Records of the Louisiana Constitutional Convention of 1973: Convention Transcripts

VOLUME SEVEN

by

LOUISIANA CONSTITUTIONAL CONVENTION RECORDS COMMISSION

Moise W. Dennery, Chairman
A. Edward Hardin, Coordinator of Research
LOUISIANA CONSTITUTIONAL CONVENTION RECORDS COMMISSION

MEMBERS OF THE COMMISSION:
Chairman Moise W. Dennery
Vice-Chairman David R. Poynter
Chris J. Roy
Max N. Tobias, Jr.
Mark T. Carleton
Louis E. Newman
W. Lee Hargrave
C. B. Ellis
Thomas Jacques
Donald J. Lemieux
Norma M. Duncan
Sallie Farrell (February, 1975—June, 1975)

A. Edward Hardin, Coordinator of Research
USER GUIDES ARE REPRODUCED IN VOLUME XIV.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Date</th>
<th>Proceedings</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>September 7, 1973</td>
<td>43rd Day's Proceedings</td>
<td>1149</td>
</tr>
<tr>
<td>September 8, 1973</td>
<td>44th Day's Proceedings</td>
<td>1184</td>
</tr>
<tr>
<td>September 12, 1973</td>
<td>45th Day's Proceedings</td>
<td>1210</td>
</tr>
<tr>
<td>September 13, 1973</td>
<td>46th Day's Proceedings</td>
<td>1223</td>
</tr>
<tr>
<td>September 14, 1973</td>
<td>47th Day's Proceedings</td>
<td>1253</td>
</tr>
<tr>
<td>September 15, 1973</td>
<td>48th Day's Proceedings</td>
<td>1272</td>
</tr>
<tr>
<td>September 19, 1973</td>
<td>49th Day's Proceedings</td>
<td>1296</td>
</tr>
<tr>
<td>September 20, 1973</td>
<td>50th Day's Proceedings</td>
<td>1327</td>
</tr>
<tr>
<td>September 21, 1973</td>
<td>51st Day's Proceedings</td>
<td>1354</td>
</tr>
<tr>
<td>September 22, 1973</td>
<td>52nd Day's Proceedings</td>
<td>1380</td>
</tr>
<tr>
<td>September 25, 1973</td>
<td>53rd Day's Proceedings</td>
<td>1395</td>
</tr>
<tr>
<td>September 26, 1973</td>
<td>54th Day's Proceedings</td>
<td>1427</td>
</tr>
<tr>
<td>September 27, 1973</td>
<td>55th Day's Proceedings</td>
<td>1452</td>
</tr>
<tr>
<td>September 28, 1973</td>
<td>56th Day's Proceedings</td>
<td>1477</td>
</tr>
<tr>
<td>September 29, 1973</td>
<td>57th Day's Proceedings</td>
<td>1509</td>
</tr>
<tr>
<td>October 2, 1973</td>
<td>58th Day's Proceedings</td>
<td>1529</td>
</tr>
<tr>
<td>October 3, 1973</td>
<td>59th Day's Proceedings</td>
<td>1557</td>
</tr>
<tr>
<td>October 4, 1973</td>
<td>60th Day's Proceedings</td>
<td>1589</td>
</tr>
<tr>
<td>October 5, 1973</td>
<td>61st Day's Proceedings</td>
<td>1620</td>
</tr>
<tr>
<td>October 6, 1973</td>
<td>62nd Day's Proceedings</td>
<td>1643</td>
</tr>
<tr>
<td>October 9, 1973</td>
<td>63rd Day's Proceedings</td>
<td>1664</td>
</tr>
<tr>
<td>October 10, 1973</td>
<td>64th Day's Proceedings</td>
<td>1692</td>
</tr>
<tr>
<td>October 11, 1973</td>
<td>65th Day's Proceedings</td>
<td>1717</td>
</tr>
<tr>
<td>October 17, 1973</td>
<td>66th Day's Proceedings</td>
<td>1726</td>
</tr>
</tbody>
</table>
Friday, September 7, 1973

ROLL CALL

PRAYER

Mr. De Blijde, Almighty God and Father of us all, we thank Thee for the privilege of praying here. We hope that our service today will be Thy liking and will. We ask that You give us the wisdom, the grace to do the job as You think we ought to do it. We ask, in another section of our remarks and our words and our actions, we ask all of this in the name of our Savior. Amen.

