law but have been stolen away, disruptive to the family structure, who have run away, but we have not committed a state crime. Juvenile courts don't have jurisdiction and the only way that we can be held accountable is on the basis of the fact that he be charged with a crime. The second thing that we have done is that we have authorized the legislature to establish juvenile courts in family courts provided that the governing authority of a particular parish says that they need it. Thirdly, we have retained the present jurisdiction of the family court because when I first raised this amendment, it was suggested that I speak with the people from Louisiana State University, Louisiana State University, and I had to deal with a number of very different issues that we may have. One of the kind of protection that they wanted for family courts. The third section, really goes to what I think is the heart of this proposal, and which I urge it, and has been raised to come as the opportunity as to how we should have exclusive jurisdiction. I have attempted to address myself to those representatives who are sitting on the level of the legislature. Because I think we have got the support by saying we don't want to take jurisdiction

ence to capital crimes because the Supreme Court may strike that down, which means that if a youngster committed murder, he couldn't be tried in criminal court. We have provided for the exception. I would suggest to you that this article, as drafted, this amendment as drafted, does provide us with a constitutional jurisdiction for juvenile court. I would like to suggest to you that the problem of the juvenile is an increasing problem. I grant that and I suggest to you that if you look at the statistics in my district, it would indicate that. I am not foreign to this problem, but I think when we talk about a large segment of the population of this state, and we're talking about people who are going to eventually have to operate and work and live in this state, and we don't provide those kinds of constitutional protection and we leave it up to the legislature, I want to suggest to you it is going to be a matter of political and emotional whims. I want to also finally say to you that if you read the district court proposal you will find in your youngster goes to criminal court, under the Judiciary proposal, for let's say a misdemeanor, then he has a record that follows him for the rest of his life, regardless if he commits the enumerated crimes that we put in the exceptions. He is going to be subject. I am not suggesting that youngsters are so matured that the inflexibility of their young nature is that they wouldn't violate some sort of state law. It could be a misdemeanor. But are we prepared at this point to leave it up to the legislature to say whether they are going to go to criminal court, or they going to be tried as a juvenile? I suggest to you that's the main issue confronting us, particularly in Paragraph C. Mr. Chairman, I yield to any questions.

Questions

Mr. Abraham Johnny, in Paragraph A the first two sentences are very explicit and concise. It tells exactly what the Jurisdiction is. But the third sentence I find confusing. In your own words, "The family court shall have such additional jurisdiction as possessed by the family courts in existence at the time this constitution is adopted or as otherwise provided by law." I am wondering if that particular language is actually necessary, if you can't accomplish what you want by simply saying that the juvenile family court shall have such other jurisdiction as provided by law. Why do we need to refer to the present courts?

Mr. J. Jackson Mr. Abraham, this was an amendment that I accepted authored by Mr. Pugh of Shreveport. His contention was that we ought to allow the legislature some authority to expand the jurisdiction of juvenile court if such be the case.

Mr. Abraham Well, I am not quarreling with that phase of it, but I am questioning why do we need to say, "such additional jurisdiction as possessed by the family courts in existence at the time of the adoption of this constitution?" Why can't you simply say that the juvenile or family court shall have such additional jurisdiction as otherwise provided by law? That gives the legislature the flexibility it needs.

Mr. J. Jackson That was one of the arguments presented to me and one of the suggestions offered by Mr. Kean who said that he wanted to make it perfectly clear that the legislature could not in any form or fashion reduce the present jurisdiction that their family court in the parish of East Baton Rouge has. That was his suggestion to the amendment as originally drafted to provide him what he felt was the, you know, protection. Let me also add that if you look in the present constitution there are about four or five pages that deal, one with the Parish Court of Orleans, one with the Parish Juvenile Court of Caddo Parish, and with East Baton Rouge Parish, plus the district court. What we have attempted to do in the

matter of style and drafting is to compile those four pages of lengthy writings into what you see here, so that I would suggest that it may appear, but we have tried and we have talked with the lawyers in terms of the concerns had by other parishes, this was the language that they said to me that I would satisfy them.

Mr. Abraham I would assume then, by the same reason, you feel that this second sentence in Paragraph B is necessary also then? I don't see the necessity for the second sentence in Paragraph B.

Mr. J. Jackson Well, let me talk about Paragraph B. I wanted to talk to the judges of New Orleans and I talked to a civil judge. It is anticipated that New Orleans might move to a family court structure. What we attempted to do is to say that to bring some uniformity, because you don't want to have one family court with one jurisdiction and then you have another family court that has less jurisdiction. The second sentence in Paragraph B is designed to provide some uniformity in terms of jurisdiction among the family courts.

Mr. Burns Mr. Jackson, do I understand your amendment increases the juvenile age from seventeen to eighteen?

Mr. J. Jackson Right, Mr. Burns, and if you let me explain the rationale for that, it's because...

Mr. Burns Excuse me a minute, but just answer my question, first. It does increase it from seventeen to eighteen.

Mr. J. Jackson Right.

Mr. Burns Do you realize, I mean do you know, that most of the experts in this field that appeared before the Judiciary Committee, that not one recommended increasing the juvenile age, but most are confining their studies or concentrating their studies on what to do about those below the age of seventeen?

Mr. J. Jackson My only response is my previous response to a point brought out by Delegate Newton and brought out by some judges that I talked to. Let me also suggest to you that Judge Dennis has said very clearly that there is still disagreement among the experts as to what, you know, juvenile courts should be. I'm suggesting that all we are attempting to do is provide a workable amendment to allow for... to fill that vacuum that exists between seventeen and eighteen when a youngster is not charged with a criminal crime.

Mr. Duval Johnny, I think I know your intent in Paragraph C. I just want to make sure I understand it. When you say in line 3, Paragraph C, "shall have exclusive jurisdiction over the trial of all persons over the age of sixteen years", do you mean anybody who has reached his sixteenth birthday or anybody who is seventeen?

Mr. J. Jackson Those who have made sixteen and above.

Mr. Duval I see. Now also, in the way this is drafted, "the district court in the parish of Orleans and the several district courts in the other parishes of the state", why not just say "district courts in the parishes of the state"? What is the purpose of putting Orleans in there?

Mr. J. Jackson Mr. Duval, let me suggest to you that this was an amendment presented by Mr. Gravel I know your concern about the exception. What we were talking about was that, as you know, this convention has gone on record as recognizing the separation of the courts in the parish of Orleans and that there was already a precedent for that. I agree with you it could go that way but in that we have established, we didn't think that it made that much difference.

Further Discussion

Mr. Peoples — Ladies and gentlemen, I don't know how much you care about your children or your neighbor's children, or the children of the people in your community, but if you've got any consideration for them at all, you will listen to the speakers on this point. I don't think you gave Mr. Jackson a very great deal of attention, although I do think his point is well taken. I happen to be opposed to his amendment for reasons that I will set out now, but I would urge you to at least give this topic some careful attention because it very richly deserves that attention. Let me explain to you quite briefly, for those of you who may not know, the function of juvenile court. One of the principal functions of juvenile court is to adjudicate violations of the law, violations of both state and local laws, committed by children under the jurisdictional age. The trial is held by a judge sitting without a jury. In some instances, the judge serves as both prosecutor and judge. In other instances, there is a district attorney. The Arizona case decided by the United States Supreme Court in 1964, stated in the interest of (...), awarded to juveniles certain limited due process rights, but to date, juveniles are not accorded the broad spectrum of due process rights available to adults in criminal court proceedings. This amendment presupposes a number of things.

First it presupposes that you are willing to raise the jurisdictional age for juvenile court jurisdiction to eighteen in this state. It has never been eighteen in this state. It has always been seventeen, at least in my historical perspective. Secondly, it also presupposes that you are willing to raise the jurisdictional age for capital crimes from fifteen, in certain district courts, to seventeen. The way it works now is if you are a juvenile charged with murder, aggravated rape, or attempt aggravated rape, and you are over the age of fifteen, you are tried in criminal district court. If you are under the age of fifteen, you are tried in juvenile court. The mandatory trial in criminal district court is required by present constitutional provisions. I have a little bit of credibility to this particular discussion, let me say that I have been an assistant district attorney in juvenile court for three and a half years. Before that, I worked as defense counsel in juvenile court for a local agency of the poverty program. So I've seen this from both sides of the coin. So really, I have been appointed and have served on the Commission for the Revision of Juvenile Laws and for the Production of the Juvenile Code. I'd like to make the following point with you. First, I believe that a juvenile who is seventeen years of age, almost uniformly, is aware of and can be held accountable for his violations of the law. I see no reason, in the name of uniformity, in the name of saving money, or anything else, in line with the voting age, to increase the jurisdictional age for juvenile court. I think seventeen is fine. Secondly, this amendment prohibits any waiver system, which has worked well in other states and has yet to be tried in this state, where jurisdiction over juveniles at a certain age, ordinarily subject to the juvenile court, would be transferred in favor of a criminal district court where a juvenile would have full due process rights. Thirdly, this amendment prohibits any selective treatment of certain crimes. In Miami Parish, for example, we have had a great increase in recent years in the rates of armed robbery and simple robbery. It may very well be that some legislature in the future will want to do that. The crime of armed robbery is treated by a system over a sixteen should be tried in Arizona district court. This would not be possible under the amendment. Finally, as I should say, however, the objection.

Finally, I'd like to point out a couple of additional problems in the amendment. First of all, the modification to the first paragraph, the word "suppose" seems to indicate that the person is

eighteen at the time he is hearing on his behalf. I don't know if the present provisions of law in this regard are subject to the jurisdiction of the juvenile court if he is eighteen at the time of the commission of the offense. The first paragraph makes no such reference. I guess I've just about run out of time. I want to point out to you the fact.

Further Discussion

Mr. Jack — Mr. Chairman and ladies and gentlemen, I rise in opposition to this amendment. I support Section 18. Ladies and gentlemen, I want to mention this, if you will listen to me a minute. No speaker, since we've started today, has been shown any respect when he has been talking. Now I'm trying to be pleasant. This is a serious subject, it's a serious subject, very serious. You're not listening to any speaker up here. Now if you don't want to hear these speakers, just hold your hands up, and let's just quit and vote on these things. You are still talking. Now I'm going to ask for time out, Mr. Chairman, allow me 20 to get away from here. If I'm not allowed to speak with a time out, then I'm not going to speak on it. But I'm getting to where my temper is showing because people talk when everybody is speaking up here. Right in front of me, two rows over, you know who you are, you are still talking. Now I'm going to ask for some order, Mr. Chairman.

I want to make one clear statement not talking just about listening to me. You may not learn anything from me, if somebody wants to make a joke of it, I think you will, though.

Now I'm going to give you several reasons why this amendment is not in the ends of justice. Today, and I've got children and grandchildren, and I want to protect those children and grandchildren and protect other children that rob people and shoot people. Now listen to this. The present juvenile age is seventeen. This constitutional amendment raises it to eighteen. That doesn't make logical sense when you consider that we pretty much all agree that when you are eighteen, you are grown and you should vote. I voted for what a long time haven't I? I voted for the legislature since 1964, and I recognize that today with know-how, education, and more ways of learning different things, and communication, a person eighteen is as good a position to function as a grown person, a person used to be at twenty-one. Now by the same token, do you think that in two seconds a person becomes grown? You are giving the juvenile age with this constitutional amendment from under seventeen to just under eighteen. You are saying you are a juvenile under eighteen. You might just be grown by two seconds. It don't occur that suddenly. Now another thing, under the present law, if you send a juvenile to an institution, he remains there after he is twenty-one. That's because he was grown under that old law. Today, the holding is going to be, you send him to an institution in a bad enough case, then he can't be kept there after he is eighteen. Now when that comes about, if you pass this amendment, here is the ridiculous situation you can get into. You can have a juvenile who was grown under the old law, robbery, some people say, that's all right, he can die, or he can't be tried under this business in this amendment of murder, for being over sixteen. Suppose he shoots them two seconds, it's all right, that we can prove it, two seconds before he is eighteen. He would be tried, they should say. They say you need for life, it was the way at that time, that's what he was grown under that old law. Today, it would have been, you could try it at a juvenile for that armed robbery, thinking the parole that didn't die, but you could not send him back. You can no longer transfer a juvenile under the present law when he becomes twenty-one. Now let me see. I've heard of hell in an institution, I've heard of hell in a prison, but I've never heard of hell in a juvenile institution. I'm going to be, now I guess I've run out of time. The law now that I'm talking to you about, when you're sixteen, you're sixteen, you're sixteen, that's what the difference is. Now I'm going

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you. You ought to leave this up to the legislature. It's hard to change the constitution; it's going to even be harder. These crimes like armed robbery, armed robbery, my friends, is the first cousin of murder, and you better believe it. I've handled many a criminal case. I've had to go to people numerous at Angola, L. C. I. Some have employed me; most don't have the money or didn't, but I've made checks with them over a period of fifteen years. I wished I'd started sooner on certain subjects, one of which I would ask them, the charge was armed robbery. I would ask them if the man or woman you were robbing, now get this, would not give you the money and you told them you were going to shoot them unless they gave you the money. Suppose they said, "I won't give it to you". Would you shoot them? You'll never guess the answer. They said "I don't know".

Now this is not to hurt any poor little children. This is to protect the public. You may have to, and lead it to the legislature for these aids, this jurisdiction, you may have to find with the number of robberies being committed by people under seventeen, even more under eighteen, that the legislature will have to create some type of punishment for those that's different than now.

Further Discussion

Mr. Burson Mr. Chairman, fellow delegates, I rise in opposition to this amendment and in favor of the committee proposal. I don't do so because I think we have a perfect system of juvenile justice under the present law, far from it. I recognize the many faults in the present system dealing with juveniles and I think that our juvenile correctional institutions, such as the one at Scotlandville, are by and large a disgrace. But, reducing juvenile jurisdiction in the way that this amendment proposes does nothing to correct the faults with the present juvenile corrections system. What it does do, in my view, is expose the public to law-abiding citizens, one of which I make no apologies to speak on behalf of, to increased danger from serious juvenile crimes. Now why do I say this? All right, there are two primary areas where I have seen this happen. First of all is in the area of armed robbery. Now I have seen recent cases in the jurisdiction that I work in, where the planned armed robberies, but sent fifteen and sixteen year old kids in to do the actual robbing and to wield the pistol because they knew that if these kids got caught, that they would be subject only to juvenile jurisdiction. As Mr. Jack pointed out to you, under the present law, when that child is no longer a juvenile and he's been charged with juvenile delinquency, you've got to let him go. All right, and you are just as dead when the fifteen or sixteen year old pulls the trigger in an armed robbery as you are if the man is twenty-one or thirty-one years old. The victim is just as dead, I promise you.

The second area where this is of extreme concern is in the area of the schools. Now we have had, in recent years, all over these United States of America, an unfortunate rising tide of trouble of a serious nature in our schools. I handled a case this past year which I thought had one of the most absurd results that I've ever seen, if you want to know what we're talking about in juvenile jurisdiction. The child, during the fight, which resulted in the stabbing to death of a visitor to that school. The boy who started the fight was guilty, unquestionably, of aggravated assault, and the jury so found him. He happened to be eighteen years old, so he was sentenced to five years in Angola. The boy who was seventeen years old who committed the killing, because the grand jury had indicted him only for manslaughter and not for murder, was subject to the jurisdiction of the juvenile court, was charged with juvenile delinquency, which is all he could be charged with under the law, and for reasons known only to him, was given a probated sentence by the judge. I submit to you that that is the kind of thing that outrages every decent law-abiding citizen in this state. Now the average man and woman who watches

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our deliberations of television at about 60 reads about us in the newspaper really doesn't care that much whether the legislature meets sixty days or ninety days every year, or whether or not we have six statewide elected officials or seven. But every one of them cares a great deal about anything that we do to hamper the system of criminal law. I promise you that, I'm saying to you that I don't see anything in this amendment that corrects the many things that we all know are wrong with our system of juvenile corrections. But I see a great deal which would greatly hamper the prosecution and the execution of our criminal legal system. I see no warrant, on the one hand, for continuing to argue that juveniles are more and more responsible and smarter and smarter and therefore we should lower the voting age from twenty-one to eighteen, which I think was good, but then to turn around, on the other hand, and say that, well, today's juveniles aren't as responsible for criminal acts as those of twenty years ago and we ought to raise the age of juvenile responsibility for murder from fifteen to sixteen. The two arguments are obviously contradictory. It does not make sense. I ask you, in the name of both criminal law enforcement and reform of juveniles, juvenile laws, to go with the committee proposal and leave this matter where it belongs, in the hands of the legislature, where the legislature can adjust, change this jurisdiction to meet changing conditions. I see no warrant for putting this in the constitution, but if we do put it in, then I ask you to look at Article VII, Section 52, in the book on your desk, and you will see that under the present constitution the juvenile age limit is seventeen years of age, and that juveniles who commit capital crimes, if they are fifteen years of age or older, are subject to ordinary jurisdiction in the district courts. Certainly if we are going to put that in the constitution, let's not dilute it. Let's put it in there the way it is, frankly, I don't think it belongs here at all and I ask you to support the committee proposal.

Question

Mr. Abraham Jack, all the discussion so far has been with reference to the age of a juvenile. Let's forget about the age and eliminate that right. The question I have is do we need to spell out the jurisdiction of your juvenile and family courts in the constitution, or do we not? What should the jurisdiction be? Should we have juvenile courts and family courts? Forget about the age, this is the question I need to have answered.

Mr. Burson Well, I think that the committee proposal says that you will have juvenile courts. It simply leaves the spelling out of their jurisdiction to the legislature. We haven't spelled out the jurisdiction of the district courts with the detail that this amendment proposes, or the Supreme Court, nor the court of appeal. So I don't see why we ought to go into all this detail for juvenile courts.

Further Discussion

Mr. Planchard Mr. Chairman, fellow delegates, it seems as though I should get a little bit further down on the list to speak because everyone wants to speak. I'm thunder. But I do need to set out that I am strictly for a juvenile court system. I think it has worked well in the past, and I think it can work well in the future. But I am opposed to the amendment as it is written and for the obvious reasons, some of which have already been pointed out. In the "A" part of Section 18, of the amendment, the age of the juvenile is eighteen years is being set out, and it is being locked into the constitution. That means, in effect, if we ever decide that eighteen years or age is too old, then we cannot go back and change it unless we have a constitutional amendment. If nothing else, the age for the jurisdiction, age can be left out. Who can say a juvenile is a juvenile at fifteen, sixteen, seventeen, or

eighteen? We all know that some are still juveniles at twenty-one, but why set a definite age? It has caused us problems and it will cause us problems in the future. This definitely should be left to the legislature to determine, from time to time, what a juvenile is. But it seems to me we are going down two roads. We are thinking of the rights of the individual. We are considering a non-discrimination article as to race, color, sex, and age, if I remember correctly. It is not too far removed in legal theory to someday say that you are discriminating because of age in this particular article, and rightfully so, because you are having two systems only because of age. Now as to the (B) part, it says exactly the same thing as the proposed amendment by the section on the judiciary. The only thing is it takes a lot more words to say the same thing. So definitely we can use Section 18 of the present proposal, and it simply does the job, but with fewer words. As to (C) part, it seems to me that here again we are trying to set out definite crimes whereby we are going to transfer the jurisdiction from a juvenile court to the district court, but only in these exclusionary crimes. Here again, who is to lay what are the most heinous crimes. If you've checked the legislation in the past few years, when they discuss these various crimes, some people definitely believe that an armed robbery is just as bad as murder or aggravated assault. Why should we limit it to just these crimes? Here again, if we leave it to the legislature, then they can determine from time to time what are the most heinous crimes and where to need the deterrent. Lastly but not least, it seems as though we are concerned here with the rights of a juvenile. But we are not so concerned with the correlative obligations and duties of the juvenile, and rightfully so. This can be left to the legislature. Thank you very much.

Further Discussion

Mr. Warren: Mr. Chairman and fellow delegates, a few days ago I had an article placed on your desk, and I hope you have it now. I would like to refer you to the second chapter, beginning with line 16. This is where a young woman was on a committee in San Francisco. She was one of the city officials that dealt with delinquent and state dependent and neglected children. She said, and I quote, I soon learned, she says, that all the committee members did was sit around and tell horror stories about juvenile courts and detention homes and doing nothing about it. I say to you that I am not an expert in the field of writing these proposals, and I'm not just speaking for the juvenile children in Orleans Parish. I'm speaking about juveniles all over the State of Louisiana. There has been such talk about crime. You can't walk the streets, death, murder. Rightly so, we have a right to be concerned. But I'd also like to read to you a couple of lines taken from Time and the Changing, The National Council on Crime and Delinquency. It reads like this: It says, Young people are rebelling against the hypocrisy of a society that sets certain values and then lives up to the opposite. Down at the end of it, it says, The blame for the failure to recognize crime has been placed on cultural juveniles rather than the society that devotes the strategy and energy it waxes to the quite opposite goal. I'd like to you taken from this book. It says, We know, we all know it's easier and politically more profitable to crack the whip than it is to take a thoughtful, good sense, especially when talking sense is liable to cost money or change institutional. I want you to think about that when I ask you to vote. Now, I'd just like to reason with you a little while because I don't have all that expertise that some of the rest of them have here. But I want to ask you a question, and I want to make another statement before I go into this that was taken from a report that describes juvenile crime as a disease, and said it should be treated, in any other contagious disease. It's not going to be cured by

why we are having it all over. But that's why I'd like to read from a newspaper, and I would just leave it there and not say any article. I would like to see if you could see to be making, wouldn't you put him in a sanitarium so he would be treated, what would you do. There are some of the things that I would like for you to think about today. Our chairman said he hoped that we wouldn't be long, and so I'm going to cut my remarks short. But you are the judge and you are the judge. I'm going to refer to the case when you are in the interest of the children. I want us to come up with something in this constitution other than provided by law by the legislature because the legislature has been sitting constantly every year since 1964. Our juvenile situation has not changed toward betterment, it has gotten worse. I think this is the time that all of us can do something about mandating that the legislature do something for our children. I support this amendment, and if you vote it down, I hope that we can come back with something else that you will accept that will say a little bit more than the legislature will provide, because it has provided very little so far. Thank you.

Further Discussion

Mr. Burns: Mr. Chairman and fellow delegates, as some of the previous speakers have very properly said, this is a very, very important amendment as far as law enforcement in the State of Louisiana is concerned, particularly for the future. As Judge Dennis told you on the Judiciary Committee, I imagine we spent as much time hearing experts and witnesses, both juveniles, judges, from all over the state, particularly in the New Orleans area, experts who have made this their field from outside of the state. I can tell you in all truthfulness that not one of those men, either juvenile judges or these experts and researchers, ever mentioned even intimating the idea of increasing the age of juveniles from seventeen to eighteen. On the other hand, most of them were concerned as to what to do with the law violators, the juveniles who were under seventeen. Statistics and studies showed that in the age groups of fifteen and sixteen years old were many, many very serious law violators in the field of mass murders, rapes, and kidnapping. So I earnestly suggest to you that whether you see fit to put an article in the constitution or not dealing with juveniles and juvenile court, under no consideration let us write into the constitution increasing the age of a juvenile from seventeen to eighteen. Do you realize that when you do that, you are putting a juvenile within a few minutes of the age of a voter? He's very apt to be, in the not too far distant future, there will be a voter. I think if anything, and I'm not suggesting it at this time, but if we're going to change it in any respect, we should lower it instead of increasing it. I know that you, from time to time all too recently and practically every day, read or hear serious crimes committed throughout the United States, and unfortunately in our state, where you see the names of the abused and then they'll say and four or five juvenile. They don't give their name because under the law they can't publish the name of a juvenile that's been arrested, arrested with a crime. But it is very interesting to me that that they would say that the name of a juvenile, or twenty years old and they'll say and three or four juvenile. It is something that we should seriously consider ourselves with because this is a problem or a situation that is something in its importance and in its danger to our law enforcement program in this state. The last time I give you this proposal, after now, I know, I don't think I can say that, from 1964 to 1968, that's twenty-four years, I don't know how many, but I know people charged with murder, or with rape, or with aggravated kidnapping, let alone thirteen years that have served their time, and particularly in the last three years, or gotten to be a very prominent thing for juveniles. Fifteen, fourteen, thirteen years and not

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to be engaged singly, but to work in groups or gangs to where it's often to be one of the most serious menaces to our law-abiding citizens, to our everyday citizens. In some places, they are even afraid to go out on the streets, particularly at night, because of these youthful gangs parading around neighborhoods committing different acts of violence and committing different sorts of crimes. So I suggest to you, without taking any more of your time, ladies and gentlemen, that we defeat this amendment, because this committee did put in an awful lot of serious discussion and hearing these witnesses, and came to the conclusion that this juvenile program had no place in the constitution. It should be left to the legislature because it's an ever changing program. It's an ever changing situation. It's an ever changing danger that we are confronted with, and to lock this in the constitution, when five years from now we may have an even worse situation than we have. I think it's going to make it a lot harder for the law enforcement officers and the public-at-large to cope with.

Further Discussion

Mr. Gravel Mr. Chairman and ladies and gentlemen of the convention, I speak in support of the amendment, although I do believe there may be a possibility that some technical change may be required. For example, in Section "(C)" the reference should have been to criminal district courts in Orleans because under the other provisions of the constitution that we have recommended, we have recognized the difference between the criminal courts and the civil courts there. I just want to leave one or two thoughts with you, though, in connection with this proposed amendment. You know it always concerns me greatly when there is a great to-do made about the seventeen year old child or the sixteen year old child who has committed what appears to be a serious antisocial offense. Much is made of such an offense. Much is made in the newspaper because such children, generally neglected children who have had no educational opportunities, no opportunities to regulate their own social behavior have fallen, more or less, by the wayside and have committed offenses, from time to time. But it seems to me that we make an unfair judgment when we hold those kind of people, those children who have not had the advantages of proper training and education, to a higher degree of culpability than we do the hired assassin, or the criminal who is a major criminal and who has been that all of his life. I think that in this particular provision, that this constitution can very adequately provide for the most serious offenses, and permit the jurisdiction of the several district courts throughout the State of Louisiana to be exercised in those cases where murder, aggravated rape, and aggravated kidnapping are the offenses. But in other instances, the culpability of the minor child, the child under eighteen years of age, can and must be determined by a system of justice that's not tied in to the kind of system that is applicable only to major criminals and the hired criminals. I strongly urge that you give consideration to the necessity for our making a valid distinction between the kinds of criminals that we have in the state, and the ages, of course, of those who are charged with offenses against the state. I'll yield to a question, Mr. Chairman.

Questions

Mr. Fulco Mr. Gravel, we just lowered the age of an adult from twenty-one to eighteen, didn't we?

Mr. Gravel That's correct, ye sir.

Mr. Fulco Now, a juvenile, now, can be two minutes, and I agree with Hellborn Jack, not at all ways, but certainly during this case; and a juvenile, now, can be two minutes under eighteen years of age, which is now considered an adult level, and still be considered a juvenile, a juvenile

[980]

two minutes before he becomes an adult. Isn't that right?

Mr. Gravel That's correct.

Mr. Fulco Now do you think it's fair to make a juvenile, almost eighteen years of age?

Mr. Gravel Yes, I do. I think we've got to . . .

Mr. Fulco A juvenile, Mr. Gravel? Go right ahead. I'm sorry.

Mr. Gravel May I answer your question?

Mr. Fulco Yes, please explain.

Mr. Gravel I think that we have drawn the line between minors, or juveniles, and adults. That line is eighteen, and we may as well abide by it. Mr. Fulco. That's what I think we've done, and I think we've got to maintain some regularity and harmony in our concepts with respect to age. Since we have placed that line of demarcation, so to speak, in the constitution, that we should give attention to it and be guided by it.

Mr. Fulco In other words, in this age and time, we are making a juvenile, within two minutes, an adult because he's going to be two minutes lacking of eighteen?

Mr. Gravel Yes, Mr. Fulco. A man is seventeen until he gets to be eighteen. We can make it within one second if you want to.

Mr. Fulco Yes, okay. One second, he immediately becomes an adult where he used to be . . .

Mr. Gravel How are you going to stop that from happening, Mr. Fulco?

Mr. Fulco By lowering the age of a juvenile, not increasing it to eighteen.

Further Discussion

Mr. Stovall Mr. Chairman, ladies and gentlemen of the convention, may I suggest to you that we live in an adult world, and we, as adults, have not done a very good job of providing the kind of society in which our children and young people can mature into adults whose lives are fulfilled and who develop the right kind of society. In fact, we've done a terrible job, and I think the time has come when we should look at some of the things that have brought about the kind of situation we have at the present time. My point is simply this. Because we do live in an adult world, we should spell out the rights of young people in our constitution, and guarantee to them the maximum protection. Now the next point I want to make is that a very high percentage of our juvenile come from broken homes, from poverty, from unemployment, and from all of these social conditions. I think that the adult community has a responsibility to take these children and young people in dealing with their particular needs. The point that we are dealing with in this amendment is this, that family and juvenile courts have expertise and resources and special ways of dealing with young people that enables them to think not in terms of incarceration, but rather to think in terms of rehabilitation. I suggest to you that it is this consideration that should encourage us to vote for this amendment. We live at a time when the fields of psychology and psychiatry, of counseling and sociology have been developed, that we have great resources to help young people. What I am pleading for at this time is that we provide the kind of rehabilitation program in which these resources can be made available to young people who find themselves in conflict with the law. I submit to you the thing that "Pappy" Triche said to us time and time again, that the legislature makes its decisions on the basis of emotions and politics; and what we need in dealing with our young people is not emotions

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and justice, but it is objective concern. Finally, I would like to say that the Supreme Court of the State of Louisiana, the Honorable members who by reputation and rendered a great service as judge of the family court here in Baton Rouge Parish. He rendered a great service because he dealt with family and juvenile problems in a very humane way, and he did it at the same time within the framework of law. Therefore encourage you for these reasons, to give approval to this amendment. Thank you.

Further Discussion

Mr. (and) Mr. Chairman, fellow delegates, I like to ask you to vote against this amendment, even if you agree with part of it. Because, the amendment is essentially two things. First of all, it is to allow who a juvenile is. Who are these people that are going to be treated outside of the regular court system? I recognize that some of you may vitally feel that that should be spelled out in the constitution. The committee did not feel this. Even if you feel that way, I'm going to ask you to vote against this amendment because there is no spell out. But that. The amendment goes on to spell out the structure of juvenile courts. It does things which are in violence to the rest of the committee proposal. I don't think that the authors know some of the things they are about to do to the court structure in this amendment. For example, did you know that if you adopt this amendment the legislature can establish a special district for a juvenile court including one, two, three, five, ten, fifteen or thirty-four parishes? Because, it says it can establish a juvenile court in any parish or any group of parishes. It might even take one of the parishes in my judicial district which contains thirty parishes and put in a special district for that district and leave the other parish outside of it. Second, it freezes for all time the jurisdiction of any family court, because it says that after this constitution will be the same as that of the family court existing at the present time. Third, that I do not fear but think it could be interpreted by some of the authors that courts do not have juvenile jurisdiction any more. That will separate juvenile courts will have juvenile jurisdiction. This would be disastrous in north Louisiana and other areas of the state where we don't have specialized courts... where we depend on our district judges to perform both the function of the juvenile judge and the district court judge. Ladies and gentlemen, it is not necessary to do this violence to the committee proposal, to legislate about the proposed type of handling of juvenile case. That Rev. Stival and others say they want, because the committee proposal itself contemplates that juvenile will be handled in a special court, in a special proceeding. It doesn't say you are to be established in any court in these districts. You can have social workers and other professional help attached. You can run these divisions without jury trials. You can run them informally, such as the juvenile courts are presently run. You can run them with flexible administration to meet the needs of the child. You can run them with even a special judge if you want. If you do not want to have in all areas all of the juvenile case, you can judge, you can have that court. You can have a specialized judge. I happen to think that a judge is a better judge for hearing all kind of case, but if you do not want a judge and want to have some non-judging juvenile work because he's a real specialist, you can do that under the committee proposal. The committee proposal is not at all in conflict with the juvenile court philosophy

it allows new approaches and new features to be taken. This philosophy is refined and improved more legislated so. I'd ask you ladies and gentlemen, even if you do feel that we want to put an age limit or some definition of a juvenile in the constitution, let's vote against this amendment because it does much more than that and does violence to the basic committee proposal or court structure. Let's vote this down and I assure there will be other amendments doing these things individually that you may wish to do. So, I ask you to vote against this amendment.

[FURTHER DISCUSSION OF ITEMS.]

Closing

Mr. J. Jackson Mr. Chairman, ladies and gentlemen of the convention, as Judge Dennis say, there is nothing... and I want to suggest to you... as with every article that came before this convention, there is nothing sacred about a committee proposal. Now, I recognize that there are some legitimate arguments, technical arguments, against this amendment, and I will attempt to address myself to these arguments but there are some arguments I got to react to. I had intended on withdrawing this amendment to provide... to address myself to those technical amendments, but I understand from the Chairman I couldn't probably address myself to some of the arguments that have been presented against here. I think that if you're against the jurisdiction of juveniles in the constitution, then you ought to just say so. You ought not come up here talking about heinous crimes because we made for the exceptions of heinous crimes. If you're against a juvenile court system, then say so. Let's not muddle the issue with heinous crimes, because as you say, what's more heinous than murder, aggravated rape... what heinous crime that I can't delegate has suggested this. If you're two second, before 18, you're in trouble. You've got a maturity problem or a jurisdiction problem. I want to suggest to you that that lies with 17, 16, 15, and 14. The argument against this amendment and concept, and I'm not talking about technical arguments or arguments what I consider are valid but some of the arguments are that, you know, we're raising the age of maturity. I want to suggest to you that what you do with a 17 year old, who is not eligible under the present juvenile jurisdiction and unless you charge him with a crime, he can't go to the criminal court... what are you going to do with the runaway? I want to suggest to you that you can look up some statistics which say that runaways in certain murder, runaways have been involved in certain crimes and if they did do it, this provision did provide and does provide, that they can be brought before the criminal court. I want to suggest to you that some of the arguments that I've heard here today, and you're right, and maybe I couldn't be, but I've got concerns. If you've got concerns, say something that we are able to work out. I want to suggest to you that under the present committee proposal as provided by law, that would be a city ordinance. Are you willing to allow each parish, each city, to pass laws governing the behavior of juveniles? I don't think you want that. I want to suggest to you that the problem of juvenile delinquency, if you're right, won't be solved by this amendment. It's going to be solved by the state putting some money and willing and ready to change some of the institutions. It's not going to be solved by the legislature passing more laws. It's going to be solved by the legislature passing laws in terms of reform, in terms of not... that if you've got some valid concerns about this amendment, let's deal with them, but if you're against the jurisdiction, say so. If you're against one argument, that we could set up parish courts or numerous courts, different various parishes. This amendment specifically says that in order for that to happen, you must have a petition presented to the appropriate authority and that parish... those who the committee rule would believe that. The Legislature could do

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say "there shall be a juvenile court for the parish of Cameron, Calcasieu, as such." The governing authority has got to present that petition. I want to suggest to you about... in New Orleans we have talked about moving from a juvenile court situation to a family court situation and that's the only reason why certain language in here is allowing for the legislature to expand the jurisdiction. Someone said, "Well, the jurisdiction... we're going to freeze in the jurisdiction." How can that be when the language clearly says "the legislature shall have the authority to expand the jurisdiction"? I think everybody has made up their mind how they feel about the problem of juveniles. I'm suggesting to you that problem can't be solved in this convention. That's a problem of statute. But, the manner in which they will be handled is a constitutional problem, as with all the courts of the city. Can the legislature create or establish a constitutional jurisdiction? I don't know if we can. Mr. Chairman, I close.

[Record vote ordered. Amendment rejected: 34-74. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendments sent up by Delegate Gravel.

Amendment No. 1, on page 6, line 17, change the period to a comma and add the following: "provided, however, that the juvenile courts, including district courts in parish and city courts when sitting as ex officio juvenile courts, shall have exclusive original jurisdiction of all offenses committed by persons under the age of 17, except that the criminal district courts in the parish of Orleans and the general district courts in the other parishes of the state shall have exclusive original jurisdiction of persons who, at the time of the commission of the offense, are over the age of 15 years and who have been indicted by a grand jury for the offenses of murder, aggravated kidnapping or aggravated rape committed within their respective jurisdictions."

Explanation

Mr. Gravel Mr. Chairman, ladies and gentlemen of the convention, this amendment, in effect, retains in the proposed new constitution similar provisions which are in the present constitution. I believe that by the insertion of this amendment into the judiciary article that we substantially, and hopefully, have met most of the objections of those who have opposed the amendment previously introduced by Mr. Jackson, myself and several others. All this does is to reposit in the juvenile courts and the ex officio juvenile courts, jurisdiction over persons who are 17 years of age and under that, except, however, in capital offenses that are particularly stated here in this amendment; that is, offenses which are presently capital offenses, then the district courts throughout the state and the criminal district courts in Orleans have exclusive original jurisdiction. It seems to me that this provision is essential and I urge the passage of the amendment.

[Previous Question ordered. Amendment rejected: 53-53. Motion to reconsider.]

Motion

Mr. Derbes I wanted to make a motion and I was standing before Mr. Jackson was, but you've already recognized him. I wanted to move to reconsider the vote and lay the motion on the table.

Mr. Henry Well, all he's done is move to reconsider the vote and you may move to table the motion to reconsider, Mr. Derbes.

Point of Information

Mr. Tapper Is it debatable?

Mr. Henry The motion was made to reconsider the vote and then to table the motion to reconsider which is not debatable.

Point of Information

Mr. Tapper Is there any place in the constitution, in the judiciary, thus far, that we've adopted that gives district courts in parishes that do not have juvenile districts, jurisdiction...

Mr. Henry You're not asking me for a procedural rule or a ruling on the procedure there, Mr. Tapper, and I think you're getting a little far afield, there, with all due respect, sir.

[Record vote ordered.]

Point of Information

Mr. Derbes I just want you to explain the vote as it stands, Mr. Chairman. Perhaps, you were prepared to do so. I'd just like to ask you to do so.

Mr. Henry Well, now, I'd be happy to explain this, but it's high time and, Mr. Derbes, I'm sure you're familiar with the rules of procedure of this convention, but it's high time that I don't have to stand up here and explain every such motion that's made. Now, that has happened is that these amendments have not passed because there were 53 yesses and 53 noes. Mr. Jackson, wanting another shot at the amendments, has moved that we reconsider the vote. When he made that motion, Mr. Derbes moved to table the motion to reconsider, so that we'd put an end to the debate and put an end to the consideration of these amendments.

[Motion to table adopted: 54-53.]

Further Discussion

Mr. [J.] Jackson Ladies and gentlemen of the convention, let me say some dry things. What the will of the convention has prevailed, but I am somewhat contented in the fact that it was half yes and half no. I want to suggest to you that this is a very serious problem, contrary to the way the committee proposal is drafted. I want to suggest to you again that the committee proposal says that every violation of civil, criminal law, that a person must be tried in district court. If you prepare to suggest that youngsters, who do not commit the enumerated crimes as suggested in both of the amendments, go before a criminal court to have his record exposed to the public, to follow him for the rest of his natural life and with the possibility, if convicted, probably have a problem in terms of restoration of his citizenship, then I suggest that you adopt the committee proposal. I think that, and it beguiles me to kind of understand, how we can take a third of the population, the young people of our state, and go under the present constitution which the last legislature operated on and not afford them that kind of protection. I don't see talking about protection for those who commit murders because we've made those kinds of exceptions. We're talking about those youngsters who may commit a prank, who are not very cognizant of the consequences of their act, that does not result in murder and I'm suggesting to you, I'm no attorney, but I'm suggesting to you that the legislature is very political. We are, and I don't force myself of it. We're very emotional, and just let one other sensational crime occur, then you're going to have another outcry. But, you see, the outcry is almost like a big front, because the legislature has that power under the present constitution to bring any youngster who committed a "heinous crime". They've got that power already. When you hear all the clamor in the legislature prior to this matter being considered by this convention, you were really hearing a lot of people who were concerned

about the problem, but they had the powers and that's how they redress it. The only reason why it was declared unconstitutional as I understand it is that it didn't take into consideration the powers of the family courts, and that they attempted to legislate jurisdiction which would constitutionally be available. I'm taking this time because, and I guess I'm really pushing the issue, and I guess that the convention is split, so that means there might be some hope. I'm prepared to offer an amendment that says what Mr. Gravel has said and to answer Mr. Tapper's objection that district courts or city courts that function as juvenile courts are hereby retained. I will suggest to you that this is going to be possibly my last attempt to bring this problem before you, but I really want to say that you look at the judiciary proposal, and if someone can convince me that it doesn't say, no matter whether you've violated a heinous law or a state misdemeanor, that you're no subject to go to districts that function as juvenile courts, then maybe some of the objection and strong feelings that I have about this could be removed.

Amendment

Mr. Pointer: These are the Pugh amendments, now Co-authored by Delegates Kean and Avant.

Amendment No. 1, on page 6, delete lines 16 and 17 both inclusive in their entirety and insert in lieu thereof the following:

Section 18. The juvenile and family courts shall have such jurisdiction as the legislature shall provide by law.

Explanation

Mr. Kean: Mr. Chairman, fellow delegates, the parish of East Baton Rouge has a family court which is in some respects different from juvenile courts and has different jurisdiction. This amendment would simply make it clear that Section 18 is applicable to the family court as well as to the juvenile court and that the juvenile and family courts would have such jurisdiction as the legislature shall provide by law. I think it's more in the nature of a technical amendment and we feel it's necessary in order to protect the jurisdiction of the present family court in the parish of East Baton Rouge.

Questions

Mr. Tobias: Mr. Kean, Mr. Jackson pointed up a problem that Judge Tate and I are coming with an amendment to "Tear up." It's a potential problem. In Section 18, even under your amendment, it says the jurisdiction of a juvenile court shall be as provided by law. You're would add a family court to that, as I understand it. That is correct?

Mr. Kean: Yes.

Mr. Tobias: If K. In Section 16 that this convention has adopted it provides "unless otherwise authorized by this constitution, a district court shall have original jurisdiction in all civil and criminal matters." Then it says, it shall have exclusive original jurisdiction of felony cases. Now, under what Mr. Jackson's argument would he have would say that the district would have to have exclusive jurisdiction of all felony cases, including juvenile offenses. Do you see a possible hole there? In other words, do you not think that in your amendment you would want to add something to the effect, notwithstanding any provision of this constitution to the contrary, the jurisdiction of a juvenile court shall be as juvenile family court shall be as provided by law?

Mr. Kean: I would think that the amendment as proposed would give the legislature the right to provide for that jurisdiction and therefore it would carry with it the implication that notwithstanding any other provision

Mr. A. Jackson: Mr. Kean, are you aware of the fact that in the last session of the legislature of this state that there was introduced several pieces of legislation that would have effectively destroyed the entire juvenile court system in this state as well as the family court in Baton Rouge?

Mr. Kean: I was not aware that that legislation would have affected the constitutional family court jurisdiction in Baton Rouge, because the jurisdiction of the family court in Baton Rouge is constitutional, and relates itself primarily to family matters....

Mr. A. Jackson: Well, let me rephrase my question...what I am really asking is that if we had not had the jurisdiction of the juvenile court spelled out in the present constitution that the legislature would have effectively destroyed the juvenile court system?

Mr. Kean: That is correct.

Mr. A. Jackson: And then is it not true sir, that your amendment, as it is presently drawn, would not prevent the effective destruction of the juvenile court system by future pieces of legislation that might be motivated by the emotions of the day?

Mr. Kean: My amendment would give to the legislature the right to fix the jurisdiction of these courts. I recognize in making and offering the amendment that it would have that effect, but if we don't have the amendment, I don't know what the jurisdiction of the family court of East Baton Rouge would be.

Mr. A. Jackson: I agree with you, sir, but are you aware of the fact that there...that the original legislation introduced by...in the last session of the legislature attempted to destroy what you're trying to protect?

Mr. Kean: I'm aware that there was legislation in the last session of the legislature which would have effected the jurisdiction of juvenile court and I am aware of the fact that if this amendment is adopted the legislature would have that right, but my point is that if I don't put the words "family court" in here then I don't know what the jurisdiction of the family court in Baton Rouge would be, because it's now constitutional. I presume the purpose of the committee in taking those constitutional, jurisdictional areas out of the constitution was to reduce the size of the constitution and give flexibility to the legislature to deal with the problem and I have no objection to that approach.

[Previous Question Replied. Amendment adopted: 92-2. Motion to reconsider tabled.]

Amendment

Mr. Pointer: The first set of amendments is by Delegates Tate and Tobias.

"On page 6, line 16 in the language added by Convention Floor Amendment No. 1 proposed by Delegate Pugh and adopted by the convention today, immediately after the number 18 and before the word "jurisdiction" delete the word "and" and insert in lieu thereof the following: "Notwithstanding any provision of this article to the contrary, the".

Explanation

Mr. Tate: Mr. Chairman, fellow delegates, Mr. Jackson raised a possible technical problem that grew up when we took the juvenile court jurisdiction out of the constitution and when we provided that exclusive jurisdiction of felony cases shall be in the district court. I think there is no intent to say that the legislature would not provide for juvenile jurisdiction despite the fact

that the act might have constituted a felony. Therefore, I believe it's in the nature of a technical amendment to Section 16, to add in front of it, "notwithstanding any other provision of this article to the contrary"; then you go on and say, "the jurisdiction of a juvenile court shall be as provided by law...jurisdiction, whatever the Kean amendment is." In other words, there is no intent to deprive the legislature of the authority to create a section of juvenile misdemeanants, juvenile delinquents who, despite the fact that they commit what would be a felony if they are an adult, can be tried by a juvenile court system, whether they are thirteen, fourteen, fifteen, sixteen and so on. Therefore, I open myself up to questions.

Questions

Mr. Perez Judge, so that we'll be informed when we vote on this amendment, what are the provisions in this particular article which would be in conflict with the authority of the legislature to deal with juvenile courts?

Mr. Tate As a matter of interpretation, it would be this: we added, in connection with providing the exclusive jurisdiction of district court, we added, it shall have exclusive jurisdiction of felony cases. Now, it would provide no harm in the present constitution where under Section 52 of Article VII we provide for juvenile jurisdiction. But, as a matter of interpretation, it could be argued that when we provided that district court shall have exclusive jurisdiction of felony cases and that we merely let the legislature describe and set up juvenile courts, it could be argued that we have deprived them of the jurisdiction to take away jurisdiction of felony cases from the district court. Does that answer the question, Mr. Perez?

Mr. Perez Very satisfactorily, sir. Thank you.

Mr. Tate Thank you.

Mr. De Blieux Judge Tate, I'm just wondering, in view of your amendment, if it might not be better to state that in spite of the provisions of Section 15, I think it's Section 15 that we have reference to providing for the jurisdiction of the court, that the legislature may provide for juvenile...

Mr. Tate I would have no objection to say if Section 16, or whatever it is of this article...

Mr. De Blieux Sixteen, that's right, sixteen, Section 16.

I just made that suggestion. I think that it might be a better exclusive remedy for juvenile cases.

[Previous question ordered. Amendment adopted: 101-0.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Tate], on page 6, line 16, immediately after the words "provide by law" added by Convention Floor Amendment No. 1 proposed by Mr. Pugh, et al and adopted by the Convention on today, change the period "." to a semicolon ";" and add the following: "Juvenile courts shall have exclusive original jurisdiction of all offenses committed by persons under the age of seventeen, except that the criminal district courts in the Parish of Orleans and the several district courts in the other parishes of the state shall have exclusive original jurisdiction of persons who at the time of the commission of the offense are over the age of fifteen years and who have been indicted by a grand jury for the offenses of murder, aggravated kidnapping, armed robbery, or aggravated rape committed within their respective jurisdictions."

Mr. O'Neill For a point of order, Mr. Chairman. Aren't these the same amendments that we just considered, just a few times back?

Mr. Henry I believe they add one more crime to the difference in them, as I appreciate it from looking at the amendment, Mr. O'Neill.
Is that correct, Mr. Gravel?

Mr. Gravel Yes, that is correct, Mr. Chairman. I do want to apologize to the convention because there has been some problem about getting these amendments prepared and presented to you, and I realize that it does produce a great deal of difficulty. However, I'd like to state to the delegates that there has been some question at the time that the previous amendment was submitted to you, about whether or not there would be any objection to inserting, as one of the offenses which would lie within the exclusive jurisdiction of the district court, the crime of armed robbery. It was not contained in the prior amendment, and for that reason, at least, one of the delegates told me that they were going to oppose the proposed amendment. In order, hopefully, to try to get their support for this amendment, I have included that offense in the amendment now presented to you. Now, ladies and gentlemen, I honestly believe that it's essential that we make this provision in the constitution. These are the four most serious offenses known to the law of Louisiana, and there is no question but that we are going to vest in the criminal district courts throughout the state of Louisiana jurisdiction with respect to these offenses, insofar as they involve persons fifteen years of age or over. That's in the present constitution. But, in other situations, offenses involving juveniles should be considered by the juvenile courts. It should be so stated in the constitution. I respectfully urge that you support this amendment.

Questions

Mr. Duval Camille, I notice you placed an additional crime of armed robbery in here, but I was wondering about the crime of aggravated arson. Isn't that one of the most serious crimes in Louisiana?

Mr. Gravel If I'm not mistaken, the maximum penalty for aggravated arson is twenty years, which is similar to manslaughter, and it does not carry with it...

Mr. Duval Well, it must have been amended. I had thought that the penalty was far more severe than that.

Mr. Gravel My recollection is that it is twenty years, and it would equate with the offense of manslaughter.

Mr. Duval I'm talking about when they arrest... People in the edifice that arson is taking place.

Mr. Gravel That's what would make it aggravated arson.

Mr. Duval That's right. Well, I think it's more than that; I think it's life, myself.

Mr. Gravel Well, I may be wrong.

Mr. Conroy Mr. Gravel, the other day we spent a great deal of time debating about the jurisdiction of the courts in Orleans Parish, and I want to make sure that this amendment doesn't in any way backdoor something that we dealt with there. This vests an exclusive jurisdiction in the criminal district court in Orleans. Would that preclude the legislature later from changing the court setup in Orleans Parish to abolish the criminal district court?

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Mr. Gravel I think what we have done, Mr. Poynter, is to maintain the dual court system in Orleans.

Mr. Poynter You have maintained it in effect, but the action that the convention took the other day authorized the legislature to change that. Would this preclude the legislature, is this intended to preclude the legislature, from changing that present setup that exists in Orleans Parish?

Mr. Gravel I don't think that this has to do with that problem, because I think that might have to be changed in the future if there was some change of jurisdiction under the constitution, from that that is presently allowed to the courts in Orleans. I don't think that's the issue here at all, Mr. Poynter.

Mr. Tapper Mr. Gravel, it confuses me. Awhile ago you had changed your amendment to provide that in the parishes where there are no juvenile courts, that we'd be protected. The wording was changed so that you said that where district courts had ex officio juvenile authority that those courts would have the jurisdiction over the juveniles. In this amendment, you've left it out. Was that an oversight?

Mr. Gravel It was an oversight. I see that it is, and I should have left it in there.

Mr. Tapper I'm wondering if you would withdraw it momentarily and put that back in.

Mr. Gravel I'll do that; I surely hate to take the time to do it, but I think you are correct, Mr. Tapper, and it is an oversight. It should be in there. In other words, my intention was that, as well as with respect to juvenile courts, as well as ex officio juvenile courts, that they would have exclusive jurisdiction.

Mr. Tapper Well, in addition to that, you don't have anything in here about aggravated battery. In other words, one of these juveniles could bash your head in and you could be a venetable, and then the district court couldn't handle you; you still go to the juvenile court. I don't understand why you left that out. Let's say attempted aggravated rape or attempted murder, you don't think they should be in there also?

Mr. Gravel Well, if those are all going to be included, there is no use to have this provision at all, Mr. Tapper.

Mr. Leura That was my exact question. I was just going to ask you to withdraw it and put that provision in, please, sir.

Mr. Gravel Mr. Chairman, I'd like to do that. I hadn't noticed that, and I probably gave the staff the wrong copy to work from. But, what I do want to do is to withdraw it in order that I can take, say insert, after juvenile courts "and those district, parish and city courts, when serving ex officio juvenile courts." That is my intention.

Mr. Henry Of course, if this body agree, you are certainly welcome to do that, but we've got to get to some point in time this afternoon, it would appear to me, that we do something here.

Mr. Gravel I wonder if I could have, at least to get this properly before the convention, I would ask for unanimous consent of the convention to permit the amendment to read as it did in the other amendment. I don't have the exact words before me, but I don't want to make any mistake on it, but it was my intention that that same language be inserted in this amendment. Mr. Chairman if there's no objection, I'd like to have it done.

Amendment

Mr. Poynter Juvenile courts, and you wanted to add this language, and correct it if I'm wrong. Mr. Gravel, including district courts and parish and city courts when sitting as ex officio juvenile courts.

Is that correct, sir?

Mr. Gravel That is correct.

Mr. Poynter Shall we have exclusive original jurisdiction etc., as the amendment is before you on your desk. "Juvenile courts, insert, the clause, including district courts and parish and city courts when sitting as ex officio juvenile courts, shall have exclusive original jurisdiction" etc., as the amendment was previously read and is before you.

Mr. Gravel That is correct.

Questions

Mr. Fontenot Mr. Gravel, isn't it true that for a crime of armed robbery you do not need an indictment by a grand jury? ... to be prosecuted for it? Couldn't the O.A. file a bill of information?

Mr. Gravel Under present law, that's correct, yes.

Mr. Fontenot So, under this provision here, there is a possibility that it depends on whether the O.A. files a bill of information or you are indicted by a grand jury, which court you will go into. Is that correct?

Mr. Gravel That's correct, yes, sir. I designed it.

Mr. Tobias Mr. Gravel, would you be willing to accept an amendment to change the language that says "except that the criminal district courts in the parish of Orleans to change that to read a criminal district court in the", beg your pardon, "a district court in the parish of Orleans having criminal jurisdiction"?

Mr. Gravel I'd have no objection to that at all, Mr. Tobias.

Mr. Tobias Would you amend yours? Otherwise, I can't support...

Mr. Gravel Well, I don't believe the Chairman is going to put up with my withdrawing this and amending it again, but I would be willing to see that in the event this amendment passes, that I would support an amendment that would do that. I would hope that the others would too.

Mr. Lanier Mr. Gravel, you indicated that you put in this language, providing for indictment by the grand jury for armed robbery, designedly. What is your design?

Mr. Gravel That a grand jury indictment would be required in cases involving these offenses and the category of people before the court would have jurisdiction.

Mr. Lanier Well, wouldn't that then leave out of the situation that, if the district attorney filed a bill of information for armed robbery, that there would be no jurisdiction?

Mr. Gravel In other words, the grand jury would have to indict for armed robbery for a person over the age of fifteen years, and under the age of eighteen.

Mr. Lanier Well, if the district attorney is authorized to file this with the grand jury, indictment or indictment, why would you want to make that difference?

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Mr. Gravel Because of the category of potential defendants that we are dealing with, because we are dealing with children in this particular kind of a situation, serious crimes involving children. For another reason, too, I'm hopeful that in the Bill of Rights, when it comes up, that the grand jury will be required, that prosecutions will be required or permitted only in instances where grand jury indictments are returned in felonies necessarily punishable by imprisonment at hard labor.

Mr. Lanier Well, suppose the provision that you are hopeful of getting in the Bill of Rights does not prevail at the present law is retained, wouldn't this lead us to a rather anomalous situation here?

Mr. Gravel No, Mr. Lanier, what I'm saying is, is that before a district court would have jurisdiction over this category of children for the offense of armed robbery, that the grand jury would have to indict. The grand jury would be the body that would bring the charge and not the district attorney on a bill of information.

Mr. Lanier But wouldn't that lead us in the situation where actually the district attorney would have the power to determine the jurisdiction of the juvenile court, because he could elect to either do it on a bill of information or take it before the grand jury?

Mr. Gravel That's absolutely correct.

Mr. Derbes Mr. Gravel, among other things, and I think this is a serious problem, among other changes in the present system that you're amending occasions, it seems to me that it is entirely triggered upon indictment by the grand jury rather than commission of the offense. Isn't that correct?

Mr. Gravel It is triggered on both of them.

Mr. Derbes No, no, a person can commit the offense of armed robbery for which he may not necessarily be entitled to a grand jury indictment and yet not subject to the jurisdiction of the criminal district court until and unless he is indicted by a grand jury.

Mr. Gravel I think I've made that about as clear as I could.

Mr. Derbes Yes, I understand that, and I want to go ahead from that point and say, which court would have jurisdiction over his pretrial detention? In other words, in a juvenile who had allegedly committed the crime of murder, the crime of murder, he could not be detained in a maximum security facility until he was indicted by a grand jury. Isn't that correct?

Mr. Gravel I think that would definitely be the consequence of this, and that's what the procedure, I think, should be followed. We can, the minor or the child, can be detained, but there is no reason to detain anybody in a maximum security situation, at least until there is an indictment for this serious an offense, in my opinion.

Further Discussion

Mr. Jack Mr. Chairman, ladies and gentlemen, this amendment I am against. This is a perfect horrible example of the very thing we should guard against. This has error upon error. We don't have time to legislate. That's the legislature's business. We are supposed to put in this constitution things that are not going to be flexible and need change. This thing now is getting very, very peculiar. They've added here the armed robbery, as well as I can tell from the oral edition, but of course, if that's against a juvenile over a certain age, it must be by a grand jury indictment. The district attorney couldn't file a bill

of information against him. Yet he could on a regular case. Now, that is just not well thought out. I again mention to you some people get tired and don't want to speak when they keep hammering away trying to get through some kind of amendment. That's how those who were in favor of electing different officials finally got beaten, because the other side kept hammering away with it. I firmly believe the proper thing for the protection of the juvenile, for the protection of other people and everybody as a whole, we ought to leave this legislative matter up to the legislature, where they can change it if they make a mistake. This is the only constitution we've had since 1921, if we get it adopted. So, I say put in these things that are not highly controversial, that are not going to be needed to change a year afterwards. Now, this amendment is not curing anything. I don't know why Mr. Gravel is so hep on wanting to put something in here on it. We have been life-long friends. I can't understand why he keeps lowering it. He changes, he's even... I made a talk about the great number of armed robberies, so he's included that. That don't cure anything. This matter is a purely legislative matter. Let's kill this bill. Let's get along. I hate to talk as much as I do. I've asked other people at times, who are voting against this, to come talk; they don't like to. Somebody has got to do it. This bill is worse, or as bad as, the other amendment. Thank you, and you should vote against this amendment.

Questions

Mr. Stovall Mr. Jack, if you object to defining the duties of the juvenile court, why didn't you object to defining the duties of the Supreme Court?

Mr. Jack What did you say? I didn't hear you, there is so much noise ...

Mr. Stovall If you objected to defining the duties of ...

Mr. Jack Come whisper it to me, and I've got 20-20 hearing. It's the noise. Come confide in me; you're not going to agree with me, so I don't know why you asked.

Mr. Henry Why don't you all, if you are going to whisper back and forth to one another...

Mr. Stovall If you objected to defining the duties of the juvenile court, why didn't you object to defining the duties of the Supreme Court and the other courts?

Mr. Jack Because, they are not the subject. The question he asked me, which I don't think is pertinent, but I'll answer it, says why didn't I object to defining the duties of other courts. I think it's an entirely different thing. This is a flexible matter which I've tried to explain. I don't think, Reverend, you've listened to me. Everybody's got a right to his opinion. You've got a right to not listen to me. All I was asking for earlier was for quiet, for those who did. Now, you're not going to be changed by my talking. I just tell you that's my opinion, that I think it's a legislative matter. I thought the others were constitutional matters.

Mr. Womack Mr. Jack, in the case of a juvenile that needed to be put in maximum security for his own good, under this, you couldn't do that to him, could you, until it went before a grand jury?

Mr. Jack I don't know what this amendment would provide for that. It does seem to state that a juvenile, over the age of fifteen years and who has been indicted by a grand jury for the offenses of murder, etc....

Motion

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Mr. Gravel Mr. Chairman... I believe that the chair will be happy to hear a motion to withdraw the proposed amendment.

PERSONAL PRIVILEGE

Personal Privilege

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Avant] On Page 5, between lines 28 and 29, insert the following: Section 15.1. City Court Judges Term A judge of a city court shall be elected for the same term as a district court judge.

Explanation

Mr. Avant Mr. Chairman, fellow delegates, under Article VII, Section 51, I might add that every city in the state of over five thousand population has a city court. I don't know how many that is, but it's a substantial number. Every city court judge in the state has a six year term except the two in Baton Rouge and the judge of the Second City Court in New Orleans who have four year terms. This is simply a provision to make the terms of city court judges equal and uniform throughout the state, make them six years which is the same term that a district court judge has and which will be the same term that a parish court judge has under the provision providing for parish courts. It is simple, I think, I hope that's an adequate explanation. I ask your favorable vote on the amendment.

Point of Information

Mr. Munson I wanted to ask you a question, Mr. Chairman. I believe the convention has already adopted Section 15. Is this a new section, since it's numbered Section 15.1?

Mr. Henry It would be a new section, yes sir.

Mr. Avant I would hope, Mr. Munson, that it would be renumbered, perhaps, I don't know if that falls within the prerogative of Style and Drafting, but it would be more appropriate at that point in the article rather than tagging it on the end.

Question

Mr. Brown Mr. Avant, did you say that all other judges in the state are six years? Are you sure about that? Like in Winnfield, there's a city judge. That's four years. I can think of a bunch of smaller towns that just have four year terms.

Mr. Avant Well, I'll read the article, Mr. Brown. It's Article VII, Section 51, Subsection 4, and it talks about city judges, compensation, election term. The compensation of the judges shall be fixed by the legislature, etc. Now, the judge of said courts now in office, the City of Baton Rouge excepted, shall remain in office until the thirty-first day of December 1954, and every six years thereafter, said judges shall be elected at the election for representatives in Congress. I am informed that the two in Baton Rouge and the second city court in New Orleans are the only four year city judges in the state if they have one in Winnfield, I don't know about it, nobody had ever told me that before, and I don't see how you could under the provisions of this article. I feel that whether you do have any more that it should be equal and uniform throughout the state.

Amendment

Mr. Burton Fellow delegates, I rise on personal privilege just to make a point which I would have to make now, I think, in order for what I intend to do later to make any sense. I don't want to waste the time of this convention by fighting a battle that has already been fought or by trying to introduce amendments in the guise of new elections. But, it seems to me that we made a mistake Saturday, when we were all tired and in haste, when we adopted the right to counsel before the grand jury without explaining in any way, shape, or form, how that newly created right was to be exercised, who was to have it, and whether or not, for instance, the state would be required to provide everybody who testified before a grand jury with counsel, which, I think a little bit of reflection would quickly lead you to the conclusion, would either bankrupt all of our local governmental institutions that have to provide that counsel, or would lead to the obliteration of the grand jury as an institution. However, the Bill of Rights Section dealing with the grand jury sets out a right of the accused to counsel while testifying before the grand jury, with which I have no argument at all. I am saving what amendments I do have to present until such time as we reach that point in the Bill of Rights. I merely get up on point of personal privilege, so that when I present those amendments later, it would not be laid open to the obvious question, "why didn't you do it while we were still on the section where we adopted this measure?"

Point of Information

Mr. O'Neill What is the disposition of Section 20 dealing with fees? I believe it's the section we passed over.

Mr. Poynter There are two sections that failed to pass. Section 20 which had to do with preservation of evidence, failed to pass, receiving, at best I remember, about thirty-seven votes.

Section 38, Mr. O'Neill, failed to pass on Friday, receiving very few votes. Section 38 having dealt with the fees in Orleans Parish.

Personal Privilege

Mr. Jack Mr. Chairman and members, I'm greatly grieved at the amendment that was passed late last week just before adjournment. I voted against that amendment which reads, "at all stages of grand jury proceedings, anyone testifying in such proceedings shall have the right to the advice of counsel while testifying".

Point of Order

Mr. Gravel Under the guise of being apparently aggrieved, for one reason or another, Mr. Jack is trying to argue, reargue a matter that has been considered disposed of by the convention, and I suggest, Mr. Chairman, that he's out of order.

Mr. Jack Mr. Chairman, may I state...

Mr. Henry Mr. Jack, would you let me rule on this first? Turn the front mike off, will you please? Now, this is getting to the point of being ridiculous. It doesn't make any difference whether you call what Mr. Jack is saying personal privilege or speaking for or against the proposal. If I had recognized him for further discussion, he could have spoken for or against the proposal. This is incorporated in what he is saying in his feelings apparently about this proposal. We've allowed a great deal of latitude and we're going to continue to allow a great deal of latitude, and Mr. Jack, you may now proceed.

Personal Privilege

Mr. Jack You all are familiar with the amendments. There was not any discussion of it. It came as a shock and I was amazed at it. I think the reason people seeing Watergate and the great number of perjury indictments when people went before a grand jury. Now, here's where my grievance comes in and it's severe one. I'm down here to try to help write a constitution that will be a good one, and the people will vote for. I have to state, when I'm showing my grievance against this, what I suggest. I think if these, this amendment stays in this constitution, we are going to be beset with the opposition of one of the strongest lobbies Louisiana has ever had. I think the amendment is wrong. I voted against it, but I'm telling you, I believe that the D.A.'s feel that this amendment will upset the criminal jurisprudence of this state to such extent that a world of them will have to oppose the entire constitution.

Now, I will vote for an amendment that states where a man has been arrested and he appears before the grand jury, then he can bring all the lawyers he wants, but not this kind of thing where just every Tom, Dick, and Harry that might have wrecked...seeing an auto accident which a person was injured, rather was killed, that he can bring lawyers there. That just disrupts things. Now, I say, and this is the reason I wanted to talk before Mrs. Miller's motion, I'm going to vote to approve the entire proposal. But this is so serious, Mrs. Miller, I hope nobody will lay the motion on the table where it would take eighty-eight to reopen it, because, I think, you who are non-lawyers, and even you who are, who wasn't one of the ten, if you will talk to district attorneys, talk to people that is in this work, you will figure that your vote should be simply for the instance where the person's been arrested and you have an accused before the grand jury that he brings you. Now, that's all I want to say, and that's why I wanted to say it before we approved the whole proposal, and I hope you won't lay it on the table, because if you do, put that in the Bill of Rights, like I just stated, you would still have this other one in there and you would really have a kind of a conflict. That's all I have to say. Thank you.

Point of Information

Mr. Stovall Mr. Chairman, rule number seventy-nine, explanation of vote, "no delegate shall be permitted to explain his or her vote except as hereafter provided; any delegate may explain his or her vote in writing, or reasons for not voting in writing, and request that such explanation be made a part of the record." Would you consider that this rule would be unnecessary, some of the explanations that have been made...

Mr. Henry I don't even think we need a rule to make unnecessary some of the explanations that are being made.

Personal Privilege

Mr. Tapper Mr. Chairman and fellow delegates, I'm not here to explain my vote. The only reason that I attempted to appear here on personal privilege was because of the point that was made by Mr. Burson. I want it to be perfectly clear that that amendment, as we adopted was not, was not detrimental to the public, to the people or to justice in this state. But on the other hand, was very beneficial and should remain. However, I also want to make it crystal clear to those who will intend, or who intend to do something to take it out in the future, either here or in the Bill of Rights, that I stand firm for the rights of the people of this state. If the district attorneys, or anyone else, intends to make an issue over this, that justice cannot be done, and I stand here as one who will continue to fight for the rights of all of the people of this state. Thank you.

Personal Privilege

Mr. Graves Mr. Chairman, ladies and gentlemen of the convention, you know it seems like every time Mr. Jack gets up, he seems to barrel his way up here to the microphone, always with something new and enlightening to say to the convention, but in most instances, he's just rearguing a case that he lost. I thoroughly disagree with Mr. Jack in his statement that the amendment that was passed that Mr. Tapper offered the other day was ill conceived and ill considered. Now, it may have come to a shock to him and to the district attorneys, but by a vote of almost ninety to ten, this convention adopted that amendment. We've had two overpowering efforts exerted upon this convention. One has been by the district judges, and the other one is being conducted now by the district attorneys. Now, if Mr. Jack wants to support them in their special interest efforts, let him do so, but I don't think he should chastise this convention or any of its delegates who feel contrary to the way that he feels. For me, for my part, I'm proud of the vote that I cast against the judges. I hope I have the opportunity to do it again, and I can tell you another thing. I'm proud that I voted to help those witnesses who are hauled before a grand jury and to give them the opportunity to have the advice and assistance of counsel. Ladies and gentlemen of this convention, if there is ever a time when a person is entitled to his constitutional rights, to legal assistance, it's when he's hauled before that grand jury solely and exclusively under the control of the district attorney where he can be badgered, cajoled, and questioned and if not indicted, at least for a substantive offense, maybe he'll be indicted for perjury.

We've done two things that I think stood out in the minds of the people, two things for which we could have gotten greater acclaim. One has been overturned by this convention because of a superimposed influence of the district judges and the other judges throughout the state. The other one, the district attorneys are going to seek to overturn. Now, let's just see how many are going to stand up and stay counted as you were when we voted the last time on a Tapper amendment. Thank you, Mr. Chairman.

[Previous Question Order]

Closing

Mr. Dennis Mr. Chairman, fellow delegates, I would just like to say that if this article passes, which I hope it will, and I hope you'll vote for it, I do not plan to attempt to lay the motion on the table. I do plan to follow the precedent that the other articles established and leave the matter open, but I would like to ask you, if those of you who do wish to air some of these issues again, would please introduce a delegate proposal so that we might have at least a committee hearing on the issue before it comes to the floor again. As the convention goes on, our time is going to become more and more precious, and we should attempt to work out some of these things in committee rather than on the floor. Mr. Chairman, I now move for a final passage of the Judiciary Article.

[Proposed Passage 98-1]

Personal Privilege

Mr. Dennis Mr. Chairman and fellow delegates, I would just like to briefly say "thank you" on behalf of myself and the Judiciary Committee for your patience, and your attention and your participation during the some two weeks of debate. I have some statistics that might be interesting to you. The staff tells me that there were over two hundred and twenty amendments drawn up, over one hundred and twenty were offered, and fifty-two passed. I think that most of those were in

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the nature of technical amendments. I think you have done our committee the honor of allowing this article to remain relatively unamended. We thank you for that honor, and we want to inform you that the Judiciary Committee will continue to be operating and will be happy to consider any technical proposals that you wish to submit. Thank you very much.

PROPOSAL ON THIRD READING AND FINAL PASSAGE

[The committee proposal on the rights article is read.]

Recalls

[The committee proposal is read.]

Mr. McInten—Committee Proposal Number 25, introduced by Delegate Jackson, Chairman, on behalf of the Committee of Bill of Rights and Elections, substitute for Committee Proposal No. 2, by Delegate Jackson and other members of the committee. A proposal to provide a Preamble and a Declaration of Rights to the constitution.

Explanation

Mr. A. Backus—I would beg your indulgence for a few minutes because the members of this committee believe that it is very necessary that we should take a few minutes to try and impart to you, what we have tried to accomplish by way of this document that is before you. Ladies and gentlemen of this convention, you are considering a very important document. You assemble as delegates to this constitutional convention, not to reflect what has happened in the past. You come here, not so much to see to it that we keep in the constitution what is presently recorded there, but we come here to write a new set of organic laws which we believe will, not only preserve what has happened in the past, but will ensure and provide for the future. Therefore, we ask that you give full consideration to what we have put before you, and of this very important article. We have already provided, and adopted, powers and functions for the executive, legislative and judicial branches of government. I think what we have done has been in the interest of this state. I think it is no question that we have provided for these three basic branches of government, the necessary and sufficient power that is needed to ensure that all people of Louisiana can have life and have it more abundantly, but now we turn to another important consideration. We now turn to the consideration that we believe to be so very, very necessary in light of the present circumstance, and in light of what is about us. We turn, to amendments to what rights and liberties our Louisiana should have—what rights we should ensure by way of this document for all of the people of this great state in which we live.

We were here today to ask you to consider that we should have right, for the aged, for our Senior Citizens. We were here today to say to you that we should provide for those who are disabled, and whose bodies have been mangled and twisted, and are so labeled as physically handicapped. We were here today to ask that you would consider the rights of minorities. We were here today to ask that you would provide for all segments of this population. We ask that you would say loudly and clearly that we will not abridge the rights of women. Therefore, we believe that it is in the interest of this state to provide full and perfect rights in order to ensure that there is full development of each and all segments of this Society. We ask you today, a freedom loving, free-willed citizenry to a constitutional convention, to give members of this committee the right to full equality, and to give large recognition and the same respect and status for women, for children, for minorities, for all individuals who have been so treated.

Now, I know that you have heard what this committee

proposal represents the majority of a few hundred individuals. But, I want to point out to you, very honestly, that the committee that drafted this article that is before you, gave full and deep and grave consideration to all of the issues that will be raised by way of amendments and that we have considered prayerfully and fully all of the features that are a part of this document and are presented by way of the sections here. I would also point out to you that this committee represent a microcosm of this state. We have individuals hailing from the north, from the south, from the central part of this state, we have individuals who are a part of this committee who might be considered to be all liberal persuasions. We have individuals who would say and say so that which has been, and that which we hold to be so important today, and so let no one lead you astray and suggest that this committee is a radical group that present on this day, sections that were not considered and passed by small margin, because they would be leading you astray and would not be dealing with the facts as they transpired in this state.

We ask that you consider this document, because we believe that it declares that the raison d'être of government is to protect and to provide for the individual. That is why we have included an equal protection clause in the rights article. We included this equal protection clause because we wanted to say to the people of Louisiana, that our government of Louisiana, not the Federal Government, will afford equal opportunities, equal protection, to the rich and poor alike, to the male and female alike, to white and black alike, to the young and to the old alike, to the strong and to the weak alike, and we believe that this is a Bible, and we believe that this is an important consideration, and so we ask you to join with us to ensure that citizens all over Louisiana, from the bayous of South Louisiana to the rolling hills and the red clay lands of North Louisiana, would have rights and would have them pronounced by this document that is before you. Now, I have been around this convention for some days, and I have been in places far from this convention site, and I have heard voices raised against the considerations that are before you. I've heard individual discuss and say that they are against sections that are contained in this article that we have labeled the Declaration of Rights Article, and I say to the individuals as I listen, and as I internalize their utterances, that we cannot be bound by the provincialities, that we cannot be bound by the untimely thoughts of today, because what is good for today will not suffice for tomorrow. We have to usher in a whole new creative thought process, that we have to usher in a whole new creative pattern and atmosphere for this state, which will say to every individual that you matter, that you are important, and we care, and that we understand, and that we are concerned, and that we want to protect you. So, as you ponder this article, I hope you will search your innermost thoughts and know that you can be infallible, and know that the individuals before you represent broad and deep and full consideration of the future of this state, and in understanding that will be certainly create all of your reservations, I commend this article to you as a document that will extend upon the restrictive African concept of citizenship, and bring in a whole new ideology that is not now a part of the thought pattern of Louisiana, but would bring about that we should have a new understanding of what it means to be a citizen of Louisiana, and the rights for all of the people of this great state in which we live a life of dignity, a sense of pride, a sense of justice that will be proclaimed by us all and be borne.

—Deputy Chairman

Mr. Jackson, Mr. McInten, delegate to the convention, after the reading of the Bill of Rights and Elections, and in the course of the proceedings, certain individuals presented the following

the proponents and opponents of the Federal Constitution. That debate dwelled in part on one issue: a question of whether or not a Bill of Rights ought to be attached to that document. In the *Federalist Papers*, Alexander Hamilton argued that a Bill of Rights was not necessary. It was useless, he said, because governments had no power other than that which was specifically delegated to it in the constitution. But in answer, Patrick Henry, who opposed the adoption of the constitution without a Bill of Rights, said "No, that's not true;" he said "the necessity of a Bill of Rights appears to me to be greater in this government than ever it was in any government before." I have observed that the sense of the European nations and particularly of Great Britain is against the construction of rights being retained which are not expressly relinquished. I repeat that all nations have adopted this construction, that all rights not expressly and unequivocally reserved to the people are impliedly and incidentally reserved to rulers. What is a Bill of Rights? Someone has said that a Bill of Rights is really not a Bill of Rights at all, but properly it is a bill of prohibitions, a list of don'ts for government. If you look at the Federal Bill of Rights, you'll see "Congress shall make no law, no law shall be passed abridging the" and on and on, it proscribes government activity. It does not grant rights; it does not pretend to. It only proscribes government so that certain rights will be protected. Notice too, in the Federal Bill of Rights, there is no promise of affirmative action by the government. It does not say "we promise to give you certain rights and will do something to enforce that promise." It simply is stated in the negative, "we will do nothing to infringe on your rights." Government was set up to protect us from criminals and from foreign invaders, originally. The constitution of this country, and especially the Bill of Rights, were established to protect us from government. The distinction between the U.S. Constitution, and the government established here, is that of every other government before it, was that here, and here alone, government was forbidden from acting as a criminal. Not only were criminal actions of individuals proscribed, but government could not act against those it was supposed to be protecting, and that makes sense. Mankind can survive, even though there are occasional wrongdoers, but mankind cannot survive if he is plagued by tyrannical government, if there is oppression; if there is government imposed economic crisis; if there is needless war, if government persists in trouncing on the rights of the individual. Government passes countless laws to regulate and control the lives of individual citizens, and a bill of Rights is what regulates and controls government, so here in this proposal will be one of the few places where we consider carefully the evils of government and attempt to protect our citizens against them.

The Declaration of Independence says that "all men are endowed with certain unalienable rights", that to secure these rights, governments are instituted among men. To secure these rights, governments are instituted among men, and, thus, the founders were saying "governments don't create rights; rights exist before government, and the purpose of government is to protect right". The most important words, in any document ever drafted by any group of men in any government are the words in the Bill of Rights of those men's constitution, and that is why the language we choose here is so important. But why do we need a State Bill of Rights? The U.S. Constitution and its Bill of Rights protects us, and yet the U.S. Bill of Rights provides only certain basic protections, and no all the basic protections are instituted among people wish to enjoy. The past one hundred ninety years has demonstrated that, time and time again. History has taught us more about government and its abuses, and, in any case, James Madison said that "the purpose of state governments is to protect the life, liberty, and property of citizens", and if you study the laws, you'll find that that's

true. Our life, liberty and property, is the domain, primarily, of state and local government, not federal government. When the federal government had its Bill of Rights drafted, that Bill of Rights did not even apply to state action, only to federal action.

Since the Federal Bill of Rights was not designed to protect against state action, it is important that in each state the people there determine what limitations must be placed on the activities of their state government. State government is closer to the people. It can do more harm and needs special limitation. It is important to note that there can be no conflict between the Federal Constitution and its Bill of Rights, and the Bill of Rights in our State Constitution. A conflict would be a legal impossibility. The U.S. Bill of Rights now, because of the Fourteenth Amendment, prohibits certain state and federal action. It protects certain rights in that regard. Says certain laws passed by the state or federal government will be illegal.

What a State Bill of Rights does is something different. It says that only certain state and local laws will be illegal. If we wanted no more than the protection provided by the Federal Constitution, we would not need a State Bill of Rights. We could omit it, and we would lose nothing.

The only purpose of having a Bill of Rights in our State Constitution is to grant additional protection that is not given to us by the Federal Constitution. Additional protections must be granted, particularly in the areas of government taxation of the laws, the right to property, criminal justice, and the free enterprise system.

The Bill of Rights before you now was drafted by ten people, ten delegates here, over a period of eight months. They have all shades of opinion, I can assure you. They come from all areas of the state. Each of us brought with us a set of ideas, a philosophy. The delegates that they originated with us. Some of the debates in our committee, some of the conflicts raised in our discussion there, have troubled thinkers for the last four thousand years. They will trouble you here. If there is any virtue in this Bill of Rights, and I think there is, the committee would attribute it to the virtue, the insight, the insight into the rights of man, which have been given us by greater thinkers than we are from over the past four thousand years.

Despite a great divergence of opinion on our committee and some heated emotional debate, we have drafted a document that we offer with unity, without dissent. It is not a liberal or a conservative document. I think it represents the best of thinking of the predominant philosophies in our society. No one committee member agrees with each part of it, but all of us agree with it as a whole. Each word of this declaration has a meaning. Sometimes that meaning has special and great significance. It is a whole. If you pick it apart, if you amend it, "if you seek it, if you abuse it, if you distort it, its efficacy will be destroyed. Consider it carefully. I think you will agree to it with pride and pleasure. I think it will be a fitting set of limitations on this government. It will live today and for decades to come. It will give to each Louisianian the protection that his life, his liberty, and his property is entitled.

Further Discussion

Mr. Guarisco Citizens of Louisiana, the premise by which this convention was allegedly conceived, is that it was time to trust the legislature, time to trust the executives, time to trust the judiciary and time to trust the public officials. I agree with that, I agree with that premise. Now it's time to shift gears. This is the proposal, this is the section where you will not trust anyone, no one. We do not trust your public officials when we are talking about the basic rights of the individual citizens of this state. You give all the rights to government, give you all of it, but

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we just keep these few, these few in this twenty-five or ten article, nothing more. Some people here feel that they will retreat from any innovation, any change, anything that might upset the apple cart. I feel sorry for those people because they didn't write the constitution, their ancestors wrote the constitution for them. I'll read a statement from two philosophers, one from a long time ago and one from a contemporary. The first is from a revolutionary, A Bill of Rights is what the people are entitled to against every government on earth and what no just government should refuse. I feel sorry for those people who refuse. The other, A Bill of Rights is a vested interest of the individual against the will of the majority. The first was by Thomas Jefferson, the second which I consider the convoluted thinking of the intolerant, tolerated gaffly of the local consumer, political consumer report whose pamphlet would be torn up if you didn't have freedom of the press. We are not here to disparage the man in blue or, as the children say, "to bum rap the volliceman". Justice Brandeis said, that the greatest dangers to liberty lurk in the insidious encroachment by men of zeal, well meaning but without understanding. Is this exaggeration? In France de Bergerac, in speaking of his frustration about printing laws. "This is the latest pose of yours, ruining every chance that comes your way become exaggerated", and Cyrano said "Then I exaggerate". La Bret said, Oh, you do. In principle there are things in this world a man does well to carry to extremes. Many persons don't care about civil liberty, except their own small liberty. No one cares about discrimination until they are discriminated against. No one cares about the rights of the accused until they are the accused. In summation, I paraphrase Reverend Niemöller, in 1943, I believe, in Nazi Germany he said, "They came for the Jews and I wasn't a Jew, so I didn't protest and they came for the Catholics and I wasn't a Catholic so I remained silent and then they came for the Trade Unionists and I didn't belong to a Union, so I didn't protest and they came for the blacks and I was a white. I said nothing and then, and then they came for me." Fellow delegates, we are always speaking about Louisiana being last, well, there's one place that I hope Louisiana is not last, when we come to hate, to count this Louisiana last, when we come to hate, to count this convention last, and count me last. Thank you.

Peading of the Section

Mr. Tuxter A Preamble: We, the people of Louisiana, grateful to Almighty God for the civil, political, economic, and religious liberties we enjoy, and desiring to protect individual rights to life, liberty and property; afford opportunity for the fullest development of the individual; assure equality of rights; promote the health, safety, education, and welfare of the people; maintain a representative and orderly government; secure peace, tranquility, and justice for the common defense, and secure the blessings of freedom and justice to ourselves and our posterity, do ordain and establish this constitution.

Explanation

Mr. A. Jaxkin Mr. Chairman, ladies and gentlemen of the convention, I am grateful for your consideration for the Preamble to the Constitution for the State of Louisiana. We all believe we believe it to be very important in terms of establishing a kind of concept, the kind of direction, the kind of feeling and the kind of concern that we ought to have for all of the citizens of our state. The Preamble is very important, I reject from the present Preamble that is found in the Louisiana constitution because the present Preamble talks only about liberty. We are concerned that we will provide for more than just liberty. We believe that we ought to say by way of this explanation, explain that we want to provide for a quality of life in this state that will ensure

that that will promote happiness, that will ensure peace and the all our peaceful intent, but more than that, in this Preamble we provide some new considerations. What are they? We provide for education. We say emphatically that the state is going to be concerned about education. Why? Education is the great equalizer. It is the process by which we can stand, and men are able to stand on a level ground with their brother and with their sisters. So that is why we are concerned about setting forth the concept that the government provided for by way of this new constitution will ensure that there will be educational excellence for all of the children of all of the people, for all of the individuals that make up this great state of ours. More than that, we expand upon what the government ought to be about and set forth some guidelines by way of this philosophical sermon that would suggest that our form of government will take on a certain aspect that I think all of you would hold to be important and sacred. That is, that it will be representative and it will be a representative form of government. That is not found in the present Preamble. I would hope you would prayerfully consider the fact that we are setting forth by way of this Preamble, the idea that our government will be representative and that our government will be orderly. Finally, may I say to you that we hope you will look at this Preamble, because we believe it will embody and embrace all of the ideas, all of the aspirations, all of the hopes, all of the dreams, not for today, not for tomorrow, but for generations yet unborn, for what Louisiana is to become. When Louisiana is a bright shining star of the new South, it will be because we have shown the way, because we have suggested by way of the Preamble that this is the direction in which we are going to travel. I know that some of you will quibble about the language and will suggest that we have embraced some concepts that need not be there. I simply say to you that again I would ask that you would not be confined by the provincial thoughts of today but, more than that, would recognize that the Preamble does not have the force of law. It will set forth for us, a humane and just concept of government that will emphasize not only liberty, but will emphasize the right of the individual and will ensure that secure and happy life for all of the people of this great state in which we live. I ask that you would favorably adopt the Preamble to the constitution for this great state in which we live.

Further Discussion

Mr. Fulco Delegate Jackson, I favor the Preamble and commend you and the committee for a very good Preamble, but it's all concerning what can be done for us and what protection and rights that we may have. Would it be appropos, or would it be out of place, for us to include in the Preamble a pledge of loyalty and allegiance to our country and flag, would that be the proper place? Something in appreciation for what we may have conceived our government, while it will afford to us protection, privilege, and blessings, would we turn it around and say, in return for all of this, we also pledge our loyalty and allegiance to our flag or our country and our flag. I just don't know if it belongs there or not and whether or not it would be appropos, I'm only asking.

Mr. A. Jaxkin I do believe, Mr. Fulco, that the thought expressed by you is embodied in the Preamble. If you will look at the last phrase "and secure the blessings of freedom and justice to ourselves and our posterity, do ordain and establish this constitution." I think we are making here a pledge, we are expressing our allegiance. We are saying that we are grateful for the blessings that have been bestowed upon us. I believe your suggestion is embodied in this Preamble.

Mr. Fulco Well, I would hope so, but that's the

question I wanted to ask.

Point of Information

Mr. Anzalone Mr. Chairman, I rise on a question of the Chair, if I may? Representative Jackson has stated that it is the intention of his committee that the Preamble not form a part of the substantive law of this constitution. I would ask the chair how would it be procedurally proper for someone to bring to the floor for a vote of this convention to determine, for sure, that this Preamble does not form a portion of the substantive law of this constitution.

Mr. A. Jackson My statement was based on prior court decision and this was discussed at length and fully in the committee. And based on the court decisions that we considered, we make the statement that no Preamble has the force of law. That's why I said it was a philosophical sermon, that it set forth a concept of government.

Questions

Mr. Anzalone Well, Representative Jackson, I'm not that well schooled in procedure but would you or the Chair have objection to a vote of this convention to determine by a vote of this convention that it is positively not going to have the force of law, as you stated?

Mr. A. Jackson Well, you know I certainly have no objection to the will of this convention. This convention may choose to do whatever it likes, but we simply point out to you that even if the convention votes to make it a part of the organic law that we already have prior court decisions that would not make it a part of the substantive law.

Mr. Anzalone I disagree, just slightly.

Mr. Landrum Mr. Jackson, in response more or less to Mr. Fulco, the blessing that you are giving thanks is not to the country, but to God. I believe that's the way it is set out in the first sentence, "We are thankful to Almighty God".

Mrs. Warren Mr. Jackson, I like your Preamble. I noticed that we have an amendment which is eight lines and this is ten, the original Preamble by the committee is ten, so it's not a matter of length. Don't you believe that everything in the Preamble is something that we should have as our right as individuals?

Mr. A. Jackson Well, we certainly believe this, Delegate Warren. As I tried feebly to communicate to the members of this convention, we believe it is necessary that we will set forth the direction that government ought to take in this state. We believe it is necessary for us to set forth by way of embodiment in this Preamble; what our hopes are, what our aspirations are, our concern for dignity, our concern for a secure and humane life for all of the people of this state. Of course, it did take a few more words to do it, but we believe this to be so very, very necessary that we would ask that you would consider it.

Mrs. Warren Could you see justice prevailing if we did not have these rights?

Mr. A. Jackson Well, I think that not to set forth by way of the philosophical sermon, the direction of this state and our hopes and aspiration, that would certainly restrict and would certainly confine us and place certain constraints on what we hope to achieve by our ideas and ideal. Therefore, we think very highly that we should adopt what we have here.

Mr. Jenkins Delegate Jackson, you may recall the research done by our staff when they located the

case of Jacobson v. Massachusetts, a United State Supreme Court case decided in 1904. Do you recall that that case held that the Preamble of a State Constitution is not a legally binding part of that constitution? It is not a source of power for any department of government, instead it merely indicates the general purposes for which the people ordain and establish a state constitution.

Mr. A. Jackson That was a basis on which I answered Delegate Anzalone.

Amendment

Mr. Poynter Amendment No. 7 [by Mr. Thistlethwaite.]. On page 1, delete lines 14 through 23, both inclusive in their entirety and insert in lieu thereof the following: "We, the people of Louisiana, grateful to Almighty God for divine guidance and mindful of our unique heritage, do reaffirm our adherence to the Constitution of the United States of America and, desiring to declare and ensure the rights of the individual and provide a plan of government for the good order of the state, do ordain and establish this constitution".

Explanation

Mr. Thistlethwaite Mr. Chairman, ladies and gentlemen, in the Canterbury Tales in the one entitled the prologue of the "Wife of Bath" it is stated this is a long Preamble of a tale. We submit to you, this committee proposal is a long Preamble of a constitution. Our quarrel, however, is not with length. As Philip James Baylor wrote, "it matters not how long but how". Nor do we quarrel with the noble catalogue of aims and aspirations which the committee's proposed Preamble ascribes to this convention and the constitution which we are establishing. For while the Preamble is not an operative part of a constitution, it may serve as an aid to the interpretation of the rest of the document, if it contains an adequate statement of the purposes of the document and of the guiding intentions of the constituent assembly, this convention. It sets the tone. With that in mind, we submit to you a proposed Preamble that is indeed a Preamble to a constitution for Louisiana, and not a long and lovely and high-sounding catalogue of good intention, with which we do not quarrel profoundly but which misses its mark as a Preamble. We submit to you, that our proposed amendment accomplishes a number of desirable aims which add up to a complete and accurate and succinct statement of the guiding precepts under which we are drafting this constitution and of the true purpose of a document. First, we express gratitude for divine guidance. Next, we acknowledge that unique heritage which is ours in Louisiana, whose history in government and law as well as these men and women is as rich and robust and romantic as is any in these United States; we acknowledge that we have inherited some of our sovereignty through the Federal Constitution. We are not a sovereign nation state but rather are an independently functioning though interrelated part of a national union. Lastly, we set forth the two great underlying principles for which this constitution is created. First, to declare and ensure the rights of the individual; and second, to provide a plan of government for the good order of the state. We submit to you, ladies and gentlemen, that this sets exactly the full and proper tone to preface and introduce and Preamble our constitution. We take pride in presenting what we consider a proper Preamble for our constitution. We urge adoption of our amendment.

Questions

Mrs. Warren Mr. Thistlethwaite, you mentioned "setting the tones" and I'm kind of wondering what you meant by "setting the tones", but if it's what I have in mind, I believe the ones submitted by the committee would set a better tone and a

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were clarified tone than the one you have setting.

Mr. Thistlethwaite Mrs. Warren, that's why we are going to vote on this amendment because I think that, as you said, it seems to you—

Mrs. Warren But, I'm trying to get to a question I want to ask you. Is it anything in here that was submitted by the committee that you think is not a good tone?

Mr. Thistlethwaite Mrs. Warren, I do not quarrel greatly with this long catalogue of good intentions. As I said, I think it's very nice.

Mrs. Warren It's two lines longer than yours.

Mr. Thistlethwaite Yes. It is not really a Preamble to a constitution. It is a statement of a lot of nice principles. They could have added sanctity of motherhood....

Mrs. Warren Yes, but you had mentioned of God's divine guidance. Now we are coming back to something else and you said God's divine guidance and that God would also, wouldn't you think, want people to have this? Wouldn't you think this would be a nice tone that He would want all of us to have the same thing, the right to these things? Not that we're trying to make it law, it's setting the tone.

Mr. Thistlethwaite Well, Mrs. Warren, I don't know how much more we can thank God for than divine guidance.

Mrs. Warren But you can't legislate that, I'm aware of that. I mean we can put something down along to legislate the other but, we can't legislate His divine guidance because we are not going to do that.

Mr. Thistlethwaite That's a little beyond our power.

Mrs. Warren Right. We would go into the golden rule you know, when we go to legislating now. Thank you very much.

Mr. Thistlethwaite Mr. Chairman, I would like to add one coauthor, Mrs. Heloise Corne, who independently wrote almost this identical Preamble.

Further Discussion

Mr. A. Jackson Mr. Chairman, ladies and gentlemen of this Constitutional Convention, I rise in opposition to the proposed amendment by Delegate Thistlethwaite. I'm sure that he has thought about a Preamble for our constitution but I do not believe that he has had time enough to give full consideration to what ought to be achieved by way of the opening statement for a great document, such as the one that we propose. I do not believe this, because Delegate Thistlethwaite did not provide in the Preamble that we would have a representative form of government. I do not believe he has given full consideration to what ought to be in this great statement of principles because he does not provide for an orderly form of government. Now you, fair-minded ladies and gentlemen, people who have expressed an interest in this State, the people who want to see this great task of ours endure, know that we ought to have set forth in the beginning that we will always have a representative and orderly form of government. I'm sure that you do have that. Now I appreciate the efforts of Mr. Thistlethwaite, but I would say to you that after six months, ladies and gentlemen, six months of full consideration that this fair amendment cannot do justice, will not do justice to what ought to be set forth by way of a new compact, by way of new articles in the State of Louisiana, now the delegates would have very well to say that they are to vote against what the committee offers because it's two long

A few words will enable all of us to think in one way when Louisiana is moving and who will be saying a few words that will head us in a new direction. A few words that will turn us away from the terrible, who will want to turn us away in the dark days. A few words that will ensure a better life for our children and generation yet unborn, who would want to turn us around. I would ask that you not consider how long it is, but what it says and what it proposes to do and whether or not it's going to be in the interest of Louisianians. Somebody said, I think Mr. Thistlethwaite said, that we have been co-opted, we have been co-opted by the Federal Constitution. I conceive no such a notion. I say that we are a free sovereign state and we ought to determine the direction of this state. And this is what we've tried to do by way of this Preamble. Ladies and gentlemen, the delegate has spent had time enough to give full consideration to the direction of this state. He has not had time enough to consider what life is likely to be twenty, thirty, fifty years from today and he has not provided for it. I would ask that you would vote against this amendment.

Questions

Mr. O'Neill Do you agree that there has been too much discussion on the length rather than what this thing says and that the objections on length are groundless?

Mr. A. Jackson I certainly agree. I don't think that ought to be the consideration. I think the consideration ought to be what is contained in the Preamble and what it's proposed to do by way of setting a tone, what it's proposed to do of setting a philosophical concept for this state.

Mr. Chatelain Delegate Jackson, I noticed you have a ten member committee. How was this reported out of your committee, was it unanimous or what was it, sir?

Mr. A. Jackson Yes, sir. Every member of our committee signed the document.

Mr. Chatelain Because that bears on judgment. Thank you.

[The speaker's name is not clearly legible in the original document.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Poynter], page 1, delete lines 14 through 21 and insert in lieu thereof the following: "We the people of the State of Louisiana, grateful to almighty God for the civil, political and religious liberties we enjoy, and desiring to secure the continuance of these blessings, do ordain and establish this constitution."

Explanation

Mr. Poynter Mr. Chairman and ladies and gentlemen of this convention, the preamble which you have just heard read is verbatim, exactly like the preamble in the present Constitution of 1812. I have been informed that we have had that preamble in many previous constitutions. Why others were so much about the present preamble is that it would attempt to include in the preamble those detailed provisions with regard to the protection of individual rights to life, liberty and property. If you would look at Article I of the present constitution, it states that all government of right originate with the people. As I pointed in their will alone, and the constitution solely for the good of the whole. I would say that the preamble and the articles which follow will attempt to handle the problems which upon which this great state of ours has been

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founded. That is the great principle that thou shalt not kill, thou shalt not rob, etc., and to protect the society, and the people generally against individual rights of any one person. I frankly don't know how can I understand how anybody could explain to me, what is meant by to protect individual rights to property. We have the right to pursuit of happiness. We have the right to pursuit of happiness. We have the right to pursuit of these various things. But we also have the obligation to live under an organized society. I submit to you that the present Bill of Rights which has in 1921 the Constitution has served us long and well, will not provide controversy when we go to the people, and is something which all of us should be able to accept. Thank you.

Further Discussion

Mr. A. Jackson Mr. Chairman, ladies and gentlemen, I rise in opposition to the proposed amendment. Are we going to allow people who are no longer here to write this constitution or are we going to write it? Are we going to allow individuals who could never dream nor even visualize in their fullest imagination what Louisiana is likely to be like in thirty, fifty years from today or are we going to provide for the generations yet unborn? The gentleman suggests that we ought to allow individuals who are gone to the dust to write this constitution. Are we so steeped in yesteryears that we can't visualize and hope and dream for a better day? I think not. I think that the individuals assembled here will do justice to the people of this state. They will recognize that it is time that we usher in a new creative, imaginative form of government. The delegate suggested that we are not concerned about the basic Christian principles on which this state was found. He says that the Declaration of Rights Article which suggests that we are not concerned about people and gentlemen, read the Declaration of Rights' Article and you will find in every section a basic commitment to humanity. That's what it's all about. It's saying to you over and over and time and time again that we care about the individual. That we care about the kind of life he will have in Louisiana. That we care about the kind of future he will have in Louisiana. So how could the delegate in all honesty and all justice, how could he come here and suggest that we are not concerned about humanity? What the rights' article purports to do is to usher in a whole new sense of humanity, to perpetuate and bring about true community. This other delegate is wrong when he suggests to you that the preamble does not provide for the basic principles on which this country was found, this state was found. What the preamble, as proposed by this committee, purports to do is to expand upon these principles, to enlarge upon them, to allow us the fluidity to be creative, to provide for all the people. I ask you not to allow individuals moulding in their graves to write this constitution. I ask you, the creative, concerned, dedicated, imaginative citizens so elected and so appointed to write this constitution and to embrace our concepts because we believe the people ought to be free and they ought to be provided for. I ask you to defeat this amendment offered by the delegate.

Further Discussion

Mr. Jack Mr. Chairman and gentlemen, I can see now that this thing is going to cause a lot of rows. I am going to try to look at this from perspective. I can see the people, some of them, are going to say the people who wrote the 1921 Constitution had ideas in the past, dead, buried, moulding in the grave and that like. Let me tell you, nobody is for abandoning the English language and they've been using that for centuries and centuries. The Bible, the Holy Bible that took part in writing the Bible, the old and new testaments, has been dead for centuries and cen-

turies. It's still the greatest book on earth. Jesus was on this earth nearly two thousand years ago. I'm sorry that some people have forgotten that. Many of the greatest artisans, craftsmen, painters, writers, men in high office, are dead and buried. The people that established this country are dead and buried. Many of those, let me tell you, if they hadn't been there the Indians would have gotten us when we were thirteen little old colonies. The British could have got us back. We never whipped them. It was too much trouble fooling with us. We bound together thirteen colonies to form this country and these states had their own individual constitutions. There is nothing wrong with taking the present constitutional preamble. Now, a preamble, what is it? I can say this, if it doesn't have something to do with law and can be considered in cases, why don't we say it doesn't? We don't say that. I think the preamble, if it says certain things, then a case comes up on a section in the constitution later, or an article, subsection or what not, the Supreme Court, and before that the other courts, can look to a preamble to try to find out what the intent was of the writers of the constitution. I say the preamble should be very short and that's a good preamble from the 1921 one. Then whatever you've got to say about the constitution, let's say it in the constitution itself. Now that's what I feel is the proper way of writing a constitution.

Further Discussion

Mr. Weiss Fellow delegates, perhaps this is a very important issue to most of you. The entire document has been studied very extensively, as our Chairman has pointed out, and perhaps we had best start an educational program which I would like to try and introduce at this time, because of the confusion that has been made in the statements that have been made. For example, the fact that this should be a short preamble I was fully in accord with and actually proposed a much shorter preamble than is here present. The committee in its wisdom decided otherwise and I think, at this time they were absolutely correct because, in keeping with the objectives of the preamble, we must progress in a positive fashion rather than leave things to chance. Therefore, the fact that this should be very short is inconsequential, particularly in view of the fact that a lot of this material has been taken from preambles of constitutions throughout the states that have been passed and not defeated by the electorate. I would like to answer a few questions and inform you first of a very simple statement as follows: "We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare and secure the blessings of liberty to ourselves and posterity, do ordain and establish this Constitution of the United States of America." Let me excerpt a portion of the preamble that you have before you which is nothing more than an exact duplication of the preamble of the Constitution of the United States, to read as follows and paraphrase: "We the people of Louisiana, grateful to Almighty God... (skipping several lines)... assure equality of rights (that is establish justice) maintain a representative and orderly government... do ordain and establish the constitution to promote and provide for the common defense and general welfare... insure domestic tranquility (we go on) provide for the common defense and secure the blessings of liberty to ourselves and posterity do ordain and establish this constitution. In essence approximately half of this preamble is simply phrased from the Constitution of the United States. Now that portion which is in controversy asounds me by the delegate who argues that the thing we must guard against is the protection of individual property rights. The constitution of the Soviet Union asserts that no individual has property rights. Is this the type of preamble

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You want... I would insist, therefore, that you consider the additions that have been made by this committee to read as follows: for the civil, political, economic and religious liberties we enjoy and desire to protect. Individual rights to life, liberty and property, afford opportunity for the fullest development of the individual, promote the health, safety, education and welfare of the people. This is the type of thing that, as I've been educated to understand a preamble now, is a legalistic sermon, bearing an actual interpretation by the courts of significance, but simply a legalistic sermon. So, I agree. If we are going to give a sermon to the people, and a legal one, let's make it good. Now listen to the Constitution of Illinois, the preamble which they provide, a little bit more liberal. If you think this is one that's liberal, that reads as follows: we, the people of the State of Illinois, grateful to Almighty God for the civil, political and religious liberties which He has permitted us to enjoy, and seeking His blessing upon our endeavors in order to provide for the health, safety and welfare of the people, to maintain a representative and orderly government, eliminate poverty and inequality, assure legal, social and economic justice, provide opportunity for the fullest development of the individual, insure domestic tranquility, provide for the common defense and secure the blessings of freedom and liberty to ourselves and our posterity, do ordain and establish this Constitution for the State of Illinois. This constitution was adopted by the people in September, 1970, rather the convention... I'll conclude now by saying this preamble was adopted by the convention in September, 1970, and ratified by the people of Illinois in December, 1970.

Further Discussion

Mr. Stovall: Mr. Chairman, ladies and gentlemen of the convention, if there was ever a time when we needed a fresh statement of who we are and what we believe, it is this present moment in which we live. The reason for it is that the last thirty or forty years of this country have been turbulent and revolutionary years and something has occurred during these years that we need to take note of. It is what we might call a loss of innocence. I mean by this that there was a time when we simply assumed that we are the greatest in every way but during these past few years we have gone through the civil rights movement during which time we, as a state, through our official efforts, did everything we could to block progress in terms of civil rights. We have gone through a war which has lasted some fifteen years in Viet Nam, with it. My law and all of this, and during this time we have called into question what we understood we should be as a people and our nation and state. In Louisiana and in the nation have gone through a period of unprecedented disclosure of corruption throughout our state and our land. So I say to you today, we do not have a good understanding of our basic civil and human rights. We have a vacuum and this vacuum is going to be filled. Many of our youth are asking, who are we. What do we believe in, and I submit to you that we, as a government, should give to them a fresh understanding of our belief in civil and human rights. The Bill of Rights. I say to the one who refers to the Bible as being the greatest book that we have, to be understood, must be interpreted in every situation and I submit to you that our Bill of Rights and our Bill of Rights that we've reinterpreted in this day and this age or else we come to understanding of them. I would submit to the one who has said that the 1970 Constitution has served a while, it really has not served as well in terms of giving to us a commitment to basic human and civil rights. I submit to you at this time that we need a new future and a new possibility for our state, and this is going to come, and we are committed to responding to the universal circumstances and situations with a new

living and vital commitment to our civil liberties. I encourage you to vote no to these amendments, and to go along with the fresh approach which has been presented to us by our committee. Thank you.