PLEDGE OF ALLEGIANCE

RISING AND ADOPTION OF THE JOURNAL

Personal Privilege

Mr. Jackson Mr. Chairman, ladies and gentlemen, as Chairman of the Committee on Bill of Rights and Elections, I want to express my appreciation for the chance I have had to consider a matter that is near and dear to us. We have proposed, and I want to tell you that the committee, again, appreciates the wisdom and the genius of this body as it relates to the sections before you. I think up to this point we have done a very fine job with the Declaration of Rights. As a matter of fact, I am not distressed nor exasperated over the proliferation of amendments. But I do think that it is in the interest of this body and of this State that I should say that on yesterday we did arrive at a point where everybody was yelling and shouting at each other, including myself. I want to apologize to the body for the remarks that were made not germane and didn't add anything to the consideration before us. I think that is also true of a lot of other remarks that were made from this place. As the chairman of this committee, I have the responsibility, I think, to say to all of us that I think that if we are going to write the kind of constitution that's going to be in the interests of the people of this State, it behooves all of us, members of this committee and members of committees that will follow, to try and give our attention to what is before us and what is in the interest of this State. It's not a white issue. It's not a black issue, it's not a red issue, it's not a brown issue. It's a people's issue. It's the people of Louisiana that we are concerned about. So I would ask today that we leave the shouting matches for the wrestling matches on Wednesday night. Somebody said we have the whole all day, but I think that this is not an appropriate place for us to take out our personal feelings in another delegate who are working here to try and produce a set of omnibus law that will guide and direct this State. I would ask as the chairman of this committee that we would again return to the business before us, and with the kind of deliberation that we have the people of this State a document that will enable the people, whether in a whole new creative set of circumstances or not it will be human and just, that will insure a secure quality of life for all of the people of this State. Thank you so much, and we ask for your Consideration again this morning.

Personal Privilege

Mr. Stinson Mr. Chairman and fellow delegates, when I was looking at this microphone yesterday, I read a criminal case about which I said I had been involved for many years. I don't know if you will ever understand, but I remember the trial and I stated that the jury system gave to the defendant. I was confessing a crime that I had never tried to defend, that was not guilty, what I did was that I had ever defended a cas...
43rd Days Proceedings—September 7, 1973

has been twice amended.

Amendment
Mr. Poynter The next amendment is sent up by Delegates Kelly and Jack.

Amendment No. 1 On Page 4, line 15, delete the amendment proposed by Delegate Burson and adopted by the convention on September 6, 1973. Mr. Chairman, I might say there has been some question as to the full implication of the amendment. On basic interpretation of the amendatory process, the effect of this would be to delete any reference to the word either "precisely" or "reasonably" in the sentence would read, "the accused shall be informed." The present word is "reasonably" which was added after taking out the word "precisely" by the amendment proposed by Delegate Burson. The effect of this amendment, by deleting the word "reasonably," in effect, would be to have neither word there.

Explanation
Mr. Kelly Mr. Chairman and ladies and gentlemen of the convention, this has been kicked around quite a bit and I'm not going to take a great deal of your time on it. First, this amendment would simply remove the word "reasonably" that has been inserted... On line 15 of page 4, it presently reads, "shall be reasonably informed of the nature and cause of the accusation against him." This amendment will do nothing more than delete Delegate Burson's injection of "reasonable" in there. Now, I might say that we're not trying through this amendment to suggest some understanding from the Clerk that this will not restore the word "precisely." We're not trying to put "particularly," "completely," or anything else. What I think we have done, at this particular point, is reduce the rights of the individual in this particular case by putting "reasonably informed." I'd like to refer you to Article I, Section 10, of the 1921 Constitution, and this is what it reads: "In all criminal prosecutions, the accused shall be informed of the nature and cause of the accusation against him." Now, that's the law that we've been operating under, and that's the law, I think, that if we are going to do anything, let's continue operating under that particular language. We know what it means. I might add that this is not, by way of introduction of this amendment, has no intention of trying to write free trial discovery devices in criminal cases into the constitution. It's been in the constitution, I assume, since 1921. The convention has apparently emphasized, over the past day or two, that they do not want to write disclosure devices in criminal cases into the constitution, and this is a matter than can be left to the legislature. All this does, it simply says what I think we want to say. It says, "In all criminal prosecutions, the accused shall be informed of the nature." We're not going to say he is going to be precisely informed, reasonably informed... I mean you are either informed or you're not informed, so I submit this to you.

Questions
Mr. Tate Mr. Kelly, in restoring the language of the present constitution, from the debate yesterday, I do not understand you to mean very technical jurisprudence under that language that said the Bill of Information or the indictment had to contain a certain amount of details that couldn't be cured. Is that...
Mr. Kelly No, sir, that's not the intention.
Mr. Tate It's not the intention to reinstate that jurisprudence?
Mr. Kelly That's correct.
Mr. Roemer Delegate Kelly, if you understand what you're trying to do you are trying to get around a similar incident to saying like "reasonably accurate." What does that mean to you, "reasonably accurate"?
Mr. Kelly Well, of course, Buddy, that's less than accurate, that's for sure.
Mr. Roemer That's exactly right, so you are saying that "reasonably informed" is less than informed. Isn't that what you are trying to say?
Mr. Kelly That's what we are trying to get around.
Mr. Gravel Mr. Kelly, as I understand your amendment, it would, of course, delete the amendment of Mr. Burson that was adopted yesterday. Now, if we vote in favor of your amendment, just as a point of clarity I'd like to have this determined, in favor of your amendment, it would restore, would it not, the word "precisely" to the place where it was before the Burson amendment was adopted?
Mr. Kelly Now, I discussed this. Mr. Gravel, with Mr. Poynter on this particular point, I am informed by the Clerk that it will not. In other words, if my amendment passes, the language on line 15 of page 4 will now be "reasonably informed." It will not restore the word "precisely."
Mr. Gravel Well, this is one of the very few times, I guess, in my life that I have disagreed with Mr. Poynter, but I think if we delete the Burson amendment, unless I'm not clear on what it provided, that we are then reinstating the committee language. I would suggest as a technical matter, and in an abundance of precaution, and in order to be fair, that we add to your amendment, Amendment No. 2, which would then delete the word "precisely" after the restoration of the language that was deleted by the Burson amendment. I think that may be necessary.
Mr. Kelly I have no objection to that, and I meant if the convention is willing to do that, well, that's fine.
Mr. Gravel Mr. Chairman, may I ask for a ruling from the Chair? Then, one way or the other we can be sure what we are doing here because I do have some confusion about it. If there is a clear ruling and that's what the result of it will be, then, okay. Either we have to have a clear ruling from the Chair, in my judgment, or we have to have an Amendment No. 2 to accomplish what Mr. Kelly wants to do.
Mr. Henry Why don't I just rule? I'm going to rule that we'll withdraw the amendment and we'll make the change. There is nothing wrong with it, but that will...