Further Discussion

Mr. Jenkins: Mr. Chairman, delegates to the convention, it is amazing to hear it suggested that we do not know what this concept of individual rights to life, liberty and property mean. It was in our first state constitution, the Louisiana Constitution of 1812, which said in order to secure to all the citizens thereof the enjoyment of the right of life, liberty and property. In 1776, specifically mentioned the fact that all men are by nature equally free and independent and have certain inherent rights with the means of acquiring and possessing property. The Declaration of the Rights of Man of France, perhaps the second most famous Bill of Rights says, men are born and remain free and equal in respect of rights. These rights are life, liberty, property, and resistance to oppression. Now later on in Section 1 of the committee proposal we mention that government is instituted to protect the rights of the individual and for the good of the whole. There is nothing strange about that. If we are not here to protect the rights of the individual, we might as well go home, because we got three million and six hundred thousand individuals in this state, each one of whom deserves to have his life, liberty and property protected. Other state constitutions recognize that fact. For instance, the state constitution of the State of Washington in its first section says, All political power is inherent in the people and governments derive their just powers from the consent of the governed and are established to protect and maintain individual rights. Period. End of section. This is a crucial issue. It really is. It really gets to the guts of government. The concept of individual rights is something that reached a great turning point in history with the founding of the American Republic and still, to this day, not all aspects of society have come to recognize the importance of individual rights. But our Declaration of Independence did. It said, To secure these rights, governments are instituted among men. That's the purpose of government. If that's not its purpose, it's nothing more than a criminal game. The individual rights of our citizens must be protected. There has been no substantive objection raised to the committee proposal on the preamble. Admittedly there are a thousand, a billion ways to write a preamble. It took us a day and a half to write this one. I think it would be a good idea to have a committee that would serve us for many years to come. So I urge the defeat of this amendment.

Further Discussion

Mr. Hayne: Mr. Chairman and fellow delegates to this important convention, I rise in support of the committee's proposal and in opposition to the Free Amendment. It seems to me that this committee has done a tremendous job in writing the Bill of Rights which in some elements offers a measure of hope to the people of this state. It seems to me that that is the thing that we want to do in a preamble, to give some sense of hope. Provide a philosophical foundation, the way to go all the way to a common goal in this state, give to the people of this state a sense of unity and a feeling that you know if we do it we will realize their dreams and aspirations. For a lot

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the people, not just some of the people. Mr. Chairman, I've become extremely concerned when I develop the feeling here in this convention that we are going to exercise 1921 or 1898 or 1879 or even further back, instead of writing a constitution to serve the people of this state for the next half century. Delegate Weiss has read the preamble to the Constitution of the United States of America. I repeat it here at this moment simply for emphasis, "We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare and secure the blessings of liberty to ourselves and to our posterity, do ordain and establish this Constitution of the United States of America." It seems to me that that preamble is about as long as the one that the committee has submitted to us today. Running across the pages of history and reading our documents of freedom across all of these pages of history, it seems that there is one thread that has run strong in the imagination of the people of this great nation of ours, and that is that we are going to have a humane society, that the things that we would do here would be humanistic and would develop the kind of philosophy and the kind of ideology wherein all people and all people who reside in this state could live. Listen at this beautiful document of history as prescribed in the self-evident truths of the Declaration of Independence. "That we hold these truths to be self-evident that all men are created equal, that they are endowed by their Creator with certain inalienable rights, among these are life, liberty and the pursuit of happiness." It seems to me, Mr. Chairman, that we have two schools of thought here. One school that would enjoy having the people live in the archives of the past and one school of thought that would like to have the state move forward. It was Abraham Lincoln... We have quoted here from Shakespeare and just recently my good friend, Mr. Thistlethwaite, was... We have quoted here fluently from Shakespeare, and I'm proud of that. We have quoted more recently from the Canterbury Tales and I'm proud that my friend, Mr. Thistlethwaite, would bring back this old document. I would like to quote for you the most beautiful thing I could find that has relevance on this thought that we bring to you today. That was from Abraham Lincoln in speaking to a joint session of congress in 1861 when he said, "We must think anew. The dogmas of the quiet past are inadequate for the stormy present. The occasion is piled high with difficulty and we must rise with the occasion. As our case is new, so we must think anew and act anew. We must disenthrall ourselves and then we shall save our country. Fellow citizens, we cannot escape history. We will be remembered in spite of ourselves. No personal significance or insignificance can spare one or another of us. The fiery trail through which we pass will light us down in honor or dishonor to the latest generation. We, even we here, hold the power and bear the responsibility. We shall nobly save or meanly lose the last best hope of earth."

This clock is turning around to our last best chance to save this state for all of the people of this state. I would ask those here today who are thinking in terms of 1921 or in terms of 1879, when the people with the best of their ability wrote what they thought was in the best interest of this state, that they would think anew and that we would think in terms of what will represent the interests of the people for the next half century or the next hundred years to come. Thank you very much.

[MOTION FOR PROVISIONS CONTAINED IN THE PREAMBLE AND FIRST SEVEN ARTICLES OF THE 1870 CONSTITUTION OF THE STATE OF CALIFORNIA TO BE AMENDED TO REFLECT THE FOLLOWING:]

Further Discussion

Mrs. Warren Mr. Chairman and fellow delegates, I'm going to make it brief. I oppose Mr. Perez's Amendment in favor of the proposal by the committee. Mr. Perez's Amendment doesn't say anything but civic and political and religious liberties. This is all that it says. The other one brings more to you. It brings you the health, safety, education, welfare of the people and maintain a representative and orderly government. I could go on and on. I would like to mention one thing that was mentioned. I think Mr. Jack brought up the church, the Bible. The Bible is a book that will tell you a love story. It will tell you law. It will tell you about cities that were corrupt, and it hasn't been rewritten, and we have had many constitutions, and before it is rewritten this whole world is going to pass away. So let's don't say that we are going to have what we kept in 1921 and compare it with the Bible because we will never come back here to rewrite another constitution.

Further Discussion

Mr. Kilbourne Mr. Chairman, fellow delegates, I hadn't meant to speak on this amendment. I had wanted to ask some of the proponents of the committee proposal to answer questions, but I didn't get to ask them. What really worries me about this provision in here is the sentence that says, "promote the health, safety, education and welfare of the people," which I presume the government would be expected to do. But then what else is left? That's what worries me. Are we talking about a welfare state where the government does everything for the people and they do nothing for themselves? Many years ago I think it was in the 1840's, a brilliant French writer named Alexis de Tocqueville came to the United States and made a study of our institutions and he wrote a work called Democracy in America. I can't quote what I have in mind exactly but I remember that it went something like this. He was trying to imagine the kind of situation under which tyranny would come to people and he imagined a situation where the government provided everything for the people. The government provided for all their wants, for their entertainment and for everything...all their needs. They weren't kept from acting for themselves but they were constantly discouraged from acting. In the end he made a statement to the effect that in the end the people would be like a tended flock of sheep, of which the government was the shepherd. Now that is what is worrying me about this particular provision here. I don't know whether I... really I don't know what it means or what is intended but it does seem to me that we are here promoting what I call the welfare state and which I understand to be a state where the government is expected to provide everything for the people and they are not expected to do anything for themselves. I will try to answer your questions. I don't know if I can.

Questions

Mr. Goldman Sir, do you think that the word "promote" means the same as "provide"?
Mr. Kilbourne I don't know. I really don't know. I just don't know what it means.
Mr. Goldman Well, the dictionary doesn't give the same meaning to those two words. I don't know whether the dictionary is the source...
Mr. Kilbourne Well, governments don't necessarily operate according to the dictionary
Mrs. Warren Mr. Kilbourne, I'd like to know who the government is. Who is the government?

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Mr. Kilbourne Well, we say the government to the representatives of the people. But as you know, Mrs. Warren, the government in the United States and in the states have become larger and larger, and really, all you give the governments more power, and the less liberty people have.

Mr. Warren Are you saying that the representatives do not represent the people? Then why do we have to pay their salaries if they are not going to represent us?

Mr. Kilbourne No, I'm not saying that, but I'm just talking about the situation that can arise, how tyranny can come to a people, and that is when they turn everything over to the government, everything.

Mr. Warren I don't understand you either, because if the government is the people and by the people, and we're going to pay our taxes, and we're going to hear a lot about that, why would we have to put money into a government if it's not going to promote the things that the people need, the welfare of the people? I mean there's no need to put it in there just to make some fat calves.

Mr. Kilbourne Of course, I'm imagining the situation where there is really... what would eventuate, a tyranny... where it would really be a dictatorship.

Further Discussion

Mr. Alexander Mr. Chairman and delegates, I could have pretty well said what I wanted to say in the form of a question, but I want to remind you, especially those of you who are attorneys here, if it's not true there has been some opposition expressed to the original draft of the Preamble to the Bill of Rights because of the word "property", the "protection of property rights." May I remind you that the laws of this state, both on the local and state level, give government the right to expropriate property without, in most instances, giving just compensation. I have been victimized by that factor. I have seen it done by school boards by the highway department, by city government, and, of course, by state government. I think even though this language may not be a part of the constitution itself, it is needed in this Preamble. May I, also, remind some of you who may be a little skeptical, that the government is the villain denominator among the people? The government is the referee. Now if you want a few ideas of what this world was like before there was government, I can remember when every man built his own little toll road through his property because there was no adequate government. How would you like that system, traveling through ten parishes between your home and this convention, that you had to stop at the border of everybody's property and pay a toll, that if the role that government plays, we must have government, and strong government.

Mr. Chairman, if there aren't any other speakers, I leave the previous question.

Proposed Amendments

AMENDMENT

Mr. Stival Mr. Chairman and ladies and gentlemen of the convention, I hope that you were listening very attentively to Reverend Alexander just a moment ago. Because I believe that it highlights an objection which we have with respect to this Preamble. First, let me say to you that the Preamble which has been submitted by the committee attempts to get into the various public matters encompassed, particularly, in sections one and two of the proposed constitution. Let me read to you, and I hope I can get your attention. The present Preamble reads this, and I hope Mr. Dennis is not interrupting me, "We, the people of Louisiana, do hereby solemnly and properly express by due process of law our new and improved that we have with respect to this part (and I am assuming that it would, respect

judgment, attempt to give to the individual, the absolute right to life, liberty, and property." Just as Reverend Alexander has said, he complained how the highway department and other public agencies have expropriated property for the common good, for the public welfare. That, apparently, is what the Preamble would attempt to stop and to deny to I say to you, that we have a Preamble which is included within our 1961 Constitution. It was recommended to you by the Louisiana Law Institute. It has served us well. I say that we are flirting with danger if we adopt this present Preamble which could be interpreted to mean almost anything. I urge that you adopt the amendment.

[Revised text, Article I, Amendment 1, proposed 8-1-69, Michigan Constitution, 1961, C.L. Ed.]

Amendment

Mr. Poynter Amendment No. 1 [By Mr. Stival] On page 1, delete lines 14 through 23, both inclusive in their entirety and insert in lieu thereof the following:

"We, the people of Louisiana, grateful for the sacrifice and contribution of past generations whose wisdom has made us a part of our great nation, devoting ourselves to the perpetuation of individual and equal rights to life, liberty, and property and to ensure a representative and orderly government which will protect and defend the health, safety, and welfare of all, with the help of Almighty God, do ordain and establish this constitution."

Explanation

Mr. Corne Mr. Chairman, delegates, I like all of the proposals that were submitted this morning. I think that they were an honest expression of honest feeling, of people who want what is right for our state. But I could not help but bring forth my amendment, which, by the way, was not written overnight, was not written one week ago, was not written three weeks ago, but was written as a result of the fact that I have been a teacher of Louisiana history for many years, and I have very often thought of this exact Preamble to the constitution of the State of Louisiana. I bring my amendment forth this morning because I feel we all believe that we should have a reference to our forefathers, who carved this nation out of a wilderness for us. I also believe that we need to express the thought of our unity as a state, in a union indivisible. We should have a reference to our nation, the fact that we are part of the nation, and I feel a very vital part of the nation, America. For this reason, I wish that you would vote for this amendment. Thank you.

Question

Mr. Stival Mr. Corne, you are a school teacher, aren't you? The Preamble proposed by the committee, Mrs. Corne says, "We the people of Louisiana will promote the health, safety, education of the people." Don't you think it is good to have the word "education" in our Preamble?

Mr. Corne I think it would be very fine, Reverend Stival, to have the word "education" in there. But, of course, and you know I would not prejudicial education. But when we mention the welfare when I mention in my Preamble "the welfare of the people," I certainly am taking into consideration their education in this world today.

Mr. Stival Mrs. Corne, the committee members say that, "We the people of Louisiana would afford opportunity for the fullest development of the individual." You, as a school teacher, feel that that is good, and

Mr. Corne Yes, I do, and you that is the end why, in an amendment, I have said to "health, safety, and welfare of all," and I think that takes it all in, Reverend Stival.

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Mr. Roy Mrs. Corne, it appears to me that you are grateful for the sacrifice of past generations, but not to Almighty God. Is that correct?

Mrs. Corne Well I close . . .

Mr. Roy With the help . . .

Mrs. Corne That we ordain this with the help of Almighty God, certainly being grateful to Almighty God.

Mr. Roy But you don't say that we are grateful.

[*Previous Question ordered. Record vote ordered. Amendment rejected: 34-63. Motion to reconsider tabled. Previous Question ordered on the Section. Section passed: 87-13. Motion to reconsider tabled.*]

ANNOUNCEMENTS
[*Journal 395*]

[*Adjournment to 9 o'clock a.m., Wednesday, August 29, 1973.*]

8th Days Proceedings—August 29, 1973

Wednesday, August 29, 1973

vice Chairman Daley in the Chair

ROLL CALL

MR. BERGERON presents the program

PRAYER

Mr. Bergeron: Almighty God, we ask from Thee that You would lead us in this time of turmoil, that You would guide our hearts and enlighten our minds so that we may write a document which is just for all people in the State of Louisiana; a document which does not discriminate which is helpful and clear; a document that is good for all people of the state Oh, God, lead our hearts so that we may set away all ill feelings and do justice to the office from which we are elected. We pray to you, God, amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

RESOLUTIONS ON SECOND READING AND REFERRAL [1:00:00-1:05:00]

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Mr. Pointer: Committee Proposal No. 25 introduced by Delegate Alphonse Jackson, Chairman of the Committee on Bill of Rights and Elections which is a substitute for Committee Proposal No. 2, also by Delegate Jackson, Chairman on behalf of the Committee on Bill of Rights and Elections, a proposal to provide a preamble and a declaration of rights to the constitution.

If course the status of Committee Proposal No. 15 is the convention has adopted the preamble to the proposed article setting forth the bill or declaration of rights and now has under consideration Section 1 of that Declaration of Bill of Rights.

Reading of the Section

Mr. Pointer: Section 1. Origin and Purpose of Government

Section 1. All government of right originates with the people. It is founded on their will and is instituted to protect the rights of the individual and for the good of the whole. Its only legitimate ends are to secure justice for all, preserve peace and prolate and protect the rights, happiness and general welfare of the people.

The rights enumerated in this article are inalienable and shall be preserved inviolate.

Explanation

Mrs. Dunlap: Mr. Chairman and delegates to the Constitutional Convention, this section is designed to set the tone and tone of the entire Declaration of Rights. A government based on the rights and freedoms of the individual originates with the people. One of the purposes of this type of government is to establish and protect the basic rights of the people with their best interests at heart. With this goal in mind, I believe we, the Delegates, have delivered to you an excellent document summarizing the rights you shall and shall not have. These rights, those freedoms, those rights which shall guarantee a free and equal person in the state of Louisiana.

I ask you to let's get on with our business this morning, let's pass this section a 11, and get into something more juicy, namely, section 3. And I'll be back then.

Questions

Mr. Lanier: Mrs. Dunlap, I am concerned about the words, "inalienable and inviolate." I assume these

will not be construed to mean that you cannot waive these rights.

Mrs. Dunlap: I would think so.

Mr. Lanier: In other words, your intent in saying that these rights are inalienable and shall be preserved 'inviolate' does not mean that way, you should not waive your right to a trial by jury or your right to an attorney. These are rights if done the proper way, you can waive.

Mrs. Dunlap: This section, you know, this type of language prevents state action.

Mr. Lanier: To waive an individual right.

Mrs. Dunlap: Well, to take them away from you.

Mr. Lanier: Right, but it does not preclude an individual under the proper circumstances to waive his own rights?

Mrs. Dunlap: Right.

Mr. Lanier: O.K.

Amendment

Mr. Pointer: Amendment No. 1 [2:00:00-2:05:00], on page 1, line 30, immediately after the word and the punctuation "peace", and before the partial word, "half heart of happiness"; delete the words and punctuation and promote and protect the rights, and insert in lieu thereof the following: "Protect the rights, and promote the"

Explanation

Ms. Zervigon: Mr. Acting Chairman and delegates, this is not an amendment that goes contrary to the purpose of the Bill of Rights Committee in writing this section. This is amendment to clarify what is here. I spoke to the Chairman and he has no objection to this clarifying amendment and I urge its adoption.

[Previous question removed. Amendment adopted without objection.]

Mr. Pointer: We have, of course, the Perez amendment here at this time. It's before you on the desk.

Is there a delegate that wishes to coauthor that amendment with Delegate Perez that's distributed on your desk at this time?...and wants to offer it in his behalf?

Mr. O'Neill: Mr. Chairman, I don't agree with the amendment but I think out of courtesy to Mr. Perez, perhaps we should defer action on this section and wait until a reasonable time if he gets here. If not, well, then, we can go on.

[Motion for Perez removed. The question is adopted. 40-4.]

Reading of the Section

Mr. Pointer: Section 2. Due Process of Law Section 2. No person shall be deprived of life, liberty, property or other rights without substantive and procedural due process of law.

Explanation

Mr. Voss: Mr. Chairman and fellow delegates, Section 2 of the Declaration of Rights is substantially the same as the section in the constitution of 1911. It adds only two words, "other", and "procedural", and deletes the misappropriation of property that will be dealt with in another section. We're dealing, perhaps, with the thirteenth section that has appeared before this convention so far. It's the principle of a right thing, but it has deepened in historical tradition, having been derived from the Magna Carta and was put in our con-

stitution by our founding... that is the Federal Constitution by our founding fathers and has been in the Louisiana Constitution from its inception. The question for the non-lawyers in the convention is, I am sure, what does "due process" mean? It means in two words, "fundamental fairness." In two words... fundamental fairness sums up the concept of due process. It is basically a concept of restraint on the government versus the individual citizen.

When the conduct of government tends to infringe on due process, the Supreme Court of the United States has historically used the following yardstick to measure that infringement. Does the conduct in question violate those fundamental principles of justice which lie at the base of all of our civil and political institutions? Due process involves both substantive and procedural rights in both civil and criminal law. For example, a civil servant faced with suspension or dismissal is entitled to substantive due process; that is, he or she cannot be dismissed from his or her employment without cause, that is without reason or arbitrarily. Fairness demands that no one shall be stripped of their employment without procedural due process, for example: (1) a specification of the charges, (2) an opportunity to prepare a defense, (3) a hearing before an impartial tribunal (4) the right to counsel, (5) fair and full hearing, (6) a confrontation and cross-examination and a decision supported by the weight of evidence introduced before the tribunal.

Criminal due process of a substantive nature involves those individual sections that we are going to be getting to shortly. But the most classic and obvious are those that everyone has been raised with from, I dare say, grade school, and that is the First Amendment, freedom of religion; freedom of the press; freedom of speech, etc. Those are substantive rights.

The procedural rights give you the right to enforce those, to raise those before an appropriate tribunal. This section, as I have said, is in substantial conformance with the provision in the Constitution of 1921.

And Mr. Chairman, if there are any questions, I will be happy to yield.

Questions

Mr. Denberry Delegate Vick, I'm sorry, but I did not quite understand your definition of substantive due process and I would like... if possible, would you repeat that definition, specifically the example you gave?

Mr. Vick The example, Mr. Denberry, I thought would be most meaningful to the convention, was one of employment by Civil Service, and the example of substantive due process that I used is that a civil servant, discharged... a civil servant faced with suspension or dismissal is entitled to substantive due process, that is, he or she cannot be dismissed without cause.

Mr. Denberry Well, now Mr. Vick, let me ask you this question. Under the present Civil Service Law, and presumably it will remain roughly the same...

I say, under the present civil service law, and I presume it will remain the same, a probationary employee, one who has not secured permanent employment in the civil service as a classified employee, may be removed without cause. Now, if substantive due process means what you say it is... it does... then I conceive that the language, "substantive and procedural," should not be included in here. Would you agree?

Mr. Vick No, I wouldn't, necessarily, I would assume that a probationary period is a very short one and would be an exception. And it is also one that I conceive that the civil servant, probationary civil servant, has acquiesced in.

Mr. Denberry Well, in other words, you mean if you

take a look knowing that you can be fired without cause, then you no longer have any substantive due process to require cause to be fired.

Let me get to the real point, Mr. Vick. What was the reason for adding to the present constitution the words, "substantive and procedural"? Why would not due process of law itself be sufficient under the various definitions which already have been given?

Mr. Vick Mr. Denberry, I don't think PAR's analysis has been given wide distribution. But I saw a draft and I thought it was a fair statement. We are doing nothing more than reflecting the current status of the law.

With the burgeoning bureaucracy in the country, and with administrative law becoming an everyday occurrence, procedural due process is perhaps as important as substantive due process, if not more so.

That's why.

Mr. Denberry I would not argue with that point. But I say if you have due process, that would automatically include substantive and procedural due process.

It's conceivable that a court at sometime in the future, will determine that there is a third type of due process which we may know nothing about at the present moment. That would, therefore, be automatically excluded under our constitution.

Mr. Vick No, sir, it would not. It most certainly would not.

You will notice, if you will read it carefully, it says "other".

Mr. Denberry I understand that but it says "without substantive and procedural due process of law".

My question is, sir, if there is another type of due process *inclusio unius exclusio alterius*, and therefore you would be without that. Am I correct?

Mr. Vick Well, that's your interpretation, Mr. Denberry. As we tried to follow Judge Tate's admonition and write this for the future. And your suggestion is, perhaps, well taken. I think this would cover it. It may not.

Mr. Abraham Mr. Vick, I was like Mr. Denberry, concerned about the words, "substantive and procedural," and you gave the example of a civil servant.

The question I would have, is there any way that the words "substantive and procedural" due process could be construed to apply to other people other than civil service?... could it be construed to apply to regular employees or anything like that?

Mr. Vick You mean in the private sector, Mr. Abraham?

Mr. Abraham Yes.

Mr. Vick No. No, this is strictly state action.

Mr. Pugh Sir, are you suggesting by the language that you are using here that no one would be deprived, even temporarily, of any of their property without these procedural due process requirements?

Mr. Vick Even temporarily.

Mr. Pugh Even temporarily.

Mr. Vick Well, Mr. Pugh, if you could give me a better... if you could be just a little more explicit, perhaps, I could answer the question. I can't answer the question based on that vague hypothesis.

Mr. Pugh Well, on June 12, 1971, the United States Supreme Court in the cases Fuentes and Parham both held that there could be no taking without their first having been a hearing to determine the right to take. I ask you whether or not it's contemplated

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do you understand it that there will be no taking, in any way, without there first having been afforded a right to a hearing.

Mr. Vick: Now are we discussing expropriation—

Mr. Pugh: No, Sir, I meant certainly an not.

Mr. Vick: Well, in a sorry, Mr. Pugh, I couldn't really hear you all that well. If you'd restate it.

Mr. Pugh: I'm asking you whether or not, in your opinion, this section as drafted will comply with the procedural due process requirements as laid down by the United States Supreme Court in *Fuentes and Perina*.

Mr. Vick: I do not know, Mr. Pugh.

Mr. Pugh: I ask you whether or not it wouldn't be appropriate between the words "without" and "substantive" to place the language, "there being first afforded both substantial and procedural due process of law." If, as you have stated, that your intention is that there be no taking until after there is a hearing.

Mr. Vick: Well, Mr. Pugh, you can propose your amendment. However, you realize, of course, that throughout, as a constitutional student, that whatever is reasonable usually passes muster. But in any event, you are most certainly at liberty to propose an amendment and I'll be happy to discuss it with you.

Mr. Pugh: Thank you.

Mr. Vick: Mr. Vick, I have an amendment like you are requesting Mr. Pugh about.

Mr. Vick: I don't request it.

Mr. Pugh: All right. Well, talking to him, now, as I understand it the Constitution of the United States on due process reads substantially, if not exactly, "No person shall be deprived of life, liberty or property except by due process of law."

Now, I don't know where you dug up this other right without substantive procedural due process of law, but don't you know that under the Supreme Court of the United States decisions on due process of law, they've held that you have procedural rights, the right to counsel is one, the right to work, a reduction of excessive bond. Those are procedural things. The right, if you are an indigent defendant to get a full transcript. That was the Illinois case.

Now, is it your intent to go way beyond the Supreme Court, to go beyond the United States Constitution due process of law clause, as interpreted by the Supreme Court of the United States?

Mr. Vick: The answer is unequivocally no.

Mr. Vick: And I would like to know you use all that additional language that you can't explain to us.

Mr. Vick: Because, Mr. Vick, we wanted to spell it out in unequivocal terms that citizens of this State are entitled to both substantive and procedural due process. And that's the only reason why there was no matter fact involved. I give you, Mr. Vick, the amendment are very long but due process of law work, but we wanted to make it effective and unequivocal, clear. And we are trying to do what you are trying to do and that is take a step into the future.

So what Mr. Pugh's requested, perhaps some other right, but your right to life, liberty and property of due process of law.

Mr. Vick: What I am talking, well, what are you talking about? If you don't have a kind sense

think, else besides the.

Mr. Vick: Well, Mr. Vick, I think you would you probably consider this office as another right. It's not certain, I don't think, a property right. I don't think it's a right of liberty, I don't think it's a right of life. I think this your seeking this office is another right, for example.

Mr. Vick: Look, if you are using the word "the" constitution here, for other rights, what other rights are you talking about?

Mr. Vick: We're trying to follow Judge Tate's admonition, Mr. Vick, and look into the future, that was the point for putting other rights in there.

Mr. Vick: Then you don't know what you are talking about if you don't know what other rights I'm talking about?

Mr. Vick: That's a rather unfair...

Amendment

Mr. Pugh: Amendment No. 1 [see pp. 100], on page 3, line 4, after the word "without" and before the word "substantive," insert the following, "there being first afforded both..."

Explanation

Mr. Pugh: I would like to compliment the committee first on the fine choice of language which was used by them in their proposed Section. I had brought to their attention earlier, my feeling that there should be added to that section the language "there being first afforded both..." It is one thing to give someone substantive and procedural rights. It is entirely another thing to give them those rights at a time when they are meaningful, and that is, at a time before there is any taking of this life, liberty or property. I therefore suggest to you that we amend this section to provide that these first be afforded these rights before there is a taking. I ask you for your favorable consideration of the amendment.

Questions

Mr. Pugh: Mr. Pugh, if your amendment is adopted, wouldn't that abolish the right of the highway department to deposit funds in court and take money and to ahead with their work?

Mr. Pugh: Unless you qualified the constitution to provide for a taking by the highway department in cases concerned with expropriation first, it would. I have no objection to the procedure whereby the highway department takes and pays later.

Mr. Pugh: You have no objection, but you are prohibiting it under your amendment.

Mr. Pugh: I don't think so. You can qualify that whether—in any way you want to.

Mr. Pugh: But it would have to be qualified. If your amendment is adopted, that procedure is abolished, is it not?

Mr. Pugh: That is correct.

Mr. Pugh: All right.

Mr. Pugh: Was the procedure would be abolished, where someone takes anything you want to qualify about it later, say at that right?

Mr. Pugh: Mr. Pugh, I would assume that your language is not intended to apply to the highway department at its authorized departments of any business activities for the building of roads.

Mr. Pugh: No, certainly.

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Mr. Jack Mr. Pugh, read me that where it is about after rights, without first, what is that word?

Mr. Pugh "Without there being first afforded, both substantive and procedural due process of law".

Mr. Jack All right, what about a case where a policeman looks like he has done something terrible, you are not going to be able to even suspend him until you have had a full hearing, is that right?

Mr. Pugh You'll have to have a hearing, yes.

Mr. Jack It may last three or four months, that's right, isn't it?

Mr. Pugh That is right.

Mr. Jack All the time he is going to be staying there, and it may be some horrible corrupt thing that he ought to be suspended about.

Mr. Pugh Well, now if you are talking about suspended in the instance of whether or not they could take any pay away from him, I'd say they could suspend him, but pay him, but they couldn't take him off the force and not pay him until he had a right to a hearing. Nor do I think he should be removed from the force.

Mr. Jack This is all new. We don't have any decision. This is all going beyond the United States Constitution, is it not?

Mr. Pugh No, it is not.

Mr. Jack Do you find this stuff in the United States Constitution?

Mr. Pugh I find this to be the manner in which the United States has been in....Constitution has been interpreted, I find this not to be the manner in which our courts have interpreted our constitution.

Mr. Jack Well, how have they been suspending policeman with, before the hearing in bad cases, how have they suspended other people, and people... you are an administration man, they have suspended public officials that have been indicted. What about that, that was before a hearing?

Mr. Pugh What have they taken away from the man? If they suspend him, what have they taken away from him?

Mr. Jack They have taken away his reputation as being able to carry out the duties of that office, for one thing.

Mr. Pugh Therefore, you think he ought to have a hearing first, is that correct?

Mr. Jack No. Not if it's bad enough. Just like a policeman, suppose he is accused of giving tips to bank robbers and things. That is so serious, I think he ought to be suspended and then the hearing held. Would this keep them from suspending him?

Mr. Pugh I suggest to you, Mr. Jack, that this will not prohibit the suspension of a policeman as you are concerned.

Mr. Jack Well, I just don't agree with you and I think you are all wrong. Thank you.

Mr. Arnette Mr. Pugh, this is a very simple question, but I wish everyone would listen to it. What would happen in the case where a policeman would see someone robbing, say a liquor store, an armed robbery, and the guy is fleeing and he arrests him? Well, under your amendment he couldn't arrest him and deprive him of his liberty unless he had a hearing first.

Mr. Pugh No, that is not correct.

Mr. Arnette What is that, Mr. Pugh?

Mr. Pugh This man hadn't been deprived of anything at that point.

Mr. Arnette He didn't deprive him of anything when he puts him in jail? He deprived him of his liberty; he can't go anywhere.

Mr. Pugh All right, what....I am sorry, I shouldn't ask you a question. I suggest to you that the phrase "substantive and procedural due process of law" requires a hearing at some time.

Mr. Arnette Well, you said thought he couldn't he had to have a hearing before he was deprived of his liberty.

Mr. Pugh That is correct.

Mr. Arnette ... and if this man killed forty people, you would have to have a hearing before you could put him in jail. I think it is a very bad amendment, Mr. Pugh.

Mr. Alexander Mr. Pugh, is not your amendment designed, and as it is arranged, would it prevent law enforcement officers from arresting anybody or prevent that person from being convicted because there are laws in other sections of the constitution under statutory laws that take care of criminal activity?

Mr. Pugh I don't think statutory laws could supersede the constitution. I certainly would suggest that provisions relative to locking people up will at some point be in the constitution, maybe in the Bill of Rights.

Mr. Alexander But there is nothing here designed to prevent anybody from being arrested and locked up, isn't that correct?

Mr. Pugh That is correct.

Further Discussion

Mr. Dennyery I rise in opposition to this amendment. I conceive that the amendment was well thought out, except that it avoids....it overlooks, let us say, the entire Civil Service system in the State of Louisiana and the various municipalities which have Civil Service systems. Under the present law, and hopefully under the new constitution, the appointing authority may discharge or suspend a man without a hearing. Then the man is entitled to a hearing, but.... if we put this amendment in, we would require a hearing before the dismissal or suspension of a public employee. Now, I can conceive of the situation where a man is literally caught with his hand in the till. Certainly, that man should be immediately suspended or discharged. Now, if he wants to have a hearing subsequently, he will be entitled to this. But to prohibit him from having, to prohibit the state from dismissing a man or suspending him, if he is found to be completely incompetent or he is found to be crooked or something like that, I think would be a terrible thing. I also talk against it on the basis of Mr. Drew's question. I think the language as proposed by this amendment would prohibit the present quick-taking statute of the highway department. I think that would be a very bad thing for the operation of the state; therefore, I respectfully request that you vote against this amendment.

[Amendment withdrawn.]

Amendment

Mr. Poynter Amendment No. 1 [By Mr. Jack]. On page 2, line 3, at the end of the line, immediately after the word "liberty" delete the comma "," and insert in lieu thereof the word "or".

Amendment No. 2. On page 2, line 4, immediately after the word "property" and the comma "," delete the remainder of the line and insert in lieu thereof

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of the word, "except by"

[Amendment withdrawn.]

Amendment

Mr. Pointer Amendment No. 1 [sic Mr. ...] On page 2, delete lines 3 through 7, both inclusive, in their entirety and insert in lieu thereof the following:

Section 2. No person shall be deprived of life, liberty, property, or other rights without due process of law, nor be denied the equal protection of the laws. No law shall discriminate against a person in the exercise of his rights. Private property shall not be taken or damaged nor shall vested rights be divested, except for a public purpose and after just and adequate compensation."

Mr. Thistlethwaite Mr. Chairman, and fellow delegates, I am keynoting the amendment. First, there was a technical typing error, we deleted the title, but we neglected to type in the new revised title, which would require a technical amendment... After "Due Process" put a semicolon ";" and delete "of law". Add "Equal Protection; Right to Property."

[Amendment withdrawn and resubmitted with amendments.]

Amendment

Mr. Pointer Ok, Mr. Thistlethwaite, you want to reoffer them in the form that you have them here?

What he has done is simply change his amendment so that the quoted material would begin with a title reading:

Section 2. Due Process; Equal Protection; Right to Property
Just simply added a title and the text stays the same

Section 2. No person shall be deprived", etc.

Point of Order

Mr. Jenkins Point of order, Mr. Chairman. I would like to suggest to the Chair that this amendment is not germane to the section. Separate sections of this article deal with property rights and equal protection of the laws, and this seems to deal with subjects not covered in this particular section under consideration.

Ruling of the Chair

Mr. Casey Mr. Jenkins, I appreciate your point. I had already reserved the possibility that this objection might come up. I've tried to make a determination in advance, and I will have to rule that the amendment is germane, since it does contain basically the subject matter already contained in Section 2, plus additional subject matter. So the Chair rules that the amendment is germane.

Give Mr. Thistlethwaite a chance to explain the amendment first.

Mr. Thistlethwaite, please explain.

Explanation

Mr. Thistlethwaite Well, first I want to apologize both to the committee and the huddle down here for coming in late with this. After my initial efforts in the Preamble, I had decided to go with the committee language in Section 2 and delete this proposed Section 3. However, there are a number of expert lawyers in the convention who disagree. They tell me that this Section, which, although I am the lead author, I did not personally draft in 1970, is probably the best piece of constitutional writing that has come up yet. I am not capable in background to make that claim. My amendment adequately and completely for constitu-

tional purposes take care of due process of law, and although not germane because of the title, it will hopefully substitute for both in laws 3 and 4 when we get to that part of the committee's proposal. Mr. Clegg and Justice Tate have suggested that I go ahead and offer this to the convention as a superior way of handling this part of the Bill of Rights so that we do not go into new and untraveled fields and so that we have behind us generations of juriprudence and support. I would therefore like to ask the delegate state follow me and support from a legal standpoint the propositions offered in this amendment.

Questions

Mr. Avant Mr. Thistlethwaite, isn't it a fact that what you have done in this amendment is you have kind of balled together into one section about four sections, or at least three sections of the committee proposal?

Mr. Thistlethwaite Well, what the committee did was come up with three or four sections, with which some of us working elsewhere in the state had come up with this one. I did not take the committee's sections and ball them down, we came up with this separately and are now offering it.

Mr. Avant Now, the question that I asked you, I want to make sure that I understand what the intent is. In the committee's proposal dealing with the power of eminent domain or the power of the government to take private property, as well as does yours, 'that private property shall not be taken except for a public purpose'. But I notice you did not incorporate the language that they had, 'the issue of whether the contemplated purpose be public and necessary shall be a judicial question and determined as such without regard to any legislative assertion of intent'. I would like to deliberate intent to eliminate that particular provision?

Mr. Thistlethwaite Mr. Avant, I am told that a "a public purpose" would include in all adjudication of the question; the question of necessity is built into the public purpose.

Mr. Avant Are you aware of the fact that the pipeline industry in this state has secured legislation which says that a pipeline is a public purpose and that the courts have held that they do not go behind that even though in truth, and in fact, some pipelines which... for which private property is expropriated is not for a public purpose, but for that particular company. Are you aware of that?

Mr. Thistlethwaite I have been told that, Mr. Avant. I have been told that that question has never been taken to its ultimate in the courts.

Mr. Avant Are you aware of the fact that that is, probably why, since it has never been taken to its ultimate in the courts, that this particular provision was included in this draft?

Mr. Jenkins Mr. Thistlethwaite, under the committee proposal there is a prohibition against government expropriating and taking over business enterprises so that the government in our state would never own the means of production. But your proposal has left this out, hasn't it, wouldn't it allow government owned enterprises to take over existing private enterprises?

Mr. Thistlethwaite Mr. Jenkins, for public purposes, I don't think that a private business enterprise is a public purpose.

Mr. Jenkins Well, aren't you aware of the fact that in the case of the State of Louisiana, the legislature attempted to expropriate the Louisiana Power and Light Company there, and the courts held that they had the authority to, although they never were

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able to because they didn't have the money. But the courts have already ruled that under law, without this change that the committee has made, that that would be possible.

Mr. Thistlethwaite Well, do you think that your verbiage would have any effect on that either way?

Mr. Jenkins Mr. Chairman, Mr. Thistlethwaite may not be aware that I can't answer questions.... Another question I had, Mr. Thistlethwaite, with regard to a trial by jury to determine the amount of compensation. That of course, that right has been denied our citizens since 1948, even though in federal cases the U. S. Constitution says that people are entitled to a right to a trial by jury. Why is it that your proposal does not grant to our people the right to trial by jury to determine the amount of compensation in expropriation cases?

Mr. Thistlethwaite Well, Mr. Jenkins, the right to a trial by jury belongs in other sections rather than the Bill of Rights which states basic premises. I think we could write all sorts of details into this Bill of Rights if you want to go into that area.

Mr. Jenkins But, don't you know that the right to trial by jury is in the Seventh Amendment to the U.S. Constitution? It must be a pretty basic right.

Mr. Thistlethwaite Yes, but I don't know that it belongs in a private property, also, in addition. I think the committee has got that elsewhere.

Mr. Shannon Mr. Thistlethwaite, will you explain to me at the end of your proposal here: "after just and adequate compensation"? What do you mean by that?

Mr. Thistlethwaite Well, Mr. Shannon, I am told that that is in the present law, and that "just and adequate compensation" has been well tested in courts, and it means just that "just and adequate compensation". I don't know how you could spell out "just and adequate compensation" any further than that.

Mr. Shannon Well, that is what I am trying to find out. Under your amendment how can that be attained? What procedure?

Mr. Thistlethwaite Well, the committee goes further and goes on to "that the owner shall be compensated to the full extent of his loss", etc. and I am told that is a most difficult problem and would create more problems than if it were left out.

Mr. Shannon Well, under this right here, the highway department could not take any property, until after it had gone all the way through court, and build a highway, is that right? They would have to go through court, if necessary, unless the property owner agreed to the price that they offered. They would have to go through court and a just compensation be derived through the courts, before they could proceed with the highway?

Mr. Thistlethwaite Mr. Shannon, that is the way it is now. The highway department offers property owners what they consider reasonable amounts of money for property, and if the owner does not accept it, they end up in court.

Mr. Shannon Well, doesn't the present constitution though make a provision 'except as otherwise provided in this constitution', which you do not have here?

Mr. Thistlethwaite Well, I am told that this is not needed. This thing has been kicked around by a lot of people for several months and it ended up like this, and it is considered by people who are much more qualified than I am to judge on constitutional matter, that this is sufficiently complete and ample protection without going into

dangerous details, "that in all I can tell you, Mr. Shannon; it may not be an adequate answer."

[Unrecorded portion of the proceedings continues and is omitted.]

Further Discussion

Mr. Stagg Mr. Chairman, and fellow delegates, I have been in the position of being somewhat interested in hearing the comments by the Chairman of the Bill of Rights Committee and the members of his committee who have expressed themselves at this microphone since yesterday afternoon. I guess the best way of saying it is with extreme pride of authorship of their committee's report. This has followed the same kind of comments at this microphone, in turn given by Senator Blair for his committee, Judge Dennis for his committee, and the same is true for the members of the Committee on the Executive Branch. Each of us came initially to this microphone, expressing ourselves about the nature of the work which we had placed before the convention, and without the slightest compunction all of the well thought out provisions which we had carefully tailored, that all adhered together, the sections one by one, was dependent on others. It was all drawn as a unit in each of these cases, and the convention proceeded to work its will on each of these previous three sections without any regard to the feelings of the members who had drawn it. The same kind of conversation is being held at this microphone today, and yesterday, by the new committee which is now before the convention. They have in page 2, from lines 1 through 30.... or 2 through 29.... in twenty-six lines they have drawn "due process, right to dignity and right to life" and have spelled it out in fulsome detail. The purpose of this amendment is to more tightly draw those same rights in seven lines of well thought out language, which I consider to be productive of and protective of those same rights, without writing them for twenty-seven lines, each line of which can produce a case or two in court. I am sure you are interpreting what this convention meant by these words or these lines or these thoughts.

You wondered yesterday, perhaps as I did, when there was a discussion on the lines in the Preamble which state that "there shall be...." promote the health, safety, education and welfare of the people". Each of you is familiar with the line of United States Supreme Court decisions that would fill a bookshelf, all of which are interpretations of the "welfare clause" of the United States Constitution, and based on a very few words in that constitution, literally hundreds of cases have been decided. The same is nonetheless true of the Louisiana Constitution, and each word and each phrase, and yes, each syllable, will be our courts be subjected to interpretation by the courts. If you read the 1921 Constitution where it states that "the property of a person shall not be taken or damaged except for public purposes and after just and adequate compensation is paid", I submit to you that in fifty years of jurisprudence, an extremely rare to find a case where a citizen of this state has been deprived of his property by an unseemly government, not with feelings for his rights of his rights to own property. That language is repeated in the Thistlethwaite amendment. It states very plainly that private property shall not be taken or damaged except for a public purpose, which may be tested by the court as to whether a public purpose is or is not. It is just and adequate compensation is paid. This covers all of the rights spelled out by the committee in lines 14 through 29. We need to write a short constitution, but not so short as to deprive rights already owned by the people of this state. But we don't need to spell out in considerable detail those rights which are already accepted as principles of law in this state.

Mr. Chairman, I urge the adoption of the amendment, and I thank the convention for its attention.

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life, liberty or property, except by due process of law. Except as otherwise provided in this constitution, private property shall not be taken or damaged except for public purposes and after just and adequate compensation is paid".

Explanation

Mr. Perez Mr. Chairman and ladies and gentlemen of this convention, I would hope and again I say, I would hope that you would listen, please, to me attentively as to what I'm about to say. I would like to relate to you an experience, which we had in our parish during the last flood stages, and ask you how I would have solved my problem under the proposed provision in Section 2. We were confronted, in the middle of the nighttime, with a levee failure which threatened the lives and property of thousands of people. Under the present provisions of the constitution, levee districts have the right to appropriate property for levee purposes. This right has been in existence ever since the beginning of this great state of ours. The members of our governing authority of our levee districts met immediately upon the spot, appropriated the lands necessary for the building of a new levee and within several hours we were building a new levee to protect the lives and property of our people. I submit to you, that under the amendment which has been submitted by the committee, which requires not only substantive but procedural due process of law, that it would require the filing of a suit, the trial of a case, and a judgement before any such action would have been taken. Do you know what would have happened to our community under those circumstances? We would have been drowned out. Now I know that the word has been passed down. Let's not pass the blame on provisions unchanged, but for God's sake let's think of what we are doing. I say to you, if you adopt this provision, as it is, that what you are doing is putting every community fronting on the Mississippi River, or wherever else you have levee protection, in jeopardy. I would ask you to adopt the provision, which I suggested, which is exactly the same provision now in our 1921 Constitution, which has been interpreted by the courts time and time and time again, and where all lawyers generally know what that particular subject matter means. I again say, please, think of what you are doing. Realize what you are doing. Let's just don't go down the line like a bunch of blind sheep and submit to the people of this state a document with provisions such as this one in it. Yes, Mr. Roy, I'll yield.

Questions

Mr. Roy Mr. Perez, I'm sure you are aware of the sheep in wolf's clothing. . . . You are aware of Aesop's Fable about the sheep in wolf's clothing, are you not? Are you aware of the old fable about the wolf dressed as a sheep?

Mr. Perez Yes, sir, I certainly am, but I can guarantee you what I'm talking about is a wolf and not in sheep's clothing.

Mr. Roy Why don't you address your catastrophic argument you've made to Section 4, when we get there, and not try to delete 2 and 3 which deal with basic rights of people, Mr. Perez?

Mr. Perez I'll give you that answer, sir. First of all, I'm addressing myself to 2, because 2 requires procedural due process of law, and under procedural due process of law, it requires the filing of the suit and a trial of the case and a judgment. I say to you under those circumstances, we will drown out thousands of people.

Mr. Roy And 4 is a specific provision dealing with expropriation, is it not, Mr. Perez?

Mr. Perez Unless this provision is taken out of Section 2, I don't care what you have in 4, it will not be cured.

Mr. Roy Don't you believe, Mr. Perez, that if this body in its wisdom chooses to deal specifically with expropriation, that it would supersede any other general provision in the constitution?

Mr. Perez When this provision requires procedural due process of law, you are not going to get around it, no, sir.

Mr. Roy How much do you pay those people those properties you appropriate without benefit of due process of law?

Mr. Perez They are paid fair market value in about ninety-eight percent of the cases.

Mr. Roy Doesn't the constitution provide that they shall not be paid in excess of assessed value, Mr. Perez?

Mr. Perez That's correct, but under both the federal laws and the Uniform Relocations Assistance Act, our people are well taken care of and I see that they are.

Mr. Roy Well, the whole point is that maybe there is not any other benevolent people like you in the rest of the state, and the people need protection from them.

Mr. Perez I suggest to you the protection they need, is that their lives and their property be protected with adequate levees and not allow the whole areas to be flooded under some guise of having to have procedural due process of law.

Mr. Gravel Mr. Perez, essentially all that you are really saying, is that you personally are opposed to procedural due process of law as a constitutional right, isn't that correct?

Mr. Perez I'm opposed under these circumstances, yes, sir, because there are times when the rights of the public, generally, must be preserved against the procedural right of an individual. Yes, sir, I am.

Mr. Gravel Second question is, that there is no doubt in your mind, but that procedural due process does permit summary proceedings by a court, isn't that correct?

Mr. Perez Summary proceedings under those circumstances, sir, would have done nobody any good. My entire community, thousands of people, would have been flooded out if we hadn't moved immediately. I don't mean two days later or three days later, I mean immediately.

Mr. Gravel You're confusing time with due process, aren't you, Mr. Perez?

Mr. Perez No, sir. I'm talking about procedural due process of law, which requires a filing of a suit and a rendering of a judgment, after trial. All I'm suggesting that we do is to say, "except as otherwise provided in this constitution", and we'll get to that when the time comes to discuss this levee problem.

Mr. Guarisco Mr. Perez, what you are saying is that it's proper, if you find it proper, to suspend rights under the constitution, whenever you so desire, is that right?

Mr. Perez Your question as far as I'm concerned means absolutely nothing, so let's get to specifics.

Mr. Champagne Mr. Perez, don't you agree that these people that have this property realize that at some day they may be called upon, and in buying that property, in acquiring that property, they are aware of the responsibilities they have to their fellowmen? Do you not agree, sir?

Mr. Perez A. I've said, the conditions upon which

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they acquired that property, was that it was subjected to the servitude for the building of these levees, and that the remainder of their property is not worth one thin dime, unless they have that levee protection. And unless we can provide for immediate levee protection, under emergency situations, then the remainder of that property isn't worth anything.

Mr. Champagne: Mr. Perez, do you also agree, that possibly people who have not experienced the ravage of the flood of '77, like you and I did, are unaware of the possibilities of this thing?

Mr. Perez: I would like to have had these delegates here, with me when I had this flood fight down in my parish. I guarantee you there wouldn't be a red light on that board for the amendment that I'm proposing.

Mr. Champagne: Mr. Perez, I'm sure you have heard from your area, when a Frenchman wants to emphasize a point of significance, he says, "I do this for you, come hell or high water". Have you heard that, sir?

Mr. Perez: I can guarantee you, if we don't pass this amendment and if we keep what we have, we're going to have an awful lot of high water.

Mr. Lebleu: Mr. Perez, under the present expropriation laws, does the levee board... if the levee board determines that a new levee needs to be constructed or repaired, does that expropriate just enough property to build that levee, or does it expropriate....

Mr. Perez: The only property that is taken is that which is actually needed for levee purposes, and we have no right to take anymore. Again, I will emphasize to you that all persons are paid fair market value in ninety-eight percent of the cases.

Mr. Lebleu: What I was really getting at, Mr. Perez, would the levee board expropriate that property say, between the levee and the river, which would take away the man's privilege of riparian rights?

Mr. Perez: That takes absolutely nothing away from him, except that the property is subjected to certain servitudes under our civil code.

Mr. Lanier: Mr. Perez, is it not true, that the right to use property immediately adjacent to navigable streams by the state, to build levees for the protection of the people who live behind these levees? Isn't it true, that this is a servitude in favor of the state, that has been in our law ever since Louisiana was a colony?

Mr. Perez: That's what I explained a little earlier, that this servitude has existed from the very beginning of the history of this state, and that it has always been recognized. Now, we would provide that we have to have this procedural due process, which is going to end up flooding out many thousands of people before it is all over with.

Mr. Lanier: Isn't it also true, that under the jurisprudence of the Supreme Court of the State of Louisiana and the Supreme Court of the United States, that this use of this property to build levees is not a taking, but is in fact, the exercise of a servitude?

Mr. Perez: That is correct, because of the fact when the property was divested from a sovereign when it was originally acquired out of either the United States or the state, it was subjected to that servitude and still is. The problem we have, with respect to this particular provision, is that it would require these various procedures to be followed before the property was taken and therefore would put us in a position where we would be flooded out before we could go ahead and get a judgment.

Mr. Vick: Mr. Perez, you are a lawyer, are you not?

Mr. Perez: Yes, I am.

Mr. Vick: All right, fine. Now there are probably at least two provisions known to you as a lawyer, and well recognized in the law, that would preempt these. One, I believe, is an act of necessity, is it not? That would have allowed to pick up the cause and fill in the levee.

Mr. Perez: Would you tell me where, or show me where, this act of necessity comes in... an absolute prohibition against proceeding, unless you follow the procedural due process of law. I believe in reading the words, not conjuring up in my mind, that maybe some court would hold because I had an emergency, I had the right to do something. No, sir, we are writing a constitution. Let's get it in proper form.

Mr. Vick: Very well. The other provision that would have allowed you to do what you did, was the police power of the state.

Mr. Perez: No, sir. The due process clause in our constitution is an exercise of that police power, and when we put in a prohibition against the taking of property until you have had procedural due process, that is all a part of the police power. We cannot go beyond that which will be in this new document.

Mr. Vick: But you really believe, and want this convention to believe, that under the "act of necessity" doctrine, one of the most extraordinary procedures, reserved for this kind of emergency, that you could not have done what you did.

Mr. Perez: Where is this doctrine in our constitution? Would you please show it to me?

Mr. Vick: In writing, no, it's in the Federal Constitution.

Mr. Newton: Mr. Perez, I'm in sympathy with your problem, but doesn't your amendment go further than just the problem that you're addressing yourself to? Doesn't it also strike out "or other rights" and doesn't it also strike out "without substantive and procedural due process of law"?

Mr. Perez: What I have done, is to take the provision in the present constitution, because of the fact that there have been many, many cases which interpret what this provision means. Yes, I knocked out "other rights", because I have no idea what "or other rights" means.

Mr. Pugh: Mr. Perez, I believe your quarrel is with the words "substantive and procedural"?

Mr. Perez: Yes, sir, it is. Also, there should be a clause saying, "except as otherwise provided in this constitution", so that when we get around to the problem of levees and the right to take, we will be able to take care of it at that time.

Mr. Pugh: I would not have withdrawn my amendment to this section, had I had the phrase "except as otherwise provided in the constitution." I'm not in doubt about that. The words "substantive and procedural" suggest that somebody is going to decide the procedural manner in which a person's life, liberty or property is taken, is that not correct?

Mr. Perez: Yes, sir.

Mr. Pugh: Is it not a fact that this committee has contemplated in Section 4, a procedural manner for taking this property that someone says?

Mr. Perez: Well, that it will put the levee districts in a position where you do have the requirement for the filing of a suit and the filing

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of these various procedural requirements, which are exactly what I'm talking about.

Mr. Pugh Are you telling me again, is it not a fact, that somewhere we got to talk about substantive and procedural rights? Somebody has got to decide what those are, is that not correct?

Mr. Perez As I read Section 2, when you say "without substantive and procedural due process", procedural process requires the filing of a suit and the rendition of a judgment after trial.

Further Discussion

Mr. Stovall Mr. Chairman, members of the convention, I think that Mr. Perez has raised a legitimate concern for our consideration. I don't think that any of us here in this convention would want to pass a constitution that would not make it very clear that persons in that kind of situation would have the opportunity to deal with them expeditiously. At the same time, the other way is an adequate recognition of the due process of law. In order to make sure that Mr. Perez's concern is dealt with adequately, I make a motion that we pass over Section 2 until after we have dealt with Section 4. Quite obviously the reason for this is, that in Section 4 hopefully we can have adequate provisions there to guarantee Mr. Perez's concern.

[Motion to pass over Section 2 rejected: 26-42.]

Further Discussion

Mr. Burson Mr. Acting Chairman, ladies and gentlemen of the convention, I rise in support of the amendment. I am, frankly, disturbed by the tenor of the debate thus far on this article. When everyone was making their declaration of position on the committee early yesterday, I had a few general thoughts regarding this Bill of Rights, but preferred to keep them to myself because I thought we were going to debate them on the merits and not on each amendment and each proposition as we had done everywhere else, but it seems to me that the tenor of some of the questions and so on, until this point, seems to imply that any time someone introduces an amendment to any of the sections of the Bill of Rights, that he is against human liberty. Now I reject that. I think that we have got to consider each one of these proposed Bill of Rights Articles, the same way that we have every other thing that we have considered heretofore, and will consider after. I don't think what this committee has done is perfect. I don't think it's altogether bad. I like a lot of it, but I think when delegates raise legitimate objections, that we ought to consider them on the merits and not purely on emotionalism. Now the main point that I wanted to raise with regard to this particular amendment is, that under the Fourteenth Amendment to the United States Constitution at the present time it says, "nor shall any state deprive any person of life, liberty or property without due process of law". In this case, and in many, many other of these sections that we will consider on the Bill of Rights, although not all by any manner of means, the United States Supreme Court has applied the Federal Bill of Rights to the states. Now here, it's not the Federal Bill of Rights, the Fourteenth Amendment applies particularly to the states, and its goal is equal protection of the laws and due process of law. Now, I am going to get up when that article comes up, and speak in favor of having an equal protection clause in our State Constitution, for a lot of different reasons. I am in favor of having a due process clause in our State Constitution, for a lot of reasons. I share Mr. Perez's concern about exactly what substantive and procedural due process means. If any of you are familiar with the constitutional history of this country, you know that the United States Supreme Court in the 1910-1939 era, roughly, before they had terms with the New Deal, went in and abrogated a lot of state legislation, such as

child labor laws and other humane laws, on the grounds of substantive due process. The history of substantive due process as a constitutional principle in United States constitutional jurisprudence is very dubious, and I just wonder what we mean when we use that term here. I don't think we mean that, but I don't know what we mean. Whereas under Mr. Perez's Amendment, what it tracks basically the language that has been in the State Constitution, I think I do know what we mean, because we've got a lot of cases that say what we mean. I think due process means due process, and it does mean procedural due process within the limits that we define in our constitution, and it does mean substantive due process if that has a meaning insofar as the United States Constitution guarantees it to us. I think before we start using new words to define new rights that nobody else has ever defined, that somebody owes it to us to get up here and tell us what they mean. I share Mr. Perez's concern, that I would prefer to have it in plain English where I know what it means, rather than to trust to some future court to define it in a way that I hope it will turn out all right. I would like to conclude by suggesting to you, that before we sit down here and adopt a lot of rights that we don't know what they mean, and a lot of rights that no other state has in its constitution, and a lot of rights that go far beyond the rights guaranteed in the United States Constitution, that we should consider whether or not in our hearts, that this is what the people who elected us sent us here to do. In my own case, I'm going to have some amendments, later on, that I think address themselves to some changes that go far beyond what the present law is in the area of criminal procedure. I think in the area of due process, if we were in the States that had the same kind of experience that he had with this levee situation, I, too, would be concerned as what does procedural due process mean. As far as the right that somebody introduced into the discussion about a right of necessity, I know of no such constitutional right anywhere, and I challenge anyone to get up here and read me a provision that says anything about it, that would urge you to stick with something that we know what it means in the law.

Further Discussion

Mr. A. Jackson Mr. Chairman, ladies and gentlemen, I rise in opposition to this amendment, with full knowledge of the problem raised by Delegate Perez, by way of this amendment and by way of his discussion before you. I want to say to you very quickly, but emphatically, that this problem was discussed. We considered precisely the problem raised by this amendment and by the delegate. I would point out to you that in Section 4 of the proposed Declaration of Rights Article, that the committee has provided for this eventuality, that the committee has provided for, and allows, for quick-taking. So there is no need for us to raise undue concern about whether or not this committee is going to protect the lives of individuals. Certainly we're going to protect them, certainly we're going to provide for them. If you read Section 4 carefully, we have provided for this. We have heard arguments raised relative to what we mean by due process. What do we mean by substantive and procedural due process? Ladies and gentlemen, I'm not a lawyer, but I have been around enough lawyers to know that when you talk about procedural and substantive due process, that you talk about being reasonable. It is reasonable for us, as a law firm, to have a section for a governmental agency or authority to baptize the people? Of course not. There is no logic and no valid argument to make when you use the fact that we have called for a process, that we have called for the protection of the rights of individuals by affording them due process. Let's get to the central question, the central question is, whether or not we're going to afford the citizens of this state a basic individual right, that's the central question. Now certainly we are concerned about the problem raised by Mr. Perez, and that's why we have dealt with it, but I tell

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you, that in this state today that the lives of thousands of people are being affected. Last year in this state, we affected the lives of a hundred thousand, one hundred thousand student in the schools of this state. We affected them because we did not have a strong provision, which provides for procedural and substantive due process, as it relates to the rights of students. We have to be concerned about this. Thousands of jobs are being taken and being affected, because we don't provide for this and because we don't adhere to it. I would ask that we would consider the central question. The question is, whether or not we are going to afford this protection to citizens. It is not reasonable for anybody to preclude a governmental authority from acting in the interest of people. It is reasonable for the police jury in Plaquemines Parish to act, and they did act. We have not prevented that, and we have not abridged that.

Questions

Mr. Perez: Would you point to me in Section 4, the quick-taking provision to which you refer?

Mr. A. Jackson: I'll come back there and I'll do so, sir.

Mr. Perez: Well, I would like all of the members, all of the delegates to this convention to have the benefit of your answer. In addition, I ask you the question, lines 27 through 31, state the issue of whether the contemplated purpose be public and necessary shall be a judicial question and determined as such, without regard to any legislative assertion. I again ask you, how there can be a quick-taking, when the defendant has a right to raise the question as to whether or not the contemplated purpose be public and necessary, which requires a full trial on the merits to determine that issue?

Mr. A. Jackson: I think that acts in the interest of the people. I think this provides precisely for what you want.

Mr. Perez: My question was directed to how can there be a quick-taking, how can we cope with the situation which I presented to this convention today, under your section 4?

Mr. A. Jackson: I think it's clearly provided, Mr. Perez.

Further Discussion

Mr. Jenkins: Mr. Chairman, delegates to the convention, it's a bit unfair and certainly very difficult to attempt to jump around and start explaining sections before we get to them, when a presentation would be made at the appropriate time fully explaining the section. For that reason, I'm not going to attempt to fully explain Section 4 at this time, because later on, I hope to make a presentation on it that I think will explain and answer all your questions. But in regard to the specific question raised by Mr. Perez, quick-taking is allowed under Section 4, lines 18, 19, and 20. Property shall not be taken or damaged except for a public and necessary purpose, and with just compensation paid to the owner or into court for his benefit. The omission in that sentence of the word "previously," before "paid," "previously paid," or any such word such as "first paid," the omission of that word allows quick-taking statutes to be enacted. Any other "later" or "first paid" or "previously paid." They do not allow quick-taking statute. We would allow a quick taking statute under this. Now Mr. Perez raised the question of whether or not there would have to be some judicial determination in advance. If he looks at his own proposal, he says that private property shall not be taken or damaged except for a public purpose, and with just compensation. After that and adequate compensation is paid, after, he says, "the process with Mr. Perez's proposal is, this is the bill saying that he wants to attach the

word "procedural" to Section 4. If he wants to do that, he ought to propose an amendment to the word "procedural." I think the real intent is to let us the second sentence of this section, "without as otherwise provided in this Constitution, private property shall not be taken, etc." His effect of this would be to negate Section 4. Section 4 provides some (redundant) advance in our property law. It would give the people some protection for a change in the seizure property. There is very little protection at present. That will be explained at the appropriate time. Mr. Perez has raised the question of flood and flooding, levee purposes. Certainly all of us are concerned about that situation. But Section 4 provides for that eventually. I wish you would note that fact. Section 4 provides for the question Mr. Perez has raised with regard to flooding, and it does this in the second sentence, where it says that the right to property is subject to the reasonable exercise of the police power. That is a term of order, police power. It means the regulatory power of the state, just as the police power of a fire inspector to enter your building and inspect the premises or to direct you to do certain things, this would allow local governments to enter and make certain preparations against flooding. Now, if the property were to be permanently taken, in such instance, then, of course, you would have to go to court later. But in the mean-time, you could be regulating it to whatever purpose the local government chose. There is no conflict there. But even if there were, even if there were, the place for Mr. Perez to make his changes is in Section 4, not here. If he wants to provide for the right of appropriation as opposed to expropriation, he should do it in Section 4. If he wants to change Section 4 to take out "procedural," he should have an amendment saying take out "procedural". But he shouldn't have this second sentence in there attempting to preempt Section 4 by his statement of how property can be taken. To adopt Mr. Perez's statement is to say this, that since 1921, under our current Constitution, we have learned nothing about the abuse of government, of private property rights. It says that you don't need to worry about jury trials to determine compensation, you don't need to worry about the amount that's going to be paid to people when their property is taken, you don't need to worry about take-over of businesses, as we've prevented in Section 4. So I urge the rejection of this amendment.

Further Discussion

Mr. Sutherland: Mr. Acting Chairman, fellow delegates, Mr. Perez and I do not always agree, but in this instance I rise to support his amendment. We have a provision in our present Constitution which has been in effect for some fifty years, and has been interpreted by the courts of this state, and has an established meaning. The proposed change in the constitution puts in some new words which may not, necessarily, which has not been interpreted and will not necessarily mean the thing that the author propose for it to mean. I do not believe in change for change sake. We have heard it said here that other jurisdictions of this Bill of Right can take effect from past experience, we don't know whether their future version of the Bill of Rights will be adopted or not. We don't know whether they will be adopted in the manner in which they have been amended. This is unfortunate because we've had to alter this constitution many sections by amendments in some times we don't know until it's all over whether or not we've covered the points we want to cover. Mr. Perez's amendment does not, except for what's provided in this constitution, and he also provides, or it can be provided, that to force you, I mean you can take care of some points that you want to take. Mr. Perez is not taking the same thing as he is. If I suggested to the House, I would say, that above your line, I would want to have a board had to come up and take your property, you would a board there, meeting the exacted terms.

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so that we would not be faced with a possible flooding in our area. I am concerned; I share his concern in this instance, because they did not go through a proceeding before they started to build that setback levee. They went ahead and did it and then went into court to determine what was proper compensation for it. I think that this should be given serious consideration, ladies and gentlemen, before you change an established procedure. Thank you.

Questions

Mr. Lanier Mr. Sutherland, have you had a chance to review the comments under the Bill of Rights proposal that was sent to us by letter dated June 22, 1973?

Mr. Sutherland I'm not sure, Mr. Lanier. I've read a lot of it.

Mr. Lanier In the comment on page 5, thereof, it says as follows: "The term 'expropriation' is to apply to both expropriation and appropriation" so that appropriation would no longer have a special status in Louisiana law. Would that indicate to you that it is the intent of Section 4 to do away with the riparian servitude?

Mr. Sutherland It would certainly appear to, Mr. Lanier.

Mr. O'Neill Mr. Sutherland, I understand that Mr. Jack has an amendment which would delete "procedural" out of this sentence. Would you agree that this, perhaps, is the amendment that we should be debating right now rather than this one which strikes at Section 4?

Mr. Sutherland Well, I don't know, Mr. O'Neill whether it would or not. I do think that we are going to have to worry about this thing section by section. I would prefer to see this section as the amendment proposes. That's why I'm supporting it.

[Quorum: 103 delegates present and a quorum.]

Further Discussion

Mr. Guarisco I know a lot of delegates here are not lawyers, so I think I want to try to explain... we are two sections ahead of ourselves, but I think I should try to explain basically what Mr. Perez is talking about in his amendment, in as far as levee servitudes are concerned.

In Louisiana, we have a unique status insofar as the law of expropriation is concerned. One, we have what's called expropriation, and we have a unique animal in the state called appropriation. Now, what's the difference? In expropriation, I think everyone here is familiar with that. Expropriation is the exercise, the right of eminent domain to take property and pay just compensation for that property. How is it paid? Well, if the people can't agree between the condemning agency and the landowner, then they go to court, have appraisals, and they make a determination of what fair market value is. That's fair. Just remember, expropriation is harsh because it takes your property, but at least you get paid for it. Now, in appropriation, the state, through its police power, can take your property to build a levee, and they do not have to pay fair market value. In fact, there's no law that they have to pay anything but a gratuity. What Mr. Sutherland just said is absolutely incorrect. He said we took the property for the levee and then we went to court to determine compensation. That's not true. You can't determine compensation because there is no provision for it. What they pay you, in the previous years assessed evaluation, I'll give you a good example, went to Judge Tate's court, incidentally, I represented some people who lost seven and a half acres of land, sixteen feet deep, with plant cane on top of it. You know what they got paid? Sixty something dollars. Now, you think that's fair and

adequate compensation? All we want to do is take appropriation out of the law and put it on the same status as expropriation; whereas the people who lose their land for levee purposes are paid fair market value like everybody else. The cost is shifted to the public, just like the cost is shifted insofar as roads, highways, bridges, ferries and come what may. Now the historical reason for this was simply that way back you had large plantations and they said, "Well, these large plantations have thousands and thousands of acres and they were riparian, which means they were next to the water, and they ought to give up their own land to protect their own land." But it's not that way anymore. We have many, many small landowners, small farmers, who can ill-afford to give up their property and not be compensated for it. Now Mr. Perez's argument, the answer to his argument as far as emergency situations is exactly what Mr. Jenkins said, is that in Section 4, irrespective of what Section 4 says, irrespective of what Section 2 says, the right is subject to the reasonable exercise of the police power. The police power of the state or the police power of the levee district, in that instance that takes the property, can be used to take the land for levee servitudes for an emergency. Then, you go into court, as Mr. Sutherland said, and determine compensation. But right now, you can't determine compensation because there is none to be given. I'll yield to any questions.

Questions

Mr. De Blieux Mr. Guarisco, do you know that the Legislature changed the law with reference to compensation for levee purposes, about two years ago? Now, they get paid a fair market value for that property.

Mr. Guarisco I don't know that to be true, but even if it isn't true, I think we should have it in the constitution where the legislature can't change it back to the other way, if such was done.

Mr. De Blieux Well, it's now the law insofar as the statutes are concerned.

Mr. Jenkins Mr. Guarisco, wouldn't all of Mr. Perez's objections be satisfied if one thing and one thing alone were done in Section 4, and that would be that we provided that in the case of flood prevention and control, quick-taking would specifically be granted? Wouldn't that satisfy every objection and argument that Mr. Perez has raised?

Mr. Guarisco I don't think it's necessary, but that could very well be, yes.

Further Discussion

Mr. Alexander Mr. Chairman and delegates, I had hoped that possibly I would pass, but I think there are a few pertinent facts that I would like to remind you of at this time, facts with which I'm sure you are already familiar. The city of New Orleans should be pointed out to you at this time that the incidence of floods in this state is an annual affair. But we have not had a serious flood comparing to the magnitude of the one of 1973, since 1927. That has been 46 years ago. Almost daily, especially right across the street from Plaquemines Parish, in Orleans Parish, the federal government, school boards, the city of New Orleans are expropriating property of poor people. When I say poor people, middle class people, people who own a little ten thousand dollar house, twenty thousand dollar house, thirty thousand dollar house. A delegate has mentioned the fact that the result of the provision or the Bill of Rights section, as now proposed, would be to place a tax burden on the people of Louisiana. Well I say to you, that three million, six hundred thousand people may be better able to bear a burden than one or two poor individuals. Let me give you this example. I was just involved in a case where the city of New Orleans took the property of a little

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...nurch and gave them forty-two thousand dollars. Right now, until this point, they have spent eighty-seven thousand dollars trying to replace that building. Now what is happening, am I not speaking about just the levee board, because levees for a title, for levee expropriation constitute a small, very small percentage of the property that is taken all over this state annually. Very, very small. In Orleans Parish, we have urban renewal and we have modern cities. I dare say that they have it in Shreveport, or you will have it in Monroe, Lake Charles, etc. Now what happens to this small individual's property is assessed at fifteen thousand dollars, and maybe that assessment was made three or four years ago. So they may give him twenty thousand dollars for his property, but because of the rising cost of building materials, etc., to replace the same building in another section of the city or anywhere else, for that matter, it may cost him fifty thousand dollars. That is the major problem, and that is the thing that we are hoping to remedy. I think that's the question that has not been addressed in this discussion, and that's what I want you to understand before you vote. Because there must be improvements. Remember, the Due Process Article, there was a Due Process Article in the old constitution, in Article 1, Section 1, which also said the same thing. All this section is doing is improving in the old thing, and the people sent us here to improve on the whole constitution, and that's exactly what we are doing. I'm asking that you will vote against this amendment. Thank you.

Further Discussion

Mr. Roy: Ladies and gentlemen of the convention, and Acting Chairman, I didn't want to get up yet because I'm getting up in a little while on another section. I just feel that Mr. Perez's attempt here, to instill fear in threats of flood and what have you, is a charade. It's not correct. It's inaccurate, and it's premature. I'm not concerned so much at now that we do not have some problem that in his mind cannot be worked out later on. I am concerned with the fact that in my judgment, this is nothing more than an attempt to scuttle this entire Bill of Rights, this entire Declaration of Rights, that we have spent so many months on. I'm going to tell you that throughout this Bill of Rights, there is one silver lining that goes all the way through that runs from the beginning of this Bill of Rights to the Declaration of Rights to the end. That silver thread is the individual, and no one is going to take me, as a member of that committee, back off of our attempts to protect every individual in this state. Section 4 is captioned "Right to Riparian." It presupposes that we are dealing with people who have something, with the "haves" of this state. We have made it our business that when you take from a "have", you are going to pay him what is due. It's no secret that in the past fifty years, what Mr. Sutherland said about the courts having been interpreting the expropriation article in a safe and sound way, we don't have to worry about it in the future. That begs the question. For fifty years, people have been denied adequate compensation when their property was taken. They are still doing it. A right-of-way agent goes to a person's land, goes through it, and evaluate the value of the taking at five thousand dollars. Later on, the State has a lawsuit and expropriates it. We do know that you have to have the right of expropriation. Then, when the question goes to court, the poor landowner knows that his property is worth fifteen thousand dollars. He gets an attorney, the attorney has to charge him a percentage of the difference over the amount that was paid for the land. The landowner comes out with ten thousand dollars. Let's say, you have to have ten million fifteen from the beginning. We have provided for that in the future, because when we say that our courts now will be able to give to the landowner to the full extent of the loss, we are going to allow the courts to be more flexible. Take, for instance, a little man and wife who have

got a store, and have worked and saved for it for fifty years, attached to their house. It's worth five thousand dollars in value. It's a little piece of lot. The State comes through and expropriates it and gives them the mere five thousand dollars. And a man and woman, but they look for a new place to live, that they can't purchase for five thousand dollars, and a new business that they can't engage in because they have nothing left. Is that fair? Now we have sought to take care of that. Now, Mr. Perez's amendment is just not kosher. It's not right to try to emasculate the rest of this document, which deals with the right of an individual by giving a bare-faced argument about the levees in his parish. There is nothing that prevents the police power of the state from attaching or filing a suit immediately and getting a court order signed attaching whatever property is necessary for the riparian owner. Mr. Perez knows, and Justice Tate will probably tell you, if you go ask him, that the riparian right of the state, of the servitude that it has along rivers, gives it the absolute right to take in the public interest, and that public emergencies always under the police power of the state have permitted the state to take action when due process would otherwise be required. Section 4 deals with that, but Mr. Perez is really worried about Section 4, well, that's all it's dealing with in Section 4 when we get there. Let's not get scared and running wild. We have tried to protect the little man, the big man, the individual in this particular Bill of Rights and in these two sections. I urge you to defeat the amendment, and then if it properly comes up in Section 4, reconsider it, if you're not sure the Section 4 does not give Mr. Perez the protection that he claims he needs. Thank you.

Questions

Mr. O'Neill: Mr. Roy, have you noticed that the greatest proponents of this amendment all seem to be what we call 'local government people'?

Mr. Roy: I've gathered that, Mr. O'Neill. I don't make any... you know, I just really don't know. I know Mr. Perez is with local government.

Mr. O'Neill: Well, you've raised the issue of a charade, and that's the point that I wanted to get at. Maybe they're after something more than what it seems.

Mr. Roy: I think the charade is Mr. Perez trying to scare people to death with flood control when he knows good and well that the police power of the state authorizes the state to protect and defend itself in emergencies. I think he knows that, but he knows it.

Further Discussion

Mr. Avant: I rise to oppose, fellow delegates, Mr. Perez's amendment. I don't say that Mr. Perez does not have a problem. It may, at a proper time, require the attention of the delegates to this convention. But the time to solve that problem is in Section 4, when you get into the section dealing with the power of eminent domain, or the right to take private property for public purposes. We're not dealing with that right now. We are dealing with the right of due process of law. But if you adopt this amendment, when we get to Section 4, we're going to be told, well, we can just delete Section 4 because we've already taken care of that problem. Now let me ask you if you're in a position that you've just gained. It may sound dramatic, it may be interesting and people down here, and I think it would be, if you found dramatic to go out and take property for the public, need to take highways and other public works. But for me, I'll use something that's not what we're talking about, exclusively. We are talking about the right of private citizens to be able to take your property for a public purpose. That's why we want to be able to get

into this constitution this provision that has a well interpreted and understood meaning in the jurisprudence. You know what that meaning is? It means that if a private corporation goes to the legislature and through the lobbying process can get them to vote that such and such a purpose is a public purpose, the Supreme Court has said the courts will not look behind that. That's what we mean, and that's what we're talking about. Every pipeline is a public purpose, in law, whether it is a public purpose in fact, or not. I had a case where a major oil company expropriated my client's property to build a pipeline from one of their refineries to one of their distribution systems on the Eastern seaboard that had absolutely no public purpose connected with the people of the State of Louisiana. That's what we're talking about, and what they don't want, is this little last three lines in Section 4, which says, "The issue of whether the contemplated purpose be public and necessary shall be a judicial question and determined as such without regard to any legislative assertion." Under the present state of the law in this state, if the legislature in wisdom decides that roller skating rinks are a public purpose, they can take your property for a roller-skating rink and you can't question it in court. That's what we're talking about. Make no mistake about it. Let's get to the question of expropriation of property and the right of eminent domain when we get to dealing with that. But let's don't go back and put this well interpreted provision of the 1921 Constitution in this section dealing with due process of law, so that when we get to Section 4, we will hear, "Well, we've already covered that. Let's just delete Section 4."

Further Discussion

Mr. J. Jackson Ladies and gentlemen of the convention, I'll be very brief because I think that the opponents of this amendment, particularly Mr. Avant, as usual before I get up here, somebody really brings out the point and crystallizes it. But I'd like to suggest and raise my comments to the opponents of the amendment. I think I understand that the words "substantial" and "procedural" are very ambiguous. My suggestion is that if it's ambiguous, we've been operating under those terms, either in the constitution or in the statutes for some time, I want to talk about the issue of flood protection. I just feel that Section 4, as been mentioned, provides those persons, provides all of us, cause I think we all are concerned about flood protection. Section 4 provides us with the opportunity to deal with it. People have made reference back to the flood of '27, I want to suggest to you that I personally experienced the flood or the hurricane known... as the result of Hurricane Betsy. On the matter of levee protection, as such, I think I'm not talking, but it's my appreciation, spending some time in St. James Parish, up around there, that when you talk about the levee areas and the land that's around the river, you are basically talking about the most fertile part, or the most fertile lands that are available to farmers, cattle raisers, persons involving agriculture. In the past, there has been some abuse under the present constitution whereby these lands have been taken without one, due process, and secondly, without just compensation. It's my understanding just recently, on the recent flood threat that we had, that levee districts and levee boards are just like the highway department. They can project, over a period of several years, they need a levee protection. So that the question of expropriation, I think it's a relevant question, but at the same time, you can project, particularly with the assistance of the United States Corps of Engineers, what's going to be the various flood levels or flood stages that are anticipated, or pat, or any term in terms of a body of water. Which means that it gives you ample time, it gives the levee board ample time to begin the negotiations for particular properties. I would also say that, in effect, that the constitution provide that government must provide for the general welfare of

the citizen of the state of Louisiana, would provide you with a vehicle whereby, if it became utterly necessary for someone, or some police jury, or parish jury, police jury or government body to expropriate a certain piece of land because of the immediate danger of a flood, then that will provide a means by which you can do it. I would seriously, ask this convention to reject the amendments and deal with this question of flood protection, deal with the question of due process... the question of just compensation in Section 4, as presented by the committee. I urge adoption. Mr. Chairman, if there are no more speakers behind me, I move the previous question. Well, I withdraw it, Mr. Chairman.

Mr. Perez In order that we may properly divide the issues, I ask that the amendment, that I be allowed to make a technical amendment to the amendment which would provide that the first sentence would be Amendment No. 1, the second sentence, Amendment No. 2.

[Motion to withdraw amendment adopted 93-1. Amendment withdrawn and resubmitted with correction.]

Amendment

Mr. Boynter On page 2, delete lines 3 through 5, both inclusive, of their entirety, and insert in lieu thereof the following: "Section 2", and the first sentence only.

Then, Amendment No. 2. Add the following after the words added by the language added by Amendment No. 1, and then add this second sentence.

So it would be drawn in such a way that the question then, and I presume Mr. Perez would call for a division of the question, and you would be able to divide and vote separately on the amendment.

Further Discussion

Mr. Gravel Mr. Chairman, and ladies and gentlemen of the convention, I speak in opposition to the amendments by Mr. Perez. The first amendment would, of course, seek to delete the language that has been prepared by the committee and that has been recommended by the committee, and would, of course, eliminate from that language the requirement that substantive and procedural due process be accorded to every person in the protection of his right. Now, ladies and gentlemen, the suggestion that Mr. Perez made with regard to the flood situation in Plaquemines Parish is just absolutely not appropriate, in my judgment, as an argument in support of his contention. This process that has been held many times has been complied with in case where, because of certain emergencies or necessities, the courts have granted immediately and without hearing, mandatory restraining orders or mandatory injunctions. I don't think that Mr. Perez would have a great deal of difficulty getting some judge to sign a temporary restraining order or a temporary mandatory injunction in Plaquemines Parish in the case of an emergency. Matter of fact, I don't think he's had much trouble getting them to sign them in cases when they weren't an emergency. Now, I submit to you...

Mr. Casey Just a minute, Mr. Gravel, as Chairman of the Convention, I would suggest that the remark is out of order. I would suggest that any remarks by all delegates be on the subject matter with no personal references whatsoever.

Further Discussion

Mr. Gravel Well, I didn't mean that a personal reference. I'm talking about him as a lawyer or any other lawyer that presents to a judge, whether it be Mr. Perez, or me, or Mr. Boynter, or anybody else, a meritorious position for a temporary restraining order, in cases where emergencies do not exist. What I'm saying, and I want to make this point clear, is that the problem that Mr. Perez

present and use just is not one that violate the concept of due process. Now every lawyer I think, knows that we are trying to do, and what the committee is trying to do in this proposal is to make sure that the rights of every individual are fully protected and that both substantively and procedurally the courts will have to act before those rights are deprived from that individual. This is just the fullest possible expression that can be made in this amendment. Ladies and gentlemen, the invention, we've done a lot in the legislative article for the legislators and elected officials. In the executive article we've done a lot for the executive officials and for the governor. In the Judiciary article we've taken care of judges and District attorneys and coroners and sheriffs and assessors and others. Now it's time, as someone has previously noted, to take care of the people, to protect the rights of the people against arbitrary, capricious, and unreasonable action by local governing authorities, by state governing authorities, and by the courts. Now is the time for us to start that process in a Bill of Rights, not a Bill of Rights such as the one that was contained in the 1911 Constitution that didn't even provide for an equal protection clause for the citizens of this state, but a Bill of Rights that is full and fair and equitable and just for all of the citizens of the state of Louisiana. I submit to you, ladies and gentlemen, that there is going to be, and I am not accusing Mr. Perez personally of doing it, but there is going to be a plan, a studious effort to try to chip by chip, break away this block of rights that has been concocted and composed by a committee that has heard hundreds of witnesses that have worked with the staff for hours and days, weeks and months, and there is going to be an effort to try to undo what I believe is a great basic article. I submit to you that, on the outset, on the principles that mean so much to the people of the state of Louisiana, to all people, that we don't permit this process of erosion and chipping away to start now, because if it starts now, we are going to see a flood of changes that will take away from the people those rights that this article, I think, guarantees to them. I strongly urge you to vote against the amendment. As far as the second amendment, Amendment 2, now that that matter has been divided is concerned, that argument, if any, can and should be made under Section 4. It's confusing to bring it up now, and I suggest to you that it should and must be amended. It's not ... It's not going to be laid before you, it can be considered under Section 4, but it certainly does not belong to be considered here. I do support the action of this committee, and I urge you to defeat the amendment.

Further Discussion

Mr. Drew: Mr. Chairman, ladies and gentlemen of the convention, I certainly would not take issue with the member of any committee in supporting their committee proposals, and I do not do it at this time. But I certainly take issue with the attitude that has developed on this one proposal that we are dealing with a perfect proposal that should never be amended. Let me remind the members of this committee to make a few of them have taken the attitude that does not belong to be considered. I don't think a proposal prepared by a few human beings, what I violently take issue with is the positions and the remarks made during the debate on this section that every amendment offer has some sinister motive. It's strange that these sinister motives didn't appear on the other three amendments. But, as I said, if you do not agree with this committee proposal, there is time during the session in your amendment. I violently take issue with that statement. Mr. Roy is going to tell you how, and apparently he must have made a survey of the state of Louisiana, the little man who discovered the value of his property. Let me tell you that you gentlemen that didn't get into Mr. Roy's statements in the parish of Webster when you came through there, the landowners that

were pressed and had their land taken by this thing— if they were paid on an average of a thousand dollars an acre, and ladies and gentlemen, let me tell you, there was not and had not been one acre of farmland in the parish of Webster since its beginning that ever sold for a thousand dollars an acre, and it's not selling for a thousand dollars an acre today. So, don't you buy the fact that our courts are depriving the people of their land rights. They have their lust rights. I am not going into a lot of detail about this amendment. I am going to support both amendments because I think it's good. I think it says what should be said and nothing more. You'd better stop and think awhile. This is serious business, this Bill of Rights, and you'd better see if you can find out what rights are as they were laid in the committee proposals. They say they are rights guaranteed by the constitution. Are they rights granted by the legislature? What are rights? How far does the mere word "rights" go when you're talking about them in this connotation? Now they have told you time and time again from this podium that everything is going to be used in Section 4, ladies and gentlemen, if we adopt Section 4 as written, we may as well go home. Because, in my humble opinion, I think it is the most abuse that I have ever seen, and when we are talking about personal rights, you get up here and it's like talking about motherhood. But gentlemen, Section 4 does not remedy this. The things that have been put in about Section 4 have been primarily taken out of context, and you can not take a section, a portion of a section, and lay this remedy the whole thing. You have to take the section in the context in which it is written. My primary purpose was not to discuss the amendments that were offered, but to remind you, ladies and gentlemen, that this proposal was submitted by human beings and can be improved upon. Thank you.

Questions

Mr. Burson: Mr. Drew, as a lawyer with many years of experience, are you aware of any other use of the term "substantive due process" in American law, other than its use during the 1940's and 50's to strike down state laws on minimum wages and child labor and other progressive legislation?

Mr. Drew: I would have to agree with that statement. Mr. Burson, and I think the use of the term "substantive" and "procedural" in the committee proposal is absolutely useless and should not be in there.

Mr. Roy: Mr. Drew, isn't it a fact that it is not a federal project?

Mr. Drew: That is correct.

Mr. Ro: The citizens of Webster Parish not compensated adequately because once again the federal government had to do it. Isn't that ...

Mr. Drew: The federal government had nothing to do with it. The entire right-of-way was acquired through the late courts of the State of Louisiana.

Mr. Roy: Isn't you know that the federal highway program provide that they will even lay off the payment of some poor store owner or some owner whose house they expropriated. Mr. Drew?

Mr. Drew: I'm not talking about some highway. I'm talking about open farmland. Mr. Roy.

Mr. Roy: Isn't it a fact?

Further Discussion

Mr. Chase: Mr. Chairman, ladies and gentlemen, I delegate to this proposition, we have here one of the most serious bills that have ever been introduced since before the passage of the amendment, not because it is introduced by Mr. Roy, but because of

you attempt to insinuate, or not because I am necessarily in opposition to what the committee has composed, put before us. But I am in support. Neither am I in support of the amendment simply because it deals with the Constitution of 1921, because I am an advocate of change. But I am not prepared, I am not prepared, and the people who sent me here are not prepared, to go forward with changes which the people who appeared on this podium were not able to explain to you just what they meant. We asked them, "What do you mean by other rights without substantive and procedural?" They said, "Well, we don't know, but possibly some rights in the future." While I am for change, I am not ready, and I cannot justify change which is unexplainable to the people who sent me here. For that reason, I support, as much as I can, the amendment that is before us, and I would do so if I were the only person who would do so.

Questions

Mr. Roy Mr. Champagne, I don't want to argue and all that because I see it may be getting out of hand, but do you realize that about twenty-five years ago the vote was called a privilege and people had the privilege of voting? Do you remember when people spoke about the privilege to vote?

Mr. Champagne I understand that, Mr. Roy.

Mr. Roy Do you agree that it is a right in this day and time?

Mr. Champagne That it is a right? Yes, it is.

Mr. Roy Now, don't you agree then that "other rights" can mean those things which today may be privileges may later, because of the value of them, be determined by a court to be a right that must be accorded due process before being removed from the individual just like the vote was?

Mr. Champagne Mr. Roy, if by your questions you would insinuate in the least that I would be against those rights, you know as well as I do that you're wrong, sir.

Mr. Roy I didn't insinuate that. I said, "Twenty-five years ago, didn't people speak of the vote as a privilege and not a right?"

Mr. Champagne I would imagine so. I wasn't here at that time.

Mr. Roy Didn't it later metamorphose, or because of feelings change into a right, and wouldn't the court twenty-five years ago have had to say that we can deny you the privilege of voting without due process of law because it is not a right, but now it would have to say we would have to grant it to you?

Mr. Champagne Mr. Roy, the thing that bothers me is that none of these rights, possible rights, things about which we knew nothing about, were explained to us. We only say we're taking care of something, and I might by further explanation of your question state that I know of nothing in the national constitution that implies that either, but we have certainly got the right to vote.

Mr. Roy Because it became a right after having been a privilege, isn't that true?

Mr. Champagne I would imagine that it became a right after interpretation in which they found no difficulty in interpreting it in language similar to this.

Mr. Roy And perhaps in the future a court could decide that what is presently a privilege, for instance a job privilege, may in the future be a right that would be one of those other rights we are talking about. Wouldn't that be true?

Mr. Champagne Mr. Roy, I have complete faith in the courts, in the legislature and all branches of government.

Mr. Roy So do I. That's why we let the courts decide.

Mr. Willis Mr. Champagne, we are merely playing on words here. A privilege is a right, is that correct? It doesn't reach maturity to the extent that it becomes a right. Isn't that correct?

Mr. Champagne Correct.

Mr. Willis Now, pray tell me, if this decade of men who presented this proposal say it is perfect, how is it come they can't tell us what it means by "other rights?" They cannot define it with fastidious precision.

Mr. Champagne I think because they are a little too futuristic in their writings at this time.

[Previous Question ordered.]

Closing

Mr. Perez Mr. Chairman and ladies and gentlemen of this convention, I think that we have gone around and around on many subject matters which have no real bearing on the amendment before us. I heard, for instance, Mr. Guarisco talking about some poor farmer who was denied compensation as a result of a levee, probably an enlargement. I don't think he probably knows the difference between an enlargement and a levee setback, but those are subject matters which we will get into when we get into the levee proposal. But, let me assure you that some persons on the levee levee problems over these many years, we do compensate our people adequately and fairly for their property taken. In addition to that, no levee is ever moved unless the United States Corp of Engineers comes to the local levee district and says it must be moved. Let's don't be boondoggled by this idea that some of our governmental officials have some ulterior motives. I can assure you that that is not correct... I would also call your attention that one of the opponents of this particular amendment has said that we have got to take care of the people, and that is exactly what I am trying to do with this amendment, is to take care of thousands of people and the property of thousands of people to make it possible for the emergency removal of levees in order to protect the lives of thousands of people. Let me suggest to you that all that we will be doing if you adopt the first amendment will be to delete the words "or other rights" and the words "without substantive and procedural due process of law". I would like to call to your attention, and I hope I have your attention. This is the report of the committee, and the Bill of Rights committee says this: the term "taking" is to apply to both expropriation and appropriation so that appropriation would no longer have a special status in Louisiana law. I ask you who is trying to pull what over whose shoulders is submitted to you, ladies and gentlemen, that if we adopt the first amendment, which I have offered, that is, the first sentence which says that "no person shall be deprived of life, liberty or property except by due process of law." If that amendment passes, I will withdraw the second sentence so that we can take it up in Section 4 to meet the objections posed by many of the persons who claim that they are getting into the territory of Section 4. I therefore, urge you to adopt Amendment No. 1. I answered many, many questions when I was up here before. I think that we have discussed this subject matter ad nauseam, and I will not yield to the question for that reason.

[Division of Revision of Statutes, Amendment No. 1 revised, Re-ordered with 1st Amendment, Amendment No. 1 adapted, 60-51, Not in

Personal Privilege

Mr. A. Lanier: Mr. Chairman, ladies and gentlemen, I simply rise for a brief moment to assure the members of this constitutional convention that while we have had exuberance expressed by members of the Bill of Rights and Elections Committee, I hope that I can convey to you that there has never been any intention on the part of any member of this committee to even suggest that we ought not to debate, that we ought not to accept amendments, that we ought not to consider the valid judgment and wisdom of members of this constitutional convention. I think it is important, as chairman of this committee, that I say this because I have heard it expressed about two times, and it grieves me very much for members to feel, by way of the questions and by way of the strong feelings that have been discussed, that there is some intention or some conspiracy or plot to prevent members of this convention from giving full attention to the very important decisions that are being made. Secondly, I heard someone express the feeling that the members of this committee felt that we were perfect. No mortal is perfect. No human being, a part of this convention, can pretend or can ever say that they have reached a degree of perfection that cannot be improved upon by the collected genius and wisdom of this convention. I wanted to say to you out of the fullness and deepness of my respect for all of the people of this convention, no matter what your persuasions are, that I respect your opinion, that the members of this committee respect your opinion, and that we intend, and that as far as I can do anything about it, we will give full attention and honor the wisdom and judgment of all of the people who offer suggestions to these proposals that we have presented by way of questions and by way of this Declaration of Rights Article.

Previous Question ordered on this Section. Section passed; (09-1. Motion to re-consider tabled.)

Recess

Quorum Bill: 102 delegates present and a quorum. Motion to revert to Section 1 adopted.

Amendment

Mr. Poynter: What we have before you are the two Lanier amendments and what Mr. Lanier has done, rather than voting separately on two amendments, he has requested a technical amendment to be added to his first amendment which would consolidate the two of them. So you have one set of amendments there which read, Amendment No. 1 [14 Mr. Lanier], on page 1, line 12, after the word "inalienable" and before the word "and under circumstances as prescribed by the state. He has made, as Amendment No. 2 to the same set of amendments, the other Lanier amendment which add the same language. Amendment No. 1 on your sheet now become Amendment No. 2, on page 2, line 1, after the word "inviolable" add the words "by the state"

Explanation

Mr. Lanier: Mr. Chairman, fellow delegates, as you will recall, during the discussion of this section, the question was brought up as to whether or not the term "inalienable" and "inviolable" was intended to mean that an individual could not intelligently waive a certain right under circumstances as prescribed by law. For example, in many circumstances in court, a defendant may wish to intelligently waive his right to a trial by jury, and prefer to be tried by the judge. In order to make it absolutely clear that what we're talking about here is that these rights cannot be violated by the state, I've added in these two amendments to clarify

fy this point. With this amendment, it became unnecessary to have Mr. Arnette's amendment, and I have been authorized by the Chairman of the committee to advise you that the committee has no objection to these amendments, so I think it's a pretty clear thing and I would move the adoption, Mr. Chairman.

Questions

Mr. Zervigon: Mr. Lanier, in Section 1, the final sentence would then read, if your amendments were accepted, if I'm correct, 'the right to enumerate in this article are inalienable by the state and shall be preserved inviolate by the state'?

Mr. Lanier: Yes, ma'am.

Ms. Zervigon: What is the phrase, "the right to enumerate in this article are inalienable by the state", mean? Does that mean the state cannot alienate the rights of the people?

Mr. Lanier: The state is incapable of alienating, surrendering or transferring these rights. I had these words looked up in the dictionary to make sure of their meaning, and if we didn't make it clear that it was intended to apply to the state, it could be construed to mean that an individual could not waive these rights intelligently under certain circumstances which would cause a great deal of problem with some of the other rights that we're going to be dealing with later on.

Ms. Zervigon: Then, when you continue and say, "and shall be preserved inviolate by the state", that puts the duty on the state to make these rights... to have these rights preserved inviolate"

Mr. Lanier: That is correct.

Ms. Zervigon: Thank you.

Mr. Jenkins: Walter, the thing that occurs to me, in our consideration of this Bill of Rights and other Bill of Rights, is the fact that we're dealing in this Bill of Rights with state action. We're talking about preventing the state from abridging certain rights. We're not dealing with individuals abridging one another's rights. That's dealt with in our criminal law. Isn't it really unnecessary to say that these rights are inalienable by the state, since that's what this whole Bill of Rights is about, what the state may or may not do

Mr. Lanier: Quite frankly, Mr. Jenkins, it's my feeling that this language is unclear as it presently exists, and some of my fellow delegates feel the same way and that's why I was constrained to put this language in to make it absolute, clear about which we speak.

Mr. Singletery: Mr. Lanier, under your amendment, could individuals alienate their rights while the state could not?

Mr. Lanier: Yes, if they do it intelligently and in the manner prescribed by law. I think the waiver of trial by jury is a classic example of that

Mr. Pugh: How did you define "inalienable"?

Mr. Lanier: Inalienable, in Webster's Seventh New Collegiate Dictionary, means incapable of being alienated, surrendered, or transferred

Reading of the Section

Mr. Poynter: Section 1. Right to individuality. Dignity. Section 1. No person shall be denied the

equal protection of the laws nor shall any law discriminate against a person in the exercise of rights on account of birth, race, age, sex, social origin, physical condition, or political or religious ideas. Slavery and involuntary servitude are prohibited, except in the latter case as a punishment for crime".

Explanation

Mr. Roy May it please this honorable convention. More than two thousand years ago, in book four of "The Politics", the world's greatest philosopher, Aristotle said, "if liberty and equality, as is thought by some, are chiefly to be found in democracy, it will be best attained when all persons alike share in the government to the utmost". Notice, Aristotle did not state, "when all like persons", but "when all persons alike share". For eighteen hundred years man anguished, suffered, fought, and was oppressed by sovereigns, until 1789, a group of daring, intelligent, and mostly God-fearing men, met in Philadelphia, and confected a document which said, "that all men are born equal and endowed by their Creator with inalienable rights", among which was the pursuit of happiness. Yet, as idealistic as this group was, still to adopt the constitution of the United States of America, certain men were referred to as chattels, and thus arose the three-fifths clause. Others, women and children were never considered as having basic rights except those specifically granted. Seventy-odd years later, this great nation was locked in a Civil War testing the validity of the doctrine of slavery, acquiesced in the constitution of the United States of America. This war resulted in the Fourteenth Amendment which gave equal protection to all men. Nevertheless, still certain segments of the population remained unequal even with respect to basic democratic rights, such as suffrage, until the early 1900's when the Nineteenth Amendment to the United States Constitution was adopted. Still there remains the invidious discrimination for unequal protection of the laws in our great state. Today, I ask you to change this idea or notion of discrimination. Not as some intellectual far-out forebears, but as a citizen, born, nurtured, reared, and educated by our schools. Not as a sanctimonious know-if-all, but as an honest, dedicated man who, but for his Cajun accent, has never felt the pains of discrimination, and who abhors arbitrary standards of all discrimination. Nor am I too proud to tell you that only last night, for the first time in years, I fell on my knees to ask guidance of a divine wisdom, much greater than mine, to fully explain this great section.

What do I ask? Only that you treat, and really read and consider what we have written, that no person will be denied the equal protection of the laws of this state, or subject to the whim or caprice of its state law or conduct, because of birth, race, age, sex, social origin, or physical condition. In layman's language, this section simply means, that if a person is denied the equal protection of, or is discriminated against, by state law or conduct, based on arbitrary standards, that law will be stricken down. It does not mean that no law may be enacted which treats these categories equally, but that all laws must be reasonable with respect to any discrimination imposed upon any person of this great state. Legally, it merely shifts to the state, the burden of proving that if a law or policy is discriminatory with respect to any of these categories, the state must prove that the basis for the discrimination is founded on reason. Are we asking so much? I think it reasonable to say that if you, the state, choose to discriminate against me, there must be a reasonable basis upon which the discrimination lies? We think not. You may inquire, does there exist a need for specifically setting forth these classes as we have done? We believe there is, for two main reasons. First, the federal courts have failed to apply the Fourteenth Amendment to all of these classes. Two millions have been, are now, and will continue to be denied equal protection of our laws. Second, we

believe that our great state should lead our own citizens to a new, politics in which we recognize the sacredness of the individual without the necessity of federal intervention, and that our great courts should interpret our new ideals of equal protection. Surely there will be questions of interpretation which will necessarily follow this section, and all sections and articles of this new constitution, but our courts will interpret our state constitution. We're on the threshold, finally, of forging an instrument which, for our citizens, may result in all persons sharing alike in liberty and equality of this democracy, as Aristotle stated. Let us not fumble this great opportunity to fulfill that ideal. Let us adopt this section in toto. I have lived with this section for five to six months. If you have any questions, I certainly will be happy to answer them.

Questions

Mr. Munson Mr. Roy, I assume you had this epistle placed on our desk from the Yale University Law School.

Mr. Roy Which one? There are two, Mr. Munson? I have one...

Mr. Munson It's addressed to you.

Mr. Roy Yes, sir, I did.

Mr. Munson Do you realize that I, and I believe some others, could really care less what the Yale University Law School thinks about the Equal Rights Amendment, or any other subject matter, for that matter?

Mr. Roy I agree with that, Mr. Munson. I'm not saying that I think you're right, in making that statement, but I put this letter out because the opposition to this amendment voiced by some female groups, was that the Yale Journal specifically raised all kinds of horrible issues that could arise, and that was the reason I wrote the Yale Law School and for no other reason. I'm not trying to influence you by any Yale thinking. I'm trying to influence you by my thinking, as a Louisianian.

Mr. Rayburn Mr. Roy, I can thoroughly understand where it says "no person shall be denied the equal protection of the laws, nor shall any law discriminate against a person in the exercise of rights on account of birth, race, age". We have in this state a law that says "you cannot be a law enforcement officer if you are over the age of thirty-five". What effect would this language have on that? We also have a, more or less, I don't really know whether it's a law or not, where if you're over fifty-five, you can't work for the highway department, where you're out there mowing the grass, where you're an employee of the state. What effect will this language have on those provisions that we now operate under in this state?

Mr. Roy Senator Rayburn, it'll have none unless the provision or the law is unreasonable and arbitrarily discriminates. Now, let me go one step further. If J. Edgar Hoover, of course, was the chief law enforcement officer in the United States for many, many years, would not have been eligible to serve as a police chief, but in my opinion, a thirty age may be discriminatory. I don't know, but it would have... it would simply shift, Senator Rayburn, the burden of proof from the individual when he shows that he is discriminated against because of an age factor that has nothing to do with the job. It would simply shift the burden to the state to show that that age factor was a legitimate consideration, and if it showed it, then the law, of course, would be constitutional.

Mr. Rayburn Would that mean, Mr. Roy, and I don't see any of the "thirty-five" group in it, that this language I've just read here, would that mean that if I'm forty-five years old and I'd like to

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be a state politician, I would go hire me a lawyer and go to court to see whether or not I'm capable of fulfilling that position.

Mr. Roy No, sir. Senator Rayburn, it doesn't necessarily mean that, but certainly you would have the right to at least try. You know everybody has the right to bring a lawsuit, but I would think that an age limit of forty-five to become a state trooper is a reasonable exercise of the legislative power and would not be stricken as unconstitutional.

Mr. Rayburn What about a person that, say, was over sixty-five? Would they be acceptable for state employment where now they have a rule that if you're over sixty-five you're not acceptable?

Mr. Roy No, sir. I don't think they would be. By the same token, I don't think that people who are over fifty, if the state passed a law and said anybody fifty or older can't work, I don't think that would be constitutional.

Mr. Rayburn What about where we just passed earlier, where a judge has got to have mandatory retirement at seventy? Could he come back in and get a lawyer and go to court and say he wanted to serve until he was eighty?

Mr. Roy No, sir, for two reasons. When the judge takes the position, or runs for the position, he runs with the tacit contractual agreement that he will abide by rules. Secondly, retirement systems are basically fundamentally correct, and as long as the age factor is not discriminatory, one that is reasonable, he certainly would be bound by it.

Mr. Rayburn Mr. Roy, I'm not an attorney, but I have learned a little in my travels in life, and I'm reading here where it says, "no person shall, and I don't see anything about if he entered into an agreement or knew something was this way or that way. It says, "no person shall." I've always been taught that the word "shall" was mandatory, legally speaking.

Mr. Roy No, Senator Rayburn, that, of course, refers to "no state action shall deprive a person", that "no person shall". In any event that your theory is defeated because a person may waive the right to jury trial and everything else and plead guilty to a crime. Certainly if you followed your logic, you couldn't do that. You may waive certain constitutional rights.

Mr. Burn Mr. Roy, most of my questions were answered in your discussion in answer to Senator Rayburn's question, which brings me down to asking you, why was age included in this?

Mr. Roy Age was included for one primary reason. Mr. Burns, we are concerned with individuals in this state. If you will bother, not you personally, but if you all will bother to read the situation of the elderly in this book that was put out by the state, you will be appalled at their circumstance. I merely say this, Mr. Burns, that every citizen is entitled to be discriminated against, on a reasonable basis. Age is not a reasonable basis unless the legislature or the state shows that it is a fair consideration. Suppose, fifteen years from now, the legislature says no person may work for the state who is fifty years of age or older. I think that we should have some protection via that the courts may look into it and decide whether that is reasonable or not.

Mr. Burn Let me ask a question, a hypothetical question. Let me ask you, I understand how it would work in certain instances. Let's leave the state out of it. Suppose a big old overgrown seventy, you're fifty-five either, say fourteen years old, would you go to a person and apply for employment, and he said

Mr. Roy No to a person or the state

Mr. Burns No, to a private individual

Mr. Roy This deals with state action. Mr. Burns, I'm not going to be caught in the other trap.

Mr. Burns In other words, it doesn't apply to any private employment, just state?

Mr. Roy No, sir. State action alone

Mr. Burns Then as I take it, the question that I'm going to ask, maybe is covered by your answer to Senator Rayburn's question with reference to highway cops and so forth. Would this section have any bearing or effect on our present child labor laws?

Mr. Roy No, sir, Mr. Burns. You know full well that the idea of the state in dealing with minors in the police power of the state is paramount even to that of parents, and it does not affect the minority age. It deals only with adult age, majority? That's where it deals.

Mr. Roemer Chris, would you address yourself to the problem of the enumeration of these rights, so-called, versus the cutting off at line mine and just to exercise of rights? Why do we have to enumerate these various rights?

Mr. Roy We feel that we have to enumerate the various rights because we think that our citizens are entitled to have our court protect them in the future. It's been too many times that even the Supreme Court of the United States has dodged the issue with respect to equal protection. We want to make sure that our justices can clearly understand that when you're going to discriminate, when the state will discriminate against a person for any one of these categories, then the state must show a reasonable basis for it. We consider that even for the physical condition. Why should there be a law that prevents a physically handicapped person, who's a computer genius from working for the state of Louisiana, because he's crippled and can't walk? That's the reason why we consider those categories. We don't want the courts to be confused anymore.

Mr. Roemer Alright, but then would you go further and address yourself to the dangers, having once enumerated certain conditions, of not enumerating others. There's no mention here of mental capacity, you could go on and on with various dots and dots.

Mr. Roy There's no problem there, Buddy, because we say "no person shall be denied the equal protection of the laws, nor shall any law discriminate against a person." Now, we specify all the categories that we feel very strongly about, that need to be given some addressing to. We have not excluded that a person, other than one of these, may be denied the equal protection of the laws in the first sentence.

Mr. Roemer But Chris, don't you think that we run the danger of setting up two classes of enumerations? One mentioned in the constitution, and another brought before the courts and the court would say, "well, this is not in the constitution", then all of a sudden this is a second class kind of condition, whether it be mental capacity or whatever we're talking about. Why mention them at all, why not put them all in one law? That is "the rights of man", and treat them as one.

Mr. Roy Well, first of all, we considered all that, Buddy. I felt told you why. Because the courts, historically, have said that we don't understand what the Fourteenth Amendment tried to tell us and we're trying to get it straight with respect to these particular categories. That was not the intent of it to those. It just says, "for these 14 categories, if you discriminate, you're out to show a reasonable basis for the discrimination.

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Mr. Roemer In pursuing, Chris, these enumerated distinctions that you have here, would you explain to us why you have "birth" and then "social origin". I'm not sure what...

Mr. Roy I'll be happy to, Buddy. Let me answer you further, because I just thought of the other reason why we enumerated. You see, ladies and gentlemen of the convention, if you're going to just not state the category, then a person who claims discrimination on a basis of any one of these things later on, has the burden of showing that he is in a class that is being discriminated against without that class having been specifically named. Once we name the class, the burden is not on that individual to prove that he is of a class against whom discrimination is being applied, but he simply goes into court, says I am discriminated against, I do fit into this category, and it shifts the burden of proof to the state to show the reasonable basis for the discrimination. Now, let me answer your question.

Mr. Roemer Wait a minute. You just raised another one, Chris. You will admit then, that those people who are not in classes enumerated here, will still have that same burden. You haven't protected them at all, have you?

Mr. Roy That, to the extent that you're talking about, that we haven't enumerated, that's correct. They have the burden of proving two things. The discrimination against them in whatever class they happen to be, and the fact that there is no reasonable basis for it, but we've outlined such broad categories here, that it appears to me that there would be few people who have not been contemplated who would have the double burden that you seek to impose on everybody, Mr. Roemer. Now, let me answer your question about birth. We mention birth because, in the past the state has discriminated against legitimate and illegitimate children with respect to aid to dependent children. We felt that we wanted that clearly understood, that in certain categories, whether you're legitimate or illegitimate should not allow state discriminatory practices against you.

Mr. Roemer What about social origin?

Mr. Roy Social origin speaks for itself.

Mr. Abraham Chris, what would be the effect of this age limit on the juvenile laws? Aren't we discriminating against a nineteen year old by giving the fourteen year old preferential treatment?

Mr. Roy No. We always give minors preferential treatment, Mr. Abraham. In fact, the juvenile courts is a concept that preferentially treats minors, but...

Mr. Abraham But, won't this point knock that out?

Mr. Roy No, it won't, because the state always maintains the right under the police power to deal with minors for their best interest.

Mr. Schmitt There's one thing I don't understand with reference to this restriction on age. What happens in a situation, as an example, on Revenue, Finance and Taxation, we are attempting to create benefits for people who are sixty-five years of age or older, greater than those who are under this age. Now, it seems to me, by the passage of this section, you will not allow us to do that. You will prevent us from granting people any type of preferential treatment due to their age, and it just seems to me to be adverse to the interest of this special group of people.

Mr. Roy It is absolutely not. As long as you treat the category, and there's a reasonable basis for it, you may do so.

Mr. Schmitt What's the reasonable basis of the majority age of sixty-five?

Mr. Roy For instance, income tax is discriminatory to the extent that on the basis of the amount of money you earn that you can be taxed at different rates, and there can be certain provisions made for certain people who have certain special categories. There is nothing wrong with a reasonable law passed which does not arbitrarily discriminate.

Mr. Schmitt But, is this in the Federal Constitution, that you can't discriminate against a person based upon age?

Mr. Roy No, Mr. Schmitt, we're trying to write a Louisiana State Constitution...

Mr. Schmitt Well then, you can't use a Federal example then, if it's not in the Federal Constitution - your basic premise. Is that correct?

Mr. Roy No, the Federal Constitution of equal protection is the same as this, only we have specified some of the categories.

Mr. Schmitt But you have put age in here...

Further Discussion

Mr. De Blieux Mr. Chairman and ladies and gentlemen, I rise in support of the section as it is now except for one small objection. I have an amendment prepared for that and that is I would just like to eliminate the word "age" out of this section.

I want to compliment the committee that drafted this particular section of our constitution. I think it's a step in the right direction and something that we have needed for many, many years. I think we are past the age of discriminatory practices based upon race, creed, sex or color, previous condition of servitude or whatsoever. I think it is about time that we get into the twentieth century, for the rest of the country and the rest of the states of our union.

And I ask you when that comes up to only delete the word "age" out of there. And my particular reason for that is because we do have a lot of laws based upon age and it's a reasonable basis and classification. Now, for instance, I know that we are coming up in the Revenue and Taxation with a provision to give an extra homestead exemption to those in excess of sixty-five years of age. If we leave this particular provision in the constitution, I think it can be attacked by those under sixty-five on the basis that they have been discriminated against.

And for that particular reason I ask you to adopt this section with my amendment deleting the word "age", because we do have ages in our statutes in a lot of respects, there were classifications as it is written except for that particular provision.

Questions

Mr. Avant Senator De Blieux, as I understand you stated that you are for the section as it is written if we just take one word out and that is "age".

Mr. De Blieux That's right. The rest of it I can agree with wholeheartedly.

Mr. Avant And you stated, also, that your reason for that was because we had many laws on the books where classifications, based upon age, were in the law.

Mr. De Blieux That I thought were reasonable, yes

Mr. Avant That you thought were reasonable.

Do you not also agree, though, that there could be other laws where there were classifications, based on these various criteria contained in this section that would be reasonable. And to give you

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in outstanding example, a law which provided that a bus driver had to be able to see and could not be held liable would be a reasonable law, wouldn't it?

Mr. Je Blieux: Mr. Avant, I don't see any other classifications that could create as much unreasonableness as the one that I have named. I feel like.

Mr. Avant: We have one in here on physical condition, do we not?

Mr. Je Blieux: That's right. Their physical condition is in this. But I think that in that particular case where the individual has to be able to prove that he was able to do the job....

Mr. Avant: All right, now. Don't you think that a lot of this discussion that we are fixing to get into, and a lot of the heat that we may generate here, could be eliminated if we simply added three words to the 8 of this section so that it will read, in part, "nor shall any law unreasonably, arbitrarily, or capriciously discriminate against a person in the exercise of his rights on account of these various criteria...."

Mr. Je Blieux: That might be true except that I think it would open the gate to a lot of discrimination which we are not seeking, based upon those three words.

Mr. Avant: Even though the law, the constitution, specifically said you couldn't do it unreasonably, arbitrarily or capriciously, you could still do it, in your opinion.

Mr. Je Blieux: I think that much discrimination we.... was not reasonable.

Further Discussion

Miss Perkins: Thank you.

Mr. Chairman, ladies and gentlemen of this convention, I rise in opposition to the committee proposal. This decision was a hard one to make and it was one that was long thought out. It has been said that a woman preaching is like a dog walking on its hind legs.... can't do it well, but you're surprised to see it done at all.

Seriously speaking, I would like to preface my comments with this, that I have the utmost respect for the ladies of this convention and each and every lady present in this audience. I do not wish to discredit them or their cause in any manner. However, I do feel that I am proud to be a woman and that I represent all women, all women who have taken initiative and that includes each and every lady present in this convention hall today. You have taken initiative, you have taken a position and for that you have my utmost respect. And I hope that whether you agree with my position or not, you will at least give me similar respect because I, too, have taken a position.

I would like to point out that I was elected to this convention to represent individuals. I was elected by individuals, not just women, even though women composed a part of the group that elected me to the convention. I, personally, am an individual, not a women's libber, even though I certainly agree with the goals of women libbers. I voted early in this convention to mandatorily force women to serve on jury duty. I did this after much deliberation because, as you know, today, as the law is in this regard, they could serve upon sitting in written request.

But I felt that it was a citizen's duty and that the defendant had a right to a cross-section of members that served on the jury that tried him. Therefore, I voted against the privilege that had previously been granted to them.

I rise in opposition to this particular amendment and I humbly beseech you to listen to the reasons why. First of all, let's consider carefully the possible effects of this provision. We have certain labor laws which discriminate, if you will, by providing a privilege for women. It puts them in

a more favorable position in which the work of greater concern are the laws affecting the family, law such as the rights and obligations between spouses. First, there is a duty to the husband to support his family which includes his wife. We would possibly be eliminating the original reason for alimony. In addition, women are given custody, a woman's separate life between the time of separation and the time of divorce, and the alimony is set at the standard on which she is accustomed to being supported by her husband.

If we adopt this position, we would lower the standard by which she currently receives alimony. Alimony after divorce would probably be eliminated totally because we would be putting a total mutual support provision in our constitution. Right now, under law, the mother of those children is entitled custody of those children unless she is proven unfit, which is a very hard burden to carry. Ladies, we will be taking this from our mothers. We will be giving the fathers an equal opportunity to receive the custody of those children.

Finally, the financial responsibilities of two spouses, two parties that have been joined in marriage. Right now, most of those financial responsibilities fall on the husband. We will be eliminating the privilege that have been given women. Right now a woman's income from her separate property is her separate estate, but yet a man's income from his separate property.... is community property.

I would like to close with this. The reason that I oppose this amendment is, I think federal law has taken care to see to it that there will be no discrimination on job opportunity because of sex.... those inequalities that we have in Louisiana law can be remedied by legislation. Ladies, you have the rights. Don't give away the privileges to those ladies that are less fortunate or less educated. Thank you.

Further Discussion

Mr. Rayburn: Mr. Acting Chairman, fellow delegate, I want to apologize for causing a little confusion a few moments ago. I had attempted on three different occasions to get recognized for the floor. I thought I made it real plain. Maybe I didn't. I have no quarrel with the presiding officer. He has a tremendous job to do, particularly with me and you, and certainly I have no quarrel with him. There was a few things that I did want an answer about and I was unable to get it, that's provided in this particular section. About half the things that we've done since we've been here had provision to the extent if you were a judge, it was mandatory retirement at seventy-five.... seventy, I'm sorry. If you'd pass this, Judge Tate, you'd take a path to uphold the constitution of our great state and you'd never have to resign because you're not breathing, because they can't discriminate against you.

We also passed a bill that said to be a J.A. you had to be a lawyer, had to practice law so long. If you pass this amendment in its.... this section in its present language, that would not hold. We have here a state law that say to be a public officer, you can't be over thirty-five.... well, that would be out.

We have a proposal that was submitted by the committee that said those that are over sixty-five are going to get a few special benefits. The veterans of this state are going to get special consideration. In my opinion, this language will avoid all of that, because you would be discriminating against you and I, if we didn't qualify in accordance with those provisions.

I had hoped to offer an amendment which would legally lay except as otherwise provided in this constitution in the event that this particular section would pass. I can see, here and now, a real job for the law. I can see that if you pass this provision with the language and the substance as they are before us this morning, I'm a pessimist in the ground that I can't look at it, there's not one thing that nobody could do that somebody else couldn't say they are discriminating against

he". They've got physical handicaps in here. I'm one of the best friends they've ever had. We'll get some judges in our great state that's seen fit to say if a painter lost his finger that he held the brush with, he's unable to paint. Couldn't paint no more. Well, I don't believe you could discriminate against him. He could hold it in his left hand. He might not paint as good, but he could still rub it up and down. There is some bad, bad language here, real, real bad in my opinion. And I think it needs a long, hard look at it because you are going far beyond anything that's been done as far as I know in this state, if you adopt this language in its present form. You are really contradicting about half of what we've done here. And if you will think back a little, you'll know I am telling the truth, and I don't think you want to do that.

If you are going to adopt this section, I think you should say, "as provided in this constitution", and not put one provision in there where you've got to have mandatory retirement at a certain age, you've got to practice law so long for you can do this, or you've got to do this or the other before you qualify. I can see with this particular language where I could be tied up in court some six months if somebody didn't want to hire me because I am a pipefitter or if I wanted to go to the medical association and say I got an honorary degree and I want to practice medicine. We'd just go 'round and 'round and you good attorneys would have a good field day, and I'd probably need a job when you got through with me. I just think that this language contained in Section 3 is a little too broad. I think it needs a little more defining, and I hope that some of the amendments that will be forthcoming, I'm sure, will define it.

Further Discussion

Mrs. Warren Mr. Chairman, ladies and gentlemen, delegates, the first thing I would like to take issue with, and it's really not personal. Miss Perkins mentioned something about the lady being a good mother, and I would like to see a good mother have to leave it to the man. I'm going to mention one statement and I'm going to ask her to ask any minister in here about it, because I'm not going to try to tell her. I want her to ask, and all of you to ask Reverend Stovall, or anybody, who Deborah was.

She mentioned another thing about support status. It's all right to have support status in the law is going to carry this status out. If we really had that, we wouldn't have as many children on welfare rolls because their living fathers would provide the things that they need according to their means. But this is just hopes. This is not true.

I have here a state memo number... August 24, 1965 and in it mention "material and identity upon disappearance of father". And I want you to listen at it. Here it says "an acquired mother who contracts a second marriage, to have consent of family meeting to preserve superintendence of her children". Even though a father has left his child and a mother is going to find somebody else that is going to take this responsibility, she has to have a meeting.

Get back to the next topic. A wife cannot appear in court without authority of her husband, although she may be a public merchant or possess her property separate from her husband. I want to speed on over a little bit further and turn over to where it says "a mother or guardian of twenty-one years of age has authority to borrow money, contract debts for her separate benefit, and to grant mortgage on her separate property, when duly authorized by her husband". That's her properties they are talking about.

"A child remains under authority of his father and mother until the majority of emancipation. In cases of differences between the parents, the authority of the father prevails". Does that tell you that a mother has all that right over a child that she has given pain and delivered.

Take a listen at this. "The husband who is a minor can authorize his wife to appear in court

whether she is a minor or of full age. See how much authority goes to law. We are not asking you to give us anything that we don't deserve. I had a little pamphlet put on your desks, I hope you'll read, "An End to Discriminations." I think you ought to read it. These are some of the things that we are thinking about trying to bring out, so you can think about it.

As my closing, and I feel by consent, I would like to tell you a little story and it goes like this. It's a barnyard story many people on a farm are really familiar with. All the cattle and the chickens and the ducks got together and they were playing. So the sheep and the cows and things, they had a fight. So the dog says "why don't you go and take it before the city council? So surely the poor cow goes up to the city council just as fast as she could go. When she got to the door and opened it, she didn't see anything but ducks. When she got back to the barnyard, they asked her, they said, "I know you got justice." She said, "No, I didn't." She said, "When I looked in that council, I knew I didn't have a chance."

I'm saying this, I want you to give us a chance. I don't want it to be this way. I'm not one that is speaking for myself, I represent men and women. All I want is justice. And if I was going on what my husband wanted, he wants what's right. But what he wanted, if he didn't want justice, I wouldn't be here for it. So let's give justice. Thank you.

Further Discussion

Mr. Burson Mr. Acting Chairman and fellow delegates, I rise to discuss the proposal, to share with you a few ideas that I have that might be relevant to your consideration. First of all, let me make it plain that we all have always been an advocate of equal protection of the law. I think it is one of the noblest constitutional principle in our law. I would like to point out to you that under the federal constitutional jurisprudence which defines equal protection of the laws, a general standard would be that all those similarly situated must be treated alike.

Now, this does not mean, however, under the federal jurisprudence, that there cannot be classification. But when the state classifies in a manner that discriminates against a person or a group of persons, under the federal jurisprudence, the state has the burden of showing first of all that the classification that it uses bears a legitimate or reasonable relationship to the purpose of the law and that that purpose is a legitimate public purpose, and secondly, it must show that the system of classification does not violate constitutionally protected rights. So I submit to you that Mr. Roy dealt with the problem in the discussion and introduced the idea that the committee intended that the state should bear the burden if it discriminates. I may be wrong, but it is my opinion that the state bears that burden at the present time under the federal constitution. This does not mean that we do not need an equal protection clause in our state constitution. We do. And I certainly hope that we adopt one whatever form it takes that is needed for some mundane reasons that have been discussed at the platform thus far. Let me give you a practical example with which I am familiar through discussion with a brother lawyer.

There was a law passed in the legislature which differentiated between the rights of used car dealers and new car dealers with regard to the application of consumer credit law that was passed in Louisiana recently. Now, this law, in my opinion, represents the used car dealers to say, "Well, for goodness sakes, there is no justification for treating us differently. We both sell cars. We are similarly situated. And the court said, "Well, that's too bad, but we don't have an equal protection of the laws clause in our state constitution. I think that we should bear the burden if the laws clause, not only for the noble aim that have been discussed up here so far today, but for many more mundane, everyday reasons that we encounter in the law.

The question that seems to be at issue, really,

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person in the exercise of rights on account of race, or religious ideas, leave out the other... I haven't finished, if I have any time. You cannot point out any discrimination against people that are listed here, except in the past there has been discrimination against race and that has been removed. There's been and always will, may be discrimination against religion. If you are going to leave any in, leave just those two... I think the first is the first sentence.

Mr. Casey Reverend Landrum, why do you rise?

Questions

Mr. Landrum Mr. Chairman, I would like for Mr. Jack to explain the word "misfit".

Mr. Casey Well, he has exceeded his time, I'm sorry, Reverend Landrum, possibly you can ask him privately.

Mr. Landrum No, Mr. Chairman, he didn't say it privately.

Mr. Casey I'm sorry, I realize he didn't....

Mr. Landrum That statement wasn't made privately, he has made it openly and I think he should clarify it openly.

Mr. Casey The rules of the convention are at this time, that a speaker is limited to five minutes and I have no alternative but to call time on him, Reverend Landrum. If at a later time, through other questions and other speakers we wish to clarify the point, that can be done.

Why do you rise, Mr. Jack?

Mr. Jack I'm glad to explain anything I said and you gave Chris Roy four extra minutes, I ask that they give me time enough to explain what I think a misfit is.

The term "misfit" has several definitions. The term I'm using it in, is a misfit is a person that does not fit into the orderly proceedings and particularly in with the majority of the people and their feelings. A misfit also, the simple example, is like a misfit on shoes. Now, each of you should not take personal offense at anything I've said, just see if the shoe fits you, that's all you need to do. Thank you.

Mr. Landrum Mr. Jack, now a misfit... what you really mean, I misfit being here, every black person in here....

Mr. Jack, some years ago, isn't it true, when you and many others used to get on the floor of the House and talk about "nigger this and nigger that" that is what you are really referring to when you say about misfit, am I right?

Mr. Jack No, that is not and I ought to.... I'm answering your question, I ought to call you right now what that is, that's not true....

Mr. Casey Gentlemen, gentlemen, turn off the mikes... Gentlemen, you're out of order, both of you. Time is up.

Mr. Kean, why do you rise, sir?

Recess

[A group of men in suits to present and a woman.]

Further Discussion

Mr. J. Jackson Mr. Chairman, ladies and gentlemen of the convention, I am of the opinion that Section 1 will do as happened, bring out the true nature of some of our feelings. I believe and originally I had gotten up here to address myself to the comment, but I think that that matter has been amply dealt with and I would ask, Mr. Chairman, that we move to dealing with the amendment that are being proposed before the House.

[Mr. J. Jackson to present and a woman.]

Mr. Tynette Amendment No. 1 [Mr. J. Jackson] on page 2, delete lines 6 through 10, both inclusive, in their entirety and insert in lieu thereof of the following:

"Section 3. Equal Protection of the Law
Section 3. No person shall be denied equal protection of the laws."

Explanation

Mr. Juneau Mr. Chairman, and fellow delegates, in the past during the proposals which have been before you on the Bill of Rights Committee, I have attempted on each vote to take the issues as they appear, at the request of the committee and I think that's appropriate, but I think now we have reached one of those issues in Section 3. I personally take serious issue with the provisions of Section 3 as it's written. To me the real blood and guts issue of this convention or one of the true blood and guts issues; we're going to have to deal with at this time. I know of no more important or emotional issue than the one that's presented in Section 3. I think it's appropriate to discuss what we have now in the State of Louisiana, nowhere, nowhere, in our present constitution is there an equal protection clause. The committee section provides for such a clause and I agree with that language, I think it's needed, and I think it's necessary. It's at that point when I cease to agree with the committee. This is the problem that's created when the committee went on, it provided for an equal protection clause. As you will know as the proposals you have before you, it goes on to provide that nor shall there be any law discriminating against a person in the exercise of his rights on account of both race, age, sex, social origin, physical conditions, or religious or religious ideas. I think that's what we ought to examine that language. It means to me that you cannot enact a law which makes a distinction between persons of different ages, this means children, middle age or elderly persons - to me, serious questions are raised. If you wanted to provide legislation which would give benefits to the elderly alone in law, say to me, serious questions are raised if you did not give to the children the same laws and provisions which you gave to their parents. Some may say that this is not a correct interpretation. They say we can have reasonable classifications. My simple answer to that is, it doesn't say that to me. When you are writing a constitution, you better be clear and you better state exactly what you mean. Let's talk about the additional language. Let's talk about that one word in the section which has received as much attention as anything that we have faced thus far, and without biting on the word, the word in the provision is "sex". In me the insertion of this one word in our constitution would prohibit any law, say a law that would distinguish between a man and a woman. Each of you should have received from the staff a summary of the provisions of the Louisiana Civil Code, which show where distinction is made between man and wife. I implore you to look at those provisions and look at them closely. If you want to wipe out all of those provisions, then you would favor the proposal of the committee. On the other hand, if you agree with many of us that some of these provisions are good provisions, then I submit that you should vote for the amendment. Let me get a little more specific, Article 160 of the Louisiana Civil Code provides that a wife who does not have sufficient means for her support, can get a loan from her husband; I personally want to retain that right for the women of the State of Louisiana. I have been lobbied and lobbied hard and the argument or one of the arguments I have heard for the inclusion of that particular provision has been, under the Louisiana law a man can sell the community property without the consent of his wife. I think the point

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It well-taken, the problem might should be solved... but the problem is that... a statutory... can be cured by a... of the law... subject to you... let's just try to solve all of these isolated problems by a sweeping constitutional provision... What you would be doing, would be destroying all of the rights that may be given preferential treatment in this state historically or otherwise to the women. In closing and to get specifically with regard to the amendment... have before you which was ready... very simply provide... that no person shall be denied equal protection of the law... Let me tell you in closing that the United States Constitution in Amendment Fourteen provides that no state shall make or enforce any law which would deny to any person, without its jurisdiction, the equal protection of the laws and that's all it says... I submit to you that we have lived well and lived long under the provision of the United States Constitution since 1868... We know what it does, and we know what it means... My amendment is simply the same thing as the Federal Constitution... What I am asking you, is to adopt a provision which is equally applicable to all, all people be they women, be they men, be they white, be they black, be they Jew, or be they... What I am asking for you is equality as established under the law with no ambiguity with no constructions as to what is reasonable, arbitrary or otherwise... I submit to you that we do not have such a provision as our law... I submit to you it's a provision which should be enacted into law and I plead for your favorable consideration... I will yield to questions, Mr. Lanier.

questions

Mr. Lanier Mr. Juneau, you've indicated in your argument that you feel the committee proposal as presently drawn will do violence to some of our statutory law, is that correct?

Mr. Juneau Yes, that's absolutely correct, sir.

Mr. Lanier What in your opinion would be the effect of the committee proposal on the law in the State of Louisiana, I think it's Code Article 2318, that says that a father is responsible for the torts of his minor children?

Mr. Juneau I would seriously doubt that that provision would be in effect, if you would pass the committee proposal.

Mr. Lanier What in your opinion would be the effect of the committee proposal on the law that says that the father is the administrator of the estate of his minor children?

Mr. Juneau I think we would be left in the situation of having a fifty, fifty vote on who is the administrator of the estate, Mr. Lanier. It would, frankly, leave it up in the air as to what it would do.

Mr. Lanier In your opinion, what effect would the committee proposal have on the rights of minors with reference to contracting and handling their own affairs and personal liability?

Mr. Juneau My own personal opinion would be that it would raise any distinctions in that regard and they would have that capacity.

Mr. Zervigian Mr. Juneau, I'm interested in the intention behind what you are suggesting because I would like that in making to make a great deal of difference later on. Is your intention to leave intact law which do discriminate between men and women?

Mr. Juneau It's my intent, Mr. Zervigian, to provide for men and women both equal protection laws, but as these cases where a reasonable... distinction can be drawn, I don't want to do violence to that kind of law, I don't want to prohibit that.

Mr. Zervigian Will, on one of Mr. Lanier's ex-

amples, for example, that requires that the father be the administrator of the estate as provided in the will, should the father be a man who can't support high enough to court his family and then the mother be a person who is expected to do that, that law would still stand under your amendment, that's your intention?

Mr. Juneau My intention would be, Mr. Zervigian, that the problem, if you're concerned with that problem, could very easily be solved by a legislative act. It would make detailed provisions in the event the father was unable to serve as administrator. I just don't think we ought to be inflexible enough to put that kind of kind of authority in a court system. I recognize, I have had personal cases where that kind of situation has come up and it's been a problem, but I think that would be a matter that would properly address itself to a legislative act, and I see no reason why it could not.

Mr. Zervigian But you do favor the legislation being able to discriminate on the basis of sex, being able to discriminate on the basis of sex... it's supposing that somebody came and asked for one of those laws to be overturned.

Mr. Juneau If there is a reasonable basis for that conclusion, yes, Ma'am.

Mr. Zervigian Thank you.

Mr. Roy Mr. Juneau, I'm a little confused as to your background on case histories, are you familiar with Reed vs. Reed, a United States Supreme Court case involving the issue of whether a male or female would be favored so low as the administrator of an estate?

Mr. Juneau I've read the case, yes.

Mr. Roy Do you know that that case was decided by the United States Supreme Court and it said that "a state law which arbitrarily says that a male is favored as the administrator over the estate of a child over a female of equal rank is unconstitutional and a deprivation of equal protection of the laws?"

Mr. Juneau Where is that, Mr. Roy, and in further answer to the question as I said, if something of that nature is unconstitutional, if it is a problem, it can simply be corrected by legislature.

Mr. Roy No, it can't, don't you understand that the issue is that the law which says that is on its face unconstitutional because it should be on the basis what is the best interest of the minor and not whether it is a male or female who serves as his administrator.

Mr. Juneau My answer to your question is, Mr. Roy, you are left with one or two alternatives. You are left, if you want a sweeping provision as you would have in the committee proposal, abolishing any distinction whatever hereafter, with regard to sex, or do you want to have, as we have in the Federal Constitution, a provision with regard to equal protection of the laws. I think that if left with that choice, would have the latter we've lived with since the 1860's.

Mr. Roy I don't think that it is what we want, but in any event, do you realize that if the twenty-seventh Amendment to the Constitution is adopted, a proposed amendment in this form, that all of your problems about changing the male children will depend upon that state case 1971?

Mr. Juneau I'm aware of that, and I'm aware that the vote was in the Louisiana Legislature on that amendment you talked about in the last session.

Mr. Roy I understand, but if it is passed and if it has been adopted by this state and seems as if we've made, we would be able to put our people in

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the sand and say we're not going to abide by it, will we?

Mr. Juneau Mr. Roy, I'm not trying to stick my head in the sand, if I was, I certainly wouldn't have filed this amendment, I can assure you that.

Mr. Roy Isn't the notion of alimony, Mr. Juneau, reciprocal by virtue of the contract of marriage, and the husband owes support to the wife, as well as the wife to the husband?

Mr. Juneau I think that under the provisions of Civil Code Article 160, it makes it very clear what the implicit right a woman has and the presumption she has under the Louisiana law. I think, Mr. Roy, in further answer to your question, if you were to pass the proposal as you have it, I think it would amount to a complete annihilation of that presumption a woman now has under Louisiana law.

Mr. Roy You don't think that when the parties enter into a voluntary contract of marriage governed by the state which says that their reciprocal rights of support, that it is binding on both, is that your comment to this delegation?

Mr. Juneau You are talking about the matrimony rights or alimony rights?

Mr. Roy The contractual rights which flow from marriage, a wife can owe support and alimony to a husband who is necessitous of the circumstances and unable to care for himself, don't you realize that, Mr. Juneau?

Mr. Juneau I realize that, Mr. Roy, and the point I'm making to you that under the provisions of the Civil Code, though it makes it very clear that the explicit and adherent rights of a woman are set forth in statutory law. I think we would put into contest the effect of that provision. I might further answer your question, Mr. Roy, it troubles me greatly if a man and woman were married at age twenty-four, both college graduates, and they made the determination between the two of them that the man would work and the woman would raise the children, she would not work for twenty-four, twenty-five years and at some later date she would run the risk of not being able to draw alimony, that concerns me greatly.

Mr. Roy Do you think that any law that would be passed that said when spouses contract marriage, that they owe mutual duties of support, that that would be unreasonable?

Mr. Juneau I don't think, Mr. Roy, we are talking about you projecting into the future, what a future legislative act would provide.

Mr. Roy No, what a future court would say, would a court say that where two parties contract a marriage knowing full well they owe reciprocal duties of support or alimony, that that would be an unreasonable contractual obligation flowing from the marriage.

Mr. Juneau I know of no provision in the Louisiana Civil Code, Mr. Roy, that applies to a husband, identical or similar to the provisions of Article 160 of the Louisiana Civil Code which provides for the alimony rights of a woman.

Mr. Roy Do you realize that the constitution that the Supreme Court of the United States did not bother to interpret the Fourteenth Amendment as given equal protection to all citizens until 1954 and that in 1896, Plessy v. Ferguson, the United States Supreme Court said that separate but equal facilities were O.K. Wasn't it only in 1954 that in Brown vs. Kansas that the U. S. Supreme Court found said the Fourteenth Amendment grants to all persons equal protection of the law?

Mr. Juneau I'm going to answer your question this way, Mr. Roy, you are trying to lead me down that

perpetual path of drawing me into the issue of right and wrong with regard to separate and equal. You know full well that I have no intentions, no feelings whatsoever with regard to destroying the right of the black person in this state. I submit to you that I think that the Federal Constitution is fully and abundantly clear on equal protection laws. We all in this state know the effect that it applies to all people and it's not a matter of racial discussion, not withstanding.....

Further Discussion

Mr. Arnette I most definitely agree with what the committee has done here and their intention, but I do question the way they have done it. I think Mr. Juneau's amendment is a good one, and I would like to point out several reasons why. First, there are several things wrong in the enumeration that the committee has made. They say that no law shall discriminate because of...well let's go through a couple of examples - age, this would prevent any law that would benefit, old age benefits, old age pensions, or voting rights...you could vote when you are born, it would prevent people from.... it would prevent laws that say a minor cannot alienate his immovable property. This is an incredible law that is trying to be proposed here by the committee. I can't even name all of the consequences of it. Second, say birth for another example, what that exactly do they mean. Mr. Roy said that it meant that you can't discriminate between legitimate and illegitimate children. I think it's the state's right and duty that it should have laws that discriminate against legitimate and illegitimate, and this has been recognized by the U.S. Supreme Court for the simple reason that we want to promote family units and legitimate marriages. We want to discourage illegitimate children. I think this has been recognized by the U.S. Supreme Court and it's a valid right. The next thing, it says social origin, I don't know what this means, does that mean nobility or if someone is a duke or a lord or member of the country club? I really don't know. Physical condition is another example, I don't propose any state law discriminating against anyone who is not physically able, but what about benefits that are proposed in laws. The Louisiana Disability Benefit Laws, things like this, this would prevent having laws that benefit disabled persons. I think we need to think about this, the gravity of the situation of what this committee has proposed. The next thing, I don't think the classes they have designed go far enough, just sitting there in a few minutes, I could think of several classes; I will give you a few examples. First of all, education, we have laws in this state that discriminate against people that do not have an education as others, for example in the civil service, you can't take certain civil service exams unless you have a college degree say, maybe this class ought to be protected. Should a person ought to have a college education before they can take a civil service exam? I don't know, maybe so, maybe not, maybe this class ought to be listed as protected. Another one, intelligence, we don't say that a person should be prevented from being discriminated against on account of intelligence, for example, voting rights. We don't have any literacy test for voting rights, maybe that's the way it ought to be, but I think we ought to maybe list this class as another protected class. How about sexual beliefs, homosexuals, you are not protecting them in any way whatsoever, maybe they ought to be listed as a class? How about economic status, we are not protecting say the wealthy or the poor or anything like this, that's another class that maybe should be listed in here.... These are other classes that perhaps should be listed, no, not at this time, that I'll tell you something that I don't like about the committee's proposal and this is probably my main objection to it, it does list classes. A long time ago it was said by someone, this is government for the people, by the people and I think that's what it ought to be, govern-

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ment by the people and for the people. I don't think it ought to be for this class and that class, and some other class. I think all people ought to be equal, they ought to all be listed in there as equal. It's time that we quit treating people as a class, it's time we quit thinking of people as black or white, or male or female or anything else. Mr. Juneau's amendment does this, it says no person, it goes further than anything the committee ever proposed, it says that no person, everybody is equal. This is what we want to attain, I think, no person should be denied equal protection of the laws. I think this is the result we want to reach, and I think the committee has gone about it the wrong way, that's why I definitely support his amendment. I yield to any questions now.

Questions

Mr. Stinson: With reference to the ages, isn't it a fact that it would be questionable whether there could be any minimum ages as to marriages for minors, any law as to prohibiting minors from going into a place where liquor is sold and also requirements on driver's licenses?

Mr. Arnette: You are exactly right, Mr. Stinson. We couldn't regulate anything that would list age in it at all.

Mr. Stinson: Now, on physical condition don't you see possibly you couldn't ever arrest anyone for sale, his physical condition because he had been drinking alcohol?

Mr. Arnette: Well, I think maybe that's a little far-fetched, but I think you might be right about it.

Further Discussion

Mrs. Dunlap: Mr. Chairman and delegates to the convention, there have been many remarks made here this afternoon concerning women, females and I would like to make a profession of the concerns of Miss Perkins, in the less trained and less educated female. If anything, the less trained and less educated female will be better off than before. She will hold an equal share in the community and keep many a reprobate of a husband from spending the community into bankruptcy. How many women, right now, are forced to work, to feed and clothe their children, and where do you find that husband and father? Delve into your hearts on this issue and check your reasons, could fear of the unknown be one? Some pioneers we have here. I also would like to point out that there is a difference between alimony and child support. Alimony can be claimed by the wife only during the separation period before divorce, this period is normally for one year, and I say, that less trained, less educated wife will be just as less trained and less educated after that one year period. I've made up a little catchy thing, I'm trying to think of anything and everything I can do to keep the word "sex" in the constitution. I start my little address this way.

Mr. Chairman and delegates to this constitutional convention, I stand before you with a clear and intention. It's your support I seek for section 1, a whole new world for you and me. Sex, as how much I've heard and the many words spoken with a little word, but in section 1 it must stay. We are headed out in the only way. I believe you call us, friends you say we drink, just bear in mind it's yours if the ladies of this house for whom I speak. It's not rebibans we want to be, we're ladies of the evening where pleasure comes from. The truth, in fact, it's fairness we seek, constitution is the name especially to all of those discriminating laws.

Tell me, assured, by time my friends, we want nothing you have, just let us in, with the whole an equal employee, with benefits, into your lives as equal partners as well as wives. Give us a chance with you from a standing position, you might be delighted with our friends, friends, friends. We are not attempting to overpower you, we are we envy your maleness, a world of all the same sex, what a horrible state of staleness, it's in our nature to love and to love. Give us the freedom of choice and our rights to be claimed as a friend, as a partner all in the same name. Give us your trust and support; have faith in the song we sing; we are all waiting in the wings. Ready to shoulder our share of the load, we are eager to walk with you down that lonely road. Give us our rights; give us your support. We are your wives, your partner and friend; accept us. I ask you to vote against this Juneau amendment, and I plead to your sense of honorable justice and fairness to stay with the committee proposal. Thank you.

Further Discussion

Mr. De Blioux: Mr. Chairman, and ladies and gentlemen of the convention, I rise in opposition to this amendment. Mr. Juneau has made the assertion that all the inequities which were called to his attention, and I say this because his amendment stressed mostly the portion of this section, can be corrected by legislation. You must remember here that we are writing a constitution, and the constitution is going to tell the legislature what it can do, and what it can't do. If the legislature could correct this condition, it has not done so in the past. This amendment will force the correction of that provision. Mr. Juneau's amendment will not require that, therefore, we should not have that amendment in this particular proposal of our constitution. Mr. Juneau stated that he knew about the vote in the P.R.A. in the legislature. I want to tell Mr. Juneau this, that amendment ratifies, that amendment passed in the Senate, it failed in the House, and you have sitting in this august body a delegate that has defeated the person who was responsible for the defeat of that amendment in the House. If Representative De Blioux thought he was an answer to you, well, I think a lot of us are going to have to answer to the public on that. If you ask support in a minute is concerned, I hear that over and over again, that it is going to relieve the husband of support of his wife in the event that he leaves or something of that sort. We already have laws on that, there is no need of correcting that because the historical responsibility, and I tell you now, at the present time, there is no sacredness in the right of a wife against the husband's alimony support. There is, at the present time, the law needs correction in that respect because there is not enough support there for them to support their own responsibility. This amendment will change that. The amendment that Mr. Juneau will will wreck this particular provision in the constitution. I, therefore, ask you to please let's vote down this amendment, and if you have some particular portion of a section that you might want to vote, please, with me. I have indicated before, that was with reference to you, that is the line that have to be in the next section, let's take that out and let the vote of all stand. But the particular amendment will drastically change all of that, and I don't believe you want to do that. Therefore, I ask you to vote for a vote against the proposed amendment and to stand with

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the protection of all of our citizens whether there's black, white, female, male, old, young, whatever it may be. Let's give them all the equal protection of the laws.

Further Discussion

Mr. A. Jackson Mr. Chairman, ladies and gentlemen. I rise in opposition to this amendment. The amendment would suggest that we do not need to enumerate because we have the Fourteenth Amendment. The Fourteenth Amendment would provide for the categories that we have here, ladies and gentlemen. I simply want to remind you that we have had the Fourteenth Amendment of the United States Constitution since 1870, and it was not until 1940 that we even got a similar, ... that we even got any attention that would provide any sort of protection for the categories that we have enumerated here. Now, let's face the central issue; let's deal with the question. People have come up here and they have clouded the issue, and they have tried to suggest that they don't know what we are talking about; they know what we are talking about. They know that we are talking about providing for women in this country the same rights that you enjoy, and that's what... that's the problem. That's the problem, we don't want to deal with it. We don't want to deal with whether or not we are willing, whether or not we are ready, as men, black and white, to extend full citizenship to women in this country; that's the question. Whether you cloud the issue and whether you address yourself to the central question or not, women are discriminated against in this country. Women are discriminated against in employment; women are discriminated in terms of their profession. You tell me why a gal has to peck on a typewriter all day and get \$2.50 an hour when she could repair the typewriter and get \$7.50, but because we have been steeped in some sort of folkways and mores about what the place is, women out there, we say that you can't come there. Now, whether you want to recognize it or not, there are a large number of women in this state today who head up the households, who are the soul wage earner, who cannot depend on a man to augment their income and to help support their family. They have to do it; they are the bread winners, and they are precluded from providing for their families and for their children a secure and just and humane quality of life simply because we don't want to change. There is no justification for the arguments that I have heard up here, none at all. Whether you recognize it or not, black people in this state today are discriminated against; black people in this country today are discriminated against, and whether or not we want to address ourselves to it or not or whether or not we want to hide behind some flimsy excuse like we don't want to establish categories, is begging the question. The question before us is whether or not we want to provide for everybody in this country, freedom and full justice and equal opportunity. Look all about you. You walk over to the State Capitol, and people are pouring out of that building right now, and very few black faces will be seen because black people are discriminated against this day, this hour, this moment, in this place, and we are asking that we put an end to it. We are asking that you look at the categories, that you not place the burden for women and blacks, that you not place the women in a situation of that building right now, will have to go time and time again and ask the courts to decide whether or not they ought to be equal. That's all we are asking; we are asking that we would put aside this question once and for all. Somebody came to me a few minutes ago and apologized for something that happened on the floor of this convention a few minutes ago, where apology was not necessary. But if you want to make right, if you want to set aside, if you want to put down forever any attention and any references to racial slurs or to the kind of inabilities that we have suggested that ought to be imposed on people, well then look at what we have proposed and give your full support to it, and look at what is being pro-

posed by way of this amendment; and know that it will not do the job. It will not afford full opportunity to the people that we are saying that ought to have it. So therefore I ask you, I ask you in the name of justice, I ask you in the name of all women all over this state, I ask you for black people all over this state. I have talked to them, and there is nothing up to this point in this constitution that black people are excited about or that they can hang onto, and they say why should we bother about it, and I say to them that the delegates of this constitutional convention are fair-minded people and they are going to put something in there for you, and this is why it was put in there, and this is why we ask you to vote for it, and this is why we ask you to defeat this amendment because you are destroying hope and because you are not addressing yourself to a serious and critical problem that exists in this state this day and at this hour. Ladies and gentlemen, I ask you to vote against the amendment as proposed.

Further Discussion

Mr. Champagne Mr. Chairman, ladies and gentlemen. I rise in support of the Juneau amendment. I submit to you that this is constitutional law. I suggest that the intentions of the committee are far ahead of their deeds. We are not writing constitutional law in that committee, we are legislating, and the place for legislation is in the legislature. There is no place for sex in Section 3. There is no place for any other thing that is mentioned in Section 3, with the exception of race. As this shall be presented as an amendment to this, and I suggest you support the Juneau amendment, and I shall vote for the amendment which puts one and only one thing that has any merit whatsoever, and that is, no discrimination because of race. I want to further say, as some of you know, that I go home every night. I discussed women's rights at length with mamma last night. She told me that she had all the hard all the world, that she wanted, and if any of you think she is ignorant or uneducated, that is not the question. She is well educated, as well as I am, and she is much smarter than some of you would give her credit for because she knows real well that when she writes a check, she says "Babe, maybe you had better check the change and account for the same money in it. I accept that as my responsibility, and that is one of the reasons why women outlive men. I think it is a great deal, I think there is a difference. I don't have to tell any of you here that over one or two years old there is a difference. As a man of French heritage, I say, "vive la difference and that to you means "long live the difference." Thank you.

Further Discussion

Mr. Grave Mr. Chairman, and ladies and gentlemen of the convention, I speak in opposition to the Juneau amendment because I don't think it does anything to all the people who are looking to this convention to see whether or not their rights are going to be given recognition. If there's one thing that a substantial segment of the population of the State of Louisiana is concerned about, it is whether or not we are going to have the courage to get away from the lack of provisions that were in the Constitution of 1921 and to put something in the constitution that has meaning and validity, clarity and peace in it. It doesn't do a whole lot of good to go to people who have been disadvantaged over the years, by circumstance and by the operation of law, and say to them that we have got a great high sounding platitude here, the concept of equal protection of the laws that is going to take care of the problems that you are primarily concerned with. If we do nothing less, we have got to clearly, concisely and specifically state in this constitution that there shall be no discrimination against those who have been discriminated against; and if we don't spell it out, if we try to gloss it over, if we try to generalize,

then people are going to say, "the delegates in the constitutional convention are trying to deny the people and states and are trying to fool us again." Perhaps we do have a few more words here than some of the delegates think ought to be in the language of the law, but where a few more words are needed, we are right here in this legislation that is going to mean more to more people throughout the State of Louisiana than any other provision that is going to be adopted by this constitution. We have got to spell out as clearly, clearly and unequivocally as that people will be a corded equal protection of the law and that specific discrimination will not exist in the State of Louisiana under State law for just as long as we can foresee that this government will exist. I urge you ladies and gentlemen, I urge you to keep in mind that we are not going to deny the people who are interested in and who support this amendment. These provisions are there because they affect identifiable, substantial segments of the population of the State of Louisiana. Let us not forsake them.

Further Discussion

Mr. J. L. Gamm: Mr. Chairman, ladies and gentlemen of the convention, as usual we had predecessors to myself that came here and articulated very adequately their feelings in this subject. I thank Mr. Gravel, Mr. Jackson, some other speakers who are in opposition to the amendment. Let me suggest to you very strongly that, being a son of termination, I would not like to as a delegate have to prolong or to continue the form of discrimination that will be allowed to exist if the amendment is adopted. I do not think and I don't think that many of you here could possibly conceive what it is to have the effects of discrimination carried on for so many years. Many of you here have conceded that we ought not do it on race, but we bring in another line, we bring in sex. We bring in physical condition; we say it's no, we want to make certain exceptions, and I want to suggest to you that this is the same argument ladies and gentlemen, that I, being the son of discrimination have heard on the issue of race. I want to suggest to you that on the matter of physical condition you got to wait. Whether you are denied... you're going to get hung up trying to determine... can you distinguish between a D.W.I. or whether you are going to deny a veteran or a physical handicapped person their just rights. I think that it is very reasonable to assume, to state emphatically, that any court will say that if someone is arrested on D.W.I., that that does not give them the protection of discrimination on physical condition. You know, I don't even see how that would have even been presented. I find it very hard to get up there and to state after that time again and try to convey to you very strongly a concept that I would appreciate, and I say this with no offense, that I can appreciate that many of you just really conceptualize unless you fit in one of these certain categories. There has been some discussion to the fact that we ought to talk about whether we are interested in brevity. We ought to be interested in style and drafting. I want to suggest to you that the persons that fall in this category don't really care about how many words you use to protect them. There have been laws that have been enacted in the federal and state level that attempted to further clarify our own interpretation of the age, responsibility and the protection of particular classes or categories of people. As there is no problem with us, I think the amendment has been set, and I don't think that we want to get hung up on the matter of which we give a little time further and attempt to emphasize those certain provisions. I know that if you give that up, I was really debating with myself whether I should say that you are interested in style you understand and be try to at least emphasize and emphasize the kinds of broad range effects that that has. I want to suggest to you that one of my major objections to the Judiciary proposed was the fact that we were including na-

ture courts and Justice of the Peace which we know there have been certain rulings that say that talk phases of that are unconstitutional and, but the arguments that were presented to you that would not include it, because it will give the people feel good. I am suggesting to you please not let anyone let us take that word out, but let us try to get to make them feel good, but to make them understand and demonstrate by this constitution, you know, we are really putting our ourselves where you might say.

Further Discussion

Mr. Pugh: Mr. Chairman, and fellow delegates, I want to apologize in that the first time of this session this morning I submitted to you an amendment that did not contain all the language that I should and I apologize for that. I would like now, however, as this body is concerned, to speak again at the proposed amendment and to suggest to you that the proponent of the amendment said that everything that he had in his amendment was contained in the Fourteenth Amendment to the United States Constitution. That is absolutely correct. I suggest to you also, however, that every phrase that is included in this paragraph has many persons knowledge been defined by the United States Supreme Court to be covered by that very same Fourteenth Amendment to the United States Constitution. I suggest to you that the language relating to birth, to race, to age, to sex, to social origin, to physical condition, to political, religious ideas, has each and everyone been already considered and found to be viable under the Fourteenth Amendment to the Constitution of the United States. I have seen an amendment laying on my desk that would do something to this article that I think would be helpful; it uses the word "reasonably" between the words "law and discriminate." I suggest that we defeat this amendment and look to the next one. Thank you.

Question

Mr. Lanier: Mr. Pugh, you said that the Committee proposal contains all the jurisprudence. Does not the jurisprudence say that the unreasonable or arbitrary discrimination is that which is prohibited, and if that is correct, would you point out to me in the committee proposal where the terms "unreasonable or arbitrary" are contained?

Mr. Pugh: I never said this contained all the jurisprudence; all the jurisprudence could be paid for by the people of the State of Louisiana, much less put in one Constitution. I said each and every one of the phrases or words as used here has already been determined to be protected by the Fourteenth Amendment. I suggested to you that the upcoming amendment was a good one when I used the very phrase that you have mentioned from there "unreasonable."

Repeating

Mr. Gravel: Mr. Chairman, and fellow delegates, I will make my remarks very brief. I would like to clarify a few points. There is not now on the State Constitution of this State an equal protection clause, and that is exactly what I want to suggest is by getting in, it is as important as it is that the constitution of the State of Louisiana says, you have afforded to the women and to the elderly and to all... a right to go into court and to contact any provision of law which you would like to have... I would like to suggest to you that you are interested in style and drafting. I want to suggest to you that the persons that fall in this category don't really care about how many words you use to protect them. There have been laws that have been enacted in the federal and state level that attempted to further clarify our own interpretation of the age, responsibility and the protection of particular classes or categories of people. As there is no problem with us, I think the amendment has been set, and I don't think that we want to get hung up on the matter of which we give a little time further and attempt to emphasize those certain provisions. I know that if you give that up, I was really debating with myself whether I should say that you are interested in style you understand and be try to at least emphasize and emphasize the kinds of broad range effects that that has. I want to suggest to you that one of my major objections to the Judiciary proposed was the fact that we were including na-

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race and is not based upon cultural origin. I respectfully submit that you should vote for this amendment. It is a fair, it is a constitutionally created right which is implicit in its own provisions. I move for its favorable adoption.

[Record vote ordered. Amendment rejected: 51-66. Motion to reconsider tabled. Motion to take up other orders adopted without objection.]

Introduction of Proposals
[I Journal 401-403.]

ANNOUNCEMENTS
[I Journal 403-404.]

[Adjournment to 9:00 o'clock a.m., Thursday, August 30, 1973.]

Thursday, August 30, 1973

ROLL CALL

[By Delegates Present and a Quorum.]

PRAYER

Mr. De Blieux Our Heavenly Father, we thank Thee for being here another day. We ask Thy guidance upon this delegation, all the members of this convention and staff, those we are supposed to represent. We ask that You give us the wisdom to go about the affairs that You would have us to do this day, that we may do it without regard to personalities, without rancor, but only in the spirit which You would have us to do it. We ask this all in Jesus name. Amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

PROPOSALS ON SECOND READING AND REFERRAL

[Journal 40]

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Mr. Poynter Committee Proposal No. 25, introduced by Delegate Jackson, Chairman on behalf of the Committee on Bill of Rights and Elections

A proposal to provide a Preamble and a Declaration of Rights to the constitution.

The status of the proposal is the convention has adopted as amended, the proposed Preamble, and Section 1, and Section 2 of the proposal. Presently has under consideration Section 3, Right to Individual Dignity.

Amendment

Mr. Poynter Amendment No. 1 [By Mr. Linnell, et al.]

On page 2, delete lines 7 through 12 in their entirety and insert in lieu thereof the following:

Section 3. No person shall be denied the equal protection of the law if he shall discriminate against a person on account of race or religious ideas, religious beliefs, or religious affiliations. No law shall arbitrarily, capriciously, or unreasonably discriminate against any person by reason of birth, age, sex, culture, physical condition, political ideas or political affiliation. Slavery and involuntary servitude are prohibited, except in the latter case as a punishment for crime.

Explanation

Mr. Linnell This amendment is an attempt to accommodate all that was said yesterday into Section 3. You will note that the first sentence has the equal protection of the law provision all by itself. The next clause provides that there shall be no discrimination against a person, no discrimination of any sort, on account of race, or religious ideas, beliefs or affiliations. When there follow the balance of the language that was in the committee proposal which states that no law shall arbitrarily, capriciously, or unreasonably discriminate against any person by reason of birth, age, sex, we have changed the words "social or class", and replaced it with the words "culture, physical condition, political ideas or political affiliation". The last sentence remains the same.

The authors believe that there is absolutely no basis for any discrimination of any sort on the basis of birth, age, or religion, but they believe that there was discrimination if it is not arbitrary, not capricious, and not unreasonable as far as the other items contained in the original committee report are concerned with the condition of birth and age, for instance, a reason for discrimination is understandable because of drivers' licenses, for example, or fair retirement

purpose. The reasonable discrimination as far as sex is concerned, for example, would be to require separate restrooms for men and women. Otherwise, you might not be able to do this under the law. Culture is obvious. There can be certain reasonable discriminations there. For instance, the English language can be the official language of the state, and therefore, that is a reasonable discrimination against the French language. The physical condition, again, that is reasonable with regard to drivers' licenses or state jobs. Also, for interdiction purposes it would be necessary to have such a reasonable discrimination. The same thing is true of political ideas or affiliations. If there was no discrimination, it is quite possible that we could not have primaries. The last sentence remains exactly as it was in the committee proposal.

Mr. Chairman, I would like to yield the balance of my time to the chairman of this committee, Mr. Alphonse Jackson, if that is satisfactory.

Mr. A. Jackson Mr. Chairman and ladies and gentlemen of this convention, I think that we have to arrive at a point where men of goodwill can reason together. I think yesterday we came dangerously toward polarizing not only this convention, but polarizing this state and the entire new constitution in grave jeopardy. That is not the wish of this committee nor is it the wish of any delegate to this convention. I think that this amendment provides the kind of protection, the kind of equality, the kind of justice for all of the categories that we were concerned about. I simply want to say for our committee that we do not consider ourselves prima donnas. We do not consider pride of authorship more sacred than the rights, and the equality, and the justice that's so needed for all people in this state. Therefore, we would urge members of this convention to put an end to the harangue that occupied so much of our time and heated our emotions to a point that caused all of us problems yesterday. Let's all give our consent, give our approval, to this amendment and move on to the next section in the Declaration of Rights Article. Mr. Chairman, if there are no more speakers, I'd like to move the previous question on this amendment.

Further Discussion

Mr. De Blieux Mr. Chairman and ladies and gentlemen, I rise to support this amendment. I'd like to say this, that I think that as it's well-known that I have been in this fight for equal rights for a long time. In reading over this amendment, it is my opinion that it accomplishes everything which I certainly stand for, and I believe the people of this state stand for. In spite of the arguments that advanced yesterday, there is no law we can pass by the legislature or no constitutional provision that we can pass by these constitutional delegates that will change the makeup of a man and a woman. Laws cannot do that; but we can, in the passing of our laws, sometimes, equalize the rights of these people. There is no law that can change the race, but we can, by our laws, equalize those rights of race in comparison, one to the other, and so on down the line. I certainly believe that insofar as people's religious beliefs are concerned or their racial makeup or whatever it may be, there should absolutely be no discrimination. This particular amendment takes care of that situation. There are some reasonable bales, as I told you yesterday, that I was afraid of by the introduction of no discrimination as to age. This amendment takes care of that situation. It takes care of the physically handicapped, and I certainly think that it's worthy of our consideration. Therefore, I ask you, let's go along with this amendment and put this particular section of our bill of rights act rest.

Further Discussion

Mr. Jack Mr. Chairman and members, this amendment is not at all like the material we were talking about yesterday. This is not a compromise, this

is a statement of what is the present law, not only through the Supreme Court, but the state decisions. So I go along with this amendment. The first part is just what I said yesterday when people were making so much noise they were not listening, that you couldn't discriminate against a person on account of race or religion. I told you I agreed with that when I was against all those other parts about age, sex and those things, because it didn't have them qualified. Now this qualifies the other which is the present law. "No law shall arbitrarily, capriciously, or unreasonably discriminate against any person because of birth, age, sex, culture, physical condition, political ideas or political affiliation." That's the present law anyway. I just want it understood that I'm trying to help write a good constitution. This has been called a compromise; it isn't 'cause I'm not going to compromise anything. As to any arguments yesterday, you've got to argue for your rights, and I'm going to always argue for what I think is right. This is the present law. It is not a compromise, and that's why I'm for this floor amendment. Thank you.

[Previous Question ordered. Quorum Call: 101 delegates present and a quorum. No motion. Amendment adopted: 100-6. Motion to reconsider tabled. Previous Question ordered on the Section. Section passed: 107-3. Motion to reconsider tabled.]

Reading of the Section

Mr. Paynter "Section 4. Right to Property. Section 4. Every person has the right to acquire by voluntary means, to own, to control, to enjoy, to protect, and to dispose of private property. This right is subject to the reasonable exercise of the police power and to the law of forced heirship. Property shall not be taken or damaged except for a public and necessary purpose and with just compensation paid to the owner or into court for his benefit. The owner shall be compensated to the full extent of his loss and has the right to a trial by jury to determine such compensation. No business enterprise or any of its assets shall be taken for the purpose of operating that enterprise or for the purpose of operating that enterprise with government enterprises, and personal effects, other than contraband shall never be taken. The issue of whether the contemplated purpose be public and necessary shall be a judicial question, and determined as such without regard to any legislative assertion."

Explanation

Mr. Jenkins Mr. Chairman, delegates to the convention, it has sometimes been said that human rights are more important than property rights, but in the close analysis of the subject by someone who lives in a free society, leads to the conclusion that property rights are not at all contrary to human rights, but indeed an essential attribute of human rights. Without property rights, it's difficult to see how human rights can exist at all. This fact was brought home to me personally, not long ago. A friend of mine had been traveling abroad. He is an evangelist, been in Europe for the summer. He spent some time in Sweden. Sweden, of course, is a socialist country where property rights have been disparaged for quite a while, and yet where the people espouse a belief in liberty. He found a strange thing, however. He found that, for example, there was little freedom of the press. He couldn't understand why. In the atmosphere of Sweden, it would seem that freedom of the press would run rampant. Yet, as he looked further, he found that in the case of newspapers, their newsprint supplies were controlled by the government. If they wanted to buy newsprint, because the government owned vast tracts of forest land and processed paper, they had to go to the state. They found that in the back shops and in the newsrooms where the editors sit, and the reporters, and the

printmen, and all the other people who run a newspaper, all the rules and regulations dealing with how they would deal with their employees were set by the government. Their right to deal freely had been taken away. The newspapers also were in a situation of finding that for advertising support rather than going to private individuals and businesses, a large portion of their advertising came from the government because the government was owning and operating many of the means of production. So a newspaper was in a compromising position in Sweden. Dependent on the government, if it wanted its sources of newsprint, it would be in the labor laws, if it wanted advertising revenue. So it was not difficult to see why there was little dissent in the newspapers. Property rights had been denied. My friend found another interesting thing. He found that as an itinerant [itinerant] evangelist he was harassed, because in Sweden, because property rights have been taken away, there is now little freedom of religion. You see, there can be no freedom of religion if people do not have the right to buy a place of worship, a tangible piece of property which is theirs, not the governments. That right is being severely restricted in Sweden. Freedom of religion can't exist unless a group of people, a congregation can get together and hire a minister, of their own money, to minister to them in the state. Freedom of religion can't exist unless people can buy books, religious tracts, and publish same. All of our basic rights are wrapped up in property rights. Without them, there can be no human liberty. In recognition of this fact, most state constitutions, almost all, somewhere recognize very clearly the right to own and control property, as among our essential rights, and thus, refer you to the first sentence in the proposed section. "Every person has the right to acquire by voluntary means, to own, to control, to enjoy, to protect, and to dispose of private property." That means simply this. It does not mean that a person has a right with regard to any given piece of property, to the disposal of it, or to enjoy it. But that he has that general right, that the right, say, to own property cannot be a right which is taken away from him. The Arkansas Constitution says this about property rights. It says, "The right to own property is above and higher than any constitutional sanction". Other constitutions pay appropriate tribute to this right. The second sentence in the proposed section, this right is subject to the reasonable exercise of the police power and to the law of forced heirship'. There are basically two ways in which government limits property rights. One, by the police power, that is the regulatory power of the state, the authority of the state to do virtually anything in furtherance of the common welfare in the nature of regulation of property, so long as property rights are not denied entirely. That is what we refer to here when we talk about the police power. It is a term of art, a legal term, which means the regulatory power of the state. The rest of this section deals with the other type of control and limitation on property rights. Not the regulatory function, but the authority of the state to take property completely. The authority of the state to seize a person's property is a very serious matter, ought not to be taken lightly. Yet, under present law, there is almost no restriction on the way in which government can take property. If there is a so-called public purpose and if just compensation has been paid, it is a taking. A purpose has come to mean almost anything. There are a few cases delimiting public purpose. Courts have held time and time again that anything government wants to do is a public purpose. Then, in the matter of just compensation. Just compensation, in our state, is decided by an instrumentality of the state, of the one doing the taking, namely a judge. So we propose here certain changes and reforms. Not to really impede government or restrict it, but to make it subject to certain reasonable limitations, to do what a Bill of Rights should, to regulate government. So, we provide that property can be taken not just for a public purpose, but for a public and necessary purpose.

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Now, Black's Law Dictionary, if you are wondering what the word "necessary" means, says this about the word "necessary," and I wish you'd listen very carefully to this. They define the word "necessary" this way. This word must be considered in the connection in which it is used, as it is a word susceptible of various meanings. It may import absolute physical necessity or inevitability, or it may import that which is merely convenient, useful, appropriate, suitable, proper, or conducive to the end sought. The next sentence is most important, however. "In eminent domain proceedings, it means land reasonably requisite and proper to accomplishing an end in view, no absolute necessity of particular location." Reasonably requisite and proper, and that's what the word "necessary" means here. The sentence, "Property shall not be taken or damaged except for a public and necessary purpose and with just compensation paid to the owner or into court for his benefit", allows a quick-taking statute. At present, quick-taking is allowed only in the case of highway purposes. No other public body or private agency can take property immediately upon filing suit, but the highway department can. This would allow any public body to have a quick-taking statute. There is nothing in this sentence contrary, and, thus, it would be able. We've been told that by eliminating the word "previously" before the word "paid", that that's the effect of this sentence. We say in the next sentence that "the measure of just compensation shall be the full extent of the loss". In other words, when someone's property is taken, he has a certain loss, and this section says that loss shall be the measure of just compensation. Sometimes, unfortunately, it has been much less. For example, suppose a highway comes across the corner of your property. You are offered five hundred dollars for it; it's worth a thousand. At present, there is no way you can get what it's worth because if you go to court and challenge that offer and try to get your thousand dollars, and even if you win, you are going to lose, because of the cost of going to court, hiring an attorney, which you'll have to pay. So this would attempt to take into a court that fact. We provide in this sentence, also, the right to trial by jury. This has scared some people. I don't know why. The right to trial by jury to determine the amount of compensation, and no other fact, is granted in virtually every other state. Trial by jury is so important, it's embedded in the Seventh Amendment to the U.S. Constitution, in every case over twenty dollars. This does not slow up the taking process at all, because taking would be allowed. Then after the taking has already been accomplished, trial by jury would be held to determine compensation. The next sentence is probably the most important, I think, because it protects our way of life. "No business enterprise or any of its assets shall be taken for the purpose of operating that enterprise or for the purpose of halting competition with government enterprises." The purpose of this, quite frankly, is to stop the government from owning the means of production. That's pretty basic to our way of life and our society, but we think in future years there may be increasing attacks at that and we want to make sure that it doesn't happen. This will reverse the holding in the Thibodaux case, in which the city of Thibodaux attempted to expropriate within the confines of its municipality, the holdings of Louisiana Power and Light Company. In that case, the district court said that taking a power company was not a public purpose. The court of appeal reversed that holding and said that it could. At that point, the city of Thibodaux, as I understand it, did not go ahead with the expropriation because they didn't have the money. But that holding is on our books giving the state the authority to take private enterprise at any time it chooses. Now, I don't question the decision in that case. It was probably right under the law at that time. That's why we need to change the law. We do provide that "personal effects" other than contraband.

I'll cut briefly continue and then try to answer some questions. The last phrase saying that "personal effects" other than contraband will never be

taken" is an attempt to protect the personal possessions of people. It deals with state action and government action, I mean, not private action, rather --state action, because of the context of this relation. We are talking here about things like jewelry, works of art, clothing, personal effects of all types. Even the Russian constitution recognizes that personal effects, personal property should be protected in this way. The last sentence simply states, and it's from a number of state constitutions, the California Constitution among others, saying that "the question of whether the public purpose is considered public and necessary is left naturally to the court to decide, and that a mere legislative assertion that a particular purpose is public and necessary, is not sufficient." This sentence is implied anyway, but we've included it to make sure there was no question as to it. Now, let me try to answer whatever questions you have in the time available.

Questions

Mr. Burns: Mr. Jenkins, in Section 4 it specifies that every person has the right to own, enjoy, control, and dispose of private property. In Section 7, it says "All persons shall be free from discrimination in the sale or rental of private property." Will you please explain if there's any difference, or is there any conflict in those two rights or those two provisions?

Mr. Jenkins: I think the general rule in interpreting constitutions, Mr. Burns, is that where there seems to be a conflict, the more specific provision will rule, and I think in this case that Section 7, if it were adopted as it exists here, would prevail over the general statement in Section 4. I think they have to be read in conjunction with other, with one another, and that Section 7 would limit the effect of Section 4.

Mr. Burns: Then I'll ask you the second question. If you say that the provision of Section 7 would prevail, do you not think that that would restrict or encroach on the provisions or the rights to enjoy, or dispose of private property?

Mr. Jenkins: I think it will, and this is where the second sentence in that section comes in, where it says that this right is subject to the police power exercise of the police power. And the theory of Section 7 is that this is in that police power.

Mr. Lanier: Mr. Jenkins, I am most concerned about some language that I see in the comment under this provision that was sent out. In particular this comment says "the term 'taking' is to apply both to expropriation and appropriation so that appropriation would no longer have a special status in Louisiana law." What does that mean, Mr. Jenkins?

Mr. Jenkins: Under the appropriation law, as you know, property can be taken with no compensation whatsoever. Now, that is what we're getting at. This does not affect the quick-taking attributes of appropriation, because a quick-taking statute is allowed under the language in the third sentence of this section. So the main effect of the language here where we say "taken or damaged" is to include appropriation so that in the case of appropriation when land is taken for levee purposes, a just compensation is going to have to be paid for that, just as for every other taking.

Mr. Lanier: Well, now, Mr. Jenkins, what concerns me about this is, are you aware of the fact that the present jurisdiction, both of the United States Supreme Court and of the Louisiana Supreme Court, is that the exercise of the priorian servitude is not a taking?

Mr. Jenkins: Well, then if it's not a taking and can be interpreted as such, then this wouldn't deal with it.

Mr. Lanier: But, by the language of this Section 4 and the interpretation given to it in your comment,

carefully to this. They define the word "necessary" this way. "This word must be considered in the connection in which it is used, as it is a word susceptible of various meanings. It may import absolute physical necessity or the inevitability, or it may import that which is merely convenient, useful, appropriate, suitable, proper, or conducive to the end sought". The next sentence is most important, however. "In eminent domain proceedings, it means land reasonably requisite and proper to accomplishing an end in view, not absolute necessity of particular location." Reasonably requisite and proper, and that's what the word "necessary" means here. The sentence, "Property shall not be taken or damaged except for a public and necessary purpose and with just compensation paid to the owner or into court for his benefit", allows a quick-taking statute. At present, quick-taking is allowed only in the case of highway purposes. No other public body or private agency can take property immediately upon filing suit, but the highway department can. This would allow any public body to have a quick-taking statute. There is nothing in this sentence contrary, and, thus, it would be able. We've been told that by eliminating the word "previously" before the word "paid", that that's the effect of this sentence. We say in the next sentence that "the measure of just compensation shall be the full extent of the loss". In other words, when someone's property is taken, he has a certain loss, and this section says that loss shall be the measure of just compensation. Sometimes, unfortunately, it has been much less. For example, suppose a highway comes across the corner of your property. You are offered five hundred dollars for it; it's worth a thousand. At present, there is no way you can get what it's worth because if you go to court and challenge that offer and try to get your thousand dollars, and even if you win, you are going to lose, because of the cost of going to court, hiring an attorney, which you'll have to pay. So this would attempt to take into account that fact. We propose in this sentence, "the right to trial by jury. This has scared some people. I don't know why. The right to trial by jury to determine the amount of compensation, and no other fact, is granted in virtually every other state. Trial by jury is so important, it's embedded in the Seventh Amendment to the U.S. Constitution, in every case over twenty dollars. This does not slow up the taking process. The quick taking would be allowed. Then after the taking has already been accomplished, trial by jury would be held to determine compensation. The next sentence is probably the most important, I think, because it protects our way of life. "No business enterprise or any of its assets shall be taken for the purpose of operating that enterprise or for the purpose of halting competition with government enterprises". The purpose of this, quite frankly, is to stop the government from owning the means of production. That's pretty basic to our way of life and our society, but we think in future years there may be increasing attacks at that and we want to make sure that we have a strong opinion. This will reverse the holding in the Thibodaux case, in which the city of Thibodaux attempted to expropriate within the confines of its municipality, the holdings of Louisiana Power and Light Company. In that case, the district court said that taking a power company was not a public purpose. The court of appeal reversed that holding and said that it could. At that time, the city of Thibodaux, as I understand it, did not go ahead with the expropriation because they didn't have the money. But that holding is on our books giving the state the authority to take private enterprise at any time it chooses. Now, I don't question the decision in that case. It was probably right under the law at that time. We also provide that "personal effects other than contraband . . ."

I'll just briefly continue and then try to answer some questions. The last phrase saying that "personal effects other than contraband will never be taken" is an attempt to protect the personal possessions of people. It deals with state action

not government action. I mean, not private action, rather--state action, because of the context of this section. We are talking here about things like jewelry, works of art, clothing, personal effects of all types. Even the Russian Constitution recognizes that personal effects, personal property should be protected in this way. The last sentence simply states, and it's from a number of state constitutions, the California Constitution among others, saying that "the question of whether the public purpose is considered public and necessary is left naturally to the court to decide, in the case of a mere legislative assertion that a particular purpose is public and necessary, is not sufficient. This sentence is implied anyway, but we've included it to make sure there was no question as to it. Now, let me try to answer whatever questions you have in the time available.

Questions

Mr. Burns. Mr. Jenkins, in Section 4 it specifies that every person has the right to own, enjoy, control, and dispose of private property. In Section 7, it says "All persons shall be free from discrimination in the sale or rental of private property." Will you please explain if there is any difference, or is there any conflict in those two rights or those two provisions?

Mr. Jenkins. I think the general rule in interpreting constitutions, Mr. Burns, is that where there seems to be a conflict, the more specific provision will rule, and I think in this case that Section 7, if it were adopted as it exists here, would prevail over the general statement in Section 4. I think they have to be read in conjunction with other, with one another, and that Section 7 would limit the effect of Section 4.

Mr. Burns. Then I'll ask you the second question. If you say that the provisions of Section 7 would prevail, do you not think that that would restrict or encroach on the provisions or the rights to enjoy or dispose of private property?

Mr. Jenkins. I think it will, and this is where the second sentence in that section comes in, where it says that this right is subject to the reasonable exercise of the police power. And that the effect of Section 7 is that this is in that police power.

Mr. Lanier. Mr. Jenkins, I am most concerned about some language that I see in the comment under this provision that was sent out. In particular this comment says "the term 'taking' is to apply both to expropriation and appropriation so that appropriation would no longer have a special status in Louisiana law". What does that mean, Mr. Jenkins?

Mr. Jenkins. Under the appropriation law, as you know, property can be taken with no compensation whatsoever. Now, that is what we're getting at. This does not affect the quick-taking attributes of appropriation, because a quick-taking statute is allowed under the language in the third sentence of this section. So the main effect of the language here where we say "taken or damaged" is to include appropriation so that in the case of appropriation when land is taken for levee purposes, a just compensation is going to have to be paid for that, just as for every other taking.

Mr. Lanier. Well, now, Mr. Jenkins, what concerns me about this is, are you aware of the fact that the present jurisprudence, both of the United States Supreme Court and of the Louisiana Supreme Court, is that the exercise of the riparian servitude is not a taking?

Mr. Jenkins. Well, then if it's not a taking and can be interpreted as such, then this wouldn't deal with it.

Mr. Lanier. But, by the language of this Section 4 and the interpretation given to it in your comment, would that not imply that it is your intent

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would that not imply that it is your intent to go away with the riparian servitude?

Mr. Jenkins Well, it is our interpretation that the appropriation power of the state is a taking, now this might be subject to later judicial interpretation, but this was certainly our interpretation of the law. Now, if it can be shown that it's not a taking, that there is an existing servitude, then there would be no problem.

Mr. Lanier Well, Mr. Jenkins, in Article XVI, Section 6 of our present constitution, which I might add is under the jurisdiction of the Local Government Committee under Levees, has it not been the jurisprudence and the rulings in our state ever since we were a French colony; that this was a servitude that burdened land on navigable waterways?

Mr. Jenkins No, I think there's a dispute as to that, Mr. Lanier. I think that it can certainly be viewed as a taking, especially in modern times when we don't have the large tracts of land extending out to the river, which was the theory in past times by which it was considered a servitude on the property. We now have a single lot sometimes adjoining the river, and it can hardly be said to be a servitude in such instances.

Mr. Lanier Well, now, are you saying that you disagree with the holdings of Eldridge vs. Trecevant and the U.S. Box Company cases, both of which were decided by the United States Supreme Court?

Mr. Jenkins Well, you'd have to give me those cases and let me look at them, Mr. Lanier. I can't tie them to you off the top of my head and tell you whether I agree or not.

Mr. Lanier Well, then, would you agree that if it can be shown to you that the jurisprudence of this state is that the exercise of this servitude is not a taking--that this portion of your provision is in error?

Mr. Jenkins No, you might say the comment would be in error, Mr. Lanier. If you are correct in your assumption, then there is nothing in this section which would conflict with the appropriation power that you are talking about, because appropriation would be allowed if you're correct.

Mr. Lanier Well, then would it be your...

Mr. O'Neill Mr. Jenkins, the point here is, whether it's appropriation or expropriation, that you want the people compensated for whatever land is taken, correct?

Mr. Jenkins That's correct, and we're trying to do justice. When people have bought a lot adjoining the Mississippi River, and that lot is taken, if there is no compensation given, and it's not just compensation, we don't think it's right, and we think we ought to be able to just compensate for it. That's what we're attempting to provide.

Mr. O'Neill The second question--is this provision which the Bill of Rights Committee came out with, isn't it basically kind of a combination of provisions from several other constitutions, Illinois, Montana, and several other constitutions?

Mr. Jenkins That's correct. There's hardly a word in here that isn't in some other state constitution and working there.

Mr. Jenkins Mr. Jenkins, what is your precedent for inserting in this proposed Bill of Rights the first two sentences of section 4?

Mr. Jenkins The first sentence is found in most state constitutions, not word for word, but something of that effect, and it's an attempt to include the same type of language in our constitution. The second sentence really is not absolutely necessary because the police power is assumed and granted in every government, but to make it clear, we've

included the second sentence. That's the reason for it.

Mr. Derbes Mr. Jenkins, how do the first two sentences, how do the first two sentences affect the right of the governmental unit to regulate by virtue of zoning, environmental policy controls, or other systems of land usage that would redound to the benefit of the mass of individuals rather than the individual, and perhaps adversely affect the individual property owner?

Mr. Jenkins This does not affect it at all. In fact, this specifically grants it, whereas it was never granted before specifically, because zoning is an exercise of the police power, and so in land use planning, that's always been the way in which it's been sustained and so there's no problem with that.

Mr. Derbes Would you say that environmental policy control...

Mr. Henry Gentlemen, gentlemen, the gentleman has exceeded his time. I'm sorry.

Personal Privilege

Mr. Womack Mr. Chairman, fellow delegates, I guess the proper way to say this is that I am aggrieved as Wellborn Jack would say, I'm bugged by one thing here, and that's where it says "every person has the right to buy, to own, to dispose and so forth. The thing that's bugging me is, what relationship is this going to have to the community property sections of the constitution. It's got to have a relationship, and it just looks to me like that we have something there we'd better take a second look at, and that's the reason I wanted to bring it up before you got too far into the discussion.

Amendments

Mr. Poynter Amendment No. 1 [by Mr. Pugh], page 2, line 14, after the words "right to" delete the remainder of the line and delete line 15 in its entirety, and insert in lieu thereof the following: "acquire, control, enjoy, own, protect, use and"

Amendment No. 2, page 2, line 19, after the words "purpose and" and before the word "just" delete the word "with" and insert in lieu thereof the words "only after".

Amendment No. 3, page 2, line 19, after the word "compensation" add the words "has been"

Amendment No. 4, page 7, line 10, after the word "paid" delete the remainder of the line, insert in lieu thereof the following: "directly or indirectly to the owner or possessor. The owner,"

Explanation

Mr. Pugh Mr. Chairman, fellow delegates, the purpose of the first amendment is that as drafted, the section provides that every person has the right to acquire by voluntary means. To be that subject, he does not have the right to acquire by involuntary means; that is to say, one cannot acquire property as a result of the expropriatory process as a result of any of the "community property" which we in this business take property. All property is not acquired voluntarily. Much of it is acquired involuntarily, and for that reason, my amendment merely says, and I use their same phrase, that he may acquire, control, enjoy, own, protect and use. In that regard, I've used their very same language except to eliminate the preposition and to eliminate the words "voluntary means." I substitute therefor, that he may acquire. Are there any questions?

Questions

Mr. Arnette Mr. Pugh, it is my understanding that you were using the bill for your other amendment. Do you want to bring them up at the same time?

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Mr. Pugh That's the reason I asked if there were any questions here. As far as I'm concerned, the amendments are severable, and I'll take just the first one, if you'd like.

Mr. Arnette In other words, we'll just discuss each amendment separately and then vote on each one separately.

Mr. Pugh If it's all right with the Chair, I'd prefer that we be considered severable and we only handle them this way, and we take it line by line.

Point of Information

Mr. Arnette Right, since the ... it is divisible, Mr. Chairman? I ask for division of the question then, and we'll discuss them one at a time and vote on them one at a time after each discussion. Do I need to say that, or ...?

Mr. Henry At the proper time, we can determine whether or not the question is divisible.

Mr. Pugh I take it that it would be severable, and I was just trying to save the state all the money it takes to print these things on four different pages.

Mr. Arnette Right. Well, my question was could we discuss each one separately and vote on each one, instead of discussing all of them together and then voting on all of them in a row. In other words, discuss one, vote on one, discuss the next one, and vote on the next one?

Mr. Henry No, in keeping with the way in which we've done it so far, he would discuss his proposed amendments, and then we could vote on them separately, but not a discussion of them separately; no, sir, not the way they are drawn.

Mr. Arnette Well, the reason I was asking that, Mr. Chairman ...

Mr. Henry I understand your reason for it, but the way we've done it so far, Mr. Arnette, it would not be proper.

Mr. Arnette Well, I just thought it might be easier since the questions were so different.

Questions

Mr. Alexander Mr. Pugh, I noticed you used the term "acquire, control, enjoy, own, protect, use"; is not the word "control" there redundant, or is it designed to mean that one who owns a hotel, for example, and he controls it, then he may control who will use it, whether he may exclude certain persons or include certain persons, etc.

Mr. Pugh Reverend, I use the word "control" because the committee has. I have no pride of authorship in that word. All I did was eliminate the prepositions and I've tried to resolve the problem of whether or not you may voluntarily or involuntarily acquire property. That was all.

Mr. Alexander You do have the proper punctuation too, after "acquire", imagine. Would you consider "control" redundant, though?

Mr. Pugh I don't think it's redundant. I reiterate that I didn't try to change the verbiage of the committee; I merely tried to take the prepositions out.

Mr. Burns Mr. Pugh, in your explanation of the words "involuntary acquisition of property", I don't quite understand you. If I wanted to go and bid at a foreclosure sale at the courthouse, and bid property in at foreclosure sale, wouldn't that be voluntary on my part?

Mr. Pugh Yes, it is, but if the property is acquired by the foreclosing creditor, then it's an involuntary acquisition insofar as the homeowner is and insofar as the creditor is. A tax sale is an involuntary acquisition of a piece of property. We acquire many pieces of property under Louisiana law involuntarily.

Mr. Burns I couldn't quite see that distinction. I understand from a creditor's seize and creditor's standpoint, but an outsider that wanted to go bid at a foreclosure sale, that's purely voluntary on his part.

Mr. Pugh That's correct. All I'm trying to do is let the word have a dual usage, both involuntary and voluntary, that's all.

Mr. Arnette Mr. Pugh, since the Chairman has ruled that we're going to discuss all your amendments right now, would you go ahead and explain the rest of your amendments?

Explanation

Mr. Pugh I'll be happy to. Amendment No. 2 changes the words "with just compensation" to "only after just compensation". The next amendment, between the words "compensation" and "paid", I put "has been paid". The last amendment, they had reference to paying it to the individual or in the court. I'm satisfied the day will come and perhaps soon, in which these issues are not necessarily heard in court, but heard as they are in many areas by other bodies, and therefore, I say "directly or indirectly to the owner or possessor." I say "indirectly." I think it covers a payment in the court, but I don't like the use of the phrase "in the court" because that may not always be the manner in which these things are adjudicated. Insofar as the word "possessor" is concerned, I intend to cover more than an owner. I think possessors have some rights even though they are not owners, and this provides that if the court determines that a possessor is entitled to be paid, he can be paid that. As this reads, you can only pay the owner. I have no ulterior motive other than to lay that out, that's all.

Questions

Mr. Arnette Mr. Pugh, would you go ahead and explain what your amendments 2 and 3 do? I don't understand exactly what that does. Does that prevent a quick-taking, or permit one or what?

Mr. Pugh It does not prevent a so-called quick-taking. You say "with just compensation"; I say "only after". You don't have a taking until the money is deposited in the courts, regardless of whether it's quick or slow. There is no taking until after the money is deposited. That's the reason I used the phrase "only after". In addition to that, I say to deposit it directly or indirectly, he's paid. He may be dead; you've got to pay any one of a number of arrangements of people.

Mr. Arnette Well, there's only one thing that bothers me about your Amendments 2 and 3 then. You say it doesn't prevent a quick-taking. What about an emergency situation such as Mr. Perez explained where they had to fill in this levee within the hour. Would they have to wait until they actually got the ... the Board acted, got the money together, deposited it wherever it was supposed to be deposited, and then they could go ahead and fill in this levee or put in a levee setback? I don't understand; it seems like it would delay the action quite a bit.

Mr. Pugh I don't look as Mr. Perez does. I respect his opinion, but I don't. I don't think it look as he does about these grave consequences about the levee. As I understand the law, we all own property subject to the right of the government to

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reacquire that property. There's no question about that in the law. We only own property subject to the right of the government whether it's the state, whether it's the federal, whether it's exercised by a public corporation to take it back from us. Now, if you wish to have a phrase included here, "except as otherwise provided in the constitution", I've got no quarrel with that.

In further answer to him, I don't see any difference between saying you'll take it with just compensation because that still suggests that you're gonna pay something at the time of the taking.

Mr. Roemer: Bob, my question is in line with the thrust of what you're just talking about now, and that is, isn't your amendment, particularly 2 and 3, in regard to this "just compensation" wouldn't it read "and only after just compensation has been paid"? Is that correct in line 19 and 20.

Mr. Pugh: That is correct.

Mr. Roemer: Isn't that more restrictive in terms of the ability to take and use property? Under your language you couldn't do that pending just compensation; it would have to go ultimately through the courts, just compensation determined, money deposited, then property could be utilized. Am I wrong in that?

Mr. Pugh: Well, the courts have already, in my opinion, established is meant by the phrase "just compensation". Had they not done that, I would have had something to say about that. But the courts already determined what is meant by "just compensation". It's language that we are all familiar with.

Further Discussion

Mr. Jenkins: Mr. Chairman, delegates to the convention, Mr. Pugh's analysis of what "by voluntarily acquiring" means is now what we have in mind. We don't think that the language "to acquire voluntarily" in any way restricts people from the right of acquiring by involuntary means. However, we have no objection to his amendment because it does perhaps make the wording a little softer, and it does cover this objection even though it's not necessarily something that we need to take care of. So for that reason, we have no objection to the first amendment.

Point of Information

Mr. Warren: Mr. Chairman and fellow delegates, I didn't rise to oppose or support this amendment. I rise only for a point of information because I didn't have a chance to ask a question. It has been much talk about the levee boards, appropriations and expropriations, and what I'm trying to find out is, does this only apply, are we only discussing things for levee board and highways and streets, or will this affect our property in general, across the board. This is all I'd like to know, is this going to only affect the levees and highways and things that we have brought up to discuss, or is this going to affect expropriations or appropriations all over the state, across the board? And, I would like for anyone in authority to answer that question for me.

Mr. Henry: I'm sure Mr. Pugh will answer that, Mr. Warren, when he closes.

[Mr. Pugh: I will answer that question when I close.]

Questions

Mr. Warren: Mr. Pugh, if I seem to sound a little ignorant, it's true. I am ignorant to this extent, and I would like to know if this was referring to property just on the banks of the river or for levee boards, or for the streets, or does it affect people all across the board. My opinion, according to the dictionary, that you're going to have, if you're going to appropriate property, you're going to have to first take it before you can appropriate

it. So, I'm trying to find out if this affects everybody or just a few of the plaintiffs that have been mentioned at this convention.

Mr. Pugh: I think our constitution is going to affect everybody. I think we're hung up in this convention over the question of levees, over just compensation, and only after, and with just getting into semantics. I mean, the courts have already determined these issues. Am I answering your question?

Mrs. Warren: You are. I just wanted to know if it was going to affect everybody, because the issue has been raised principally on levees, which all of us are concerned about, our safety and all, but still I wanted to know if it affects everybody.

Mr. Pugh: The constitution as adopted, in my opinion, will affect all citizens doing business or living in the State of Louisiana.

Mr. Abraham: Bob, I'm in agreement with Amendments 1 and 4, but the language of 2 and 3 disturbs me, because when you say that it can be taken only after a just compensation has been paid, well, this would leave a question in my mind as to whether just compensation has actually been paid or not. Then the owner would go to court and say, "No, you can't take this property for a highway, because I intend you have not paid just compensation", and I think that that would hold up that proceeding until the court did make a determination, whether just compensation has been deposited or not.

Mr. Pugh: If I told you that there's a distinction without a difference between the phrase "with" and "only after" you'd ask me what the difference is, but the amendment is for. But really, I don't see any change in the law as I know it today by the phrases I'm using here. If the committee, I mean if the convention thinks otherwise, they can vote it down; it's not going to hurt my feelings. I feel very strongly about Amendment No. 1, however.

[Amendment No. 1 refers to the following: "Every person shall acquire, control, enjoy, own, protect, use, and dispose of his property, subject to reasonable statutory restrictions."]

Amendment

Mr. Pointer: Amendment No. 1 [of Mr. Pugh], on page 2, line 14, immediately after the word, "person" and before the word "has" insert the following: ", subject to reasonable statutory restrictions." It would begin "Every person, subject to reasonable statutory restrictions, has the right to" and you pick up Amendment No. 1 just adopted, by Mr. Pugh, "acquire, control, enjoy, own, protect, use, and..." etc.

Explanation

Mr. Denney: The purpose of this amendment is to provide that although a person has a right to acquire, own, control and so forth his own property, this right has to be subject to the right of the state to provide certain restrictions. For example, we have in our law that if you have a piece of property which is complete enclosed from a highway or a road then you have the right to get a servitude of passage over your neighbor's property, the nearest exit and entrance to that road. It seems to me that this is a reasonable restriction which can be placed upon the ownership of property. You have the same problem with regard to certain other private servitudes, such as the right to view, the right to light, the right to drainage and so forth. You have a right of lateral appurtenance over your neighbor's property. There are common walls which you can build on your neighbor's property. If you own your property in such a way that it abuts upon your neighbor's property, you are required to pay him damages therefor. It seems to me that by not restricting this to reasonable statutory restrictions

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tions you may invalidate all of these basic property rights in Louisiana law. Now I discussed this thoroughly with Mr. Jenkins. Mr. Jenkins and I disagree on the meaning of police power in the next sentence. He feels that the sentence which starts, "this right is subject to the reasonable exercise of the police power" would protect these other property rights. This is just a matter of disagreement between us on the meaning of the words "police power". I do not agree that this would protect the property rights which are now in our law and I think they definitely should be protected. I therefore ask for the adoption of the amendment.

Questions

Mr. O'Neill Mr. Denberry, would you explain your definition of police power, just for the benefit of us all?

Mr. Denberry Well I think police power, as Mr. Jenkins has in his Black's Law Dictionary, refers primarily to the power of the state to govern intercourse between society as a whole, and it does not apply to rights between individuals. It applies to the right of the state to protect the public at large by the normal police functions and that sort of thing, but I do not believe it would apply to rights between private individuals.

Mr. Bollinger Mr. Denberry, it seems to me that when you put a phrase like "subject to reasonable statutory restrictions" in an article in the constitution of this nature you are kind of doing away with the purpose of having a Bill of Rights because the Bill of Rights is, I think, to protect the people from the government in a certain aspect or protect the people from the legislature in another respect, and I think when you allow the legislature to make laws governing these rights then you are kind of doing away with the theory behind the Bill of Rights. Am I not correct?

Mr. Denberry Well, Mr. Bollinger, there is a certain merit in your argument and I can understand that, but it seems to me you have to choose between the lesser of two evils. You do not permit, for instance, under the present law, a minor to sell property or to buy property. You do not permit an interdict to do this on his own, or her own. These are restrictions which have to be placed on there by statute and I think you have to choose between the lesser of two evils. This is the reason I used the word "reasonable" in there. I think it protects the civil rights as against the state under normal circumstances. But under these other circumstances, I think you have to permit it.

Vice Chairman Casey in the Chair

Mr. Arnette Mr. Denberry, don't you think there are also many, many other examples of reasonable restrictions that the civil code has on property that need also be protected?

Mr. Denberry Mr. Arnette, I have no doubt about that.

Further Discussion

Mr. Conroy I rise in support of Mr. Denberry's amendment. I think it is vitally important that we adopt this amendment. I think that the basic concept or desirability of creating in the constitution the rights to property can certainly be well founded and justified by the committee, but I do think, as has been pointed out and as all of us are concerned about the breadth of it and what the simple statement as the committee had drawn it, what it might do to many of the present law that we have on the books that do, I think appropriately, restrict private ownership or impose on it certain servitude rights and other rights. So I urge your adoption of the Denberry amendment.

Further Discussion

Mr. Jenkins Mr. Chairman, delegates to the convention, we will oppose this amendment for two reasons. First of all, it is redundant. We have already provided that the right to property is subject to the police power, elsewhere, and also because it is slightly different in that police power, as defined presently, already has built into it certain restrictions, certain delimitations, certain understandings that reasonable statutory restrictions, that term, does not have built into it. Let me read you what the police power is supposed to mean, according to a Black's Law Dictionary, which I think is an accepted source of such comment. It says "the power is the power vested in the legislature to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the commonwealth and the subjects of the same. An authority, the police power is an authority conferred by the American constitutional system upon the individual states through which they are enabled to generally secure the comfort, health and prosperity of the state by preserving the public order, preventing a conflict of rights in the common intercourse of citizens". Let me read you one other explanation of the police power. Well, in summation, what I said, the term proposed by Mr. Denberry is redundant and unnecessary because we have already provided, in the second sentence, that the right to property is subject to the police power which is the reasonable regulatory power of the state. I think it important that we say the police power because the courts have interpreted that term many times in the past, courts throughout this country, and it will be more subject to rational interpretation. What is the police power? Well, here is what this source says. It says, "What is termed the police power of the state which, from the language often used respecting it, one would suppose to be an undefined and irresponsible element in government, can only interfere with the conduct of individuals and their intercourse with each other and in the use of their property." In other words, the police power interferes with people, regulates the use of their property. That's what the police power is. It is one of the two types of restrictions and limitations on property rights. First, the police power, the right to regulate. Second, the expropriation power, the right to seize. So we say that already. Now to say it again is to set up a dual standard which is not going to be subject to whatever limitations and protections have already been set up in previous decisions as to what police power means. An example is, in some instances a local government has attempted to put a particular business out of business in a general location because of something it was doing that was a nuisance. The courts have said you can't put it out of business if it stops being a nuisance. That's not a reasonable exercise of police power. If it can stop what it is doing that is a nuisance then it can continue in business. Otherwise, it is a seizure. So we know what the police power means. I think that this is a more proper term than the one proposed by Mr. Denberry, so I urge the defeat of the amendment.

Question

Mr. Stovall Mr. Jenkins, not being an attorney, the language "subject to reasonable statutory restrictions" does not mean the same to me as police power, and I am using police power in the general sense. Could you clarify if it means the same? Could you make it clearer? I don't feel that you've done so up until this point.

Mr. Jenkins The police power as normally used in legal language means the general regulatory power of the state to regulate, generally, most aspects of human endeavor, but particularly property rights. It is subject to certain limitations and restrictions, that term is, as defined in past court decisions. It has a history all its own. Now, the

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here proposed by Mr. Denny is somewhat unclear. But it is not subject to these past court decisions and limitations, so that perhaps there could be some abuse of Mr. Denny's term that we hope would not be involved in the term "police power" because of the past interpretations given it. I hope that answers your question.

Further Discussion

Mr. Roy: Mr. Chairman, ladies and gentlemen of the Convention, I think that if you were listening that would be very well taken. Subject to reasonable statutory regulations, of course, imply that they just steal from the police power. Now we say the reasonable exercise of the police power, but it could be that the statutory rules in the future may not come under police power. It may be something totally different. I just don't believe that the right of property which I have come to appreciate a bit, not more after being on this Bill of Rights Committee and reading the material we did and listening to the arguments of a real proponent of property rights, as Woody Jenkins is, I just don't believe that it should be subject to the whim and caprice of future statutory law that may not come with it, the purview of the reasonable police power, I think it's surplusage. It's just adding a bunch of words that really don't mean anything and it opens the door to some chance of some type of law which is not really the exercise of reasonable police power and which results in the right of property being lessened or modified. I urge your rejection of it and let me say this: certainly, I have no pride in authorship to that extent of this particular provision. I think the Committee has shown that its pride in authorship is subject to your change and whatever have you. I don't get paranoid about that we don't want any changes. This change just doesn't make any sense in my judgment and I don't think we ought to be cluttering up something that was perfectly clear before with extra words.

Question

Mr. Singletary: Chris, would you say that interdiction stems from the police powers?

Mr. Roy: Right.

Mr. Singletary: Would you explain that a little?

Mr. Roy: The police power of the state to concern itself with interdicts, with minors, with any person unlimited as long as it is a reasonable exercise thereof and is not contrary to anything which is in the Constitution. I think that if you talk about it, you don't think I can't let you the question. My opinion is that the law of interdiction can arise through reasonable police power and interpretations. I don't see what it has to do in any event with extra words that Mr. Denny wants to add here.

Mr. Anzalone: Mr. Roy, I do have appreciation that the reason that the state of Louisiana can govern the people who live within its boundaries is because of the police power granted to the state.

Mr. Roy: Well, that's a pretty broad question. It is to govern the people who live in the state of Louisiana because the power to create a constitution can't allow them to be governed and under the contract theory they give up certain rights which is in the creation of the constitution, even if you never mention the word "police power", would be the notion that running through government is the police power so that the police power may govern the lives of people to show intent even though not expressly stated.

Mr. Anzalone: Do you believe that the state has the right to govern and pass laws which are not necessarily associated with police power?

Mr. Roy: Well, I think any law I think the state

has a right to pass laws that affect people, because we have given that power to the legislature.

Mr. Anzalone: Now Mr. Roy, what you are saying is that you do not want the state to have the authority to give any law insofar as property, the Bill of Rights is under the police power of the state, and you have recognized that there are many state affairs in which the state can govern.

Mr. Roy: No, I didn't say that. I said that

Mr. Anzalone: Yes, sir, you did.

Mr. Denny: Mr. Roy, do you agree that it is possible that a court in this state might not agree with your opinion as to what the police power means?

Mr. Roy: Mr. Conroy, obviously I would have to say "yes" because the court would agree that everything we've written doesn't mean what it said either. Anything is possible. You could start flying right now.

Mr. Derbe: Mr. Roy, I think this is very important. Can you state definitively and categorically that every law enacted by the state or Louisiana, or any municipality or governmental subdivision thereof, which in any way, directly or indirectly, affects private property is an exercise of the police power?

Mr. Roy: In the broadest sense of the word police power, I would say you could say that.

[PROCEEDING TO THE AMENDMENT
SECTION, 14-1, PART 1, SUBSECTION
14-1-1]

Amendment

Mr. Poynter: The next amendment is offered up by Delegates Denny and Singletary.

Amendment No. 1 on page 7, line 17, after the word "power" insert a period and delete the remainder of the line and on line 18, at the beginning of the line, delete the word and punctuation "heirship."

Explanation

Mr. Denny: The purpose of this amendment is to remove from the section on the Bill of Rights any language with regard to forced heirship. I have previously introduced a delegate proposal concerning forced heirship. I think it is basically a reiteration of the legislative power. It really doesn't belong in the Bill of Rights, at all. I think we should be able to have forced heirship. I think it should be distinguished from what is in this section because this section doesn't cover all of the rights of forced heirship. Mr. Singletary and I therefore believe we should delete it from this section and distinguish it fully later.

Substitute

Mr. Roy: Well, I don't necessarily disagree with you at all. I was going to ask if you were aware of the fact, though, that our committee was written and I don't know how you all got the information, by many law dictionaries throughout the state regarding the opinion that forced heirship was part of the police power. I don't know how you got that information and recommendations from some law professor.

Mr. Denny: I received some information that I received at one of the committee's.

Mr. Roy: Well, that's the way we should do it. I have to say that we should be able to have the reason we talked in was because we had it in the Bill of Rights. We thought that was the way to do it. I don't know how you got that information. I don't know how you got that information. I don't know how you got that information. I don't know how you got that information.

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Mr. Dennerly Well this was the purpose of my delegate resolution, Mr. Roy.

Mr. Perez Mr. Dennerly, isn't it true that the reinforcement to the law of forced heirship does not require forced heirship but, if there is forced heirship, that it would have the effect of limiting the meaning of the first sentence?

Mr. Dennerly Yes, I think that's true, Mr. Perez.

Mr. Perez I don't quite understand why it is then that you would want to eliminate those words because it is quite possible that if we eliminate those words we may be eliminating forced heirship as such.

Mr. Dennerly Well I don't know that by leaving them in there we continue forced heirship as such and I thought it would be more proper to discuss the whole concept of forced heirship in one place, Mr. Perez, and that's the reason I filed that.

Mr. Perez Wasn't it the purpose of the committee to be sure that the first sentence, which talks about every person has the right to acquire by voluntary means, own, control, enjoy, protect and so forth, might be construed to do away with the laws of forced heirship and therefore, if you do not put it in the next sentence, the right to the law of forced heirship, that it may, in fact, do away with the laws of forced heirship?

Mr. Dennerly Except for the amendment which was just adopted which says that it's subject to reasonable statutory restrictions and I think that would permit the law of forced heirship.

Ms. Zervigon Mr. Dennerly, were you aware when you introduced this amendment that when the composite committee went around the state hearing testimony, the sessions I attended, which was all but two, we had several people testifying against the concept of forced heirship and not one word spoken in favor of it?

Mr. Dennerly Yes, I had heard that, Mrs. Zervigon, and I thought the entire matter should be discussed on its own merits rather than in the Bill of Rights section. This is the only place it appears, as I recall, in this section. It did not appear in the legislative section. It will appear in the delegate resolution which I have proposed.

Ms. Zervigon Were you aware that the same thing occurred in our neighborhood meetings, at least within Orleans Parish, that we had several people testifying against the concept and no one speaking in favor of it?

Mr. Dennerly Yes, I was aware of it.

Ms. Zervigon Thank you.

Mr. Singletary Mr. Dennerly, under your previous amendment that provided for reasonable statutory restrictions, wouldn't that take care of forced heirship?

Mr. Dennerly I should think so, Mr. Singletary.

Mr. O'Neill Mr. Dennerly, your resolution on forced heirship, your delegate proposal, if it were inserted in the constitution, that would certainly take care of any problem, wouldn't it?

Mr. Dennerly Yes, sir.

[Previous question closed. 200 AM
Call: 100 delegates present and a
quorum. Revised vote recorded. Amend-
ment adopted: 99-51. Motion for
consistency tabled.]

Amendment

Mr. Poynter The next amendment is sent up by

Delegates Toland and Chehardy.

Amendment No. 1 on page 2, line 16, after the word "property" change the period to a semi-colon and add the following: "and every person shall be entitled to his own home free of any state, parish, local, or any other taxes whatsoever. The legislature shall define what constitutes a home."

[Quorum Call: 103 delegates present and a quorum.]

Explanation

Mr. Fulco Mr. Chairman and fellow delegates, this amendment might have been quickly prepared but it has been considered perhaps most of my life. I have always wondered, prior to my time in the legislature, why a home was taxed. I had always heard that taxes were placed on revenue producing items. I have never seen yet where you could consider a home as a revenue producing item. A home is a man's castle. A home is something that every young married couple hopes to acquire in their lifetime. We have taxes galore. We can produce revenues from other forms of taxes. We need not have another tax on a home. Now this is not a selfish tax. This tax is providing for an exemption for rich and poor, for young and old, no discrimination whatsoever. So, it is not a selfish tax. Now what will happen to the revenues that are lost from this means of taxation? It can certainly be made up otherwise from existing taxes and it is not going to be additional taxes on the part of anyone because what you will save in paying taxes on your home will have to be made up through other taxes that are now levied otherwise. Now, after a young couple acquires a home they are burdened with this home tax. Should they be able to take care of the taxes that are assessed on their home, they are concerned further about additional improvements or expansion on their home to accommodate the increase in their family. Where there are additional children, there must be additional rooms in that home. In order to make this improvement or expansion on their home, they are further taxed because there is an increase in the assessment of the home because of the improvements and because of the improvements there are additional taxes. I remember some years ago when I was in the legislature that I put in a bill in the legislature to exempt...

Mr. Casey Mr. Fulco, just a moment. It looks like an anthill out on the floor of the delegation and it sounds like a beehive. Would all of the delegates please take their seats? The sergeant-at-arms are constantly signaling the Chair that the delegates cannot be heard.

Mr. Fulco Thank you, Mr. Speaker. I'm going to be brief and not talk to you long but I did want to make this point that I am sincere, that I am conscientious, that I am honest, that I do mean this amendment with all my heart. I hope you feel likewise. Let's consider the young couple that will have children who will need expansion in their home facilities yet they cannot provide for additional homes because when they do it goes on the assessment rolls and they have to pay additional taxes. For that reason, they are deprived from making necessary improvements. That bill that I introduced in the legislature was fought by labor at the time and when I asked Victor Bussie why he had opposed that bill, he told me, "Frank, I didn't really realize at the time what you were providing for. I would not oppose such a bill as that because you are providing business for the carpenter, for the painter, for the plumber, for the electrician, and I should never have opposed that bill." If he had not opposed that bill at the time, the bill would have passed, it would have become law. The young couples would have been able to provide for expansion in their homes and not worry about it going on the assessment rolls and thereby not paying additional taxes. A home is not a revenue producing item. It should not be taxed. Thank you.

Questions

Mr. Jureau Mr. Fulco, you are aware as you very well know that over the past eight months that this very subject has been considered by the Committee on Revenue and Taxation.

Mr. Fulco Well I am glad to hear that it has been considered. I hope the results have been in our favor.

Mr. Jureau Well assume that to be true, Mr. Fulco, don't you think for the proper consideration and the deliberations of this convention and to get the statistics and the information necessary before this convention, that it would be more appropriate to take this particular article that you are suggesting up when we get to Revenue and Taxation?

Mr. Fulco Pat, maybe we can do that and maybe we may have to do that.

Mr. Jureau Well I'm asking which way would be better for the people in the convention...in these convention delegates to consider the issue?

Mr. Fulco Well let's have a trial run now, Pat, how about that?

Let me answer Antz's question briefly, and I'll yield the rest of my time to Mr. Cheardy, but I would have thought that he would have asked for the floor. You could ask for the floor.

Mr. Jureau Mr. Fulco, you said that this revenue would have to be made up by more desirable taxes or other more desirable sources of revenue. During your sixteen years in the legislature, what desirable taxes did you run across to make you against the people?

Mr. Fulco None.

[Antz asks: Is legislation present and a question.]

Further Discussion

Mr. Cheardy Mr. Chairman, members of the convention, this matter has come about in a relatively few minutes of time, and it came about because Mr. Fulco discussed with me, just a short half hour ago, why wasn't something said in effect about the real property rights, the right of a man to own his home, in this section. As I listen to amendment after amendment by all the do-gooders that are worried about the rights of the people of this state when we live in an age when taxation, throughout America, has ravished every homeowner in practically every state, except Louisiana, because I have seen fit to withstand the laughter of those who thought it was a ridiculous fight to take up the homeowner's fight in Louisiana, and I mean for eight years. Now, I was perfectly willing to go back and wait for the assessors' fight for a program of which I am a part and of which I am for. However, we are now talking about basic rights in a Bill of Rights. It has always been my contention that one of the prime rights of man is the right to own a home. It has always been my contention that the basis of our society, of our democratic structure, is the home. It is the root of our democracy, and if every man owned his home, no matter how humble or how big, you would have less social strife and you would have less misery in this world. I don't want to yield until I finish my few more minutes. What is the situation? The assessors' fight is to have an income tax. How I will up and say, well, where will the money come from? We have a thirteen Billion Dollar total wealth product in Louisiana. When the corporations have taken off to the point, seven billion in dollars in exemptions, and leave less than half the total wealth available for taxation, they have never once said, where will the money come from? Simply five percent, probably, of the existing qualified, today, are being in new additions, not an inducement to new industry. A man I hope to truly help

people. We're talking about income when we get into revenue and taxation, then we have time enough to worry about all of the ad valorem tax structure. You hear the argument, well, a man with a big house may get 50%. Well, a man with a big home, if that's what the concern would be, could be taken care of very easily as far as taxes go, because he is going to be the one to pick up the burden in all of his other areas of wealth. I should every homeowner in Louisiana be guaranteed his home free of any form of taxation. Now, if you want to see how truly heavy this is, financially, let us look at these statistics and this was compiled in the last U. S. Census Bureau, Statewide, only seven percent of the homes, on an average in the state, are over thirty-five thousand dollars in value. In New Orleans, sixteen percent of the homes are over thirty-five thousand, and in Jefferson Parish, twelve percent. We have proposed a five thousand dollar homestead exemption. We have proposed a ten percent assessment base. So when you take those figures and look at them, you realize that the excess that will have to be picked up is negligible. Also, when you realize that this is the first time in this convention, basically, we have a chance to concretely give to ninety percent of the population or seventy percent, a home, and guarantee them that confiscatory taxation will never take it from them. Now, when a man stands up to talk, ask what is his interest. Does he represent the corporate structure? On our committee, for example, we had one member whose law firm represents seven percent of the tax-exempt industries in this state. We had another one who represented Mr. Busie, in his suit, for actual cash value assessments on every home in Louisiana. We had another one whose family has just recently been granted an exemption, and it might be his grandpappy, but he's just been granted almost a million dollars of exemption on some dairy farming stuff. So you will find that those who will preach hard against the homeowner have an ax to grind. If you truly say you're for the homeowner, there's one way to do it, is to give him a chance to own that home without the burdens that have chased people out of New Jersey, chased them out of California, out of Texas, out of Florida, out of California, out of every area of the country. This is what will create a labor market. This is what will give people something to work for and to look forward to, and I want to answer specific questions, so whoever wants to ask a question, best ask them now.

[Rules suspended to allow speaker to handle question. Mr. Cheardy asks: How long will it take to get to the end of the day? 4:00-4:15.]

Mr. Cheardy Fine. What I do want to do, because I feel very deeply about the subject, the people who in the last...I just want to make a half of a minute statement. The people, who in a few minutes time joined in this thing who have feeling in it, I think I owe it to them - the authors on this bill, which have not been written out in full on your copy are Fulco, Cheardy, Alario, Willis, D'Gerolamo, Conno, Ica, Bergeron, Wilo, Thom, Jack, Guarisco, Jandry, Bell, Rey, Hernandez. There was that many more, we didn't have time. Just on the spur of the moment and here we are.

Question

Mr. Jostent Mr. Cheardy, perhaps we could do a step further. Don't you think, maybe giving a little bit further, the state would provide a home for every homeowner in the state?

Mr. Cheardy Well, if you want to do it, you can put forth an amendment in. If you want to make a fool of yourself, go ahead and do it.

Mr. Jostent Don't you think maybe this is giving a little bit along that line? If we could provide a little bit further and let the state provide everybody a home in the state.

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Mr. Cleary: No sir, I don't. I can only answer you... your question merely shows your ignorance of the entire subject matter.

Mr. Fontana: Mr. Cleary, you've been on our committee. I'm on Revenue, Finance and Taxation. Why don't you ever provide for this in our own committee? Why do you bring it here now whenever our Committee Proposal isn't ever up? Why did it ever bring it before?

Mr. Cleary: Because this is an entirely different matter. In the Revenue and Taxation Department, we are setting forth an entire plan of ad valorem taxation, encompassing homestead exemptions, encompassing classifications, encompassing religious exemptions, industrial exemptions and a whole subject matter. We're also, in that particular committee, studying the area of the license tax on automobiles, the income tax. Right now, we are talking about rights, rights, a so-called Bill of Rights, and of course come, and I believe there are those that are familiar with the fight that I've been involved in, and many of the assessors, not all of them, but many of them, share the belief that a man's home is a basic right - the ownership of that man. That is the reason this came up when Mr. Falco approached me. I could not possibly not go along with him and in a space of about six or seven minutes or so, within time as we had, or ten minutes, about twenty people joined with us. If you want to ask independent questions, ask them and I'm right with you, and I don't want to waste my time by asking about typical questions you ask ordinarily. Mr. Fontana.

Mrs. Warren: Mr. Cleary, you mentioned the fact that the corporations could not pay the tax where the property owner was relieved. I'm wondering, how would you assure the convenience and the people across this state that the corporations that are not relieved are going to have the necessary taxes to operate government and our schools and things?

Mr. Cleary: Right. Now, of course, what I had said, Mrs. Warren, is that we have a total thirteen billion dollar wealth problem in our state, that already seven to eight billion of that has been released from the tax base of taxation. This is a total tax exemption route. Now, I also point out that, already, under the plan which will come up under Revenue and Taxation, after you allow for a five thousand dollar homestead exemption, and a ten percent assessment of current market value, you have very little left of the dollar, of dollar value to be collected on a home in Louisiana. Now, how will it come about, we shall probably already in the committee when will come before the body as a whole, an amendment to the industrial exemption law providing that when industrial exemptions are granted, homesteads will receive the benefits of the community or the municipal, wherever the exempt property is to be located. That, of course, is a question of the effect of the governing authorities of the subject, parishes. We're determining whether or not they're going to permit any further extension of industrial exemptions. Now, to say exactly where it comes from, I also pointed out that while they have taken over half of the wealth, with the industrial exemptions, they have also taken that same kind of exemptions for the average man in this state and had that we need to do so to let us know how bear the burden that should be borne of this state and not get when you do shift. When you take the tax off of the average man, the result is, none where you get the same kind of exemptions, they're not going to want industrial property, that's why the more expensive property will have a much more burden over the long haul. The more relief the state has, when you're releasing property when you're exempting, as the State will have to pay the requirements of the property in the state, and if that program is that you're going to do the work of this Government, then of course, you will still have responsibilities with the one in relief.

tion, the overall impact should be almost negligible, but, we will have established in this state the right for a man to own a home without fear of confiscation by taxation. Will encourage home building, you encourage the labor market. Many areas of this country where the labor market has gotten so poor because of taxes, they have actually literally left the state because they cannot own a home. So the money will come, it will be injected to those more able to...

Mrs. Warren: You still haven't answered the question I'm trying to find out, we're talking about this today, and if this passes today and what you're talking about falls or as you say, these people don't see the way you see it, then what is going to happen? This is what I'm trying to find out. How see, we're kind of stuck in the cap before the horse, and I would just like to find out where is this money coming from in the event that...

Mr. Cleary: It is going to be no more so than when we had a two thousand or we have a five thousand offset. It is merely going to be shifted to other areas of taxation that can afford it, much more so than the average farmer or the small homeowner in the state.

Mr. Burns: Mr. Cleary, you've mentioned several times in answer to other questions about the homestead tax exemption which had been under study in the Committee on Revenue and Taxation. If your amendment would pass before this committee today, that would go away with the homestead exemption completely, would that? There would be no more taxes or homes?

Mr. Cleary: Well, I would say this, that if this would occur, you would be in the envelope of about a million to two million dollars of property tax exemptions for the average homeowner, 50 thousand for veterans, one thousand for people over sixty-five which is in our plan. Actually, it would probably... you're only going to affect another five percent of total property in the state under this plan.

Mr. Burns: But, if we would take out this amendment that we're on, that we would not that go away with all state, parish, municipal tax completely?

Mr. Cleary: Right. It would make the Bill of Rights near worthless, and it would really go away with the need for homestead exemption, because you would be given a total exemption on a home. It would be a total homestead exemption. In effect.

Mr. Burns: One more question, please. I understood you to say that this idea of this amendment only came to you about a half an hour before it was prepared and introduced. Is that right?

Mr. Cleary: Not the plan, the conceptual being worked on for me for over a year. I have preached for the exemptions of home from taxes, but when I sat down and listened to all this, pardon the expression, this so-called "keeping people" worrying about the property rights of men and when I know that the property rights are being curtailed with some measure of the state, and through the half interest of the corporate structure, and when I take all the exemptions... I would no longer sit by, even though I knew we had an alternative plan in place we under Revenue and Taxation, and had put for the time that I've stayed all my life. That is nothing new, for every year I give you the information for a man who wants to be free from taxes.

Mr. Burns: One more question. What is the going to get it? Mr. Cleary, you have just stated, and I know you're very sure and you have got a whole lot of facts, but what I want to know is, you're telling me that you're going to give in the way of this competition, how you're going to get the government to pay or something that has occurred here.

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representing just compensation, and in the event of any disagreement between the property owner and the taking agency, that then an estimate of the compensation, based on appraisal would be paid in the court for his benefit. And upon that occurrence, the possession would be delivered to the taking agency with the deposit in the register of the court. From that point on, the landowner would be entitled to have his trial by jury with respect to the question of compensation, and, obviously, would seek that right because the second part of this amendment would only come into play in the event of disagreement.

In light of the comment made by the committee that it was their intention to make a provision for this, the committee, as I understand it has no objection to the amendment.

Questions

Mr. Avant Mr. Kean, my understanding of the present state of the law is this with respect to quick-taking, that the Department of Highways is the only agency of the state that has the right to a quick-taking; that is upon paying into the court their estimate based upon appraisal of the value of the property, when the money is deposited in the court and the judge signs the order accepting the money, title to the property then passes to the Department of Highways and you can litigate later about just compensation.

Mr. Kean That's correct.

Mr. Avant And that the only agency, the only entity that has that is the Louisiana Department of Highways, under a special constitutional provision, is that correct?

Mr. Kean That's correct.

Mr. Avant Now, your amendment, then, would extend that quick-taking privilege automatically, would it not, to all public agencies, including school boards, recreation and parks commission, you name it. Any agency.

Mr. Kean It would do that, Mr. Avant, and in place of the present provision, the landowner would have a right to a trial by jury with respect to the question of compensation which he does not presently have.

Mr. Avant All right. Now, another question. It would also extend it to private entities that might possess the right to expropriate under certain circumstances, would it not?

Mr. Kean Only if the court found that there was a public purpose and necessity under the last sentence that the committee has in its proposal.

Mr. Avant All right. Now that's what's confusing me, because the public necessity, the word "title" in this section as it now stands applies not only to private entities that might have the powers to expropriate but also the public entities. In other words, if the public agency, say, say the recreation and parks commission for the parish of East Baton Rouge decided to expropriate X acres of land for this and such a purpose. Under this provision as it now stands, the landowner would be entitled to litigate the necessity of that as to whether it was a necessary public purpose, would he not?

Mr. Kean That point would have to be passed on by the court as the committee proposal would.

Mr. Avant All right, now. What I am having difficulty doing, Mr. Kean, is reconciling your amendment with that concept because your amendment speaks only of the issue of just compensation. He may not argue about the compensation. He may not be questioning the compensation. He's questioning the public necessity, but when the money is paid into court, possession passes at that time under your

amendment even though he is still litigating about the public necessity of it. Would that not be correct?

Mr. Kean The reason, Mr. Avant, that I did not say title passage as it does in the Highway Department statute, and instead used the word "possession", was designed to ensure that nothing more than possession passed under these circumstances and it would be at the risk of the taking agency that the court might thereafter decide that it was not for a public purpose and a necessary public purpose. And that was the reason I used the word "possession" rather than title passing as it is used in the highway statutes.

It seemed to me under those circumstances that the taking agency would have the right to possession but would do it at the risk of the court taking the position in the same proceedings that they were not entitled because it was a matter of... not a matter of public necessity and purpose and, therefore, they would take that possession at their risk under those circumstances.

Mr. Avant I want to make sure that I understand your amendment, then. If the recreation and forest commission expropriated a hundred acres of land for a park and the landowners were arguing about just compensation and that was all, then the money would be paid in the court, possession would pass, they'd have the right to do what they wanted to with the property, later on if they got more money, they'd just get more money. But at the same time, though, if the owner was litigating about the necessity of it, the public necessity of it, if they did go out there and start bulldozing, excavating for swimming pools and things like that, they'd be doing that at their risk.

Mr. Kean At their risk. That's right, sir.

Mr. Avant And if the court disagreed with them, then presumably they'd have to restore the property....

Mr. Kean Remedy that situation.

Mr. Avantto the original condition.

Mr. Kean That's the reason I used "with design", the word "possession" rather than "title".

Point of Information

Mr. Stagg When the Clerk read the amendment, it stated that it deleted line 20 in its entirety and then in a further reading, the Clerk said that the two words at the end of the amendment, "either party", were also to be stricken. If that's so, doesn't that leave an imperfect sentence dangling at the end of this amendment when it is adopted?

Mr. Poynter Mr. Kean, I think you need to add back in, "the owner".

That's correct. I think Mr. Kean wants to add back in the words, "the owner". Add back in. Instead of "either party" which he does not want, add back, "the owner", and that would restore the full sentence that commences on line 20 and is completed on further lines.

Questions

Mr. Planchard Gordon, my question was, in your wording of this thing you say that "just compensation shall be paid to the property owner or in the event of disagreement, an estimate of just compensation, based upon appraisal." But there is nothing to say who is to appoint the appraiser or who is going to make this appraisal. Is it incumbent upon the taker of the property, or is it the right of the landowner to have the appraiser, or to present the appraiser?

Mr. Kean The amendment contemplates that the appraisal would be made by the taking authority and based on that appraisal, the money would be

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placed in the registry of the court

Mr. Flanhard Well, in that instance, do you feel that based upon appraisal is necessary... or the wording is necessary. If we just leave it with just compensation.

Mr. Keen No, because I wanted to follow the procedure that is presently followed by the highway department, and that is if having an appraisal made which is alleged to be by that appraisal the... it is entitled just compensation. I didn't want to leave it just up for somebody to decide it was estimated just compensation. I wanted that to be based upon an appraisal of the property.

Mr. Flanhard Well, in line with what Mr. Avant was asking you, I felt that this was only for the quick-taking by the highway department or by the state agency. But apparently it is the same for private-taking, also.

Mr. Keen It would be applicable to any taking agency, and as I pointed out to Mr. Avant, it change in line with the committee's philosophy. The present manner of handling expropriation suits, and because of that change, I see no particular manner in extending the quick-taking to the other agencies as I understood the committee intended to do.

Mr. Flanhard Thank you very much.

Mr. Alexander Mr. Keen, I have two quick questions. The first, as you know, an appraisal becomes obsolete very quickly and there is no indication at the time... it could be an appraisal that was taken in 1960, isn't that correct?

Mr. Keen I would think if you were required to put an estimate of just compensation into the registry of court based on appraisal, that would be an appraisal made as of the time you were taking the property. And you couldn't use an appraisal that was ten years old for that purpose.

Mr. Alexander Right. That would be good. Now the other is, as you know, an estimate, that property as a rule, especially residential property, is sold above the appraisal value... sometimes as high as twenty-five percent. Now, do you mean here that the whole transaction would be restricted to the appraisal, as such?

Mr. Keen No, sir. I do not, sir. As a matter of fact, we have not deleted the following sentence which provides that in the event he has a case tried by jury, he is entitled to receive the full extent of his loss. This is merely a mechanism by which we would start the expropriation proceedings forward and, as a consequence, and at the time of the taking agency, they could have possession. But the landowner would be entitled to the trial by jury to receive the full extent of his loss irrespective of what was the estimated just compensation based on which the proceeding started.

Mr. Alexander Thank you. Then you are not withstanding to be compensated to the full extent of his loss. You are still retaining that.

Mr. Keen No, sir. We had amendments two and three which we have withdrawn. We have original purpose was to do that in line with our discussions with the committee we left it in.

Mr. Alexander Thank you.

Mr. Leigh Mr. Keen, in view of the fact that they have had the property by expropriation the compensation that is paid, do you understand that a lawyer or their agent is going to be there with it.

Mr. Keen Yes, sir.

Mr. Pugh I think would it not like the Rest

and law, there is the right

Mr. Keen No, it would be the supporting evidence, so to speak, for the best estimated amount of the just estimated compensation.

Mr. Pugh All right. In addition to that, you have interests in the owner of the property being compensated. You are not suggesting that one might be less than an owner and still be entitled to compensation, are you?

Mr. Keen No, sir. I am not. Anyone who is entitled to compensation would be in the same situation.

Mr. Pugh You look at property as if it is a right as well as physical ownership of a tangible, is that correct?

Mr. Keen That's my appreciation, yes, sir.

Mr. Leigh Mr. Keen, I am concerned about the informal amendment changing either party to the owner which was made a moment ago. Do you intend by that to deny to the expropriating party the right to a trial by jury?

Mr. Keen As the amendment would read, the right to a trial by jury would belong to the owner, yes, sir.

Mr. Leigh And it would be denied to the expropriating authority.

Mr. Keen That's right.

Mr. Duval Mr. Keen, would your amendment apply in situations where public utilities, pipelines, etc., which have the right to expropriate... would it apply to them?

Mr. Keen It would apply to any agency which would be... could demonstrate that the purpose for which the taking was intended would be a public purpose and a necessary public purpose. And if that included a pipeline, yes, it would.

Mr. Duval Well, you mentioned quick-taking. Would it take away the right to litigate the necessity for the taking?

Mr. Keen It would not, sir, because the last... we did not delete and did not offer an amendment to delete the last sentence in the section. And the last sentence in the section specifically leaves to the court a decision with respect to public purpose and necessity and says that it is a judicial decision.

Mr. Duval Well, I had understood you. I thought you had in fact allowed a quick-taking for all of this type of agency.

Mr. Keen No. My point is that it would benefit, at the risk of such a utility, company, or utility this procedure. But it would be solely at their risk because all they would get is possession and it, under circumstances where public purpose and necessity is in issue, but at issue, it was the court that it was not public purpose and necessity, then the landowner's right would be returned to him at the risk of the taking agency.

Mr. Duval Well, what if the real purpose of the utility would not be able to really commence until such time as the court had decided.

Mr. Keen That would be. There would just have to take that risk or else, would take the risk or get the matter disposed of.

Mr. Keen Mr. Keen, if I understand this thing... from the answer that you've given me the other question, would it not be the case that the court that normally would be the expropriating authority between landowner and the expropriating

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company when they are coming through an area to the extent that they would come in and get one appraisal and just deposit that sum for the whole line rather than having to negotiate bit by bit as they go through?

Mr. Kean I don't think so, Mr. Burson, because the procedure as I envision it here seems to me would be to encourage the pipeline companies to negotiate to the fullest extent possible. Because if they got the appraisal, put the money in the registry of the court, they would only have a right of possession at their risk and would still have to litigate with a trial by jury the actual extent of their loss....

Further Discussion

Mr. Roy Mr. Chairman, ladies and gentlemen of the Convention, Mr. Kean, we are going to have to not exactly punt you, but I understand that you....that Mr. Jenkins told you the committee felt that your amendment was o.k. and we've out-voted Mr. Jenkins so that the convention knows, I'm sorry to do that, Mr. Kean, but that's....we just disagreed with Mr. Jenkins when we found out about it, we out-voted him.

We feel that the amendment is not needed and the biggest problem is that it permits quick-taking by pipelines and private enterprises and we are against that. We think that the Section 4, the more you read it, because of all these amendments that are affecting it or are trying to affect it, the more we hope you will agree is designed to protect the individual property owner, it's for the people who have something, and that's the whole concept behind it. We allow quick-taking, we allow the money to be paid in the court, and we allow for a jury trial to determine the value of the taking later on if necessary. But we urge the defeat of this particular amendment.

Thank you.

Question

Mr. Anzalone Mr. Roy, Mr. Perez brought up a question the other day concerned with quick-taking as we are dealing with here. Do you think that this privilege should be extended to all taking agencies?

Mr. Roy Mr. Anzalone, personally do I agree that it should be? Are you asking me? What do you want me to say?

No.

Further Discussion

Mr. Burson Ladies and gentlemen of the convention, we've got a flood of amendments hitting the floor here. But I hope that the volume of the amendments does not obscure the importance of the question involved here.

Now I rise to oppose this amendment, not because I do not think that it is not a well thought out and complete piece of work in itself, just as most things Mr. Kean does. I simply disagree with the theory because I believe that if this Bill of Rights proposal has got anything in it that I agree with, and I don't want Chris Roy to faint back there, but it is the right of a jury trial for landowners whose land is being expropriated. Because if there is any area or the law where people are abused in my experience, it is this one.

Now the district that I represent is a prairie area which probably has as many pipeline running through it as any inland area in the state because we are at the juncture of most of the pipelines coming from the Gulf and going up to the north. Now I am aware of landowners that have seven, eight and nine pipelines through a rise in this one. Then when they come with the eleventh pipeline they are told you have to take twenty or thirty dollars a rod, this is what we are going to give you, we won't give you any more, if you want more than that you've got to go to court. Well, the landowner knows if he has to go to court that by the time he pays his attorney's fees he's going to

come out in the hole. So he takes \$1500 far more than even what his land is worth, much less the inconvenience to him. I think that if there is any area where an individual would receive justice from a jury, it would be this one.

The error that I see in Mr. Kean's proposal is, do we really believe that a court is going to make....let's say Michigan-Wisconsin Pipeline Company, to use a big one for an example....you've got to take up that thirty-six inch line that you put through this rice farmer's field because you really didn't have the right to take it, after they'd laid maybe fifty or a hundred miles of that line, and if they did....if the court did tell them that, would that be more of an inconvenience to the pipeline company than it would to the landowner? Suppose he is in the middle of planting next year's crop and instead of having one year's crop disrupted, he'd have two. And what kind of compensation would he be paid? Would he be paid on the basis of one disruption or two disruptions? I just don't think it's practical.

And I, above all, do not believe that public utilities should have the right to quick-taking. I think that that is a right that ought to be severely restricted and I would not be for an expansion of quick-taking power beyond what we have in the utility industry under any circumstances. I urge you to defeat this amendment and to retain the concept of a jury trial, particularly in the area of taking by public utilities of private property.

Further Discussion

Mr. Guarisco I rise in opposition to this amendment and I think I was instrumental in the committee in having this jury trial put in the committee proposal. And the reason why I did it is because I have lived through it many times, personally and representing clients. And you can't understand how important it is to lose your property to a pipeline company on the highway or come what may until it happens to you. And all this committee proposal does is give the landowner an opportunity to have a jury trial if he desires one and he has a right to waive one if he doesn't want one.

Now think about who's opposed to this. Who is lobbying for this kind of amendment? The pipeline companies, the aerial right-of-way for electrical lines, the highway department, but you don't see anybody lobbying for the landowner, the homeowner or the people. Now who is in a better position to know the value of the property in the vicinity than the people who live there? If I'm a farmer, I would darn sure like to have a few farmers on my jury or the opportunity to have a few farmers on my jury to determine the just compensation that ought to be paid for my land. And I'm going to tell you how to do it.

They walk you in the court and they say "just compensation", say you go to court. Then they come in with the objective appraisals. They are about as objective as I am toward my family. They walk in, and I've questioned them, I said....the appraiser to your day in court, but you better be in how many times did you appraise for this company?"

He said, "Oh, about five thousand times."

Well, they are on the payroll. They are not objective. Procedurally, we talked about procedural due process yesterday. Now this is why it's important in the expropriation case, sure, you've got your right to your day in court, but you better be in court in about fifteen days. Now they've made all this preparation. You don't even know it's coming and then you've got to find an appraiser and appear in court and to defend this thing.

Then if you lose, they still take your property and you don't have a right to suggestively appeal from that judgment. Once they take it, it's gone. So the better view is to allow jurors who are residents of the vicinity to determine the compensation. It doesn't stop the pipeline company from taking the property.

I yield to any questions.

Further Discussion

Mr. Tappan. Mr. Chairman and fellow delegates, I rise in opposition to the amendment. I, too, like the speaker before me, knows full well what happens with these pipeline companies. That's just one example and I'm not pin-pointing them, especially, but not only in the rice fields but let's take in South Louisiana, if you've ever flown over South Louisiana and looked at the pipeline situation of that area, you have a network of pipelines that are running like this. That's the area what they do in in order to service those pipelines, they dig the canals and put these pipelines in the canals and leave the canals open so that you have a taking of not only the particular area where the canal is, but of the use of the surrounding property, and what they are doing and have done in the past and what is this, they establish a particular price, let's say per rod, this is established in a particular area, the court is aware of this, and you can argue till you're blue in the face, you are not going to get any more than five dollars a rod or ten dollars or whatever it is. Whereas if you have a jury, you have a much better chance because a jury will be made up of people who own property, also, and I urge that you defeat this amendment.

(Relevant Section of Article)

Opening

Mr. Tappan. Mr. Acting chairman and fellow delegates, I listened to the committee's opposition to the amendment and I frankly do not quite understand the logic of it, then because my amendment does not take away the right to trial by jury. The amendment deprives the right to trial by jury at the instance of the landowner. My amendment does not take away the right to be compensated in the event there is disagreement to the full extent of the loss as provided by the committee section. Their logic, in this circumstance, is the only difference between this amendment and the committee proposal was the justification and a means by which these proceedings could be started at the risk of the landowner. And if, in fact, it was for a public purpose and a necessary public purpose as for example in the case of a highway project, there would hardly be any remaining issue before the court other than the issue before the jury as to the full extent of the loss by the landowner. And under those circumstances, I simply don't believe that the arguments in opposition to the amendment are what the amendment does. It still provides for trial by jury, it still permits the landowner to recover the full extent of his loss; it simply permits a means by which you can initiate the trial without undue delay, and I urge your support of the amendment.

(Relevant Section of Article)

SECTION 10. (1) Whenever the State or any political subdivision thereof shall acquire any real estate for a public use, the State or such political subdivision shall have the right to take possession of such real estate without compensation to the owner thereof.

Amendment

Mr. Tappan. Amendment No. 1 (by Mr. Tappan). On page 2, line 24 after the words "and before the words "and", insert a period and delete the remainder of the line, and in line 2, delete the following: "shall be a trial by jury to determine such compensation."

Explanation

Mr. Tappan. Mr. Chairman and fellow delegates, I rise to withdraw this amendment at this time. There may be one of additional amendments that he suggested that would add and fully delete this. If they are not adopted, then I'll come back with this amendment later.

(Relevant Section of Article)

CLOSING

Mr. Plymter. Amendment No. 1 (by Mr. Tappan). On page 2, line 24 at the beginning of the line delete the word "purpose of operating that enterprise or for the".

Amendment No. 2. On page 3, line 15 after the word "enterprises," change the word "in a period" and delete the remainder of the line and delete line 26 in its entirety.

Explanation

Mr. Conroy. These are two amendments and really deal with entirely separate matters. The committee proposal, however, has both matters in one sentence, so I submitted them together on one sheet. The Amendment 1 deletes the prohibition against expropriation of a business enterprise for the purpose of operating that business enterprise. The deletion to be made, in this regard, is whether the constitution should preclude the possibility of a municipality or a parish taking over and operating an existing utility, for example. There are a number of privately owned and operated transit lines, utility companies of one kind and another, and the question is whether you do, in fact, want to preclude the state from ever, under circumstances where it might be required to do so, or to the best interests of the people in that area to do so, to take over the operation of that enterprise. The committee proposal as written would prohibit it unless a fair price could be agreed upon between the existing utility and the parish or municipality. I think, that under a lot of circumstances that I can see, it would not be possible to agree upon a fair price, and as a practical matter in utility regulation, I think that the fact or the power of ultimate expropriation is often a significant factor in the ability of the state to control the operation of a utility within that state.

The second amendment deletes the prohibition against the taking of personal effects. I have to say that my primary reason for suggesting the deletion of that is that I have no idea what the committee is successfully attempting to prohibit the state from doing. I don't know what personal effects means, or what a court may ultimately determine it means. It concerned me as being much too broad a prohibition against the state. The committee proposal initiating this amendment is one of what is intended to be meant by personal effects, but I, frankly, am not satisfied that that explanation would be a part of the constitution. It certainly would not be a part of the constitution. I am concerned about whether unintentionally we would be precluding the state from in some fashion exercising some right which might be desirable on the part of the state.

I think that in general in both these areas there's a difficult decision to be made as to the balance of rights between the protection of the individual, and certainly the committee proposal is a large, large sense, is directed and geared toward the protection of the individual, in the other side is the balancing question of the extent to which you want to hand-off the state, which is comprised of all of us, from doing things which may be in the best interest of all of us. I yield to any question.

Question

Mr. Tappan. Mr. Conroy, as I read your amendments, the language of this sentence will now read as "no business enterprise is any of its assets shall be taken for the purpose of halting competition with government enterprises." Would that be correct?

Mr. Conroy. That's correct.

Mr. Tappan. Now, would this mean that if the government was not in competition with this business, that it could expropriate?

Mr. Conroy. Yes, as I explained in the case of a utility, for example.

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Mr. Lanier Are you familiar with the case of the City of Thibodaux vs. The Louisiana Power and Light Company?

Mr. Conroy I am generally familiar with the existence of the decision. I've not read it. I understand that it does recognize the right of a city to expropriate a utility company.

Mr. Lanier Since I've lived with this problem for some time, can you understand why I would be quite concerned about the intent of what you are trying to do?

Mr. Conroy My intention here is to maintain that decision. In other words the committee proposal, as I would read it, would prohibit a city such as Thibodaux from taking over a public utility. The purpose of this amendment was to preserve what I understand the court's decision was in that case: that they could upon payment of just compensation. I don't know which side of that case you might have been on.

Mr. Lanier Well, I was on the side which I felt was in the best interest of the city of Thibodaux. No, what I am getting at is it is your intention that you do not wish to interfere with the result of the case of the City of Thibodaux vs. Louisiana Power and Light?

Mr. Conroy As I understand that case to be, as I said, I've not read that case, but as I understand it, that's correct.

Mr. Lanier It is not your intention to interfere with another city, or example, like Houma, Louisiana that may be going through this process right now?

Mr. Conroy No, mine would permit a city to take over a utility. That's the essence of it, yes.

Mr. Jenkins Mr. Conroy, you said the question raised by your amendment is whether or not you're going to allow a municipality to take over the utility companies within its city limits. Now, isn't it true that under your amendment any business enterprise in this state could be taken over by either the state or a local governing authority? Isn't that correct?

Mr. Conroy I don't think so, Mr. Jenkins. I know you and I have discussed this before, but I think that the restrictions that the committee properly has in here about "a public and necessary purpose" prescribe a sufficient safeguard there to prevent this from being carried too far. But in the case, for example, of a utility I can see a necessary and public purpose under certain circumstances. I just don't believe that the courts would get carried away with that to permit just a socialization of our economy. I know that you and I disagree on that, but I just don't see it, frankly.

Mr. Jenkins You can't see a judge possibly deciding that it would be necessary to take over a certain business enterprise or industry? You really can't?

Mr. Conroy I really can't, Mr. Jenkins. As I've said, you and I have discussed this many times and I've tried to see your viewpoint on it, but you and I just basically disagree.

Mr. Jenkins But you will agree that in virtually every other nation on the face of the globe judges have so found, haven't they?

Mr. Conroy Not that I know of, but in any event our country is certainly happily different from the other countries that I know of. We just haven't had this problem, and I don't see it.

Mr. O'Neill Mr. Conroy, you say that you can foresee the possibility of a municipality wanting to take over a utilities company or those things.

Are you in favor of them also taking over the mass transit systems and then any other thing they deem to be in the interest of the people?

Mr. Conroy I didn't say I was in favor of it. Mr. O'Neill, My question is whether we should preclude that possibility of it ever coming up. I can see many instances in which it would be desirable for the municipality to do it. I guess it ultimately gets back to the same questions we talked about previously, about the extent to which you want to have confidence in your government, or not. I recognize the dangers and the difficulties in this situation. It just seemed to me that if we were precluding something unnecessarily here.

Mr. Roy David, you've answered that question about No. 1, and I think you've got a good explanation. It's a matter really of personal philosophy, I guess, in the end which way we go.

Mr. Conroy No, I don't think it's a matter of personal philosophy. No.

Mr. Roy Well, it's a matter of which way you think, but that's not what I want to ask you. You do agree that we have provided for very protective type of provisions with respect to taking charge--appropriation. Right?

Mr. Conroy Yes, I would say so.

Mr. Roy I'm addressing myself to No. 2 now. What I'm worried about your No. 2 does, disregarding whether you or I believe that personal effects should ever be expropriated by the state, for instance, law books. If the state needed law books, you could start saying we're going to expropriate law books. That would be a personal effect, wouldn't it?

Mr. Conroy Mr. Roy, my problem here was definitional. I don't understand what a personal effect is. It seemed to me that anything that was truly a personal effect could, by necessity, not be the subject of a public and necessary purpose. It was purely a matter of semantics and difficulty in comprehending what we were prohibiting here.

Mr. Roy Doesn't it really work the other way? We do define what may be expropriated, that is property.

Mr. Conroy Yes.

Mr. Roy We're talking about immovable property. Are we not?

Mr. Conroy Well, we're not in the very area that we're talking about right now in taking over, for example, a transit company. It wouldn't be an immovable or immovable assets. It might be some buses, or streetcars, or trains, or pipe or I don't know what.

Mr. Roy Let me get to my last question. When you talk about, though, that you want to take out the second section which deals with personal effects because you're not sure what it stands for. Disregarding whether or not we should ever be expropriating things other than what we do know we're talking about, you haven't really any procedural built-in guidelines, so that the legislature would have carte blanche, would it not, if it went into any other type of expropriation other than utilities and/or property? Wouldn't it?

Mr. Conroy No, you've built in a very fine safeguard here of "public and necessary purpose" and a trial by jury on that question. I don't see how you could be too concerned about it, Mr. Roy. A personal effect... your description here says it's intended to cover money, stocks, bonds, objects of art, books, papers, tools of trade, and clothing. But as I've said, it seems to me that a court could determine that a personal effect maybe means personal property. In which case it would preclude

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the taking over of certain assets that are not movable, such as pipeline, wires, cable, the transit facilities of a utility, things like that. That was my problem.

Mr. Chatelein: I certainly like your amendment very much. We have a situation in Lafayette with the city of Lafayette owned utility system, but there is also a problem in city expansion where we run into other utilities. Would the city of Lafayette then, with your amendment, have the right to take over these lines as they expand?

Mr. Conroy: Yes, and certainly without this amendment, they would not be able to. That's why I brought the question up. I don't have any problem in this area. As a matter of fact, I'm likely to be on the other side.

Mr. Chatelein: Throughout south Louisiana we have this problem. I think you have a very great amendment.

Further Discussion

Mr. Planchard: Mr. Chairman, fellow delegates, I rise in support of the Conroy amendment. Basically, for the reason that we in my city have experienced the very problem that he is talking to take care of. I'm thinking of the problem of expansion of your local unit, whether it be to take over or appropriate a public utility or a private concern. Many areas in this state, and particularly in my area, the expansion was made by a subdivision for subdivision purposes. They had to go out and furnish their own utilities. These were private people who started water companies or sewerage facilities, and they operate them for years. But as the city grows, they must necessarily take in these areas which incorporate these utilities, whether it be private or semi-private. Now, if you do not allow the local governments to take over these facilities by expropriation, you're saying in effect that the person who has that utility can refuse to let it go, but by the same token you're saying in effect to the city or to the local unit that you have no choice. You can not expropriate and you can not purchase, unless that man wants to sell it. So in effect what you're saying is, in order to give to the people of this area the necessary facilities, water, sewerage, or electricity, you must in effect go into competition, lay raw lines, and go to the additional cost. Of course, that could not be for public purposes. So you necessarily would have to have this amendment to take care of those situations. Under the present law you may expropriate and the cities can do it, but they have to pay fair compensation. Also at the present time, I'm not mistaken, there must be a referendum, if they're going to take over a public utility in a new area. But I'm saying in effect this amendment is absolutely necessary, unless you preclude the cities and the local government from ever expanding and presenting or giving to the people in these new areas the necessary facilities they've got to provide at the least rate. You can well appreciate that when they do take in a new area, if they have this right of appropriation or expropriation, if they have this right, then they have a tool to barter with. Because if a person does not want to accept fair compensation, then they must expropriate and let the people decide what that compensation would be. So it gives them at least a tool that they can use, in effect, let's talk about it and come to terms. If they have this right of expropriation, the person would have to talk in them. I ask you to please give this amendment your due consideration because it is important to the local government.

Question

Mr. Neal: Mr. Planchard, we're talking about utility companies in your hypothesis, but if this language is included, would you agree that the local governments could then expropriate just about

anything they want to? Or go into competition with anything else they want to go into competition with?

Mr. Planchard: What I am talking about, and I don't think this amendment puts them in that category, because I don't think they could do it now, and I don't think they could do it under this amendment. We're talking about public services, and nothing else. Certainly a city is not going to go out and go into competition in the business field. That would be absurd to even think about it.

Mr. Abraham: Mr. Planchard, I'm in agreement with this amendment, and I would ask you this. I know of an instance in which a public utility at the expiration of its franchise decided it would go out of the business, in this instance it was water. It would go out of the business, and so the city was faced with the problem of what to do in the way of operating its water supply. Now, if this language remains in here, as it is, where it says "no business enterprise may be taken for the purpose of operating that enterprise", would not this language preclude the city from taking over this water operation and operating it itself? Because the utility company had actually refused to operate any longer.

Mr. Planchard: If that company does not decide to transfer it to the city, you're absolutely correct.

Mr. Abraham: Well, even though it wanted to transfer it to the city, and even though they were both in agreement, this language says that the city can't even take it over then.

Mr. Planchard: Well, from that interpretation, you're right.

Explanation of Vote

Mr. Duval: Mr. Acting Chairman, fellow delegates, I rise to explain a vote which I am not going to make on this issue. I wish the Journal to reflect that I abstain from this issue. Sometimes a lawyer involved in a public forum can have a timorous problem, and this is mine. I represented at one time the city of Houma in a suit against Louisiana Power and Light to expropriate the facilities of Louisiana Power and Light within the city limits of Houma. I also represent a rural cooperative which has facilities within the city limits of Houma, and the city of Houma may at some time decide to expropriate those facilities. I feel that because of that problem, my vote, any vote that I would be asked to give, therefore, I am going to abstain from the vote. Thank you. I wish the record to so reflect.

[Moderator: If you will please proceed with your question.]

Further Discussion

Mr. Jenkins: Mr. Chairman, delegates, I asked for your special attention in this, because there won't be another time during this convention that I come before you with more sincerity and with more appreciation of your consideration than I will on this amendment. We have included in the constitution a very important sentence that can protect future generations of Louisianians from the government owning the means of production by expropriation. The sentence says, "no business enterprise or any other activity shall be taken for the purpose of operating that enterprise or for the purpose of halting competition with government enterprise." That means that a local government can not take a level of government which has a utility company or anything else it wanted. It could operate business enterprises, if it wanted to, but it couldn't seize them by expropriation, socialist style. If some of the people involved on the other side of this issue want to exempt utilities

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companies from this on a municipal level, let them offer an amendment to do that. The way this amendment is drafted it would allow the State of Louisiana or any of its political subdivisions to expropriate any business enterprise in this state. For example, a delegate governor might come to power and be mad at the Standard Oil, or the railroads, or some manufacturing industry, or any number of other businesses. He would have the authority under law to go to the legislature and have that business expropriated. Now, this proposal, this section, is offered to protect future generations of Louisianians from the sort of threats that you see in Chile right now, that you saw in Cuba, that you've seen in virtually every other country on this globe. Please, please retain the language of this sentence.

I recently took a poll throughout East Baton Rouge Parish, a mail poll, of several hundred persons. One of the questions we asked was this: "Do you believe the government should be allowed to take over any business enterprise even if it pays just compensation?" Eighty-nine percent of the people said "no." The government should not be allowed to take over any business enterprise for the purpose of operating it. Our people don't believe in that. If there is one thing you ought to consider in this convention, it's preserving to that extent our market system. Let's don't allow the government to take over business enterprises. It's not right. It's not just. No local government, no state government or anyone else needs that authority. Please vote against this amendment.

Questions

Mr. Roy Mr. Jenkins, aren't most of the takeovers of public utilities by municipalities for the purposes of raising money in lieu of a tax base?

Mr. Jenkins I think that's correct.

Mr. Roy Don't you believe that municipalities and the people are better serviced when private enterprise owns these utilities and have to conform to the Public Service Commission rules and have competition among themselves, and if the city owns it for making money instead of paying taxes?

Mr. Jenkins I think you're absolutely right, because all your utility companies are under the regulation of the Public Service Commission. But your municipalities are not under any regulation whatsoever from the Public Service Commission. But that's not the real issue here. If they want to exempt municipal utilities, let them come with an amendment to do that, but this amendment allows any business enterprise to be taken.

Mr. Willis Well, you've just about answered them, Woody. Isn't this the case of private enterprise against government ownership?

Mr. Jenkins I think it is.

Mr. Willis Doesn't this encompass more than utilities? The words used are "business enterprises", and it can include a hardware store where a city could pluck a hardware store making a good profit and take over the profits of that store.

Mr. Jenkins That's right.

Mr. Willis As a subterfuge for not raising taxes, they pluck away the public utility so they can raise the rates, in lieu of taxation, and give you pretty bad service, because, for this reason, the private enterprise and the utilities servicing the municipality is regulated by the Public Service Commission. Isn't that correct?

Mr. Jenkins That's right, sir.

Mr. Willis So from a consumer standpoint, isn't the proposal of the committee more salutatory....

Further Discussion

Mr. Chatelain Mr. Chairman, fellow delegates, I am in great sympathy with this amendment. I think Delegate Corroy has come up with something that is greatly needed in south Louisiana, particularly. I certainly support his amendment. I could go on for many minutes with the problems we have in the Lafayette area. We have an REA company that we had to fight with for many years to be able to expand our city limits. Every time for the last twenty years we've had to expand the city limits, we had to go into a fight for the right to buy their lines and services in the area of expansion. Of course, every time we expanded we had to give those people sewerage, parks and playgrounds, and all the other necessities of cities. So I urge you to please support this amendment.

Questions

Mr. O'Neill Mr. Chatelain, my good friend Mr. Willis was correct when he said this is a question of free enterprise versus government ownership. Is there anything in the committee proposal which will prohibit a local government from entering into a private negotiation to buy a utility company?

Mr. Chatelain No, sir, Mr. O'Neill, there isn't as I appreciate it, but you don't know the problems you have when you try to do business with these people who don't want to sell.

Mr. Lanier Mr. Chatelain, don't you think with reference to this issue of what is the best way in which the people of a municipality can be serviced is best determined by the people in that municipality?

Mr. Chatelain I certainly do, sir.

Mr. Lanier If they feel that a publicly owned utility is the best way to get service, shouldn't they be entitled to make that determination?

Mr. Chatelain They should, Mr. Lanier.

Mr. Lanier When this utility is operated by locally elected people who are directly responsible to the people in the municipality at the ballot box, don't you think that this is a very good way to insure that the proper service is given to the people?

Mr. Chatelain I do, sir.

Fellow delegates, I strongly urge you to support this amendment. I could go on.... I used to own the city transit system in the city of Lafayette. I know the need for cities taking over transit systems and utility lines. I urge that you support this.

Mr. Winchester Mr. Chatelain, I have a problem in St. Mary Parish that deals with the water district that surrounds the two towns. They're having trouble with the towns wanting to take over their customers by incorporation. What would this do to a water district that needed these customers to survive...that it built a water plant, a filtration plant, if these towns took over all of their customers, they would certainly be in financial difficulty. What would this amendment do to that situation?

Mr. Chatelain Well, should the city take over, as I appreciate it, sir, they would take over the indebtedness also.

Mr. Winchester The indebtedness is not what I am speaking of. I'm talking about their right to survive as a going concern.

Mr. Chatelain We had similar problems in the Lafayette area. Every one of the water districts and the private water companies were very happy when the city took them over, because they were in

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need of relief

Mr. Anzalone: Mr. Chatelain, Woody Amer-Jent well, with business enterprise, and the only thing that I've heard that the proponents of this measure that you're talking about have talked about are utilities. My question to you, sir, is that do you think that the power of expropriation of the government should extend beyond what is reasonably necessary insofar as utilities are concerned for the protection of its people? My basic question is, should do you think that it should be extended beyond that into private enterprise at any time that they so wish to expropriate it, that they could do it?

Mr. Chatelain: Mr. Anzalone, as a business man and an attorney, you know good and well I don't believe that.

Mr. Guarino: Mr. Chatelain, you said that you were owned the transit system in Lafayette. Did the Lafayette municipality confiscate that bus line or did you sell it to them?

Mr. Chatelain: I would hope that they would have confiscated it, as many times during the last few years that I owned it, but in final analysis they did like all other cities. They went into agreement with me and finally purchased it.

Mr. Guarino: Do you understand the proposal is only to prevent confiscation, but you could sell the bus line if you wanted to?

Mr. Chatelain: Ah, I appreciate it, sir, this would happen anywhere in the normal course of business.

Further Discussion

Mr. Stovall: Mr. Chairman, members of the convention, it seems to me that we are dealing with the real issue here that is faced and has been faced by different municipalities, and that we should make our decision in the light of what we think is the best way for a municipality to deal with the problem. What I'm saying is that I feel that one of the former delegates, by throwing out before us words like "demagogue" and "socialism" and what happened in Chile and in Cuba is misleading. It took a scare campaign. We should make our decision on a rational basis, looking at the issues that are before us in this amendment. I would like to go further and speak very briefly in support of the amendment as I understand it. It seems to me the question before us is not whether or not the government is going to take over private enterprise. Instead, the issue before us is whether or not a municipality should have the flexibility to deal with the real issue that it confronts. The issue is whether or not a municipality ought handle it, situation that there would be uniform utility rates. It is a question of whether or not the people of a given community might be able to exercise their will to deal with a very real need. It seems to me that this amendment is a good amendment and one that merits our support, and it is just now that is going to open the door to many unnecessary dangers. Thank you.

Further Discussion

Mr. O'Neill: Ladies and gentlemen of the convention, the arguments we have heard expressed here have been on the moral level of municipalities and whether or not they should be able to take over utilities companies or not. That issue is completely immaterial to me because we are about to vote this today. I think they are having this filibuster front of the floor hoping that we see nothing else and we say that we are done. Yes, water there is a utility utility there. I don't even agree with that and we should kill this whole section, but if we say that section that you have just read, it makes the utility companies that you are talking about to take over the utility lines

and keep them from the people who are owning it and they own all of this water, that is all. Well, I don't agree with that because if you have one man who owns that utility company, he should be protected and he should have the right to hold onto that property. No matter what vote of majority (any, you shall no longer own that property, you shouldn't take it away from him. I think that is the question we are about to discuss here today.

Questions

Mr. Arnette: Gary, the question I have to ask you is, does this amendment do anything more than bring this constitutional provision into the line of what is the present law. This does not change the present law at all, is that not correct?

Mr. O'Neill: Mr. Arnette, as big an advocate of change as you are, I would have to say that it does make a change.

Mr. Arnette: And what is that change, sir, if you will please enlighten me.

Mr. O'Neill: This amendment?

Mr. Arnette: Yes, please, explain...

Mr. O'Neill: Oh, I'm sorry no; the amendment is status quo. This article does definitely make a change....

Mr. Arnette: The amendment just brings the constitution into line of what is the present law, right?

Mr. O'Neill: Perhaps.

Mr. Willis: Mr. O'Neill, Mr. Arnette, question prompts my first question, one I hadn't intended to ask. Isn't it a fact that by virtue of the words "business enterprise" this amendment does enlarge the scope of our law to include all enterprises of business which are not public utilities, including hardware stores, law offices, drugstores, and the like?

Mr. O'Neill: Transit companies and all, Mr. Willis.

Mr. Willis: Precisely. Now my next question, in refutation of the argument that the utility rates would be uniform. Isn't it a fact that not withstanding what is just is equal, it is not always what is equal is just, when the rates are above what they should be?

Mr. O'Neill: Exactly, Mr. Willis.

Chairman Henry in the Chair

Mr. Lanier: Mr. O'Neill, further up in this same section, doesn't it provide that property shall not be taken or damaged except for a public and necessary purpose?

Mr. O'Neill: That's what it says, Mr. Lanier. You read very well.

[Proceedings continued on page 11.]

Closing

Mr. Lanier: First of all, Mr. Chairman, I will ask for a division of the question on this amendment. When it comes to a vote, there are two amendments. I also a little bit started at some of the amendments that are at the table. I believe that the first one is drawn by the committee. I believe that the necessity of a public and necessary purpose. I am a little bit upset at some of the things that that people such as Mr. Chatelain or myself would be responsible of supporting or anything that that that enterprise system, which certainly I believe is very desirable. And I will at the subject, if someone is interested that amendment was to read

forcefully home to the delegates to the Constitutional Convention exactly what the committee proposal would do. The committee proposal does change the law. At the present time, a municipality does have the power to expropriate a utility for a public and necessary purpose. It would not have that right under the committee proposal. The amendment here is designed to permit that to continue to happen. It is not designed to go beyond that. I confess my own inabilities in finding appropriate language to limit the extent of the taking beyond what the committee has already, very desirably and appropriately done in limiting the right of expropriation to public and necessary purpose and putting in a great number of safeguards in that context. I certainly desire to maintain private enterprise. I believe in private enterprise, but, at the same time, in this article we are thrust into the very middle of the argument and the contentions between private enterprise and what's best for the public. I ask your support of the amendments. Thank you.

Questions

Mr. O'Neill Mr. Conroy, I believe you stated that now when a municipality expropriates public property or expropriates property, it has to be for a just and necessary purpose.

Mr. Conroy I'm not sure that's so right now, it's a public purpose; I'm not sure. You have tightened up the language so there are more safeguards already under your amendment than there probably are right now. My amendment does not create any greater dangers than there are now, probably fewer dangers in the context of what the committee has already done.

Mr. O'Neill In line with Mr. Chatelain's problem with utility companies, don't you agree that an amendment that would exempt utility companies would be more appropriate at this point, rather than the amendment that you have?

Mr. Conroy Mr. O'Neill, as I explained in my discussion, no, I found it difficult to find the appropriate language that would cover that situation because I think the "public and necessary purpose" language already describes that.

Mr. Weiss Delegate Conroy, this is a very difficult problem and you are trying to bring it back to the way it is today, I understand, at present. It is true now that a municipality can expropriate appropriate land without permission of the legislature in any given locality?

Mr. Conroy I really don't know. I thought they could....

Mr. Weiss Don't you think that's rather significant because if that's the case, then your amendment would be unnecessary.

Mr. Conroy No, this goes beyond land.

Mr. Weiss Since a municipality is a division of the state, it would seem that before it accrues responsibilities and indebtedness, it would be of necessity a problem for the legislature....

Mr. Conroy It would have to be funded, yes.

Mr. Weiss So don't you think the legislature, therefore, must approve this at the present time?

Mr. Conroy From the standpoint of financing, perhaps.

[Record vote ordered. Division of the Question ordered. Amendment No. 1 reread and rejected: 45-61. Motion to reconsider tabled. Amendment No. 2 reread. Record vote ordered. Amendment rejected: 26-83. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Weiss]. On page 2, delete lines 27 through 29, in their entirety.

Mr. Henry Are you going to handle it Mr. Duval? Proceed.

Explanation

Mr. Duval This amendment deletes lines 27 through 29 of Section 4. Lines 27 and 29 prohibit the legislature from ever making any assertion or definition as to what is public or necessary. It is my opinion that this unduly restricts the legislature and leaves the entire matter to the judiciary to determine what is public and what is necessary without the benefit of any definition, prohibiting the legislature from having any leeway in determining specific issues. I think it is certainly unduly prohibitive, and I don't think...I really don't know exactly what the committee's intent is, but literally construed, it completely prohibits the legislature from entering into this field at all. I think all of us know that in the future many examples may come up where the legislature will have to act and will be prohibited from acting. What does the word "necessary" mean? All things have to be necessary to whom, to what? I think you ought to have some legal definition and the best place for this is in the legislature. You might have every question that is going to be litigated over necessity without the benefit of any definition at all, any guidelines except case to case. I don't think it's a very good idea. I urge you to adopt the amendment deleting those lines.

Questions

Mr. Roy Mr. Duval, who but the courts should interpret the word "necessity or necessary"?

Mr. Duval I think the legislature should be allowed, as the people's direct representatives, to at least give some guidelines and definitions which the court can interpret.

Mr. Roy Well, this doesn't prevent them from giving those guidelines; it just merely provides that the guidelines will not, of themselves, determine the question of necessity. Isn't that what it says, that still interpretation will be up to the courts?

Mr. Duval I understand what you are saying, but in my opinion the words as read prohibit the legislature from ever entering into this question.

Mr. Roy No, no, it just says it doesn't...where do you see the word the legislature is prohibited from defining necessary in that phrase?

Mr. Duval It says, "shall be..purpose shall be public and necessary, shall be a judicial question and determine as such without regard to any legislative assertion". Now, that's pretty plain to me.

Mr. Roy Does it say that the legislature may not assert what its opinion of necessary is, or does it say that one, even if the legislature makes the assertion, a court must still pass on it?

Mr. Duval I think it gives the court the right to just completely disregard the legislative assertion.

Mr. Roy Well, don't you think they in... Let me ask you my next question because we just aren't getting anywhere. If you are right that the legislature should be able to decide the necessary and public purpose of it by merely declaring it, why don't you let them declare the compensation and prevent the courts from discussing the issue of compensation too?

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Mr. Duval: Mr. Prez, that, of course, is a philosophical question.

Mr. Perez: With regard to the necessary purpose, don't you believe that it may be possible if the court would hold that and be aware of the fact that you have a road better than Route 409 and, however, that it is not necessary to build another one?

Mr. Duval: That's very true, Mr. Perez. As a matter of fact, you get into almost a public-private commission sort of thing for trucks, for trucking companies and other utilities, and that certainly wouldn't work as to the operations of the State of Louisiana. I agree.

Mr. Perez: Isn't it true, also, that if you have a school house or a school building in an area and you still have some seats left in that school building and in order to look forward to the future, the school system decides to add another building and the landowner "come in and say, 'Oh, it's not necessary to build another school; you still have a school with a few seats left in it.'"

Mr. Duval: I agree, I think this language is fraught with that type of possibility.

Further Discussion

Mr. Avant: Mr. Chairman and fellow delegates, I don't vigorously and with all of the ability that I have or don't have, got to oppose this amendment. This is a bad, bad, bad amendment. Now, let me tell you, first place in all due respect to my good friend, Mr. Hernandez, who made this statement, the issue of whether the contemplated purpose be public and necessary shall be a judicial question and determined as such without regard to any legislative assertion, simply means that when the legislature says that thus and such is a public purpose and a public necessity, that the landowner has the right to have that reviewed by the courts, it gives the right of judicial review. I'm not necessarily opposed to eliminating that requirement when you have the state or a political subdivision of the state expropriating property. I understand from Mr. Perez that he has that amendment which he will offer which will draw the distinction. I am most hung up about public utilities, particularly pipeline companies expropriating property because they had a sufficient lobby to go to the legislature and get the legislature to enact a law that says "any pipeline is a public purpose", and that's exactly what the situation is. In my experience, I have had cases where pipeline companies have expropriated right-of-way to carry their refined product from their refinery to their terminals, a gallon of gasoline, refined product from a refinery in this state to their markets in other states, and take my clients' property for that when it was no more a public purpose or a public utility than the road that goes from Louisiana State Highway 409 back to my house is a public purpose. You wouldn't ship a barrel of oil in that pipeline or a gallon of gasoline yourself or nobody else would, there is no more a common carrier than my automobile is a common carrier. This is a waste of great abuse and there has got to be some limit put on it in the Constitution, or we'll do it the other day, if the people that owned Miller (reading rinky) can get a train enough tanks to go up to the 1000 and convince the legislature in the wisdom that a roller skating rink is a public and necessary purpose, then we would be expropriating land for roller skating rinky. I vigorously ask you, vote this amendment down. It's a bad amendment. Then if an amendment is offered which will take care of the true and just and legitimate needs of the State and the citizens thereof, I'll vote for that amendment, but when it comes to the question of private corporations, owned by private stockholders, having the right to take a man's property for their own private purposes and no more, or the land having the right to review that, that's wrong. It always has been

wrong and it always will be wrong and you'll have time to stop it, here and now. I want you to vote down this amendment. If existing companies own private companies and legitimate public purposes owned by government, then I'll join Mr. Hernandez for that amendment.

AMOTION

Mr. Willis: Mr. Avant, isn't it a fact that we've got about two or three years ago, maybe four, that the only time that the question of public necessity of purpose would be an issue was within the ten days from the filing of the suit to the time of the answer?

Mr. Avant: That is exactly correct.

Mr. Willis: And, thereafter, it was no longer a judicial question and you were foreclosed.

Mr. Avant: That's right, it wasn't a question for anybody.

Further Discussion

Mr. Hernandez: Mr. Chairman, ladies and gentlemen of the convention, I take the floor in opposition to this amendment. I agree with Mr. Avant in a number of cases, but my objection goes even further than Mr. Avant. This is about the last opportunity for anyone to defend their property, especially in the case of where the value is intangible, that is where it's aesthetic or sentimental values. There is no way now to obtain a suspensive appeal. That's been abolished, and it was abolished through the influence of the oil companies and the power companies in about 1952. Since that time, since you have no right of a suspensive appeal, the only way you have to protect your property would be through something like this. I have an amendment and another reason I'm opposing this amendment is because I propose an amendment to this section on line 28, and it would simply provide for the necessity of a particular location to be determined by the courts. There is no other way, all of us know that locations, whether it be a pipeline, power line, highway, or any other public improvement, is for the most part an opinion. There are so many times when these opinions do not take into consideration the value that this person or this family places on that property. There is no way to pay for it; it's intangible. This is the last chance to provide some protection that these people have a right to enjoy. For that reason, I ask your opposition to this amendment. Thank you.

AMOTION

Mr. Drew: Mr. Chairman, ladies and gentlemen of the Convention, let me answer a few of the amendments against this amendment because I think it's very urgent that we pass this amendment. I'm coming to Mr. Avant's amendment about the pipeline that did no good in the State of Louisiana, and he's surprised that that remark coming from Mr. Avant when you consider the number of people which probably come into the hundreds of thousands that this pipeline is solving the problem to which they are working in a beautiful way. There is no way that this State of Louisiana has no effect upon the citizens of Louisiana. Another thing that I think is a little issue with is the way Mr. Avant said that the legislature is so stupid that they think you can come down and lobby for a while and I think we are getting real close when we get to the point that I'm sure that we are getting to the point of this thing, that is, the way that we are getting to it is wrong, it's the wrong way and the wrong way, what is the consequence of the wrong way? My particular concern is with the court

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ment of Highways. Does that leave it up to a judge, subject to review, to say it is not necessary to put it in this location, go back and spend two more years on your engineering work and give me another shot at it? What is necessary, is it the construction of the highway? Does necessary mean the location of the highway, what does necessary mean that you are saying that no one has any say so except the judge, sitting there to decide a judicial decision? In my humble opinion, this is a legislative matter; the legislature should not be deprived of the right to assert some definition of what is public and what is necessary. If you do not adopt this amendment, you are completely tied our hands. In answer to Mr. Willis' remark that if you don't take some action in ten days, you are forever bound on it, if a suit is filed in this type of matter and you do not take action within the limits prescribed by law at this time, you are just as much bound except you have eight more days possibly on the thing. I don't see that there's any merit to Mr. Willis' argument. Mr. Hernandez is worried about the location, and I am worried about the location. According to his argument, it would be up to the court to say where you would locate a highway, and can you imagine the bedlam that this state would be in if we had to wait for a court to determine the location of a highway? It takes months and sometimes years to complete the engineering work before they can determine where a highway will be built and then they go into court and a judge says "It's not necessary to put it that way; go do some engineering work on the other side of town and go across somebody else's property". That could easily be the interpretation of necessary, as to whether that location is necessary, this is an amendment that we need to where we can properly proceed. I am afraid that the whole emphasis throughout this proposal has been nothing alone but individual rights. Well, ladies and gentlemen, I submit to you that the mass of the people have some rights too and should be equally considered. When we forget the masses' rights for a single individual's rights, we have done the greater of the injustices. I'll yield to a question.

Questions

Mr. Roy Mr. Drew, doesn't line 27 clearly say "The issue is whether the contemplated purpose be public and necessary" and not contemplated location or contemplated manner and all of that. Doesn't that obviate what you've tried to say?

Mr. Drew No, not completely, Mr. Roy, in my opinion.

Mr. Roy You think that contemplated purpose can connote location?

Mr. Drew I think it could, yes.

Mr. Roy Purpose means location in your judgment?

Mr. Drew It could very well be interpreted that way.

Mr. Jenkins Mr. Drew, don't you agree with the definition of necessary provided by Black's Law Dictionary when it says, "In eminent domain proceedings, it means a reasonably requisite and proper for accomplishment of end in view, not absolute necessity of particular location?" Don't you agree with that?

Mr. Drew I don't disagree with the dictionary, Mr. Jenkins, but you have added "necessary" to that, and "public and necessary"...

[Records vote ordered. Amendment received: 38-71. Motion to reconsider tabled.]

Amendments

Mr. Poynter Amendment No. 1 [by Mr. Hernandez]. On page 2, line 28. Immediately after the words

and punctuation "question, and delete the word "determined" and insert in lieu thereof the following: "the final determination as to necessity of the location shall be made after due consideration of the loss of aesthetic value." Amendment No. 2, Page 2, line 29, immediately before the word "without" delete the words as such".

Explanation

Mr. Hernandez Mr. Chairman, ladies and gentlemen of the convention, this amendment is offered for the sole purpose of directing the courts to consider the aesthetic and possibly even the sentimental value of damage to property in reaching a determination as to whether or not the location of any public improvement is necessary. I ask you to consider the fact that an overwhelming majority of cases the exact location of the right-of-way, whether that be pipeline, power line, highway, or any other right-of-way, is a matter of opinion. Many factors should be considered before a final decision is reached. So often the aesthetic value of property is overlooked by the locating engineers. This is especially true since the right of a suspensive appeal was abolished in 1952. In so many cases that refer to the right-of-ways of highways, pipelines, high lines and so forth could be changed a little at no cost or only a small cost and possibly sometimes just a short distance to not damage that property that is considered so valuable by the homeowners. This would serve to lessen the damage to property that is rich in aesthetic value or sentimental value. This is especially true in the case of personal property of elderly people. There is no attempt to restore the right of suspensive appeal which would cause long delays. The court could determine, after a short hearing, whether or not the proposed location of improvement was in the best interest of all concerned. By that, I would like to explain further that in the case of a property boundary dispute, the court not being an engineer can call in or designate a third and disinterested party, a surveyor or engineer, to referee or decide which of these engineers was correct. It is not a long-drawn-out process, not by any means. This can be done in a matter of a day and it would protect a right the people so justly deserve. Since the right of the suspensive appeal was abolished about twenty years ago there has been no way to prevent this unnecessary and needless damage of property to our people. I am afraid that since there is no right of suspensive appeal, the locating engineers often don't take into consideration, because they haven't been forced to. They go through and rather than do a little extra work on the location to see whether or not it could be changed without severe damage to the property, they go ahead and assume well that's alright, that's a good location. That is a tendency among engineers, and that has always been true. I truly believe that this amendment could possibly provide a fundamental right to the people of this state they could enjoy. It is conceded that this is a provision that would seldom be used, but in those rare cases it is sorely needed, that is to protect the intangible values that these people so often cherish. Mr. Chairman, I would like the privilege of answering questions of anybody that has one.

Questions

Mrs. Zervino Mr. Hernandez, I'm in sympathy with the intent of your amendment. I was just wondering if you would consent to withdraw it and add a word "aesthetic, or historic value". There are such things that are historically important they could state that may not be beautiful to look at, and I just wonder if you would accept that word.

Mr. Hernandez Mrs. Zervino, to give you a honest answer, I tried to think of that word and couldn't to save my life, and in fact, I even asked some in research for this other word that I sorely needed in this amendment. I wish that I

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Could do that, and if there is any way to do it, I would be happy to do so because in the late afternoon that have been damaged seriously by right-of-ways, that would come under that. I think if I read the definition of the two words "aesthetic and historical", I would have a mighty good case. I wish you had told me about this earlier.

Mr. Tolson: Would you consent to withdraw your amendment at this point and add that word with the consent of the body?

Mr. Hernandez: If it's acceptable to the Chair, yes, Ma'am.
Mr. Chairman: Would you entertain that idea of withdrawing this amendment long enough to add "historical" to it?

Mr. Henry: Yes.

Mr. Hernandez: It would read "aesthetic and historical" value.

Amendment withdrawn and brought back with original word added.

Mr. Boyner: The way the amendment will be drawn, all the instructions will be the same. The language added to Amendment No. 1 would read: "Final determination as to necessity of the location shall be made after due consideration of the loss of aesthetic or historical values."

Amendment No. 1 (Withdrawn and brought back with original word added.)

Amendment

Mr. Boyner: Amendment No. 1 (Mr. Boyner), page 2, between lines 29 and 30 add the following: "The provisions of this section shall not apply to appreciation of property for levee purposes."

Explanation

Mr. Perez: Mr. Chairman and ladies and gentlemen of the Convention, when I appeared before you yesterday, when we adopted Section 2 which provided that no person shall be deprived of life, liberty or property without due process of law, I had a second obligation which would have taken care of the problem with respect to the levee district, but because of the objection which were raised at that time, and it was not in the proper place, I withdrew the amendment.

The problem which we have with respect to levees, I believe we fully explained to you yesterday, that we just do not have the time to do a detailed work on the so-called "due process" procedural and substantive procedure which would take so much time that it would endanger the lives and property of the people involved in the levees.

I suggest to you that, with what we have adopted in Section 2, and when we get on the motion picture, the Commission of Investigation will see taken care of at that time, that this section should not apply to appreciation.

Amendment

Mr. Henry: Mr. Perez, if by some error or error, I know 1973 they appropriated some property in St. Charles Parish, the purpose of which was to build a levee which would be the base for a highway. Under this provision, could they appropriate the appropriate levee purposes and then ask for other authority?

Mr. Perez: Well, that depends mostly with respect to the Commission of Investigation. We discussed many things when I came here, I have indicated a lot more programs that we have at this time. But we are talking now about the specific necessity of

state (in the levee and property of the levee) that these levees protect. And there may be a situation under which there can be very fast action.

Now, there is no question that in the event that were to happen, the landowner would have to back and say that this property was not taken for levee purposes and, therefore, you do not have the right to use it for a road. The law presently states that when you appropriate for levee purposes, it is for levee purposes, and no other, and you do not have the right to use it for any other purposes.

Mr. Flory: Mr. Perez, though, I appreciate what you say as far as the present law, but when you put this provision in the new constitution, then what does that do? Doesn't it nullify the existing law insofar as what you put here?

Mr. Perez: No, sir. First of all, if you will read Section 2 which we've already adopted, no person shall be deprived of property without due process of law, and we do have and will have in the levee district article, the safeguard which are needed with respect to the right to take the property.

Now, I would hope that I would not, at this time, have to get into a lengthy discussion of the question of the servitude for levee purposes because that should be more appropriately taken up at the time when we consider the problem of levees. All I am trying to do at this time is to defer the consideration of the levee problem until we get on levee districts. And that's the purpose of this amendment.

Mr. Alexander: I say first, I support the amendment. I think it is a very good one. But I was wondering if you could not indicate here that during times of emergency, because I am concerned about during normal times when there are no flood threats, when a levee is being built, or built a large number of levees, you would not need this emergency type of thing.

Mr. Perez: Well, the problem, first, is that no levee is ever moved unless a careful and detailed study is made by the Corps of Engineers and they come in with their stability studies and determine that levees have to be moved.

Now the problem we get into is the fact that that matter should be more carefully considered when we discuss the question of levees, and I'm hopeful that we will not get into that lengthy debate at this time.

Mr. Alexander: Well, may I possibly just mention this? Suppose we'll take the new bill which, you know, through part of, through the Orleans Parish. There was no hurry to build levees, yet levees had to be built. I think that they would need this kind of legislation in order to do that.

Amendment

Mr. Perez: Well, you get into a very serious problem from a standpoint that in certain situations, if you wait until the levee fails, you're talking about lives. We had the problem at Lake St. Charles Parish, I believe, one of the parishes above New Orleans, this year, where there was a tremendous saving in the latter, but the levee itself had not, as yet, failed.

The question is, do we wait until that time or the levee has virtually failed before we move that levee or do we move it in advance? This issue would be moved in order to bring the levee and levee to the attention of the Commission of Investigation. These levees are near other levees, so we should take care of them.

Mr. Almette: Mr. Perez, I have had a suggestion about the word in your definition, you give "appropriate" word for "emergency".

Mr. Henry: The Commission of Investigation is given power by the Commission for Levee Districts, established to be the only agency of government.

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have the right to appropriate. Now what appropriate means is that you.....that the required levee districts, after the showing is made by the U. S. Corps of Engineers, comes in and adopts a resolution of appropriation. It differs from expropriation because of the fact that you must have your regular court proceeding in order to expropriate. That's the difference between the term "appropriate" and "expropriate".

Mr. Arnette Well, the only thing that bothers me about using this term here, it seems that you are going to keep the process as it is now, of only paying assessed value....

Mr. Perez No, sir, that is not correct. Now I want to disabuse your mind of that, now, and again I hope we don't go into those details at this time. But, under appropriate federal law, whenever there is a levee setback, full one hundred percent value of the land is paid, and I can assure you, we, at this time, are in the process of paying property owners from one end of our parish to the other, and the Corps of Engineers' appraisals are always more than liberal. In addition to that, we now have the Uniform Relocations Assistance Act and people are more than adequately taken care of, so that there is no problem with respect to it.

You confuse the term "appropriation" with respect to the right to take, as opposed to the obligation to take.

Further Discussion

Mr. Roy I just...ladies and gentlemen of the convention, I just wanted to say that the committee acquiesces and agrees with this particular section, if that makes any difference.

Further Discussion

Mr. Arnette The word "appropriation" in this particular sentence does bother me, and the reason it bothers me, is, according to state law that has been upheld by federal decision, Louisiana need only pay assessed value for land they take for levee purposes.

Now Mr. Perez is, I'm sure, correct in that in his parish when it's taken for a federal project, the federal government does pay the value of the land.

But I'm talking about in other places such as in the Red River or places that is not a federal project, they only have to pay assessed value, which is about ten percent. And I don't want someone taking my land and only paying ten percent. This is the thing that bothers me about this particular amendment....And that right of Louisiana to only pay ten percent has been upheld by federal court decisions which say that when you bought the land you knew about this servitude that the state had on it, so, therefore, you can't gripe. I think this is a big problem, and I don't think we ought to pass this amendment with that particular word in it.

Questions

Mr. De Blieux Mr. Arnette, do you know that the legislature two years ago passed an act that could permit the paying of the fair market value for property taken for levee purposes?

Mr. Arnette Did it permit it, or did it demand it?

Mr. De Blieux It passed an act stating that the value of, the appropriating value of, property taken for levee purpose shall be the fair market value.

Mr. Arnette It said, "It shall be"? Couldn't the legislature just turn around again and say, "They shall not pay fair market value"?

Mr. De Blieux Well, that's what you are basing your argument on now, what's in the law right now,

and I'm telling you that what you are stating is the law....is not the law.

Mr. Arnette Isn't it in the Civil Code that way?

[Previous question ordered. Amendment adopted: 44-20. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Poynter and Mr. Lanier], on page 2, line 25, after the word and punctuation, "enterprises," add the following: "Except that municipalities may expropriate, with just compensation, utilities within their jurisdiction".

Explanation

Mr. Lanier Mr. Chairman, fellow delegates, the purpose of this amendment is to authorize the presently existing law in the State of Louisiana to continue, which gives authority to municipalities to expropriate utilities for just compensation within their jurisdiction. Specifically, this law is set out in the cases of *City of Thibodaux versus Louisiana Power and Light Company*, 373 Federal Second 870, and *City of Thibodaux versus Louisiana Power and Light Company*, 126 Southern Second 24, and in that particular case, the Supreme Court of Louisiana refused to review the opinion of the Court of Appeal and affirmed the decision.

Under the presently existing law of the State of Louisiana, a municipality does have the authority to expropriate utilities within its jurisdiction. This exists under the authority of Louisiana Revised Statutes, 19:10 through 19:17 and 33:41. The purpose for keeping the law as is, is to allow for a municipality, if it deems that it is in its best interest, to own its own utility and do its own work on a local basis, to continue that practice.

And we have debated this particular thing to a large degree on some of the amendments and primarily the purpose of the amendment is to retain this law with reference to municipalities.

And I will be glad to yield to questions at this time....

Questions

Mr. Jenkins For the record, Walter, and in case this amendment were to pass, is it your understanding that this would give municipalities authority to expropriate electric power companies, gas companies, waterworks within their jurisdiction?

Mr. Lanier Yes, utilities.

Mr. Jenkins And it would not include the authority to expropriate transit companies or common carriers. Is that your understanding?

Mr. Lanier I'm going to be quite frank with you, Mr. Jenkins, I'm not sure if a common carrier has been classified as a utility. I do not think that it has. But I don't have the jurisprudence in front of me on that right now and I am unable to give you a definitive answer on that.

Mr. Jenkins Well, now, you are offering this amendment. Shouldn't we know whether or not we are going to be allowing the expropriation of bus companies, street or railway companies, taxicab companies....

Mr. Lanier I think the...I don't think the Taxicab companies would come under this.

Mr. Jenkins What about bus lines, street cars?

Mr. Lanier I do not think that a bus line would. A street car might, I'm not sure. I cannot answer that, Mr. Jenkins.

Mr. Jenkins Well, who can answer that for us,

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Mr. Lanier

Mr. Lanier If I had some additional time to research it, I could

Mr. Pugh Did you have any reason for leaving parish now out where a parish, if it wanted to, on a parishwide basis might want. ...

Mr. Lanier I'm not sure that a parish has that authority, right now. I do know specifically that a municipality does. If you feel that the authority should be extended to parishes, I quite frankly would have no objection.

Mr. Pugh I was wondering why you didn't put both of them in there.

Mr. Pugh Mr. Lanier, here sometime ago several municipalities in our area had considered the purchase of a gas distribution system. At that time, and I think under the present laws, that had to be done with the vote of ... the approval of the people approval of the voters. And I just wondered if your amendment would, say, do away with the requirement of a public referendum of those involved.

Mr. Lanier I do not think so because my amendment would merely authorize the continuance of the existing statutory law. And if the legislature would set forth in detail how this right would be exercised, I think they have the power to do so. In fact, it is my opinion that they would ... the legislature would have the authority to determine how this right would be exercised.

But there is existing law on the books today, both in the jurisprudence and in the statutory law, to authorize this procedure, and this is what I want to continue in effect, because if a municipality wishes to do this, to provide its own service, I feel that it should.

Mr. J. Neill Mr. Lanier, we have a little bit of a special problem here in East Baton Rouge Parish. We have a City-Parish form Home Rule Charter that covers the entire parish. Yet within my own district, I have a city. Who would have jurisdiction over that?

Mr. Lanier As I understand your City-Parish Charter, you have a definite municipality. I think you have five, as a matter of fact, in the parish of East Baton Rouge. And you have formed a government with the parish and the municipalities. This is intended to apply within the jurisdictional limits of a municipality.

Mr. J. Neill Well, do you agree that there could be a problem in determining exactly where the jurisdiction lies?

Mr. Lanier No, but if there is a municipality that has definite city limits

Mr. Lanier Mr. Lanier, you specifically, I noticed, left out everything other than municipalities. Do you feel that this is not discriminatory against other public bodies of all types who are authorized to do things and then says, "No," you have to do them and you can't do them.

Mr. Lanier I think, Mr. Lanier, as you and I discussed previously with reference to the issue of parishes, the question here is in what circumstances would a particular body subordinate of government be authorized to expropriate a utility? I am primarily concerned with municipalities and that is why I am here, and that is the reason why I think this legislation was drawn this way. If you feel that this authority should be extended to public bodies, frankly I would favor such a proposition.

Mr. J. Neill Well, Mr. Lanier, I would not write law, as such, but to favor either, if there happens to be public law necessary as determined by the legislature or whether the utility takes right

be. If they have the power of expropriation granted to them by the constitution or by the state legislature, then they by all means should not be hamstrung in this and this be strictly limited to municipalities and their acquisition of utilities. Mine would be broad enough to cover all political subdivision and for their purposes which are public and necessary.

Further Discussion

Mr. Sandiz Mr. Chairman, fellow delegates, I rise in support of this amendment. I don't know how many of you are from municipalities that have their own utility systems, but in our particular case in Opelousas, we have three different utility systems surrounding our city. Now, this amendment continues the law as it exists today so that when our city expands its area by incorporating different sections, our city is able to expropriate the utilities within that new area providing it pay just compensation.

If we would not be able to do that, we could have a crazy patchwork system of utilities serving our municipality. We have some water systems coming into our area from outside companies, electrical system and gas system. And I submit that in order for any municipality to make long-range plans for loop line for proper pressure on water and gas and utilities, that they should be permitted to continue the existing law which gives them the right when new areas are taken into the municipality to expropriate the systems and pay the utility companies previously serving that area just compensation for the systems. And I urge your favorable support of this amendment.

Questions

Mr. Roemer Delegate, I wonder if you'd address yourself to the question of why? Why should a municipality have the right to expropriate a private or public company such as utilities? Why should they have that right?

Mr. Sandiz Well, Mr. Roemer, we expropriate for the benefit of the citizen of our area. And the only way, for example, if you have a private company furnishing you electricity, and the city has the responsibility of serving all the other people around that area, then it doesn't permit the city to properly serve the future areas that would come in unless they can maintain that system as a uniform system. And I think it would be, the rights of the citizens of that city should be paramount in that circumstance.

Mr. Roemer Well, wouldn't you agree with the concept that the people who are presently outside the city limits are now getting served by the utilities. And just because the boundary, which is imaginary, anyway, is moved, then all of a sudden they have to go with a new utility system and you can expropriate another man's property, or another business?

Mr. Sandiz Well, I'm lumping upon that ... they are serving a public utility to the citizens of this city. And if these citizen petition to come into this city, then their elected officials would have the right to expropriate that system to take over everybody in the city would be under the utility system.

Mr. Roemer Right. Well, I hope you realize that we disagree strongly on that point.

Mr. Sandiz Well, I understand that, sir.

Mr. J. Neill Mr. Sandiz, you speak of the rights of the people to vote to break things. Now, I would think the man who owns the utility company, or the stockholders, have any rights whatsoever?

Mr. Sandiz Mr. J. Neill, I don't look upon a utility system as being a type of private ownership

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that's not subject to this type of exercise of the rights of a public body, such as a city.

Mr. O'Neill So, if I owned stock in Gulf States Utilities, you're telling me that I don't have a right to own my stock...that the vote can come and take that away from me. Are you saying that?

Mr. Sandoz No, I'm saying that when that area that was previously served by that utility becomes a part of the municipality that the rights of the citizens of that municipality should prevail.

Mr. A. Landry Mr. Sandoz, is it true that all public utilities are under the supervision of the Public Service Commission?

Mr. Sandoz That is correct, sir.

Mr. A. Landry And that if they are under the Public Service Commission, should they also be under the authority of the cities so they can appropriate if the need of the citizens is so badly needed that they can say, "To heck with you because we've been incorporated, we are not going to give you the proper service?"

Mr. Sandoz I agree with that.

Mr. Roemer Delegate, you talk about the city expanding. You know that kind of vote it takes for the people and the tax base of an area that's not presently incorporated to be so incorporated?

Mr. Sandoz I didn't get the first part of your question.

Mr. Roemer Do you know what the percentage figure is for the voters in an unincorporated area, and the tax base in an unincorporated area, to petition for incorporation? Do you know what that percentage is?

Mr. Sandoz Twenty-five percent.

Mr. Roemer Only twenty-five percent of the people and in effect the city has the right to take away as a result of only twenty-five percent vote, part of a man's business, or a citizen's business.

Mr. Sandoz But that citizen is in that area, then, and he is subject to the will of that twenty-five percent.

Further Discussion

Mr. Gravel Mr. Chairman, ladies and gentlemen of the convention, I speak in opposition to the amendment. I think that it's very, very important that the delegates to this convention recognize the clear distinction between governmental and proprietary functions of a municipality. Now the fact that a city may operate a municipal utility system simply means that it's in business. It's in private business, so to speak, in competition with other private businesses. It is not, as such, and the courts have decided this many, many times, engaged in a governmental function. Essentially if this amendment is passed, it will allow a municipality operating as a private business, to exercise a public right of condemnation. That's dangerous. We should vote against this amendment and every other amendment of its kind that would seek to permit private rights to be protected under public laws.

And I urge you to defeat the amendment.

Further Discussion

Mr. Jenkins Mr. Chairman, delegate, one of the questions that I would certainly raise is whether or not it is just to think that here in Baton Rouge, the City of Baton Rouge, an amendment would be able to go and forcibly expropriate the Baton Rouge Waterworks Company, which is a private company owned by stockholder; that under this they could go and they could expropriate Gulf

State Utilities Company. They could expropriate their buildings, their offices, their lines, that this city would be able to expropriate South Central Bell within the confines of this municipality, its downtown offices, its exchange centers, its lines...that, to me, just doesn't seem just. There is nothing in this committee section that prevents a municipality from owning a utility or from purchasing a utility, but it just doesn't seem just to allow the expropriation of these utilities in case the stockholders don't choose to purchase them. Bear in mind this, too, that as long as South Central Bell, or Gulf State Utilities, or Baton Rouge Waterworks is in operation here, they are under government regulation from the Public Service Commission. But if they were expropriated, the municipality could set its rates and its service at whatever standards it wanted to because it would not be subject to regulation by the Public Service Commission.

So I urge the defeat of this amendment.

Questions

Mr. Lanier Mr. Jenkins, you have indicated in your remarks, have you not, that this amendment would permit the taking of certain utilities?

Mr. Jenkins Yes.

Mr. Lanier Would you also admit that this amendment is merely a restatement of the present law as exists in the statutes and the jurisprudence?

Mr. Jenkins Well, there might be one difference. I fear that under this amendment, there might not have to be a showing of necessity because, as we would provide otherwise in this article, because we specifically expropriate utilities in the sentence and I fear they wouldn't have to show necessity and possibly in public purpose.

Mr. Lanier Mr. Jenkins, doesn't the sentence in here say that the taking can only be for a public purpose and necessary purpose?

Mr. Jenkins It does. But you say in here that municipalities may expropriate utilities within their jurisdiction. You specifically grant that authority without limitation.

Mr. Lanier And don't these sentences have to be read together within this section, Mr. Jenkins?

Mr. Jenkins I think where applicable, but this sentence seems to grant without limitation this authority.

Mr. Lanier Now, you referred to the Public Service Commission. Is it your feeling that you would rather have the rates in municipalities set by the three members of the Public Service Commission rather than the members who are directly elected to the City Council?

Mr. Jenkins Between those choices, I would certainly prefer the Public Service Commission because when you have that situation, you have the advantages of private ownership and the efficiency that goes with private ownership, with government regulation attached to it. Whereas, if the municipality has it, you have none of the advantages of private ownership and the efficiency that goes with it, only the government control of it.

Mr. Mire Mr. Jenkins, just to make it perfectly clear, isn't it a fact that municipalities, or rather utilities owned by municipalities, aren't under the Public Service Commission?

Mr. Jenkins That's right, Mr. Mire, they are not under...the municipal utilities are not regulated by Public Service, and they can charge whatever they choose. That's why in some of these cities the rates are so high when the municipalities regulate them and own them.

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Mr. Mire And isn't it a fact, too, sometimes from, maybe, a high rate that is charged, they can, in fact, reduce the taxes in this municipality by making the consumer pay a higher rate on a utility

Mr. Jensen Yes, sir, and whereas they might have to have a write on letters tax increase, they can suit arbitrarily raise rates

Mr. Mire Thank you, sir

Mr. Goldman Isn't the word "except" in this amendment, doesn't that erase the necessity to determine public necessity?

Mr. Jenkins Well, I fear that it might be. Mr. Goldman,

[Proceeding Question Ordered.]

[Closing]

Mr. Chatelain Mr. Chairman and fellow delegates, at this point, it doesn't seem that we are in too good a shape with this amendment. But I want to tell you before we vote on it. You heard a lot of talk here in the last few days about rights of people. I want to ask you a question.

What more is right than a citizen who gets together and forms a city, a municipality... and decides to build within that municipality utility systems, sewerage systems, water systems and other utilities for the well-being of the fellow members of that city... or the residents of that city?

We are talking a great deal about the rights of individuals. You can go too far in a lot of areas in the rights of individuals. The objections were raised by the committee members and some others that the... David Conroy's amendment went too far. It was too... it took in too many areas. But we reduced it down to only municipalities. We are speaking now only of municipalities.

And for your information, the purpose that we have in mind is for municipalities to grow, to expand their city limits. That's what it's all about. And how can you expand your city limits when you run into situations where there are one or two utility systems who you have to compete with. Who are under those circumstances? The people... we are talking about people... we are talking about people who live in municipalities. Who are going to lose... those people are going to lose. You have to compete for two or three different lines.

In Lafayette right now we have a situation where you have lines simultaneously running side by side, electricity going through both trunk lines. This is not right. We want the right to live within that area and give service to our people.

There's talk about franchises. The people here know, especially the lawyers know darned good and well that has lines are granted franchises up to twenty-five years. They also know that takilabs are operated under ordinances. The city ordinances control that other all, the people who live within that city do have some right to write ordinances and other things that are necessary for the well-being of their people.

Let's look at this thing objectively. Let's talk about the rights of people. That's all we are talking about. The rights of people. You are expanding the city limits right now, my friend Mr. Mire, without fifty percent of the people wanting to come in in the 1970's are future voters here.

Also you know who has behind all of this, the water utility systems now who were organized during the depths of the depression in 1933 to give utility to the rural area. Those people came to Baton Rouge and lobbied the legislature to pass a law where it took fifty percent of the people with no franchise area to be able to get 50 percent of the franchise that was needed in 1970. We are talking about rights. All we are talking about, those rights.

And I wish that you would go and support this amendment. It's a good amendment. It gives the

right to think people who live within these cities, particularly in the south, who have two and three different utility systems running side by side.

[Reading Back of Previous Amendment Proposed]
2:12-27 M. Mire: Mr. Chairman, Amend. 10:10:10

Amendment

Mr. Poynter Amendment No. 10:10:10, page 2, line 19, immediately after the word "public" and before the word "purpose", delete the words "and necessary".

Amendment No. 10:10:10, page 2, line 18, at the beginning of the line, immediately before the word "shall", delete the words "and necessary".

Explanation

Mr. Casey Mr. Chairman and delegates, one of the greatest concerns that as a delegate, individually, that I have, are the use of the words on line 18 and line 28 of the word "necessary". It is my understanding, and I'm not an attorney who has worked in the area of expropriation and appropriation, but it is my understanding that the taking under those circumstances must be for a public purpose, and the word "necessary" is not now contained in our constitution. I would suggest to you, and I know we have great concern in our city and I would imagine you would, also, in your city or municipality, that the word "necessary" can lead to all sorts of difficulties and delays and problems. For instance, in our municipality, the construction of a cultural center necessary, is a new municipal auditorium necessary, is a new city hall necessary, is a public park in a certain area necessary? You can imagine that this will lead to all sorts of litigation, all sorts of problems. I think we are creating problems for our state and for our municipalities and for our parishes. I think this is one of the most problematic areas that you are adding to the new constitution. I would strongly urge and recommend that you delete the word "necessary".

Questions

Mr. Avant Mr. Casey, I'm looking now at an amendment that bears Mr. Perez's name. That amendment, as I interpret it, would get down and make it a legislative question as to public necessity in the case of a municipality or any governmental agency, but would leave it at that stand with respect to utilities. I just want to know, would that amendment solve the problem that you are concerned with?

Mr. Casey It may very well, Mr. Avant, and I would suggest this. It may resolve the problem. I will now withdraw my amendment with the right to reserve the right to submit it before we vote on this section. I will be glad that.

Mr. Chairman, I would not like to withdraw my amendment, and I would appreciate the gentleman's attention of the gentleman to leave it in. I would suggest, also, have a public utility in your utility in the city of New Orleans, also. I would like to request that the amendment remain as is and it receive your favorable consideration.

Mr. Bergeron Mr. Casey, in an agreement with you, could you possibly define to me what the term "necessary", when necessary means?

Mr. Casey Mr. Bergeron, that's a good question. I've considered about. I know we have some utility, particularly, all the local municipalities that are available, all their operations that are available in interpreting the word "necessary" under other circumstances, and I fear I am unable to give you the somewhat hypothetical that I would like to give you. I would advise you to go to the word "necessary" in the constitution. I would like to see you go to the word "necessary", because we certainly have some utility in our state already. I would like to see you go to the word "necessary" in the constitution, the word "necessary".

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dividual with reference to his property. I think we are creating problems with the addition of the word "necessary".

Mr. Bergeron You say, also, that this term is not used in our present constitution, is it?

Mr. Casey Mr. Bergeron, to my knowledge, it is a new term in our constitution unless someone corrects me to the contrary.

Recess

[*Quorum Call: 86 delegates present and a quorum.*]

Further Discussion

Mr. Derbes Mr. Chairman and ladies and gentlemen of the convention, I rise in opposition to the amendment. It's my appreciation of the law, as an attorney although not one who is experienced in this area, that in the ordinary discharge of any governmental function, that is recreation, transportation, or education, the municipality or the expropriating body need merely allege public purpose in order to accomplish and satisfy the requirement of public purpose. I think there should be some converse requirement for the municipality to show, that indeed the expropriation or the taking is necessary. By necessary, I mean reasonably...in reasonable furtherance of its particular aim and without substantially adverse, detrimental, effects upon the community. I can refer you to numerous instances, certainly in an urban area, where expropriation, although deemed advisable by the municipality, may be substantially detrimental to the citizens of certain sections of the community. For example, in New Orleans, we tore down many square blocks of very valuable historic buildings in a, I think, very firm residential area in order to provide for a cultural center. I'm not against cultural centers, but perhaps cultural centers can be located in areas where they do less of a disservice to the neighborhood residents. I'm not against governmental agencies performing ordinary functions, building facilities to satisfy the needs of the people, but I do think some further standards of care are required so that all individuals' rights and benefits will be protected rather than the municipality merely designating a certain area or a certain facility for expropriation and going in and doing so. So I rise in opposition to the amendment, and I urge its defeat. Thank you.

[*Quorum Call: 85 delegates present and a quorum.*]

Further Discussion

Mr. Roy Mr. Chairman, I hated to ask for that, Ladies and gentlemen. I never have before and I don't think that I'm so brilliant that you should always listen, but this is extremely, extremely important.

Just a while ago, when we talked about expropriating public utilities, we were assured that since Mr. Lanier, and Mr. Chatelain, and Mr. Anzalone's Amendment with respect to expropriating public utilities came at line 25, that the words "public and necessary" therefore used were applicable. Before a utility could be expropriated, the municipality would have to show it was for a public purpose and necessary. Now, suddenly Mr. Casey, and I know that he's not in bad faith, but apparently in the city they think that you can go around and expropriate property at will, decides that no longer is that the law. It's going to be done because it hasn't been used in the past in the constitution. That's the exact reason we've raised the issue because there had been abuse, and abuse, and abuse on top of abuse. Different municipalities, and local governing agencies have expropriated people's property in the past without the necessity of doing so. Now you know we allow our courts the right to determine pain and suffering. We

allow them to determine good faith and bad faith. What's so wrong with letting a court of law determine whether a police jury or a local governing body is...it's necessary that it take my piece of property for a park when the fact is the municipality owns a piece of property right on the side of it. You understand that the opposite of the word "public", is "private". So that as long as the property is used for any public citizen, then no one may say that it's not necessary unless we give the court one other ultimate word to use to determine in the interest of the citizen, the person who owns maybe that one little piece of property and is living on it, whether some municipality may pick it up and maybe not even use it, may put something on it that is not necessary. In a lot of cases, ladies and gentlemen, turn around about three years later, declare there is no more need for the property because they don't plan to build the little park and sell it to some friend.

Now one other thing let's look at. Get a big subdivider, subdivides a big piece of property. He sells thousands of lots out of it, and then after making a killing, he gets these people to say "we need a park near my subdivision". The people get on the municipality. The municipality goes and expropriates Mark Abraham's property next to the subdivision when the subdivider could have provided for that in his subdivision plans. Is that fair? Now I'm not saying that it should never be done and that we can't be clairvoyant at all times and know when we may need it, but let's give the courts one look at it. There's no problem with respect to the taking. There's no need for an immediate taking. In highways you don't have to worry, they can show the necessity right off the bat. But these little municipalities, this bunch from New Orleans, the Vieux Carre Commission and what have you, go around expropriating property they may not need to do. Let the courts determine it. That's all I ask you. I voted for Chatelain, Lanier's Amendment thinking that the necessary would stay in this constitution and suddenly "necessary" is being taken out, and that's not necessary.

Questions

Mr. Guarisco Mr. Roy, couldn't this lead...without showing a necessity, couldn't this lead into an abuse of municipality of services. Identical services?

Mr. Roy That's right.

Mr. Guarisco Can't facts show a necessity be proved like every other fact in court?

Mr. Roy That's right. You could show with a project or an engineer's just a preliminary plan, the necessity of something and not go around and expropriate ten different lots for a park.

Further Discussion

Mr. Jenkins Mr. Chairman, delegates, sometimes if we don't like a concept, the best way to try to defeat that concept or turn people away from it, is to tell them that we don't know what it means. Well, the word "necessary" has a specific meaning. It is used in a number of other state constitutions. There is a great deal of precedent for using it, and there's little doubt about what it means. Let me read once again what the law dictionary says about the word "necessary". It says this. I think if you listen closely, there will be little doubt about it. "This word must be considered in the connection in which it is used as it is a word susceptible of various meanings. It may import absolute physical necessity or inevitability, or it may import that which is only convenient, useful, appropriate, suitable, proper, and conducive to the end sought. In eminent domain proceedings, and that's what we're talking about, "the word 'necessary' means land reasonably requisite and proper for accomplishment of end in view, not absolute necessity of particular location." What is reasonably requisite and proper, that's all it means. It's

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created no problem in other states where it's in the constitution. You go back to the mother of our law and the mother of much of our culture. France. You'll see that the French Bill of Rights says something very similar. It says in the Declaration of the Rights of Man, the right to property being inviolable and secured, no one shall be deprived of it except in cases of evident public necessity. Evident public necessity which is much stronger than what we propose here. If you look at the Declaration of Human Rights drafted by the United Nations, hardly a group which is particularly well disposed toward property rights, it even says that no one shall be arbitrarily deprived of property. That's what we are talking about here, whether the taking can be arbitrary or not. If we say "necessary", then we're eliminating that possibility. Look at the constitution of the state of Massachusetts which has been working in that state, as written, since the year 1780. It says this, and whenever the public exigencies require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor. It hinges it on public exigencies. Public exigencies is the standard there. What does that mean? The word "exigencies" is defined like this: "Emergency, something arising suddenly out of the current of events. Any event or occasional combination of circumstances calling for immediate action or remedy." That's the standard in the state of Massachusetts. We're not suggesting such a high standard here. What we are suggesting is this, that if the government wants to take your property or my property, that the government show that it needs to do it, that's all, that it needs to do it. Simple as that, that it not be arbitrary. The term "public purpose" as in our law at present is a very weak standard because anything has been defined as a public purpose. But if we're going to allow the right to take people's property, let's be sure government needs to do it. That's all the word "necessary" here requires. So I urge the defeat of the amendment.

Question

Mr. Jenkins: Mr. Jenkins, you've read us the definition several times today from Black's Law Dictionary, with respect to the definition of the word "necessary", would you be willing to concede that there are numerous definitions of the word "necessary" besides that one set out in Black's Law Dictionary?

Mr. Jenkins: Well, I think that the discussion there adequately covers what you just said. Yes, there are many definitions, but in regard to eminent domain proceedings, the definition is specific. It's fairly well settled in the law what the word "necessary" means.

Mr. Jenkins: Okay. Now what I am asking now, is, if it is true that you do have a definition for eminent domain, what guarantee do you have that Black's Law Dictionary of the word "necessary" is going to be followed?

Further Discussion

Mr. Neill: Ladies and gentlemen of the convention, if this amendment is adopted, what we're going to allow ourselves to do in conjunction with the last amendment we've adopted is that if a municipality can expropriate a utility company and a citizen can show that it's necessary, then any utility company taking money is going to be taken to the emergency by municipalities, and that's exactly what it's going to do. Tell me what you'd like to see. We've told you what "necessity" means, and you say, of course, it's been the case of litigation over these many years. Well, I suggest to you that "necessity" has been the word, and I suggest to you that these amendments in the constitution which these are the first time these companies and are to favor these individuals who represent their citizens. It is

a bad amendment. We had a case here in State Rouge that's currently in the news where a man a couple of years ago bought a piece of property. He bought that property which was considered somewhat out in the country at that time, so that his children could ride horses on that property. Well, it so happens that now the subdivision that has moved nearby since then has decided that they need the property for a public park. Well, they are ready to expropriate it, and expropriation proceedings are going on right now. So a real estate company has bought the property across the street and they are advertising their apartments saying, "Come live with us, we're going to have a park right across the street". Yet it has no regard for the man whose property they are taking. This amendment is bad. The word "necessity" is the key to this whole article, and I think that it's time that we kill these amendments and we go on with the committee proposal.

Question

Mr. Jenkins: Mr. O'Neill, we've talked a lot about utilities and municipalities and government, but isn't the reason that the committee has put in there the word "necessary" to protect the people, particularly the little citizen of this state? Isn't this a protection for them?

Mr. O'Neill: Yes, Mr. Jenkins.

Point of Order

Mr. Arnette: Mr. Chairman, I would like a division of the question, please.

Mr. Henry: A division of the question.
Mr. Arnette, the question is not divisible.

Mr. Arnette: Mr. Chairman, isn't it that Amendment No. 1 applies to "necessary" for taking of a public utility and Amendment No. 2 applies to "necessity" as in any other taking? Is that not correct? It seems to me two different issues.

Mr. Henry: No, sir. The second one has to do with the determination of it and I don't believe they are divisible at all, sir.

[Previous Question Ordered.]

Closing

Mr. Casey: I'll be very brief. I'll take just one or two minutes, Mr. Chairman.
Delegates, this is an extremely serious problem that you should give, and I ask that you give your proper attention to this problem. The word "necessary" is not now in our law. I think in litigation, generally, the rights of an interest to the people have been protected by the courts. But I think we are going to have serious problems in our parishes and municipalities, unless we take this wording out because whenever your parish or your municipality has a need to progress and do something constructive there will be all sorts of suits, whether it be in injunction or whatever you, that can be filed that will obstruct the progress of your area. I know in my area, and I'm sure in many of your areas, we have things that have not to be done every day and we are going to stultify our progress. If we don't have the ability to construct new things, to make new progress in the way of park, recreation area, new city halls, and we don't need one today, but maybe twenty years from now we will need one. I'll give you delegates, that we have to have some faith in our judicial system and I would suggest to you that if a parish or an improvement or if a taking of absolutely unnecessary, I would suggest to you that our courts would grant a remedy to prohibit by injunction the unnecessary taking for construction of some project that would be absolutely ridiculous in the part of a governmental unit. I therefore urge that you adopt the amendment.

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[Record vote ordered. Amendments re-recorded, 49-66. Motion of reconsideration tabled.]

Amendments

Mr. Poynter Delegate Perez sends them up.

Amendment No. 1. On page 2, line 19 immediately after the words "public and insert the following: ", in the case of a public utility, a".
Amendment No. 2. On page 2, line 27, at the beginning of the line delete the word "The" and insert in lieu thereof the following: "With regard to a taking or damaging by a public utility, the

Explanation

Mr. Perez Mr. Chairman and delegates, the purpose of this amendment is to put public utilities such as pipeline companies, power companies and the like in a different category than the state and its political subdivisions. We've heard most of the arguments in favor of the necessity or showing the necessity directed primarily against pipeline companies, power companies and so forth. The thing that bothers me so much about this word "necessary" is that I really don't believe any of us really knows what it means. Even when Mr. Jenkins, when he appeared a few minutes ago, in quoting from the law dictionary, it was said that the word "necessary" is susceptible of various meanings. Now let's consider for a minute some of the problems that might be involved in specific situations. Let's look, for instance, at a school board that might determine that the number of school children is increasing in that school, and five years hence, that they might need another school building. The first thing they must do is to acquire the property before the plans can be made for the building because you have to make the building fit the property. A person could come in and say, "Oh no, it's not necessary to build that school. We don't know whether, in fact, an industry in the area might close down. We don't know whether your statistics are correct that the population, the school population will increase." Now if you would just converse situation where a large industry might decide well, we want to come into your area and build a large facility which will hire hundreds of people, but you don't have enough school facilities. Now if you'll build a school, we'll consider coming into the area. There's no absolute guarantee that there is that necessity. Now I've heard these definitions or these explanations that "necessity" means reasonably necessary and a lot of other limiting language on the word "necessary". But the amendment, the provision itself says "necessary". It doesn't say reasonably necessary, or expedient, or anything else. Let's take a look, for instance, at public parks. Is a public park necessary? It's convenient, it's something which will promote the general welfare, but it's not necessary. Let's look at the new interstate highways and other highways being built by the state. We already have highways throughout this state the length and breadth of the state. Is it necessary to build a highway between here and Shreveport? We have other highways there now. Or let's look at the Mississippi River bridge that's been embroiled in the Orleans in controversy for years and years and years, and there's a great deal of opposition. Is it really necessary? We have one bridge across the river now. It certainly will be convenient to the people there, but is it necessary? So I submit to you, that before any action can be taken to expropriate property that you need legislative authority. Local government just doesn't by whim, decide that it's going to go take somebody's property and in most cases you have to go to the people, and you have to get the authorization from the people to issue bonds. When the people come in and decide well they want this facility, but on the other hand a judge may come along and say, "Well, I don't care what the people said, I don't believe this is necessary." I say that we are flirting with danger--extreme danger. I say to you that we should put public utilities in a different

category than state and local government. Therefore, I would urge you to adopt this amendment which would limit the word "necessary" to the use of expropriation powers by public utilities but would not require governments, either state or local governments, to go into the issue of "necessity". I say to you that this is just an invitation to have lawsuit, upon lawsuit, upon lawsuit to determine whether or not, in fact, a particular proposed public project is necessary. Yes, I'll yield to Mr. Roy.

Questions

Mr. Roy Mr. Perez, you know that the law of negligent homicide says that it's the killing of a person through criminal negligence which, as defined by the statute, is a gross deviation from reasonable conduct, is it not?

Mr. Perez Well, first, I'd have to have the book before me, but I don't quite understand your purpose. I cannot answer the question because I don't know offhand.

Mr. Roy I'm going to get to it in a second. We allow either a jury or a judge to determine what is gross deviation from reasonable conduct using about four words that are pretty hard to define, and yet, you want to tell us after we just went through all this on "necessity" that we can't have a judge decide whether something is necessary or not?

Mr. Perez Well, I think that we are getting into an area where you have, first of all, people who hold an election to issue bonds, and they say, "we want that public facility". Then you have the local government itself or the state government, through its legislature and the governor, deciding that it wants a certain public project, these people elected by the people, and we're going to say a judge is going to come along and tell either the local government which has the authority given to it by law, or the state itself, "No, we don't agree with you that there is a necessity for this". I believe that we should put our faith and trust with regard to public projects, projects which are sponsored by the state and local governments, and with the authority to do it under law, I think that they should not be required to show the necessity because I think the people decide that necessity through their representatives.

Mr. Roy Aren't these judges subject to review on appeal and didn't you support the right of review by six or seven judges of the appellate courts with respect to . . .

Mr. Perez Of course, I support the right of appeal, but again we're talking about one district court judge and six or seven appellate judges.

Mr. Roy All right. Let me ask you something. Your amendment is not needed insofar as Mr. Lanier and Mr. Chatelain and Mr. Anzalone's Amendment that we passed. . .

Mr. Perez It has absolutely no reference to that. What we are talking about here is the power to expropriate, to take property, and what I would hope that we could do, and I believe it's the will of the majority of the delegates to the convention, hopefully, that we put public utilities in a different category than we would state and local government.

Mr. Roy But we just did that with the Chatelain, Lanier, Anzalone Amendment because they added that the word "necessary" . . .

Mr. Derbey Mr. Perez, you have trouble with the definition of the word "necessity or necessary", and in your comments you seem to be somewhat far afield from my definition of the word "public utility". On the record, could you tell us what you mean by public utility?

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Mr. Perez: Well, I think public utilities are well defined under the law. It is a service provided by a company which is privately owned, but for the good of the general public, such as Louisiana Power and Light, gas transmission companies, power companies and so forth. Telephone companies. I don't think there is any question about what public utility mean.

Further Discussion

Mr. Stagg: Mr. Chairman, fellow delegates, un-asked as I am to raise in support of a Perez Amendment, I do so at this time because I think what he is telling this convention is quite true. I have a great deal of respect for Mr. Jenkins and the thoughts which he and his committee put into this section of this article. I am, also, at the same time, a member of various organizations around the State, one of which, in particular, doesn't believe that certain roads ought to be built, or that certain public projects ought to be undertaken and they followed this policy with an assiduous use of the court to slow and or attempt to stop public projects. I don't think that the State Highway Department is free from error. I don't think that the city or shreveport is free from error, and I have been a visiting member of the board of both of those governmental organizations. In neither case do I think they offered what the property was worth, nor in either case did a court award ultimately what this property owner felt that his property was worth. But the projects were of public necessity—that of building a new and modern airport, and that of building I-20 through the city in shreveport; where they spent to put it had a lot to do with engineering. It had a lot more to do with the cost of the right-of-way and the ultimate budget of the project, and though I thought they could have gone a different way, I am sure that everyone whose property was in the path of that expressway also thought that they could have gone on a different route. Well, the issue is laid and it's being used now by fifty thousand cars a day and the question of whether it was necessary to put it where it was now, is laid at rest because that particular public improvement is being well used and the city would be choked if it didn't have it. Your cities will be choked in the absence of adequate freeways or bridges across bodies of water and other things which might successfully be challenged as to the exact location of it—the project delayed in courts for years while the district court decides that something isn't necessary and then the supreme court, and maybe to the United States Supreme Court. Who knows how many years can be taken up to decide whether it is necessary to build a road at this location or at this site. I think there is a clear distinction in the phrase "public and necessary" when it applies to public utilities, and pipelines, and high lines, and telephone lines, and that kind of installation. But I think the public is well guarded and the public is well served by the zoning order of this statute in the taking of public rights-of-way for highway and airports.

Further Discussion

Mr. Jenkins: Mr. Chairman, delegates, we hear the proposal of some who want to put a slight amendment to the law to appear to have the same intention as is granted in many other states, that utilities and they have the highway, the telephone, the gas, everything they need. It isn't a loaded problem there, it works there. In 1979 90% of the gas there would be the same kind of necessity. It's not in that that year ago when we almost had a gas shortage. It is a similar problem that is in the highway and articles. I think if we could submit this question to the people they would be overwhelmingly in favor of the requirement that before their property is taken, it be provided to be needed. That's the only thing we're taking here. We support that article. It could have a sense of respect, it can be amended, whatever

it may be, and a label that will be taken by a local government that is to take it, it doesn't have any difference to him which one is being taken, he wants to know that it is needed, and difference does it make? It does not have any difference to the man whose property is being taken. It ought to be necessary to take private property. People work a lifetime for it, and we've used time and time again that the standard definition of "Necessary" word necessary. Legally recognized, have nothing to do with taxation. But with the necessity of the particular purpose, not the necessity of a particular location. Let's give our people in this state a break from arbitrariness in government. We constantly suggest our people to every manner of regulation and control, but we don't ever want the slightest little regulation on government. Let's just don't be arbitrary in the way taking. Let's make sure it's needed. So I urge the defeat of this amendment.

Questions

Mr. Willis: Mr. Jenkins, we've had trouble with the definition of the word "necessity", and we've heard of necessities of life. Can we turn the coin over. The opposite of necessity is luxury, is it or non-necessity? In that vein let me ask you this question. If a governmental body is unable to prove necessity, should it be entitled to the luxury against the landowners and homeowner involved, to rampage their homes and pull a road? If they can't prove necessity, it shouldn't be entitled to that, should it?

Mr. Jenkins: No, sir, I don't think so, and that isn't a hard burden to prove in very many cases. It would be very rare when the government wouldn't prove that.

Mr. Willis: And that is not detrimental to property, is it?

Mr. Jenkins: No, sir, I think it will lead to more support for public projects because people will know that when the government does something, it's at least reasonably requisite to some public purpose.

Mr. O'Neill: Mr. Jenkins, we've made some mistakes; not to levees; we've made concessions to municipalities to expropriate utilities. Don't you know they're just finally trying to get it down to where this absolutely means nothing?

Mr. Jenkins: I think so, Mr. O'Neill. This is the real out of the whole proposal right here. If something is needed before it's taken, if a trip that out of it, we don't have much left. This is the real out of it.

Further Discussion

Mr. Gray: Mr. Chairman, ladies and gentlemen of the convention, agree with Mr. O'Neill and Mr. Jenkins that it is in great debate the last provision in this section, but most of all we'll go away with the better question that deals with rights to property. The article that we're dealing with here in this section, being part of the address themselves to the bill of rights, the rights of the individual and the rights of the public. Now, if you don't mind, I would like to show before taking a man's property, that the property has to be taken for a public purpose, then you might as well write in here that there shall be no public use in the State of Louisiana in the future. Without this provision in Item 21, though 21, we have an absolutely meaningless provision without this provision with this provision. It's critical to the public interest, the individual and the general welfare. You will recall that the same provision has been in Louisiana, in many, in many years, in many amendments to the constitution and to public purpose. I suggest to you that if we will make the words "the public purpose" the requirement of the State of Louisiana,

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have got to insure that before those rights are violated, it's got to be demonstrated that a public purpose and a necessary public purpose exists. I urge that you reject this amendment so that we can maintain the integrity of this section and make this truly part of a true Bill of Rights.

[Previous Question ordered.]

Closing

Mr. Perez Mr. Chairman and ladies and gentlemen, from the discussion that I've heard from the previous speaker, it would make it appear that government is a big, bad wolf attempting to devour all of those citizens of this state or any citizens of the state it might decide it would like to devour. You know and I know that generally speaking local government and state government acts reasonably and in accordance with the will of the people because those people are responsive to the needs of the people, because if they are not, they are going to end up out of office in a hurry. I submit to you that under what this amendment would do, would be to require government to do everything it does today with respect to the construction of a public facility, and that is, would have to get the necessary authorization from the legislature or through the constitutional authority, and it would still have to comply with all provisions of law. There is no idea that arbitrarily government is going to try to walk over people. I think all of us know that local government and state government are responsive to the people of our area. Let me call just one other situation to your attention. We have a great number of urban renewal projects under way now, and again I can't under any stretch of the imagination figure out how it would be held that that is a necessary public purpose. And again I call your attention and I urge you please consider the fact that none of us really know what the word "necessary" means. We would not give the authority to the legislature to define "necessary", we would strictly be subjected to the decisions of the court as to whether in a public project was necessary or not, in spite of the fact that the people themselves may have voted bond issues to build a facility, in spite of the fact that either a representative of a local government under authorized law or the state government have decided that this is a worthwhile project for the progress of the people of the state or the people of that particular area. A judge could come along and say, "No, I don't agree with that. That's not necessary." I don't think that we want to leave government in that unfortunate position.

Questions

Mr. Pugh Mr. Perez, as I understand the law relating to expropriation as we know it today, the word "necessity" has not heretofore appeared in the constitution.

Mr. Perez That's correct.

Mr. Pugh Therefore, it's a jurisprudential rule to show necessity.

Mr. Perez It would place in the hands of the court the authority to legislate with regard to what necessity means.

Mr. Pugh I'm saying heretofore necessity has been a jurisprudential rule, and it has been...

Mr. Perez If in any particular case that word came up in some statute, I would think, yes.

Mr. Pugh All right then, is it not true then that in the past both the government, if expropriating and a public utility, if expropriating, had to show necessity?

Mr. Perez You ask whether they had to show necessity?

Mr. Pugh Is it not required that necessity be shown in ...

Mr. Perez No, sir, there's a difference because under, if for instance you have a statute authorizing the construction of a particular highway, that is the necessity.

Mr. Pugh I understand.

Mr. Perez That is, if the legislature in its wisdom has decided that it's going to build a toll road from Baton Rouge to Shreveport, that is the public necessity. On the other hand, if you have a public utility which says that it's necessary for them to build a line from South Louisiana through the State of Louisiana to some other place, that is a different situation and that's where the word "necessity" should come in.

Mr. Pugh But, I'm saying that premitting the question of the specific special statute for highways is a general proposition of law as you and I know it to be, when a public body attempts to take property, they must show a necessity, a public purpose.

Mr. Perez Are you asking me a question? Again what happens is that if you have a law authorizing the construction of a Mississippi River bridge in New Orleans that would show the public necessity, and you don't go beyond that. What you would do under these circumstances is to say that in spite of the fact that the legislature authorized the bridge across the river, it is necessary for a judge to say whether it is necessary or not. I urge you to adopt the amendment.

[Record vote ordered. Amendments rejected: 48-61. Motion to reconsider tabled.]

Amendments

Mr. Poynter Amendment No. 1 [by Mr. Roy], on page 2, line 14, delete Floor Amendment No. 1 proposed by Delegate Denney and adopted by the Convention on August 30, 1973.

Amendment No. 2, page 2, line 16, delete the word "the"

Amendment No. 3, on page 2, line 17, immediately after the partial word "sonable" delete the words "exercise of the police power" and insert in lieu thereof the words "statutory restrictions".

Explanation

Mr. Roy Mr. Chairman, ladies and gentlemen of the convention, I've spoken with Moise Denney and he has no opposition to this. We merely take the words this morning that he inserted "statutory restriction", you remember those subject to reasonable statutory restrictions, which came right after the person and which made it awkward because we'd kept in "exercise of police power" on line 17, and we simply take out the "police power" and insert the word "statutory restrictions" there. So that there's no question but that valid statutory restrictions with respect to the ownership, enjoyment, and what have you of property will prevail, and we won't be in an ambiguous use of the words "police power".

Questions

Mr. Keen Do you intend that property would not be subject to reasonable exercise of the police power by this amendment?

Mr. Roy No, not at all, but certainly the reasonable exercise of the statutory restrictions would encompass the police power of the state.

Mr. Keen Well, I'm not too certain that I agree with that point, Mr. Roy. The exercise of the police power in statutory restrictions in my view

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ould be two separate and distinct things, and if I understand your amendment, property would no longer be subject, possibly would not be subject to reasonable exercise of police power, and I'm certain that's not what you intended.

Mr. Roy: No, sir, Mr. Kean, what I believe is that if of course the property is always subject to police power, but police power is an intangible thing that doesn't mean anything. Before you can subject property to any type of restriction or law, you've got to have your positive law that affects it, and therefore, the law would come from the right of the state through its police power to regulate it.

Mr. Kean: Mr. Roy, you would agree that when we talk about police power, we are talking about the exercise of governmental authority for the safety, welfare, and health of the citizens of the area or of the state.

Mr. Roy: That's right.

Mr. Kean: And I just don't read the same thing out of 'statutory restrictions' as that, and I think you run serious question about whether or not property would then be subject to police power by reason of your amendment.

Mr. Roy: I don't see that problem at all, Mr. Kean.

Mr. Conroy: Mr. Roy, isn't it possible for a parish or a municipality in some cases to exercise a police power?

Mr. Roy: That's right. Police power is inherent, but it doesn't exist until you make something in writing of it.

Mr. Conroy: Yes, but your proposed so-called technical amendment would relate only to statutory restrictions. A municipality or a parish would not be exercising police powers under a statute; they'd be exercising police powers otherwise so that it seems to me that your proposed amendment severely restricts what was already in here.

Mr. Roy: I think you're making a play on the word 'statutory' as meaning necessarily coming from the legislature.

Mr. Conroy: Yes, I think that's the normal interpretation of 'statutory'.

Mr. Roy: Well, I think of...

Mr. Conroy: I think if we check Black's Law Dictionary again, if one of you all have it, you'll find that that is what it normally means.

Mr. Jack: Think, how about after 'police power', instead of knocking it out, put 'and legislative restrictions' because they are different and as was said.

Mr. Roy: Mr. Jack, I think probably with the question raised by Mr. Kean and Mr. Conroy that'd probably be right. I simply was trying to take it out of the awkward position it was in following 'person and just put it somewhere else, so I'm going to withdraw it. I really think that it's poorly worded as it is.

Amendment

Mr. Boyner: Amendment called Messrs. Leigh, Womack, Lasker, Lanier and others. Amendment No. 1, on page 11, delete lines 14 through 19, both inclusive in their entirety, and insert the law thereof the following: Section 4. Except as otherwise provided in this constitution, private property shall not be taken or damaged except for public purposes and after just and adequate compensation is paid to the owner or into court for his benefit. The legislature shall, by statute provide the procedure

for such taking, which shall assure that the owner shall be compensated to the full extent of the loss. Personal effects, other than contraband, shall never be taken.

Explanation

Mr. Leigh: Mr. Chairman and ladies and gentlemen of the convention, let me say at the outset I'm sorry that this hour is late; I'm sorry this has to be brought to you at this late time when we're all anxious to adjourn. But I do think that the amendment is important and gives us a choice between two philosophies. At the beginning, I'd like to call your attention as Mr. Boyner has to the fact that the word 'his' in the next-to-last line of this amendment should be 'the', and I will explain why as I go forward. My amendment seeks to bring the constitutional provisions with respect to expropriation into substantially the same picture as they exist at the present time. It seems to me that the main thrust of this section is with respect to expropriation, and I suggest that the exception should be limited to that purpose. According to our amendment, our amendment proposes to delete from the section the first two sentences. With respect to the first sentence I suggest that the right to own and acquire property by any means is inherent in any society which exists in the United States today, whether in Louisiana or elsewhere, and that the right to hold property requires no affirmation in this constitution. Further than that, I fear greatly that if we should guarantee to every person the right to acquire, own, control and dispose of property, we would be seriously jeopardizing our law of succession. For every person must necessarily include both husband and wife, and I fear that this language might be construed as providing two heads for the community, either of which might act independently of the other. I do not believe that this sentence of the committee's recommendation provides any right not now enjoyed by every citizen, and that its inclusion in the constitution would raise serious questions of property tenure which should be left as is. The second sentence of the committee's recommendation refers to the reasonable exercise of the police power. Reference to the law of forced heirship has been deleted by the 'Tenney' amendment. With respect to this it is my understanding that the police power has been held to be an attribute of sovereignty, that it exists without regard to any constitutional or statutory authority. That being true, it seems to me that in the reservation of that power in this section is wholly superfluous. The main thrust of this amendment is to deal with the right of expropriation which is dealt with in the remainder of the section as proposed by the committee, which I think is properly dealt with here. This amendment, as I stated at the outset, seeks to reaffirm the law substantially as it exists today. The first sentence of my amendment is taken from the Constitution of 1921. With the additional language used by the committee that justification for the taking may be found in the public interest which I suggest I understand that the committee feels that the inclusion of this language will provide the basis for a so-called 'quick-taking' whether or not it will have that effect, I do not know, but in any event it is not being handed by this amendment. The use of the phrase 'except as otherwise provided in this constitution' at the beginning of this amendment is afforded the protection which I suggest has alluded to with respect to the expropriation of land for levee purposes. This amendment differs from the entire the remaining provisions of the committee's recommendation and leaves the question of providing procedures to the legislature where, I suggest, it belongs. It seems to me that that is a legislative function and should not be left to the legislature. That would require a jury trial if it was fit and would provide that the taking of a private business enterprise by a governmental agency for the purpose of its operation by that agency is subject to the law

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express no views on these subjects but suggest that they are the proper subjects of legislative action and should be left to the legislature, not included for all time in this constitution. I have perpetuated the committee's requirement that compensation must be paid for the full extent of his loss. I have changed, however, the word "his" to "the" because I'm afraid that by using the word "his" and guaranteeing to the owner compensation to the full extent of his loss, we may be opening the door to claims for damage for mental anguish, for injured feelings and for other intangible damages. The owner should be fully compensated for everything that is taken but should not be allowed to claim other intangible damages which might be wholly speculative. Finally, I suggest that the last sentence of the committee's proposal which this amendment seeks to delete is an infringement upon the legislative process which should not be constitutionally sanctioned. I am of the opinion that this provision in the committee's proposal would have an adverse effect principally upon municipalities, police juries and other state agencies rather than upon public utilities. It is my understanding that under present law the courts in the final analysis must determine that property sought to be taken by a public utility must be shown to be needed and to be a public service or in the public interest. But it seems to me that a determination by the legislature or by a municipality or police jury that certain property is needed for public purposes should not be subject to review. Such right of review as is presently enjoyed by the courts is not further restricted by this amendment, but I do believe that a full and unrestricted right of review should not be delegated to the courts by constitutional power. This, ladies and gentlemen, affords a clear choice between the legislature and constitutional provision. In our consideration of the legislative article we have embraced the philosophy that more power should be given to and more trust should be reposed in the legislature. This amendment follows that philosophy. I earnestly submit to you that my amendment provides all the language that is necessary in a constitution, and I urge its adoption.

I yield to any question.

Questions

Mr. Weiss Delegate Leigh, do I understand the thrust of your amendment to mean that private property owned by an individual which is taken or damaged, for public or necessary purpose, is to be compensated for by a decision of a political body, that is, the legislature rather than a judiciary, nonpolitical type of body?

Mr. Leigh No sir, Dr. Weiss. I don't understand that to be. The compensation would be decided by the courts.

Mr. Weiss But, does your amendment say that?

Mr. Leigh Yes.

Mr. Weiss You say the legislature.

Mr. Leigh No.

Mr. Weiss My understanding is that the legislature...

Mr. Leigh I said procedure for attaining that end shall be established by the legislature.

Mr. Weiss But, if the legislature decides...

Mr. Leigh Not the amount of the compensation.

Mr. Weiss Could they provide for a decision with out the judicial action?

Mr. Leigh For a decision on what, Doctor?

Mr. Weiss On this loss that an individual may suffer.

Mr. Leigh They would provide, the legislature could provide any procedures for the taking of property either by a municipality or a governmental agency ...

Mr. Weiss Or some other political body, some other political body?

Mr. Leigh Could provide any procedures that the legislature saw fit.

Mr. Weiss Such as an appointed political board for example, is that right?

Mr. Leigh Such as a what?

Mr. Weiss An appointed political board.

Mr. Leigh Well, a police jury or a governing body, the legislature could give to the governing body or the police jury or the municipality or the political agency, could give it a right to expropriate property and to declare the public need for it.

Mr. Willis Mr. Leigh, with superlative submission, does not this amendment rip out the rights reserved to the people in this article discussed all day, and transfer it to the wisdom of the legislature which we proposed by this committee article not to have been so sagacious to date?

Mr. Leigh Mr. Willis, this amendment would delete from the article as it has been discussed today, it would delete the first two sentences of the section. That is it would delete the guarantee of the right to own, control, and dispose of property, and it would delete the sentence that that is subject to the exercise of the police power. It would delete that.

Mr. Tapper Mr. Leigh, I think you answered one of my questions just now. You said you're deleting and taking out of the constitution the right of every person to own private property. Is that right?

Mr. Leigh Yes, sir, I think that that is an inherent right which is not needed to be constitutionally approved, and I feel that that language as used in the committee's proposal would drastically affect our law of community property.

Mr. Tapper Well, you don't believe that everyone should have the right to own private property?

Mr. Leigh Absolutely, but I think they have that without constitutional fiat.

Mr. Tapper Where do they get it from, Mr. Leigh, if it isn't in the constitution?

Mr. Leigh They get it as an inherent right.

Mr. Tapper I don't understand your reasoning there, but let me ask you the second question. Didn't you know that I don't believe that we have any rights unless we provide for them in this constitution, but secondly...

Mr. Leigh All rights not reserved...the constitution contains a provision that all rights not delegated to the legislature are otherwise retained by the people.

Mr. Tapper We haven't adopted that as yet, I don't believe. However, the last question is this. You're saying that the legislature can provide for the procedure for compensation. Suppose the legislature said that the payment shall then be the assessed valuation of the property? Then that's what it would be, wouldn't it?

Mr. Leigh My amendment, this amendment says that the legislature shall by statute provide the procedure for such taking.

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Mr. Tajper And for the compensation ...

Mr. Leigh Which shall assure, in other words, the procedure shall assure to the owner the same assurance that is given in this constitutional provision that the owner will be compensated to the full extent of the loss. Ladies and gentlemen, I do urge the adoption of the amendment.

Further Discussion

Mr. Tobias Mr. Chairman, fellow delegates, what does our proposal as it presently stands, not this section, I rise in support of this, but what does the committee proposal sound like at this point? It reads as it is appropriate as follows: "Every person subject to reasonable statutory restrictions has the right to acquire, control, enjoy, own, protect, use, and dispose of private property. This right is subject to the reasonable exercise of the police power. Property shall not be taken or damaged except for a public and necessary purpose and with just compensation paid to the owner or into court for his benefit. The owner shall be compensated to the full extent of his loss and has the right to a trial by jury to determine such compensation. No business enterprise or any of its assets shall be taken for the purpose of operating that enterprise or for the purpose of halting competition with governmental enterprises, except that municipalities may appropriate with just compensation utilities within their jurisdiction and personal effects, other than contraband, shall never be taken. The issue of whether the contemplated purpose be public and necessary shall be a judicial question, and the final determination as to the necessity of the location shall be made after due consideration of the loss of aesthetic and historical values without regard to any legislative assertion. The provisions of this section shall not apply to appropriation of property for levee purposes. Ladies and gentlemen, this is verbal garbage, and that's all it is—verbal garbage. What does the present constitution say about property right? One section, section 2 of article 1 of the present constitution provision reads as follows: Except as otherwise provided in this constitution, private property shall not be taken or damaged except for public purposes and after just and adequate compensation. This is all our constitution presently says. Now, what does the amendment before us do? It distills Article 1, Section 1, Article 111, Section 37; Article VI, Sections 19 and 19.1; Article XIV, Section 30. It distills all of these sections into one simple, clear, and concise statement. A Bill of Rights intended to be a brief, accurate statement of basic rights, not all of this stuff, garbage that we have put in it and that the committee has put in it. Tampering with the law of property is a dangerous thing that you would not wish to have a history of this state if going down the drain if we do not adopt this amendment. One hundred and sixty-one years. I don't know what the committee proposal as amended will do, and I dare anyone here to say he knows what it will do. No one knows. It's dangerous, very, very dangerous. People have said you have to put in a provision that you need— that property cannot be taken except for necessity. Let me alert to you that if it would ever be necessary to seize property and if it was not needed, you'd have the right to attack that. You'd have the right to attack it, and I am sure that the people of this state would stand for a bad fate taking of anybody's property.

Further Discussion

Mr. Leigh Mr. Chairman and fellow delegates, just the day a resolution was made by the body that was made of a time I did not have the pleasure of serving, that you would, instead of hiring a group of lawyers, instead of hiring a group of government experts to write a constitution, allow you to look at it and make your decision, whether your decision was for good or for bad, the decision

was made. I look at this committee, I see on this committee as good a cross-section of people as I have had the pleasure of meeting in this body. I have heard, since you were kind enough first off this morning to pass one of my amendments, a number of suggestions most of which were well taken. With those I disagreed, I was outvoted. I'm of the opinion that the section as it now is is satisfactory in form for the purposes in which it is to be adopted. Had you wanted myself or any other lawyer to write this constitution for the purpose of culling words, for the purpose of making it look so much nicer, you should have made that decision many, many days ago. I move, and as much respect as I have for Mr. Leigh, if you had wanted to start with the 1921 Constitution, why didn't you just do it? Just take the 1921 Constitution and start from there; that's not the decision you made. I abide by your decision, and in that connection, I move the defeat of this amendment.

Further Discussion

Mr. A. Jackson Mr. Chairman, ladies and gentlemen, I'm going to be brief. We have debated this question practically all day. We have considered every issue brought before this convention relative to this section. I believe that it is in the interest of this state to have a strong proposition to put before the people as it relates to property rights. I believe this because I believe property rights to be fundamental. What this amendment proposed to do is to strip out, to take away the built-in protection that we have provided after careful consideration. We cannot support this if we feel strongly about property rights. We cannot support it because it eliminates the right to trial by jury. We cannot support it because it eliminates the expropriations, the protection that we've built in to protect businesses. We cannot support it because it removes the provision as it relates to a determination in making it necessary to determine whether or not we ought to take property from private individuals. I urge you to vote against this amendment. We have considered the proposition fully, and if there are no other speakers, Mr. Chairman, I move the previous question, and I ask that you vote against this amendment and let's go on and adopt this section.

Mr. Henry Mr. Champagne wants to say one thing. Well, will you withdraw your ... then he's going to move the previous question, I feel almost certain. He just looks like he's got it on his mind.

Further Discussion

Mr. Champagne I'm glad he gave me this opportunity. You all know I am very brief. My comments are this: I submit to you that a wasted afternoon can be rectified by adoption of this amendment. I now move the previous question.

Question

Mr. Duval Mr. Champagne, I just couldn't go all day without asking somebody this question. We all know that the fifth Amendment of the United States Constitution says, nor shall private property be taken for public use without just compensation.

Mr. Champagne Yes, sir.

[Motion for adjournment.]

Closing

Mr. Woods Mr. Chairman, fellow delegates, it amazes me that we go through this process and find that we are dedicated and bound by all manner and right, and everything else, not to be negligent in the constitution, to trust the individual, to put the bare necessities in a brief constitution, the guaranteed provisions in a brief constitution, until we get to a Bill of Rights—when we get to a Bill of Rights we find what is normally our more liberal approached people, and there's no criticism of it, taking the place and defending what should

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be our conservative approach, and to conserve this, trying to come up with a constitutional provision here on a Bill of Rights that only spells out the bare minimum and leaves the rest to legislative action. A previous speaker said "yes, this eliminates a trial by jury". I wholeheartedly agree that it does, and when you get to the point to where every little ten or fifteen or twenty dollar appropriation suit, expropriation suit by the highway department, is going to require a separate trial by jury, you're not going to cost the taxpayers a few dollars, you're going to cost the taxpayers a ton of money. We've gotten along real well for many, many years under the expropriation right with the highway department. Keep in mind, that while highway construction is going up at approximately ten to twelve percent a year in inflationary costs, that every time you take a little delay of this small item of trial by jury that's going to delay construction, hold up anything that you wish, you're going to cost the taxpayers an additional ton of money. The proposal that you have at this time, as this statute has been amended previously, spells out all of these rights as outlined by statute. So it leaves the first whole sentence to the legislature to come up by statute. You say this will allow quick-taking. Certainly, it's going to allow quick-taking, but it still leaves all the protection in the world. The highway department has exercised the right of quick-taking before and it has caused no problem. They deposit the money in the bank after they get the independent appraisers which is required under the federal projects for our appraisers on their projects that's not federal. They deposit the money in the bank, file expropriation suit and go to work the next day. This leaves that provision the same that it is. You come back and say that we're not going to trust the legislature to write in the statute, the protection that you need, yet on the bottom you leave it to judicial review. You're willing to leave it to a judge that's been elected a second time and is going to serve out the retirement, and make that decision for you, yet you're not willing to let one hundred and forty-four legislators write into the statute the provisions that you need to provide for the right that you have under this constitutional provision. We have done pretty good since 1921 under the rights that the constitution guaranteed us. This provision here still leaves everything the 1921 Constitution provided. It leaves a leeway for change as time goes on. I think you have to have that leeway. I think, Mr. Tobias, I wouldn't necessarily say that everything in it was garbage, but I will say that we have wasted a lot of time today legislating into this section what those that have proposed to legislate into this section all day long, have constantly fought legislating into the constitution every since we've been here. What I submit to you is that this gives you the skeleton protection you need. It takes all the protection, property rights that was guaranteed under the 1921 Constitution which we've operated under for fifty-two years, and consolidates it into this one document. As I said, it leaves and mandates that the legislature then take the necessary action. The question was raised as suppose the legislature doesn't provide for enough money... doesn't provide... this section here says the legislature shall provide... shall provide the means, the manner in which it shall be done, and shall provide that... and this provides that "the full compensation shall be paid in the case of expropriation". So I urge the adoption of the amendment.

[Record vote ordered. Ocurum 50]; 110 delegates present and a quorum. Amendment rejected: 43-67. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [By Mr. Womack], on page 2, line 21, after the word "loss" and before the word "and" insert a period and delete the re-

mainder of the line, and on line 22 delete the following: "right to a trial by jury to determine such compensation."

Explanation

Mr. Womack Mr. Chairman, fellow delegates, all in the world this does is deletes the section there that guarantees the right to trial by jury on expropriation cases, and I can see beyond any question that if every little ten, fifteen and twenty dollar expropriation claim in the highway department and heirs to where they are expropriating one-tenth of an acre valued at four hundred dollars an acre, and heirs to where you have eight, ten and fifteen heirs and each one of those heirs demand a right to trial by jury where they have some fifteen or twenty dollar interest, at-most, then a right to trial by jury is going to cost an enormous amount of money. We've gotten along real well without it. I see absolutely no use for it at this time so I urge the adoption.

Questions

Mr. Jenkins Lantz, isn't it true that in virtually every other state, citizens have the right to trial by jury to determine the amount of compensation in expropriation cases?

Mr. Womack I think maybe most of the other states have it. By the same token, Louisiana doesn't have a Chirographic law either and I think forty-nine other states have it but Louisiana hasn't seemed to fit it. It doesn't mean that we've got to copy after everybody else.

Mr. Jenkins Well, why should our citizens be denied the opportunity to have a jury of their peers to determine the amount of compensation? I just don't understand it...why they shouldn't have that right.

Mr. Womack Mr. Jenkins, I have no objection to the right to trial by jury if you'll put a limitation on it to where you're not going to get to where the cost of the trial by jury could exceed the amount of money involved as much as two or three or four thousand percent.

Mr. Pugh Sir, are you aware of the fact that the party calling for the jury is obligated under the laws of Louisiana to pay the cost of the jury? He must put up the cost of the jury, and also, are you aware of the fact that the judge has the right to assess the final cost to either party?

Mr. Womack Well, I don't know, Judge, I have some reservations about that, but somewhere down the line they tell me that maybe if you can't afford an attorney that somebody has to hire you one.

Mr. Pugh The mere fact that they are taking property from you, from the person suggests to me that he has the right...has the ability to go out and hire a lawyer.

Mr. Womack Well, that may be your opinion. I just think that we're wasting a lot of money.

Mr. Avant Mr. Womack, are you aware of the fact that if the highway department offered that heir twenty dollars, as you said, for his interest in this one-tenth of an acre, and he didn't take it and asked for a trial by jury, and that had been a fair offer and he didn't get anymore money that that, that he would have to pay for that jury and not the state?

Mr. Womack Well, I question that because if he comes back and files a civil rights suit and says "I wasn't able to pay it", I don't know what the federal courts would rule.

Further Discussion

Mr. Tapper Mr. Chairman, I'm going to call for

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the question. I don't want to say one thing. I've been trying to get recognized and I don't appreciate being put down the way I have and you know it. I wanted to ask a question of the last speaker and you said I could and then you didn't let me.

Mr. Henry: Ooooh, well, go ahead E. J. and ask the question.

Mr. Tappier: I still love you though, darling, ladies and gentlemen, I just rise in opposition to this and I want to say one thing and that is, I believe the people of this state are tired of being over regulated by government. I believe that what we're doing here, if we do adopt this amendment, is to take away from the people the right to make their decision on the value. I urge your defeat of this amendment and move the previous question.

[Previous question ordered. Record vote taken. Amendment rejected: 19-93. Motion to reconsider tabled.]

Further Discussion

Mr. Eason: Mr. Chairman, ladies and gentlemen of the convention, I know you feel just like I do at this time of the evening after a hard day so don't worry, I'm just going to be up here one minute and I'm not going to argue the pros and cons of this Section. But, however, it seems to me in order to cast an intelligent vote on Section 4 that some of the authors, or some of the members of the committee should explain what these lines mean in Section 4 as to two or three lines I'm going to read to you in Section 7. I asked one of the authors this morning who presented this Section 4 the question and he didn't answer it satisfactory, in fact, in my opinion didn't answer at all, and this is what I think we should know. One member of the committee should explain to us before we are called on to vote on this section as a whole, because to me there is a pat definite conflict and I'm afraid when we get to Section 7 after we voted on Section 4 that we may find it out and that's why Section 4 reads "every person has the right to acquire, to own, to use, to enjoy, to protect, and to dispose of private property." Now, in Section 7 it says, "all persons shall be free from discrimination in the sale or rental of property." It seemed like to me in a word, Section 4 gives you the right to acquire, and own and enjoy property but Section 7 restricts your right to sale. We sell it or lease it. I think we should have that explained before we vote on this section in order that we may vote intelligently on this and on Section 7.

Further Discussion

Mr. Tobias: Mr. Chairman, fellow delegates, I rise in opposition to this Section. On the last amendment, Mr. Wright's amendment, I spoke and called the original a amended, verbal garbage, and that's exactly what it is, verbal garbage. This section needs quite a bit of leaning up, to say the least I would urge this convention to defeat this section. Let the committee come back after it's rewritten it and submit to us and see if it sounds a little bit better. One of the members of this convention reads this amendment, which I will request that he do before we vote on it. The section I want you to listen to it carefully, read carefully, and see if you want something like this in your Bill of Rights. Take a look at the present constitution. Look how long the Bill of Rights is. It's not very long. There are provisions in Article III of the Constitution which is Bill of Rights material but that's about it. What we've got here is not Bill of Rights material, it's an attempt to legislate from the floor of a constitutional convention which has not studied it but has amended it haphazardly. I urge that you defeat this Section and let some one else forward, and let the committee clean it up and submit a new proposal.

Further Discussion

Mr. Eason: Mr. Chairman and delegates, we've all heard for a good part of this day, the arguments and cons of Section 4. I must admit that I believe I voted for most of the amendments that were proposed today on Section 4 because of my great concern for the many new concepts and changes that were being advanced today in Section 4. I think we're creating great problems for our state, like our parishes, for our municipalities. There's no need for me to detail each reason that I feel that you should vote against it. But I think the many amendments that were advanced today speak for themselves and for the concern that many delegates have for the correctness or appropriateness or for the validity of the concepts that are advanced. This Section needs sixty-seven votes to pass. I think there are enough few things wrong with it and I certainly in no way, wish to take away from the Committee members on Bill of Rights. I think they were most sincere in their efforts in this section and I certainly congratulate their efforts. I merely, as one delegate, disagree with them and reserve my right to vote no on the entirety of Section 4. It needs sixty-seven votes to pass and I think... I would hope that if we now defeat Section 4 that possibly some corrections could be made to Section 4 to make it more acceptable and passable when finally voted on by the people in Louisiana. I do not yield.

[Previous question ordered. Motion to reconsider.]

Closing

Mr. Jenkins: Mr. Chairman, delegates to the convention, this section has been referred to as "garbage". Mr. Tobias, who said that several hours ago, stood over here next to my desk and told me that he believed that the state owned all property and that the citizens of the state used it only by its permission. Well, the people of this state don't believe that. They believe that property rights is one of their most basic rights, and they will stand behind that right to the death. Just test them and you will see. When this section is complete, I think it will stand as a monument to our respect for the individual citizens of this state. When we go to the people we're going to have to show them something; some reason to be for this constitution. This will be one of the best, most popular sections that we can bring to them, because it protects the people of this state. It had a lot of amendments today. There's mistakes in grammar or in technicalities, I know Style and Drafting will correct those. But when we complete this constitution, I believe this section will be something that we will stand behind and be proud of as some of our best work. I move the adoption

[Section passed: 19-94. Motion to reconsider tabled.]

Personal Privilege

Mr. Tobias: Mr. Chairman, fellow delegates, I request the personal attack made upon my view by Mr. Jenkins. I have never attacked him on the floor of this convention for his views, and I will not do so now. He firmly disagree on a number of issues. I will add this, he took my statements out of context completely out of context. It's a good way to win a point, very good way. What my statement was to him was that historically, all property came out of the flock of the sovereign. Originally, historically, this is fact - you read history you know that all property belonged to the King of England, the example is and the United States sent to him and stated that you cannot get it back. The state cannot get it back without due process of law and without just compensation.

[Section passed. Motion to reconsider.]

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REPORTS OF COMMITTEES
[I Journal 416]

INTRODUCTION OF PROPOSALS
[I Journal 416-417]

[Rules Suspended to extend time for introduction of delegate proposals through Wednesday, September 5, 1973. Adjournment to 9:00 o'clock a.m., Friday, August 31, 1973.]

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employees and judges.

Mr. Henry Should be referred to the Committee on Education, Health and Welfare. Under the rules Judge Dennis, why do you rise?

Motion

Mr. Dennis Mr. Chairman, I'm going to have to strenuously object to the referral of this proposal to any committee other than the Judiciary Committee, and I would like to state my reasons for that.

Explanation

Mr. Dennis Mr. Chairman and fellow delegates, I am rising to explain my reasons for objecting and asking that this delegate proposal by Mr. Gravel be referred to the Judiciary Committee. The proposal is entitled, "Retirement," however, if you will look at the title set forth in Article VII, Section 8 of the Constitution of 1921, shall be exclusive and shall be continued in full force and effect."

That sentence says, "Notwithstanding any other provision of this constitution to the contrary, the retirement system and plan for judges and their surviving dependents shall be as set forth in Article VII, Section 8 of the Constitution of 1921, shall be exclusive and shall be continued in full force and effect."

Ladies and gentlemen, this would completely repeal and undo what we spent two days on this convention floor debating and hammering out. It would not only undo it and repeal it, it would also tie the judges exclusively to the 1921 Constitution while the rest of the state went forward in the 1974 Constitution.

It would also, as I read it, make it impossible for the legislature to enact a statutory contributory program for judges without amending the new constitution. Now the first part of this proposal about retirement in general, it adds nothing to the present law. The legislature, even if you didn't say anything, would have the power to provide for retirement systems for other people.

So, I think that you can see, if you look at it, that the real purpose behind it is to simply undo what the convention has already done in the Judiciary Article and the legislature that they shall provide for a retirement already. So I'm asking you to send this to the committee that considered this matter originally, that considered the judges' retirement originally - the Judiciary Committee.

Further Discussion

Mr. Flory Mr. Chairman and delegates, I rise in opposition to the substitute motion made by Judge Dennis, and I'd like to set forth my reasons for that briefly, if I can, to say to you that the Committee on Education, Health and Welfare has been assigned the subject of retirement by the Coordinating Committee. We have gone into the subject of retirement already, we have drafted Committee Proposal No. 11 which covers all public officials of the State of Louisiana, as well as employees of the state and its political subdivisions.

Now, I don't know what the purpose of this resolution is, as based upon what Judge Dennis said, but if you read the resolution, it makes it mandatory upon the legislature that they shall provide for a retirement system for public officials, employees of the state, etc. It does contain a provision relative to the judiciary, but I submit to you, that the proper committee ought to be Education, Health and Welfare who has dealt with the subject of retirement for all public officials and employees of the legislature that they shall provide for a ruling of the Coordinating Committee made months ago.

Now, I would ask that you reject the substitute motion and uphold the ruling of the Chair.

Further Discussion

Mr. Gravel Mr. Chairman and ladies and gentlemen

of the convention, Judge Dennis is just wrong about what this proposal seeks to do. The title to the proposal says, "To provide with respect to retirement systems and plans for public officials and employees and judges."

Now this proposal is the mechanism by which, I think, a comprehensive, well-ordered article can and should be devised so that the legislature will have some mandate from this convention with respect to any retirement plan or system that might be developed for the benefit of public officials, employees, and judges in the State of Louisiana.

Judge Dennis picks out one part of this proposal and says "relegate to the Committee on the Judiciary of which I am Chairman, the total plan for retirement systems because it also includes judges." Now, I don't think there is any question that the appropriate committee that should hear retirement plans and programs or provisions that ought to be in the constitution with respect to it, should take into consideration all plans. At the time that we were having the debate on the judges' retirement system, Mr. Aertker got up and said, "Well, we've got something in the article on education that deals with the retirement plan for public school employees."

I'm confident that whether it's in the local government article or not, it's certainly going to be proposed at some time that there be included in the constitution something with respect to the employees of local government. So, I think it's important that we have considered by one committee the totality of the retirement systems and plans in the State of Louisiana. The Judiciary Committee is not the committee to consider all retirement systems. The proper committee under our rule would be the Committee on Education and Welfare. As a matter of fact, that is the committee that has addressed itself generally, up to this time, with respect to retirement systems.

Now I urge that you reject the motion of Judge Dennis. Let this proposal go to the Committee on Education and Welfare where it rightfully belongs because it's in the welfare of all of the citizens of the State of Louisiana, and it will be for the education of some of the judges. And I suggest that that's the committee where it properly belongs.

Questions

Mrs. Warren Mr. Gravel, I wonder in your proposal, would you mind on line 18 after the word 'period', delete and strike out the remaining part?

Mr. Gravel Well, Mrs. Warren, this is a committee...

Mrs. Warren I asked you one simple question, Mr. Gravel, and I'd like a simple answer, a yes, or a no.

Mr. Gravel Mrs. Warren, I'm not going... I don't answer questions yes or no. I'm going to tell you, this is a committee proposal that can be considered and heard by the appropriate committee to make such changes as it considers appropriate. I'm not going to make any change in the proposal as it is at this time [time] No...

Mrs. Warren Well, you answer... I remember once you made a statement from that platform that you didn't know you had made a mistake and you weren't telling the truth... So, I'd like to know now, are you telling the truth?... you're not going to answer me yes or no.

You see, I'm trying to find out... I'm trying to arrive in my mind as to if this is a fair situation, whether I win or I lose, I want to be able to vote on this intelligently, and I wanted to know whether you were willing to do it and all the other... I know what kind of proposal it was. That's the reason I asked the question.

Mr. Gravel This proposal is presented to this convention in perfect good faith on the basis that there should be full consideration of one committee retirement plans and systems by one committee and re-

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recommendation should come out to this convention absolutely.

Mr. Glineau Mr. Gravel, I'd just like to clarify some things. I have the rules before me, then in when talking about the substantive Committee. It says, "Committee on Education and Welfare which shall consider public education, welfare, consumer affairs, civil service, labor and industry." You will agree that it doesn't say anything about retirement in those rules, does it?

Mr. Gravel Not specifically, but I think when we consider labor and industry, we are considering the employees. And incidentally, the committee has come up with one proposal, Committee Proposal No. 11, that I think is partial towards the goal that I'd like to see the committee come to that does deal substantively with retirement systems.

Mr. Glineau And you will agree that the proposal in question has been dealt with by the Judiciary Committee for approximately eight months. Isn't that correct?

Mr. Gravel No, sir, I will not agree. I will agree that the part that has to do with judicial retirement has received special and unique treatment by this convention and there are many delegate proposals that relate to actions that have already been taken by this convention that are going to be considered later on to the convention after the consideration has been given those proposals by the committee to which they are assigned.

Mr. Jean Mr. Gravel, as I understand the last sentence of your proposal, that would lock the judge in to the present constitutional retirement benefits, contrary to what the convention has previously voted in, would it not?

Mr. Gravel That would be my recommendation. That's the way I've drawn it because there is, in favor of the judge now, a constitutional guarantee that I'd hate to see them lose.

Mr. Jean That being the case, would you have any objection to separating that last sentence and referring that sentence to the Judiciary Committee and the balance of your proposal to the other committee?

Mr. Gravel Yes, I would. I think it ought to be considered, as I've tried to explain it, wholly and fully by one committee.

Mr. A. Landry Mr. Gravel, is it possible under this proposal that you would also consider the retirement system of the sheriffs, the aldermen, the clerks of court, the district attorneys?

Mr. Gravel That's right. In other words, this is the request of the committee that directives be given by this convention to the legislature with respect to any or more retirement systems for all judicial officials and employees, including judges.

Mr. A. Landry Is it correct that some of those retirement systems are not even in the constitution at the present time, and don't and some of those officials don't care about putting it in the constitution?

Mr. Gravel That may be true, but there could be very good reasons why this convention would want to be sure that there would be nothing that the legislature could do to diminish any rights that were assured, both under the constitution and under the statute.

Executive of the Judiciary. As with judicial pay has been raised. And we are now in the position of having to refer it to the Committee on the Judiciary.

ENDING

Mr. Denis Mr. Chairman and fellow delegates, this proposal is designed to do one thing and nothing else, and that is to undo what we adopted after two days of debate on this convention the judges' retirement, to bring this issue back to the floor, and if this passes, it would let the judge I refer to the 1961 constitution and put them in a worse position than they are in now because you could not enact a statutory program under which judges could contribute to their retirement systems. So I ask you to refer this to the Judiciary Committee because of its drastic effects and implications upon the judiciary of this state.

Question

Mr. Gravel Judge Dennis, this is a... this whole issue that you've raised here is not in the merits of the proposal, it's a question of what committee it goes to. Isn't that correct?

Mr. Dennis That's correct.

Mr. Gravel Now, have you read the proposal? Have you read Committee Proposal No. 36?

Mr. Dennis Yes, sir.

Mr. Gravel Does it relate exclusively to the judges' retirement system?

Mr. Dennis The only thing new it really does, Mr. Gravel, is to the judges' retirement system. The rest of it is rather vague in general language.

Mr. Flory Judge Dennis, how many judges in this state?

Mr. Dennis About a hundred and five or a hundred and fifty... I keep hearing different numbers. I think it's somewhere under a hundred and fifty.

Mr. Flory Do you realize that there are at least sixty thousand state employees that would be affected by the first two or three sentences of this proposal which has been dealt with with the Committee on Education, Health and Welfare?

Mr. Dennis Mr. Flory, you say retirement and affect a lot of people. But you and I both know that the first part of this proposal really doesn't do anything. It tells the legislature to establish retirement systems for other employees, and it's been doing that for fifty years. And you know, you've got something in your committee proposal already that says the same thing.

Mr. Flory That's exactly why.

Mr. Dennis The real purpose for this is to get the last sentence and it's to undo the judges' retirement proposal that we adopted last week and the week before.

Mr. Will I don't think it's fair, Judge Dennis, that the Judiciary Committee has its hands so clean. My proposal has been completely adopted, including the retirement system for judges and that it's through it work and an agreement that would be a commission with letters from the Education Committee which can not question the Judiciary Committee and some weeks more to do. Isn't that correct?

Mr. Dennis I believe you are correct. I believe this would establish a commission of working something that they already have done on the Judiciary.

Mr. Flory Judge Dennis, don't you know that if we don't do this, some people will be able to give us

Mr. Dennis Yes, sir.

[Motion to otherwise refer to Judiciary Committee adopted: 71-28. Motion to reconsider tabled.]

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REPORTS OF COMMITTEES LYING OVER
[I Journal 420]

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Mr. Poynter Committee Proposal No. 25, introduced by Delegate Jackson, Chairman on behalf of the Committee on Bill, Rights and Elections, which is a substitute for Committee Proposal No. 2 by the same gentleman.

A Proposal to provide a Preamble and a Declaration of Rights to the constitution.

And of course, the status of the committee proposal at this time is that the convention has adopted as amended the proposed preamble to the Bill of Rights or Declaration of Rights and has adopted Sections 1 through 4 as amended of the proposed Declaration of Rights.

The next section which would be up for consideration in its regular order would be Section 5. Right to Privacy.

Reading of the Section

Mr. Poynter Section 5. Every person shall be secure in his person, property, communication, houses, papers, and effects against unreasonable searches, seizures or invasions of privacy. No warrant shall issue for the search of a person supported by oath or affirmation, particularly describing the place to be searched, the person or things to be seized, and the lawful purpose or reason for the search.

Any person adversely affected by search or seizure conducted in violation of this section shall have standing to raise the illegality of that search or seizure in the appropriate court of law.

Explanation

Mr. Vick Mr. Chairman, fellow delegates, one of the geniuses responsible for our Federal Constitution and the Bill of Rights said that "there is a circle around every individual human being which no government ought to be permitted to overstep, that there is, or ought to be, some space in human existence thus entrenched around and sacred from authoritarian intrusion. No one who professes the smallest regard for human freedom or dignity can ever call this into question." Those words were those of Thomas Jefferson. The section you have before you is very, very similar to the Fourth Amendment, prohibition against searches and seizures in the United States Constitution. It is very, very similar and in close conformity with the provision in the 1921 Constitution, with one or two changes. The key throughout, as you heard yesterday and as you no doubt will hear again today, is every man's home is his castle. There are many, many subtle and sophisticated ramifications to this from the standpoint of law enforcement. But nevertheless, while a man's home is his castle, there have been intrusions and incursions into those sacred domains. As a matter of fact, evidence seized in unlawful searches, that is without warrants, are allowed to be used in the courts of law to convict citizens in this state as late as the mid sixties. The prohibition against unlawful searches and seizures distinguishes a viable democracy from a dictatorship. As I said, there was belated recognition of the prohibition against unlawful searches and seizures insofar as the introduction of the concept into a citizen's law in a criminal proceeding just as there was a belated recognition of the right to remain silent and to be informed of one's rights. Now, the major difference between this proposal and the proposal or

the section in the Constitution of 1921 is in the last sentence which says: "Any person adversely affected by a search or a seizure conducted in violation of this section shall have standing to raise the illegality of that search or seizure in the appropriate court of law". Now ladies and gentlemen of the convention, we had numerous witnesses appear before us. Mr. Ed Ware, the president of the District Attorney's Association appeared before us three times. Mr. Aaron Cone, president of the Metropolitan Crime Commission of the city of New Orleans appeared before us twice, in addition to other representatives of law enforcement. They all recognized the problem. The problem, ladies and gentlemen, that the last sentence addresses itself to is lawless law enforcement, which none of us can countenance, that is, members of the law enforcement community or citizens at large. I want to give you an example of why the committee arrived at the determination to include this language. Mr. Chairman and fellow delegates, I'm going to read part of a transcript; it's an exchange between Delegate Wall and Mr. Ed Ware, the president of the District Attorney's Association. I would, Mr. Chairman, like the record to reflect that I cannot give the exchange the spice that Mr. Wall would have, but, nevertheless, I want to read this to you and I want you to listen very carefully.

"Question by Mr. Wall: Did you have an opportunity to see, about a month ago, the editorials where federal agents without a warrant broke into two innocent persons' houses?"

Answer by Mr. Ware: But what I'm saying is for the evidence. If a man is guilty and we have the evidence of his guilt, use it. Why should he go scott free because someone else has violated the law? Do two wrongs make a right?

Question by Mr. Wall: No, I think what we want to do and you want to do is obviate policemen kicking in doors.

Answer by Mr. Ware: Yes, and you know the best way to do it.

Mr. Wall: How?

Mr. Ware: If he does it, put him in jail and make him pay a fine.

Mr. Wall: Ed, have you ever had a case like that in your court where a policeman illegally got evidence and violated the law?

Answer by Mr. Ware: Yes.

Mr. Wall: What did you do with the policeman?

Mr. Ware's answer: What can I do with him? You can prosecute him, or you can charge him.

Mr. Ware: Show me the statute, "Shady," where it says if you violated someone's constitutional rights that you pay a fine or go to jail.

"Shady": If he's violated the law, there are plenty of laws on the books. I'm not a criminal lawyer or a lawyer, but there are plenty of laws on the books and if a policeman violates the law, then you could prosecute him. I'm confident of that.

That concludes the exchange. What we were concerned with was lawless law enforcement, nothing more, nothing less. Can we have respect for law enforcement when one of the most sacred Anglo-American concepts is violated without affording the citizen an opportunity for redress. That is the question that's proposed in the last sentence. That's the question that has been raised there. We have answered it on this committee, by allowing a citizen redress. There are laws; there are laws, indeed. One of them is the Civil Rights Act, and let me tell you, ladies and gentlemen, you get very, very close to that if you don't have that Act in the United States District Court charging law enforcement with violation of constitutional rights. Very short shrift indeed, because federal judges say it's a local matter—a local matter. Therefore, ladies and gentlemen, on the suggestion of law enforcement, albeit with some dissent, I dare say this last sentence has been included to give citizens who have been aggrieved, who have had their doors kicked in by law enforcement without a warrant, and who have been terrorized and whose property has been destroyed, a right to go into a court of law

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and ask for redress of grievances. That is the word and substance of it and, Mr. Chairman, I yield to questions.

Question

Mr. Langer. Mr. Vick, with reference to the sentence that starts on line 7, on page 5, there has been some confusion in the federal jurisdictional procedure over whether or not you can lawfully seize an item that is not specifically listed in your search warrant. What is the intention of your committee as to how this language should be interpreted?

Mr. Vick. Well, are you referring to, of course, the beauty of this section, Mr. Langer, is quite frankly, as Mr. Burson did for you the other day, gave you a list of all of the Supreme Court decisions that control us today by absorption to the Fourteenth Amendment applying the Bill of Rights, the first ten amendments to the States. If you're talking about Chimel v. California, that sort of thing, where it's within the control. . . All right, fine.

Mr. Langer. No, what I'm getting at. . .

Mr. Vick. Obviously, a warrant must always describe with particularity. Now if they pick up other things, under Supreme Court decisions, that are not listed in the warrant, are outside the control of the suspect, or of the accused, or of the person named in the warrant, I would think that a Motion to suppress would lie. But mind you, I don't think that we want to, here, go into detail matters. I think always a search warrant, historically, has been the things described with particularity. Now if they pick up something else that's not in the warrant, well, that's. . . you know, that's for the court of law to decide. But the intention of, the intention of the committee, Mr. Langer, insofar as the language in the section is concerned, is to be identical or as close with the sedentary, as close to the section in the Constitution of 1921 as we could make it, and I think it is.

Mr. Langer. Well, the point I'm getting at is I am familiar with cases in the federal courts that go both ways on this point, and I was wondering if the committee has considered this particular point. In other words, if you lawfully enter with a valid search warrant and during the course of a lawful search find an item of contraband that is not specifically listed in the warrant, could you then lawfully seize that item?

Mr. Vick. Well, again, Mr. Langer, without belaboring the point, the answer to this would depend on what you mean by the Supreme Court guidelines, the most recent one of any magnitude being Title 18.

Mr. Langer. Well, then it is your intention to adopt the federal jurisdiction for interpretation of this language, is that

Mr. Vick. I didn't hear you, but I think we do have to follow the federal guideline. But in any event, in Chimel, as you're all, that in either case as well, the law enforcement officers would have searched them on the premises while they're in the house and given the warrant. Now I would think that a very, um, thing, they don't like to do it, they don't do it in many cases. But nevertheless, they should, because the man is sitting anywhere, that's for sure.

Mr. Langer. Well, when is it your intention that the committee will attempt to require the law enforcement officers to give the warrant to the person in plain sight, to have to pass back through the procedure of getting a search warrant and finding a judge and everything else?

Mr. Vick. Well, well, we're bound by the Supreme Court in the entire Fourth Amendment area, you know that. It's really for the party to de-

side these things, point. I can't make that from this position. I don't have the time, but I have the access to the research staff to answer those highly technical questions.

Mr. Langer. Delegate Vick, does the last sentence in this section carry out the present law enforcement officials, and after discussion with other citizens who appeared before the committee, it was very clear that something needed to be said about this. Therefore, in answer to your question, I would have to answer yes.

Mr. Vick. Mr. Sandez, after the exchange that I just read you, and after discussion with other law enforcement officials, and after discussion with other citizens who appeared before the committee, it was very clear that something needed to be said about this. Therefore, in answer to your question, I would have to answer yes.

Mr. Sandez. Would this, if a judge inadvertently issued a search warrant?

Mr. Vick. Inadvertently issued, yes.

Mr. Sandez. Would that give the person a cause of action against him if it was submitted to him in erroneous information?

Mr. Vick. Well, you know, Mr. Sandez, Aguilar vs. Texas, of course, deals with that subject and says that, among other things, that the warrant has to be there so a groundwork before warrants are issued, affidavits, etc., and the affidavits cannot be attached to the warrant if they are suspect, but a warrant inadvertently granted with the proper basis would not give rise to an action, no.

Mr. Henry. You've exceeded your time, Mr. Vick.

Amendment

Mr. Poynter. Amendment No. 1 [to Mr. Sandez]. On page 3, line 5, after the word "jurisdiction" delete the remainder of the line and delete lines 6 through 8 both inclusive in their entirety.

Explanation

Mr. Burson. Mr. Chairman, ladies and gentlemen of the convention, Mr. Schottell is not with us today, however, I discussed this matter with him, and I think I understand his intent in submitting this amendment and I will try to explain it as I understand it. First of all, I would urge all of you, for a proper understanding of the issues involved in this section, to look at the Fourth Amendment to the little copy of the U. S. Constitution that was passed out to you yesterday, or whatever other copy you might have, so that you would know what to do with the U. S. Constitution. It is my understanding of the present state of the law that the protection of the Fourth Amendment against unreasonable searches and seizures, which give the courts the right to suppress evidence illegally seized, inasmuch as it has been applied, and as originally applied through the Mann decision, to the States today. In fact, the Mann and Tate and Criminal Procedure provide that any defendant who brings a Motion to suppress evidence illegally seized by both the Louisiana State of Criminals and the Federal Penitentiary system, that a person who has had the subject of the Mann and Tate and Criminal Procedure, and that evidence so suppressed in a criminal trial. Now this last sentence, I have gotten two interpretations from different members of the Committee this morning, and I think that we ought to have an explanation of which interpretation is to prevail before we conclude the proceedings today. An important matter of the Committee is to be sure that we do the purpose of this law as we are to give a civil right of action against a law enforcement officer who has acted on the basis of a search warrant issued by a judge and everything else.

seizures. But there is another interpretation which has been advanced which would be a change in the criminal law, and that interpretation would be that this last sentence would be designed to give someone other than the person whose house was searched the right to contest the illegality of the search in the criminal proceeding. That would happen in this type of situation. There had been a bank robbery; the culprits are hiding out and there is an illegal search. The house is entered and the evidence seized illegally, let's say. Is therefore the basis of the prosecution not only against the person whose house has been broken into but, let's say, his two fellow culprits? I think it is a correct statement of the present law that only the person whose house was broken into illegally could raise the issue in criminal court and could move to suppress the evidence; the other two people could not. That evidence could be used against them. It is my understanding, in talking to Mr. Roy, at least that that is his intent that this sentence would extend the right to move to suppress the evidence from the person whose house had been broken into illegally to the other two people there with him. Now, of course, you could extend this example to other situations that you could think about. Now I don't know whether it is the wish of this convention to extend that extension. I would point out to you, and I'm not here to vigorously argue the point but more to inform you, although I assure you I will be here to vigorously argue some other points on criminal procedure later on. If you do accept this sentence and if that interpretation of Mr. Roy is correct, then you would be, as I understand it, changing the criminal code of procedure that we presently have in Louisiana and extending the right to make the Motion to Suppress to others adversely affected by an illegal search in addition to the person whose house had been entered. It is the purpose, as I understood Deshotels, in his amendment, in discussing it with him, to eliminate that concept and to leave the law as it is. This is the reason that the amendment has been offered. I will answer any questions that anyone has.

Questions

Mr. Lanier Mr. Burson, am I correct that there is presently some form of jurisprudence to the effect that even though a person consents to a search you have to affirmatively advise him of his right to decline to consent to the search?

Mr. Burson I think that's correct, Mr. Lanier.

Mr. Lanier Well, under this sentence that's in here right now, the sentence that you are seeking to delete, could you have a situation where, say, somebody robbed a bank and hid it on my property and I wasn't a party to the thing? The police came and asked me if they could search my property, but didn't tell me I had a right to refuse even though I didn't have anything to do with it. Would that be an illegal search under that circumstance which would allow the bank robber to then claim that that evidence couldn't be used against him?

Mr. Burson It could be interpreted that way. Of course, you get just all sorts of different circumstances under this search and seizure thing. I know when I was a defense attorney, which I have been all the time up until January 1 of this year, I filed a lengthy brief on the first decision by the Louisiana State Supreme Court on the question of the application of Mapp, after Mapp came out. The situation that you're talking about in the consent search was involved in the case that I was defending. As I remember it, even at that time, you were right in that the consent had to be an informed consent. I presume that informed consent would mean that you'd have to be informed of your right not to consent.

Mr. Abraham Jack, maybe it was stated and I missed it, but for those of us who are not really familiar with the criminal law and so forth, doesn't a person

right now have a right to contest an illegal search or seizure?

Mr. Burson Yes sir, but I think it's important to recognize the distinction between his right civilly and his rights criminally. As to his rights criminally, there is no question that under the United States Supreme Court decision in Mapp and under the Louisiana Code of Criminal Procedure, that the person whose home has been entered illegally, certainly, can move to suppress that evidence in court. Now, there is a question, in the civil situation. It's my understanding of the civil law that in the tort law that you have certain remedies and also under the recent decisions of the Fifth Circuit Court of Appeal, they have said, I believe I'm correct in saying this, that the Fourth Amendment would give you some civil rights. But this whole matter is handled, as I understand it, in England as a civil matter. That is to say, if your home is entered illegally that you are given a civil right to proceed. Now we have never gone this route nationwide; we've been more or less limited up till now to this motion to suppress the evidence on the criminal side. There is some argument, Justice Cardozo, the great justice of the U.S. Supreme Court, in the 1910's that the argument that evidence, if it was good evidence that tended to prove guilt or innocence, shouldn't be excluded just because it was illegally seized, that what you ought to do is give the person who is aggrieved a civil right of action for damages. This may be what this seeks to do. I'm not sure. I think that we ought to get into that question before we vote.

Mr. Jenkins Jack, I appreciate the fact that you are not very vigorous in your support of this amendment. Let me ask you this. Won't this, if we don't have this sentence in there that you would take out, isn't it really going to mean that there is going to be really no effective barrier against law enforcement officials infringing on the rights of people, breaking down their doors? The case in Illinois is a prime example where the people went in there on an alleged drug raid and tore up the place. There was no evidence whatsoever to support it. Isn't this amendment going to just continue to encourage that sort of thing?

Mr. Burson Well, Woody, I can't agree with you entirely. It depends how far this language goes. I think the most effective barrier that you have under the present law is the Motion to Suppress and I filed quite a few of them in my time in defending people. In fact, just about every case I ever had involving seizure of evidence, any good defense lawyer is going to file a Motion to Suppress, and when you are successful, of course, that's the most effective way to bring home to people that they've got to conduct these searches in a legal manner. But I will readily admit that there are places, and England is one that I am aware of, where they handle this as a civil matter. However, there, they do not have the Motion to Suppress in the criminal proceedings. I think it's important that we understand exactly what this sentence does before we go into approval of it, one way or the other.

Mr. Jenkins Well, but a Motion to Suppress really, while it may have some deterrent effect on illegal acts by law enforcement officials, really it includes no sanction against that individual at all—the person who does the illegal action. It's merely something that will cause him to lose a conviction later on, but it doesn't directly discourage him does it?

Mr. Burson Of course, Woody, and again this is something I'm familiar with because I've filed suits for assault and battery against police officers and for false arrest. You've got remedies under the tort law at the present time for these situations. It's a question that I think is in the state of evolution in the present law as to whether you would also have a right in tort for personal

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... as far as an invasion of property rights per se is distinguished from invasion of your person. There is sole authority that you do. I don't think that this facet of the law is fully developed at this stage.

Further Discussion

Mr. Warren: Mr. Chairman and fellow delegate, I'm rising very high in opposition to this amendment. I'm going to use a few general parables that we know every day. In recent years men have been able to go to the moon because the government has provided them with the vehicles with which they would go. We can travel from one side of this State to the other in a matter of hours because we have the vehicles to go with that speed. If you have a carpenter, I don't care how good he is, if you don't give him the tools to work with, he's not going to be able to do a job—so then we would not have any houses. I'm bringing your attentions, and I wish this person was here, just about three or four weeks ago, about three weeks, I'll put it that, when I got home a young woman called me and told me that she was away from home when the policeman kicked her door down and went in it and searched. They found nothing; they just ranshacked it and left. Her door was left; anybody could have gone into this house and took anything they wanted to. Someone law the do it. I have the highest respect for law enforcement and I would do anything in my power to help promote the welfare of our law enforcement officers. But also, there are a few rotten eggs in any barrel that you can find, and I assure you that there are exceptions to all rules, and the general rule outweighs the exceptions any day. I'm going to ask you to give the average citizen a vehicle by which he can secure his rights in this constitution and not be subject to 'if I can or if I can't. I think that we should make this thing very clear. We came here, probably, to write a new constitution or rewrite this one or not stick to the old one. If I had a Constitution and I'm not criticizing it, was all that good and did not need any repairs we would not be here today. I think that this is a very good proposal that has been submitted by the Bill of Rights and I think we should accept this one amendment as it is written. Let us not get bogged down in little technicalities that might cause a little trouble, a little change. There is good sometimes; it might cause a little problem. We changed all the way from the 1925 Ford, as I could remember, to 1973 and we're soon going to be buying 1974 if we can afford it. Let us, today, give respect to our citizen and give them the right what they also deserve. Let me remind you, "two wrongs does not make a right. Are there any questions?"

Further Discussion

Mr. Avant: Mr. Chairman and fellow delegates, I'm in opposition to this amendment. You are now talking with fundamental. I can see how someone can say that they don't understand what this means. It's very clear what it means. It means that any person who has been searched or whose home has been searched, whose property has been seized in violation of the law has the right to question that violation in court. Now I say, we are now dealing with fundamentals. One of the fundamentals of the Bill of Rights is the Fourth and a total legal matter. I that when you search and you go to look at night, you don't have to fear the rifle butt aimed, your door in the middle of the night. You don't have to fear the iron brute of oppression kicking in your door in the middle of the night because you live in a free country, with the Bill of Rights guaranteed by the Constitution. Now, the amendment we're talking about is a fundamental guarantee of your liberty, and all this last sentence says is that if your rights in that particular are violated, you can get the right to question it in court. Now, if you take that sentence out, you leave the way open for you not to have the right to question it in court. Now why is that important?

I served in the military, 1950-1954 and I was suggested Army sergeant, but I never knew by name of the social law experts who have to see us. That this is the whole thing that we're talking about. In violation of our constitutional rights is not admissible to be done away with. Now why should it not be done away with? It should not be done away with because it insure, that law enforcement officers, before they conduct a raid or violate someone's rights, go through the procedure that are required by law. You have sure that they have the right to go in. The provision says that first there's got to be probable cause, and it's got to be supported by oath or affirmation that particularly describes the place to be searched, the persons or things to be seized, and the lawful purpose or reasons for the search. Now all that means is that they have to go before a judge and state under oath why they want to conduct this seizure or search, what information they have that causes them to want to do that, and then particularly to describe the place to be searched, the persons or things to be seized. Now is that too much to ask of a law enforcement officer before, in the middle of the night, a rifle butt knocks your door down? Is that too much to ask? Is it wrong to say that people who take oath to enforce the law will operate within the law. Is that wrong? No, it's not wrong. I submit to you that it's absolutely and fundamentally right. If you take that last sentence out, you take away from the law enforcement agencies of this state the incentive that they have to comply with constitutional safeguards before they take such drastic measures as breaking into a private residence in the middle of the night to conduct a search and seizure because you take away the certainty; you take away the thing that they stand to lose; you take away the admissibility of that evidence and the ability to use that evidence to gain a conviction. Now I believe that people who violate the law should be convicted and they should be punished. But I do not believe that law enforcement officers have the right to create a dragnet and go out and violate the rights of a dozen or a score or more people in order to get one guilty man. All this does is give them an incentive to comply with the law, to follow the procedures that are there for your protection and my protection, and the protection of unborn generations, before they make such a drastic measure. I say again, you're talking about fundamentals. The difference between our form of government and that which existed in Nazi Germany, as that which existed in the Soviet Union, that which exists in Red China, you are talking about fundamentals, and if you take this provision out of this section, you are depriving the people of this state of one of their fundamental guarantees.

[Continued on p. 14, insert in the back of this issue.]

Further Discussion

Mr. Roy: Mr. Chairman, ladies and gentlemen of the convention, without being too presumptive, I really think that if we had had a chance to talk with Earl Deshautes before he left, that he would have probably pulled this amendment, and I'll tell you why, because after talking with Jack Burton, I think he had a different idea. I'll tell you in layman's language the only thing we are trying to do at this juncture. The last sentence of this section simply provides that anybody who is adversely affected by an unreasonable search may go into court before the trial on the merits of the charge which comes from the search and determine whether the evidence that was illegally obtained was used in the trial or not. Now, that's important for two very basic reasons. The first of which is the amount of time involved presently with trials cases. Now, you know, the violation of the law. The second reason is that if a person's house has been illegally searched or searched in an unreasonable manner, a warrant could be obtained to allow the return of the

thirty or forty years ago, it could have been alcohol, it was during prohibition--some contraband would be found in his home, he would be charged with possession or attempted sale or whatever have you. Now, it used to be that you'd go to trial on the merits. You'd pick a jury, it would take two or three days to pick that criminal jury; you'd get set, the D. A. would start picking on his case. Finally, when it would come to introducing the material, the substance that was unreasonably or illegally taken from your home, the defendant would object. At that time, the district judge would have to rule on the validity of the objection. If he concluded that your home had been, in fact, illegally or unreasonably searched, he would keep the evidence out. When that occurred, of course, everybody went home, but you would have had three or four days of cost and expense. Now, all we are simply trying to do because under present law, you see, the defendant may raise the issue of the unreasonableness or illegality of the search before you go start picking the jury. Several weeks in advance you have to bring it's called Motion to Suppress. At that hearing, if the judge concludes that your home was illegally searched and the material that is going to be used against you is not admissible in evidence, he rules at that time. The cost to the state, a minimal, at that time. The D. A. then decides whether he appeals from the ruling of the judge to a higher court if he chooses or if he realizes that, in fact, your home was illegally searched, then they can't go any further. Now, we want that right, that procedural right, to be accorded to everybody adversely affected. We are simply trying to give a method by which, before we get into a big trial on the merits, this is possible. Somebody asked about civil suits. This does not cover civil suits. We are in no way attempting to give a cause of action to a person to sue the poor little police officer who may have been instructed to kick the door down, to sue him. However, to be honest with you, under the present federal law, 42 USC, Section 1983, a person does have a civil cause of action against the police officer who has been instructed to kick the door down, to sue him. However, to be honest with you, under the present federal law, 42 USC, Section 1983, a person does have a civil cause of action against the police officer who has been instructed to kick the door down, to sue him. However, to be honest with you, under the present federal law, 42 USC, Section 1983, a person does have a civil cause of action against everybody except a judge because of some illegal conduct or deprivation of constitutional rights. I want to say in closing that what Jack Avant said about Russia is true. Certainly, there may be some people, just as there are now, who because of an illegal search may not be convicted. The question that you must ask is, do you think that this constitution is written to protect the guilty or is it written to protect the innocent? My statement is that it protects the innocent. It precludes, it puts down, it says no, no to sincere but erroneous law enforcement officers going down and kicking down doors or opening doors, entering your houses when they shouldn't. Your home is your castle; that's what we're trying to do. I agree that if, in this United States, any time a policeman thought that you may be guilty of something he could stop you on the street and frisk you and take anything out of your pockets, we certainly may cut down a little on the criminal activity of people. But I'm going to tell you one thing, you would check and see if you are on the rights of innocent people because I don't think there is a delegate in here that would appreciate being stopped and searched. I'll yield to questions.

Mr. Henry The gentleman has exceeded his time. I'm sorry.

Further Discussion

Mr. Schmitt The question which we have before us at the present time is one of the most fundamental questions which we have had the right or the opportunity to decide since we have been here. I'm against this amendment, this is a terrible amendment. What is a constitution? A constitution is a contract between people and the government and in this contract certain rights and responsibilities are established. With every right there is a corresponding responsibility. What is a Bill of Rights? A Bill of Rights is certain important

facets of an individual's life which he considers to be of such importance that he requires the government to reserve these rights for him, and it is essentially to protect the individual from the state and from state action. There has been no mention up to the present time, however, the terminology in the present proposal goes beyond any statement which has been made so far because this proposal protects a person not only from state action but also from private action. I believe we have seen examples of this in recent times, in which...

Mr. Chairman, I suggest the absence of a quorum.

[Quorum call: 92 delegates present and a quorum.]

Further Discussion

Mr. Schmitt This amendment is bad and it will remove one section which will provide greater protection than has ever been given in the State of Louisiana before. Up until the present time, any individual could hire a private detective firm or by stealth, or other illegal activity, break into someone's home, break into someone's doctor's office, break into someone's business and steal records and turn these records over to the police and these records could then be used by the police and could not be kept out of the records. They could not be kept out on a motion to suppress. This is a very fundamental change in the laws of the State of Louisiana. This change will allow the protection of the individual, not only from state action, but from the action of vigilante committees, from the action of other groups in our society, as an example, those who hire private detective firms to do what they know the police cannot do legally. No private individual has to have a warrant in order to break into your home. He can break into your window in the night and steal records and if these turn up in police hands, you cannot keep them out of the record, they can be used against you. I feel that this has been a fundamental problem in the history of our country. If this amendment is not used, to my knowledge too much, it can be used against the individual. This amendment is a terrible amendment. It will keep or destroy a right of an individual to protect him from a police state, because right now the police can hire an individual in order to obtain certain information in order to get a successful warrant for an individual's arrest. If this individual is considered to be a reliable person, this is accepted and can be used to get a good warrant. Therefore, a private detective firm can break into your office, check your records and see that there are certain things that are improper there, turn this information over to the police, and although the police could not use this information, this private detective firm's gross misconduct can be used to the detriment of the individual's rights. I think one thing we are forgetting here, is the question of....

Mr. Henry Mr. Schmitt, you have exceeded your time, sir.

Mr. Schmitt now moves for the suspension of the rules to allow himself three extra minutes to speak.

[Convention refused to suspend the rules to allow additional time: 76-1.]

Further Discussion

Mr. J. Jackson Mr. Chairman, ladies and gentlemen of the convention, I had planned to rise at the point when the vote would occur on the committee's proposal. I think that you have heard adequate arguments against the proposal that is submitted by Delegate Deshotel's and handled by Delegate Burson. I reserve my remarks and ask if there are no more speakers, Mr. Chairman, at this point, I move the previous question.

[Previous question answered.]

Clayton

Mr. Burton: Follow delegates, there have been some points made in the debate which I wish to address myself to. It seems it is my fate in this convention to be cast in the role of being in favor of those people who kick down people's doors and who abuse people's civil and Bill of Rights liberties. That's the way it's got to be, then I'm going to have to accept that role, but sometimes it's healthy to have a devil's advocate in the crowd. You know to require certainty in language is different from being against noble aims. I am not a proponent of illegal searches and seizures, but among other things, I would like to know on this amendment a definition of who is any person adversely affected" by search and seizure. This is a new term to me in the jurisprudence and that question and I have not yet received an answer even of agreement among the committee members. I would like also to know when they say that you are going to raise the illegality of that search or seizure in the appropriate court of law, whether they mean the appropriate civil court or the appropriate criminal court, because if they are talking about the appropriate criminal court, then unquestionably doing away with this sentence would not leave the way open to getting people's doors knocked down at night. You've got the right to raise that in the appropriate criminal court of law right now, if it's your home that's been invaded, under the Fourth Amendment to the United States Constitution, under the Mapp decision and under the Louisiana Code of Criminal Procedure. I am going to tell you today, that I'm going to be back here again in a much, much stronger vein to object to some changes in the present code of criminal procedure that are in this Bill of Rights, but I don't do so, not because I am against the rights of innocent people, but because I think that somewhere in here we've got to throw in the scales and in the balance, the interest of society in apprehending the guilty people, because let me tell you, that no matter how arbitrary the decision of the court and jury may be in a criminal case, it is no more nearly so arbitrary as the one-man decision made by a rapist, or by a robber, or by a murderer on the street. I am not saying that here as a matter of police tactics. I'm just saying that when you are considering this Bill of Rights, for goodness sake, let's not make every issue up here a matter of the fact that those who are opposed to some specific language are opposed to human liberty, are opposed to civil rights, are opposed to giving full and equal rights to black people, because this isn't the issue. The issue is, if we are going to change our criminal law, then let's know precisely how we are changing it before we vote. I think that that is absolutely necessary, if we are going to make an intelligent Bill of Rights. I would suggest to you that while I have no argument whatsoever with the principle of curtailing and eliminating illegal and unreasonable search and seizure, that I still have serious problems with the meaning of the language that the committee has used.

Question

Mr. Wilson: I will have to satisfy myself with asking you this question I had intended to ask of Mr. Clayton. The sentence you seek to strike in the third line of the article, and of course, refers to the final two. I refer you to the second line which says that no warrant shall be issued without probable cause and then you say, why purpose or reason. I think for the word "when" you have probable cause. What does that mean, "purpose or reason"? I ask you what is your view of the fact that what you seek to strike in this purpose or reason may even enlarge more what you seek to do by striking the word "and"?

Mr. Burton: I don't know, Mr. Wilson, under the existing Constitution they say that "no search warrant shall issue without probable cause and a description of the items to be searched." I don't know what it means.

Mr. Poynter: I would like to know on this amendment a definition of who is any person adversely affected" by search and seizure. This is a new term to me in the jurisprudence and that question and I have not yet received an answer even of agreement among the committee members. I would like also to know when they say that you are going to raise the illegality of that search or seizure in the appropriate court of law, whether they mean the appropriate civil court or the appropriate criminal court, because if they are talking about the appropriate criminal court, then unquestionably doing away with this sentence would not leave the way open to getting people's doors knocked down at night. You've got the right to raise that in the appropriate criminal court of law right now, if it's your home that's been invaded, under the Fourth Amendment to the United States Constitution, under the Mapp decision and under the Louisiana Code of Criminal Procedure. I am going to tell you today, that I'm going to be back here again in a much, much stronger vein to object to some changes in the present code of criminal procedure that are in this Bill of Rights, but I don't do so, not because I am against the rights of innocent people, but because I think that somewhere in here we've got to throw in the scales and in the balance, the interest of society in apprehending the guilty people, because let me tell you, that no matter how arbitrary the decision of the court and jury may be in a criminal case, it is no more nearly so arbitrary as the one-man decision made by a rapist, or by a robber, or by a murderer on the street. I am not saying that here as a matter of police tactics. I'm just saying that when you are considering this Bill of Rights, for goodness sake, let's not make every issue up here a matter of the fact that those who are opposed to some specific language are opposed to human liberty, are opposed to civil rights, are opposed to giving full and equal rights to black people, because this isn't the issue. The issue is, if we are going to change our criminal law, then let's know precisely how we are changing it before we vote. I think that that is absolutely necessary, if we are going to make an intelligent Bill of Rights. I would suggest to you that while I have no argument whatsoever with the principle of curtailing and eliminating illegal and unreasonable search and seizure, that I still have serious problems with the meaning of the language that the committee has used.

Reading of the Section

Mr. Poynter: "Section 6. Freedom from intrusion." Section 6. No person shall be quartered in any house without the consent of the owner or lawful occupant.

Explanation

Mrs. Dunlap: I believe this section is designed to prevent the take-over of any house for the purpose of housing any person without the consent of the owner or lawful occupant. This would apply to both peaceful and wartime situations. You ask, probably, how would this section be applicable today? Well, I warn you, you never know what those sheriffs and law enforcement officers will come up with next. Therefore, I move the previous question on the entire subject...

Amendment

Mr. Poynter: [Amendment by Mr. Perez and Mr. Taves.] On page 1, line 10, immediately after the words "be" and before the word "quartered", insert the words "drawn and".

[Amendment withdrawn. Prev. question ordered in the Section. Section passed: 10-1. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter: "Section 7. Freedom from discrimination." Section 7. All persons shall be free from discrimination on the basis of race, color, creed, national ancestry, and sex in access to public accommodations in the sale or rental of property by persons or agents who derive a substantial income from such business activity. Nothing herein shall be construed to impair freedom of association.

Explanation

Mrs. Soniat: Mr. Chairman, fellow delegates, this section asserts the right to be free from private discrimination in certain activities. Federal law, at the time, prohibits discrimination in public accommodations and in the sale or rental of houses, except in the case of a single-family house sold without advertising and in the case of rooms or apartments in an owner's own home. Since this is the federal law already and it is also applied to Louisiana and we want to bring our constitution up-to-date and our state up-to-date, I feel that we should put something in our constitution that will make us in keeping with present law. This, the prohibitions intended to those who derive a substantial income from such business activities as operated by an individual home owner selling or renting his own home. When we think of public accommodations, public accommodation is broadly defined by restaurants, taverns, barber shops, nursing homes, clinics, hospitals, and for this reason I would urge that all of you consider adopting this section.

Questions

Mr. Wozack: Would I inquire this to mean that under this in the Bill of the constitution then, you could not prevent a man from coming in your ladies restroom?

Mrs. Soniat: No, I don't see how you could construe this. I think that you are right when we are talking about this law from the federal standpoint, and we still have separate restrooms, don't we?

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Mr. Nomack I just wanted to know, because I wasn't sure. I wanted somebody to give us something on it from the legal standpoint.

Mrs. Soniat I will defer all other questions to Mr. Roy.

Mr. Abraham Chris, I realize that Lantz is being facetious in this, but I am serious. In Section 4, we spelled that "every person has the right to require control, enjoy, own, protect and use public property." Then we are coming back here and we say "that all persons shall be free from discrimination" - excuse me, in Section 3 is where we provide that "no law shall arbitrarily, capriciously, unreasonably discriminate against any person by reason of birth, age, sex, color, or physical condition." This says that "all persons shall be free from discrimination in access to public accommodations." Now, even though we may still have statutes that provide that there will be separate accommodations, restroom facilities, there is nothing that would prevent me from using the ladies' room or the ladies from using the men's room.

Mr. Roy Oh, yes there is.

Mr. Abraham Why?

Mr. Roy Let me explain Section 3 before Section 7. Section 7 deals with state action and no law shall do certain things with respect to unreasonably, arbitrarily or capriciously harm certain classes of people. This deals with strictly freedom from discrimination, the notion being, that there are two items in our society because of the times which have gone from purely private sectors to something more than a private sector, to something more imbued with a public aspect, that being public access to public accommodations and the sale and/or rental of property. All we are saying in that particular case is that you may not discriminate on the basis of these categories.

Mr. Abraham But, Chris, the law is not being arbitrary when it provides that there will be separate accommodations, right? The law can provide that you have separate facilities.

Mr. Roy But the law may not say anything about it, but the individual may certainly provide it himself, if the law says nothing.

Mr. Abraham O.K., then I am entitled under Section 7 to use those facilities if I want, because you cannot discriminate me and prevent me from using them.

Mr. Roy Oh, no, no, this access to the public accommodation means....

Mr. Abraham And public accommodation would be a restroom in a restaurant.

Mr. Roy It means that you may not be discriminated against in gaining access to the place because of your race, your color, your creed, your national ancestry or your sex. It does not mean that once you get in there, Mack Abraham, that you have the right to start breaking tables and throwing dishes, does it?

Mr. Abraham No, but the point and example I am making is this though, it does give me the right, does it not, to use whichever facility I want?

Mr. Roy No, it does not.

Mr. Denney Mr. Roy, I had introduced an amendment which is really technical in nature, and I wanted to ask you if the committee had any objection to it. On the second line you have "and sex"....

Mr. Roy I have no objection, I know what you are going to say.

Mr. Denney To "or sex". Also on the second line would you have any objection to changing the word "creed" to the word "religion"?

Mr. Roy No, I have no objection to that, Mr. Denney, religion or creed is probably the same thing, one may be a little broader than the other. Let me point out in response to Mr. Abraham's question that the latest expression by the Supreme Court which was Moose Lodge v. Irvis which said that you may...that private clubs, of course, have the absolute right to discriminate, private clubs. We are talking about, ladies and gentlemen of the convention, public accommodations. We are talking about those situations where a man's conduct, his engaging in business, has become more than something that's just between him and a few other people; it's for all people. I just don't see how we can say that with respect to discrimination, that we are going to allow in the future a man if he has a cafe and that's the law anyway. All we are trying to do, is for Louisiana to say that we Louisianians won't tolerate this any more, and we want to express it even though it's the present law. We are actually restricting the federal law, with respect to that particular Civil Rights Act which deals with the state or rental of property and with the access to public accommodations. Ours is more restrictive, we felt it was time for us to make....

Mr. Stagg Mr. Roy, can you explain to me briefly, how in your introduction of this section, you said that the Bill of Rights was designed to prevent state action against persons and it would appear to me that in Section 7 we are talking about person action against person, it's entirely inconsistent with your introduction to this whole subject matter.

Mr. Roy You are absolutely right, Mr. Stagg, and to the limited extent I said that we are dealing with public accommodations and the sale or rental of houses, which in a mobile population which we have at this time, has become imbued with something more than your absolute right to arbitrarily discriminate. You just as soon face it, I don't mean it that way, that's what the present law is, and I believe philosophically that it's wrong for us to say that a person has no right to go into a restaurant because of his race....

Mr. Alexander Mr. Roy, would the provisions of this section permit a customer to walk into a restaurant and go into the cash register and take what he wants?

Mr. Roy No, it certainly doesn't, Reverend Alexander.

Mr. Alexander Would it permit him to go into the kitchen and prepare his own meal?

Mr. Roy No, no, it doesn't. That's a good response to Mr. Abraham's question.

Mr. Alexander So then any reference of this sort is rather facetious, wouldn't you think?

Mr. Roy That's right. All of those are just redundant questions that were....

Mr. Roemer Chris, in this section as it relates to lines 15 and 16, "the sale or rental of property by persons or agents who derive a substantial income from such business activity." Now by substantial income, is that a dollar figure you have in mind or a percentage of his total income, or what do you mean by substantial income? I can't differentiate between that.

Mr. Roy Well, Buddy, "substantial" would be that act...all constitutions ultimately have got to be decided by a court; our courts would decide what "substantial" is. I would think it would say that it could be either one, either a dollar income or a percentage income, but it does not apply to the

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little person who doesn't engage in a business or who houses somebody in his own house, it strictly doesn't apply to those categories.

Mr. Roemer But it would apply to a small agent who didn't make much money, but all of it was derived from this sort of activity. No you think it would apply to that?

Mr. Roy It probably would but...

Mr. Roemer But what was your intent though, Chris. I mean

Mr. Roy My intent was for it...our intent was for it to apply to where the substantial income factor is enough to say that this person is engaged in that business and it is a substantial part of his total income, that's what the intent was.

Mr. Roemer Also, it's a percentage basis, then right, not the absolute dollar value of the income? Is a giant corporation, who has a leasing or rental agency on the side and they make a hundred million dollars in total corporate income and only four million dollars or four percent of that is from this sort of activity, this wouldn't apply to them, would it?

Mr. Roy No, it would apply. They are engaged...

Mr. Roemer Not the way you explained it, Chris.

Mr. Roy Well, I told you earlier that it was percentage and/or amount of the business or dollars. I think that is what the federal law presently provides. In any event, the Civil Rights Act provides that, only it's broader than that.

Mr. Warren Mine is brief because any attorney versed on the law could answer this. Is there any businesses that are allowed to have a substantial business without having separate restrooms for women and men, men and women?

Mr. Roy Well, I would think that there are some businesses that have only one restroom, but they certainly don't allow both sexes in it at the same time. I went to eat catfish at Catfish Johnson's the other night and he has only one restroom, but he doesn't allow two people, a man and woman in there at the same time unless they are husband and wife, I presume. I don't see the relevancy. I mean I don't understand, certainly you can have a business that could be... have only one restroom, but the owner can keep two sexes out or it can keep two people out of it at the same time.

Mr. Warren In other words, you go in and lock the door.

Mr. Roy Well, that's right

Amendment

Mr. Poynter Section 7 Freedom from Discrimination

Amendment No. 1 [a, w, b, c, d, e, f, g, h, i, j, k, l, m, n, o, p, q, r, s, t, u, v, w, x, y, z] On page 3, line 14, after the word "sanctuary," delete the word "and" and insert in lieu thereof the word "or"

Explanation

Mr. Denney The purpose of this amendment is to remove the "or" conjunctive word "and", which would indicate that you would have to prove discrimination on the basis of all of these items in access to public accommodations. I am certain that the committee intended that you could not discriminate in access to public accommodations on any one or more of these things. Therefore, the word "or" is being placed in the word "and", and the committee chairman advised me that the committee has no objection to this.

[Amendment adopted without objection.]

Amendment

Mr. Poynter The gentleman [Mr. Roemer] offers up further amendments

On page 3, line 14, after the word "sanctuary," delete the word "creed" and insert in lieu thereof the word "religion".

Explanation

Mr. Denney The purpose of this amendment is that the word...there are certain religions which do not have creeds, all creeds are based basically on religion, so it seemed to me that the word "religion" was a little broader, and I felt it was a better word and that was the whole purpose of this amendment.

[Amendment adopted without objection.]

Amendments

Mr. Poynter Next set of amendments are sent up by Delegate Burns.

Amendment No. 1. On page 3, line 15, immediately after the word "accommodations" insert a period "." and delete the remainder of the line and delete line 16 in its entirety.

Amendment No. 2. On page 3, line 17, immediately before the word "Nothing" delete the following: "comes from such business activity."

Explanation

Mr. Burns Mr. Chairman and fellow delegates, let me preface my brief remarks by telling you that in the introduction of preparation and introduction of this amendment, it is not motivated by any stretch of the imagination, or directed at any of the classes or discrimination against any of the classes of people set forth in this section or in Section 4, that we voted on yesterday. As you may recall, I tried on two separate occasions yesterday, to get some of the members of this committee or some of the authors or proponents to tell me or explain to me what the difference or what the conflict was -- if any, between Section 4 and Section 7, with reference to a person's protection and enjoyment of that private property. On neither occasion was I successful. It was not until this section was explained by one of the members of the committee that I was given the slightest insight into what this meant. I may say that the explanation given was far from satisfactory, in my opinion. Let us bear in mind, ladies and gentlemen, that we are talking now about the rights and the protection of a private citizen in the ownership of their property. We are talking about protecting them. Now, let's see what this Section 7 does with reference to the rights that were granted to a private citizen that we approved that the convention approved yesterday in Section 4. This is what we did. We said that every person is right to acquire, to own, to control, to enjoy, to protect, and to dispose of private property. Now that gave every private citizen the right to own and enjoy and to dispose of private property. Now in Section 7 that we are considering, and this is the purpose of my -- another purpose of my amendment, it has nothing to do with the first part of Section 7 which I have no fault to find with, and that is that all persons shall be free from discrimination on the basis of race, color, religion, national ancestry, and sex in the access of public accommodations. My amendment has nothing to do with that; simply my putting a -- after accommodation and eliminate that part of the section with reference to the sale or rental of private property. In my opinion, as it was yesterday and it has been confirmed today, this takes absolutely away and nullifies and negates the rights that were given to a person under Section 4 on yesterday. I don't think that the explanation as given by one or two of the proponents of this Section 7 amends in any -- by any stretch of the imagination, the objection that I'm raising and the destruction of

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the right of the protection of the private property of people. It was mentioned to me just now when I was up at the podium that one of the things that this might do would be to affect a person's right to rent a home, to stay overnight in a hotel. I wouldn't argue that question with you, ladies and gentlemen, because you know that the sale of a home under the rights to own or to sell or rent property. That comes under the public accommodations section of this Section 7. Let me just give you an illustration of what I mean. I also want to bring out at this time, before it escapes my mind, that the only reference I heard as to what this means is reference to a federal law permitting the sale of a single home. That wouldn't be covered by any of the federal restrictions with reference to the sale of property. Let me suggest this to you, that many and many and many a person in the State of Louisiana today who builds a home, he makes it attractive, he has a lot or two... property adjoining his home, and he sells that home in order to make a profit. This is not his main source of income. He may be a doctor or an engineer or architect or whatnot with the idea of building another home and doing the same thing in the course of time. Now he owns the lot next to that home. My wife and I had occasion to go down in the southern part of Guatemala in April, during the process of the conversion and down in the southern part the Indians, the Maya Indians down there, they don't worship God; they worship the wind and the sun and even the corn and things of that nature. Now that may seem far away from us, but right here in the United States we have different cults and groups of people who worship far more evil things than that, things that strike at the very morality of our nation, but they worship those things. Now, suppose a God-fearing, churchgoing individual citizen that we are trying to protect his property rights and suppose he has a home and he has built a home under the conditions which I enumerated and referred to just now, with the idea at some future time he was going to sell it and try to make a little profit and build another home and sell a lot next to his home. I think we all agree that the value of a home is influenced and affected by a large extent to the adjoining lot or the adjoining property, much less a neighborhood. Suppose under this amendment that one of these cult worshippers and is well-known to the owner, comes to him and says "I see you have your home advertised for sale in the paper and I want to buy it, but I want to buy a lot next door to it. I don't want to buy your home". . . no, excuse me, I'm getting a little ahead of myself. . . suppose the homeowner decides he no longer has any use for the lot next to his home, and he advertises in the newspaper for sale and one of these cult worshippers, which is entirely against the rights of this homeowner, this churchman so to speak. He says, "I want to buy it on the basis of your advertisement in the paper" and this homeowner knows the type of person this is. He is one of these cult worshippers. He says "No, I don't want to sell this lot to you." Under this Section 7, as I take it, he would have to sell it to that cult worshiper if he took it to court. I say to you, ladies and gentlemen, in all sincerity that I just believe this is a bad part of this section. I believe it's in absolute conflict with the rights that you gave the people under Section 4 to acquire, to own, to enjoy, and to dispose of property. It doesn't put any restriction on it. It says "to own, enjoy and dispose of property" and here we are saying that you can only sell your property, according to the explanation that some of the proponents gave just now, that it only referred to certain types of property, but that's not set forth in this Section 7, ladies and gentlemen. This is just a general statement putting a restriction on the sale or rental of property. I say to you without affecting the rest of the section, which I have no fault to find with, that I think we should delete this particular section because if no other reason, it's in direct conflict to the Section 4, that gave the people the unlimited, unrestricted right to purchase, enjoy and sell their property if they saw fit. I say there would be no

end to real estate dealings and real estate transactions in Louisiana if this part of this section is adopted.

Questions

Mr. Hayes Are we having any problems in this state now as a result of what you said, when you were up there about what you might have to do?

Mr. Burns Truthfully, I can't answer that because this is the first time I've ever heard of it.

Mr. Hayes Isn't it true, Mr. Burns, that most of your federal programs have a stipulation that you must do this?

Mr. Burns I'm not familiar with it. As I say, when I read this proposal was the first time I'd ever heard of this particular question. Reading the two sections together is really what disturbed me. Perhaps if this was the only one that was in here, I could perhaps understand it a little better.

Mr. Hayes Isn't it true that brokers have to sign some stipulation to that effect in order to participate in federal projects?

Mr. Burns I can't answer that.

Further Discussion

Mr. Abraham I am in complete agreement with Mr. Burns on his amendment. While I am not going to take issue with what the intent of this language is, I merely want to point out that this language is in direct conflict with what we have said in Section 4. Also within itself Section 7 has areas that I would say are inconsistent. In Section 4 we spelled out that a person did have the right to dispose of the property as he wanted... private property. Then we come right back in Section 7 and say that "all persons shall be free from discrimination in the sale of real estate." Now, they're trying to say here is that a person actually should be free from discrimination in trying to buy property, which see, in Section 7 we say "all persons shall be free from discrimination in the sale of property," so if I am the owner and I'm wanting to sell and someone tries to force me to sell it, to whom do I sell it to, then you are discriminating against me as the owner. By the same token if I am the purchaser, I am being discriminated against if a person does not want to sell to me. So which is going to rule? Is Section 7 going to rule? Is Section 4 going to rule? Now, even though Mr. Hayes has made the point a while ago that maybe there are no problems with this, the thing that we have to keep in mind is, if this amendment is adopted, I'm not going to say "if," I'm going to say "when" because I have every confidence that it will be adopted, but when it is adopted, then it's going to have to be studied. The courts are going to have to look at it and are going to wind up having to render interpretations and decisions on this. I think that this is very poor language here in the way this is written. For that reason I think that we ought to adopt Mr. Burn's amendment and eliminate that particular sentence or part of the sentence from the article.

Questions

Mrs. Warren Mr. Abraham, if a person wanted to sell his property, he would be putting it up for sale for a profit or for some reason he wanted to get rid of it. He did not any longer want to own it. If he does not want to own the property, why should a person be discriminated against in buying it so he could pick who he would like to buy his property?

Mr. Abraham Mrs. Warren, as I said, I'm not taking issue with what the intent of this is. I am taking issue with the way it reads, and I think it's very ambiguous. This is the point I'm trying to make, that the language is ambiguous and is

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Incorrect

Mr. Warren: Well, in this instance I don't know what you would refer to as ambiguous. But what I'm looking at is the principle behind the thing. If you want to sell it, you want to sell it. If you don't want to sell it, you would want to keep it.

Mr. Abraham: It says "All persons shall be free from discrimination in the sale." So you cannot discriminate against me in selling the property, nor are you supposed to discriminate against the person buying the property.

Mrs. Warren: For the intent, would you be willing to change the wording?

Mr. Abraham: If someone can come up with better language, I have no objection.

Mr. Velazquez: Are you familiar with the amendment of Mr. Roemer and Mr. Kelly which merely makes a change from "persons or agents" to "those who are substantially engaged in such business activity?"

Mr. Abraham: No, I haven't seen that amendment yet.

Mr. Velazquez: It seems to me that this accomplishes what our good friend wants to accomplish, Mr. Burns, wants to accomplish, without going into the other problems that you are bringing up.

Mr. Abraham: It may be, but I haven't seen it yet.

Mr. Velazquez: I see what he wants to do. In a sense I sympathize, but I think that he's attacking it the wrong way. He's taking out too much. He's trying to clean the field and he's burning the crop down.

Mr. Abraham: All I told Mr. Warren, if there is better language, I have no objection to it. The only thing that I am saying is that this to me is better language in itself, and it also conflicts with Section 4.

Mr. Velazquez: I feel that I'm going to have to be in opposition to Mr. Burns.

Further Discussion

Mr. Jackson: Mr. Chairman, ladies and gentlemen of the convention, I rise in opposition to Mr. Burns' language, not particularly in disagreement with all of the points that he's made. I want to suggest to you, as Mr. Velazquez has alluded to, that this convention will be presented very shortly with an amendment which maybe can deal with the language of Mr. Burns. But there has been some other allegation made about, not necessarily the wording, but the content, the intent of this particular section. Let me suggest to you that this does not, and this is not in conflict with Section 3, because Section 3 has the language that says you cannot discriminate based on, unreasonable, arbitrarily, or capricious reasons. I want to also suggest to you, just in the question of sale or rental of property. Mr. Burns did raise the question that you have a problem with the seller and the buyer. I know, as a matter of fact, that contrary to the general belief that all a person has to do is hold title to the land and all the property rights and all the things are abandoned, suggesting to you that has not been the case; that is a matter of judicial interpretation. To those who will present arguments such that all Johnny Jackson has to do is hold title discrimination. Johnny Jackson has no private discrimination. I think this matter has been raised on the floor and discussed very fully on the federal level. I think there's one question that has not been raised, and that is the State of Louisiana. We talk about the fact of federal intervention and it becomes kind of alarming to me when we question, they say well, that in the federal constitution so we don't have to deal with it. If that is the case, then federal law supercedes state law. Then maybe we ought not be here

today. What we're saying is that the State of Louisiana is prepared to deal on a local level with problems, situations, protections, responsibilities prior to going to the federal government. Now, the other day I mentioned to you that being the son of discrimination, that it is kind of hard for me to adequately say to you some of the effects of it. I think some people already know. But I would say, and it seems like an opposite to what you've heard, I would say yes, let the state deal with its problems, with its responsibility here first. I think all the problems that this state has with the federal government, that I think will be resolved if we, the people who are writing the constitution, provide those basic rights and protection in our state constitution. You wouldn't have the kinds of animosity, on one hand, against the federal government as I believe exists today. So I would ask you to oppose Mr. Burns' amendment and suggest to you that there are other amendments coming forth. I particularly have a couple myself to this section.

I yield to any questions, Mr. Chairman, if I have time.

[Previous Question revived. Amendments adopted: 66-37. Motion to recommittable refused.]

Amendment

Mr. Poynter: Next set of amendments sent up by Delegates Haynes, Stovall, E. J. Landry, et al. Amendment No. 1. On page 3, line 15, after the word "public" delete the word "accommodations and insert in lieu thereof the following: "accommodations in the hiring and promotion practices of any employer with fifteen or more employees."

Explanation

Mr. Haynes: Mr. Chairman and delegates to this convention, this amendment is a very simple amendment. I cannot call it a real amendment, but it simply attempts to do something that every member of this convention would want to do, and that a vast majority of the people of this state would support. I looked at the historic documents of freedom, and just about running through the vein of these documents written by the forefathers of this great nation of ours was one simple thought that everybody in this nation was entitled to "life, liberty, and the pursuit of happiness." I would submit to you that unless one has the opportunity to make an honorable and decent living in a great country and in a great state, there can be no pursuit of happiness. This amendment simply attempts to bring this section in line with that basic idea that we all have had as part of the American dream for some three or four hundred years. I would support the idea that there are two things that we need most in this state for all of the people. I think the first is the need in this state is education, and a kind of quality education that will provide for the optimum development of every person in this state. I think the second great need that we have in Louisiana and throughout America is the opportunity to hold and maintain a job. I would submit to you, my friends, that the antithesis of this, where a person has no job, is the war and disease and poverty that run rampant in our state and across the nation. I remember it was back in the early days of the sixties when we went across this country sitting in the back of the airplane, sleeping in hotels, and during everything humanly possible to make for open accommodation for all of the people. When we woke up in the morning these laws made possible for people to have the opportunity to eat at a lunch counter, to sleep in a hotel, only to find out that we had no money to do this because we had no jobs. Mr. Chairman and members of this delegation, the privileges of doing a business in this state and in this country is a privilege rather than anything else. We have certain laws discriminating these people that provide for the incorporation of these businesses, for the partnership of the state might be. We don't

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believe that these business institutions that are thriving on the state and thriving on the people of the state should be permitted to discriminate against any of the people. Then we believe it's important today. We don't believe in federal encroachment. The federal laws provide just what this amendment calls for our bringing our state in line with. We're simply asking you to bring our state in line with the federal laws of the state. Finally, I'm asking you this morning that we cease the rhetoric and bring the dreams and hopes and aspirations of the founding fathers of this nation into reality. This is all we are asking, that all people might have opportunities for "life, liberty and the pursuit of happiness". We believe that all people ought to have the opportunity for a more abundant life in the kind of rich nation, the rich state that we have. We live in a Christian, democratic society. We simply ask you to help us to bring the rhetoric that we have preached for some four hundred years in line with the realities of what exists today for all of the people of this nation. We can no longer tolerate discriminating against people because of any circumstance of their background or their race, their sex, their religion or what have you. We're simply asking in this simple amendment that you would bring this state in line with what we already have in the federal establishment.

Mr. Chairman, I would beg of my friends to support this very simple amendment for the people of this state. I yield to a question.

Questions

Mr. Burns Mr. Haynes, did you not ask me a few moments before, while a group was up there around the podium, would I support or be in favor of your amendment?

Mr. Haynes That's correct.

Mr. Burns What was my answer?

Mr. Haynes That you would support it. I think this represents a great day in this state. Mr. Burns and Mr. Jack and all of us can work for the advancement of all of the people in this great state.

Mr. Roy Mr. Haynes, isn't it a fact that this amendment really helps the state out because as the present law is, if Louisiana has a law with respect to persons employed, then when any issue comes up, Louisiana courts decide it first rather than have federal courts come right on in? The present law is, is it not, that if we have nothing and a person complains, the federal courts have to come in and decide it initially, but if there's state law, the federal government has provided that it will defer to state interpretation of the state provision? Isn't that right?

Mr. Haynes That's exactly right, Mr. Roy.

Mr. Roy So, that would help us out, and it would leave it to our courts to determine this particular provision which is the federal law anyway, is it not?

Mr. Haynes That's exactly correct, Mr. Roy.

Mr. Roemer Delegate Haynes, would this in any way stop a businessman from discriminating in his employment practices between the abilities of people, in his job?

Mr. Haynes It certainly would not. I think it would encourage that, and then I think it would spread it, Delegate Roemer, wherein we would erase the blemishes of any kind of discrimination in our system of operations in the state.

Mr. Roemer So then what you're trying to do is to encourage the employers of the state to concentrate on the capabilities of the potential employee rather than these other factors. Is that it?

Mr. Haynes This is exactly correct.

Mr. Guarisco Mr. Haynes, doesn't, insofar as the first part of this section, doesn't the city of Orleans since 1969 have a city ordinance allowing public accommodations much like we're preparing here?

Mr. Haynes I understand that's correct, and from the testimony that I heard Mayor Landrieu make the other day, they are moving forward in the employment of all of the people in the city of New Orleans.

Mr. Guarisco This has not worked to New Orleans' detriment and quite the contrary. Isn't that so?

Mr. Haynes It would be supportive of New Orleans.

Mr. Kean Mr. Haynes, don't we have the same problem here that we had over in Section 3 and which we met by changing or amending the section to make it read that there could not be "unreasonable discrimination on the account of sex" and other things? For example, there might well be some job, I'm not sure at the moment I could cite it, where for one reason or another it would need to be a woman in that job, and therefore, if you didn't offer the opportunity to a male, you would discriminate but not necessarily "unreasonably discriminate?"

Mr. Haynes Delegate Kean, I think the connotation as expressed in our amendment before you now is more specific, and when it comes to a definition of what's reasonable or what's unreasonable, I think you would leave the interpretation to the judiciary in order to make a final determination. What we are asking is that we be specific here in this constitution that will govern the people of this state for the next half century.

Mr. Kean What your amendment would do, it would say that an employer with fifteen or more employees could not discriminate on account of sex, for example, irrespective of what might be the necessities of the job.

Mr. Haynes If you would add the word that this person might not "unreasonably discriminate", I would say yes; I would agree with you.

Mr. Kean But the proposal does not contain the word "unreasonable", does it?

Mr. Haynes I think if the language does not, I think the thought, and then you already have in Section 3, I believe it is, that you quoted very succinctly from, the unreasonable concept in discrimination.

Mr. Kean In other words, you would give to this the same effect as Section 3.

Mr. Haynes Right.

Mr. Berry Mr. Haynes, isn't it also true that this amendment would take care of strictly intrastate business activity that may not be covered by the federal statutes?

Mr. Haynes Yes, Dean Berry or Delegate Berry, and I appreciate your bringing that point to our attention.

Mr. Berry So that if there is any deficiency in the federal law, this would supply it.

Mr. Haynes This is correct.

Mr. Poynter Mr. Chairman, I think this originally contemplated the language which was deleted by the Burns amendment being left in, and therefore contemplated a series, in essence of three areas of nondiscrimination. I think the amendment should now be corrected by first of all changing the comma "," behind "employees" on the third line to a period ".", and secondly after at the beginning

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... accommodations, inserting the word or... accommodations, or in the hiring and promotion", and putting a period "." at the end of "employees".

Mr. Henry: You have no objection to that, Mr. Haynes?

Mr. Haynes: No objection, whatsoever. Thank you very much....

Further Discussion

Mr. Conroy: I have been attempting to work with the committee on devising language to make the present status of the amendment unobjectionable to me. I have the same problem Mr. Kean suggested in his questions. As presently drawn I'm afraid that the amendment would, for example, prohibit the Knights of Columbus or a Catholic institution from insisting on or giving priority to hiring Catholics, or any other institution that was predominantly a particular group or something, giving preference to those people. The committee has indicated that they have no objection to inserting, with regard to these employment practices, words that would not unreasonably, arbitrarily and so forth discriminate in hiring and promotion practices an account of these factors that are listed. But until we can work out that language I have to oppose the amendment, but I think we will be able to work it out shortly.

Question

Mr. Boy: Mr. Conroy, I think you're right and you can know that I'm speaking for the committee when I say that we will put in the word "unreasonably" with respect to employment.

Mr. Conroy: Yes, I would hope we could either take a short recess and get that straightened out. It's the same problem we had on the earlier section, and I think it would save a lot of arguing and confusion.

[Amendment withdrawn.]

Amendment

Mr. Poynter: Amendment No. 1 [by Mr. Haynes] On page 1, line 15, after the word "public" delete the word "accommodations" and insert in lieu thereof the following: "accommodations, and from arbitrary, unreasonable, or capricious discrimination on any such basis in the hiring and promotion practices of any employer with fifteen or more employees".

Explanation

Mr. Haynes: Mr. Chairman, the only thing this does is to make some technical corrections in the amendment, and we've held a caucus and we were in complete agreement. We think that this amendment now will satisfy the aspirations of all the delegates of this convention, and I would simply not like to waste your time as I've tried to do during the entire history of this convention. I would like to beg of you a favorable report on this amendment. Thank you very much for your consideration.

Further Discussion

Mr. Stovall: Mr. Chairman, ladies and gentlemen of the convention, we need to be mindful that the road to hell...

Mr. Henry: Yes, brother, we hear you.

Mr. Stovall: I'll paved with generalities. There comes a time when we need to be specific, and it seems to me that this is one of those occasions. It is not enough simply to say that we are against discrimination. We need to interpret what we mean by that, and it seems to me that this amendment does just that. It is a good amendment because it gives support to the many fine business and indus-

trial concern throughout our state who are seeking to hire people on the basis of merit and not on the basis of the characteristic which are designated here. If this convention can do something to give support to these many business enterprises, then I think we should do it. One of the most vicious kind of discrimination is economic discrimination, and the other side of the picture is this: If the economic power of our state and our nation is not used to promote the common good and the general welfare and that of all persons regardless of race or creed or color, then that economic power is in danger itself. Which is to say that one of the ways in which we can support the free enterprise system is to support this kind of amendment. I would like to say also that you'll please note that the name of Mr. David Lonroy has been added as one of the sponsors. In adding these words "unreasonable," "capricious" and "arbitrary" many of you have indicated your willingness to give support to it. In closing I would like to quote something that comes from a novelist of the sixteenth century. He said, "I may not like the crew, but in time of storm I will do what I can to save the ship for we are all in this together." We are all in our economic life together, and it seems to me that this is one of the good ways in which we can manifest that. Thank you.

Questions

Mr. Alario: Reverend, in the amendment it says that "free from arbitrary, unreasonable or capricious discrimination if you have fifteen or more employees". If I had fourteen employees could it then be arbitrary, unreasonable and capricious?

Mr. Stovall: I would assume that on the basis of this amendment you could, if you so desired, Mr. Alario.

Mr. Alario: Don't you think the amendment maybe should have ended after the words "and promotion practices"?

Mr. Stovall: No...

Mr. Alario: And not make any reference to fifteen or more?

Mr. Stovall: I think the reason here is that there's more or less tracks the federal provisions and another advantage of this particular amendment is that it means that we as a state are affirming our belief and our faith in human rights, and we're not waiting for the federal government or some outside force to force us to do something. Instead we're voluntarily committing ourselves to that which we feel is humane and worthwhile.

Mr. Stinson: Bro. Stovall, isn't this a right to work amendment?

Mr. Stovall: I do not so interpret it, Mr. Stinson.

Mr. Stinson: Suppose that I'm a corporation and I have a contract with the union to employ only union personnel, and under this the person that applies, regardless of who or she or what it might be, I have to take them. Is my contract going to be valid or will this violate the terms of my contract? Which will prevail, this or the contract I've already entered into?

Mr. Stovall: Mr. Stinson, you would not be discriminating on the basis of race or sex.

Further Discussion

Mr. Flory: Mr. Chairman, delegates to the convention, contrary to what Mr. Stinson said, I'm here in support of the amendment. Let me say to you that when I accepted the appointment to this convention, I did so with a full understanding that we were to develop a constitution for all of the people of this state. So far, in my efforts, I have endeavored to do just that, and I believe

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sincerely that if we do nothing else in this convention or nothing else in our lifetime than to solve some of the problems of discrimination that have existed in this state for the last hundred years, then we will have fulfilled our purpose. I believe that it's high time that we say what we mean and that if we honestly believe that there ought not be discrimination, let's use plain, simple language. I do not believe that this will in any way negate the labor relations picture in this state as referred to by Mr. Stinson. I do believe that it will have placed the employment practices in this state on the basis on which it ought to be placed and that's upon the basis of qualifications alone, and it's on that basis that I ask you to adopt this amendment.

Further Discussion

Mr. Segura Mr. Chairman, fellow delegates, I hate to get up and speak against Mr. Haynes' amendment because I've been working with Mr. Haynes on the Education Commission. I've learned to respect the man and I would like to help him and I would like to help his cause. But let's stop and think of what we're doing. We're writing a Bill of Rights. The employer should have rights, too; and Mr. Flory, an employer can't think of only qualifications. What about compatibility? If his employees don't get along and work together, the progress they're going to do, or what they are going to accomplish is going to be affected. Many of the delegates here brought up the fact that this is already a federal law. If it is a federal law, it's a bad federal law and instead of trying to put it in the state law because it is a federal law, we ought to take it out of the federal law. We ought to start working on our Congressmen for that because if we're going to write a Bill of Rights that's fair for everybody then it ought to be fair for the employers, also. This is a nation of free enterprise and if it's free enterprise, it ought to be free for everybody. It's good for us to stand up here and say, "we're free, we want to protect everybody." We'll protect everybody. I ask you, please, vote against this amendment and let's give the rights to all the people.

Questions

Mrs. Zervigon Mr. Segura, I'd like to explore this field of compatibility with you a minute, if you will. Have you ever known unpleasant people in your life?

Mr. Segura Yes, I have.

Mrs. Zervigon Are they all black, or female, or white, or male, or do they cut across those groups?

Mr. Segura There are good people whether they are male, or female and they are bad people whether . . . not bad people, I don't think anybody is really bad. There are reasons where people are incompatible and it doesn't make any difference whether they are white, or black, or male, or female. No, ma'am.

Mrs. Zervigon Well, Mr. Segura, should you run a business of fifteen employees or more, this would not require you to hire someone who was unpleasant, someone who was unqualified, someone who was disheveled. It just means when two qualified people come or when an unqualified and a qualified person apply, should the qualified person be either black or female you would have to give due consideration to the qualifications.

Mr. Segura Let me answer your question this way. If an employee has the right to quit me without giving me a reason, I should have the right to fire him or not hire him without giving him a reason, as long as it's my business. Now if it's my business, it's up to me to see that this business makes enough profit to be able to hire those people, and if I'm hiring people who are, and I just use this as one example, compatibility as one example; if I

hire people who are compatible to each other, not necessarily to me, then they can't produce as well as people who can work better together.

Mrs. Zervigon Well, you are talking about personality traits though, this doesn't forbid the discrimination on the basis of personality traits--only on the basis of external. . . .

Mr. Segura I'm not talking about discriminating against anybody.

Further Discussion

Mr. Burson Mr. Chairman, fellow delegates to the convention, I rise in favor of the amendment. I have consistently, throughout this convention, taken a position which I will continue to take against what I feel to be diminishing the rights of the average, decent, law-abiding citizen to walk the streets in safety. But I think that in order to be consistent, any advocate of strong effective criminal law enforcement has got to be for equality of social and economic treatment of all of the citizens in our society. I think that if you are for one and against the other, you are in a contradictory position. We cannot tell people that we just want enforcement of those laws which would put them in jail and in jail in favor of enforcement of those laws that would give them equal opportunity. Now, I have served on a school board during the most tumultuous period in the public school system in the history of our state when we made the transition from a segregated school system to a unitary school system. We've had a lot of problems, but at this point in time, the school board that I'm associated with hires people on the basis of ability and we can discriminate on bases other than race, sex, or the prohibited bases in this article and we can certainly discriminate between deciding whether or not we want to hire an "A" student or a "D" student to teach our children. We can discriminate on the basis of whether or not a person has a certification in the particular field and we do so. But we are prohibited, just as this amendment would prohibit the discrimination on the basis of race, sex, and so on rather than on the basis of ability and qualifications. As I read this amendment, it does nothing more or nothing less than cite what the federal law is. We are all part of the United States of America; we've all got to obey the federal law, and it seems to me that in essence, this amendment is really a statement of goodwill on our part to those people who have legitimate concern in this area. I urge you to adopt the amendment.

Further Discussion

Mr. E. J. Landry Mr. Chairman and members of this convention, what I have to say is very simple. First, let me express my appreciation to you for having had the privilege of listening to the pros and cons over the period of time since our beginning. Really and truly, I have tried not to miss one word of the wisdom, of the teachings of what you had to say to me over this provision. I'm proud, very proud, to have my name on the proposal. There was no hesitation whatsoever when this fine, young man--I don't know how old he is, he won't tell me, but he is a young man, an aggressive educator who has had the rights and the welfare of people of the State of Louisiana in mind for the last thirty years. I've seen him in prayer with attention and pledge and say a prayer with you, the thing that is uppermost in my mind is the Second Commandment. Yes, there is religion in this body, and thank God that there is religion; and what came to my mind was the Second Commandment, and it told me, immediately, what God said. You ask for his guidance, God says simply, give to your neighbor. In the Second Commandment, "exactly what you would like to have for yourself." That's what I'm trying to do in every vote--"Give to your neighbor what you would like to have for yourself." Thank you for the privilege of sponsoring this before you and I hope that you give us a lot of

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Green Light: Thank you.

AMENDMENT NO. 1 TO THE HAYREN AMENDMENT
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Amendment

Mr. Foynter: Amendment No. 1 to the Hayren Amendment, page 3, line 14, immediately after the word "and" insert the word "ancestry," and before the word "and" insert the word "age."

Explanation

Mr. Velazquez: Mr. Chairman, fellow delegates, some of the aged citizens in my district have written to me that certain property owners have refused to rent their homes or apartments because of their age. The landlords in question cite the fact that they provide large, heavy garbage cans that are required to be placed on the curb in the morning on certain days. They cite the fact that the aged person isn't capable of transporting this can from the apartment to the curb and that they would have to hire a person to do this. The aged person in question then explained to me they would be willing to purchase smaller cans themselves, and put them out. The man went on to say that he still wouldn't rent them the houses or the apartments. I think that this problem and similar problems of this type exist across the state, and that the aged deserve this protection. I don't see how any delegate here could oppose this amendment. I request its adoption. I'd like to make the suggestion that my coauthors, I don't believe, were mentioned, Mr. Clerk.

Give Chairman Casey in the Chair

Questions

Mr. Brown: Mr. Velazquez, what about the problem you run into, for instance here, very close to the aptly? There is a housing project, a large apartment complex for persons who are over sixty-five, you've got to be sixty-five or older to even live there. That's one of the requirements and a lot of the funding came from federal funds based on that age provision. Also, I'm concerned about apartments. You know a lot of people live in apartments and there are restrictions against children, having children in the apartment and, of course, someone comes home from a pretty long day's work and they quit. They don't have children themselves and they don't want to have children around. Do you think that you present competition when you put the age restrictions because of example both of the sixty-five and over and of children? Would you comment on that?

Mr. Velazquez: I think that we are but I'd like to address that to the group. The people are wanting to accept a reasonable amount of restrictions, but they are not willing to accept an unreasonable amount of restrictions. I'd be willing to accept an amendment to take care of the problem to accept an amendment from you to take care of your particular problem, but I still think the problems of the aged are sufficient important and we owe them sufficient respect to think that one word in this constitution, few of us are against people because of their age, I sympathize with your position, but I still feel that we owe the respect and we owe it to them that we should give our constitution.

Mr. Brown: Are you would allow... you would like the problem of getting funds to build housing for senior citizens and older, for instance, retiree and young, things you do that. In many instances, the funding itself is based on the requirement.

Mr. Velazquez: The federal government gets all the money for the housing. It considers funds for money for the aged, for housing funds for low-

come, it provides funds on a number of different bases. What you ought to do is let the federal government have their own create some funds for housing solely for persons who have children, solely for persons who don't want to be around children, solely for persons who are left-handed, solely for persons who are right-handed. I feel this is your right, Senator Brown.

Mr. Brown: Well, you are being arbitrary now, I'm asking you about children in apartments, though if I want to live in an apartment without children, as I read your amendment, an apartment owner can't make this available. Now, do you agree with me, or don't you?

Mr. Velazquez: I don't agree.

Mr. Singletary: Would your amendment force a landlord to lease to say, someone sixteen years old or under that?

Mr. Velazquez: Not specifically. What it would do would be it would try to give equal rights. This is not a thing to force people down your throat, but it's a question of keeping you from cutting their throat.

Mr. Stagg: Tom, in reading this thing as I'm now reading with your amendment in there that all persons shall be free from discrimination on the basis of age in access to public accommodations and from arbitrary, unreasonable or capricious discrimination on any such basis in the hiring or promotion practices; with the adoption of the Hayren amendment, does not now the adding of the word "age" put "age" into the nondiscriminatory in hiring practice as well as in public accommodations?

Mr. Velazquez: To an extent it does and to an extent it doesn't. Those aged persons who are receiving various pensions and other means of financial support would, in a sense, be penalized... they would be penalized by taking a job.

Mr. Stagg: Well, let's don't talk about that which age. Suppose the man is forty-six and the employer doesn't want to hire over forty-five. Can he not then go to this constitutional provision and state that because you've got fifteen or more employees you've got to hire me because all you are discriminating me is that I'm forty-six instead of forty-five.

Mr. Velazquez: I feel he may have a basis but he would have to prove his other qualifications for that job other than the fact that he just happened to be a certain age and happens to want that job. I mean I just can't walk into a place and tell a man he has to hire me if his only openings are for welders and I don't know one end of a blow torch from the other.

Mr. Lanier: Velazquez Velazquez, I'm concerned about if I suppose I was a barroom operator and a twelve year old child came in my barroom. Would I tell him to get out?

Mr. Velazquez: Definitely.

Mr. Lanier: Would this not be a discriminatory based upon age?

Mr. Velazquez: I don't feel that it would be. I think it would be under the public power of the state. You are, in a sense, private time.

Mr. Lanier: Also, suppose I was a hotel operator and had an 11 rated movie would I, under this authority, be prohibited from having that movie, a twelve year old child, from having that 11 rated movie?

Mr. Velazquez: Not at all.

Mr. Singletary: You are you aware that there are certain movies, for example, about sex and violence

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blocks from here that have a housing project that only rents to people sixty-five years of age and older that are run by religious organizations that give benefits to these people that are sixty-five and over--low rents and fine housing? However, your amendment seems like it would do away with this because that type of arrangement would discriminate against someone under sixty-five in those public accommodations. Is that not true?

Mr. Velazquez My amendment is not intended to have that effect, and if you have some perfecting language or some perfecting additional amendment, I'd be very happy to give it my support because my point is to provide the protection that these aged citizens feel that they need.

Mr. Arnette I realize what your point is, but it just seems like it is poorly drawn. Maybe if you would say "unreasonably discriminate against someone because of age, etc., etc."

Mr. Velazquez I would very happily accept that unreasonable restraint. Now I can better see your point, Senator Brown.

Mr. Arnette Well, in other words, Tom, you would accept that amendment. Perhaps you would like to withdraw your amendment and resubmit it with that language.

Mr. Velazquez I would rather run with it now and have you all make that addition later on. I will be very happy to cosponsor your amending language, but I would prefer not to withdraw it at this time.

Mr. Derbes Tom, I'm in sympathy, I think, with the purpose. . . with your intent here, but I'm not sure that it really accomplishes the purpose that you want it to accomplish. I'm not sure what "public accommodations" means as a term of art, but I don't think that "public accommodations" means private, rental property. So if you prohibit discrimination based on age in "public accommodations", I don't think that that phraseology taken in toto will affect private, rental property. It will affect, as I see it, hotels or other businesses that are in the habit of dealing with the public on a regular daily basis, but I don't think it's going to affect private, rental property. Now, maybe you could correct me.

Mr. Velazquez As I envisioned the term of art, it's being expanded by the courts and I feel it will cover this particular instance. But as I said to Mr. Arnette, I'd be very happy to consider and support anything that you think would help moderate this or bring it into compliance with your objections.

Mr. Avant Mr. Velazquez, if I had an opening in my law firm and I wanted to hire a lawyer, and I had two applicants for the job, one of them was forty-five years old and one of them was twenty-five years old, and I said to myself, I know the forty-five year old man is more qualified; he's got a lot more experience and he's a better lawyer, but I'm going to hire the twenty-five year old man because I want to bring him up my way, and teach him to do things my way, and think my way, and act as I do, would I be being arbitrary and capricious, and unreasonable?

Mr. Velazquez I would not think so in that particular field. In some other fields it might be.

Mr. Avant Do you think that if I propounded that question to a hundred people that there is any way to predict how it would be answered by the majority?

Mr. Velazquez No, I don't think there would be any way to predict how you would be answered.

Mr. Reeves Tom, are you. . . in reference to Mr. Arnette's question, are you familiar with the federal housing projects and the type Federal hous-

ing programs that are available?

Mr. Velazquez I know that there is federal legislation for certain types of housing for certain groups of persons on different bases.

Mr. Reeves Are you familiar that the federal government has a program called 221 D3? They allow. . . which is a supplement to that, they handle low income housing for the elderly, and so on and so forth. Are you aware that your particular provision would be. . . if this amendment was passed, the federal government itself would discriminate? Are you aware of that?

Mr. Velazquez In effect, the federal government does discriminate by allotting different proportions of their housing funds to different groups. But no one, I think, has yet challenged the federal government for discriminating on various bases because the federal government contributes their overall plan, is one of justice and fairness for all people. In a particular instance you could probably cite discrimination, but you have to consider their overall plan.

Mr. Reeves The second question is this. Would you agree that if you had arbitrary, capricious language placed in the Act in reference to discrimination against age, that this would solve the problem? In other words, if you would withdraw your amendment and place this in there, would you agree that this would solve, I think, all of our problems?

Mr. Velazquez It wouldn't solve all of our problems because there is nothing that can solve all of our problems, but it might go part of the way. I think that we have a fairly good vehicle here, I'd be very willing to accept any additional language or even cosponsor it.

Mr. Kean Mr. Velazquez, as I understand this section it now reads there are really two parts. One deals with discrimination on basis of race, color, and so forth in access to public accommodations; and the other deals with unreasonable discrimination with respect to hiring and promotion practices. Now, if I understand your amendment, you would add "age" applicable to both of those parts. Under those circumstances, if we had an "X" rated movie, he would no longer then be able to say that persons under seventeen years of age couldn't come to that "X" rated movie with your amendment, would you not?

Mr. Velazquez It seems to me you still could do it, but it appears that there seems to be some confusion. If I could see one of my coauthors for a minute, perhaps they would be willing to join to allow me to perfect the writing, but I couldn't do it without consulting them. Mr. Arnette.

[Amendment withdrawn.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Velazquez]. On page 3, line 14, immediately after the word "ancestry" and the comma ",," and before the word "and" insert the words "physical handicap"

Explanation

Mr. Bergeron Mr. Acting Chairman, ladies and gentlemen, I may run into the same problem as Mr. Velazquez has just faced, I hope I don't. The reason I'd like to insert "physical handicap" in this section, it simply goes back to the language of our Preamble. One of the first three words of the language in our Preamble--"We the people," that's the first three words. Now one out of every twelve Americans in the United States are physically handicapped. I do not believe we should discriminate against a person, be it on the basis of whether he is crippled or physical handicaps of this nature. I do not feel that we should discriminate against a

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person of this nature. You know, it always seems to me that when I see something of this nature happen where people never take a very great interest in a matter until it affects them, until it hits home, until someone in their family or one of their friends has the problem. Then, oh, wait a minute, let's look at it. Then, this concerns me, let's take a closer look at this. But if it doesn't affect us just pass it by the wayside and say, we've got to do it, we've got to do it, it doesn't affect me. Why shouldn't a person who is in a wheelchair have access to public accommodations such as theaters, such as hotels, such as restaurants? I think our government was founded on fairness to all. I'm going back to the words that Mr. Kendall has used when he has spoken earlier on this. He said, "I believe we have come up with something that is fair for all." Well, let's make it fair for all. Let's not think of these people as "disabled" or people who do not belong in society. The physically handicapped want to be citizens, taxpaying citizens. Sure, they are good enough to go and fight for us overseas, or they are good enough to be in the army, or in the navy, they get injured, well, we're not going to worry about them anymore. Now I heard someone say earlier, if we insert the word "unreasonable" in the preceding section, well, that might be fine. I could go along with that. I would have no objections to that. But, I do feel strongly that the physically handicapped of our state, of our nation, play a very vital role in our society. I do believe that they should be accepted as citizens. You know, having worked with you delegates over the past eight months has been one of the biggest privileges I've ever had in my life. It was once said by someone I know, "that there are two ways to defeat a man the way is to push him down and step on him, the other way is to lift him up." I think by working with you over the past eight months I feel that you are those type of people. I don't think by asking for anything unreasonable, looking at our Preamble, it states "to secure the blessings of freedom and justice to ourselves and our posterity." That's what we are trying to do. To afford for the fullest enjoyment of individual rights. That is, we are trying to do, to assure equality of rights that is in our Preamble. That is what we are trying to do. Ladies and gentlemen, I urge you to give this your fullest consideration. Think about it carefully, think about what it means to the physically handicapped people of this state. I'll yield to any questions at this time.

Questions

Mr. Alzakal: Well, I'm not in disagreement with the original intent of your amendment, but I think your amendment is in the same boat as Mr.

Veizquez's was in that since we have added the words "to the fullest enjoyment of individual rights" and "to promote the realization" that there words being added to this section drastically changes the impact of what your amendment will have.

Mr. Bergeron: Well, Mark, I don't really that your amendment, we just would would say that you would not discriminate unreasonable or capricious, or things that would make it. I think if a rip-off man wanted to be a truck driver, for instance, I think it would be reasonable discrimination to say, "Well, you just can't fill the job." I don't think that it would really matter that with I think that the previous amendment which we have passed would take care of situations of this nature.

Mr. Alzakal: Mr. Bergeron, I have a son who is thirty-five years of age and in he has had five years of age he has had diabetes. Recently, he filed an application with a major company and he was accepted, but when they found out that he had diabetes, they turned his application down. Would he be covered under this amendment?

Mr. Bergeron: Well, in sincerity, Mr. Winchester, I really don't know the answer that you I think it would probably be in the situation of an estate

an instance where I as familiar with. A gentleman I know is partially crippled, he is in a wheelchair although he can walk with the aid of a cane. He graduated magna cum laude in high school and magna cum laude of college. He did excellent in law school. When he went to apply for an application with a law firm, they would not even look at his application because they found out he was physically handicapped. I agree that it is the prerogative of the individual to hire or take on anyone he wishes, but I just don't feel... I feel that if a man can fill the job and an able job well, I feel that it is entirely not hiring the man on the basis of a physical handicap has no place in our society. That's the way I'd look at it. I'd like to think it would help that situation, Mr. Winchester.

Chairman Henry in the Chair

Mr. Conroy: Mr. Bergeron, I've had some personal experience with this, too, but you do understand that there are some occasions when an area of public accommodation, such as a theater, may feel that for the safety of the person himself, in the event of fire or something like that, but there might be a problem and that therefore, they don't feel they have adequate facilities to handle someone who is in a wheelchair? Don't you feel that that respect your amendment does have the same problem that Mr. Veizquez's has?

Mr. Bergeron: Well, I can see your point. I do feel that all theaters and restaurants and hotels should have adequate access and exits to the facility. I guess it would depend on the particular situation but I could see your problem occurring.

Mr. Conroy: Right.

Further Discussion

Mr. Jackson: Ladies and gentlemen of the Convention, I'm not going to attempt to get up here and suggest to you that we ought to list everything from here that affects human rights and privileges till tomorrow. I think you're right. We could come up with various categories. I think that saying as a coauthor on two amendments, age and the physical handicap, that what we need to do, and I think there are some problems, but we need to raise to this constitutional convention, we need to raise this issue here so at such time that the consciousness of not only delegates but that the people throughout the State can recognize that there are some serious problems in these areas. I do not wish to, and I guess my points by me coming up here has indicated that I have basically stuck with the Bill of Rights Committee. I can understand some of their rationale for not supporting this amendment. I don't necessarily say that I agree with them, but this is where myself and the Bill of Rights, we split. I want to suggest to you in the matter of physical condition, if you look at section 1, where it talks about state action, that you've got the same kinds of problems existing void of state action for those who raised the arguments, and I am concerned about some of the arguments against it, those who raised the argument about, you know, "just because you permit me to talk about the same conditions, then you'll give me something up here again." But in the matter of housing, when it came to the physical handicapped and the matter of aged, you know, that is done by all of us and there is nothing that this convention can do to solve that. That's no problem. For those who talk about, Mr. raise the issue that you are doing to require certain people to be in certain accommodations for the physically handicapped, I mean, it's just a matter of fact that there are a significant amount of the people of this state, and we're talking about a constitution for all the people, now, that requires that we must have a way. The state does it. I don't believe that you would like to force the state to do this, to make it a matter of fact that it not be forced to accommodate someone if the substantial part of our population is physically handicapped.

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his rights. I think there are some problems in this area, but I would appreciate it that we do not suggest, particularly to the physically handicapped and the agents that are viewing these proceedings, to hear such argument against this amendment as being proposed. Just think that is a misrepresentation of the facts. Now I would suggest, as to Mr. Bergeron, that's his prerogative as lead author, that he do like we did with the aged provision and see if we can accommodate those concerns that we have. But I would not like this convention, in the proceedings, to reflect back to the rest of the state that we are not concerned about the plight or we're not concerned about the aged—the plight of the handicapped and the aged because... and that we've satisfied certain segments and certain categories, we'd let the other ones struggle for the next fifty years. I think that's a bad thing, precedent, that we do. So I think if you got opposition, I don't want to monitor it, be cognizant of the fact that that's going on in this building by ourselves, but that there are people viewing our proceedings. I think they could very well understand that when you talk about some of the problems including the way the language is, that that is not meant to be a denial to physically handicapped and the aged, but that there are some practical problems that need to be resolved.

Further Discussion

Mr. Jack Mr. Chairman and gentlemen and ladies, I am for this amendment. I am also a coauthor of Mr. Velazquez's Bill for the Aged. I want all these people treated the same. Now I've had a lot of experience with the physically handicapped. It has been my experience, and it's an amazing thing until you see it, the physically handicapped goes to work, works, does things, and yet I'll see people not physically handicapped at all that will not work. I, for the life of me, cannot see why they should not be in here.

The same thing for the next amendment temporarily withdrawn will be back just like it was except with a little change of the word, "the aged". I'm speaking this because it goes together. That's to keep that one from being confused with real young people.

Now, back to the physically handicapped. They are going to force the employment being in the thing. It's going to be that the discrimination cannot be arbitrarily, capriciously or unreasonably just like the other categories were named there. It's not going to mean that you are going to have to take the physically handicapped that can't do its... your work. It's not going to mean that you can't consider age of a physically handicapped or of an aged person, and I'm going to answer, without being called upon, the person that asks the question about lawyers applying at certain ages.

Naturally, you would consider in it, if you wanted to train a person in your own way. The same way you'd wanted to work physically handicapped. Naturally, if there's work he couldn't do, or work that wouldn't fit your business, you wouldn't be arbitrarily, capriciously, unreasonably discriminating. And actually, you wouldn't be discriminating at all because you are entitled to get the best kind of people to work for you. But, if we are going to have a declaration of a human right here, let's include these two categories that have been left out that were included in the Section No. 3. So if they were in there, they belong here. That's why when you voted against.... for that... voted on that amendment awhile ago that that passed, I voted against it because it was one that would discriminate against the physically handicapped and against the aged, and we had amendments coming up and I'd like to have held it till all of them.

So let's treat all of these people fairly. Let's adopt this amendment, putting in here "the physically handicapped", then let's put in Mr. Velazquez's and my amendment as to the aged.

Thank you.

Further Discussion

Mr. W. Jackson Mr. Chairman, ladies and gentlemen of this convention, I rise in opposition against the present amendment before you and the previous amendment withdrawn, and I am speaking for the committee. We have considered this problem in depth. All of the members of the committee on Bill of Rights and Elections are in sympathy, in complete sympathy with the problems that confront the physically handicapped. We are in complete sympathy with the problems that confront our senior citizens. But we are aware, completely aware, of the fact that if you include the language offered by these two amendments, that you will be imposing on private individuals undue burden that is not consistent with their capacity to fulfill. It is not fair, it is not right to impose upon private individuals the kind of impositions that would have to be assumed by them by adding these amendments.

Now I know that... I know how individuals feel about this. But when we were dealing with state action, we felt that it was right, we felt that it was in the interest of this state, we felt that it was in the interest of this class that we would preclude discrimination against those groups. And that is why we fought for it, and that is why we worked for it, and that is why it was included, and that is why this is the one we adopted. But we are talking about a different consideration now.

And in due deference to my friends who are sincerely interested in this, I want to say to them that they are no more interested in it than I am. And they have no more sympathy and no more sensitivity than I have. But it is not right and it is not proper for us to place these... to amend this section by adding these two categories when we refer to action as it relates to private individuals and we ask that you would not include this in this section because it is too much of an imposition against private individuals.

Questions

Mrs. Warren Mr. Jackson, I'm going to quote one of your words. You said you were in sympathy with the handicapped and the aged, then you added "but". Now, if you met a man that was hungry and he asked you for a piece of bread and you said to him, "I'm in sympathy with you, but it's nothing I can do about it," when you had an opportunity to do something about it. But, I'm trying to find out from you now, what good is sympathy going to do when you are not willing, when you've got an opportunity to do something about it to do it.

Mr. A. Jackson If that sympathy is transferred into action, it would do a lot of good. And my sympathy motivated me to act when we were in committee and I'm motivated to act to defend the proposition as it related to protection and equal rights for senior citizens, and we did this on yesterday and so I don't believe that anyone can charge that this committee not only failed to recognize the problem, but transferred its sympathy into action on yesterday.

Mrs. Warren I'm sorry I wasn't able there to find your real meaning.
Thank you.

Mrs. Brien Mr. Jackson, if we are talking about employment of physically handicapped, wouldn't that give some conflict to the public sector? And as an insurer found out if an employee is handicapped, I don't think the insurer would insure him.

Mr. A. Jackson Well, I think you are creating all kinds of problems in the private sector. And that's what we are talking about in this section. We are talking about the private sector. We are not talking about the public sector. And as it relates to the public sector, we feel strongly as a committee that there ought not to be any forms of discrimination. And this is what we have addressed ourselves to.

But in the private sector, we do not believe that we can support the contention of individuals

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that was in a state building. I'm sorry, I should have said that. Yes.

Ms. Zervigon What your amendment, as I understand it, would do, would require the theatre owner to say to the man, "Of course, welcome you, come in." But you do understand that your wheelchair doesn't fit into our dressing room; and then let the man decide whether or not he'd like to bear that discomfort.

Mr. Bergeron That might be the cases in some places. Ms. Zervigon I don't have the exact measures of all dressing rooms in the state. But I would say that this would more or less apply to new constructions going up. I wouldn't say that every dressing room in the State of Louisiana would have to be modified.

Ms. Zervigon No, I'm asking you whether or not your amendment would require, for example, our issuance of building permits to be changed in such a way that we had to survey every building to see whether or not a handicapped person would be totally accommodated. Some of the handicapped people are not just wheelchair people, they are stretcher people. And I was just wondering if your intention was to change the issuance of building permits.

Mr. Bergeron No, ma'am, it does not.

Ms. Zervigon Thank you. Then I'll continue to support your amendment.

[Record vote ordered. Amendment adopted: 65-40. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1, on page 3, this is by Mr. Hayes

On page 3, line 17, after the word and punctuation, "activity", insert the following,
"no penalty other than that provided by law shall apply to any conviction for an offense".

Explanation

Mr. Hayes Mr. Chairman, ladies and gentlemen of the convention, I've seen some of everything, something for everybody, but looks like to have something for the entire state, this would be it. If we don't have people listening to this, I can bear with you. Sometimes I fall in that class myself after spending a whole day in that chair it gets kind of boring, and I won't fuss about that at all.

The purpose of this amendment, I guess if I explain it and you listen you would probably see what it is and I may not have it in the right place. Several people mentioned that I probably should put it under another number. And if that's true I'd be happy to put it under another number. If I don't have it drawn right, and someone thinks they can draw it better, I'll be happy to do that.

It says, "no penalty other than that provided by law shall apply to a conviction and an offense". The sole purpose of this amendment is to stop the insurance commissioner from letting the insurance company set the rates on insurance. That's what it's for.

Now, I'm going to give you an example of what I'm talking about. Under Revised Statute 22:1415, the... it says "with respect to carriers of insurance to which this part applies, agreement may be made among insurers with respect to equit their apportionment among themselves of insurance which may be afforded applicants who are in good faith entitled to, but who are unable to secure such insurance through ordinary methods." And such insurers may agree among themselves on a use of reasonable rate modification for such insurance. Such agreements and rate modifications to be subject to the approval of the Casualty and Surety Division.

What the Casualty and Surety Division has done under the rate insurance program, is set up a sys-

tem where it is based on how many tickets you get. Now, let's see how that works.

A person who has no criminal record whatsoever, has violated no... who has not even had an accident, not even bent a fender, can get two violations, seven points is what you need. Under Section 905 of this section, seven points will commit one hundred and fifty percent increase in a person's insurance. Now let's see what that will amount to.

Take a person with ordinary means with two old automobiles where the standard policy on a liability insurance, let's say, would be one hundred eight dollars each, which would total out to two hundred sixteen dollars. A hundred and fifty per cent increase on this would be three hundred and twenty-four dollars which would bring just liability insurance up to five hundred and forty dollars which would be twenty-five percent of this money would go to the insurance agency. All this is based on letting the individual be fined again after he has been fined by the judge. And letting an insurance company rate people individually rather than in a group.

Insurance, in my honest opinion, and the definition will say it's the pooling of the resources of the many for the anticipated losses of the few, and I believe you could cut out some of the discrimination that's going on and when everybody in this state is affected. Now, some of the people, if you... in some high up or some high office... you might be able to not go through all of this ticket business. You might be able occasionally to not go through the court system and get your ticket on record. But let me tell you what happens. They send your ticket out to a computer and the state keeps the computer. The credit bureau will order this from the computer for the insurance companies, and for two of these tickets, look what they can do again. Let me finish this program. I only gave you half of it.

Now here's the other half. Let's take the collision portion of the same two cars, there's an increase of four hundred and seven dollars. All right, what is the penalty for one year for two violations? Seven hundred and forty-one dollars. For a three year period, the penalty for two radar tickets when you have not had an accident at all is two thousand two hundred and twenty-three dollars, that's the ability. Now some... the jurisdiction of some of these courts were not covered. And this is the way the insurance companies are run in this state now. My reason for putting this is they say they wanted equal rights, equal protection... I've been hearing that. We probably have more rights in the '21 Constitution than we'll ever get.

I was in the United States Navy where you are supposed to have a lot of rights. I was never segregated more than I was in the United States Navy, and they had all this in the constitution then. And they had all these rights in the Constitution of '21 that we are talking... we are going to have to do something here in this constitution that's going to give somebody some immediate relief. And where we need it in the insurance industry in this state and every family.

Another place we segregate and we discriminate is about the twenty-four year olds have to pay an additional premium, have never had an accident and may not have a driver's license. They pay a higher rate. I would prefer seeing a young man, twenty-four years old with a standard rated policy, so he would have insurance in case he would have an accident with me, than to charge him at a higher price where he would go without the insurance, have an accident, he wouldn't have any. It's better to apportion this insurance on the basis where everyone would pay a small amount of insurance than to try to make one person pay it all because of discrimination, "cause some people don't get these radar tickets."

I yield to any questions.

Questions

Mr. O'Neill Mr. Hayes, you said that this may be in the wrong section. Do you think Style and

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Drafting could change the section if they have to

Mr. Hayes: I hope they could, and I would be anybody who can change the section, or any attorney, or anyone who can change the section or even change the entire structure of what I am trying to solve. If anybody here thinks they can change it, I'll be happy to accept the change. And if Style and Drafting can put it somewhere else, I'll be happy for them to do it.

Mr. Alexander: Mr. Hayes, do I understand the intent of your amendment is to end the penalty that insurance companies usually assess against a reckless or habitual reckless driver, one who has caused many accidents and who's been, maybe had many violations?

Mr. Hayes: No, Sir. It didn't say that under Section 7, I can give you a copy of this, it just said you can't have the way I measure you need seven points, Reverend Alexander. You don't need an accident and you don't need a reckless driving. All you need, the way I see it here, is just two tickets. And now that computer will not tell you what it was. They'll say you either had a moving violation or you didn't have a moving violation and if you're in there is all it does. It doesn't tell you any of this. See they rate you. Now they don't get a court record. They get their record from the computer which is nothing, see? And this is what they rate you with. This is the bad part about it.

And again, if a judge makes you pay a fine of a hundred or two hundred dollars that should be sufficient and you have a valid driver's license, I don't think the insurance company should again fine you. In this case, it would be two thousand dollars after you have been fined by the courts.

Mr. Alexander: Well, what I'm trying to get at is I understand that about this section, I think that is a little arbitrary. But if there is a habitual drunken driver, a bad driver, who has been involved in many moving and serious accidents...

Mr. Hayes: Good. Take his license away from him. That's how you solve that. You don't solve that by making or rating him as one. You're supposed to take his license. If he has a valid license from this State, you shouldn't do that to him. That's what I'm telling you. Have a solution there. Take his license.

Any other questions?

Mr. Jayard: George Dewey, you know a good bit about this point system. What happens if a guy has a ticket, whatsoever, but he goes to a social party one night and then he gets picked up by the van and gets a DWI ticket. Say he runs 100... I said what happens? A fellow goes to a party one night, although he has no record, no previous driving violations, but he gets picked up by the van and he runs enough to have a DWI ticket. What happens in his point system, then?

Mr. Hayes: There is a certain amount of points. It's here for that. They'll give him a certain amount of points. I'm saying if the judge gives him a fine, that would be sufficient for the second, whatever number the judge imposes should be. If he wants to take his license, take his license. If you're going to charge him five hundred dollars, charge him five hundred dollars. But in addition to that, don't go and let the insurance company make him an insurance company of one.

Mr. Jayard: Let me see if I can just get a better idea. Let me see if he has to go and give his license to any insurance company, which required him to go on and insure an insurance premium?

Mr. Hayes: Yes, Sir. That's what they do. They go and say that they go down and they make him go on and insure. In saying, you would just let it be

state it would be fine him sufficiently, that should be the penalty rather than the insurance company imposing the penalty. The penalty is enough. Who is going to impose it?

Mr. Fayard: But actually, in this case, he would have two penalties, right?

Mr. Hayes: He has two penalties. That's all I'm saying. And I'm saying anybody who can help write this better than I have it here, welcome it. Yes, Sir.

[Aurum Call: The Moderator present and in question.]

Mr. LeBlau: Mr. Hayes, I believe you are discussing your amendment on the increase of insurance premiums?

Mr. Hayes: Yes, Sir.

Mr. LeBlau: O. K., I just wondered what your opinion would be of a person who, say, had an accident and under this provision his premiums would not be allowed to be increased, nor could his policy be canceled. What would happen to that person when his insurance policy ran out? Do you think that the insurance company would renew his insurance?

Mr. Hayes: Is that the amendment I'm running you are reading there?

Read the amendment. I don't think I'm running the one you have in your hand.

Mr. LeBlau: I just asked you that as a beginning, Mr. Hayes.

Mr. Hayes: O. K., good, good question. When a house burns, we don't cancel a person, we don't do this to a person whenever a house burns down, say you can't get house insurance unless you can find some reason to say that it was arson or something like this. If the person didn't intend to have an accident, I don't think he should be penalized from having insurance again.

And remember, again, the insurance doesn't belong to the insurance company. It belongs to the people. The people pay the premiums. It's imposed on everybody. Whenever there are accidents, it's paid for by everybody and the insurance companies make a margin, or make a profit allowed by the Rating Commission. It should be done. They should make a profit. But they shouldn't be allowed to go around canceling people's insurance so when they have an accident with me or with you, they won't have any insurance. You see what I'm talking about?

See, I want them to have insurance if it runs

Chairman Henry in the Chair

Further Discussion

Mr. A. Jackson: Mr. Chairman, ladies and gentlemen, the title to this section is "Freedom from Discrimination". Now, I rise in opposition to the Hayes amendment, the one and the one that is pending. I rise because it simply has no place in this section. All people are being treated alike as it relates to the question and problem that is being now asked. Now, I recognize the problem, but we simply must deal with it in this section. If possible, I know that I see a lot of people in people's faces out there, because I know what their strategy is. I'm not going to ask any charges here, but I think that we all know that it is simply a subterfuge to vote for some of the amendments that have been proposed and that's getting passed. So I ask you not to amend this section. If you're not here, it would be better that we not amend it. The purpose of this is to amend it. I ask that you vote against this amendment because it simply does not belong in this section.

Closing

Mr. Hayes This is the only amendment...it's just like I told you there are...you could say what you want...I told you a few minutes ago that I was in the United States Navy and we had all of this Bill of Rights then...I don't know a place they segregated more at the time than they did in the Navy...complete segregation. So here is something that will help everybody in the state immediately. You can go home and point this out to everybody and say "what have you done for me?" Say "I've done something for you in the area of insurance." Everything else I've seen done here has been done almost for the handicapped, it's involved ladies, it has involved lawyers, it has involved some particular group. This will involve everybody in every home. Now the question I'm saying is this, you can help everybody in the state by seeing all of us share an extra dollar or two. Believe it or not I'm not even for twenty-five year olds and twenty-four year olds paying an additional premium because here's what it does; with the two tickets...what I just read...think about a twenty-four year old boy already paying about two times the rate and you put all this on him then what's going to happen? He's not going to have insurance - he's going to run into you-O.K.? He's not going to have insurance O.K.? That's all you're doing, is forcing a lot of people in the street without insurance and you think you're doing something big. When a person runs into you. [...] He doesn't have a thing...doesn't even have insurance. Now the state does not, unlike people think, they don't demand that you have insurance; they only ask you after you have an accident to show financial responsibility or to raise your license, but they're not going to do anything to you until you have an accident. But if you fix insurance so that you can have...everyone can buy it and you can buy it reasonable, you can have insurance. Now you know that we operate like Blue Cross...Blue Cross operates and they insure everybody...if you got a group policy everybody's insured. Question?

Questions

Mr. Thompson First question. What business are you in? Insurance business.

Mr. Hayes No, sir.

Mr. Thompson Second, won't he raise everybody else's rates?

Mr. Hayes Now, here's what insurance is all about. Let me tell you.

Mr. Thompson No. Answer my question.

Mr. Hayes I don't know if it would raise everybody else's rates. It might...just like ad valorem tax or anything else. Whenever there's a tax, a small tax on everybody is better than one or two people running into somebody having a total loss because they didn't have insurance. Now, I would prefer paying an extra dollar or two so that boys under twenty-five could even get insurance. That's alright with me; I'm not trying to save that dollar; I don't mind that, you see. I would rather do this so everybody could have insurance...you wouldn't have to have all these assigned risks and surplus lines where people running all over here hiding in the surplus lines and going down assigned risks raising everybody's rates on the individual basis. You'd have a clean slate and you'd have a good insurance program here in this state if you adopt this amendment and you cut this foolishness out. The next thing I want to say is, we're being raided by the radar machines and the zascar machines, you see. They're watching you being done...that's what it's being done by and you know all this isn't done absolutely and totally fair because some people mail in the fine. Some people don't go to court; some people have cafeteria court; some people call down to the sheriff's office, say "what is the fine?...put in a

check and mail it down. They might not go down because the fine is too low or even fight the case. I would urge the passage of this or if anyone has something better, I would support that.

Mr. Alexander Mr. Hayes, is it not true that life insurance is based on, actuarially on, the level premium where the ten year old pays more than he should pay at that age and the fifty year old pays less, so there is a level premium across the board?

Mr. Hayes Well, I'm not speaking about life insurance, but I would assume that you are correct. This is not life insurance that I'm talking about.

Mr. Alexander Well, I think the aim of your amendment is to bring this more in line with...

Mr. Hayes Maybe more in line with that...

[*Revised White ordered. Amendment proposed: 80-48. Motion to reconsider tabled. Motion to take up other issues adjourned: 80-48.*]

INTRODUCTION OF PROPOSAL⁴
[I Journal 424-42]

Personal Privilege

Mr. Weiss Fellow delegates, I have no intention of delaying you for the long weekend but I contend that we are defeating this constitutional convention. We are going bankrupt in time. Thus far this is our fortieth constitutional legislative day in a three month period. We've averaged three days per week; we have at the present time averaged eight days per article on the last three articles we have approved. Simple arithmetic leaves one to calculate that we have time for six more such articles before the end of December. Time is running out. I ask you, can we meet longer hours or days; can we reduce debate; can we reduce floor amendments; can we accept the responsibility to write this constitution for the people of the State of Louisiana in the time assigned? We have some serious problems before us; education, retirement, taxation, civil service, natural gas sales; these problems...dock board...name them, you can assume that we have yet to act on them. I ask at this time that the Executive Committee, by its next meeting, to help us all, come forth with a schedule that we can adhere to, to complete the matters before this convention by the date we are assigned to present this document to our governor. I think we can expect nothing less from you and me and our Executive Committee. Please let us work together to complete this document. I do not want to be part of a sinking ship. I have done everything possible as crewman to do my share. What now will you do?

Announcements
[I Journal 41]

[*Continuation of 80-48. Motion to take up other issues adjourned: 80-48.*]

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Wednesday, September 5, 1973

PRIVILEGE

RAIER

Mr. Raier: In these few days, say all the work began to continue and end in three... I feel constrained to report, in view of the fact that I have been quite... The charge was made that this committee, in the absence of... proceeded to report unfavorably a proposal that he had presented to that committee...

PRIVILEGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

Personal Privilege

Mr. Aertker: Mr. Chairman and fellow delegates, on the occasion of your last meeting here there were several allegations made about the conduct of the committee on education. I feel constrained to report, in view of the fact that I have been quite... The charge was made that this committee, in the absence of... proceeded to report unfavorably a proposal that he had presented to that committee... I feel that this proposal of Mr. Leithman was given more than adequate thought. Mr. Leithman was absent when the committee proposals were presented and he was absent for a period of two weeks. As chairman of that committee, I was not advised as to the reason of the absence, but that committee was held three weeks prior to the action that they took that we had attempted to resolve all of the matters dealing with that matter of education. The vote of the committee that his proposal should be reported unfavorably... I just feel the case of the committee to this convention, which will have the opportunity when the whole matter comes up to you, and at that time I would advise you the just way and what was the real original the committee is making, what proposals Mr. Leithman is making, and we will please go along in your hands as to what the final judgment will be.

INTRODUCTION OF RESOLUTION

INTRODUCTION OF PROPOSAL

APPROVAL OF THE AGENDA, PLACING AND READING

Mr. Chairman, delegate branch of No. 101, representing the... A proposal to appoint a committee...

Mr. Henry should be referred to the Committee on Education, Health and Welfare under their jurisdiction late, why do you rise, sir?

Motion

Mr. Tate: Mr. Chairman, I don't know what about parliamentary procedure, but I read the papers and it seems to me that the retirement provisions for judges as to the judiciary, do they not?

Mr. Henry: Well, retirement is being considered, it is by understanding, by the Committee on Education, Health and Welfare and to retain jurisdiction of course, I understand that you are talking about, so you object to the ruling and move that the proposal be referred to the Committee on the Judiciary, I would assume, is that correct?

Mr. Tate: All right, will you do it...

Mr. Henry: Why do you rise, Mr. Willis?

Mr. Willis: Mr. Chairman, we voted on that last time...

Mr. Henry: No, sir, it was a different question.

Mr. Willis: The question of which committee would have jurisdiction over retirements, and we voted on the Judiciary overruling the Chair.

Mr. Henry: But it was a different proposal last time and to remain... I say that under the rules it is referred to the committee.

The gentleman has objected to it being referred to that committee and has moved instead that it be referred to the Committee on the Judiciary...

Mr. Willis: May I humbly join his objection?

Mr. Henry: I'm sure that the convention will feel that way, but for me, I've got to abide by the rules on the referral to these.

[SPEAKER] SPEAKING IN ORDER, REPORTS REFERRED TO COMMITTEE ON EDUCATION, HEALTH AND WELFARE...

REPORTS OF COMMITTEES BY NAME

INTRODUCTION OF PROPOSALS

FINISHED BUSINESS

APPROVAL OF THE AGENDA, PLACING AND READING

Mr. Knight: Committee Proposal No. 101, introduced by Delegate Ed Koon, Chairman in behalf of the Committee on Civil Rights and Liberties, which is a substitute proposal for Committee Proposal No. 101, given by Delegate Jackson, Chairman in behalf of the committee.

A proposal to provide for a Breach and a Separation of Rights to the constitution. The motion of the proposal at this date so that the convention has adopted, as amended, the resolution of the constitution, the proposed article 10th and the first six sections as grounds of similar proposals, presently has your authorization... I suggest the motion of your committee to this convention to that particular resolution has not been adopted as yet.

Further Business

Mr. W. Knight: Mr. Chairman, I have the motion...

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tion for about three minutes. I think I could resolve some of the serious conflict that we have by way of this section. I believe that the resolution would be in the interest of this deliberative body and in the interest of this state and the passing of this constitution. The committee seriously considered the language that is before you in Section 7 without the amendments. But, because we have promised that we would defer to the judgment of the members of this body, we feel it is very necessary that the committee would have the opportunity to research very carefully the questions raised by way of the amendments adopted by this convention. We believe this because we believe that it is our responsibility to be able to rationally answer several questions raised by delegates to this convention, relative to the implications of the adding of the wording contained now in Section 7 that deals with the physical handicap, deals with employment that will probably be raised by adding the word "age" to this amendment, and because we want to be able to rationally and definitively discuss this section with you, we would ask leave of the convention that we would be able to withdraw this section at this time and consider delegate proposals that have already been introduced and researched very carefully the question raised by way of the amendments so that we could return to this body and make a definitive statement and be able to deal rationally with some of the questions that have been raised. Mr. Chairman, in behalf of the committee, I would like to introduce this floor amendment that would delete the language found between lines 12 and 18 inclusively and ask that the Committee on Bill of Rights and Elections would give full consideration to the delegate proposals introduced, as well as the questions raised by way of, for members of this convention.

Amendment

Mr. Poynter Amendment No. 1 [by Mr. A. Jackson]. On page 3, delete lines 12 through 18, both inclusive in their entirety and I have added, with your permission, Mr. Jackson, including convention floor amendments thereto.

Point of Information

Mr. Gravel Mr. Chairman, would you have any objection to an amendment to the motion that Section 7 be deferred at this time, hopefully that there might be some determination made by the committee?

Mr. Henry I think their committee has met and made its determination, and I think they have thought through it relatively well. Of course, we are going to have to dispose of the amendment because the amendment, if it's offered.

Mr. Gravel Mr. Chairman, I have some feeling about it, and I would just like to be heard on it because I think I would like to offer a substitute motion. When I'm in order to do so, I would like to be recognized for that purpose.

Mr. Henry Well, the amendment's being offered. It will be necessary to accomplish your purpose to defeat the amendment, and then your motion would be in order, but we have to dispose of the amendments first just procedure, Mr. Gravel.

Mr. Gravel Well, are we going to consider the other amendments so that are before...as we have been doing heretofore, consider all amendments at one time?

Mr. Henry Well, heretofore, what we have done is if we got an amendment to delete a section, we take that amendment first and this would be what we are doing here, Mr. Gravel.

Mr. Gravel Well, I didn't know we had done that before, Mr. Chairman.

Mr. Henry Yes, sir, if you will recall, at your

suggestion, several times we called up an amendment to delete a section...

Mr. Gravel I don't need any help on this question, please. All I want to know is this, in the event this amendment passes would it be proper then to consider other proposed amendments to Section 7? In other words I have an amendment that I want to present to the body in lieu of Section 7.

Mr. Henry In the event Mr. Jackson's amendment is adopted to delete Section 7 as written right now, certainly, you could come right back and say on page 50 and so, add...

Mr. Gravel That's all I wanted, thank you, Mr. Chairman.

Point of Information

Mr. Jack Before we adjourned last week, we had put in this Section 7, in the part where we put physically handicapped, different other things, everything but the aged... Delegate Velazquez and myself have an amendment for the aged. I think since this is going to come back, and with Delegate Jackson's permission, I think we ought to go on with the amendment for the aged and have that in along with the handicapped and the others in this first sentence and second sentence and third sentence of Section 7, do you mind that?

Questions

Mr. A. Jackson Delegates, may I simply say that, Mr. Jack, with due respect to your pending amendment and to Delegate Gravel, we just believe there are too many unanswered questions relative to private sector as it relates to senior citizens that must be resolved and must be fully researched. Now I can promise the delegates, in behalf of our committee, that we are going to give full attention to these questions, but we do not believe that it's fair to ask delegates to vote upon this proposal, and we have not studied and given full consideration to including age and to including some of the other provisions that have already been adopted by this convention. We think we have some far-reaching implications here that's going to redound to the dissolution of some of the support that we have for the constitutional convention and for the adoption of this constitution by the people. We believe we can resolve the difference if we can recess the question, so all we are asking for is time to give full consideration to the propositions and the questions raised by way of the amendments.

Mr. Jack Mr. Jackson, let me ask you this. If we had stayed in session ten minutes longer the last day of the session last week, we would have had the aged in there. Now your committee's had since about February 1 to resolve all of this thing, all other committees, and it looks like every committee proposal has been torn to shreds on this floor. I'm asking you why do you object to ten minutes to at least put the aged in here in the same category as the others we are going to be at a disadvantage looking after the old people, aren't we not?

Mr. A. Jackson Well, I answer you, Mr. Jack, by saying that the committee... if you will read the language clearly that was proposed by the committee in Section 7, you will find no reference to age, nor any reference to individual's physically handicapped, nor any reference to outlawing discrimination in the area of employment as it relates to the private sector. What I am trying to suggest is; that the committee did not intend for this language to be included in our present Section 7. Therefore, it is necessary for us to research it; it is necessary for us to give additional consideration to it.

Mr. Jack But what I'm getting at, your committee is a little committee-ten people out of one hundred and thirty-two. You all have been wrong so much,

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Don't you think it would be right to take a few minutes to add "aged" in here to equalize it with the other part about these that are sick and the disabled and those things.

Mr. A. Jackson I do not, Mr. Jack, in the light of some of the problems that we have by adding that last amendment.

Mr. Landrum Mr. Jackson, I think I have to agree with Mr. Jack. I think the committee should go ahead with what you have, and I would like to know this from you: what area do you find that you need additional research on?

Mr. A. Jackson Oh, we're talking about the private sector, Reverend Landrum, and we will be asking individuals to make certain changes and certain accommodations in the private sector that we have no right to ask them, and we just have not considered all of the implications. All I'm asking you is that we be given the time to research the question as it relates to these three categories.

Mr. Burns Mr. Jackson, if the committee... if this is withdrawn and the committee researches the question more thoroughly of Section 7, will the three amendments that were voted on and passed overwhelmingly last Friday by the convention, will it be taken into consideration and not injected back in there in another form?

Mr. A. Jackson They will certainly be given full consideration and this is why we are asking for this time. As I said in my opening statement, that we intend to give full consideration to the amendments and to the questions raised by the amendments.

Mr. Chatelain Delegate Jackson, doesn't your amendment purely and simply delete Section 7, sir?

Mr. A. Jackson As amended, yes, sir.

Mr. Chatelain Well, I think you have a good amendment.

Mr. A. Jackson Thank you.

Mr. Bergeron Mr. Jackson, I offered an amendment last week pertaining to the physically handicapped. I believe what you are asking is just time to find out what effect this would have on this section...

Mr. A. Jackson That's all we ask, that's all we are asking for.

Mr. Bergeron You are saying that you will take these questions into consideration and won't overlook them?

Mr. A. Jackson I promise that we will hold open hearings; I promise that we will research the question of physical handicap, age, the whole business for open housing and everything.

Mr. Bergeron Well, Mr. Jackson, on that light I would support your amendment.

Mr. A. Jackson Thank you.

Further Discussion

Mr. Ray Mr. Chairman, ladies and gentlemen of the convention, I rise in support of the amendment, and I'm going to call for the question right after I speak if no one else is prepared to speak. We considered in this Bill of Rights section all matters that would possibly come up. We concluded, and the convention voted it down, that there were certain sections or certain elements of the population that we could not protect in Section 7 without stepping on the toes of others. We need to look at this thing all over again, and we propose in it a. Although I said, to all of you that we will look at it, but there are some very serious problems. I know a lot of you voted for the employ-

ment provision because you felt that it would give the states a first crack at determining whether or not a person in law there was a violator rather than a person being able to go to federal court. We realize though and we weren't able to explain it to you properly, but the federal provision which is the equivalent of it has a commission that sits and hears complaints. It has a method of implementation so that when there is a violation of the federal provisions, there is a hearing to determine the issues, and the court and the commission has teeth to do something about it. What we may be doing here, for instance, by putting something in our state constitution with respect to employment and putting a number like fifteen is that in the future if Congress reduces it to ten, we then would be having a problem in the state. But besides that, without any other implementation we would be opening the door for people to be discriminated against by way of employment, which is exactly what we were trying to obviate. In other words, if a person had a legitimate gripe, rather than be able to take it to a commission that would have been created by the legislature to implement the provisions, there would be no one; he would simply be delayed in his access to federal courts; he would have to exhaust the Louisiana courts and not get any remedy. We just feel, and we did consider most of these things, and we reached the conclusion that we should not go into them; we had legitimate reasons; this convention chose not to accept some of them, that's one thing. But, you do not know how far you've gone in adopting the amendments. I think you ought to give us a chance to look at them and come back to you again at a later date and show you exactly what's involved. For that reason, I think you ought to support the amendment, and I move the previous question.

Further Discussion

Mr. Jack Mr. Chairman, thank you for the compliment regarding me. I rise after driving two hundred and forty miles through the rain from Shreveport this morning. Now last week we thoroughly considered Section 7. The only amendments that I know of that remain was one by Mr. Yazzou and myself to put in the "aged" after we put in "physically handicapped" and we adjourned then. Another one by Mr. Gravel, which Mr. Gravel, this is my interpretation of yours, would put back in "the sale and rental" under the words "public of access" so we have gone over that. It seems to me like, and I don't know all purposes, but it's been over by that committee. Committees have had these proposals and this material since sometime in February, that's long enough. I ask to defeat this amendment, to delete Section 7, and let's take up Mr. Velazquez's amendment and mine which should be next. That simply adds the word "aged" one of the delegates, where we had aged in the other amendment, was worried about age referring to a small child, so we put aged. Now let me just briefly tell you a few things, and I ask you to please be quiet. Let me tell you, we are not doing anything for people that are old, and you are going to have people living older and older. Those people who are active should be able to have jobs, should be able to do something. Now this is just picked up at random in the Shreveport paper when I was home. Look at these ages. John Ford, director, died at seventy-eight, earlier, if he hadn't had that, he would have lived to be a hundred he was active up until two years ago. I'm going down just deaths here in the paper and underlining them in Shreveport. A man named Arnold, sixty-two, and the other one seventy-seven. Another one Gilly, inventor, the other one in Shreveport died sixty-six, Reverend James Hildabakk, a man of a hundred and four years of age, now he had a lung life, I heard that, that, and an active life. Now at farmville, I don't know too all different names in small towns, this one is seventy-nine, in Indian, seventy-seven. I'm reading the yearbooks, people live at all ages, much longer. Another one in Winfield, sixty-nine, one

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in Winnfield, eighty-five; one in Leesville, sixty-four; one in Leesville, forty-six; Point, Louisiana, seventy-nine; one in Koontz, ninety; one in Nacogdoches, Texas, only fifty-six; one in Nacogdoches, Texas, ninety-two; Center, Texas, seventy-six; Hope, Arkansas, seventy-six; Tyler, Texas, seventy-eight; eighty-four years of age in Marshall; seventy-seven in Nacogdoches; over in Russia, if it's true, a hundred and sixty-eight; you saw that; Arthur Tolkin in London, eighty-one. Now let's do something for old people.... Let's defeat this amendment and pass ours.

Further Discussion

Mr. Alexander: Mr. Chairman and delegates, I admit my bewilderment and confusion at this point. I saw the report of the committee. The report did not contain all of the language and all of the provisions that I wanted to see. Then when I understood and I heard some opposition that it contained more language and better provisions than some delegates wanted, I said this is good, we have reached a compromise. It doesn't have what I want from the left and it doesn't have everything the other fellow wants from the right. Now, I'm a little confused, and I have the following questions to pose to the committee and to the chairman—and may I throw in parenthetically that I believe the committee has done a good job up until now. But I believe the committee is panicking, I believe the committee has taken cold feet, and I believe the committee is now trying to retreat. I want to ask this question. Number one, this convention has been in session now for eight months, this is our eighth month. That committee has been meeting, as well as all the other committees, for those eight months. Tell me now, what can that committee do to obviate the possibility of everything to anything it will report on this convention floor. Number two, no matter what this committee reports subsequently, does this committee expect opposition or amendments no matter what the committee brings in subsequently and how much research it does or the members thereof do. There will still be the same amendments and those who oppose will still be opposed, unless somebody on the committee can tell me that those people who possibly will oppose it, which is their right, will not oppose whatever they are going to bring in then. Then what kind of vote do you expect now? The kind of vote that Proposal No. 7 would get now at this minute is an unknown factor, it will still be an unknown factor unless someone has polled all of the delegates and knows what each delegate will vote and how he will vote; then I'm willing to withdraw my objection. But at this point, I feel this question must be decided; I know it's a kind of wrestle question. I know it has a historical background and I know it could tear this convention apart. We are trying to avoid that. I know we might do everything possible to prevent tearing this convention apart, but I don't think we should retreat at this point. I think we should take our bitters with our sweets and if we win, we win and if we lose, we lose. That's all there is to it, and I'm asking you to oppose this amendment. Thank you.

Vice Chairman Miller in the Chair

Further Discussion

Mr. J. Jackson: Madam Chairman, ladies and gentlemen of the convention, I rise in support of the amendment as introduced by Mr. Jackson on behalf of himself and his committee. As most of you know and can recall on Friday, that I got up to this platform and indicated a strong support of inclusions of the term "age". I got up and spoke on behalf of the physically handicapped. I suggest to you that you ought to support this amendment because what it allows, and one of the things that came to my mind after talking with you delegates who were opposed to this section, who were not necessarily opposed to physically handicapped, it was the fact that there are some real unanswered questions.

There have been cases, and if I fall in that

category, I will admit to the persons who I got up here and spoke for, there are occasions when persons with very well-meaning intentions can include as we have attempted to do in Section 7, certain provisions not recognizing the overall ramifications. I would suggest that there exists a possibility where we may be in some cases, if we don't fully consider this matter, maybe doing more harm than we are doing good.

I, as a delegate, have attempted to constantly keep an open mind no matter how strongly I feel about a particular issue. I felt, and I still now feel that age and our senior citizens ought to be given just consideration without discrimination.

I don't think that as some delegates have mentioned, it's a matter of retreat on the part of the committee. But it is a matter to make sure that when we are doing something, that we are providing, not only in a meaningful way, but in a responsible way so that we don't do as equal harm as we call ourselves doing equal good. I would suggest to you that the committee proposal amendment offers the opportunity. It doesn't exclude or say that you can go before the committee and they won't consider inclusion of age, physically handicapped, or some other vital concern of delegates that may have not been offered at this time. But what it does is to allow this convention, and it allows each of us to go to the committee to keep Section 7 and the whole question concerning Section 7, in perspective. And I agree. I think once that is hammered out and the concerns are considered, then we bring it back to the floor so that we would not have continuous confusion as Reverend Alexander said, we won't have that confusion. I would suggest to you that if this amendment is defeated, we'll probably rehash what we went through Friday, and the whole question was to go through that and they want to give every aspect, every category just and fair hearings to determine the merits of inclusion.

To give you one example, and I know my time is short, even on the age, you know I mentioned about in the Act of Congress not being affected by it if we included age there. But doing the further research on my own, the one position you've got Social Security benefits, you know you have the nursing home situation, that can very well be affected. And I think that the agents, particularly, would very well understand that if this convention adopts Mr. Chairman's, Mr. Jackson's amendment, that is not saying to them that we don't want to include... that is saying that we want to make sure that we are not doing you any harm, and we want to hear the question really debated and allow all factions involved in this convention to air.

[Quorum Calls 99 delegates present and a quorum.]

Further Discussion

Mrs. Warren: I would like to say, really, for Reverend Alexander's benefit for one thing. I got up this morning at four o'clock in order to be here at this committee meeting this morning. I was of the opinion on Friday that I wanted to go on through with it, win or lose. But, really, if we lost, it was really too much to lose, and for me to gain a little bit by pushing the issue wasn't going to help the people of the State of Louisiana.

When we hired the... executive branch was supposed to be considered. If we had this convention, it was postponed and we took the legislative branch. And I don't think that that was stepping back or evading the subject or so forth. I think it was a matter that we should take up what we were prepared to do at that time. So I think that this point... I'm going to support this amendment for the effect that it could be withdrawn and reworked over because there were members here from the community at large that said they wanted a chance to come in and sit down and be heard on this subject. So at this point, I'm going to move the adoption of this amendment.

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[L'erevaux Question ordered.]

losing

Mr. Jackson Madam Chairman and ladies and gentlemen I've heard charges on the floor of the convention that the committee on Bill of Rights is trying to pull something.

The only thing that we are trying to pull, ladies and gentlemen, is we are trying to pull from the collective minds of this state and of this deliberative body, all the knowledge that we can pull in order that we can give it to you in order that you can make a rational and intelligent decision. That's all we're trying to pull.

There is no secret... it's no secret that there are individuals who would like to see the amendment and other amendments being considered, passed by this convention. It is no secret that they would like to see this section defeated, and they are entitled to their rights and their beliefs. I didn't come here to argue with you. But I did come here to ask you to allow this committee to get the full information for you so that you will have it in order to make the proper judgment. Now, I want to say to you that this committee was the committee that came up with the idea that we ought to consider the physically handicapped. It was this committee who embraced the idea first and who brought it to this convention. It was the committee on Bill of Rights that embraced the idea that we ought to care for our senior citizens. It wasn't an extraneous issue for us. We considered it in depth. We considered it day after day, and we concluded that it was in the interest of this state as it relates to state action that we ought to consider the senior citizens, and that's why it was included in Section 3.

So the charges that we are not concerned about senior citizens is without foundation. Now I've heard the charge that this committee has cold feet. What a ridiculous charge. For twenty years, for twenty years as Chairman of this committee, that's all I've done was to help half of me live to the whole fight for freedom and justice and human dignity. And if anybody believes that I have cold feet, I'll take my shoes off and they'll see that I am very warm.

Mr. Chairman, I ask that we pass this amendment.

Chairman Henry in the Chair

Point of Information

Mr. Burns Should this amendment of Mr. Jackson's be adopted, will all of the pending amendments on the same section be held in abeyance or deferred?

Mr. Henry They won't be held in abeyance because there won't be any more Section 7. But you know, we just don't know what's going to happen so you can't amend the line when the words have already been taken out of the line, if the amendment is adopted.

Point of Information

Mr. Gravel Mr. Chairman, I understood the Chair to rule in response to a question that I put to the Chair that if this amendment was adopted, then any other amendments that related to Section 7 would be available for consideration.

Mr. Henry well, Mr. Gravel, there are, I think, three amendments up here to add a Section 7 or which provide complete paragraph or sentences, and that make sense. But there are a number up here, two, that would be to amend out words in lines which are not going to make any sense if that paragraph is not there, Mr. Gravel.

Mr. Gravel I understand the distinction. I just wanted to be sure that I understood the Chair correctly.

Point of Information

Mr. De Blieux Point of information to this matter that Mr. Gravel inquired about. This amendment of Mr. Jackson's, as I understand, could be passed by just a majority vote. Now, if another amendment was proposed for this particular section, will it require sixty-seven votes?

Mr. Henry To add a section, it would require sixty-seven votes. That's correct.

Mr. De Blieux Well, we can delete it with a majority vote but it would require sixty-seven to add it back in.

Mr. Henry That's right.

[Amendment adopted: 489-9. Motion to reconsider tabled.]

Reading of the Section

Mr. Pointer Section 8. Trial by Jury in Civil Cases.

Section 8. In all civil cases, except summary domestic and adoption cases, the right to trial by jury shall not be abridged. No fact, determined by a judge or jury shall be reexamined on appeal. Determination of facts by an administrative body shall be subject to review.

Explanation

Mr. Guarisco Ladies and gentlemen of the convention, this Section 8, Trial by Jury in Civil Cases, actually has three facets to it, or three sections.

The first is that we would not change the law, but we would constitutionalize the right to a civil jury in the State of Louisiana. The present law is that there are civil juries in Louisiana, but they are merely by legislative act. In other words, the legislature could do away with the civil jury system in the state.

Now the committee proposal has several exceptions to a civil jury. I think Mr. Pugh has an amendment to this section that further amplifies on that and it may be a little better than the committee proposal in that regard. But the basic premise is, that we would retain and constitutionalize the civil jury. And let me tell you why.

If you believe in the participatory democracy, that is that the people should participate on all levels of government, then you should believe in this. There is no prohibition against the people being in the executive branch, whether it be governor or lieutenant governor, attorney general, mayor or... there is no prohibition against the people participating in government in the legislative area insofar as being in the legislature or being on a police jury, or being a member of a city council, or what have you. And that's good. I think we all agree with that.

Now when it comes to the judicial branch, the little difference, because we have to have men there who are versed in the terms of art, that is the law, people who are learned in the law. The average person cannot participate in the judicial branch insofar as interpreting the law. And I think we all agree with that, that we have to have lawyers, and lawyers become judges, and the judges are certainly educated in determining the law.

But, the people can participate in a determination of the facts. So, insofar as we can do it, we will let the people participate in the judicial branch by allowing them to sit on civil juries and listen to the facts and make determinations. So, in that way, we have people participating in all three levels.

Now, the second part of the article is that no fact determined by a judge or jury shall be reexamined on appeal. I know we discussed that earlier in the judicial article. I think the convention is now more familiar with why a civil jury is and what — how to distinguish facts from law. It's very simple that we are not going to change the law insofar as the judge makes a determination as to what the law is, or the court of

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Appeal saying the law was misapplied in the court below. But we do not do that. It is Judge or once a jury who sat in the Court of Record at the trial level, heard the facts, saw the witnesses, heard the inflection in their voices, witnessed their demeanor, is certainly much...in a much better position to determine the facts. If the case goes up on appeal, those facts are conclusions, they cannot be examined any longer. It brings us in line with the rest of the Western world. Last time, I think Judge Dennis, and mistakenly so, I've researched it again to make sure, is that we must follow our French tradition in letting the appellate judges reexamine the facts. That has nothing to do with the French Civil Code. France doesn't follow it. We got a little smidgen of it from Spain. Spain doesn't follow it, nor does any European country, no South American country, no jurisdiction in the United States and not even the Federal courts.

Now, do we feel...I know we have a good judiciary. But I don't think they are invested with ledger domain. I don't think their clairvoyance and psychic wherewithal they can supplant their appreciation of the facts above that of a jury or a judge who saw the witnesses. In fact, you know a lot of people say, "Well they've got too many lawyers here, and too many lawyers there." Well, I don't think the lawyers or the judges are in any better position to understand a factual situation. A man in the street, a fellow juror, a fellow citizen is certainly able to understand A B C when he hears it or sees it.

Now the third fact of this, I don't think you should have any problem with this, is that determination of facts by an administrative body should not be subject to review. Well, even the persons who believe that you should review facts, have to believe that you should review the facts of an administrative agency. For an example: the fire marshal can make the determination that your building is condemned by the evidence that he hears in his administrative hearings unimpeded by the rules of evidence. His conclusions cannot be reviewed by the District Court, the Court of Appeal or the Supreme Court. And what you are doing, in effect, is allowing....

Questions

Mr. Smith Mr. Guarisco, under this section here, it looks to me like you'd have to have a jury case and a Justice of the Peace or City Court. Is that right?

Mr. Guarisco Mr. Smith, that could be possible. Mr. Pugh am....Mr. Pugh's amendment which is out now, would correct that problem, if that is a problem with you.

Mr. Smith But as it stands now, it's that way.

Mr. Guarisco It possibly could be interpreted that way, yes, sir.

Mr. Smith Regardless of the amount and controversy, too, isn't that correct?

Mr. Guarisco No, one thousand dollars is an amount you have to have for a jury trial now.

Mr. Smith Well, it's not in here that way.

Mr. Guarisco No, it's not in here, no.

Mr. Fontenot Along the same lines, Mr. Guarisco, isn't it true that this thousand dollar limitation is in the present code of civil procedure but that you say here, "In all civil cases the right to trial by jury shall not be abridged." This is the constitution. It overrides the Code of Civil Procedure, don't you agree?

Mr. Guarisco I don't think....I think they could reasonably put jurisdictional amounts in there.

Mr. Fontenot Now, another question. Don't you

think this directly conflicts with what we passed in the judiciary committee proposal already?

Mr. Guarisco I don't think we hit the issue square on, and I don't think the convention quite understood it at that time.

Mr. Fontenot Don't you think we decided the issues of whether they should determine, review facts or law....don't you remember going over these same arguments, pro and con, and we voted on it in the Judiciary Committee?

Mr. Guarisco I just answered that question.

Mr. Fontenot Do you recall....O. K., another question.

At the present time, this first sentence, "in all civil cases except summary....etc.", isn't this, at the present time, in the Code of Civil Procedure?

Mr. Guarisco Yes, I just don't want it to be removed for all civil cases. The legislature could remove the right to civil jury all together. I recognize the limitations, and will accept the limitations.

Mr. Fontenot Isn't it also true that determination of facts by an administrative body, we have already covered that in the Judiciary Committee?

Mr. Guarisco We didn't cover it at all. We left it out as silent in the judiciary article.

Mr. Fontenot Another question. Don't you think maybe the best thing to do would be to just leave this section out all together?

Mr. Lanier Mr. Guarisco, if I recall correctly, didn't, at the beginning of this article on the Bill of Rights, didn't we approve something saying that all of the rights set forth herein are inalienable and inviolate?

Mr. Guarisco Yes, but someone could waive the right to trial by jury just like they do in a criminal case.

Mr. Lanier But the state could not waive it, is that correct?

Mr. Guarisco No.

Mr. Lanier O. K. Now, under the present Code of Civil Procedure, isn't there a provision that says in order to have a jury trial in a civil case you must elect to have it not later than ten days after the service of the last pleading?

Mr. Guarisco Whatever you say, I guess that's what's in there.

Mr. Lanier O. K. And wasn't this rule put in our Code of Procedure so we'd have an orderly handling of cases so we'd know in what cases there would be a jury trial and what cases we would not have a jury trial?

Mr. Guarisco I suppose so.

Mr. Lanier O. K. But if we had an inviolate right that was in the constitution, then this provision would be unconstitutional, wouldn't it?

Mr. Guarisco That doesn't bother me at all.

Mr. Lanier Well, but do you....what effect do you think that would have on the orderly handling of cases if a man could come in the day that the case is set for trial and demand his jury trial and get a continuance because there was no jury venire pulled.

Mr. Guarisco You can....you can certainly have reasonable rules of procedure to setup the jury system. That's not a problem.

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Mr. Lanier Mr. Guariso, do you mean to tell this convention that if there is an inalienable, inviolate right that cannot be abridged, that it would be waived by a procedure established by the state legislature?

Mr. Guariso An individual can waive any rights he can. You know a criminal can waive his right to trial by jury. You know that.

Mr. Lanier But wouldn't this statute provide for a waiver as setup by the state unless the right is obtained within a certain period of time?

Mr. Guariso That might be so.

Mr. Lanier And if that is so, wouldn't it be unconstitutional?

Mr. Guariso No, I don't think so.

Mr. Dennis Mr. Guariso, I understood you to say that under this provision, the legislature could establish a dollar amount under which it could provide that there should be no trial by jury.

Mr. Guariso I feel that they could. Yes.

Mr. Dennis How can you say that when it says clearly, "In all civil cases, the right to a trial by jury shall not be abridged", except for those few that you have mentioned there. I don't see how you can say that. Didn't they find it necessary in the Federal Constitution to set forth a twenty dollar amount?

Mr. Guariso Well, Judge Dennis, I have no quarrel if we would put a jurisdictional amount in the constitution. It is not really a problem now of a thousand dollars. It doesn't make much difference.

Amendments

Mr. Poynter The first set of amendments to be offered is a set by Delegate Duval. Amendment No. 1, on page 2, line 20, after section 8, delete the remainder of the line and delete line 21 in its entirety, at the beginning of line 27 delete the word and punctuation, "a bridge."

Amendment No. 2, on page 3, line 22, after the word and punctuation, "abridge," delete the remainder of the line.

At the beginning of line 23, delete the words, "examined on appeal."

Amendment No. 3, on page 3, line 23, after the word and punctuation, "appeal," delete the remainder of the line and delete line 24 in its entirety.

Explanation

Mr. Duval Mr. Chairman and fellow delegates, these amendments delete separately each sentence in the committee proposal. There are three sentences in the committee proposal, and there are three separate amendments. The amendment, each deleting a sentence, I thought that this would be the best way to present the issues to the convention so that each sentence embodies a different idea. And Mr. Pugh's amendment, I might like the first sentence, but I don't like the second sentence. You've got to vote for it all in one package. And this is the basic problem we had in drafting. In how we are going to present these amendments.

My first amendment deletes the first sentence, "In all civil cases except summary, domestic and adoption cases, the right to trial by jury shall not be abridged." The primary reason for my amendment is the way that the matter is phrased, not the content.

In Article 15, 16, of the Code of Civil Procedure, the law is stated about jury trials. It is presently not in our constitution. This, of course, is totally new. And it states that trial by jury

shall not be available in a writ demanding less than one thousand dollars, exclusive of interest and cost, a suit or an unconditional obligation to pay a specific sum of money, a summary execution, probate, partition, mandamus, habeas corpus, writs, warrant, injunction, concursus, workman's compensation, emancipation, tutorship and maintenance. In other words, there are many exceptions to when jury trials are available in our present law.

The word, "summary," used in the committee proposal, is totally vague and you could have a jury trial in an executory proceeding which is a formal closure, and have a jury trial there. You would have a jury trial in many instances which have historically been exempted in Louisiana with the word, "summary." And I don't think any lawyer would know precisely when he had a right to a jury trial and when he didn't under the committee proposal.

Therefore, my Amendment No. 1 deletes the first sentence, and if Mr. Pugh would come back with just his first sentence in his amendment, I might be able to go along with that because I think it states it a lot clearer. I just don't like his second sentence in his amendment.

The Code of Civil Procedure in its annotations provide that in connection with summary proceedings referred to in this article, the word "summary" does not include actions which are not truly summary in nature but are merely preference cases. I think it would be very difficult to ascertain what is summary and what is not. I think you need to specify much more clearly what is meant by summary in this article or you'll never know when you have a right to a jury trial and when you don't.

Now the second amendment, in my opinion, is the primary amendment which I am offering to this convention. The second amendment deletes the sentence two of the proposal. The fact determined what is summary and what is not, I think should be reexamined on appeal. I think this convention has already spoken on this issue. There was lengthy debate, and it is my opinion that it was the intention of this convention to allow appellate review of the facts.

Louisiana may be different in that regard, but I think we have a much better system of justice because of it. I have been a victim of it and my clients have on occasion, and I must admit generally the appellate court was right when it reversed. I think we need the check of an appellate review, because you should not perpetuate injustice if a jury makes a factual error. And all you have is subtlety with lawyers trying to find questions of fact, meaning questions of law. I think we have already spoken on it. I think we ought to vote on this because we have had a long debate on it. I think No. 2 should certainly be changed and it's a complete, drastic change in Louisiana law and I don't think it's warranted.

I think we have a very fine system, I think many of us will not understand all the various ramifications we will have if we do adopt it.

But as a basic concept, I believe sentence two should be deleted because you ought to have appellate courts having the right to do away with injustice because the sole purpose of the system of justice is to ascertain the truth. And this type of provision when you do not have appellate review, retards the truth and allows errors to be perpetuated, and I don't think this should happen.

The third amendment deletes line three. I have no strong feelings about that. I actually believe that determination of facts by an administrative body shall be subject to review, I think they should be subject to review, factually. I have, really no quarrel with it. I merely wanted to present all three ideas to the convention, the three ideas embodied in each sentence.

Thank you.

(SPEAKING)

Mr. Dennis Mr. Duval, I don't know how you say that you are for the concept of this statute in the first sentence, but you are offering this amendment because you don't like the wording

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Mr. Duval Yes, sir.

Mr. Dennis I had misapprehended your reason. I thought you were trying to delete this because you considered it to be statutory and something that should be controlled by statute as it is presently. Am I wrong?

I'm for your amendment, but apparently, I may be for it for a different reason than you are.

Mr. Duval Let me say this. Because of the many exemptions, you may well be right. Because of the many exemptions that would be necessary, and others may come up, you may be right. It probably should be statutory.

Mr. Dennis Isn't this statutory at the present time?

Mr. Duval Yes, sir, it is.

All of the material contained in Section 8 is presently statutory so what we are doing is making statutory material constitutional material.

Mr. Dennis That's the first sentence of Section 8 you are talking about.

Mr. Duval That's right.

Mr. Jenkins Mr. Duval don't you think that the right to trial by jury is of constitutional status inasmuch as it's in the United States Constitution and in the constitution of virtually every other state?

Mr. Duval Of course, it's not in our present constitution. It's in our statute law and we seem to have done pretty well without it being in the constitution. We've allowed the legislature to have exemptions which are intelligent exemptions, which are reasonable exemptions because jury trials in some instances just don't work. And I don't have a great... I know, I realize some of us have a great fear about what the legislature is going to do in that area. I don't. I think it's worked well, and I haven't heard a big hue and cry to change it, to put it in the constitution from your average citizen.

Mr. Jenkins Well, would you really want the case to exist as it could, possibly, some day where jury trials in civil cases would be abolished by statute inasmuch as there would be no constitutional protection?

Mr. Duval Personally, I think in Louisiana, I don't think it would ever happen, personally, but in Louisiana when you do have an appellate review of facts, a jury trial loses some of its basic import, and I'm sure that's going to be an argument used by the other side in this matter.

Mr. Jenkins Let me say, also, let me ask you, also, with regard to your third amendment, deleting the review of facts by administrative bodies, isn't this inconsistent with your other argument on the one hand, you want the court to be able to review determinations of fact by lower courts, but you don't want them to review decisions of administrative bodies.

Mr. Duval Mr. Jenkins, I said in my remarks that I'm merely presenting all three ideas, and I agreed with the committee proposal on the last sentence.

Mr. Champagne Mr. Duval, you do agree at any rate that the first sentence is confusing in the least. In other words, it's not definite in what it does say.

Mr. Duval Most definitely, I agree with that.

Mr. Denney Mr. Duval, isn't it a fact that we adopted a provision in the judiciary section which covers the last two sentences, namely, "except as limited to questions of law by this constitution

or as provided by law in the case of review of administrative agencies' determinations its appellate jurisdiction extends to law and facts"?

Mr. Duval Yes, sir. I think we've already accomplished the purpose of the last two...not the purpose...but we've already voted on the thrust of the last two sentences and taken a stand.

Further Discussion

Mr. Fontenot Mr. Chairman and fellow delegates, I rise in support of Mr. Duval's three amendments. I think that we have covered some of these issues previously in the Judiciary Committee's proposal where we decided certain issues of which were to be reviewed, facts or law. We decided that previously, yet all of a sudden, here in the Bill of Rights Committee we're faced with it another time. As I stated in the couple of questions I asked Mr. Guarisco, some of these same provisions right now are in the code of civil procedure. I don't think they need to be in the constitution.

The code of civil procedure which is determined... the laws in the code of civil procedure...are changed whenever necessary by the legislature. If you lock this in the constitution anytime something needs to be changed you're going to have to have a constitutional amendment. Now, concerning some of these amendments that were proposed, I know that you can't discuss them, but the point I want to raise is that somebody proposed an amendment, if I may read part of it... "in all civil cases except those relating to adoption, executory proceedings, interdiction, partitions, successions, domestic and all summary matters"...O.K., here you have the committee proposal which doesn't go into that much detail; then you have the first amendment by Mr. Edwards, Mr. Conino...then all of a sudden somebody told them", but what about the city courts; what about the minimum...the thousand dollar...the cases in amounts under one thousand dollars...you don't need a jury trial in those cases." So, somebody came with another amendment. But, the point I'm trying to make which would include cases under a thousand dollars...you don't need a jury trial. The point I'm trying to make is that all of a sudden you have these amendments and then somebody thinks of another little section; well, we don't need a jury trial in this section. Well, don't you think this is legislation? We're not here to legislate. We're here to write a constitution. The people back home this week told me, "You might, as well go home. Why do you even go to Baton Rouge?" They have been convinced by somebody, I don't know who, the news media or just our own actions here that we're a bunch of clowns here trying to write a constitution. I was very upset when they told me I ought to go home. They're not going to vote for it right now. But, you keep putting in, I'm not going to call it "verbal garbage", but you keep putting in all this legislative matter in the constitution you're going to force constitutional amendments every year. That's the exact purpose we were sent here for...to try to solve some of these constitutional problems. I think that Section 8 does not belong in the constitution at all. I think Mr. Duval has a good amendment. The legislature ought to provide for these things. We shouldn't get into details about which cases should have jury trials and which ones shouldn't. I know we're going to leave some out. The first time you leave some out, you're going to have a constitutional amendment the very next year trying to put it back in. The real issue as I see it is whether you're going to have this in the constitution or not. That's the issue, and as far as I'm concerned I don't think you need this kind of language in the constitution. I think it has been taken care of in the past by the legislature very adequately. I don't think you need it in this constitution. So, I urge you to adopt Mr. Duval's amendments, all three of them. I yield to questions.

Questions

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in this state. I urge you to adopt all of the Duval amendments. Reject this committee section entirely. It's out of place in our system of laws in this state. I said we had dealt with this before. We did. Under the Legislative Proposal we prohibited the adoption by reference of a system of laws outside of this state. When you inject a mandatory trial by jury into this state's law, you get into the questions of common law that would abrogate what we did under the Legislative Proposal. The very concept that was inherent in what we did in the Legislative Proposal was to prohibit exactly what is attempting to be done here. That is, we rejected the common law as a system of laws applicable to this state. I urge your adoption of these amendments.

Question

Mr. Dennis Mr. Conroy, did you know you had just said everything I wanted to say and much better than I could say it?

Mr. Conroy I doubt that it was much better, Judge Dennis, thank you.

Further Discussion

Mr. De Blieux Mr. Chairman and ladies and gentlemen of the convention, I oppose this amendment for this particular reason: the question in your mind and the question in my mind and the question that will be decided here upon the vote of these amendments is whether or not you believe that a citizen has the right to a trial by jury. Whether or not he has the right to have his case heard as it passes upon the facts of whether or not the truthfulness of his issue that he presents to the court or the untruthfulness of it. That's what's involved in this amendment and that's what we have to decide. That's all that there is involved in this. Mr. Duval's amendment completely negates the right of a person to have his case heard as to the truthfulness of it by a jury. If you are opposed to his having that right then you're for Duval's amendment. If you want to guarantee that right as our forefathers did in the United States Constitution you will vote against this amendment. That's the whole thing that's involved. Therefore, I ask you to vote down this amendment. If there's something in this section that you don't like that the committee has proposed, we have other amendments that I think will correct that. Let's don't kick out the right of a person to have his case determined as to the truthfulness of his allegations and that's all that's involved...the truthfulness of his allegations by peers who can look at the witnesses, who can hear the witnesses and decide whether or not they're truthful or untruthful. I guarantee you this, I think as a practicing attorney that twelve good, sound people can determine whether or not a person is telling the truth or not telling the truth just as easy and a lot better sometimes than just one sole judge sitting on that bench. Whenever you take this case up on appeal, that's what that judge is going to be looking at...a cold record...not looking at the grimaces of the witness, not hearing the inflection of his voice, not hearing his hesitations and so forth and so on. That's what you have to consider in this matter. Now, if you want to deny the people that right then you're for the Duval amendments. If you want to guarantee them that right which was guaranteed us by our forefathers in the Magna Carta, you will vote against this amendment. That's what's involved.

Questions

Mr. Fontenot Senator, did I understand you correctly to say "if you want to deny jury trials to people you vote for the amendment"? Did you say that?

Mr. De Blieux That's what you're doing in this particular case. That's right.

Mr. Fontenot O.K. In the present Constitution do you have a provision that the Bill of Rights Committee is proposing right now?

Mr. De Blieux In the present constitution. No, you don't have that...

Mr. Fontenot Now, does that deny people the right to trial by jury? It's not in the present constitution and if you leave it out of this constitution will that deny the right to trial by jury?

Mr. De Blieux You have to take it this way, Mr. Fontenot. I want to guarantee them the right to trial by jury because if the legislature can give it, it can take it away.

Mr. Lanier Senator De Blieux, would you agree that under Article 231 of the Louisiana Code of Civil Procedure that the right to a trial by jury in civil cases is recognized?

Mr. De Blieux That's the same answer to that, Mr. Lanier, as I gave to Mr. Fontenot, yes, it's in there at the present time but by the same token they could remove it and take it away.

Mr. Lanier And in the official revision comment under this law that's been in our state for quite some time, are you aware that it says this article serves the same purpose as federal rule 38A which provides that the right of trial by jury as declared by the seventh amendment to the constitution or as given by the statute of the United States shall be preserved to the parties in violation, are you aware of that?

Mr. De Blieux Well, I just want to be sure that we guarantee them that right and that's why I'd like to have it in the constitution...that they have the right to a trial by jury.

Mr. Champagne My question was very much along the same line. I understood you to say that the national constitution guarantees a trial by jury, is that right?

Mr. De Blieux Yes, but that relates to federal cases...at that particular...as I understood...cases tried in the federal courts...you have that. I'm not sure that that would reach far enough for the trial of cases in state court.

Mr. Champagne Well, it has in many other cases. The federal constitution has provided in many other cases, but I have this further question. In other words, you say that if you're against the trial by jury you vote for this amendment....

Mr. De Blieux Yes, if you're against guaranteeing the person the right to a trial by jury then you can vote for this amendment.

Mr. Champagne By the same token....

Further Discussion

Mr. Jenkins Mr. Chairman and delegates, in the case of the first amendment, the question seems to be whether or not we're going to give constitutional dignity to the right to trial by jury in civil cases. When Mr. Pury brings forward his amendment shortly, I think that with regard to sentence one, it will merely restate the present law. It won't make any drastic changes. Judge Tate mentioned that the listing of exceptions might be statutory in nature. It would be probably in any other state but Louisiana, but we have to make a distinction here. In most state constitutions the right to trial by jury in civil cases is stated in their constitution without any limitation, but it is understood that at common law, trial by jury does not pertain in certain instances such as the one I listed. But, in the civil law, if we want to grant a constitutional right to trial by

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jury we have to state it and then we have to specifically make the exceptions because we have common law to rely on to make those exceptions for us. That has been constitutional in nature. The right to trial by jury is one of the hallmarks of our way of life in this country. Certainly, even in civil cases, despite the fact that they are rarely used in Louisiana, and they're not going to be used very much even if we do keep sentence one basically as it is with the Pugh amendment. This is not statutory in nature. It's basic... the right to trial by jury reviewed by your peers of a civil jury. In sentence one of the Pugh variation one, it should be retained regardless of what you wish Section 2, regardless of whether you allow a court to review facts on appeal. We need to grant what is stated in sentence one... the right to trial by jury. Because that's so basic. Let me discuss just for a moment to the third amendment. This amendment should be rejected. An administrative body generally is in the executive functions of government and it has a number of different functions some of which are legislative, some of which are judicial, some of which are executive in nature. An administrative body has rule-making function. It makes what amount to laws. Then, certain petitioners can come before it and have an interpretation of those rules made in a given case, and then frequently it must, also, execute the laws of the rules which it has made. To grant to an administrative body the authority to determine facts and not allow a court to review that is contrary to the principle being set forth by the proponents of the amendment... the fact that courts of appeal should be allowed to review facts of appellate courts should be allowed to review facts determined by a district court so much more the argument should be that the court should be allowed to review factual determinations by administrative bodies. Administrative bodies have an innate bias because they are making judicial determinations on rules which they have made themselves. Also, administrative bodies frequently do not conform to the rules of evidence. They do not abide by them in the way that a court of law would be. Their factual determinations are not the best sort of factual determination. So, whether or not we allow review of facts by court... of court decisions, we should certainly allow review of facts in administrative agency decisions. So, for that reason, I particularly urge you to defeat amendments Number 1 and Number 3.

Questions

Mr. Tolja: Mr. Jenkins, does Louisiana follow the common law?

Mr. Jenkins: No, it's not a common law jurisdiction, but in some areas of the law, as I understand it, there is a common law influence.

Mr. Tolja: O.K. Are you aware of the seventh amendment to the United States Constitution?

Mr. Jenkins: Yes, I am.

Mr. Tolja: If read a billows in suits at common law the right of trial by jury shall be preserved.

Mr. Jenkins: Well, that's correct.

Mr. Tolja: Well, in Louisiana, you admit, that we have a civil law tradition. So, in other words, it would not be inconsistent for us to not provide for trials by jury in the constitution since we do not appear to follow common law. We follow the civil tradition.

Mr. Jenkins: On the contrary, that's all the more reason why we need to add it to the constitution. I would not be inconsistent for us to not provide for trials by jury in the constitution since we do not appear to follow common law. We follow the civil tradition.

Mr. Tolja: If I am not available to us, we would like to give our citizens special protection since we do not have the common law to provide that they will have the right to trial by jury to civil cases.

LEGISLATIVE RECORD

Further Discussions

Mr. Pugh: Mr. Chairman and fellow delegates, I rise in opposition to this amendment. There are several amendments pending to this section one of which, joined by many coauthors, I had the pleasure of presenting to this group. I had not intended to talk against somebody else's amendment, but the very nature of this amendment is such that I must necessarily do so to be able to get to the one that I prepared for your consideration. It has been suggested from this rostrum that this is a new and novel approach. I wrote for your benefit... I'm satisfied that many of you read it, because you've been kind in your compliments concerning it... an eight page dissertation on the background of jury trials as we know them today. To say it's novel when the declaration of resolve... the declarations of the causes and necessities of taking arms... the Declaration of Independence, the Ordinance of 1887... all called for trials by jury presented to George III as one of the objections why the people no longer wanted to be under the English rule. Although the constitution was silent on the question, six of the fourteen states that ratified the constitution understood that a provision was put in the constitution and until the Bill of Rights relating to a trial by jury. This was, in fact, done. It became the ninth of the various amendments to the constitution... one and two being defeated... it then became the seventh. In Louisiana we do not have a trial by jury and the reason we don't have a trial by jury is because the appellate courts can review the facts. Now, let me tell you what happens in a jury trial, before you get alarmed. First of all, there's a judge sitting there. The case is presented to a jury, when the jury comes in with their verdict, if that jury is wrong, upon application of the district judge can grant a new trial. If the district judge is wrong, there who heard this evidence along with the jury, can grant a new trial. What happens so often, however, is the judge says, No, the jury's right. They found the facts. They were correct on the facts. Then, what happens it's taken up on appeal in the appellate court... you get a two-to-one verdict and the appellate court reverses on the facts. The judge is going down the north side of the street; he was going down the south side of the street. Now, they reversed those facts from the record, they haven't seen those witnesses. They haven't heard those witnesses. They have no way of testing the veracity of those witnesses and that's important in litigation. Now, I reiterate that you have two judges on the court that said he was on the north side of the street. You had a judge who was a district judge saying "Why certainly, he was on the north side of the street." Then, you go up to an appellate and they say, "Nah, he was on the south side of the street. So, what happens. Two judges say he was on the south, one of the judges who was on the court of appeal said he was on the north." The judge below said he was in the north. Twelve jurors said he was on the north, but, by God, under our system, he was on the south. He was on the south because two of the three judges said he was on the south. It's as simple as that. I have a case exactly like that right here. Now, let's understand this jury thing. The ordinary way, getting that we could put it in the statute book, let me tell you that the constitutional amendment that you've already passed, the provision, says that you can't review the facts. Well, I don't care what the legislature says, if the constitution says, I correct myself... if the constitution says they're going to review the facts, that they're wrong the facts that the legislature says, that's what you say you've passed this around before. Well, men, first of all by the amendment, and I don't mean to speak for my amendment now but merely for clarification purposes... my amendment changes something very vital. The appellate court can't review a bench decision. A decision of a

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judge you can still review. That is the distinction. In addition to that, when you adopt a judiciary section you put in both the Supreme Court and the court of appeal there would be as otherwise provided in the constitution. As I understand it, and I wasn't here, but as I understand it, this may be the first instance where two committees addressed themselves to the same subject. Just like two judges, three judges, twelve jurors... one saw it one way and one said it another way. So, it turned out that the judiciary got here first. Well, just because they got here first, let's don't now say, "Look, you boys can't be heard from." The people who appeared in the opposition to appellate review of the court appeared before the Bill of Rights because that's where they thought it was going to be. That's where it is everywhere else. Let me tell you that 49 states are different from ours. Let me tell you all something else. Do you know if I got a case worth \$10,000, if I got a domiciliary of another state, be it corporation or otherwise, I can bring one suit in the federal court and you can't review the facts? Do you know that I could have brought the same suit in the state court and the facts are reviewed? It doesn't make sense that I can try my same case one side of the street...the appellate courts can't review the facts...I try it on the other side of the street... they can bring one suit. It can't make sense. I would appreciate, if you will, I tried in the little memorandum I gave you to develop the constitutional law. I can sit here and tell you that the Spanish law provided for jury trials. They even provided for jury trial in the appellate court. I can tell you every decision on this case and this issue, and I put some of them in this little memorandum I gave you. I can tell you what's in every constitution. Somebody got up here awhile ago and said, "Well, you know, we put a provision in this constitution that says you can't adopt a whole set of laws which are otherwise from another jurisdiction". Gentlemen, that's been in the 1812, the forty-five, the fifty-two, the sixty-four, the sixty-eight, the seventy-one, the ninety-eight, the thirteen and the twenty-one constitution. There ain't nothing new about that. That's been in every constitution.

Further Discussion

Mr. Abraham We've heard from nothing but attorneys on this particular section. I think it's time we hear from a lay person. I am in favor of the Duval amendment and let me tell you why... that the original committee proposal says that we want to have this trial by jury in civil cases except...and it listed three exception cases. Somebody gets a reading...some attorneys get to reading and here we have a proposal...that's by several authors, eleven of whom are attorneys, four of them are members of the Bill of Rights Committee and they say, "Oh, we've left out some exceptions". So they added some exceptions to this amendment. The same group of persons come back now five minutes later and add some more exceptions and the point I want to make to you is that this is what's been going on with this whole article on the Bill of Rights...we keep writing and writing and writing more law, and we don't know what we're writing. I submit to you that if we can't decide ourselves, among ourselves, and if all these attorneys here can't decide then we'd better leave a lot of it to the discretion of the legislature. Now, you can argue all you want about the...I'm not in disagreement necessarily with a trial by jury, but what I'm trying to say is that we cannot write all this language into this constitution and we'd better leave it to the statutes. As far as the reexamination of the facts...well, I would like to find several reliable sources that there are many other states who wish they did have this same right, and I'm told that there are many federal judges who wish they had this same privilege. So, I would suggest that we delete this whole article...rather this whole section...from this particular article and I urge your adoption of the Duval amendment, and Mr. Speaker,

if there are no other speakers, I would move the question.

Mr. Henry You have a man that wants to ask you a question, first. Will you yield?

Mr. Roy.
The gentlemen yields.

Questions

Mr. Roy Mr. Abraham, I'm interested in your last observation. You do realize that the Constitution of the United States has been in existence from 1789, do you not?

Mr. Abraham All right.

Mr. Roy Has there been any change in the review of facts there? There hasn't, has there?

Mr. Abraham Not to my knowledge, no.

Mr. Roy There hasn't been in any state in the United States, is there?

Mr. Abraham Has there been any problem here in the State of Louisiana?

Mr. Roy Has there been any...I'll answer yours. Yes, there has been a problem. Appellate courts have been reversing jury findings when they don't know what they're talking about. Now, I ask you...

Mr. Abraham That's your opinion, Mr. Roy.

Mr. Roy I ask you the question, in all these friends you talk to, didn't any of them tell you that the states, forty-nine other states, had changed their system, Mr. Abraham?

Mr. Abraham They have not changed their system, but many of them wish that they had changed their system.

Mr. Roy You mean some few told you that?

Mr. Burson Well, as I undertook it, you said that we seem to be changing a lot of existing law without knowing or even agreeing among ourselves what we were doing or what the effect of what we were doing would be. Do you think that your view of that kind of change is shared by a lot of other non-lawyer Louisiana citizens?

Mr. Abraham Yes, I do.

Mr. Burson I want you to know that there is at least one lawyer in this convention that agrees with them.

[Previous Question ordered.]

Closing

Mr. Duval I would like to point out to the convention, as I'm sure you already know, but just out of abundance of caution, we have three separate amendments. The first amendment primarily goes at the language of the committee proposal, and I think they will even admit that the language is certainly ill-conceived and is not subject to a specific interpretation. You have many, many exceptions in Louisiana because we do have a civil law heritage and this language is varied and unworkable. But that amendment, I might point out that language again is in our statutes. We're taking statutory law and making it constitutional, and many of us have no idea what we are doing when we put this in the constitution. We have no idea what the ramifications are going to be, but yet, we're enshrining these things in the constitution without really thinking about them, without analyzing them. We're putting sloppy language in here. Amendment No. 1 deletes that language. It's sloppy language. I don't think any judge here could tell you precisely what is summary and what is not and when you have a jury trial and when you

don't. Number 1, Amendment No. 2 deletes the provision which takes away the rights of appellate courts to review facts. Louisiana has worked very, very well. One reason our court docket is as good as empty is because it functions with appellate review of facts. In other jurisdictions you have five, six, seven and eight years to wait and you want to talk about justice? You see an old person who gets injured and has to wait ten years, and I know Mr. Roy says there's not many jury trials in Louisiana now, and he's right, there aren't. And that's one reason the system works as it does. But when you start having no appellate review, everybody and his uncle is going to want it, and you're going to have mistakes made, confusion. It's not a question of who's telling the truth and who's not. If you've ever been in a lawsuit it's a pretty complex thing. It's not a question of who's lying and who's not. It's not an oath swearing where you run over it. It's understanding complex, abstract issues, and I believe that there should be jury trials, but these jury trials should be subject to review by appellate courts because you will perpetuate injustice, you will have new trials constantly. You will have the dogonest mess you'll ever see as they do in many other jurisdictions, where you have to wait years and years to go to trial where injustice is perpetuated, where new trials are had all the time, where a great deal of money is wasted on the administration of justice. Louisiana is unique in its civil law heritage and I don't think other than some of the lawyers here and some other lawyers, you're going to have a great hue and cry among the citizens for this provision. I don't think you'll find that at all. I think you'll find it's a lawyer's provision, not a people's provision, because I guarantee you they don't want to wait eight years and nine years to go to trial, and I guarantee you that you'll have more jury trials than you can shake a stick at if we pass this provision. We don't know all the ramifications that we're going to do here. We are voting on something that's statutory, making it constitutional, and we don't know the ramifications, and I guarantee you not one of us here does know all the ramifications. We don't know what effect it's going to have on the administration of justice. The system as it presently is certainly has worked well, and we're making a drastic change without really knowing the effect. It's going to have on Louisiana's judicial system. Also, we're adopting language in the first sentence that's totally sloppy. I urge that you adopt the amendments, all three amendments. I might point out one other thing. We've gone over this appellate review of facts. It was discussed thoroughly and more thoroughly than it was discussed today. Mr. Rugh had some fine remarks and I appreciate it, but we had this full discussion, and it was voted down tremendously by a vote of 90 some odd to 16, and I can not see what revelation has sent this group to make us change, what statement has been made here to really shake us from that vote. I urge you vote the same way and vote to adopt these amendments deleting those provisions. Thank you.

Questions

Mr. de Blieux: Mr. Duval, if all these lawsuits would come about by people asking for jury trial, as you alleged it would, don't you think we ought to guarantee the right to the people to have those jury trials?

Mr. Duval: Mr. de Blieux, my amendment, all you recall in your first, in your statement you still my amendment go away with the right to jury trial if you don't like the law just as it is, and they have jury trials. But I might point out in answer to your question, my primary concern is Amendment No. 2.

Mr. Warren: (addressing Duval), you said one thing that's kind of puzzling me. You said it's not a matter of truth or false, and you were talking on fact, is that important what you said afterward

How they judge people on the truth or whether it's false. Now, how do they judge?

Mr. Duval: Mr. Warren, it's not only a matter of whether a jury deciding whether a witness is lying or not. That is a gross simplification of a jury trial because many issues come up and it's difficult for the jury to understand the concepts. You have expert witnesses talking about fields of metallurgy and other things where the witness isn't lying. It's not a question of whether he's lying or not, it's a question of whether the jury can assimilate all these facts and make a proper determination. Most of the time they do, but when they don't, it is a good idea to have another court to look at it, and when an error is made to get to the truth of the proceeding.

Mrs. Warren: So you mean you're saying that if you don't have a jury trial you're most likely to get the truth?

Mr. Duval: Mrs. Warren ...

Mrs. Warren: Listen, I'm not speaking for or against. You said something and I'm trying to get information.

Mr. Duval: I'm merely saying there should be a check on a jury trial which is the appellate courts. That's all I'm saying.

[Unfinished question ordered. Record vote ordered. Amendment No. 1 reread and adopted: 73-11. Motion for reconsideration tabled. Record vote ordered. Amendment No. 2 reread and adopted: 76-21. Motion for reconsideration tabled. Record vote ordered. Amendment No. 3 reread and adopted: 74-21. Motion for reconsideration tabled. Previous question referred in the entire subject matter: 67-48.]

Point of information

Mr. Tobias: As I understand it, if we vote no on this particular section that would delete the language that remains.

Mr. Henry: That is correct, sir.
Mr. Clerk: If you will, please, read what is left of Section 8.

Mr. Poynter: Section 8, "trial by jury in civil cases," Section 8.

Point of information

Mr. Burns: I've listened so much that I've gotten confused now. In other words if we want to just delete the number of the section and the title of it on this next vote, we vote no. Is that correct?

Mr. Henry: If you want to get rid of the title and the section, the thing to do is to vote no. That's correct, sir.

Mr. Burns: Because we've already eliminated the rest of it.

Mr. Henry: Yes, sir, we've already eliminated all the words. Now we've got to get rid of the number. It looks like.

[Unfinished question. Record vote ordered.]

Reading of the constitution

Mr. Poynter: The Constitution of Louisiana, Article 9. We have shall discuss the meaning of every person to speak, write, publish, photograph, illustrate, or disseminate on any subject shall gather, receive, or transmit knowledge or information, but shall publish shall be responsible for

the abuse of that liberty; nor shall such activities ever be subject to censorship, licensure, registration, control, or special taxation."

Explanation

Mr. Jenkins It has been said that a frequent recurrence to fundamental principles will preserve the liberty of a people. So far just a moment before we consider the language in this section, I'd like to discuss a little bit about the history of "freedom of expression." It goes back a long ways, you know Socrates was sentenced to death because of the views he expressed. Christ was crucified because of his teachings. Early Christians suffered martyrdom because of their beliefs. Under Rome and Athens there was a great deal of freedom of speech, but with the coming of the Dark Ages, freedom of expression was not tolerated at all. In fact if there is one thing that highlights or signifies the Dark Ages, it's the fact that the free flow of knowledge and information was curtailed. With the advent of the printing press and the mass dissemination of ideas, political and religious leaders came to fear more and more the dissemination of ideas. Publication without the imprimatur of licensing authorities received harsh punishment. The sentencing offenses did not lessen with the abolition of the Star Chamber. After that the law of treason was utilized to restrict the speech of people. There were some dark days at that time. Under King Henry, VIII printing presses were licensed and only licensed books were allowed to be sold. Queen Mary established a stationers company which was chartered to control printing. Queen Elizabeth I established a law requiring that every book that was published in the realm had to have her approval. Many tyrannies occurred under the Star Chamber when they decreed that all books had to be submitted for licensure and registration. In the colonies the governors were given licensure censorship authorities. Only when American patriots challenged the right of government to censor their speech did the bars drop. Cases of Benjamin Harris, James Franklin and Peter Zenger, brave men who stood up for what they believed, have brought us our freedom today with regard to freedom of expression. There has been taxes on the press; in fact, taxation of the press was one of the things that founded our free republic. The Stamp Act tax as you may recall was a tax on paper, newspapers and advertisements. British government tried to apply it to the colonies in 1765, but they rapidly had to repeal it because this discriminatory tax amounted to a tax on knowledge and information. Here in our own state we had a discriminatory tax in 1934, the Gross Receipts tax on magazines, newspapers and periodicals which was ruled unconstitutional. There have been many challenges to a free press with the freedom of speech. We hope that the section that we're offering will provide the protection that the people of our state need. Let me analyze it, part by part, if I may. The first clause which states that "no law shall abridge the freedom of every person to speak, write, publish, photograph, illustrate or broadcast on any subject" is merely a restatement of the present law. It is a modernization of language. The next clause stating that "people have the right to gather, receive, and transmit knowledge and information" is what is behind freedom of expression. Unless people can gather information, they can do research, unless they can read, unless they can ask questions, freedom of expression means nothing. The greatest threats to the freedom of expression are censorship, licensure, registration, control, arbitrary taxation. We've attempted to prohibit those. Censorship, it should remember, is a prior restraint. It does not apply to the requirements of free speech after the fact. Censorship is a prior restraint, and that is what is forbidden here. When we first drafted this section, we did not have the language on line 29 saying that each person shall be responsible for the abuse of that liberty. You know the First Amendment to the U.S. Constitution is unrestrictive of the press. It

says "no law shall abridge freedom of speech or freedom of the press". It doesn't say "but," it doesn't say "except;" it doesn't say "but there are limitations," there are no limitations in the First Amendment. So we thought it unnecessary to put any in here, but the district attorneys came and appeared before us and thought there might be some problems with obscenity and libel and slander, so at their request we added this language. They have now endorsed it and said that it meets with their approval, and that they see no problems of enforcement along those lines. This language has the strong support of the Louisiana Press Association and its one hundred and forty newspapers, daily and weekly. It also has the strong support of the Louisiana Broadcasters' Association representing all of the state's television stations and almost all of its radio stations. The President of the Louisiana Trial Lawyers' Association came before us and said that he thought that this should be a model for other state constitutions. Certainly, it's not perfect, but we believe that it gives our citizens the sort of protection that they need in a changing society. So I'll ask if you have any questions, I'll try to answer them.

Questions

Mr. Roemer Woody, on this line 30, 31, and 32 it says "nor shall such activities ever be subject to censorship," etc., but this licensure and registration, how does this affect our current laws that deal with the licensure of either newspapers or television stations or whatever? Could you address yourself to that for my benefit?

Mr. Jenkins Licensure of the press and registration also is presently illegal under federal court decisions. The licensure of the broadcast media by the federal government is not really an exception to that, because they are not licensing there the right to speak or express ideas but only the mechanics of the mechanics of certain broadcasting and also access to common property, mainly the airways. There are no licensure laws at present, and under current court decisions there could not be, and this simply by asserting it here is to make sure that in the future there could not be either even if the Supreme Court decisions of the United States were to change along those lines.

Mr. Roemer As I understand your answer then, what you're saying is that certain registration and licensure laws as related to the broadcast media relate not to the news that they put out or whatever, the information they disseminate, but rather to the equipment that they use. Is that correct?

Mr. Jenkins Also, you must remember, Buddy, that this applies to state laws. We cannot change what the federal government here does. What we're saying is the state shall not license...

Mr. Roemer I understand, but I would make the further point and ask if you agree that a television station without broadcast equipment is no station at all.

Mr. Jenkins Well, that's true, but you can have certainly closed circuit broadcasting and things of this nature, and it's not a question there of licensing they can ever begin their expressions of opinion or whatever it may be. This was something that as was mentioned in the original commentary was a great abuse of the press in its early days, when kings would say that only certain men can express opinion, only those that we license, only ones that register with us or whatnot. This is proscribed now, and we want to keep it that way.

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Mr. Tobias: Woody, my questions are rather friendly this time. Are you aware that I'm very much in favor of the committee proposal? My next question is, would you please explain the term "licensure"? It's not a very common word, and I wish you would explain it so people would understand it better.

Mr. Jenkins: Licensure here is licensure in the sense that physicians or other professional groups are licensed. It would mean that if we had a licensure law as you do in Spain and in a number of countries where the press is severely controlled, it would mean that there would be a state board or agency set up, and before any one could be a newspaper reporter, or a newspaper publisher, or editor, or owner, or whatever, they'd have to go before this board, get approved by the board before they could be involved in the business of being in the news dissemination business.

Mr. Tobias: My next question is this: Article I, Section 3 of our present constitution presently uses the language that "abuse of the liberty is prohibited." This would...this particular type of language would cover, I would guess, as it presently does, pornography. In other words, the jurisprudence would be continued under that particular language. Is that not true?

Mr. Jenkins: Yes, that is correct, and you notice that none of the things in the last sentence—censorship, licensure, registration, control or special taxation—are presently used to limit pornography. It's done by criminal statutes after the fact, by injunctions, by nuisance statutes and things like this, which these would be perfectly legitimate under this.

Mr. Singletary: Woody, my question sort of related to Max's question in that the language each person shall be responsible for the abuse of that liberty. It seems to me that this committee proposal is so broad that it'd be practically impossible to have any abuse of that liberty. How can you abuse this liberty, it's so broad?

Mr. Jenkins: Well, no, that's not true. There are...this statement is made in virtually every state constitution regarding abuse. It's not necessary to put in there because with the language we have here and in other state constitutions it is assumed and understood that there are limitations to it, we specifically...

Mr. Singletary: You're saying that there are limitations to some of these rights?

Mr. Jenkins: Yes, sure. Just as our present constitution says that "no law shall restrain or abridge freedom of speech," but people should be responsible for the abuse of it.

As I was saying, our present law states that "no law can abridge or restrain freedom of speech or of the press."

Mr. Singletary: You're talking about the Federal Constitution.

Mr. Jenkins: No, I'm talking about the state constitution as an example.

Mr. Singletary: OK.

Mr. Jenkins: But each person is responsible for the abuse of it. You notice under that language it would say nothing to abridge or restrain freedom of speech, and it doesn't really limit that other than this statement that people are responsible for the abuse of it. And that is the same theory that we're operating under here.

Mr. Singletary: So that law itself of the court would be that for instance the courts could say that certain material is obscene or something like that.

Mr. Jenkins: That's correct.

Mr. Jenkins: Mr. Jenkins, one of the proposals I have, the last clause, I'm not sure—I would like to me that that would affect the validity or the existence of obscenity law. Reading that

Mr. Jenkins: No, there is nothing in there that would in any way affect obscenity law. For example censorship is a legal term and it means precise restraints before publication, before broadcasting. That is illegal at present, so it simply relates to the present law, and now we can't have censorship under present law. You can only go out and restrain people after the fact, after they have done something that is proscribed by the statutes.

Mr. Rayburn: Woody, would you define for me what you are talking about here when you say that each person shall be responsible for the abuse of that liberty? Would you define "abuse of liberty"?

Mr. Jenkins: Well, it's very difficult to define, and that's the reason our committee did not include that language at first was because we thought it was difficult to define. What the District Attorneys' Association tells us it means and some of the D.A.'s who talked to us is that it particularly covers libel, slander, defamation, obscenity, pornography, things like this. It will give judges the opportunity to have some leeway in defining when someone has gone beyond the valid limits of freedom of expression.

Mr. Rayburn: Well, in other words it would strictly leave it up to the judiciary to decide whether the abuse of someone's liberty had been made or not?

Mr. Jenkins: In the same sense that that is up to the judiciary now, because the present law says somewhat the same thing...

Amendment

Mr. Poynter: The first amendment is a Burson amendment.

Amendment No. 1, on page 3, delete lines 26 through 32, both inclusive in their entirety, and insert in lieu thereof the following: "Section 9. No law shall abridge the freedom of speech or press."

Explanation

Mr. Burson: The purpose of this amendment is to give the delegates the opportunity to vote on a clear simple statement of freedom of speech or press which is a virtual paraphrase of Article I of the Bill of Rights to the United States Constitution which says simply that congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof or abridging the freedom of speech or of the press, so the reason why I used the word "no law shall abridge the freedom of speech or press" is, this is a virtual paraphrase of the First Amendment to the United States Constitution. Now, the United States Supreme Court has ruled on many occasions that the First Amendment applies to the states through the fourteenth amendment. We have words of jurisprudence; we have legions of cases defining what and how the freedom of speech or press should be defined, we will know then what we are talking about. I am not sure that we will know what we are talking about if we adopt the committee proposal. For instance, what does the freedom to photograph include? Does it perhaps include invasion of privacy? What about upon us and your privacy, and how about if we have previously in Article V herein established an absolute right to privacy, do we now want an absolute right to photograph to illustrate that? The question has been raised by their commentaries and by questions asked earlier today whether it interpreted literally, the 1970 law which provided mutual wire communications transmission facilities, such as telegraph and telephone connections, by the Louisiana Public Service Commission which is presently authorized to control these lines.

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strumentalities by state law. The phrase "abuse of liberty," also, is something that I frankly don't know what it means. Maybe some district attorneys do, but I don't. I do know what "freedom of speech or press" means. Now the meaning of "freedom of speech or press" as defined in the United States Supreme Court jurisprudence is not a constant one; it changes from time to time. We are all well aware of the tremendous expansion of the Freedom of the press that has occurred under the New York Times versus Sullivan rule in which now in order to establish a case of defamation [defamation] against the press, one must show not only that there was a misstatement that damaged his reputation, but that such a misstatement was arbitrary and intentionally made, which is a very difficult burden of proof for anyone involved in a defamation [defamation] suit. I would also point out another difficulty with the committee proposal might be: how do we square the absolute right to photograph with the secrecy of the grand jury for instance? Would we then have T.V. cameras in the grand jury room? I don't know. I submit to you that we know under free speech and free press that we would not be permissible. I do not know whether a right to photograph would permit it or not and I suggest to you it might take a few court cases to decide it. In the area of pornography, it may be that the district attorneys are convinced that abuse of that liberty includes pornography. I am not convinced that it does at all, and the United States Supreme Court has only just this time handed down a decision in which they state clearly that the determination of what is and what is not pornography will be a local matter that will be left for the states to decide, and I suggest to you that that is exactly what the citizens of the State of Louisiana want. They want the right to decide what shall be considered pornography, for sale in the corner drugstore to their children, and they do not want to have to be bound by the standards of Las Vegas and New York. Now, you may or may not personally agree with that opinion, but I challenge anyone to get up here and state that that is not the opinion of the overwhelming majority of the citizens of the State of Louisiana. It is my interpretation that as sovereignty constitutional body for the State of Louisiana and not for New York or California or Nevada that we would do well to begin with this article in remembering that we are supposed to be here to project the will of the people of the State of Louisiana in writing a new constitution. I'll answer any questions.

Questions

Mr. Roemer Jack, is your amendment...does it, it tracks the language of the Federal Constitution, is that not correct?

Mr. Burson Yes, sir.

Mr. Roemer O.K. Don't you think that that section of the Federal Constitution has been interpreted broadly? In other words, when they talk about freedom of speech or press, haven't they included the other broadcast media in there?

Mr. Burson Yes, sir.

Mr. Roemer Well, then how would you change in effect what we've already done or what the committee's already done in Section 9? Don't they just spell out these various media representatives and segments of the media rather than leave it at freedom of speech and press? I mean, what have you really done?

Mr. Burson Well, they spell it out except they don't limit it, the way I read it, to what has been interpreted as free press. For instance, it says "no one shall abridge the freedom of every person to publish, photograph, illustrate, broadcast," etc. It seems to me that there should be some distinction between a newspaper man's right to photograph news and perhaps the right of some private detective to photograph someone of our active-

ties that we'd prefer not to have photographed.

Mr. Roemer I see, so you don't think that your amendment as it's already been interpreted by the federal courts would strike down the freedom of the press as we know it? In fact, it would be just a continuation of that. You're worried about these unknown areas that's mentioned here.

Mr. Burson That's exactly right.

Mr. Roy Mr. Burson, aren't there a lot of areas in constitutional law that you didn't know about in the past and the courts determined in the future?

Mr. Burson I don't think there is any question but what the freedom of speech or press is an organically growing area just as all other areas of constitutional law. But I think, like Justice Frankfurter, that they should be allowed to grow organically, to grow a little bit here, a little bit there, and to be defined as they grow and that we shouldn't strike out statutorily-not statutorily, constitutionally-here and set some new language in here that we really don't know what it means. Let's let those areas continue to grow organically.

Mr. Roy I see. You do agree though that our Supreme Court will determine what this section says for our citizens, do you not?

Mr. Burson Yes, except that they, in so doing, they cannot infringe on any Federal Constitutional rights of free speech or press that we have.

Mr. Roy And we won't have to be going back to the federal courts all the time to guarantee to our citizens certain things, but our courts may go ahead and rule on it without the intervention of federal courts. Isn't that true?

Mr. Burson Well of course, Mr. Roy, our state courts do very often apply the Federal Constitution in cases they decide. They do so habitually.

Mr. Roy Don't you agree, Mr. Burson, that the Public Service Commission as created by this constitution, since it will be dealing with specific issues, for instance, telephone and telegraph, will supercede any general provision we have? Don't you agree with that as an attorney, Mr. Burson?

Mr. Burson That would depend how that general provision was stated. I was merely paraphrasing there an argument that the Public Affairs Research Council had reached.

Mr. Goldman Delegate Burson, do you feel that the First Amendment applies only to the protection of the press and not to the people for the right to know?

Mr. Burson No, sir, not at all.

Mr. Goldman That's the argument that I've been listening to the last few minutes.

Mr. Burson I'm not aware that I made that argument.

Mr. Willis Mr. Burson, focusing on the word "photograph," I envisioned that that could mean, if you read the whole sentence in proper perspective, that anyone could photograph a trial and maybe film it, a trial in court, and then publish part of it and thus distort or distort the trial itself, couldn't it?

Mr. Burson I think it's certainly open to that interpretation, Mr. Willis, and I'm worried about the way that some of these undefined rights might have in actually infringing upon other rights that other citizens may have.

Mr. Perez Mr. Burson, isn't it true that the courts have held that the freedom of speech does

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not extend to a person standing in a crowded theatre and yelling fire, but that under the proposal by the committee which would read that, "No law should abridge the freedom of every person to speak, that there would be no such limitation."

Mr. Burson: I think that certainly this is a danger we get when we use language that has not been judicially defined. I think the other classic example, other than the one you mentioned, is using a loud-speaker near a hospital. That just points up that when you have these so-called absolute rights that you're going to have a collision between them someplace and you've got to determine which one prevails then.

Mr. Langer: Mr. Burson, am I correct in recalling that we previously passed a resolution saying that all rights conveyed herein shall be preserved inalienable and inviolate by the State?

Mr. Burson: Yes, sir.

Mr. Langer: This proposal says here that "no law shall abridge the freedom granted herein," doesn't it?

Mr. Burson: Yes, sir.

Mr. Langer: Now, would it be your opinion that the committee proposal as presently drafted would permit a witness in a juvenile case which is normally secret to go in with a camera and....

Further Discussion

Mr. Avant: Mr. Chairman, fellow delegates, I rise in support of Mr. Burson's amendment, although I have amendments which I have offered which I hope it will not be necessary for this convention to consider. The words "freedom of the press, freedom of the speech, freedom of the news media" to publish, broadcast, telecast on matters are very sacred and nobody would in any way impinge or infringe to any degree upon that liberty. We owe a great debt to the free press in this country and I wouldn't bother to give you specific cases, but I think you can think of many yourself that would immediately come to mind where the people of this State and even of this nation are indebted to the free press for the things that they have brought to the attention of the general public, and nobody wants to infringe upon that, but this committee report as it is drafted and as it reads goes far beyond, far beyond, any concept of freedom of speech or freedom of the press. It completely, in my humble opinion, destroys any right of privacy that any citizen has. You have been spoken to concerning the one word "photograph," but I'm going to go to another phrase in there which disturbs me more than the word "photograph." I thought you'd be interested in that, and that is the phrase "to gather, receive or transmit knowledge or information" when coupled with the phrase "nor shall these activities ever be subject to censorship, licensure, registration, control or special taxation." Now you know we are becoming a nation of consumers, we're not producers, and we're getting bigger while we are born and a number of billions of us at least one hundred times during our life we litigate with us all during our life. We all have some application of one kind or another for hospitalization insurance, fire life insurance, fire disability, for any number of things. We fill out applications when we go into the hospital. There are people who are involved in the business of accumulating that kind of information and putting it on computers and selling it to other people. Now do you mean to tell me that we're going to put in our constitution a provision that forever guarantees to these people the right to accumulate the most personal and intimate data and information about every citizen in this State and to use it in the commercial trade market? To me the idea is absolutely ridiculous and that is exactly what this permission would permit, and that right to invade in that business would not be subject to control,

to any type of license, registration or anything else. Another thing, when you look at the news media, there's a very, very clear distinction that is drawn in the law with respect to the right of the news media to disseminate information, and that is, it must have some reasonable semblance of being newsworthy. Now, the courts are very liberal in interpreting what is or what is not newsworthy in favor of the press. But there are certain items of our personal life that are not newsworthy to anybody. The public's got no interest in various and sundry aspects of our life. Well, if you adopt this report as it is written, the right to publish, speak, photograph, illustrate, or broadcast on any subject it doesn't make any difference whether it's newsworthy or not, you're doing away with the requirement that is personal and newsworthy. Then the most intimate and personal details of your life become the property of any person who is low enough to traffic in that type of information. Believe you me, there are people who do that and you know it. I urge you to adopt the amendment guaranteeing freedom of speech and freedom of the press.

[Motion to revert to introduction of Proposals adopted without objection.]

INTRODUCTION OF PROPOSALS

[Introduction 41-2-48]

Announcement

[Introduction 41-3]

Personal Privilege

Mr. Lowe: Mr. Chairman, ladies and gentlemen of the convention, let me have your attention for a minute to bring you up to date a little bit on some of the problems we're having in paying you off. I know a lot of you are interested in when you'll get your check. We've had some problems in the orderly flow of paperwork. Mr. Hardin has problems in getting the delegates to sign their per diem vouchers. Also, we have many absenteeisms that prohibit him from getting all of the per diem vouchers. As of right now, I don't believe we have all of the per diem vouchers signed for last month. Hopefully we'll have them all in the morning and we can start to process them and pay you by at least Friday afternoon. That will take care of this month.

Now, let me tell you what we're going to try to do to keep you a little happier. We're going to start paying twice a month. We're going to let the per diem go in on the fifteenth, covering the first through the fifteenth. We'll pay you ten days after that which will be the twenty-fifth. So on the twenty-fifth [twenty-fifth] of each month you can look for a check covering the first fifteen days. Then we'll pay you again for the last fifteen days by the tenth of the month. You can look for two checks every month, one on the tenth and one on the twenty-fifth. I hope that that meets with your approval. If it doesn't, let me know and we'll try to do something that does meet with your approval. Right now, look for a check Friday and I hope that we can meet that deadline.

Thank you, Mr. Chairman.

Personal Privilege

Mr. Rugh: Mr. Chairman and fellow delegates, I have something that may be of some interest to you in Liverpool, in the northwestern part of the State, on September 11, we're having a familiar. The function is to honor Russell Lunsford, a State legislator, a rather unusual one that the governor will speak in behalf of the executive. The Honorable Hubba Henry will speak on behalf of the legislature. Justice John Hagan will speak on behalf of the judiciary. We, also, will have a attendance of every one of the former living governors. If any of you wish to attend that function, if you will let me know tomorrow, I will let you that the

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necessary arrangements are made. Thank you.

*[Adjournment to 9 o'clock a.m., Thursday,
September 6, 1973.]*

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Thursday, September 6, 1973

ROLL CALL

[Roll call was held in a quorum.]

PRAYER

Mr. Alexander: Most Holy and Eternal God, we have come again to our task of devising and developing plans for the governance of our people. May each delegate here realize his dependence on Thee. May he operate and work consistent with Thy love, Thy patience and Thy understanding. Guide us in our deliberations and when we come to the end of our journey, admit us into Thy presence, in the name of Jesus. Amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

RESOLUTIONS ON SECOND READING AND REFERRAL [Journal 414]

PROPOSALS ON SECOND READING AND REFERRAL [Journal 434-437]

Mr. Henry: Now ladies and gentlemen, before we start this business on Bill of Rights today, if you will allow me a few minutes. Yesterday, looking out over the Convention, there weren't thirty percent of you in your seats the whole time. We'd have a quorum call, and people were coming down from the balconies, and the rafters, and the men's room, and the women's room and everywhere imaginable. Some people are talking about taking off next week and going home. Well, if you don't want to stay, there is a door over there and there are exits back there and go on home, but let those of us who are interested in writing a constitution stay here. If you don't like what's being proposed, please sit in your seat and listen to what's going on so that your questions will be intelligent. If you don't like what's being done, speak against it. But for goodness sake, for a change, have something to say. We've got a lot of work to do. The TV cameras are not nearly covering everything that's done and said at this convention. I know you get extremely irritated with my caustic remarks from time to time. For this I apologize, but I must tell you that I get extremely disgusted from time to time, having to say, "Take your seats and hold down the noise." Now we've got a job to do and it's as simple as that. It's not fun and people tell us everywhere that we're not doing anything but a luncheon of arguing down here, but we are not deliberating well right now. Now, if we are going to deliberate, let's sit in our seats and all like reasonably intelligent ladies and gentlemen. We don't want people in the state to think the nitwits have taken over this convention.

UNFINISHED BUSINESS

PROPOSALS IN THIRD READING AND FINAL PASSAGE

Mr. Plynter: Committee Proposal No. 25, by Delegate A. Jackson, which is a substitute for Committee Proposal No. 2, also by Delegate Jackson, both on behalf of his Committee on Bill of Rights and Bill of Law.

A proposal to provide a Preamble and a Declaration of Rights to the Constitution.

The status of the proposal is as follows: The Convention has adopted the proposed Preamble, Sections 1 through 6 as amended of the proposal, has deleted Section 7 with the view of further committee study, has deleted Section 8, Trial by Jury and Civil Cases and presently has under consideration Section 9, Freedom of Expression, and in particular, an amendment proposed by Delegate Burman proposing an amendment or alteration to that section 9.

Explanation

Mr. Chairman, Delegate, yesterday we had a number of quite ludicrous arguments raised and objections to this section, and I want to try to answer some of those ludicrous arguments. For instance, it was said that this section, as proposed by the committee, will allow people tooller "fire" in a crowded theater, loudspeakers to go blaring down the street near a hospital. It's going to allow people to burst into your bedroom and photograph you or go into the courtroom and photograph the proceedings. It's even going to prevent the Public Service Commission from regulating telegraph and telephone lines in this state. Now, can you imagine that? This section has nothing to do with extending property rights, and let me say what I mean by that. If I have a piece of property here, the fact that you have a right to speak freely doesn't give you the right to come on my property and speak. It doesn't give you the right to come trespass on my property. Nothing in this section says that, and if such an interpretation could be given to this section, it could be given to our present constitutional provision which says: "Any person has the right to speak, write, and publish freely on any subject, being responsible for the abuse thereof." If that interpretation could be given to our proposal, it could be given to the current constitution, but it never has. Now, why can't a person holler "fire" in a crowded theater? The reason he can't is not an infringement on his right to speak freely. The fact is, when you go into a theater, you go in and you are making a tacit agreement with the theater owner that you're not going to do anything to harm his property, that you're not going to do anything to interfere with the rights of the other people in the theater. That consensual reason is the reason you can't holler "fire" in a crowded theater. You have, in effect, contracted away that right, and you haven't given up your right to speak freely, and the fact that someone could be punished for doing such a thing isn't an infringement on freedom of speech. Now, bursting into your bedroom to photograph you, now how absurd can you be? The fact that you can photograph doesn't give you the right to go on somebody else's property and photograph it. The same is true of a courtroom. A courtroom is the property of the state, a courtroom is the property of the state. As property owner, the state can reasonably regulate who goes in and what they do there. Naturally, it's not subject to all the discrimination and discretion of a private property owner, but the state nevertheless is a property owner and has a right to control access. A loudspeaker near a hospital—the reason that we can prohibit loudspeakers near a hospital or any sort of loud noise is not a limitation on freedom of speech because it doesn't limit the content of speech; it limits the volume, just as any loud whistle, any loud noise could be limited. This section in no way forbids the limitation of loud noises or other sorts of public nuisances. It's only speech or speech which cannot be reasonably interfered with here. Now, Public Affairs Research Council in their brilliant treatise on the Bill of Rights said, "Why this might even forbid the Public Service Commission from regulating telephone and telegraph companies." They made that judgment without ever even consulting any attorney. In the first place, the Public Service Commission, this body would pick up such an argument. But, if you notice, the one who have made this have generally been opposing everything proposed by this committee, whether it's liberal or conservative or whatever. Now, here is why this proposal would not change the authority of the Public Service Commission to regulate telegraph and telephone companies. In the first place, the Public Service Commission, at present, does not regulate the content of telegraphic and telephonic communication, not at all. They don't regulate the content of them. But as property owner, the state owns the highways, the state owns the navigable bodies of water, the state owns many public lands, and if any telephone or telegraph company wants to cross any highway with its line, any navigable body of water, it has the

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right as property owner to set the terms over which any of the instrumentalities can cross its property. This section doesn't change that at all. Let me tell you what this section does do. This section does one thing and one thing only; it restates the present law. That's exactly what it does, nothing more, nothing less. It's been argued even though we've been over it that this forbids regulation of pornography by the inclusion of the word "censorship." That's not true. Censorship is a prior restraint on expression. In order to be censorship, it has to require that before publication you submit a piece of writing, you submit a film or something else to a censor, and he has the right to strike out or to retain things, to tell you you can't publish it all. That is outlawed under Supreme Court decisions. Prior censorship, censorship of any kind is not allowed. The way that pornography is regulated right now is not by censorship; it's after the fact—by criminal statutes after the fact, just like murder is punished after the murder, right now. You can go out and seize pornographic films, pornographic literature and there is nothing in this section which doesn't allow that; it's as simple as that. Now one of the difficulties I've seen is that many delegates have not read this section. Look at it, read it carefully, think about it.

There's not a thing strange or unusual about it; it simply restates the present law. So I urge the defeat of this amendment.

Further Discussion

Mr. Jack Mr. Chairman and ladies and gentlemen, I rise to support the Burson amendment. It's short, it's clear, it states no law shall abridge the freedom of speech or press. It's been interpreted by the United States Constitution, by the United States Supreme Court, by the Louisiana Supreme Court. We adopt that, we know where we stand. As to this new suggested law which makes the constitution longer in this section, it's uninterpreted. It's a dangerous thing. The first time, in my opinion, you have an absolute right to do all those things. Then, it does say each person shall be responsible for the abuse of that liberty. The damage is done; it says, "nor shall such activities ever be subject to censorship, licensure, registration, control or special taxation." There's no censorship with the first part broader than the present constitution. You pass this thing, Section 9, just like it is, you are going to have people can do anything they want. You are going to create pornographic pollution in this state, and you are going to legalize character assassination. Now, Mr. Woody Jenkins was using the word about like people that didn't agree with him were silly, I forgot the exact word, use the example of a person hollering fire in a theater. We're not talking about that. We are talking about what people can do, not by some example like he's giving. I don't think anybody but a maniac is going to jump up and holler "fire" in a theater when he don't think there is one. But there's plenty of people that would love to advertise with pornographic pictures, billboards, if the paper would take it, newspaper pornographic things to advertise "X" rated pictures, to do anything. You just go in bookstores and see the trash and the rot and try to find something to read. People have to have protection from all that kind of stuff—children do. Why not take the simple version Mr. Burson has, "No law shall abridge the freedom of speech or press." You talk about pollution from smoke and everything else. . . no, I don't want to answer you, Woody, till I finish, and you really are not going to have learned anything from me; you've got your mind fixed on it. This is just rotten, dirty pornographic pollution. It ought to have been before the Committee on Natural Resources and Environment where we could blast it if it as the worst pollution you could get, and throw it out and keep it out. Thank you.

Further Discussion

[1112]

Mr. Thistlethwaite Mr. Chairman, fellow delegates, I rise in support of the Burson amendment. I would like to inform you that I have been the editor and publisher of a daily newspaper in Louisiana for thirty-three years. I've been threatened with lawsuits dozens of times; I have been sued three times; I have paid one; I have settled out of court for liable per se on three occasions; I've been down this route. We've got almost two centuries of jurisprudence behind the Burson amendment. It tracks very closely the first amendments of the Federal Constitution. It sums up what we have now in our constitution. When we go into the committee's language, we do not know what we have; we have at least two decades of litigation ahead of us if we adopt what the committee proposes. I urge you to vote for the Burson amendment.

Questions

Mr. Jenkins John, why is it your colleagues in the Louisiana Press Association have endorsed the committee proposal and opposed this amendment?

Mr. Thistlethwaite Mr. Jenkins, I was not present; I have no idea. Frankly, I don't know why they supported it. They say that they had no objection to it, as I understand it.

Mr. Jenkins Well, did you know that they are actively supporting it and actively opposing the Burson amendment?

Mr. Thistlethwaite No, they are not. . . I just talked to Mr. Norman David who represents the Louisiana Press Association; they acquiesce in the language. They do not actively support it; they endorse it. I disagree with them; I think they are wrong.

Mr. Jenkins Is that correct, they endorsed it? They endorsed the proposal, is that correct?

Mr. Thistlethwaite The Louisiana Press Association Board of Directors said that it will go with this language, that it will endorse it. I think they are wrong. I think they are asking for trouble.

Mr. Jenkins Are you aware that the Louisiana Broadcaster's Association also supports the committee proposal?

Mr. Thistlethwaite I am aware that Mr. Douglas Manship said so.

Mr. Roy Mr. Thistlethwaite, do I understand that you have read Mr. Burson's amendment? Did you read Mr. Burson's amendment?

Mr. Thistlethwaite I have a copy of it in my hand. It says, "No law shall abridge the freedom of speech or press."

Mr. Roy Did you read Section 3 of the present constitution? Have you ever read Section 3 of the present Louisiana Constitution?

Mr. Thistlethwaite Yes, I just read it.

Mr. Roy No, no, you didn't read Section 3. The present constitution says, does it not, "Any person may speak, write and publish his sentiments on all subjects being responsible for the abuse of that liberty." doesn't it presently say that?

Mr. Thistlethwaite Mr. Roy, that is true; however, we have ample jurisprudence to cover that under the Burson amendment.

Mr. Roy Don't you think that. . . do you realize that this constitution of Louisiana will be interpreted by our Louisiana Supreme Court, do you not? Do you realize that?

Mr. Thistlethwaite I am fully aware of that

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Mr. Roy: You realize that if we leave out this being responsible for the abuse of that liberty that Mr. Burson ought not to put in, that the courts say think we have made a substantive change and that there will be no responsibility for any abuse, criminal defamation, pornographic and all that. The reason we added that language to our section was because the district attorneys wanted it. Do you realize that?

Mr. Littlethwaite: Mr. Roy, you are an attorney and I am not. I think that there is ample jurisprudence. I'm not worried about Mr. Burson's language, but I'm worried about yours.

Mr. Roy: That jurisprudence in Louisiana supports your contention that if we take out "being responsible for the abuse of that liberty", that our courts will still have that right to make a person responsible.

Mr. Littlethwaite: Yes, sir, I think the courts still would.

Mr. Roy: Well, you're telling us that you know about jurisprudence. What cases in this state would support you?

Mr. Littlethwaite: Under the Federal Constitution where these rights end up, there is plenty of jurisprudence on it.

Mr. Roy: We're talking about a state constitution written for our citizens to be interpreted by our courts. Now, you say that there is ample Louisiana jurisprudence that would not make any difference even if we leave out these very essential words "being responsible for the abuse of that liberty." You say it would make no difference in Louisiana. Tell me what case would say that?

Mr. Littlethwaite: Mr. Roy, at law you are responsible for abuses.

Mr. Roy: If we take it out, the courts may think that we're not going to be responsible any more. What do you see what I'm saying?

Further Discussion

Mr. C. Jackson: Mr. Chairman, ladies and gentlemen, I rise in opposition to the Burson amendment and I do so because I believe that we have carefully considered the question before us and that the language offered by way of this section deals with a rather serious and complex problem in a manner that we believe to be in the interest of citizens of this state.

Last night I heard individuals say that I can't understand why this Bill of Rights Committee keeps talking about the rights of the individual. Well, again and again, we will continue to talk about the rights of the individual. This is the only place in this state constitution where the rights of individuals will be listed for, where we will address ourselves in what we believe to be the rights of Louisiana and the right of generations yet unborn. And this is why you hear us coming again and again. We place guilty to that charge. If you think that that is wrong, we likely suggest that this is the real purpose of a Bill of Rights.

Now, I think I'm perplexed by some of the arguments that I've heard relative to this section. Some people have suggested that they don't vote for the preamble of the individual Bill of Rights. Yet they indicate that they want to vote for the amendment before you and it is such broader than the committee's language. I am perplexed by that kind of reasoning. May I read to you from an editorial that appears in a local paper, it says, "The federal constitution is understandably clear why there has been so much litigation over its interpretation through the years. A state constitution should be more specific in some respects. As we have tried to do in 104 of the article, look at the preamble, look at the

litigation, and based on the recommendations of the district attorney, placed this preamble in this section."

We've done more than that. We have made legal liability responsible for those abuses. We have made them responsible for abuses in terms of pornography, we have made them responsible for abuses when they slander individuals or for defamation of character. Now, there are other argument, which would suggest that this is a dangerous section that we have. One of the reasons why we have so much litigation in this area is because the federal language is broad. But I ask you, ladies and gentlemen, is it dangerous, is it dangerous to assure that citizens in Louisiana will have the right to speak freely? Is it dangerous to secure the rights of individuals to express themselves by way of written communication? Is it dangerous to have people declare that they are for or against, and crusade for and against issues in this state? I hope not. I hope that there will never be a day when it is dangerous for an individual to express himself in this state. If we are concerned about these kind of dangers, I dare say that we ought to rest easy because we have no real fears.

But what is dangerous, what is dangerous, my fellow Louisianians, is the abridgement of freedom.

What is dangerous is for to remove the language that is encompassed in this section which makes individuals responsible for abusing the freedom. That is dangerous. And that is why the committee has placed it in there. And this is why we will say to you today that this section will permit the courts to regulate obscenity, will permit the courts to establish criminal law, civil law, to regulate all of these areas and the Burson amendment will not do this.

I call on you, in the name of justice, I call on you in the name of freedom, I call on you surely, in the names of the rights of individuals, to vote against this amendment, this amendment and say to all of the people of this state that we came here not to abuse freedom, but to say to generations yet unborn that they will have the freedom that will allow them to crusade for and against vital issues and vital concern.

I yield to questions.

Further Discussion

Mr. Goldman: Mr. Chairman, delegate, I hope you'll forgive a little preamble to what I have to say because this is my ninth day at the convention and my first speech... something that my friends and colleagues would find it hard to believe because I have a reputation for running off at the mouth, and that's the reason I have written what I have to say so that I don't ramble. I, also, have the reputation of playing the devil's advocate.

I rise in objection to this amendment and any other amendments that would serve to chew up Section 9 as reported by the committee. I would object technical amendments, such as Delegate Denney's changing the word "every" to "any". I find absolutely no fear with this section. I really don't fear what has been proposed.

I'm absolutely convinced that every delegate here is genuinely sincere and dedicated to creating a new constitution that will best serve all the people of our great state. And no one here is intent to pressure or ulterior motive. I have stated at interviews and in conversations back home, and I believe it, and I hope that you will prove me right. I've been asked about my philosophy and labels. I don't like labels, and a philosophy is difficult to explain because it doesn't remain rigid. It changes with the times. It cannot really be put into words, it must be displayed by deeds. However, if labels must be used, and this is to get a little background, and give you some idea of how I see, and I've been asked for this by a lot of people and organizations since I've been appointed, I do not believe in any belief in free enterprise and the maximum of govern-

ment interference... even more conservative than many of you because I don't believe in any government owning any facility.

And I am completely and devotedly a humanist. Unique, you call that? Incompatible? I believe not, and my experience has shown that it is not. Now as one who has been involved in the dissemination of news and information for the past forty-seven years, I can tell you that neither the press or broadcasting are served well by the simple, innocuous phrase, "There shall be no abridgement of the freedom of speech or press."

What's even more important is the fact that it is only an illusory subject, a service to the individual citizen, who has inalienable right to know and be informed. It has and does result in an inhibitory process which tends to slow down the open and robust discussion of public and controversial issues of the day. It really creates a fear that inhibits open public debate. This must be an absolute right in a free and open society such as we claim to prefer.

The key word here is censorship, or if you prefer, prior restraint. These restraints come in many and subtle ways on people and can only be prevented with the aid of constitutional provisions as have been outlined and authored by the Bill of Rights Committee. Anything less is an invitation to the subtleties of prior restraint.

The committee section, as written, provides for the rights of privacy and general welfare restraints that all reasonable and responsible people want with the sentence which reads and is read, "But each person shall be responsible for the abuse of that liberty." We don't want abuse or the right to freedom of speech... abuse of the right to freedom of speech, press, broadcast expression, photography and so forth, any more than we want abuse of the right of the individual to do anything else in his pursuit of happiness such as kill or maim his fellow man, or to be convicted and prevent an irrational person from committing a crime before he commits it. He is punished for it after the fact, not before. And any such person who exercises his right of free expression and abuses it, will be subject to punishment to fit the crime, subject to punishment to fit the crime as established by law and decided in the judicial process. But at the same time, with this constitutional provision, he knows that he will be free to express himself by whatever medium he chooses if he responsibly avoids abuses.

This does not prevent the spelling out of what those abuses are or will be, nor the determination of such abuses and the punishment for them when committed. Really, all this article does is establish once and for all that there can be no censorship or prior restraint in communications and that's as it should be. I know that all the delegates here would go on record to oppose censorship... Any effort to cut this section to eliminate portions of it, or to simplify or generalize it into one line, or sentence, will actually have the effect of censorship or prior restraint. I urge the defeat of this amendment.

Mr. Henry Some of the... after I've said something about please stay in your seats, some of the people, especially some of the older, one of the older Senators, pointed out that he had a malfunction in his chair. I don't know how he would really note that because he hasn't in it too often, lately.

But, we have talked with the people out at LSU, namely the President of the university, about getting some more comfortable chairs for the delegates. But wait, it's not easy because when you start dealing with something as important and as big as LSU, it takes days and days, because, you see, I called them and then they called Mr. Poynter and said that they would talk to him. And then the President called me, and I called him back. And right now, Mr. Poynter's got a letter in the mail that if he'll call somebody else out there, that we're going to try to work out something about some chairs.

They don't understand, Senator Rayburn, that

they'll be back before the Budget Committee went away, and that there are ways to explain this. But I think perhaps you and I should get together and write a little note out there to somebody that some folks, especially some folks who sit on the Budget Committee, are looking uncomfortable and plumb mad, at times, over here.

Further Discussion

Mr. Vick Mr. Chairman and fellow delegates, I rise in opposition to Mr. Burson's amendment, and to advocate the adoption of the committee's proposal.

As a former professor of constitutional law, I want to correct a few rather glaring errors. Rights, under the Constitution of the United States, or the Constitution of Louisiana, are not absolute. As a matter of fact, there are no rights that are absolute. Justice Hugo Black considered the First Amendment to the United States Constitution absolute because it says, "Congress shall make no law." And no law means no law. But believe me, there are no rights that are absolute. And further, there are rights that are in conflict in the present Bill of Rights, in the Federal Constitution, in the present Bill of Rights in the Louisiana Constitution, and indeed, in this proposal that you have before you. There will be rights that will be in conflict. And there are rights that are in conflict.

For example: the right of privacy as opposed to the right to photograph, that has been raised here from this podium, and the gentleman delegate gave to me as to why he was opposed to the right to photograph was the example of that rather persistent photographer in New York that used to stand on guard outside Mrs. Jacqueline Kennedy Onassis' apartment and follow her everywhere she went. And no doubt, she is a public figure, but the right to photograph is expanded. And she did she do? She went to court and got an injunction to keep that man a hundred yards away from her at all times thereby balancing the rights, the right of the photographer to photograph, and the right of Mrs. Kennedy to move with some degree of freedom... or Mrs. Onassis, if you will.

Now I recognize that public officials are very sensitive to their privacy, and that they do have some justification for that sensitivity. Newspaper men are under a deadline as are their T.V. counterparts. They make mistakes. We all make mistakes. But I take that one step further insofar as public officials are concerned, I think in many cases they are hypersensitive to what the press says, both the electronic and the printed media. But let me suggest to you, fellow delegates, that civil recovery is allowed for defamation, for libel and for slander where public official are concerned, and I commend to your attention the most recent case of Marialloto [Mayor Alloto] when Look Magazine accused him of Mafia connections, and his subsequent recovery of the suit, in millions of dollars against Look Magazine that forced them out of business.

Remember, remember under the New York Time versus Sullivan Doctrine that Mr. Burson enunciated, that there is civil recovery for defamation if the statement were both false and made without true malice, that is, with the knowledge that it was false or with the reckless disregard of whether it was false or not. And that's what brought the seemingly end to Look Magazine, they went so far out again to a public official, and they were finished.

Now, insofar as public figures who are not public officials, Mrs. Kennedy, for example, would fit that category, as, indeed, a number of other public figures, I command to your attention, ladies and gentlemen, what happened on the Saturday Evening Post when they accused Earl Butts of fixing football games. He sued and successfully recovered millions against the Saturday Evening Post, which again, was in part, responsible for their untimely demise.

Ladies and gentlemen, this proposal by the committee repeals the present law. Some of the delegates remarks from this podium notwithstanding,

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it capsulizes the present law. What's wrong with that? What's wrong with that? I have heard any number of delegates from this podium say, "we want the people to be able to read it and understand it." This is in clear, unequivocal language and believe me, it does not give license to do those things that are permitted by law.

I urge your defeat of the Burson amendment.
Thank you.

Further Discussion

Mr. Newton Mr. Chairman and fellow delegates, I rise in opposition to the amendment and primarily to clear up any misconception that you might have.

It's been remarked from up here that there is this vast body of jurisprudence which interprets the language of the Burson amendment, and there is. But that's by the United States Supreme Court interpreting the United States Constitution, and this language in the Louisiana Constitution is going to be interpreted by the Louisiana Supreme Court, and the Louisiana Supreme Court is not bound by the decisions of the United States Supreme Court in interpreting the United States Constitution. And I think without the language that each person shall be responsible for the abuse of his liberty, I think we are running into problems, and I urge the defeat of the amendment.

Questions

Mr. Lanier Mr. Newton, would you agree that there is substantial jurisprudence under Article 2315 of the Civil Code dealing with libel and slander?

Mr. Newton It is my understanding that there is a considerable amount.

Mr. Lanier And this is a statutory provision that's been in our law since we were under the Code Napoleon, isn't that correct?

Mr. Newton I believe so.

Mr. Lanier And, really, even if this clause in here that says, "But each person shall be responsible for the abuse of that liberty." If that were not in there, all of these things could still be cured under Article 2315 couldn't they?

Mr. Newton I'm not real sure about that if you're changing the constitution from what it is now and leaving that language off, it could very well be interpreted that we meant to change that provision of law.

Mr. Lanier Now, something else. We've been told that the language in this section is very clear and states the present law. Now, would you agree that we have previously, in Section 1, said that all rights enumerated in this section shall be inviolate and shall be preserved inviolate by the state? Would you agree with that?

Mr. Newton I believe that's right.

Mr. Lanier Now this thing here says, "No law shall abridge the freedom of every person to photograph." Is that correct?

Mr. Newton I assume you are correct. I am not reading it.

Mr. Lanier And that this pertains on any subject is that correct?

Mr. Newton I would think so.

Mr. Lanier OK. And then, in the last clause it says, "Nor shall such activities ever be subject to censorship, licensure, registration, control, or special taxation." Is that correct?

Mr. Newton That's what it says.

Mr. Lanier Now, would you, therefore, say that it is pretty plain that under this language that the state could not prohibit somebody from photographing a jury trial?

Mr. Newton I think that would be an abuse.

Further Discussion

Mr. Weiss Mr. Chairman and fellow delegates, back home, many of the people that have seen me in regards to this constitution request repeatedly to bring home a document they can understand. This is rather difficult sometimes when you sit on a committee, as I have, for many, many days with attorneys who use high-class legal language.

However, the amendment as proposed here is a very simple one, it states only, "freedom of speech or press." I contend that this is an over simplification of a very difficult problem and we must modernize it. The committee has spent many hours and days studying this, and it is certainly antiquated to use the term "speech or press." The major media today, the people's lobby, the education lobby, is television. There is no word here which applies to audio-visual.

Now in an attorney's sense, how can you interpret such law when you say, "only speech or press?" Where are the audio-visual people to be interpreted in this short statement? Perhaps there has been jurisprudence over the years established in regards to television. But it is not stated in this amendment.

I urge you to vote against it. There are three points which must be made clear in the committee's proposal. And I would ask you to bear with me to explain in detail these three points very simply.

First is the ability to speak, to write, to publish, to photograph, to illustrate, broadcast and transmit such knowledge which includes the television, which includes the audio-visual means that we have today at our disposal. It spells it out clearly, it tells the public, it tells the Supreme Court, it tells the people of Louisiana that we are in favor of freedom of expression.

Second, it allows for punishment in regards to abuse of that liberty. Injunctions can be obtained, and are obtained, to prevent people from such trash as has been perpetrated upon the public. And this is in newspapers, television, or other special media. This can be stopped by injunction and the courts will make this decision and not some censorship board, which is the third and most important part, that censorship, licensure, restrictions and controls in special taxation have been used throughout the world to stop the press.

In fact, there was a decision in the Supreme Court of our land because Huey Long tried to stop the motion picture presses from publishing. And those of you that are familiar with the law can bring that to the attention of this group. It is time we stopped this foolishness and allow freedom of expression as it should be enjoyed by all the people of this great state.

And I urge you to defeat this amendment and accept the committee's proposal.

Further Discussion

Mr. Roy Mr. Chairman, ladies and gentlemen of the convention, of course I rise in opposition to the amendment for many of the reasons previously stated, not the least of which is that it does not provide for the abuse of that freedom.

Now I've heard Mr. Lanier get up about three times and he's always bringing in some issue that I just completely disagree with him on. First of all, Article 2315, for you folks who don't know it, is an article in the Civil Code of Louisiana that allows a person to sue when he has been wronged, either verbally, that is by slander, libel, by written word, or, of course, just run over by an automobile.

Now Mr. Lanier knows, and every lawyer in here knows that if 2315 is in conflict with a constitutional provision, then the constitutional provision

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is going to prevail. Mr. Burson has omitted the words, "being responsible for the abuse of that freedom." In my judgment, our Supreme Court, in interpreting our new constitution, if ever we get one, and this particular section may say the convention had something in mind when it left out being responsible for the abuse of that freedom.

Therefore, there is no abuse any more, and 2315 is inapplicable. Now, let's go to the other question you asked about.... photography.

The section simply says, "In any sentence, 'There shall such activities be subject to censorship, license or registration to control a special taxation.'" Now Woody explained that very well. It means that you can't have the state creating any commission or any body that can come in and before you write your book, before you take your photograph, or before you sing your song, they cannot come in and censor it nor can they make you license yourself as an author, nor can they make you register as an author, nor can they control what you are going to put in there and nor can they specially tax it.

Once you do it, you are in the same boat as you are now and you always have been. You are subject to the abuse of what you have done and then you are responsible for whatever slander, libel, pornographic and otherwise material you put out that was wrong and against the law. So that's no problem.

Now, the last thing he mentioned is this word, "infringe," that "We make these rights invade with respect to the state." Everyone knows that a person may waive his basic constitutional rights before you are prosecuted or plead guilty in a federal court since every case, you must be in every case where there is a serious crime, you must be charged by a federal grand jury indictment, the court asks you, "Mr. Roy, do you realize that you have to be indicted before you can be charged?" And I say, "Yes." "Do you waive that right?" And I say, "Yes." And then you go on. "You may waive any constitutional right."

I'm going to yield to questions because I see there are some questions.

Questions

Mr. Jenkins Mr. Roy, during our committee deliberations, we had perhaps, two or three hundred people testify before us. Can you tell us how many people came and opposed this freedom of expression section?

Mr. Roy John Thistlethwaite was the only one, and then he really wasn't that sure about what he was getting into.

Mr. Jenkins Is it true that the District Attorneys' Association has said that this section is acceptable, then, and provides adequate safeguards against obscenity?

Mr. Roy John Richardson, the D. A. from Caddo Parish came down and we had omitted the words, "being responsible for the abuse of that freedom," and he said, "You must have that in there because if you don't, it's his judgement that then there would be no abuse and you'd have complete, absolute freedom," so we added that in there because of a D. A.'s remarks. You're right.

Mr. Jenkins Now, is it true that the section as written simply restates the present, existing law on this subject?

Mr. Roy Yes, it does, and it makes sure that our courts understand, our state Supreme Court will understand what we talked about when we say, "broadcast."

Mr. Jenkins Now, isn't it important, though, that we keep this present state of law written in the law because if, say, future U. S. Supreme Courts came back and wanted to allow, say, licensure of the press, we would be protected, wouldn't we?

Mr. Roy That's absolutely correct. What the U. S. Supreme Court does, if it decides to come back and make it... make censorship legal, we in Louisiana state, we don't believe in prior censorship.

Mr. Goldman Delegate Roy, did you, and do any of the delegates here remember some eight or ten years ago when the legislature almost passed a law that would make the attorney general of this state the censor for all advertising in this state, all advertising? If that law had passed, would have gone to the attorney general before being either printed, broadcast, or any other way it could be brought to the people. And he would have the sole authority to say whether it was true or false, whether it was good or bad or any other thing, and he could stop it or let it go.

Mr. Roy That's correct, and that's a perfect example of prior censorship that no one would think wrong.

Further Discussion

Mr. Dennis Mr. Chairman and fellow delegates, I wanted to ask a question of Mr. Roy, but he ran out of time. The thing about the committee's proposal that troubles me greatly is the part that says that no law shall abridge the freedom to gather, receive or transmit knowledge or information. These words, if believe, could be subject to the interpretation that no law could be passed regulating anyone in bugging devices or using electronic surveillance or infringement on individual's privacy. I know we have already passed a section that says the state cannot practice unreasonable searches and seizures, but I think that this might be interpreted to mean that we could not pass a law protecting private citizens from unlimited searches and seizures, so to speak, gathering of information.

Now, I've talked to some of the people who are for this committee proposal and they say, "Oh, it would never be interpreted that way." And I've heard Mr. Roy explain what some of these words mean. But I really don't think that some of these phrases he's been using in the proposal and I don't know that the words, "gather, receive, or transmit knowledge or information," have been interpreted that well in the courts so that we are absolutely certain they would not be interpreted in a dangerous way, a way that would infringe upon individual liberties. I realize that the newspapers and the news media are very happy with this. The district attorney may be happy with it. But what about the people who are concerned about the individual liberties? I didn't get a chance to ask a question as to whether or not you heard from those kind of people.

But I.... it troubles me to see you get away from words that have a hundred and fifty or more years of interpretation behind them, and about new words. In this whole Bill of Rights Section, what we are trying to do here is say in a very few words what would really take volumes and volumes to actually spell out, and our courts, over a hundred and fifty years have done that. And in many instances here, we are discarding the very words that have a hundred and fifty years of interpretation behind them, and adopting new words, and it makes me very uncomfortable because I don't know that we know how those words will be interpreted.

So I ask you to support Mr. Burson's amendment, or an amendment similar to that that gets us back to some words that have been interpreted by the courts that we know what they mean, and not adopt language like giving someone the unfettered right to gather information which might mean, and I hate to be one to raise up a boogeyman, but we've got to think about these things. It might mean that we could not regulate individual private citizens in using electronic devices and so forth, that would invade a person's privacy.

Questions

Mr. Smith Judge Dennis, I'm for the Burson amendment. But don't you think the present section as written is way too broad in what it is trying to prohibit?

Mr. Dennis Mr. Smith, I think that probably, our Supreme Court would, through a series of cases, interpret it so that it would probably come back to mean about the same thing as Mr. Burson's amendment would. But, why force us to enter that much litigation to get back to about the same thing? And then, I'm not absolutely certain that that would occur.

Mr. Smith Well, don't you think the section as written now encourages obscenity and pornography?

Mr. Dennis Yes, sir, it could. However, that doesn't concern me as much as this unfettered right to gather information.

Further Discussion

Mr. Willis Mr. Chairman, my ladies and gentlemen of the convention, plain, honest and well understood words are the only ones to deposit in a constitution. To experiment cutely at the moment with words and phrases which do not have the test of time, or ambiguous connotations, is to court that which would require our citizens to court our courts continually and leave to unoward circumstances which are neither now desired or contemplated or predictable. I do not have a mind keen enough, or a tongue nimble enough to suggest all the consequences to which the verbosity of this article may lead. If brevity is the soul of wit, let me suggest we be brief. Let those who would be verbose tell you that this amendment does not achieve their all in less words. As a matter of fact, I plainly heard Delegate Jenkins say, "it didn't."

I am for freedom of clear expression, not of verbosity and ambiguity. My courage to make this suggestion mounts with the occasion. We must purify our constitution with understandable language, not pollute it with words, words which will only stifle wholesome statutes existing and to be. Words without thoughts never to Heaven go. I fear that what we now consider great rights, will give license to do great wrongs. Give me enough ink, and I can write, publish, photograph and illustrate your reputation and honor out of existence without a blench of untruth by merely withholding some of the truth. Give me the audience, whether captive or not, and I can speak and broadcast you likewise. Are we oblivious of the teachings of history? Those same lessons recommend freedom of expression either by speech or press. I sound the tuckets of war in defense of those freedoms. But there is no need to draw useless blood. We are all in agreement on the freedom. Our disagreement is on the language to achieve the balance between that freedom, these are the others which we have.

You have heard from the Psalm, My cup runneth over. In parallel, this Bill of Rights is a cup, and this article is its contents which is running over with words and leaving us a legacy of a loss and a great deficiency. If we speak with words with deliberate speed. But let us not speed without deliberation. Of the two, deliberation is the better, impatience is a symptom of poverty in judgment. I readily embrace the freedom to express one's self by word and print. To ear and eye to its fullest extent and within propriety. Both reach the mind, but I am unalterably opposed to allow any person to reach mine, or those of my own, with impropriety, and I very much fear the article under consideration gives the license under the guise of freedom of expression, to do just that and to turn our society topsy-turvy.

The article as written, under the guise of freedom, gives a smooth path to indecencies, improprieties, and every other.

Mr. Henry Mr. Willis, you've exceeded your time.

Mr.

Mr. Willis — very well, sir.

[Unintelligible speech]

Motion

Mr. Burson Mr. Chairman, ladies and gentlemen, the author of the Bill of Rights to the United States Constitution primarily, as I recall Mr. Madison would, I am sure, by a long had in wanting to hear that some of the delegates to this convention greatly fear the language which they think to secure freedom of speech and press in these United States. I am sure they would be astounded to hear that they are in favor of censorship and more astounded to hear that their language was foolishness. I think the best test of their language is, that it has stood the test of time. For those of you who might have fears in that regard, they have stood the test of time quite well in the era of radio and television. We have cases on the books which clearly include radio and television within the protection of free speech and free press. As Mr. Willis put it much more eloquently than I can, we all agreed on the objective. It is simply a question of what language we will use. I have submitted to you language which has stood the test of time and language which is substantially different from the language of the committee proposal and from the present State Constitution. Do not be deceived. The present State Constitution, if you will look at Section 7 of the Bill of Rights of the present State Constitution, talks about freedom of speech and press, just as the U. S. Constitution and just as my amendment speaks of freedom of speech or press which has a well-defined historical meaning. The committee proposal speaks of the freedom of every person to "speak, write, publish, photograph, illustrate, or broadcast on any subject; to gather, receive or transmit knowledge or information," which I submit to you, is quite a different thing from a defined freedom of speech or press. As far as the phrase about abuse of liberty, I suggest to you that no lawyer in here seriously suggests, or should seriously suggest to you, that people have not been responsible for the abuse of the freedoms of speech or press in this country, whether by libel law. Now by the latest decision of the United States Supreme Court they have removed pornography from the protection of the First Amendment freedoms. They have removed it. That's what the decision says. I have it at my desk, if anyone cares to look at it. Would we turn around in a State Constitution and perhaps, I don't say the committee proposal does this, but it may and some committee members have told me that they intended that it should. I won't embarrass any of them by calling their names here. That it should encompass the right to distribute pornography and if that's what they intend, then I tell you frankly, I am against it. I am against it for the major reason that the overwhelming majority of my constituents are against it and I was born and raised in my district and share most of their view to the T. Now, as Mr. Franier pointed out under the 15th and 15th of the Civil Code, which we have had in effect in this State since we were a possession of France, we are well covered on the question of libel and slander. I'm not worried about that. I am worried very deeply in the area that Mr. Avant brought to your attention yesterday. Does this untrammeled right to photograph, to gather, receive or transmit knowledge or information on any subject. To have the right to delve into your private, personal affairs and transmit that information to other. If it does, then I don't think there is any delegate here that would want to vote for that provision.

[Unintelligible speech]

[Unintelligible speech]

Agreement

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Mr. Poynter Amendments sent up by Delegate Gravel.

Amendment No. 1. On page 3, delete lines 26 through 32, both inclusive in their entirety, (and need to add the language "and strike out Flobon Amendment No. 1, proposed by Delegate Burson, adopted by the convention today,") and insert in lieu thereof the following: "Section 9. No laws shall abridge the freedom of speech or press, but each person shall be responsible for the abuse of those freedoms."

Explanation

Mr. Gravel Mr. Chairman, ladies and gentlemen of the convention, all that this does is to add to the Burson amendment that has just been adopted by this convention, the provision that each person shall be responsible for the abuse of those freedoms. I think this is necessary in order to make sure there can't be any interpretation of the Burson language to make the proposed rights therein set forth completely absolute. I believe this is an adequate protection, and frankly one that I think is needed, despite the language in Article 2315 of the Louisiana Civil Code. I don't think there is any question but that we need this particular authorization or restraint in the constitution itself, and I urge your adoption of the amendment.

Questions

Mr. O'Neill Mr. Gravel, Mr. Burson said we didn't need this language. Does he agree with this amendment?

Mr. Gravel I don't think he said we didn't need it. I disagree with him to that extent. I don't think he has any strong feelings one way or the other about the language. I don't know, that's up to him, but I do think it is necessary and we do need it. I would ask that you support the amendment.

Mr. Burson Do you know, Mr. Gravel, that I have no objection to this amendment?

Mr. Gravel Thank you, Mr. Burson.

Mr. Fulco Camille, would freedom of speech and press necessarily have to have included "broadcast"? Would that give the...if you added the word "broadcast" in there, would that give the broadcast stations any protection?

Mr. Gravel Of course, Mr. Fulco, I think that interpretation goes more to the question of the Burson Amendment. In my judgment and without much question, without any reservation, I think it definitely includes radio and television broadcasts.

Mr. Fulco I was asked to make that request because the broadcast people felt that in the committee's section, they had to have the word "broadcast" in there to afford them the same protection that is afforded the press. I am only making this request, asking the question at their request, thought maybe you might enlighten me.

Mr. Gravel In my opinion as a lawyer, that is not necessary. However, I say the amendment that I am proposing really has to do with the question of whether or not these freedoms will be constitutionally protected. In this question I think that the argument and the vote on the Burson amendment has already foreclosed that question.

Mr. Fulco Thank you.

Mr. Gravel Personally, I think broadcast is amply protected by the Burson language.

Mr. Fulco Well, that's what I thought, too. Thank you.

Mr. Warren Mr. Gravel, this is a question I wanted to ask some time ago and everybody ran out of time. The...no law shall abridge the freedom of speech or press has already been interpreted, am I right?

Mr. Gravel I think many times, yes, Ma'am.

Mr. Warren Could you or anybody give me in writing, I'm asking you the speaker, the I want it in writing, the interpretation of this meaning, please.

Mr. Gravel I could give you maybe my opinion, but it would....

Mr. Warren Give me your opinion, but I would like for anybody and I'm going to ask the Chairman that I get this in writing, the interpretation of this meaning, please.

Mr. Gravel Mr. Chairman.

Mr. Henry Well, Mrs. Warren, I don't think I can give you that in writing. I don't think anybody here right off can give you that in writing...

Mr. Warren It doesn't have to be right off, I just want it.

Mr. Henry Well, I'll appoint Mr. Gravel then to make sure that you get this in writing before this convention is over.

Mr. Warren Thank you, very much, that's all I want to know.

Mr. Gravel Mr. Chairman, I can give the Chairman three cases where the Louisiana courts have interpreted this language, and they are in writing....

Mr. Henry Mr. Gravel, now let's be fair. The lady has asked for a written opinion, I know of no one who writes any better than you do, and I think you can put it in the language that she would understand it and appreciate it. She's not asking you too much.

Mr. Gravel How much time do I have to prepare it?

Mr. Henry Till January 4, Mr. Gravel.
He will do that, I am sure.

[Previous Question ordered. Amendments adopted without objection.]

Amendment

Mr. Poynter Mr. Drew does want to go with his amendment.

Amendment No. 1. On page 3, delete lines 25 through 32, both inclusive in their entirety (and we need to add the language "and delete the Gravel amendment just adopted") and insert in lieu thereof the following:

"Section 9. Liberty of Speech and Freedom of the Press
Section 9. No law shall ever be passed to curtail or restrain the liberty of speech or freedom of the press. Any person may speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty."

[Amendment withdrawn and resubmitted with revision.]

Mr. Poynter Now, Mr. Drew, you want it to read the last sentence, "the abuse of that liberty or freedom."

Explanation

Mr. Drew Yes, sir. Mr. Chairman, ladies and gentlemen of the convention, there is not a great deal of difference between the Burson and the Gravel amendment. The reason I am offering this amendment is because

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it tracks the language of the 1st Constitution, except for the fact that the 1st Constitution reads in the second line, 'liberty of speech or press.' I thought it would make it a little bit clearer to add, 'liberty of speech or freedom of press' and the reason I added at the end of the sentence of the amendment, 'or freedom' because the question was raised that the responsibility for the abuse of that liberty had to be limited to liberty and not freedom of press. Therefore, it would, the abuse would be the responsibility for the abuse of the liberty or the freedom of the press would be subject to court action, if necessary. The reason I offer this in lieu of the amendment that was adopted and offered by Mr. Graves, is that this is the language of the 1920 Constitution, which has been interpreted time and time again. Although that on the surface and on the face it appears to have the same meaning, when you change words, you have the possibility of having interpretation. I don't think the minor change that has been made here, by the mere insertion of 'or freedom of the press' where we also insert responsibility, that freedom would make any change in the court decisions and which we are living under. Although from the debate, the extensive debate that was had here on the Burson amendment, I don't think that the press association or the broadcasters' association or any other of the news media associations have had any complaint or any hostility toward the present provision of this Constitution. We had many years of jurisprudence interpreting this. It certainly has not been abused; it has not limited the freedom of the press or the broadcasters, and I think by staying with the provision that we have operated under for the last fifty-two years and taking benefit of that jurisprudence would well be to the benefit of this consented State. I move for the adoption of this amendment.

[Speaker: The Speaker orders: Amendment adopted, 47-42. Motion to reconsider denied.]

Amendment

Mr. Painter: Next amendments are sent up by Delegates O Gerolamo, Toca, [11] and many others. Reads as follows now:

Amendment No. 1. The instructions are going to have to be changed as follows: On page 3, line 26, insert the following after the language added in Convention Floor Amendment No. 1, proposed by Delegate [1] now and adopted by the Convention on September 6, 1973. Any person whose character is assailed by reason of the exercise of any freedom herein granted, shall be afforded an equal opportunity to reply, and the legislature shall enact laws to implement this provision and provide penalties for violation, and you need to strike out the word "such activities shall not".

Legislation

Mr. [1]: Mr. Chairman and fellow delegates, the author of the Constitution of the United States worked hard and hard to insure for all of the 13 liberties granted in the Bill of Rights. It took the same time to categorize each of the liberties and their rights, but that there would be no interpretation, misunderstanding as to their meaning or intention. When the 13 amendments of American principle were called by the first Congress and then ratified by the people in 1791, there was no doubt in anyone's mind that any new law that was enacted of the Bill of Rights was applicable to everyone, every citizen, every individual. Not in the language of title and the bureaucracy of modern society, it has become necessary that we here in Louisiana, taking a long time at the ratification now before us, to offer specifically the title, I titled it "Freedom of the Press" and the amendment is in the same terms as were in the original when it was adopted. It was to protect the press and the press was the only way that the people could be kept informed of the activities of the government. The press is the only way that the people

could get a just reply in some cases, in some instances, and a fair representation of the matter at hand. It is to be presented the fact to the other side. We can all recall incidents when a newspaper headline criticizes a public official or exposes an alleged business malpractice only to retract their statement after the true facts become known. How often do we not see their retraction in no more than the same amount of exposure or attention as the initial headline, thereby leaving an erroneous opinion in the mind of the public. It is this injustice which must be closely scrutinized during the 60's and now in the 70's consolidation, syndication, acquisition of radio and television stations and the demise of vast numbers of newspapers around the country, has resulted in a concentration of ownership of the mass media into fewer and fewer hands. This is a form of private censorship with influence over a large area of the nation, an unchecked influence over the ideal and morals which guide our daily lives. It is necessary that we as representatives of the people of Louisiana insist that every individual has the right to, and an equal opportunity to, reply when his character is assailed by reasons of the exercise of any freedom granted in this Constitution. Fellow delegates, just recently in the State of Florida the legislature in Florida passed a state statute [1038, referring to candidate running for public office. I will read it to you. If any newspaper in its column assails the personal character of any candidate for nomination or for election in any election, or charges said candidates with malfeasance or misfeasance in office, or otherwise attacks his official record or give to other free press for such purposes, such newspaper shall upon request of such candidate immediately publish, free of cost, any reply he may desire to in as conspicuous a place and in the same kind of type as the matter that calls for such reply, provided that such reply does not take up more space than the matter replied to. Any person or firm failing to comply with the provisions of this section, shall be guilty of a misdemeanor in the first degree, punishable as provided in the Statute. This case went to the State Supreme Court in Florida and the State Supreme Court's conclusion, we would not find that the operation of the statute would interfere with the freedom of the press, as guaranteed by the Florida Constitution and the Constitution of the United States. Indeed it strengthens the citizen, in that it presents both views, leaving the reader the freedom to reach his own conclusion. This decision will encourage rather than impede the wide-open and robust dissemination of ideas and counterthought, which the concept of free press both fosters and protects and which is essential to intelligent self-government.

Gentlemen, this is the reason I have, and that other members who endorse this amendment, of introducing this. It certainly is not meant to impede or suppress freedom of speech or press, which is so vital to our country. It only affords those who are not in the position to demand front page coverage when their character has been assailed, to ask for it and be given free of charge, and no cost, and therefore I ask for your vote on this amendment and I ask for your favorable advice.

I will answer any question, Mr. [1].

Question

Mr. Warren: Yesterday and I think it was [1] and I wanted to be listed as one of your opponents on the question I asked you to answer. You also made your presentation. Well, this will refer to those persons against the question [1] and [1] elected officials, or will it be an equal amount to cover anyone who feels that their character has been assailed?

Mr. [1]: The amendment that you are referring to will take care of everyone. The Statute will be just for the legislator. For the person that has been elected whose character

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Mrs. Warren I would like to get on this one and endorse it.

Mr. O'Neill Mr. D'Gerolamo, I see that it says here that the legislature shall provide penalties for not doing this. Can you tell me in your mind what kind of penalty you might be thinking about?

Mr. D'Gerolamo I have no ideas right at this present time, probably something on the order of the state statute in Florida, but certainly we want to leave it open for suggestions and the legislature to do what they think is right for both the press and the individuals.

Mr. Munson Eddie, does this simply add to the amendment just adopted proposed by Mr. Drew?

Mr. D'Gerolamo Yes, sir, all it does is add another paragraph to it, sir.

Mr. Munson Well, I heard you say in your remarks, any person whose character is assailed would have the right to the same coverage in his reply. It doesn't say so in the amendment. In other words, is the reply going to be on page 32 or page 1, or is that left up to the statutes?

Mr. D'Gerolamo This would be left up to the statutes, Mr. Munson.

Mr. Riecke Who would determine and at what point would it be determined, whether the person's character really was assailed?

Mr. D'Gerolamo I believe the intent of this would be left up to the person who has been assailed.

Mr. Riecke In other words, that person could just simply say "my character has been assailed," whether it really was or not and get front page coverage?

Mr. D'Gerolamo Well, Mr. Riecke, I'm sure that the only time that the use of this thing would be to set out by the legislature the laws to implement this provision. It would be again left to the legislature to implement these laws.

Mr. Riecke I see.

Mr. Kean What is the meaning of "whose character is assailed?" What does it take to assail one's character?

Mr. D'Gerolamo Well, I have probably and you have had read and heard innuendos, accusations about a person, of the character of a person, that later on never did materialize, but they hit the headlines and it's the person whose character was assailed.

Mr. Kean Well, suppose the headline as you refer to it was true. Suppose the newspaper published a truth, which had the affect of assailing one's character. Would that require that nonetheless there be this right to rebuttal that this would give them?

Mr. D'Gerolamo Be in the practical sense, I would say yes. But certainly if a man committed a crime or was accused of a crime and it was the truth, certainly this man would have a type of rebuttal, whether he is found guilty or not, which would be later on. What I am trying to prevent, if possible, at many a time a person is convicted before he is even tried. He is convicted by his peer, by the public, before he is even brought to court.

Mr. Kean Wouldn't you think that the amendment that has just been adopted, the Drew amendment, which makes a person responsible for an abuse of the liberty of speech or freedom of press would take care of this problem that you are attempting to get to with your amendment?

Mr. D'Gerolamo No, sir, I do not, Mr. Kean, because I believe that although a reply may be given, sometimes, it's not used and printed, or as such.

Mr. Denney The delegate D'Gerolamo, as I understand it the State of Florida adopted a statute as you read it. The State of Florida, however, has no such constitutional provision as this, does it?

Mr. D'Gerolamo I do not know. I think it does, Mr. Denney, by this wording here on page 11 of the suit, it says, "in conclusion, we do not find that the operation of the statute would interfere with freedom of press as guaranteed by the Florida Constitution".

Mr. Denney In other words, if we have a similar provision in the constitution as the State of Florida does, we would not need this provision in the constitution, if the legislature saw fit to adopt a similar statute. Is that correct?

Mr. D'Gerolamo That's possible, sir.

Mr. Denney Furthermore, the State of Florida does not require the legislature to adopt such a statute and your proposal requires the legislature to enact laws to implement this provision. Is that not correct?

Mr. D'Gerolamo Yes, sir.

Mr. Denney So that you are not satisfied that the legislature believes this to be a good thing; you would insist that the constitution require the legislature to adopt this, whether the legislature felt it was a good idea or not. Is that correct?

Mr. D'Gerolamo Well, I believe the legislature could enact the laws however stringent or lenient as it would feel fit was necessary.

Mr. Denney But it would have to adopt some law, is that correct?

Mr. D'Gerolamo Yes, sir.

Mr. Denney So, don't you agree that what we are doing then, is putting legislative material into the constitution?

Mr. D'Gerolamo Not particularly, sir.

Mr. Denney Thank you, sir.

Mr. Willis Mr. D'Gerolamo, I don't want to abuse you with these questions; I'm in favor of the thrust of your amendment. But don't you think that character...well, let me put it this way, isn't character and reputations different?

Mr. D'Gerolamo I presume so, sir.

Mr. Willis So, then wouldn't the appropriate word instead of "character" be "reputation", your reputation is misused. Don't you think it would be "reputation" would be the word that you should have? The character is something that you make of yourself, a reputation is how you are looked into the eyes...maybe not, then I have this other question, "Equal opportunity to reply" has me puzzled, what does that mean equal facility, equal time? You understand the meaning of it?

Mr. D'Gerolamo Yes. What the intent of this is, that the person who is assailed, whose character is assailed, will have the equal opportunity to reply. Now it would be set out by statute of the state legislature, in the method of reply; but, he does have, he will have the opportunity to reply.

Mr. Champagne Mr. D'Gerolamo, does this thing here...in other words, my question to you and probably you don't agree is, I feel that no other constitution has this in it, to your knowledge, is there any other constitution?

Mr. D'Gerolamo I don't know, Mr. Champagne.

Mr. Champagne The thing that I'm worried about while I'm in sympathy, is that I feel that this is

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legislation don't you think, perhaps, this is legislation?

Mr. Gerolamo I feel it should be in the constitution. Mr. Champagne, this is why I drew up this amendment.

Further Discussion

Mr. Derbes Ladies and gentlemen, first I would like to dispel any rumors that I have been taking video lessons from Eddie LeBreton. I just have a bad cold, and I hope you will forgive me for the moment and pay a little bit of attention to what I have to say. I don't think this amendment is necessarily a can of worms or a snake. I think it's a dinosaur, because it's essentially prehistoric. It flies in the face of all that we know about existing law of libel and slander. It flies in the face of New York Times vs. Sullivan and makes no distinction between public figures and private persons. It makes no distinction between data, which is disseminated about individuals and an actual assault. . . . Makes no distinction between data that is disseminated about individuals and an actual attack on an individual's character. I can say, as a matter of fact, I saw Helmut Bollinger with a red, white and blue tie on the corner of Convention and Fourth Streets in the City of Baton Rouge, and according to Mr. D'Gerolamo, if he considers in his sole discretion that that's an assault on his character, then he can go to court and occasion an equal opportunity to reply. I think most of us are attempting to do in this constitution, what's going to protect all of the people. Thomas Jefferson once said, "Give me a choice between newspapers and government, and I'll take newspapers." Well, I tell you that this amendment is going to have a chilling effect on freedom of speech and freedom of the press. One of the foundations of this democracy, is the ability of newspapers and other members of the media to disseminate the news and at the same time be responsible for any abuse of that liberty. I don't know what assault means. Does it mean libel? Does it mean published data or information about, or does it mean a personal, physical attack? If I say that somebody has certain character traits, that might be an attack on his character. If I, otherwise, say that I saw Helmut Bollinger and such at such and such a time, that's not necessarily an attack on his character, although he may consider it so. Also, I don't know what an equal opportunity to reply means? Does that mean if you publish a transcript of certain proceedings in which an individual was involved and I may take two or three pages of newspaper space, and he considers it an attack on his character, that he has an opportunity to publish a like amount of information in a succeeding publication? Frankly, I don't know. As it stands, if a person abuses his right of freedom of speech, the newspaper or the member of the media that's involved in the abuse, has an implicit obligation to print a retraction, in order to mitigate damages. If I say something about Senator Heilbrunn that's bad, that's wrong, that's a personal attack on his character, in order to protect myself I've got to print a retraction. I've got to give him an opportunity to reply. If the record is bare of such a retraction, then nothing has been done to mitigate damages. I indeed I have libeled or slandered him, then he has a right, appropriately, for me to all out in favor of complete freedom of speech where individuals are concerned.

Further Discussion

Mr. Tenney I rise in opposition to this amendment. First I would like to state to you my knowledge of these facts, although I may be assailing my own character thereby. I am a member of the advisory editorial board of the Times-Picayune in New Orleans, and I am the chairman of the Louisiana Filmmaking Television Authority, and in both of these capacities I would have to object to this amendment. In the first place Mr. Gerolamo was

unable to explain what the meaning of the phrase "whose character is assailed." As Mr. Yeon pointed out in his questioning it is very difficult to determine what this means. I suppose for example that a newspaper publisher who is in office as the representative from the seventy-seventh district has done a poor job as a representative. Presumably that representative would consider that his character had been assailed, and he would therefore be given "an equal opportunity to reply," which would mean that he could then publish in the newspaper, or cause the newspaper to publish in the same place a statement which said "the representative from the seventy-seventh district, in his opinion, is doing a good job. I'm trying to reduce this argument really to an absurdity, because I feel that an amendment of this sort becomes an absurd amendment to our provision in our constitution. Despite the language of the court in Florida, it would seem to me that this clearly would violate the "freedom of the press" privilege granted by the Constitution of the United States. I would further point out to you that even in Florida the only time this law applies is during a political campaign in which a newspaper might attack one of the candidates. Then that candidate is an equal to reply. Equal time and equal as interpreted by the F.C.C. and the courts really deals with politics, principles. It doesn't deal with individuals. It seems to me that this would be a very poor type of thing to put in our constitution. As Mr. D'Gerolamo answered to my question, this will "require" the legislature. It will not give the legislature an opportunity to determine whether such a law is a good law, it would require the legislature to adopt a law. Now, I don't believe that we in this convention are legislators. We're not supposed to be legislators. We're supposed to write the basic principles of the law. If such a law is a good law, the legislature would have a right to adopt it under the present provisions as the proposal has been amended. It seems to me that the very nature of the language in here is so weak, "whose character is assailed" -- it has no real definite meaning. "Assail" means a violent attack. Therefore, if the newspaper calmly states, "well, we don't think Mr. D'Gerolamo has done a good job," that's not an "assailing" of his character. That's merely a statement of opinion. Furthermore, if the newspaper carries it on the front page that someone has been indicted, that's merely a fact. It is a fact that a grand jury indicts someone after it has so indicted him, I don't believe anyone would require the press or the radio or the television or broadcasting of any nature to come in and say "this man says he was not indicted." That's all you could say because the indictment itself may be an assailing of the character. It seems to me, ladies and gentlemen of the convention, that the language in this proposed amendment is such that it does not belong in a constitution, and I urge you to vote against it.

Question

Mr. Roy Mr. Tenney, do you know some people whose character cannot be assailed?

Mr. Tenney No, I don't know of any, not even me.

Further Discussion

Mr. Tupper Mr. Chairman, fellow delegate, as a author of this amendment and rise in support of it, will not labor the point with you, but it seems odd that the only people that have supported this amendment are those who are connected in some way or form with publications. It was as simple as Mr. Tenney or Mr. Derbes would have you believe -- if your character has ever been assailed, and there's no question of the difference between character and reputation, I don't know what that is, hereafter, what you really are, reputation is what people think of you. However, if something is said about you that is supplied

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gathered from an unknown or an undisclosed source, and it's printed on a front page of a newspaper or a magazine in the front section, and the retraction is in section 4, page 32, that really doesn't do you a heck of a lot of good. Let's be honest with one another. This may be classified as part legislation because it says that "legislation shall", but aren't we going to adopt a schedule which will do the same thing. We will require in order for the constitution that will finally be adopted to be effective there will be certain pieces of legislation that the legislature will have to pass. So let's not kid ourselves, we're speaking of something here that's very, very vitally important, not only to public officials or candidates but to every citizen of this state. I don't think that any of the major news media would be in opposition to a fair and impartial equal opportunity to reply in equal space. I don't think you'll have any opposition from them, because I believe that they are for fair play and decency and honesty, and I urge that you adopt this amendment. It's been so vitally and badly needed in this state for so many years. I urge that you adopt the amendment and let's get on with the business, because this is not an absurdity, this is a necessity. Thank you.

Questions

Mr. Kelly Mr. Tapper, I realize that you have directed most of your statements toward the press, so to speak, but your amendment as I understand it, refers to any person who might assail the character of any other person. Is that correct?

Mr. Tapper Yes.

Mr. Kelly All right. Can you foresee a situation where in a political campaign one party was on television and the opinion of the other candidate, his character was assailed? Now, this says that somebody is going to have to afford him an equal opportunity to reply. Does that mean that, say the T.V. station whereby the political advertisements were being run, are they going to have to afford him this opportunity to reply, or is the other candidate who made the alleged character assailing going to have to afford him this opportunity?

Mr. Tapper Well, I think you have to take it in two parts. In that instance this would not apply to the television station or radio station. Certainly if they are running a paid ad, then they have no responsibility whatsoever.

Mrs. Zervigon Representative Tapper, are you aware of the fact that Mr. Kelly doesn't own a newspaper?

Mr. Tapper I beg your pardon.

Mrs. Zervigon Are you aware of the fact that Mr. Kelly does not own a newspaper or sit on the editorial board of a newspaper?

Mr. Tapper I really don't know what his occupation or profession is. He didn't say he was opposed to the amendment either.

Mrs. Zervigon Are you aware of the fact that Delegate Derbes does not have an interest in a newspaper?

Mr. Tapper I am aware of the fact that he either had or still has, as I think it's the Vieux Carre Courier, I'm not sure.

Mrs. Zervigon Are you aware that he sold that paper?

Mr. Tapper I heard that he might have.

Further Discussion

Mr. Stagg Mr. Chairman and fellow delegates, I rise in opposition to the amendment. I think I am

constrained to rise and to take up your time simply on the chance that by say 55 to 53 or some other close vote, this amendment might sneak through, and in order possibly to obviate that possibility I would like to speak as forcefully as I can against it. In the Florida law that has been quoted by Mr. D'Gerolamo and others it says that if any newspaper assails the personal character of any candidate or attacks his official record, if something like that was presented to narrow the issue, this amendment might be much less offensive to me. I agree with Mr. Derbes when he says that this amendment will have a chilling effect upon the freedom of the press. I want to point out to Mr. Tapper that I don't own any newspapers or any other methods of communication other than my own voice, and I'm going to use it not to oppose the amendment on the basis of the way it's drawn. Look at your amendment. What do they mean by "character is assailed?" What do they mean by "equal opportunity to reply?" If a purported assailment takes place on the six o'clock news on Monday, which is a heavy night of viewing of the news at six o'clock, and the reply is at ten o'clock on Tuesday, has that man had an equal opportunity to reply? Can he ever get together the same audience who heard the assailment and then give his reply? It's not possible. The "legislature shall enact laws to implement." How in the world can our legislature slug its way through all the business they've got to do now in order to come up with some kind of legislation that will assign you "column inches"? Suppose that in the times Picayune they said in a story that contained no more than three column inches that such and such a person has done this or that, and he has only three column inches in which to reply. Is that an equal opportunity? Does it have to be the same length? Does it have to be on the same page in relatively the same location? What in the world does that mean by "equal opportunity to reply"? "Shall provide penalties for violations"--what kind of penalties? Do you go to jail if you don't do it? How do you jail a whole newspaper or a television station for not allowing what they think is an improper denial of an opportunity equal to reply? Look again at your amendment at the last line. It says "such activity shall not". That doesn't apply to anything anymore because we're now working against the Drew Amendment which passed this convention by 69 to 39, and that tag end on this amendment has no place to attach. If you attach it, if you would adopt it, it's got nowhere to go. It doesn't apply to anything. I would like to close, Mr. Chairman, by urging the convention to dispose of this amendment, to vote it down, to do away with it, so we can go on to the other matters before this convention this morning. I'll be glad to yield to anybody's question.

Question

Mr. Conroy Mr. Stagg, I agreed with your analysis of this, but I think you left out one part of it. The reference to any person at the beginning, would you understand that to mean any person in the world whose character was assailed, the way it's written, just what would it mean? Would Palestinian guerrillas have a right to equal time in this state to explain why they might have hijacked an airplane or something?

Mr. Stagg If you could view those words in any other context, I can't figure out how you would. Your answer to your question is certainly yes.

[Previous question referred to 86-1.
Amendments rejected 10-7. Motion
to recess denied 10-11.]

Recess

[Lecture 12: 95 delegates present and
a quorum.]

Amendment

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Mr. Poynter Amendment No. 1 [By Mr. Jenkins], on page 3, line 22, at the end of the line add the following: (We'll have to change that, Mr. Jenkins, to add it after the language added by the Drew Amendment.) Add the following: "such activity shall never be subject to prior restraint, licensure, registration, control or special taxation".

[Amendment withdrawn and resubmitted with correction.]

Mr. Poynter Are you going to send up new amendments that would delete the word "control"? So it would read as follows: "such activity shall never be subject to prior restraint, licensure, registration or special taxation".

Explanation

Mr. Jenkins Mr. Chairman, delegates, this is an attempt to include basically what was in the last phrase of the committee's proposal in this section. I don't think that this restriction was really fully and adequately discussed, and I think it ought to be. You notice that we have taken out the word "censorship" and put in "prior restraint." Under court decisions they have the same meaning. There is no difference, but because some delegates did not like the word "censorship" being in there, we put in there "prior restraint." We deleted the word "control" so that the now forbidden would be prior restraints, licensure, registration and special taxation. That is the law at present, and this would ingrain that in the constitution. The reason that it's important to put it there is that if we ever had reversal by the courts, particularly on the federal level, there are other decisions that we have ruled out prior restraint, licensure, registration and special taxation. It might be possible for legislatures to come back and do that sort of thing, impose that sort of restriction. So, we think it important to include these protections in the constitution. You'll notice that each one of these protections protects against some sort of interference by the government. Nothing is ever published before it's ever put out to the public. There's no prohibition here against punitive action being taken against someone after he has abused that right, but this forbids any government from going in and trying to prevent him from speaking. There's no way to know in advance what a person is going to say, what he is going to write, what he is going to publish, and certainly the government should not be set up in a position where they are examining the papers that people intend to publish or whatever else, before publication. If you are going to have a free press and freedom of expression by every person, you have to do away with prior restraints on freedom of expression. So I urge the adoption of this amendment.

Questions

Mr. Roy when you use these terms "restraint, licensure, registration, or special taxation," for instance if an evangelist is going around the state, he's engaging in freedom of speech. Is that right?

Mr. Jenkins That is correct.

Mr. Roy The state could never pass any law which would require him to be licensed or to register as an evangelist or to specially tax whatever contributions are gotten, or even to restrain him from making speeches as long as he was not abusing that privilege, isn't that what you're seeking to do?

Mr. Jenkins Yes, they wouldn't require all evangelists, for example to go and register at the state capital before they could go around the state.

Mr. Roy Neither would they require an individual who is interested in writing a book to register as an author or whatever have you, nor to submit his manuscript for prior censorship nor anything else.

Isn't that right?

Mr. Jenkins That's correct.

Mr. Roy But if he would engage in writing a book that slanders someone, of course once that's done then the person would have redress and he wouldn't be because he abused the freedom of the press by slandering. Isn't that true?

Mr. Jenkins That's correct. It's just like the rest of our criminal laws. In other words you don't punish someone for doing a criminal act until he's done it.

Mr. Derbes Mr. Jenkins, one of the contemporary developments in modern American society has been the development of cable television. Cable television as I understand it is something that can be licensed on an individual metropolitan basis, and has been licensed in many large cities. Wouldn't your amendment prohibit the municipality from entering into any form of regulation or licensing of such enterprises?

Mr. Jenkins No, not at all. The protection of the section as written right now says that any person has the right to speak, write or publish his sentiments on any subject, and you could not license those activities, but licensure of cable television does not license those activities. What it licenses is the construction and the interconnection of certain mechanical facilities. That's what is licensed, not the content of speech or is there any control over the speech itself, so that would not be applicable in this case.

Mr. Avant Woody, I'm strictly seeking information. You have taken the word "control" out of your amendment.

Mr. Jenkins Yes, that's correct.

Mr. Avant Then I want to know something about "prior restraint." Would that language prohibit an individual from obtaining injunctive relief against a person who was, because of his past activity, you knew was going to abuse the individual in some way under the guise of exercising free speech or the freedom to write or something like that. Do you understand what I'm talking about?

Mr. Jenkins Yes.

Mr. Avant I wouldn't want to stop an individual, say you or anybody who could come into court and show that they had been abused and had reason to believe they were going to be abused in the future, from obtaining injunctive relief against someone who was abusing him.

Mr. Jenkins No, let me refer you to Section 22 which has to be read in conjunction with this section. Section 22 gives the right to every person in private action to due process of law and justice adequately administered without "enial, partiality or unreasonable delay for actual or threatened injury to him in his person, property, reputation or other rights." So you would be protected in those circumstances for injury to your reputation under Section 22.

Mr. Avant In other words, the words "prior restraint" are primarily intended to be prior restraint by government.

Mr. Jenkins That's correct.

Mr. Weiss Delegate Jenkins, if your amendment was in effect would it have avoided the tax on obscene Court hearing at which time a statute in the Illinois book imposed heavy and discriminatory taxes on advertising revenue of newspapers of the larger cities, particularly those that received pay hereinafter at that time?

Mr. Jenkins Yes, that is correct. Now on the

very language that we have adopted now with Mr. Drew's amendment was used as the basis in our state courts to oppose that First Amendment discriminatory tax. This would particularly prevent just such abuses as occurred during the 1930's in which the U.S. Supreme Court found to be unconstitutional.

Mr. Stagg Woody, I think you said that if the Supreme Court ever changed its line of decisions interpreting the First Amendment, that you would need these in our Constitution. Would you give us the benefit of what thinking leads you to believe they might in some measure melt down the line of decisions on the First Amendment?

Mr. Jenkins Well, I think we're seeing a more conservative court, and if that trend continues, and certainly I think that most of their decisions thus far, I don't think are particularly objectionable to me, but I think that that trend could continue to the extreme, to the extent that some of the basic great protections for freedom of expression could be diminished to the extent of allowing licensure, registration, special taxation, prior restraint, and censorship of this nature. I urge the adoption of this section.

Further Discussion

Mr. Jack Mr. Chairman and members, I'm against this amendment. Now putting in the word "restraint" to me clearly means not just what some would or wrote about you published, if you knew it ahead and it was the most libelous thing going, you could not get an injunction, because that's exactly what this word says. "Such activities shall never be subject to prior restraint, licensure, registration, control or special taxation." They've taken out "control" they took out the original on "censorship" "restraint" should come out; "licensure" should come out; "registration" should come out. I don't know about "special taxation". We've got too much taxation so that's all right with me. I'm just saying that I'm for freedom of speech and those things, but when an injunction will show that the man is libeling you, you say he has the right to write, or to publish, falsehood, a lie, a...lie, or whatever it is and something that ruins your good reputation and to put in here that you couldn't have an injunction issued against him, and you are left to your relief under the present constitution of things that are in the '21 and which we've adopted and should adopt. It's just not fair to allow a few people that would want to do that to make the other good people suffer. I don't know where people get some of these ideas, but I'm telling you when you see these amendments, when a man or woman starts amending their own amendments, to add things, to take them out, they just keep at them. It's just like an apple--as far as I'm concerned I used to say in that House, "One worm ruins an apple". This one's got four worms in it, and I say let's get rid of it and defeat that amendment. Thank you.

Questions

Mr. Roy Doesn't the restraint that we're talking about or the prior censorship or restraint or licensure refer to state action only and not to conduct between individuals?

Mr. Jack No, I don't agree with you at all. It says "no law shall abridge the freedom of every person to speak, write," so forth.

Mr. Roy What is a Bill of Rights but an instrument, a document addressed to what the state may not do.

Mr. Jack Mr. Roy, I'm not meaning to be unpleasant, but I don't see in how much you stretch the North Pole and how much you stretch the South Pole, you're going to ever bring them together. And, on this Section 9 you're not going to bring you together and me together. So we're just wast-

ing the time, and the Chairman has been on us this morning until my back's sore about all these things. I'm just saying that the question you raised in... I don't want to be impolite, but I can't answer to suit you.

Mr. Jenkins Mr. Jack, maybe didn't hear my answer to Mr. Avant. He asked a similar question. Don't you think that under Section 22 of this proposed Bill of Rights that the question you raised would be covered because we provide that "every person shall have an adequate remedy by due process of law administered without denial, partiality, or unreasonable delay for actual or threatened injury to him in his person, property, reputation or other rights." "Threatened injury to his reputation", isn't that by being more specific a particular answer to the question you raised?

Mr. Jack If I understand you, when you talk about having a remedy, going to court, is that what you're talking about?

You've got to hire a lawyer when you go to court on these things.

Further Discussion

Mr. Conroy I speak in opposition to the proposed amendment by Mr. Jenkins. I had previously prepared an amendment to this section as originally drawn to delete the similar phrase, and feel that while some of the more objectionable words have been deleted, the provision still contains a lot of very dangerous language that I think would have an adverse effect on desirable, regulatory control. In order to understand my objection here I think you have to go back to the language as we now have it in the section and understand that it says that no law shall ever be passed to curtail or restrain the liberty of speech or freedom of the press. I think that everyone realizes that those phrases have to be given a broad understanding and interpretation, because they go far beyond just speech and just press, to T.V. and to other means of communication. The provision here which would preclude certain... "prior restraint, licensure, registration or special taxation of such activities" is in my opinion undeniably vague as to exactly what it does prohibit. "Such activities" is a phrase that worries me when it refers back to an earlier phrase that the courts have given a very broad interpretation to. In other words I think that the final clause as Mr. Jenkins now proposes to introduce would be subject to the same objections I had before and that is that it could prohibit our copyright laws in this state. It could prohibit the attempts by a court to prevent photographing of activities within the court. It could prevent for example the registration of lobbyists. There were some questions and answers about whether somebody could require registration of evangelists. Well, registration of evangelists is a form of registering some limited group of evangelists in some activity, but it is a proper restraint on the freedom of speech. I think that we have to understand that the legislature and the state need some desirable reasonable restraints upon the exercise of the freedom of speech and freedom of the press, and those are permitted under the existing section as this convention has adopted it, and I urge your refutation of the Jenkins amendment.

Questions

Mr. Vick Mr. Conroy, are you aware that this provision capsulizes three landmark cases?

Mr. Conroy Mr. Vick, I would disagree with your description of what this does because I think it may attempt to do that, but I don't think it does it, Mr. Vick.

Mr. Vick Well, if I gave you the three cases, would you then might be inclined to change your

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mind?

Mr. Conroy Mr. Vick, I'd be happy to look at the cases, but as I said I think that any provision here that would preclude any registration of such activities without defining such activities leaves itself open to severe criticism as to what activities it's precluding the registration of.

Mr. Vick If it dealt exclusively with the press, would that satisfy you?

Mr. Conroy Mr. Vick, if this thing were considerably reworded, it might under some circumstances satisfy me, yes, but it is not so worded. We can only deal of the amendment we've got before us which I think is objectionable.

Mr. Annette Mr. Conroy, would the phrase "prior restraint" possibly do away with all censorship of pornography, of things of this nature or perhaps permits to parade or permits to assemble in certain areas requiring say a public health certificate saying you have the proper number of rest rooms and things like this? Would this prevent anything like this?

Mr. Conroy Mr. Annette, it might. That's my objection. I don't know what it might prevent, and that's my concern with the wording of...the vague wording of this particular amendment.

Mr. Denney Mr. Conroy, don't you agree that all of the examples you gave are properly subject to the police power of the state?

Mr. Conroy Yes.

Mr. Denney Then don't you agree that when the police power of the state and the rights of freedom of speech and press come into conflict that a reasonable exercise of the police power will always be permitted by the courts?

Mr. Conroy I think it would always be permitted under the language of the section as adopted by this convention, but I think it may not be possible under the amendment as proposed by Mr. Jenkins.

Mr. Denney Would you explain why you don't think it would be possible?

Mr. Conroy Because it says such activities shall never be subject...

Mr. Henry Mr. Conroy, you've exceeded your time.

Further Discussion

Mr. Champagne Mr. Chairman, ladies and gentlemen, I'm going to be very brief. This committee has done a good job on freedoms of the individuals. At the beginning I thought it was doing fine, and I find and I submit to you that in this Section 9 we now put the individual on the defensive. I think we're now seeking to retake some of these rights. The real trouble with this section is that it is adopting legislation in the fact that they come here and take this word out and that word and that is one of the problems you run into when you start legislating in the constitution. You have a hard time saying what you mean. This legislation does not belong in the constitution. I submit to you that there is nothing in the wording as previously adopted that doesn't completely take care of this section. We can have other legislation if we see that it's necessary — what we're trying to do here, and they have admitted, is that we're trying to anticipate what might happen in the future. We're anticipating what might happen in the Supreme Court, what maybe they are going to do. They can't tell you what's happening here. Take care of it. Tell you what it means. They get up here and they say well, it doesn't mean that and it doesn't mean this, but the thing that bothers me is that if they don't know what it means, how in the world are we going to impress the people back home what

it means. I tell you that we'd better stop this legislation right now and get down to writing the constitution. We picked this out a few minutes ago. It keeps coming back. Let it kill it once and for all. Let's beat this amendment and just put flaming red all over that board. Thank you.

Questions

Mr. Jenkins Mr. Champagne, I don't know why you say that we don't know what these words mean. Certainly the terms "licensure," "registration," "special taxation," and "prior restraint," are all legally defined terms with very specific meanings. How can you say we don't know what they mean?

Mr. Champagne Well, Mr. Jenkins, I have a question...well, you can't answer questions in your position. I've been trying to ask some for a long time, and I haven't had a chance. The point is, Mr. Jenkins, anytime you start writing an amendment, and then you start pulling words out and adding others and this and that, I say that you don't really know what it means. That's my answer.

Mr. Willis Mr. Champagne, the words with which we are laboring are definable legally, but we don't know what the ultimate legal definition will be, do we? It depends on the court at the time.

Mr. Champagne That is correct.

Mr. Willis And what it may mean to us today may not mean that to them tomorrow, isn't that correct?

Mr. Champagne That's correct.

Mr. Willis But we know what we've got, what it means, don't we?

Mr. Champagne That's correct.

Further Discussion

Mr. Denney It seems to me that this is not legislation at all. This is a prohibition against legislation. When Mr. Willis said "we don't know what the court is going to interpret this to mean," we don't know what the court is going to interpret any of the things we put in here. They may change definitions in the future, as well. But it seems to me that this will protect the people of the state in the long run by never subjecting to prior restraint, licensure, registration, or special taxation, the rights of freedom of speech and the rights of freedom of the press. If you have a question, I...

Questions

Mr. Drew I have two questions, Mr. Denney. Would you define licensure for me? I haven't been able to find anybody that knows what it means.

Mr. Denney Well, I read it in the dictionary a while...about yesterday when I first saw it because I wasn't sure what it meant myself. Although I can't really quote the dictionary on it, Mr. Drew, it means roughly the same thing as licensing, but it's a noun rather than a verb. Licensure means that freedom of the press shall never be subjected to licensing by means of licensure, if you will.

Mr. Drew As written, that would mean any type of license, occupational or otherwise then, would it not?

Mr. Denney I would think that it would mean anything other than what the police power of the state would permit. If a reasonable licensure means the granting of a license especially to practice a profession, for example, you and I need no license tax as lawyers.

Mr. Drew A second question, Mr. Denney, what is special taxation, and can you put it in a category?

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of what is general and what is special taxation? I think I know what they are intending to say.

Mr. Denberry Well, my understanding of special taxation would be a special tax on the right to disseminate information, for example. But the publishers of a newspaper, obviously, would be subject to the general income tax laws, that sort of thing. If they have a corporation, they would be subject to the corporate franchise tax which is a general tax applicable to all corporations. The income tax would be applicable to all individuals and corporations.

Mr. Drew Would you say that the sales tax which newspapers do not pay, I understand, is a special tax?

Mr. Denberry If I'm not mistaken, newspapers are specifically exempted from paying sales tax. I do not know that if the special exemption were not in there that they would be exempt from that. I know I think that's a general tax.

Mr. Drew Do you call that a general tax or a special tax?

Mr. Denberry I would think it would be a general tax.

Mr. Willis Mr. Denberry, with submission, sir, your declaration indicated that the courts may, in the future, change its definition of free speech and free press. Is that what you intended?

Mr. Denberry Yes, sir, it could mean that.

Mr. Willis Isn't it a fact that as opposed to the stare decisis rule. . .

Mr. Denberry That's Latin, that's not French. Be careful with it.

Mr. Willis Yes, but I'm coming with some French for you, my dear sir. Isn't it a fact that that's in the common law and that in Louisiana we have jurisprudence constant?

Mr. Denberry Oui, oui.

Mr. Nunez Mr. Denberry, I didn't quite understand your answer to Mr. Drew about the advertising, the sales tax on advertising. Newspapers are exempt at this particular time.

Mr. Denberry That's my understanding, Senator.

Mr. Nunez That's mine, also. Suppose in the event . . . that it says, "I shall never be subject to." Suppose that they would, some day along the future, fifty years from now, they might want to be registered, and they might want to be licensed, or they might want to have some of these things. You are saying "They shall never be."

Mr. Denberry Well, I think for the purposes of our constitution, Senator, that you know you can waive your rights. I can't conceive that they would, however.

[Previous Question ordered.]

Closing

Mr. Jenkins Mr. Chairman and delegates, let me just hit a couple of more licks on these terms. They are all very clear. I don't think there can be much discussion about what they mean. "Prior restraint" simply means before publication, before dissemination of the information that the state can't come in and question or challenge it. That's all that means—before publication. After publication, they can. Licensure, of course, is not referring to occupational license taxes. That is not licensure at all, that is a mere tax for doing business, and licensure, the prohibition against

licensure is already upheld under the First Amendment. We want to make sure that it continues to be held that way. Of course, what that means is that no state board could be set up to say that newspapers or other media could not operate. Imagine the situation, if you had a state board of newspapers and it gave the Times-Picayune a license. At any time it could withdraw that license and if it did, the Times-Picayune would have to close up. You can see the tremendous influence that the politicians would have over the publishing industry—over the people who would be criticizing the politicians. Registration is simply the requirement that someone go and register with the state before they engage in certain activities, such as before they publish a newsletter, or a newspaper, or whatever. If you required that before anyone disseminated ideas he go and tell the state, "I'm going to disseminate ideas," that would be registration. That's a very clear term, there's no doubt about that. Certainly, it's not the prerogative of the state to know to have to have access to who all is going around expressing opinions. That's simply not a function of the state, if you are going to have a free society. Special taxation simply means that taxation could not be applied just to the dissemination of knowledge and information. It would not at all prohibit an extension of the sales tax to advertising. If it's a general tax applicable to all business, whether it's sales tax, income tax, whatever it may be just as corporate income tax now are applied to newspaper corporations. There's nothing prohibited about that. What would be prohibited would be just the sort of tax we had back in colonial times with the Stamp Act, when newspapers, per se, and nothing else were taxed. Advertising, per se, and nothing else was taxed; and paper was taxed, and nothing else. This would not be allowed. A special tax on the dissemination of ideas and knowledge. So these are very clear terms. They are things that we need protection against; it's of constitutional dignity. I urge the adoption of this amendment.

[Record vote ordered. Amendment re-made. Section 41-68 Motion to reconsider tabled. Previous question ordered on the Section. Section passed: 108-2. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter "Section 10. Freedom of Religion. Section 10. No law shall be enacted respecting an establishment of religion or prohibiting the free exercise thereof."

Mr. Weiss Mr. Chairman, fellow delegates, this section should be like an oasis in the desert.

Mr. Henry Well, get ready, Dr. Weiss! We'll bring the camels in in just a minute.

Explanation

Mr. Weiss For the major majority group, or the majority group rather, the major minority group of those present, it certainly has lacked verbosity and has no lack of jurisprudence. It is a reiteration of the first two lines of the Bill of Rights of the Federal Constitution and is a streamlining of the old Louisiana Constitution. Our forebearers have recognized the mistakes of centuries. Four thousand years ago when the slaves left Egypt to the time that the Puritans came to these shores about four hundred years ago, our forebearers and those of us present all recognize that to avoid mental enslavement and control is essential. Therefore, freedom of religion as cited in this section is nothing more than a copy of the Federal Constitution as it exists, and a streamlining of the 1921 Constitution. It is my understanding that it takes nothing in removing a few statements from the 1921 Constitution, and with the tremendous amount of jurisprudence backing it, it should meet all the criteria that we expect of it.

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First, that there will be no state religion or national religion, and secondly, that it allows us to practice one's religion with freedom. There have been no opposing testimonies in this regard, and I am open to questions. If there are none and no speakers, I move the adoption. Mr. Chairman—

Questions

Mr. Lanier Dr. Weiss, I note in the comments that were sent out with your article that this says that it is intended for a modernization of language and makes no substantive change. Is that correct?

Mr. Weiss That is correct.

Mr. Lanier Was it the intent of your committee that the case of Seegers v. Parker, decided by the Louisiana Supreme Court in 1970, which said that the constitutional prohibition against enactment of laws respecting an establishment of religion forbids not only full establishment of religion or religions, but also prohibits legislative action either advancing or inhibiting religion? Is it your intent that this jurisprudence would not be changed?

Mr. Weiss It was the intent of the committee and certainly, all of us felt that it would not be changed. Furthermore, the Supreme Court in *Lemon v. Kurtzman* and *Tilton v. Richardson*, in 1971, substantiated the Louisiana decision. I think I might mention at this point to further clarify the excellent point you brought up, sir, that the court applies two guidelines, it's my understanding, in dealing with religious and secular matters. First is, a law or program must have a secular purpose neither advancing nor inhibiting religion in making decisions in this regard. Second, it must not involve the government, federal, state or local governments—with excessive entanglement with religion. These are decisions that have been substantiated by both the Supreme, and as you pointed out, the Louisiana Supreme Court.

[Previous Question ordered on the Section.
Section passed: 104—, Motion to reconsider tab[ed].]

Reading of the Section

Mr. Hardin [Assistant Clerk] "Section 11. No law shall impair the right of every person to assemble peaceably, to petition government for a redress of grievance, to travel freely within the state, or enter and leave the state. Nothing herein shall prohibit quarantine or restrict the authority of the state to supervise persons subject to parole or probation."

Explanation

Mr. Jenkins Mr. Chairman, delegates, this section is the same as the present Section 5 of the 1921 Bill of Rights with the addition of two concepts. On line 7, the concept that people should be allowed to travel freely within the state, and second, the fact that people should be allowed to enter and leave the state. I think everyone grants that these are basic rights that everyone has, and we want to make sure that nothing is ever done to impair those rights. This has been a real problem in a number of other places and countries. If you've ever been to Europe or Latin America, you know that virtually every transportation stop, you will be stopped and asked to see your papers. Constantly, people are harassed in their freedom of movement and in this is something unique and unambiguous. The Universal Declaration of Human Rights, for example, in Article III, states that everyone has the right of freedom of movement, and residents within the borders of each state. Also, everyone has the right to leave any country including his own, and return to his country. If sure, it would be impossible, at present, in all likelihood, for a state to be passed forbidding people from leaving a state or entering a state,

but there have been attempts by other states, in the past, to forbid just that. The State of California, for example, at one point was trying to stop people from coming into the state. In other areas of the world, various governments are notorious for forbidding people from leaving. The district attorneys asked us to include the second sentence specifically reserving the right to quarantine, and parole, and probation supervision. Obviously, things like arrest, things like bail are not covered by this because they are covered in other sections of this Bill of Rights. Naturally, if someone is under arrest, or in a penitentiary, or a jail, he loses a number of rights given in this Bill of Rights, and freedom of assembly and movement is just one of them. Certainly, he loses freedom of speech—he loses a lot of other things if he is arrested. Bail, of course, is a contractual thing. A person is allowed out on bail only after he has consented to confine his activities to certain areas; so there is no conflict there. I urge the adoption of this section.

Questions

Mr. Roemer Mr. Jenkins, I notice on line 7 it says, "to travel freely within the state. . . No law shall impair the right of every person to travel freely. . ." What about this toll road are you going to build? Can I ride on it free?

Mr. Jenkins No, of course the state is property owner of the roads just like any other property owner has the right to charge you for the use of its property. But there could be no legal barriers to people traveling on property where they had permission to be.

Mr. Derbes Mr. Jenkins, what are you really trying to accomplish by these words, "to travel freely within the state, and to enter and leave the state"? I mean, what are you really afraid of here that you are trying to prevent?

Mr. Jenkins We're trying to prevent the sort of things that happen particularly, in the European countries where people are required to say, to carry papers at all times, and to constantly show who they are, or where they are going and things of this nature, Mr. Derbes.

Mr. Derbes All right, well, let's just take a couple of examples, for example. How about commitments for mental health purposes? You have seen fit to set forth two specific exceptions to your general rule, but you leave a lot of other exceptions out. I don't understand the mechanics of the article when you do that. I mean, what about arrest, what about imprisonment, what about commitment, what about the police power of the state to restrict travel in times of emergency or hurricanes or the like, for the public good? Why aren't these exceptions set forth with particularity?

Mr. Jenkins Well, naturally all of those things are exercises of the police power which the state has the authority to do. But, you see, you could raise the same objection to the present constitution which says, "Everyone has a right to assemble for peaceful purposes." Well, you could say now, that prevents, you see, laws which forbid you from going to a certain place or would restrict you in some way. That's a frivolous argument, though, we think. We think that all those things are implied. The only reason that we have the particular exception noted is because our district attorneys felt that it was what to put those exceptions in there. They are really not necessary to put in there either, because the police power of the state is granted.

Mr. Derbes But don't you agree that when you put certain exceptions in there and leave other exceptions out, that you question the validity of the exceptions that are absent?

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Mr. Jenkins No, I don't think so at all.

Mr. Abraham Woody, you are saying, of course, that this doesn't apply to a person out on bail and this type of thing because you assume that that's handled, but I don't see it that way because doesn't the Section 1 say that "all these rights shall be preserved and violated by the state"? This tells me, in effect, does it not, that a person is out on bail and he is told that he can't leave the state, that this is a violation of his rights, is it not?

Mr. Jenkins No, not at all. You see, a person can't—you could not take away the right of a person to do certain things, but a person in a given situation may contract not to do certain things. That's all that bail is, is a contract.

Mr. Abraham If I'm out on bail, I'm not contracting to stay in the state.

Mr. Jenkins No, you agree, by the terms of your bail, that you will return at a certain time, that you will stay within a certain area according to the terms set forth.

Mr. Abraham Well, aren't there other exceptions, for instance, maybe in a child support case where the husband is required to stay in the state? This is the thing that bothers me, is the language "to enter and leave the state." I'm just wondering . . . I realize what you are trying to get, but isn't this too restrictive?

Mr. Jenkins No, this is merely the constitutional protection that you have under the Federal Constitution of the fact that the states cannot regulate interstate commerce. They can't stop people from going between the states, anyway.

Mr. Kelly Woody, Mr. Abraham touched upon one of my problems, and that is saying a child custody case. It's not uncommon for a court to dictate that either a mother or a father, having the custody of minor children, shall not take them out of the bounds of that particular district. I think a child would have to be considered a person under the proposed Section 11, and there is no exception for that. I can foresee where this would create problems in the custody.

Mr. Jenkins Well, certainly a child is a person, but he legally does not have a free will, Don, as long as he is a minor. So I don't see that that's a problem, the fact that a child may or may not want to leave the state would not be a question, I don't think.

Mr. Kelly All right, but what if the parent is ordered not to take the child outside of the jurisdictional boundaries?

Mr. Jenkins Yes, it's the same question of withholding alimony or something like that. There are sanctions that can be levied against a person in those circumstances.

Mr. Kelly Well, what bothers me, I think that this is one of the things that protects certain fathers. Let's assume, and you are well aware of this, ladies get the custody of the children in most cases. This does give a father, in some instances, some protection by saying that these children, at least, have to stay in the jurisdictional boundaries of Louisiana. As I read this proposal, there is a possibility that the lady, once receiving custody of them, could take that child to New York City and never return with it.

Mr. Jenkins No, this doesn't grant the right of any person to take anybody else out of the state—just the right to take yourself out of the state.

Mr. Perez Mr. Jenkins, is there any companion provision in the present Louisiana Constitution on this subject matter?

Mr. Jenkins There is not, in the present constitution, that I can find. However, in our early constitutions, this was mentioned. The fact, in particular, that people have the right to enter and leave the state. If you check the 1812 Constitution, for example, you will see that mentioned.

Mr. Perez But not "to travel freely within the state." That was not in any article.

Mr. Jenkins No, I think that that was understood and granted.

Mr. Perez Isn't this provision, if adopted, would be under the police power of the state?

Mr. Jenkins Subject to it, yes, sir.

Mr. Perez No, no, under the police power. That is the only reason that this would be adopted would be as a limitation upon the police power?

Mr. Jenkins Yes, I think so, yes. That's right.

Mr. Perez All right, would you answer how I would handle this situation? You alluded to the fact that under the police power, and we've heard these general words that these certain things could be done, but you take in Cameron Parish within the last few days, or in my parish, or other south Louisiana parishes, and we had hurricanes; and we have areas that are destroyed; we have roads that are flooded. If a person has the absolute right to "travel freely within the state," how can I, for instance, as head of a local government, say, "Oh no, you can't come into this area now. It's not safe for you to travel in this area?"

Mr. Jenkins I think that you can do it when you own the roads and have jurisdiction over the roads; you can forbid people from coming into it. I don't know if you could forbid, for example, someone from flying in in a helicopter or something of that nature. I don't know that you have that authority now.

Mr. Perez Can you point to any provision where you say you think we could do it? As I understand. . .

Mr. Jenkins No, I didn't say I think. . . I didn't mean to say "I think," I know that as long as you own the roads you can close certain roads, Mr. Perez, if you are the governing authority of the parish.

Mr. Perez Aren't roads public in nature and belong to all of the people, not to the parish of Plaquemines, for instance, or to any particular parish?

Mr. Jenkins They are public property, not common property.

Amendments

Mr. Hardin Amendment No. 1 [by Mr. Arnette]. On page 4, line 6, immediately after the word "peaceably" and before the word "to" delete the comma "," and insert in lieu thereof the word "or". Amendment No. 2. On page 4, line 7, immediately after the word "grievances" change the comma "," to a period "." and delete the remainder of the line and delete lines 8 through 10, both inclusive, in their entirety.

Explanation

Mr. Arnette Well, I think it doesn't require much explanation after the questions that brought out the problems with the committee proposal, but I'd just like to reiterate a few of them. First of all, it's totally unnecessary because we've been going by this. . . we haven't had this in our present constitution; we've been living under it for fifty-two years. We have had no problem with it whatsoever, but I can see some problems that might

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arise if the committee proposal is adopted. First of all, well, the question has been raised about arrests. Well, Mr. Roy, you might have a valid point. You might be able to arrest someone and prevent them from moving within the state and around the state. But what about questions of bail? Perhaps one of the parts of the bill agreement is that you don't get bail unless you promise that you won't go outside say, the parish or the state. Well, it might be a contract or an agreement, but I think the state is in a pretty good position to make you agree to that contractual position. I don't think we ought to necessarily do this. The next thing, the question was brought up about commitment of people to mental institutions or other institutions. What about material witnesses that need to be kept in jail for their own protection or possibly to make sure the prosecution is going to have a case when the case does come up on trial? What about restricting travel in cases of emergency? What about juvenile restraints, custody cases, children of juveniles sent to L.T.I.? They haven't committed any crime; they haven't actually been arrested. It's not considered a crime or an arrest, so the police power under arrest would not apply in this case. Could you confine a child to L.T.I.? Now, Mr. Jenkins says, well, it's understood that all this is under the police power of the state. But where you specifically prohibit the police power of the state from operating, there is no police power. It's very, very obvious. When you have a specific prohibition that says "you may not do this," State of Louisiana," then the State of Louisiana may not do this. It doesn't make any difference about any police power they supposedly had; you just took it away from them. Now another thing Mr. Jenkins says, he said "well, since you own the roads, you can prohibit people from traveling the roads." Well, that's a fine argument because it gets around the whole constitutional prohibition. If you closed all the roads, no one is going to be able to travel around the state unless they have a helicopter, or an airplane, or something like this, or make agreements with every private persons along the way, that you can travel across their land. So, I think, well, I want to bring out is, our present constitution does not have this prohibition. It is unnecessary. Why bring up problems with it? They sought to have two particular exemptions to this, but there are many, many other exemptions that you could think of just right off the top of your head, in no time at all. Also I think it's unnecessary because the federal courts have decided that travel interstate is governed by the ICC clause, the Interstate Commerce Clause of the Federal Constitution, and they have based the Civil Rights Acts on it--the Civil Rights Act of 1964, for example. Also, we are guaranteed a representative form of government in this state, and our only fear of such restrictions, of travel restrictions, is that you would have this representative form of government is taken away and you would go to a dictatorship. But I don't think the federal government would ever let that happen in any one of the states of the Union because simply, it's against the Federal Constitution. I don't think any representative form of government would unnecessarily restrict a person's travel within the state. So, I think, let's get rid of this language that is unnecessary, that might definitely cause us problems. I urge the adoption of the amendment. Thank you.

Questions

Mr. Roy: Mr. Arnette, under your provision, we could have a real anomaly in that you are entitled to peaceably assemble, but you might not be able to travel freely to get there. In other words, the state would say, "Yes, you can assemble to do anything you want, peaceably, but the only thing is, we're not going to allow you all to get there. Isn't that what you are saying?"

Mr. Arnette: Mr. Roy, don't you think that's a kind of silly question?

Mr. Roy: No, I don't. I think your suggestions are real silly because in the past, there have been contries. . .

Mr. Arnette: Are you arguing or asking me a question?

Mr. Roy: Let me ask you another thing. Don't you think that if each parish decided from now on that anybody coming into their parish, that they were going to stop every vehicle coming in there to check driver's licenses and all, isn't that one thing that would stop the free travel of our citizens? Wouldn't that be permissible without this amendment?

Mr. Arnette: You are exactly right. They have the power to spot people to check driver's licenses, they always have had it, and they have done it in the city of Baton Rouge. I got stopped three times in one morning, but I don't think anything like this is necessary.

Mr. Jenkins: Now Greg, let's assume your interpretation of the committee's proposal is correct. Let's assume that. Now, let's look at the old constitution. The old constitution says "the people have the right, peaceably to assemble." So let's interpret the old constitution the same way you interpret the new proposal. According to that, then, under the old constitution, the people have the right, peaceably to assemble. Isn't it correct that you can't stop people for identification? You've got to allow them free access to all highways at all times, even if there is a hurricane, so they can go assemble? Can't stop them for quarantines if they are trying to go assemble? Wouldn't that be the interpretation of the old constitution?

Mr. Arnette: No, Mr. Jenkins, I don't think your interpretation is correct because the present constitution has been interpreted and it has meant reasonable assembly. You have certain reasonable restrictions on that assembly, but I'm afraid that if we come up with some new language, that has not been interpreted, we're going to end up with many, many problems and that is why I proposed this particular amendment, because it is absolutely unnecessary. You have the right to free travel now; you have it interstate. I can't conceive of any situation where it would be taken from you in a state, but you said that if a man owns a highway or the state owns a highway they can make you pay a toll, they can stop you from going on that highway in case of an emergency. Well, if that's the case and that is the interpretation, then they could stop all travel whatsoever on any highway in the state in any manner they so chose.

Mr. Willis: I want to focus on the word "travel." On water, you can sail, swim, or submerged. Now, on land, you can walk. . .

Mr. Arnette: Was that sink or swim, Mr. Willis?

Mr. Willis: Well, you travel submerged, submariner. Travel on land can be all sorts of locomotion, by walking. Now, let's focus on that. We'll exclude the air, airplane and helicopter. In Section 4, we have a right to control private property. Now, this provision says "travel freely within the state. My property is within the state, so they will be able to trespass on my land. If we adopt Section 20 where they can bear concealed weapons, then there is going to be a standoff, isn't that correct?"

Mr. Arnette: Well, I think you might be exactly right, Mr. Willis.

I'd just like to say one more thing about Mr. Willis' statement. I realize some of these things that I'm mentioning and he brought out are fairly far-fetched, but they could definitely happen under the committee proposal.

Mr. Bayburn: Mr. Arnette, I'm deeply concerned about the language here that I believe you are

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trying to take out of this provision. It says, "to travel freely within the state." Would that mean that if you have a bunch of people who want to parade in the city of Bogalusa, and the city council adopts an ordinance that they cannot parade during business hours, it will have to be between the hours of five in the afternoon and eight at night, or something similar to that, does that mean that the word "have" that power to adopt that ordinance anymore if we put this language in the constitution?

Mr. Arnette I think you might be right on that, Senator.

Further Discussion

Mr. A. Jackson Mr. Chairman, ladies and gentlemen, I rise in opposition to this amendment and in support of the section as proposed by the committee. Now, I don't know whether some of you are taking this section seriously or not, but I would suggest and hope that you would give it full attention to it. Today, in South Africa, one cannot travel freely. Today, in Europe, there are walls erected between sections in Berlin that will not permit free travel. I know you say that that could never happen in Louisiana. I'm sure there was a time in Germany when people said that that would never happen. I'm sure that there are people in South Africa, especially people black like me, who would desire the right to be able to move freely and to exercise their freedom as human beings, but this is not being permitted. Now, I also, heard that we ought not to adopt this section because it's new language. Ladies and gentlemen, we are writing a constitution. We are writing a constitution that is going to be a new set of organic law, all of which will be subject to new interpretations. You know, why write a new constitution if we've got to know what every word means, what every shade. . . There is no way. As the Chairman stood here some months ago and said that part of this constitution will be written by nitwits, some of it will be written by courts if this state. Ladies and gentlemen, that is true. Much of this constitution is yet to be written, and if we are going to allow individuals molding in their graves to write this constitution, if we are afraid to embrace new language, if we are afraid to say that individuals ought to be free to move in this state, if we continue to raise all of the extraneous issues, if we continue to be frivolous about the freedoms of individuals in this state, I fear that we will not have any protection at all for Louisianians. I urge you to reject this amendment, and I urge you strongly to adopt the committee's recommendations by way of this section, because it is in the interest of people that they be able to move freely, and that their right is guaranteed them by way of this constitution.

Further Discussion

Mr. Jenkins Mr. Chairman, delegates, I'd like to call to your attention an article in U.S. News and World Report from about two or three weeks ago--the August 13, 1973, edition. The headline of the article is "Pliant of Cubans Under Castro--Nobody to Trust." I want to read you about three paragraphs out of it.

"A few months ago orders were issued that anyone wanting to travel from one province to another needed special government permission. Later, this decree was tightened to require authorization for trips even between cities in the same province. One example, to obtain a permit to travel from Guantanamo City to Santiago de Cuba, both an oriente province, like our states, a Cuban must register. . . Now listen to this. "He has to tell officials the reason for his journey, whom he will see, where he will go, and when he will return, to travel simply within an oriente province. Even inside a city, anyone boarding a bus must show his work permit--an essential identity card for everyone these days. Failure to carry this card means a sentence to work on a state farm in a sugar

cane field or anywhere else the government decides to send an offender. Resist, and the alternative is jail."

One of the great problems of American society today, I think, is our self-satisfaction. We think because things are rocking along well at the present, that things are going to continue to run now on. . . Because there is no problem about traveling freely today, there never will be.

Mr. Chairman, I suggest the absence of a quorum.

[Quorum Call: 89 delegates present and a quorum.]

Recess

[Record Quorum Call: 106 delegates present and a quorum.]

Further Discussion

Mr. Jenkins Mr. Chairman, delegates, it's been said, and by our founding fathers that a frequent recourse to fundamental principles will help us preserve liberty, and that's what we are trying to do. We're trying to have here a constitution for all times. Not just for good times, for fair weather, but for foul, when we have bad leaders, demagogues, when times are hard. Now, we never would have had a Bill of Rights to the Federal Constitution if in the discussions there, when they were proposed and considered in the various states, people had said, "Oh, freedom of speech to the press, think about the terrible abuses." Or freedom of religion, think what can happen with that, or right to assemble. I'm suggesting this, that when we talk about the right of people freely to assemble, to enter and leave the state, that the courts are going to give that a reasonable interpretation just like they have freedom of assembly. If we give the court some reasonable language, I think they will interpret it reasonably, but if we make all these frivolous objections and comments, we're not going to have a Bill of Rights at all. We could take any fundamental principle and talk about apparent exceptions and constraints and things like that, but that doesn't change their fundamental nature. Now, if we defeat this amendment, I certainly would have no objection to our coming back and deleting the second sentence of this paragraph, the thing excepting quarantines and of pardon and parole. This might give the courts a little more leeway in interpreting the first sentence, reasonably. Well, let's don't raise the frivolous objections. Let's give them, the words here, a reasonable interpretation. I think we'll have a better Bill of Rights and constitution as a result.

Further Discussion

Mr. DeBlieux Mr. Chairman and ladies and gentlemen of the convention, the first thing I want to point out to you about this particular section of this amendment. The only thing we are concerned with is the words "to travel freely within the state, and to enter and leave the state." I wanted to say that I'm supporting Mr. Arnette's amendment. I think it is a good one because it deletes those words and I think that I can see problems that may arise as a result of that particular language in our constitution. First, let me state this. There has been some reference here with the reference to the conditions in Cuba, or maybe South Africa or some place like that. There is one distinct difference between Cuba and other places in the state of Louisiana. That is, we elect our representatives. The representatives elected to the legislature are the only ones who could possibly deprive you of that right, are elected by the people. They are the representatives of the people, and they have to act for the people. Do you think they are going to legislate to take away that right from the people? Do you think they are going to deprive the people of the right to travel on their highways? You need legislation to take away that right, and I just don't feel any leg-

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relator is going to have the nerve to try to justify the sense of the freedom of travelers on their highway and getting to and from jobs that they have a legitimate right to get to and from. We've got like other plays. Offer a few legislative alternatives are considered. I don't think we have to worry about that. I think Mr. Arnette has a good argument and the particular way in that we have in this question has to end with the word "or vehicle," stating that No law shall violate the right of every person to assembly. We all agree upon that, or to petition the government for a redress of grievance. We all agree upon that, and I think that's all that's necessary to put in the constitution and we should leave the legislation to the legislature, as time sees, and conditions permit. I ask you to support the amendment.

Question

Mr. Roy: Senator De Blieux, were you in the legislature when the case that certain people could drink out of certain public fountains at 1955 in the 1950's?

Mr. De Blieux: I didn't get your question, exactly, Mr. Roy.

Mr. Roy: Were you in the legislature when it said that only certain people of a certain race could drink out of certain fountains at Louisiana State University in the 1950's?

Mr. De Blieux: Well, I was not there, I don't think, at that particular time. I believe that was in the 60's.

Mr. Roy: Do you know that when I was at LSU, there was a sign on a sign posted on the wall of fountains and that it was the legislature that did that? Can't the legislature infringe on the right to travel when it chooses, if it chooses?

Mr. De Blieux: Well, we are a lot more enlightened than when you were in school, Mr. Roy.

Mr. Flory: Senator De Blieux, if I remember correctly, you were Chairman of the Institutional Committee in the legislature at one time, concerned with rehabilitation, and I ask you the question in that light: If you delete this language which would leave the constitution silent, could it not then, the legislature, prohibit the reciprocity agreement that the legislature has adopted in the past in the way of a parolee who, let's say, was sent up in Georgia as a Louisiana resident; the legislature would forbid him from coming back into the state by refusing to supervise him or parole, if you delete the language.

Mr. De Blieux: If we deleted that language it's possible to do that. I suppose, Mr. Flory, but I certainly don't think that this language is proper for the constitution. I might add that it would be available to the state, too.

Mr. Flory: Senator De Blieux, in going and coming back and forth to the legislature, you are concerned from being picked up, are you not?

Mr. De Blieux: Well, I don't know if I ever have been picked up or not, but I know that the legislature is not. Mr. Flory, but I suppose.

Further Discussion

Mr. Flory: Mr. Chairman, following the vote, there are two amendments before this committee in regard to this amendment. It will be a matter which have been made in about 1960 and 1961, but we will have to make up the provisions of this committee. And I might say that I hope you'll be glad to see who has called either committee together the possibility of this committee, and I would like to see it.

Mr. De Blieux: I want to explain why the original I have with

present to one of those committees that has been set up in 1961, I suppose, by the committee, why I have voted against them and why I am in support of this particular amendment. I suppose as I go to it that we have gotten involved in a system of you go back and read Section 11, in this proposal, and particularly the last sentence of that provision, of that section, you will find that as they are stated that the right which are in fact in this proposal are to be held inviolable by the state and inviolate by the state.

Now there's been a good bit of discussion as to the right of the legislature to reasonably regulate, the right of the legislature through the exercise of the police power to override certain constitutional guarantees, and under the present constitution, that is correct. Under the present constitution, the legislature has the right to reasonably regulate speech; it has the right to reasonably regulate other constitutionally guaranteed rights, and where the conflict occurs, the reasonable exercise of the police power prevails. But the present constitution does not contain the last sentence of Section 11 of this constitution... of this proposal. And in light of the provisions of this last sentence of Section 11, which guarantee to the citizens of this state the right to travel freely within the state and say that "that right is inviolate by the state," it means to me that no police regulation could affect that right. And under those circumstances when we talk about the application of reasonable police regulation to these rights as proposed in Section 11, we overlook the guarantee of the last sentence of Section 11. And for those reasons, I simply cannot go along with these general guarantees where we have no protection against reasonable regulation of those guarantees. If we did not have the last sentence of Section 11, as it would accept the provisions of Section 11, as it is now written, because under general constitutional principles as they now stand, the state would have the right to reasonably regulate travel within the state and not violate the right given under Section 11. But in light of the last sentence of Section 11, I do not believe that the state would have that right, and under the circumstances, you'd simply have the right to travel without any restraints, and I don't know where that would lead us to. I think it would be chaotic, and for that reason, I support the amendment by Mr. Arnette.

Now, if the committee wants to delete Section 11, the last sentence of Section 11 and leave the constitution as it stands with respect to the exercise of the police power, then I'll join with them in supporting Section 11 as it now reads.

Further Discussion

Mr. Flory: Mr. Chairman and fellow delegate, I have no quarre with the last sentence in the section, Freedom of Assembly, and I let me talk you how about the rest of this section is.

Back in 1960, in Shreveport, a black invasion loaded with shady characters, armed with automatic guns, sawed-off shotguns, in fact, would be Shreveport and, whether or whether, the sheriff was notified about this movement in the past at the time going in Louisiana that he notified them that they had two hours to leave Shreveport. The sheriff was concerned about a possible invasion as a possible incident that would endanger or to be the lives of certain people. And, because of this police regulation, and because of the authority that he had, he was able to get away with the incident but he was notified in the past, but, suppose that as the time comes part of the section in the constitution, in my judgment, the sheriff could not have gotten people out of the state because the constitution would have guaranteed them two hours of movement in the state. And as a matter of fact, back at the time, the sheriff was notified that he was notified that they were coming, and he was notified that they were coming, and he was notified that they were coming.

So, I say that the police power of the state is not to be used to regulate a situation in which, where, in that time the section is in

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is with the amendment. Let's adopt the amendment and allow the first part of it to remain.

Thank you.

[Previous Question ordered. Roll call vote ordered. Amendment adopted: 4-39. Motion to recommit withdrawn. Previous Question ordered. New Section 12 section passed: 44-1. Motion to suspend considered tabled.]

Reading of the Section

Mr. Poynter "Section 12. Rights of the Accused Section 12. When a person has been detained, he shall immediately be advised of his legal rights and the reason for his detention. In all criminal prosecutions, the accused shall be precisely informed of the nature and cause of the accusation against him. At all stages of the proceedings, every person shall be entitled to assistance of counsel of his choice, or appointed by the court in indigent cases, if charged with an offense punishable by imprisonment.

Explanation

Mr. Stinson Mr. Chairman and fellow delegates of the convention, Section 12 has to do with the rights of the accused and now in considering this section, I hope and I am sure that each of you will consider the premise of our law, our freedom and our liberty, that every person is innocent and is to be presumed innocent until proven guilty beyond a reasonable doubt in the courts of law. The Bill of Rights is passed and enacted for the purpose of protecting the individual citizen from the unreasonable actions of our government. We are blessed statewide, and nationwide with having a government that is considerate. But as we have repeatedly said, we've got to think of the future. We've got to think of the future. The rights of the individuals now and in the future, I hope, will continue. There are abuses, but we can't go overboard one way or the other. We've got to be steady and considerate and determined in protecting the rights of the individual, and the fact that crime now may be on the increase doesn't mean that we have got to discriminate against the individual. It means that we have got to do more towards having better law enforcement, not taking away or infringing on the rights of an individual citizen.

So, it's with this in view that this Section 12 is presented for your consideration at this time. As a member of this convention, as a member of this committee, I certainly do not think that I am any better qualified to pass on this than you are. However, as every lawyer knows, there are different words that mean the same thing. Any lawyer or any individual can take a passage or letter, or even a story or a poem, and revise it according to the way that they like the words. But let's consider this as to what would be best for the individual. And it's with that in view that I present it for your consideration.

Questions

Mr. Derbes Mr. Stinson, although I don't disagree with your purpose, I have some semantic problems with the first sentence of the section. It says, and I quote, "When a person has been detained, he shall immediately be advised of his legal right and the reason for his detention."

Now, does that refer to all phases and stages of detention? In other words, when a person is detained by a law enforcement officer, must he be informed at that point? When he is detained again by a judge in a bail hearing, must he be informed at that point? When he is detained after conviction and confined to an institution, must he have habeas corpus rights and other rights to post conviction remedies be given to him? Do you understand that?

Mr. Stinson I certainly do, yes, sir.

Mr. Derbes And is that the intent of your article?

Mr. Stinson The purpose is to protect the innocent person who is not a lawyer himself....

Mr. Derbes No, no, that's not what I'm saying....

Mr. Stinson And so, therefore, well let me finish it....when a person is picked up and someone raises the question, well suppose this is a citizen's arrest, this is pertaining to state action where it's a state policeman or something of that type. I think if we have more advice given to people, we will have less of the sad results that we have seen recently. In other words, we've read in the paper where the....

Mr. Derbes Yes, I understand that, Mr. Stinson, but after conviction, after a person has been convicted of an offense and incarcerated in an appropriate institution, must he then and there be informed of any further rights which he has? It seems to me clear from my reading of your sentence that he should be. Is that what your intention was?

Mr. Stinson No, sir, no, sir. Which portion of that....

Mr. Derbes It says, "Whenever a person has been detained, he shall immediately be advised of his legal rights."

Mr. Stinson Well, they are done if the person is being sent off to an institution or the penitentiary; he is given a copy of his commitment papers at that time.

Mr. Derbes No, but his legal rights are further than that, Mr. Stinson; he has rights to post-conviction remedies like habeas corpus, and the like. Should he be sat down at that point and given a full account of all his post-conviction remedies? Is that your intention?

Mr. Stinson If the legislature sees fit to broaden that....

Mr. Derbes No, no, that's not....alright....O.K. Now, what about the instance of involuntary commitment, that is, commitment for other than a commission of a crime, the commitment of somebody who is mentally ill, judicially and extra-judicially? That's detention in my opinion. Should he be again sat down and informed of all of his rights? Is that the intention of this article?

Mr. Stinson It was primarily intended for criminal prosecutions and criminal action.

Mr. Derbes Well, it doesn't say that. And finally, what are his legal rights? I mean, are legal rights his legal rights with respect only to the trial at that stage or the proceedings at that stage? Or do they imply....I mean what is the extend of the definition of legal rights?

Mr. Stinson I think that's been interpreted by the Federal Courts. They have to explain that any time of arrest, and what his legal rights are as to counsel and not to make a statement and many other things that he's entitled to.

Mr. Derbes D.K.

Mr. Ginn Mr. Stinson, it says, "at all stages of the proceedings," at all stages of the proceedings he must have a lawyer there. Does that mean that a sheriff or a district attorney could not talk to the man unless there was an attorney there? If that what this implies?

Mr. Stinson It says, "He shall be entitled." And I think that means that if a person says, "I'd rather not talk to you until I have the opportunity to see a lawyer," and they should explain to him before he answers any questions, and I believe that's

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federal and, also, state, that he has a right to an attorney to advise with him before he makes any statement. I think it is just a reena-tient of what the present law is.

Mr. Roemer. Mr. Stinson, in lines 14 and 15, it says, "In all criminal prosecutions, the accused shall be precisely informed." I heard some discussion over that phrase, "precisely informed." Why not just "informed"? What are you driving at, "precisely informed"? Could you explain that?

Mr. Stinson. If you had practised law for forty years, you'd understand that. The district attorney doesn't want to give you anything. You have to end up filing a Bill of Particulars or even the assistant district attorneys don't either. You have to file a Bill of Particulars and argue in court and sometimes take it even to the higher courts to find out something that you can build your defense on.

Mr. Roemer. So, by "precisely" you mean completely. Is that it?

Mr. Stinson. Completely, as far as they have it, "sir." I think that the, let us say the presumed person is entitled to that. The district attorney shouldn't be able to hold back anything as a surprise at any stage of the prosecution.

Mr. Roemer. Well, as far as I'm concerned, "precisely" does not mean the same thing as "completely." I think you mean this not at all the opposite of "imprecisely", but I think you mean "precisely" as "completely." It ought to read that. It does not.

Mr. Stinson. . . . I was using the Louisiana language, not Yankee language.

Amendment

Mr. Plynter. Amendment No. 1 [by Mr. Avant], page 4, between lines 19 and 20, insert the following: "No person shall be subjected to imprisonment or forfeiture of his rights or property without the right of a judicial review based upon a complete record of all evidence upon which such judgment is based. This right may be intelligently waived."

Explanation

Mr. Avant. Mr. Chairman and fellow delegates. . . to this convention, this amendment supplies something that is an absolute must in view of the present status of this constitution. There are certain courts that are not courts of record. There are certain courts where you may be fined or imprisoned or your property may be forfeited for certain offenses where no record is made. In a municipal court, for example, you can be fined up to three hundred dollars, be held and imprisoned up to six months, and there may not be a record of the evidence of the testimony upon which that conviction or sentence is based. Now that is no problem under the present constitution because Article VII, Section 36, of the constitution now provides that in those cases, and in certain civil cases, that the district courts have appellate jurisdiction and have no to the district court and have a trial de novo, which means a new trial where the case is tried by the district judge, without a jury, and you are limited to the same witnesses, of course, who testified in the lower court. But the Judiciary Committee, in its wisdom, and it so far has been reaffirmed in by this convention, eliminated the provision for appeal by that did not it is no longer in the document as it now stands, although it had worked, in my humble opinion, very satisfactorily under the provisions of Article VII, Section 36, for many, many years.

But now, we are faced with this situation under the present status of this constitution. And that is that a person may be sentenced to actual imprisonment up to six months, he may be fined up to

three hundred dollars, or certain rights or property of his may be declared forfeited in a court where there is no record made of the evidence upon which that sentence is based, and he has no right of appeal. He has no trial de novo, he has no right to appeal. The only thing that he has is the right to apply to the Supreme Court under the exercise of its supervisory jurisdiction for a writ of review.

Now, the way you do that is you attach a copy of all of the records in the lower court and send it to the Supreme Court, and you point out what you feel to be an error, and you ask them to agree with you that there was an error, and ask them to bring the case up and consider it on the record. The problem is that you are not going to have a record. There's not going to be any record. So, the net results of what we have done so far in doing away with the trial de novo, and in adopting the provisions with respect to appellate jurisdiction in Article VII which we have adopted, is that it is not only possible, but it is inevitable that unless we correct it, that when this constitution becomes effective, if it ever does become effective, that a person can be sentenced to six months in jail, or at least five months and twenty-nine days in jail; he could have the right of appeal, and there will be no right of review based upon any kind of record.

Now, various problems were brought up in connection with this, and I put in, I incorporated specifically in this provision that this is a right which the accused has which may be the subject of an intelligent waiver. Now, let me explain to you what that means.

In . . . under the law and the constitution, you have in certain cases the right to trial by jury. You have the right to counsel. The court advises you of these rights, tells you, "Mr. So and So, you are charged with this and such a crime which is a felony; you may be sentenced to up to so many years. If you are convicted, you have the right to be tried by a jury. You have the right to counsel; if you can't afford counsel, the court will appoint a lawyer in your behalf. Do you understand those rights?" And he says, "Yes." "Do you wish those rights or do you want to waive them?" "I waive them." So he can waive this right intelligently after it has been explained to him. So it's not going to mean that in every case that's tried in a municipal court or city court, that you are going to have to have a court reporter and go to all this what has been termed, perhaps, an undue prohibitive expense in order to supply this man his rights. All you've got to do is explain to him his rights, make sure that he understands his rights. If, after explanation and understanding, he waives them, then that's his business. But the way the situation is now, he does not have that right, and he can be imprisoned up to six months, his property can be forfeited, taken away from him, his driver's license can be taken away from him, even though that may be the way he makes his living, and that all right and review based upon a record of the evidence upon which that sentence is based.

And I just respectfully submit to you that that is not right and that is not proper, and that the right of that kind of review is fundamental and has to be provided.

I urge the adoption of the amendment.

Questioning

Mr. Perez. Mr. Avant, do you know of any provision that we have adopted yet that would be contrary to the provision which would authorize the trial de novo that you were talking about before, was a year taken out of the constitution?

Mr. Avant. I don't know of one that I would be would absolutely prohibit it, as far as Mr. Perez, but I can't be so sure as the present constitution. We have not provided for it in the constitution. We have provided that we have provided that the appellate jurisdiction of the Supreme Court is over

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in those cases where there has been a fine in excess of three hundred dollars, or imprisonment in excess of six months, and that in those other cases, the other cases, where the fine is less than three hundred dollars, or the imprisonment is less than six months, we have made no provision for that.

Mr. Perez The reason I ask the first question is because of the fact that we all know that there are going to be many, many provisions taken out of the present constitution which, apparently, the members of the convention consider to be statutory in nature. And those provisions will be carried over as statutory material. And I was wondering whether your problem wasn't really taken care of because of the fact that this provision for the trial de novo would be carried over as legislative material.

Mr. Avant Well, I have not been told by anyone that it is being carried over by legislative material, Mr.... as legislative material, Mr. Perez.

Mr. Perez Well, don't you think it's reasonable that we are going to have many, many provisions which are going to be carried over as legislative material, and this is one of them that we could take care of in that fashion?

Mr. Avant We may take care of it, and we may not take care of it. I am aware of a strong sentiment in favor of abolition of trials de novo. We were told that they were a waste of time, a useless repetition, unnecessary, etc., etc., by many learned scholars and so-called experts, and based upon that, and perhaps other considerations, the committee in its wisdom did not incorporate the trial de novo, nor has the convention to this point done so, and I feel that I would be derelict in my duty, in what I conceive my duty to be, to sit here silent while we have a situation where a man can be imprisoned for up to six months and have no right of appeal and no record. That just goes against my sense of fair play and justice and what should be done. And I am not going to be silent as long as that is the situation which is what it is now.

Mr. Perez I'm in general sympathy with your purpose. The only problem, and I'm very much concerned about it, is what the tremendous cost would be. And my question is whether you have any idea what the cost would be to provide these complete records in these lesser courts.

Mr. Avant I would say this, Mr. Perez. Number one, it is a right which may be waived after it has been explained. And I dare say that the record will not cost as much as the trial de novo.

Mr. Kelly Jack, a lot's been said here concerning courts of limited jurisdiction and trials de novo, but this provision which you are proposing at this time is directed to district courts also, is it not?

Mr. Avant It's directed to any situation where you can be put in jail for six months and have no right of appeal and no record.

Mr. Kelly Let me ask you this. Can this happen...

Mr. Avant It can happen in a district court.

Mr. Kelly ...in a district court at this particular time, can it not?

Mr. Avant Yes, it can.

Mr. Kelly Even though a district court is supposed to be a court of record.

Mr. Avant That's right.

Mr. Kelly If you don't walk into that court, or have a lawyer sitting there beside you that asks to have a complete record made, you are not going to get one, are you?

Mr. Avant That's correct.

Mr. Arnette Mr. Avant, I'm in sympathy with your amendment and what it tries to do. The only problem is, I see a couple of things that bother me about it.

The first is that it says that you are going to have a complete record of all the evidence in all these courts, which would include city courts, J. P. courts, and all these other courts.

Mr. Avant Mr. Arnette, let me correct you on one thing. A Justice of the Peace Court does not have any criminal jurisdiction other than as a committing magistrate. A Justice of the Peace Court in this state can't put anybody in jail.

Mr. Arnette Well, you say "forfeiture of property."

Mr. Avant I don't know how a Justice of the Peace Court can forfeit your property.

Mr. Arnette O.K. Well, let's go with the city court example.

We have a city court in my hometown, and I don't see anybody in the world they could afford to have a record of the cases if everybody wanted to have them. And a trial de novo has worked well in the past. We've made provision for it. In the Judicial Article, Section 16, we say that the "district court shall have appellate jurisdiction as provided by law."

Does that not provide for a trial de novo in statutory form?

Mr. Avant That does not. It does not. If it said that there would be trial de novo, I wouldn't be up here, Mr. Arnette.

Mr. Arnette But you... in other words, you want to get rid of all of the city courts in the small towns around Louisiana with....

Mr. Avant No, sir, I do not want to get rid of the city courts in the small towns around Louisiana. All I say is that....

Mr. Henry Mr. Avant, you have exceeded your time.

Further Discussion

Mr. Stinson Fellow delegates, I'm in... certainly in sympathy with what Mr. Avant has, and this is in addition to what we have proposed, but I'd like to point out some things for your consideration and also for Mr. Avant's consideration.

Someone touched on the fact if it's a bail forfeiture, naturally that means that the defendant is absent so he cannot waive. Now I don't know how they can take the evidence in the city courts and other places on all bail forfeiture in the event this person would want to appeal later on.

Next, forfeiture of property. Now, you're under the present law, a lot of times the district judge or the city judge will tell the person he can keep his driver's license, but it's forfeited in Baton Rouge by the Department of Public Safety. Does that mean that the Department of Public Safety has got the complete record of what action they take so that person can appeal it to some court? I don't know what court.

Next, it says "subject to imprisonment." Mr. Avant doesn't say, he's talked on six months, but he doesn't say six months. Under this, it would be for two or three days. I don't see how that would work.

Now an extreme case... maybe Judge Tate can pass on that... if a lawyer is disbarred, he certainly has forfeited some rights and property, and if the Supreme Court disbars him, who is going to review the judgment of the Supreme Court in the disbarment proceedings? That's another feature that's bad. Now, as I say, I'm in sympathy for giving everyone protection, and I think if he is on an appeal, the higher court that reviews it should

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have all the evidence. There is no question about it. If not, he's being denied his rights.

But now on this, all I read it, it would say. It appeals from the district court to the supreme court. It would be on the law and the evidence. We have another provision that only criminal cases can go up on the law question. There's a conflict between this and what we have already enacted. As to what the court would pass on, I don't know. Those are features here that I've outlined that I'd like for you to consider, and also, as someone else pointed out in the city court, they are limited, and the point, if they have to have a secretary or a court reporter there, is going to run up and the legislature is going to have to end up increasing the cost of court now in criminal cases, and in some cases, there might just... a fine may be five dollars and the court cost is already as much as eighteen to twenty dollars in some cases. And when I speak of this in the legislature, they used to say, well, you are taking care of the criminal. As you know, if a man is convicted of a felony and goes to the penitentiary, he doesn't pay court costs. It's our everyday citizen that runs a red light or fails to stop, gets fined five dollars and then has the court cost attached on to twenty and twenty-five dollars. That is the person we are trying to protect from the cost angle. So these are the bad features of this. If you could adjust that, we have no objection. I personally don't not speaking for the committee. But with these defects and these dangers, I'm afraid that we shouldn't adopt it and put this in the constitution. It is a matter that could be protected in the state that is already protected by law, and the legislature has the authority to pass that in its wisdom, not putting it in the constitution. In view of all this, I'd like to urge you let's reject these amendments.

Further Discussion

Mr. Derbes: I guess there aren't too many people who are interested in this amendment because I see a lot of empty chairs.

I'm completely in agreement with Mr. Avant's principle that whenever anyone is imprisoned, he should have an opportunity for judicial review. No matter what the court... I'd just like to mention upon your amendment, I think that this amendment will provide for judicial review of all administrative agency determinations where anybody loses any rights for which he may be an applicant, or any rights that he may possess. There are literally scores of administrative agencies in this state which affect the trades and professions and conduct of business in the state. And it would seem that although this amendment is not directed in purpose toward those administrative agencies, they nevertheless come under its scope, or within its scope. And by adopting this amendment, you will be providing for judicial review of, in my opinion, all administrative agency determination. So, I think you should think about it very carefully. It's much broader, in my opinion, than merely the instance where a person is imprisoned by a Justice of the Peace Court.

Questions

Mr. Lanier: Mr. Derbes, are you aware of the fact that under Article 16, Section 1, the code of criminal procedure that if a sentence imposed includes a fine or costs, the sentence shall provide that in default of payment thereof, the defendant shall be imprisoned for a specific period not to exceed one year?

Mr. Derbes: No, I'm not specifically aware of it. How do you relate that to this proposal?

Mr. Lanier: Well, in saying it says here, "No person shall be sentenced to imprisonment" would that not mean that even if the authorized penalty was a fine that nevertheless under this code provision, that in default thereof, imprisonment would be authorized.

Mr. Lanier: That seems to be one of the problems, Mr. Lanier. I'm glad you pointed it out. It happens to be in favor of judicial review for anybody who is convicted of a crime. I just think this goes much further than that and we should take that into consideration.

Mr. Lanier: Well, wouldn't that mean that this provision would apply to all misdemeanors as well as all felonies?

Mr. Derbes: I would think so. Yes.

Mr. Lanier: Now, further, and this is something, quite frankly, I don't know the answer to. Do you know if the decision of Boykin versus Alabama is applicable in misdemeanor cases?

Mr. Derbes: That's a transcript case?

Mr. Lanier: No, that's the case that says that the judge has to....

Mr. Henry: You've exceeded your time, sir.

Further Discussion

Mr. Arnette: I just have a couple of short statements. First of all, I'd like to point out that under Paragraph B of Section 16 of the Judicial Article, we made provision for appellate jurisdiction in the district court. We presently have that appellate jurisdiction in the form of the trial de novo. I don't envision us changing anything. But what this particular amendment is going to do, and the thing I'm afraid it's going to do, is put the city courts of the small towns out of business. You can't possibly have a record of every traffic violation, every assault and battery, every disturbing the peace, and have a city court run. They just don't have the funds to do this. And I think you're going to clog up your district courts when you do away with these city courts. This is what the big problem is with this particular amendment.

I don't see how we can accept an amendment like this that would accomplish such a purpose. We have worked well in the past with a trial de novo to the district court, and I don't see any reason to change it. We've made provision allowing for a trial de novo, and I don't see any reason to have anything different.

Thank you.

Questions

Mr. Drew: Mr. Arnette, in addition to Section 16 (A) that you referred to where we can provide appellate jurisdiction in district courts, are you aware that, also, in Section 5 (F) of the Judicial Article, it provides "in all criminal cases not provided for in Section 12 of this article, an accused shall have a right of appeal or review as provided by law," which would further strengthen your argument?

Mr. Arnette: I wasn't aware of that. Mr. Drew, I hadn't remembered that. But it's a very good point to bring out. No person would be denied the right of review. Now Mr. Avant has put down here, it says, "This right may be waived intelligently." Well, this is a fine idea except nobody is going to waive that right before the review is already taken to make sure that no mistakes were made. So you would have to have a record of every crime offense in the city courts, and they are all not equipped either financially or physically to do this. So if you want to put your city courts out of business, adopt this amendment.

Mr. Stag: But all your argument is against the rest of this proposal, is that correct, Mr. Arnette?

Mr. Arnette: Well, I'm against the rest of it. The question is the burden it would put on the district courts, the backlog of cases. It would prevent the

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them that are presently handled by smaller courts... things of this nature.

Mr. Stagg Are you aware that in some legislation, it's necessary to attach a fiscal note to show what the proposal would cost if it was enacted? What would you estimate the annual salary of a court reporter would be? About twelve thousand dollars, would that be a fair figure?

Mr. Arnette I would say twelve thousand....

Mr. Stagg And a transcript is normally a dollar per page. Is that not correct?

Mr. Arnette That's exactly right.

Mr. Stagg And how many city courts can afford that kind of expense if this record was required?

Mr. Arnette I don't know of any city court outside of, perhaps, the city courts in New Orleans, or maybe Baton Rouge, or the very large cities. But when you get in town the size of Jennings, around twelve thousand, it's impossible to provide that.

Mr. Stagg Would not then the court reporter make more than the city judge?

Mr. Arnette Oh, a lot more.

Mr. Smith Mr. Arnette, wouldn't this apply to the mayor's court, too, in any town?

Mr. Arnette It would also apply to mayors' courts or any courts that presently have any criminal jurisdiction that are under a district court. And it'd just do away with those type courts, Mr. Smith.

Mr. Hayes Mr. Arnette, you would want to deny the rights because of the amount it's going to cost. Is that correct?

Mr. Arnette No, Mr. Hayes, that is a fallacy that I think Mr. Avant stated, "that there would be no review." But this is not the case. We presently have trial de novo, which is an entirely new proceeding in a district court, that if a defendant wants this, he may have it by right. He's presently got this right. We're not taking away this right from him.

Mr. Hayes Didn't this amendment say that you could waive it if you wanted to?

Mr. Arnette This amendment does say that you can waive it. But the problem with that is, Mr. Hayes, that nobody is going to waive it before the record is taken, before the trial is over, because he doesn't know whether there's a mistake made until the trial is over.

Mr. Hayes In the terms of cost, since it can be done, say, on a tape varied sheet, and you are only, this cost only comes into play after you are actually making the record, wouldn't it still be reasonable to make this record?

Mr. Arnette Well, it's presently done by the means of court reporters and transcripts and things of this sort, which are quite, quite expensive, Mr. Hayes.

Mr. Hayes Don't you have a right to a jury trial in federal court with twenty dollars. Mr. Arnette, about twenty dollars? Can't you get a jury trial if you want it?

Mr. Arnette If you can get in the federal court in the first place which takes a ten thousand dollar claim, yes.

Mr. Hayes Twenty dollars. Right?

Mr. Arnette No. Ten thousand dollars, Mr. Hayes, in ninety-nine percent of the cases.

Mr. Hayes I say with the involvement of twenty dollars, and that's when you can demand one for twenty dollars.

Mr. Arnette If you can get into court in the first place which takes ten thousand.

Mr. Hayes Oh, yes, O.K., then. Thank you.

Vice Chairman Casey in the Chair

Further Discussion

Mr. Kelly Mr. Acting Chairman, ladies and gentlemen of the convention, I rise in support of the Avant amendment.

We tried to bring this out in the Judiciary Committee for months and months, and apparently it finally did get something onto the floor of the convention. However, apparently, this did have some ambiguity in it because, I think I discussed this with Mr. Duval, and you could read it in one way whereby it would mean that free transcripts would be provided in all cases including civil cases and everything else.

That's not what this amendment does. And there's one basic question that has to be answered, and that's whether or not we are going to put a price tag on justice. Now anytime a person is called into a court of law, I don't care whether it's a mayor's court, a district court or whatever court you may bring him into - I think that he should be entitled to have every right provided to him, including this right to know what has been said against him and to have some recodation of the same.

Now, the cost factor has been argued here today. That's the main opposition to this. It is, well, look what this is going to cost. This is just no argument when we start talking about placing a man in jail or taking his property away from him. And this city court argument, that's a fallacy because a city court can provide a cassette recorder just as easily as a district court can. And I'll say it, I don't care if you're only in the city courts or courts of limited jurisdiction, as Mr. Avant answered in a question by me. This goes on in our district courts today. I guarantee you, you get the guy that is called in, is ticketed, say, for simply battery. He's got a good job; he's got a wife to support; he's got children to support. So he gets picked up on a simple battery charge one Saturday night. All right, he goes into court the next Friday or the Friday week, and he doesn't think too much about it because he looks at the penalty and he says, "Well, not too much can happen to me over this. I don't think I'll even go to the trouble of getting a lawyer. I'll go and defend myself." He walks in there and the judge says, "You're up and say, 'Are you ready for your case?' Yes." And let's suppose that he has been apprised of all of this other constitutional privileges. No one ever asked him, "Do you want this recorded?" They are not even going to ask him, if he's got a lawyer, sitting beside him, "Do you want this recorded?"

So he goes on and the witnesses testify against him. Now he thinks, "Well, maybe if it's guilty, I'll get a fine or something." But for some reason, somebody's in a bad mood on this particular day, and the first thing you know, he's been sentenced to four months in jail. He doesn't even have time to go home, tell his wife, "Look....", or call his employer, "I'm not going to make it today because I've got four months to go, four months to serve." And then he decides, "Well, it's high time I'd better get a lawyer because I'm in trouble."

So he calls one. Now, what's he going to do? There has been no recodation of any of the evidence presented against him, and by evidence, I'm talking about what witnesses said happened on this particular event. This is the very thing which I think Mr. Avant has in mind. This is no move to abolish city courts. This same things goes on in district courts. This is a move to protect the average man who doesn't think that he's got legal problems, and he walks into that district court or

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city court and the first thing you know, he ends up in jail.

... I suggest that you give sincerity to this proposal. I think it is a good proposal. It's not going to cost anyone any money. The only involvement in these matters involves the transcription, not the actual recording of it, and anyone can record the testimony. There's going to be no real expense for that record going to be available so that another court can look and see if this man or this woman received true justice.

I ask that you vote for the amendment.

Question

Mr. DeBlieux: Mr. Kelly, isn't it now available to them they have these transcribers that they can take the testimony down and make the cost of these records almost minimal?

Mr. Kelly: That's my understanding, Senator.

Further Discussion

Mr. Johnson: Mr. Chairman, ladies and gentlemen of the convention, I support Mr. Avant's amendment. I think that some points have been raised relative to what kind of effect that would have on our judicial proceedings. I want to suggest to you that we are talking at this point about the Bill of Rights Section. We have provided in the Judiciary all the rights, responsibility, and jurisdiction, and we have in some cases expanded the powers of the district attorney and the powers of the courts. I suggest to you that this is no more than a provision to allow that, while engaged in the criminal justice system, that we will provide necessary measures to protect an individual's right.

Now the question is raised that if he pleads guilty, can he not waive it? Does this prevent him from waiving that right? I'm suggesting to you that it says very clearly that this right may be intelligently waived.

I think when we talked about - and I read the Memorandum that was issued out by the District Attorney's Association, someone representing the district attorneys viewpoint, I read it and it just seemed to me that we should be ought to do more when we talk about the term, 'law and order,' we ought to talk about the term, 'law and order and justice,' has been. As my appreciation of those words, been exhausted. Let me suggest to you that in the criminal justice system, that besides the point of arrest, that at this point where a person goes before a court and feels as though he didn't get a fair trial, then he ought to have the right to appeal. Inevitably he has to have the supporting documents to justify his right. It would seem to me that we extend this kind of right or privilege to prosecuting attorneys, and I'm not sure I think if he got a fair judgment, and if he were to appeal, that he should not have it does no harm to provide the recording of that.

Now, these people say we are not talking about cost. I'm suggesting to you that I think, personally, at a delegate, that some people are weighing that factor and that's the way they are going to vote. How do you vote on this amendment? Can we really afford to cost for a trial? We are supporting to keep the criminal law and procedure for the judiciary, where we have provided our district attorney with this necessary funds, with the necessary staff, with the necessary expertise required, that it would be more than reasonable that we want to provide at least as this amendment possibly obtain, the opportunity for a person who is convicted, property, certain of his rights to be able to raise the record now of that testimony against him. I think some people have said you can't do it, you know people, and when we are in the presence of a jury system, saying things against you without you having the right to defend yourself. I think when it comes on the record, that there are systems that are available and a system that would be desirable.

For those reasons, and particularly for the

reasons again all presented by Mr. Avant and Mr. Kelly, I would like that you seriously consider that and vote favorably for the adoption of this amendment.

Finally in making Mr. Johnson's statement to say that we would spend day and days talking about the possibilities and the effect of a certain legislation - I'm suggesting to you that there provides any legislation that this generalization we wish to submit to court interpretation. That's why we've got a judiciary, and in that we have members of the judiciary, practicing attorneys, and possibly some defendants presently in this convention. I do not see where that should be a fair obstacle to the adoption of this amendment.

So, therefore, for previous reasons and that

addition, I call for your favorable support.

Mr. Chairman, if there are no further speakers, I move the previous question on....

[President: Would it be all right?]

Closing

Mr. Avant: Mr. Chairman and fellow delegates, I think that Mr. Kelly stated succinctly the reason why this amendment should be adopted. You can't put a price tag on justice. Now, insofar as the allegations that the cost of this would be unduly prohibitive, that is simply not correct because with the electronic recording equipment that is available today, I can record virtually every word that has been said in this convention all day today for less than ten dollars. Now, another thing, insofar as the argument that the trial de novo still exists, if it did, I wouldn't be up here. I'm telling you that it does not. It's in Article VII, Section 36, of the constitution of 1921, and it's nowhere to be found in this constitution up to this point, and if it is transferred under some transitional article, it still won't be in the constitution. I don't care how you explain it, or how you try to explain it, there's no way, in my humble opinion, that you can justify depriving an individual of his liberty and putting him in jail and locking him up without giving that man a right to have the evidence upon which that conviction and sentence is based reviewed by another court based upon a record of the proceedings.

Now let me tell you something. Let me tell you the kind of thing that I'm talking about. I'm going to get down to the kind of nitty-gritty, as some people say. And I'm not saying that all city judges are like this. But let me just give you not a hypothetical case, let me give you a case.

A man's son's attending a high school dance. We're supposed to be in at 10:00 A.M., about 1:30 A.M. he's not in. The man's up, he's sitting, he's waiting, he's watching television or reading, he's drinking a few beers and the boy's late and he comes home a little bit faster than he should and about two blocks behind him comes a police officer. He runs in, jumps out, runs in the middle. Papa goes out to see what's been going on. He has he torn up the car of something. And there the police officer arrives. Mr. Avant and Mr. Kelly are being drinking, you been driving this car, you've been drinking, I have a question for you. The sentence is mandated on what that kind of testimony. Now, that's what I'm talking about. So, record, trial de novo under the constitution of 1921 didn't stick. No, it didn't stick, but it would stick under this one, because you would have a trial de novo, you don't have any record and you don't have any appeal. Now, what's the price tag on justice and you can't put a price tag on it. It's a humble opinion, without having any right to have somebody make up at that expense and say and determine whether he believes it or not.

I'll be happy to answer any questions you may have.

Mr. Johnson: Mr. Avant, I'm going to vote for it.

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information on how this amendment would actually work. For example, in the traffic courts in the city of New Orleans, judges may handle three hundred cases in the course of a day. Some of them may plead guilty, some of them may stand for trial. Now, at what point would the provisions of this amendment go into effect when we say he shall not be deprived of certain rights? How would that work?

Mr. Avant All you have to do, Reverend, is you have to explain to the man his rights, the right... you explain to him that he doesn't have to plead guilty, that he has a right to be tried. Prosecution is compelled to put on evidence and establish his guilt beyond a reasonable doubt. He could plead guilty if he wants to.

[Record vote ordered. Amendment adopted: 66-17. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Burson], on page 4 of the Bill, after the word "shall" delete the word "precisely" and insert in lieu thereof the word "reasonably".

Explanation

Mr. Burson Fellow delegates, this amendment is proposed because under the present law the constitution simply requires that you be informed of the nature of the charge against you. It doesn't say precisely; it doesn't say reasonably; it does not say as Mr. Gravel's amendment will "with particularity". Now, "with particularity"... seems to me would imply that you'd have to more or less include a bill of particulars in the indictment or information. Now this is a good time as any, I don't know if there would be a good time, for me to express some views that have been welling up inside me since I first read the Bill of Rights Proposal, and I have waited a long time to express these views because had I expressed them when I first reacted I probably would have over-expressed them. But I want to get into it now. I think you can't decide on these rights of criminal defendants in isolation. You have to consider the whole committee proposal, and in my view, the whole committee proposal taking it together, makes about nine or ten radical changes in favor of the rights of criminal defendants. I am stating here and now my intention, on each one of these changes, to submit to you amendments which will retain the present criminal law. Not because I think the present criminal law is perfect, which Lord knows it is not, but because I do not believe that your constituents or mine sent us up here with a commission to execute pell-mell without the deliberation and committee study that a legislative body would do over perhaps eight or ten years of time, but to give vast new areas of rights to criminal defendants and to make criminal prosecution infinitely more difficult than it has been in the past. Now you may think that this is an attitude which grows out of the fact that I am an assistant district attorney. Well, I have been one for less than one year of my life, but I have had a year of criminal defense law. I am taking these views, rather as a representative of Representative District 41, the people I was sent here to represent, and I think that their views on this score are probably emblematic of the views of the overwhelming majority of the citizens of this state, and I want to say at this point that I do not pretend to be an expert on the attitudes of black people, but I will tell you with some degree of knowledge all having run for public office on two occasions in the district that I represent and having got votes varying between sixty and ninety-four percent of the vote that I am familiar with the attitude of black people in District 41. I do not intend to interpret granting new rights to criminal defendants as a minority rights issue. The only request I have ever had on this score is want equal enforcement of the law". "We want the law to be enforced

equally the same way to us as it is to everybody else", which is an extremely reasonable and just position. But it seems to me that if we fall into the trap of considering criminal rights as a minority rights issue that we will be guilty of the same kind of paternalism that in my view has been our biggest problem in our segregated society. When we would not punish the crimes of blacks against blacks or...

Mr. Casey Just a minute, Mr. Burson, let me interrupt you.

Point of Order

Mr. A. Jackson Mr. Chairman, I question the line of discussion being pursued by the speaker. He's not addressing himself to the amendment and while I know we have allowed a great degree of latitude, it would seem to me that it would be in the interest of this body in order to inform them precisely of the intention of this amendment that he would confine his discussion to the amendment before us. I think that he's raising a lot of extraneous issues that should be offered in a general debate and I object to this discussion at this time stating that it's not germane to the amendment.

Mr. Burson Mr. Chairman, I requested earlier, of the Chairman, in the day, a personal privilege and was informed that personal privilege was not appropriate on this topic, at which time I decided to confine....

Ruling of the Chair

Mr. Casey Just a minute. Alphonse Jackson has addressed a point of order to the Chair and I think it's only the prerogative of the Chair to answer. I don't think I should ask any other speakers to confine their remarks as far as possible, and I realize we have enjoyed a tremendous amount of latitude [latitude] and I think we still will, in the future, enjoy that latitude [latitude] but as far as possible all speakers should confine their remarks to the precise amendment under debate or to the proposal under debate, and I would ask the speaker at this time to do so.

Mr. Burson Yes sir, Mr. Chairman. The only point I was trying to make here is that you don't solve problems by throwing the baby out with the bath water and in my view, to propose here radical changes in a new Code of Criminal Procedure which was adopted in 1966, after ten years of work by the Louisiana Law Institute, by a practically unanimous legislature and enshrine in the constitution material which is essentially statutory in nature would be a tragic mistake. Now the Code of Criminal Procedure is not perfect although I think it would be rated one of the better modern codes of criminal procedure available in the states of this union. But it can be changed as the need arises in the state legislature. If we freeze into the constitution minute details of criminal procedure beyond those basic guarantees similar to the guarantees that are enshrined in the United States Constitution, in my view we are making a fatal error. Now I am making this speech, not after failing to discuss this with the proponents of these changes, because I have discussed it, and when they talk compromise, the compromise idea I get is that it is a compromise to agree to only get hit over the head five times instead of ten times. It seems to me that on this particular amendment that it is all we need put in any constitution that is to criminal defendants, but reasonably informed of the nature of the charge against him, consonant with the short form of the Bill of Information which is available under our code of criminal procedure, consonant with good practice in framing indictments and that if it is the design of the committee by the use of the word "precisely" to make sure that we have to include in each and every indictment or information what amounts to a Bill of Particulars that we are giving prosecutors a new and unnecessarily cumber-

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mean? I don't know what that means.

Mr. Roemer Well, it has the same thing to do with your Bill of Particulars, Alvin, where you are at least given some nature of the scope and the cause of your accusation. "Reasonable" is just to me so undefined as to be unworkable here. As far as I'm concerned when we're "reasonably informed" we might as well not mention information at all.

Mr. Roy Actually, Buddy, wouldn't you agree that as an analogy, if I tell you that you have to be careful in the way you do something that if I then say you must be reasonably careful I'm actually allowing you to be less careful? Is that not correct?

Mr. Roemer That's exactly right.

Mr. Roy So when...in the present law it says that you must be informed, if we adopt this amendment that says you must be only reasonably informed, it's even less than what you're being informed at present, isn't it?

Mr. Roemer Exactly.

Further Discussion

Mrs. Warren Mr. Chairman and fellow delegates, I first had in my mind to ask a question what was the word "reasonably" mean as referred to Mr. Burson's amendment. After Mr. Burson began to explain his amendment, I became a little bit upset, or probably disturbed might be a better word. I think I said from this platform when I came, that I came here to represent all of the people. I think if this convention will write a constitution that will reflect the justice of all people, I think we will have done a good job. I also think that Mr. Roemer had versed principally the things that I had in my mind that this section refer to people who were coming up, who are accused, who we would be bringing up to say you have done something. I think that a person should know what he is charged with exactly. If I am charged with killing a person, I'd like to know that the charge was murder. If I'm charged with manslaughter, I'd like to know that it was manslaughter. I can remember some years ago when the question came up about jails and things didn't dawn upon me. I just knew it was a place to put you away and I didn't want to be there, and I made this remark "jails are not made for dogs, but it certainly is not made for me". I don't know when the time will come that I might be put in that position, that I might be stopped and I might be [be] taken in for some reason or not. If I'm stopped driving my car I'd like to know all the officer's stopping me for before he takes me in. So I'm going to ask you to please vote against Mr. Burson's amendment. Judge Tate said something about it would be hard to change what had happened maybe four hundred years ago. It might be hard but if it's right I think we should make that attempt so lets [let's] us defeat this amendment.

[Previous Jurisdiction Article.]

Closing

Mr. Burson Fellow delegates, in response to the arguments that have been raised against this amendment, let me say at the outset that Article VI of the United States Constitution Bill of Rights, which you all have in the copy of the U. S. Constitution that was given to you by the League of Women Voters, if you look at it, says that you have a right to be informed of the nature and cause of the accusation. It doesn't say "precisely informed" and it doesn't say that you have the right to participate in "trial" or "hearings". So I would bring to your attention the fact that under Gideon versus Wainwright, every criminal defendant who is charged with more than a misdemeanor has the right to counsel, an absolute right to counsel, provided for by the state, if he can't afford counsel, and that counsel if he is

worthy of the name certainly knows how to file a motion for a Bill of Particulars. This is just trying to do with one word or two words or three words exactly what I told you, to make criminal prosecution more difficult. Now, Mr. Roemer was talking about the fact that these rights are designed to protect innocent people. That is correct. They are also going to be used mainly by people who are guilty of crimes because whether or not you realize it, sheriffs and police officers don't go around arresting people who didn't do anything if they could help it and district attorneys don't go around prosecuting people who they know are innocent, and it seems to have been a tacit presumption engaged in by all of the members of this committee. Now, that presumption may be correct.

Now, maybe our elected sheriffs and our elected police chiefs go around arresting people who didn't do anything, and maybe our elected district attorneys go around prosecuting people who didn't do anything, but you know it's funny; the only district attorneys I ever saw defeated in the area of the state I live in were those who were not zealous enough in prosecution. I never say one defeated yet because he was too zealous in prosecution, and I'm telling you that the law abiding people in this state don't want us here doing everything we can to make apprehension and prosecution of criminals impossible in the guise of establishing individual liberties and rights. By the way, defining for the first time rights and liberties which have not heretofore been defined by any state in the union.

Questions

Mr. Kelly Jack, under the present law, say as an assistant district attorney, and I file a Bill of Particulars asking you for the witnesses that you're going to use in a criminal prosecution, do you have to even tell me the names of those witnesses?

Mr. Burson No, sir. There is no criminal discovery in Louisiana.

Mr. Kelly Alright sir, I file a twenty-five dollar law suit against a defendant... does that defendant in that twenty-five dollar law suit.... he has the right to all types of discovery devices, does he not?

Mr. Burson Yes, sir.

Mr. Roy Jack, you mentioned the Sixth Amendment to the Constitution of the United States. I am very interested in it, but didn't you forget to tell these delegates that the Constitution of the United States Sixth Amendment requires a grand jury indictment for every crime that is serious, which has been interpreted by the United States Courts to be any crime for which you can be sent to prison for one year or more?

Mr. Burson Yes, sir, and in *Hirtout versus California*, decided by the U.S. Supreme Court in 1884, they said that the grand jury indictment was not included in the due process of law guaranteed which the states must provide under the Fourteenth Amendment.

Mr. Roy Isn't it also a fact that when you're charged by a grand jury indictment, that you give a lot more information than the short form Bill of Information that you and other assistant D.A.'s and the D.A.'s, in this state may use at this present time?

Mr. Burson That's not necessarily so at all.

Mr. Roy I don't it a fact that under the hort form indictment, Jack, that for murder you merely have to say Chris Roy killed Camille Gravel and that's enough under the late indictment?

Mr. Casey I'm sorry gentlemen. Mr. Burson has exceeded his time.

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Mr. Gravel It is not my intent nor do I think that it does but it would require that if the short form indictment is employed that the prosecution would have to give full particulars together with the indictment. In other words, I think the facts would have to be stated and this is the intention of the amendment. The facts would have to be stated fully in the indictment or else in some accompanying document that would set forth the facts.

Mr. Lanier Let me ask you this, under our present statutory law and jurisprudence and I would specifically refer to probably one of the first cases, State vs. Barksdale. Is it not the present law, that where the short form indictment or information is used that the defendant as a matter of right is entitled to a Bill of Particulars?

Mr. Gravel That's correct. In other words, he's entitled statutorily as a matter of right to a Bill of Particulars and this would constitutionalize that right. That's exactly what I'm trying to do.

Mr. Lanier Now, when you say "to be completely informed", as I understand the present jurisprudence, it says that you are required to state the date, time, place and manner in which the offense was committed. Is it your intent that the state would be required to furnish more than that information?

Mr. Gravel Absolutely, I think that's one of the big problems that we have now is that just giving that information and not other facts does not particularly and fully inform the defendant.

Mr. Lanier If you require more information, what specific additional information is it your intent to require as a result of this amendment?

Mr. Gravel Sufficient facts that would justify a basis for the essential elements, as set forth in the statute, of the offense.

Mr. Lanier No, but what I mean...if you furnish date, time, place and manner in which the offense was committed, what additional types of things would you want?

Mr. Gravel Well, it would depend on what you mean by "matter." "Matter" might very well encompass enough facts to justify a determination that the essential elements of the offense have occurred. I can't generalize on that.

Mr. Lanier I'm trying to get to this point. If I were an assistant D.A. and I was reading this in the new constitution, how would I know what I am required to furnish?

Mr. Gravel You would be required to furnish, Mr. Lanier, as you well know, sufficient facts--I've said this about three times--that would justify the conclusion that essential elements of the offense had been committed. In a negligent homicide case you would have to allege facts that would show that criminal negligence, and not just simple negligence, occurred.

Mr. Burns Mr. Gravel, as a result of the conversation, question and answers, between you and Mr. Lanier, this is the only thing that I'm getting me. Under our present law when the defense attorney asks for a Bill of Particulars, he enumerates and specifies in that request exactly the information that he wants. Now under your proposal, and I understand the purpose of it, who would determine whether a Bill of Information or an indictment would set forth with the necessary particularity. Would each case have to depend on the particular fact; in that case, or would there be some standard? Who would set the standard, is what I'm getting at?

Mr. Gravel I don't think there's any doubt but that it is my intention by this proposed amendment

to require that there would be the same facts set forth either in the indictment, or Bill of Information, or in a statement of particulars, as would justify the conclusion that a crime had been committed. Mr. Burns, I don't think there's much question that you as a district attorney, Mr. Lanier as a former district attorney, and Mr. Burson know what I'm talking about. We're talking about those facts that are necessary to be alleged, either in a Bill of Particulars, if the short form indictment is used, or in a Bill of Information if the short form is not used, that would be adequate to constitute a crime.

Mr. Burns I'm not arguing against your amendment. I'm not questioning. I'm just sincere as to what facts would have to be disclosed in the Bill of Indictment or Bill of Information to meet the requirements of this particularity if you didn't give enough information, in other words. Would the defense attorney...could he get up in court and ask that the indictment or Bill of Information be dismissed, or would you as a defense attorney require the state to furnish more particularity?

Mr. Gravel Sufficient particulars that would constitute the offense and set forth the nature of the offense.

Mr. Anzalone Mr. Camille, a few minutes ago you told us what a short form indictment contained. Now, by your amendment I would assume that you are wishing to change this somewhat.

Mr. Gravel Well, it could be done in two ways: either the short form indictment would not be employed and used by the prosecutor where he would, say, come up with a Bill of Information that would set forth all of the facts as is done in the federal court, or it could be done by employing the short form indictment but requiring that a separate statement of particulars accompany that.

Mr. Anzalone Now, Mr. Camille, would you tell me how the indictment would read? Would you be able to tell me how the indictment read under the old law. I want you to tell me how the indictment will read under your provision, because I would assume that it is detailed enough that we would know what to do. So tell me, if you can, how your new indictment will read.

Mr. Gravel Well, assuming that we don't use the short form...let's assume that we're talking about the case of negligent homicide so I can stay within the illustration. You would say that John Smith met his death as a result of the criminal negligence of Jack Brown, which criminal negligence consisted of his driving while intoxicated on the highways of this state at a certain time and place. That would then inform the defendant a whole lot more about the criminal activity on which the prosecution was being based than to say that "AB" negligently killed "CD."

Mr. Anzalone That is all that your amendment does?

Mr. Gravel That's absolutely all that it's intended to do. To require...

Mr. Anzalone Are you sure that's all it does?

Mr. Gravel That's what I intend for it to do: that the nature and cause of the offense be particularly set forth in the charge or in the accompanying papers.

Mr. Berry Mr. Gravel, as I understand your amendment, you would be getting everything that you would ordinarily get in a Bill of Particulars in your initial short form indictment or information, so as to prevent and obviate pre-trial motions. Is that right?

Mr. Gravel It would certainly tend to do that considerably, if the requirement was made. One

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...er, that it would do in that regard too. Mr. Berry, is this is that it would not require necessarily that the defendant, the person who is charged, go hire a lawyer in order to find out everything that has to be found out about the charge here. He at least would have before him at the time the charge was made the facts and circumstances if the alleged offense.

Mr. Berry: It would have a tendency to lock the prosecution in within the scope?

Mr. Gravel: Well, it would require the state when it is undertaking to prosecute somebody to have sufficient facts upon which a charge could be based. In ninety-nine instances out of a hundred those facts are within the control exclusively of the prosecuting attorney who either can file a Bill of Information or can in most instances get an indictment since he is the legal advisor to the grand jury.

[Burton → J. → delegates present → Mr. Gravel.]

Further Discussion

Mr. Tate: Mr. Chairman, fellow delegates, I rise to oppose the Gravel amendment. I've been told I should speak more fully, but I don't know more sense, but God punished me with not being able to, but I'll do my best. Let us say again that we all agree with Mr. Gravel's objective that by some means or another the defendant should be furnished sufficient information with particularity to enable him to prepare his defense. There's no... absolute... in my opinion... should be informed and that... unfortunate, and I repeat again, under the interpretation of what is being proposed, the nature and cause of the accusation against him that refers to one piece of paper, the indictment or information that is typed up by a secretary at the behest of an attorney general... district attorney, an assistant district attorney, and filed and that... starting at the end of you, Mr. Gravel, I think, fully and fairly informed you of the difference. Under the interpretation of the Supreme Court, wrong or right but for a hundred years, this has to give the essential facts. Now, the essential facts, for instance he said in the negligent homicide case, were "AB negligently killed" "CD" "Eric Roy negligently or with intent killed Camille Gravel." Something like, no, I take it back. Nobody's listening. The lawyers laugh at my level, why don't you? Thank you. A short form indictment just gives the facts. Somebody killed somebody. Now he himself, and he was very thorough, he said from now on you would have to say "he killed him with criminal negligence as a result of driving while intoxicated" and maybe the courts would say at the corner of Highland Road and Winifred Drive, etc. Now let me give you the history of the short form indictment. When you have a long form indictment with all that particularity that can't be waived under our law, in every instance it can be and perhaps it should be, but under our interpretation of our constitutional law, if it can't be waived, that means if he put it at the wrong makerhead, even though everybody knew this was the right railroad, it might mean that... it is fair enough to say that it might not mean this, but if they left out the words "with criminal negligence" or "with just plain" with negligence, even though everybody knew of our penal code of criminal negligence, that would mean the whole prosecution is nixed out even though there's been a fair trial and they have to be appeal and the right judge notices that they left out that word. Now, I want to tell you that we can not help but to be sympathetic with the general objective that the proposed change has informed but under the honest interpretation of the nature and cause of the accusation and his name, that would mean that on this piece of paper, typed up at the beginning of the prosecution, they have to state the particularity, and we don't know how much particularity it is, many facts that everybody knows,

if that thing was happened or left out of this piece of paper, the whole prosecution could be thrown out after a fair trial and upon appeal. I want to tell you the reason for that short form indictment is because the long form indictment is a lawyer's game. Even though everybody knows what he's charged with, the accused knows, and I want to say one other thing. There's a difference between indictment... this is what starts it... and a Bill of particulars. The Bill of Particulars enables the accused after the indictment to obtain the information, more precise information, than is on the indictment. As much as he ought to have, and in my opinion, in the future the legislature is going to give him more discovery, and it should. It should give him more discovery, but that is not the question before us. The question before us: are we going to freeze into the constitution a requirement that the indictment or the information, that piece of paper that's type up in the beginning of the transaction, has to be letter-perfect at the risk later on of some omission devastating the entire trial proceeding and appeal and conviction and making you start over again.

Further Discussion

Mr. Burton: Mr. Chairman, fellow delegates, I know Mr. Gravel the other day said that the two best lobbies that we'd had at this convention were the D.A.'s lobby and the judges' lobby. I think we better add a third one to that list now, the criminal defense law lobby. If I was still practicing criminal defense law, I think that this language would be a dream. This would, more than anything I could imagine, transform the law from an attempt to determine the guilt or innocence of a party accused, into a lawyer's game. Just as Judge Tate told us, the genesis, the origin, of the short form indictment was to get away from the game over whether on that one piece of paper you could include everything that Mr. Gravel has in his mind when he says "with particularity." Now, I have to take his word about what he has in his mind, because we have not had a legislative committee study this thing and make a record as to whether or not they intend a criminal discovery bill to encompass finding out the list of witnesses that the state is going to have and so on. I agree with Judge Tate. I have long felt that there was room for a criminal discovery act in this state, but we ought to know as a criminal discovery act what can be discovered, and not leave it to vague terms such as "with particularity." Now I submit to you that Mr. Gravel's amendment does either one of two things: it either makes unconstitutional the short form indictment statute or it does not. If it does make it unconstitutional, then we're legislating in this convention and we're going to it like a man; if it does not change the short form indictment statute, then I submit to you by his own argument it has no purpose and should be rejected therefore.

Question

Mr. Kilbourne: Mr. Burton, I was interested in your remark made a while ago by Professor Berry, something to the effect that the prosecution would be locked in, in this bill, in this statement of these facts, these particulars in the indictment. I ask you if the prosecution is locked in, which I think Professor Berry is right, would it not be long let's possibly that we'd be under a situation where some fact was erroneously stated, analyzed, tentatively stated, that the whole indictment—the whole trial might be thrown out?

Mr. Burton: Yes, sir. I agree with Professor Berry's interpretation of that statement, but I think it's just another example where we're legislating in this convention, where we're legislating in this convention, where we're legislating in this convention, rather than in the halls of whether or not we've passed a law on the witness meaning, and whether or not evidence has been given in testimony, the facts or memories of the witness.

Further Discussion

Mr. Roy. Mr. Chairman, ladies and gentlemen of the convention, I'm getting kind of up to here with two things: one is the pontificating of some people and the other is the influence of the district attorneys in this convention, and the district attorneys sitting in the audience in this convention. Mr. Burson, for your information, if you'll just get the record of the vote, you'll find that about eighty percent of the lawyers here voted on your, and for your, amendment. It's just not right to get up and make personal ad hominem arguments when we're dealing with principles of law. If we can't be intellectually honest in a convention like this, we'd just as soon fold up. We're not intellectually honest when we make the assertion that the people who are criminal defense lawyers are for a certain provision because they're going to make more money or because that's where their interest lies. Because Jim Derbes is not a criminal defense lawyer in my opinion. At least I don't think he does. Harmon Drew, I don't know how much he practices. These fellows voted for the Burson amendment. I'm not singling them out to disagree with them. I'm just saying they're not right to keep getting up and always have a scapegoat when you really don't want to address yourself to the real issue at hand, which is whether we are going to say that an accused will not be told what evidence the D.A. has. We're not asking for that. We're asking that if the legislature says that the crime of murder is committed if you do something one, two, three, then when the man is charged, we think it ought to be stated that he committed murder by doing one, two, three. We're not asking them to give us anything that they have or they may not have. We're simply saying, "Tell us," under a section of the law where you're dealing with a crime that may be committed in several ways. I'm just saying, "Tell us which way this man committed the crime." That's all. Now, with respect to the influence of the district attorneys, there's no question about it. I just happened to talk with some guys just now who thought Mr. Gravel's amendment was good, and they got the word from back in the seating arrangement up there and suddenly they've had to change. I'm not going to say who. I'm not privileged to disclose that. I am privileged to tell you that I worry about it. If anybody doesn't know what it's like to have to vote, well I can tell you, because I had the great fortune of having to cast the tie-breaking vote under circumstances like that. I just don't think it's right. We have given the district attorneys what they need to prosecute people. We don't have to give them the victims. We don't have to give them innocent victims of whatever they seek. They may be in good faith, but I've had enough of that little print-out that they sent out that's not logical either and doesn't make sense. Justice Tate said that you have to have a letter-perfect Bill of Information, and I can't disagree with him more. The fact that he's on the Supreme Court doesn't make his right. In other words Justice Tate has told you that if you spell a word "seize" s-i-e-z-e instead of s-e-i-z-e that you would let a criminal off. That is not the law and he knows it. We're simply asking that you particularize. If you sue me for a hundred dollar, I have the right to make you particularize. I have the right to say, "Tell me for what reason do I owe you the hundred dollars, and what did I sell you that did I buy from you that you're entitled to collect." All we say is that if you're going to send a man to prison for ninety-nine years, which you may do under armed robbery and for which a district attorney may charge a person on his own motion, on his own Bill of Information, let me for what reason do I have to know which this prosecution will be based, but I will not tell you what evidence I have. We're not asking for the district attorney to give us his evidence. We're asking for them to tell us, for what facts upon which he relies to charge and convict a person. I am for the amendment and I wish you would adopt it.

Chairman Henry in the Chair

Further Discussion

Mr. Drew. Mr. Chairman, ladies and gentlemen of the convention, with all of the discussion we've had on this amendment I hesitate to even get up here, but I think that I do have an obligation to the convention and to my constituents at home and to the rest of the people of the State of Louisiana. The one thing that I have not heard mentioned in this Constitutional Convention since the day it began in January is the term "law and order," and that is what the people of this state are interested in. It has been very prominent by its absence throughout this entire convention. Let me tell you, in answer to Mr. Roy's statement about who handled what type of business, I served as assistant district attorney for ten and a half years in the 1940's. Since 1949 I have been a criminal defense lawyer and a civil defense lawyer. Approximately forty percent of my practice is criminal practice. I violently oppose this amendment by Mr. Gravel and I will tell you why. Every-thing that they have told you, the proponents of this amendment have said, they want by the virtue of putting this trap in the constitution can be acquired now by a Bill of Particulars. It can all be acquired by a Bill of Particulars. If you are not satisfied with the answer to your Bill of Particulars, under our Code of Criminal Procedure you have a right to object to the sufficiency of those answers, and ask the court to order them to furnish you additional information. If this amendment is adopted and put in the constitution, you have no recourse, ladies and gentlemen, it is not subject to the provisions of the Code of Criminal Procedure because it is a constitutional provision. What this amounts to is that if the prosecution in attempting to set up the initial basis for the case does not put evidence in the trial, there's no provision that defense counsel has to object to the sufficiency of the charge. He can wait until it winds up in a conviction and the man goes to the penitentiary, file a writ of habeas corpus and say he was denied his constitutional rights because it was not "with particularity." What does particularity mean in this other amendment that everyone was so worried about? In those cases if you would as to what an intelligent waiver is. There are so many definitions in what had been held an intelligent waiver. Now leave it up to the courts to tell you what "particularity" is, and you'll empty Angola. As I said to begin with, this Constitutional Convention should take into consideration the will of the masses of this state and not go overboard on the rights of the individual defendants in criminal cases. I want them to have their just rights because I represent them. I see nothing wrong with the procedure that we have now as prescribed by our Code of Criminal Procedure, which is statutory. If any change is made, it should be made by statute, by amending the Code of Criminal Procedure, not by putting a trap, and ladies and gentlemen, that's all this is-- a trap to turn convicted criminals out of Angola. If it has to be that the defense should have additional information, and I think possibly we should be entitled to a little more information than the jurisprudence allows us, but that can be handled by statutes. Ladies and gentlemen, I urge you to defeat this amendment because it is nothing more than a trap. I yield to questions.

Questions

Mr. Haynes. Delegate Drew, I'm not a lawyer but this would clear up a lot of things in my thinking about the amendment. I remember a few years ago, the Johnny Jones case in Minden that involved Johnny Jones and Sonny Man Harris, wherein Mr. Johnny Jones was lynched and I think Mr. Sonny Man Harris escaped and got away to New York or somewhere to safety. Would this amendment have made it possible for attorneys, ladies and gentlemen, others involved in law enforcement in Webster Parish to have prosecuted the perpetrator of this crime?

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Mr. Drew Mr. Haynes, you have asked me something that I can tell you in great detail, because I was sworn in as assistant district attorney the day before that incident happened. I had grand jury investigation of the case, was unable to provide enough evidence to warrant an indictment of any type. The federal courts intervened. They indicted on less evidence than I had presented to a state grand jury, and every defendant they indicted was acquitted because one of the defendants, Harris, who was not killed, took the stand in federal court in Silverpoint and sat for four of the five defendants were not even present. I'm very familiar with that case and this would have added nothing to it.

Mr. Stinson Mr. Drew, if this amendment is beaten and you leave in "reasonably," don't you think that that is going in the future to prohibit filing a Bill of Particulars because it would be best not to have anything in there than have "reasonably inform him"? If you have that, it's going to be a question, instead of your right to a Bill of Particulars under the present law, it's going to be a question of whether or not "reasonable information" has been given. So....

Mr. Drew I don't agree with your statement, Mr. Stinson, that that would prohibit the filing of a Bill of Particulars, a motion for a Bill of Particulars; I don't think the word "reasonable" is necessary. I'm sorry it's there, but I don't think it would prohibit me from filing a motion for a Bill of Particulars and getting additional information that I might need.

If there are no other questions, I sincerely hope that you will defeat this amendment.

Further Discussion

Mr. Jackson Ladies and gentlemen of the convention, Mr. Chairman, I'll try to be as brief as I possibly can in discussing the Burson amendment. It seems to me and I would imagine that, and I wasn't there, but I would imagine that when the founding fathers came up or when persons came up with the concept that a man should be innocent until proven guilty that we probably heard the same kinds of arguments... that we're going to get everybody out of the "lockyards" we're going to deny the protection to law-abiding citizens. I want to suggest to you that it's almost like history repeating itself. I want to suggest... what's so different between these three words of "precisely, reasonably, and particularly"? It's a matter of a choice of words, except that the word "reasonably" as I appreciate it, is less than what we have in our present constitution. I think and I'm fair to, and let me go on record for the public, to say, to be delicate, that no one condones criminal actions--no one. It disturbs me that the more and more we attempt to do things rationally the rights of a citizen that we take the presumption that if a man is charged he is guilty. There is a difference between giving a criminal or a defendant a right to criminal procedure. I'm just afraid that we're moving so far in terms of wanting to be crime wary that we're getting away from the basic protection of the rights of a citizen I presumed innocent until he's proven guilty. On the other side of the coin, about the technicalities that let criminals escape, I think Justice White has said that in the technicalities that didn't let the criminal escape, I just want that you to go to and have a trial again. There is not going to be any absolute law whatsoever than can provide and cover all loopholes, but I'm going to understand the presumption that a man is innocent until proven guilty that we're balancing out each letter under the same amendment.

Now, I have a question, what about people who are in parish prisons throughout this State and who have not been charged with a violation of information, and they have not gone to trial until this very date, from four to eight to nine months. Under our present system what about people being charged on bills of information, limited to what you kind of particulars, absence of political offenses. I want to suggest

to you that the kind of business that we before presented to you here is not really valid. The matter of law, and I'm not a lawyer, but the whole matter of law and judicial interpretation and court action is based on technicalities. That's what law is all about. When you try a case, and lawyers know, raising a technicality, even district attorneys use that. So I don't see how we're going to say that we're going to hang up on the fact that it offers a technicality. I want to suggest to you that this amendment as proposed by Mr. Stinson just maintains with some reasonable or precise... the presumption that every person that is accused is innocent until proven guilty, no matter if you knew and you saw him. That doesn't deny the judicial process, but you should not... What about the man that is charged on circumstantial evidence? Is he to be denied the particularities of what he is being charged with? We talk about this whole presumption of innocent until proven guilty. I would ask that you weigh that. I would also ask that you weigh that there's no law that we can pass or no constitution that's going to cover all loopholes, but that through the judicial process, it provides that criminals will not escape. For those who are talking about letting criminals out of Angola, and the Legislature, I'm suggesting to you that criminals are being processed, being convicted, sent to prison and the crime rate hasn't changed that much. I think that we ought to try to keep it in perspective, and I'm saying we're dangerously treading on a thin line between law and order and the presumption of innocent until proven guilty, without necessarily favoring criminals or not. We're talking about the basic rights of an accused person. So I would ask that you weigh that.

Mr. Chairman, if there are no further speakers,

Mr. Henry There is another gentleman on the list and you have a gentleman who wants to ask you a question. Representative...
Would you yield to a question from Mr. Arnette?

Question

Mr. Arnette Johnny, this will be a quick question. Are you aware that under the Code of Criminal Procedure as presented all you need to do to get the particulars of any crime that you are accused of is just ask for a Bill of Particulars?

Mr. Jackson Mr. Arnette, as I appreciate these three amendments, and this one here talking about the Bill of Particulars, we were talking about constitutionalizing the rights of an accused. We presently... I'm just saying that that same argument could hold for the various lines that we adopted prior, the Burson amendment because "reasonably" says through the Bill of Particulars you can do it. I think if we're going to constitutionalize it and we're going to get away from the ill effects that result as a matter of a person being accused without fully knowing, and that's his right to know, whether you get it or not.

Mr. Arnette Well, Johnny, why don't you constitutionalize.

Mr. Henry Mr. Arnette, he's exceeded his time.

Further Discussion

Mr. A. Jackson Mr. Chairman, ladies and gentlemen, I simply want to see if I can't return us back to what we were trying to do here as a way of this question. We were trying to do here for a long period that we think would be afforded to individuals. There was an attempt to make the part of the committee that saw for the purpose of crime in this State. There was never an attempt on the part of the committee to impose criminal procedures in this State, but we looked at all of the various powers that we had afforded to all of the various agencies of government, and we felt that there ought to be somewhere in this constitution some guarantee for individuals who are

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citizens of this state, individuals who walk down the street, individuals who are arrested every day, individuals who are innocent who are arrested every day. We thought that we ought to provide for them. Now, I think Delegate Drew has brought it all out in the open. I think he has. I think he said to you that nobody has raised the issue of law and order. Well, you know one of the problems we have in this country today is the law and order syndrome that has pervaded all of the thought process of this nation and of this state. The rights of individuals are not only abridged but the rights of individuals are threatened on almost every hand. So I ask law and order for whom? Law and order for what? Where I come from I hear a lot of people talking about they are representing their district. I represent my district, and I say to you that in my district when they say law and order, we say it's a code word. It's a code phrase. It means law and order for black people, and it means a license for police to do whatever they want to to people who are powerless. That's what law and order means to the people in my district. So when people yell about representing their district, I have to represent it. So I say to you that the law and order syndrome is not the issue, but I can understand how it clouds the issue because it's so much a part of what we think and what we believe in this country today. We can sit here and we can be unmindful of it if we want to. You can think that when Delegate Drew talks about law and order that he's only talking about black people. Sooner or later they're going to be enslaved; sooner or later you're going to be arrested; sooner or later you're going to have your freedoms abridged and then you're going to know what law and order really means in this country. I'm disturbed! I'm disturbed that we can't address ourselves to the fundamental issue that the individual ought to have some guarantees. He ought to have some rights. It ought not to be abridged simply because we are afraid to allow people justice and dignity in this country.

Further Discussion

Mr. Gauthier Mr. Chairman, members of the delegation, I rise in opposition to the Gravel amendment. I would like to preface my remarks with a couple of words on what I feel has been going on for the past few days. I have sat at my desk and tried to intelligently vote on each amendment as it comes before us, regardless of who was for it or who was against it. I listened intently any time a group was for it or against it. I did not cast my vote because they were for it or because they were against it. Yet a few speakers before us has suddenly labeled this whole group as being pro one group or con another group. I believe this is unfair. I think each and every member of this delegation....

Point of Order

Mr. Stovall Point of order, Mr. Chairman, is that we had a ruling when Mr. Casey was in the Chair a few moments ago that we would try to stay on the substance of the various amendments that were being presented, rather than dealing in generalizations about what has been done previously. That's simply my point, that we should remain on the substance of the amendment.

Ruling of the Chair

Mr. Henry Well, Reverend Stovall, I was not apparently in the Convention Hall when the ruling was made, and I'm sure if Mr. Casey made a ruling he was correct. I would ask and invite and insist members who speak to speak on the amendment and let it go at that. We've got enough on that to worry about without getting into everything in the world that's been created. Proceed.

Further Discussion

Mr. Gauthier Mr. Chairman, in speaking directly to this amendment, let me say that there has been numerous occasions when I have supported the committee's stand. On other occasions I have not and in the future I will not when I feel they are being unreasonable. In this particular case, the Burson amendment, to me, put back in what was reasonable; the committee had been unreasonable. The Gravel amendment, if adopted, would simply do what the committee had done. I would suggest to you, this is not what we want to do. I continue to urge each and everyone of you delegates, do not let the streamlining or the type of words you heard up here alleging that you belong to this group or that group interrupt your train of thought and to continue to cast your vote as you feel it belongs and not as any or one group would have it cast.

Further Discussion

Mr. E. J. Landry Mr. Chairman, ladies and gentlemen of the convention, I just wonder if at this particular time, I could get your attention. I've paid each one of you off before I came up here. By that I mean this. I have listened to you, I have listened to you faithfully, diligently, and now I'm asking again for the favor that you gave me sometime ago. It takes a lot of courage for me, at my age, to muster up the energy to appear before you at this time, but I did, I'm here. I'm asking you not to be weary. Years ago, Ted Gormley taught me a tremendous lesson very near this place where we are meeting now. He said the most important things are done when you are weary. I ran the five miles out to the Grand Old Long distance races. He taught me the lesson of second wind. He said there comes a time in your life when you get a second wind. I got my second wind a moment ago. I got my courage and I got my energy. Ladies and gentlemen of this convention, I've heard the lawyers talk, and really and truly I want to hear more layman talk. I want more reactions from ordinary people, like myself, who don't know the law. I'm going to tell you that I can appreciate this amendment. I know what it means. I know what it means to be informed with particulars because I would not be here today if that hadn't happened to me. I wasn't a criminal but power surrounded me and because of the fact that I exercised my civil rights, like myself, I came near being crucified, but because of the fact that I was protected with human rights, with particular rights spelled out in law telling me exactly what I had to defend myself against. I am here to defend this amendment will all of the vigor that I have. Ladies and gentlemen to this convention, if there is no other one thing that I could help put into this constitution, this one thing would protect the liberty and the dignity of the people of Louisiana. I am here to plead with you to put this into the constitution because that's why I came here. Thank you for doing it.

Further Discussion

Mr. Stagg Mr. Chairman and fellow delegates, I am not a criminal defense lawyer; therefore, I am not a member of that lobby. I am not now, nor have I ever been, a district attorney or assistant district attorney. Only on one occasion in twenty-five years of law practice have I had the opportunity to defend a man charged with a capital crime and that occurred some seven years ago. The case took six years to dispose of. It occurred in the area where Chairman Jackson lives and it was a charge of rape against a black man and the victim was a white high school girl. It was not a popular thing to do, but the court appointed me to defend the man and I did it. I was not on the case about defending a criminal case, or man or charge of a capital crime. But I did learn right off from the Code of Civil Procedure that I had a number of defense motions available to me and to him, and they were used. We first moved to quash the indictment. Then we moved for motions of Bill of Particulars. Then we moved to separate

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these defendants one from the other. We did everything that the code of civil or criminal procedure allows in this state. Because they were available, the district attorney had to comply with them. This is a safeguard. There are the safeguards that presently exist in this state. Any lawyer, if I can do it, any lawyer can do it, and every man charged with a serious crime is required under the laws of this nation to be furnished with an attorney for his defense. If he can not afford to hire one, with a great deal of respect for Mr. Landrum and with a great deal of respect for those others who have spoken at this microphone, I urge the defeat of the Gravel amendment. It is not necessary. There are means available in the statutes for the protection of all. Mr. Chairman, if there are no further speakers on the list, I move the previous question on the Gravel amendment.

[Motion for Previous Question Withdrawn.]

Further Discussion

Mr. Berry. Mr. Chairman and fellow delegates, I rise to speak in behalf of the Gravel amendment. Now the Gravel amendment, as I see it, would further expedite and speed up the whole criminal procedure. As you lawyers know, that under these abbreviated indictments and Bill of Information—it's only succinct statement of the crime. You have come back into court to get a Bill of Particulars, that takes time. Then you go to argue before the judge as to whether or not your Bill of Particulars gives you all of the facts that you are entitled to, whether or not the criminal defendant knows what he is charged with so as to prepare his defense. Under the Gravel amendment you would be getting all of that information initially. Whereby it would facilitate the trial and speed up the whole procedure through the criminal court. There is no doubt in my mind that under the Code of Criminal Procedure the legislature could easily change the requirement of the Bill of Particulars now while this amendment would make it an organic law or as part of the constitution and, therefore, would not be subject to the whim of the caprice of the legislature. I strongly urge that the Gravel amendment be adopted.

Further Discussion

Mr. Landrum. I've tried to be quiet as I listen to the conversation about the press, which is basic in this society of ours. Sometimes it's just hard to just sit down and listen to things and not to express an opinion. I've heard about Angola, nothing would please me more than to see Angola absolutely clear of prisoners. I wish we had a society that we wouldn't even have to have places like Angola. I also noticed that we are really coming down to what this convention is really all about. That is, the fact that five of people. We are not going to really solve any problems. I have sat here, and I have thought about how far mankind could have been, could be right now, probably the many diseases that plague mankind today. We probably would not even be bothered about cancer and the many other diseases that we are so concerned about today. If we could have rid this nation of one thing, that one disease that plagues us all, and that is, disease of discrimination.

Mr. Henry. Wait just a minute, Reverend Landrum. I'm going to go ahead and say what's already been said in this. I speak to the amendment directly, in passing. Let me do it just a few minutes in this. We are going to have this convention in blows here shortly. Now be direct and speak directly to the amendment, please, Reverend Landrum.

Mr. Landrum. Mr. Chairman, I'm not a country boy, so I didn't know about fishing and rabbits and trees and all of that, and I don't know and we've heard all of that. I don't know about none of that, we I have to speak what I feel, and I think I am speaking to the question, in the amendment.

Mr. Henry. Well, there is some disagreement there between your opinion of direct and my opinion of direct...

Mr. Landrum. Well, I have been at disagreement with some people ever since I've been here. I believe this—that if we are concerned about protecting the rights of individuals, then we ought to try to do everything possible to protect the rights of individuals. You call about lawyers, no I'm not a lawyer, but I have seen enough happen in courthouses with lawyers, with district attorneys that you count cases somebody mentioned numbers the other day—like a pitcher would count how many games he won pitching ball or how many home runs you have made. That's what I've heard in the courthouse, but you are talking about sending people to Angola. You don't know nothing about Angola and yet you can sit down and talk about fifteen years, or I won this many cases or that many cases. I do believe I am talking to the issue. I intend to talk further on it. I support this amendment.

Further Discussion

Mr. Stinson. Mr. Chairman, fellow members, I wouldn't take your time if I could have asked a question of Mr. Stagg. My question was, this man that you worked for and after six years cleared him, freed him, you said if you had a good lawyer, you can do it with Bill of Particulars. I have an idea that that man though stayed in jail for six years while Mr. Stagg was freeing him. Now you know six years is a long time. I won't ask Mr. Stagg wasn't it a fact that I'm sure that it was, that that defendant stayed in jail for six years while Mr. Stagg, who had never heard a criminal case, was going to learn something about criminal law. Now that's not justice, I don't think. I want you to know that from a Bill of Rights we are not supposed to be here protecting the district attorney's office; they've got the protection. It is the individual, the common everyday person that walks down the street and is picked up and arrested; he should know what he is charged with. I want to tell you lot of you say you have never been arrested. Well I was supposedly arrested once and the state policeman, I asked him a question when was he going to let the traffic by, there was a wreck and he says, "You are under arrest; I'm going to handcuff you and put you in my car." I said, "That will be the last arrest you will ever make, and I sort of told a story. You know as a legislator you are exempt from arrest. I used to be, but at that time I wasn't, and I asked one question. I said, "Do you make it a habit arresting members of the legislature?" I didn't say I was. He said, "No, sir, I apologize. Will you please go and I'll let you pass through. Now that's not justice. If I hadn't raised that one point, I would have been handcuffed and hauled off to Opelousas, which is in St. Landry Parish, and Mr. Burson would have been prosecuting me for interfering with the state policeman performing his duties. I was as innocent as most everybody else is when they are often times arrested, a lot of people. But I say in this case, and I asked it first of Mr. Drew, when you put some into court with a Bill of Particulars and get particulars because you are only going to say you have to reasonably tell him what the charge is. I would rather not have anything in there than "reasonably." I would rather have it delete "precisely" or "in particular" or anything would be better. This "reasonably" is going to ruin the rights of the people, and I don't think that the court is going to allow you a Bill of Particulars. I still say you are entitled to know what you are charged with, the innocent person as well as that one that might later be found to be guilty. If we can't protect the everyday citizen and guarantee his rights, that is just as important as protecting a lawyer and I say one innocent person is as much as a lot more important, his rights, than what a lawyer or fifteen or twenty criminals, really criminals, we

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have got to think of the individual, the innocent person that doesn't know how to protect himself, never been involved and nobody involved. I ask you, let's pass this amendment. If we don't as far as I'm concerned, I would rather have the whole thing knocked down.

Questions

Mr. Burson Mr. Stinson, do you think that the way to provide for the rights of innocent persons is to make it impossible to administer the system of criminal justice?

Mr. Stinson Mr. Burson, if that wasn't so ridiculous, I'd answer your question.

Mr. Burson Well....

Mr. Stinson We have done everything to give the district attorney, you even have special investigators—I don't know how many you have in Baton Rouge—we authorized that. We increased your pay. The Sheriff's department has had to help you, the city police and everybody with one of those little innocent fellow that has nobody to help him unless the court can appoint a man, an outstanding lawyer—if he had been appointed for a civil case, it would have been fine appoint a man who had never had a criminal case and at that time a capital punishment. Now if that's justice, that poor fellow didn't get it....

Mr. Burson Am I to assume that my ridiculous objections are now added to the frivolous objections to the committee proposal that other uninformed delegates have been making all afternoon....

[*Previous Question Ordered.*]

Closing

Mr. Gravel Mr. Chairman, ladies and gentlemen of the convention, I think that this matter has been rather fully covered. I do believe that the points have been made which justify your consideration. I want all of you to keep in mind that this convention already has provided that a district attorney or his designated assistant shall have charge of every criminal prosecution by the state, shall be the representative of the state in his district before the grand jury and it's legal advisor. That means that exclusively, the district attorney and the district attorney as the advisor of the grand jury with the grand jury, has complete say-so over criminal charges that are made against citizens of the State of Louisiana in any serious...No, I won't yield, Mr. Burson...in any serious offense. The district attorneys make from thirty to thirty-nine thousand dollars a year. They've got investigators, they've got secretaries, they've got staffs, they've got lawyers, they've got assistants to help work for them. Is it too much to ask that in the performance of their duties....I'm talking about that same secretary that Justice Tate was talking about; we'll get to her again in just a moment. What I'm saying to you and Mr. Burson you can vibrate all you want to—I'm saying that is it too much to ask that the prosecution arm of the State of Louisiana inform its citizens fully with respect to charges that are pending against them, factually. Is that too much to ask in this constitution? Justice Tate say, "Let's don't monkey around with this because after all we may have to reverse some case because a secretary filled out this Bill of Indictment, or filled out this Bill of Information, just a piece of paper. A piece of paper that permits the law enforcement officials of the State of Louisiana to come arrest you, put you in jail and require you to test the solvency of your entire lifetime, requires you to hire a lawyer, requires you to get whatever legal assistance you can, but shouldn't that piece of paper say why you were arrested, why you've got to submit to bail, why you are going to be charged, why you are going to be prosecuted? Is that too much to ask of the State

of Louisiana—constitutionally. A piece of paper, a piece of paper that might deprive a man of his liberty and might even deprive him of his life. Is it too much to ask of the prosecution arm of the State of Louisiana that the facts be set forth in that charge that will justify that kind of action by the state? That's all that this is all about. All this amendment does, ladies and gentlemen, all that it does is to say in simple language that before you are arrested, before you are prosecuted, you have to be told with particularity what were the facts on which this charge has been made, what was the nature of the offense. Is that too much to ask? We've written a lot so far in the legislative article; we've written a lot in the judicial article; we've written a lot in the executive article. Now to quote from the title of a book written by a great southern governor, "Now what about the people?". This Bill of Rights is not a prosecutor's manual, this Bill of Rights that we are trying to pass here is one that will accord to the citizens of the State of Louisiana the right to be dealt with fairly and justly. If their lives and their property are going to be endangered, let them know why at the very beginning....

[*Record vote ordered. Amendment rejected: 53-62. Motion to reconsider tabled.*]

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[*Rules Suspended to allow the Executive Committee to meet. Adjournment 8:00 p.m. Friday, September 7, 1973.*]