Point of Order
Mr. Jenkins Point of order, Mr. Chairman. Wouldn't we be setting a dangerous precedent by presuming now that a clearly established rule of parliamentary procedure is not the rule, and that we have to make such an amendment as Mr. Gravel suggests? When we take off an amendment, it's standard parliamentary procedure. It's not clear from the former language. If we start thinking that we have to do that, I see in the future all sorts of dangers that might arise. Now, there is no doubt about Mr. Poynter's interpretation of this procedure, is there?
Mr. Henry There is no doubt about Mr. Poynter's interpretation of this or any other thing, but I think it will clear up everybody's mind to go ahead and withdraw it and resubmit the amendment, Mr. Jenkins.
Mr. Kelly Well, I think everyone understands the intent of the amendment, and the only other thing that I have to add is that when I talked with Mr. Burson, who was the author of the amendment that inserted the word “reasonably,” and he says he has no objection to this particular amendment. It is my understanding from talking with Mr. Stinson and Mr. Roy, and I assume they have polled the Committee on the Bill of Rights, that the committee has no objection to it. I have nothing more to add.

Point of Order

Mr. Deshotels Mr. Chairman, I raise a point of order, please. My question to the Chair is would not Amendment No. 1, I’m not talking about Amendment No. 2, but Amendment No. 1, would it not be a reconsideration of Mr. Jack Burson’s amendment?

Mr. Henry Not at all, Mr. Deshotels, because it does not accomplish the same thing as did Burson amendment.

Mr. Deshotels But, Mr. Chairman, doesn’t it accomplish the same thing that would have been accomplished if his amendment had failed?

Mr. Henry Not in my judgment, no, sir.

Mr. Deshotels Well, the word “precisely,” you ruled would still be there.

Point of Information

Mr. Jack I want to state in the first part of the question, I think Mr. Poynter is correct, but if we are going to do what we are getting ready to do now, we are sure enough going to be in a mess. If we are going to change this instead of going right like Mr. Burson’s and my amendment, I suggest we take out the whole sentence, take it out and words beginning on line 14 with the word “in all criminal prosecutions, and go through the period in sixteen and insert therein the following words. In all criminal prosecutions, the accused shall be furnished, not only with some of the information against him. That way you spell it out—third grade; everybody should get it. How about that, Mr. Poynter?

Mr. Poynter Mr. Jack and members of the convention, I frankly, my understanding would be that the amendment as originally drawn would have had the effect of doing what the author wanted to do, I, personally, have no problems and an abundance of clarity and assurance to the delegates of drafting it any way that you all are not satisfied that you have said what you want to say but a lot of amendments, in essence, constitutes nothing more than a set of instructions to me and to the enrollment room, so that when this proposal is in fact enrolled, your intentions and desire will be effecting. I can assure you that either the way it was drawn the first time or the way now that Mr. Kelly has amended it as suggested by Mr. Gravel or, if you prefer, the way that Mr. Kelly has suggested, all three will instruct me. If I understand Mr. Jack correctly from the way one thing is, namely, have line 1 read “shall be informed of the nature and cause of the accusation and of the right to remain silent.” In line 2 and it was illustrative. I read it by my method that the effect would all be the same. How, I didn’t mean everything that Mr. Jack said.

Mr. Pugh Well, the reason I asked is I was going to have an amendment providing for criminal discovery to submit to the Court that he said a while ago that he believed the consensus was against it being in the constitution, and that surprised me.

Mr. Burson The only thing is, I think you would want to simply leave the terms and conditions of that to the legislature rather than try to vet them out in the constitution.

Mr. Pugh Do you have in mind, perhaps, the Jencks Act?

Mr. Burson Sir?

Mr. Pugh Would you have in mind that the discovery right under the Jencks Act in a judicial action?

Mr. Burson Frankly, I’m not familiar with it. Mr. Pugh.

Mr. Pugh That is the discovery act, the federal discovery act.

Mr. Pugh I’m not familiar with it to moment.

Mr. Pugh Well, the Jencks Act.

Mr. Pugh Sorry, the fact that you only that you have an act that provided for an examination or interrogation of the witness by the party in the suit to discover any of the testimony, the language will be precisely the same. The Constitution isn’t the same.
Amendments Mr. Poynter Amendment No.1. [There are several sets of amendments concerning leave two amendments to them and add some language.] Amendment No. 1. On page 4, line 12, after “Section 12,” delete the remainder of the line and delete line 13. On line 14, at the beginning of the line, delete the words and punctuation “for his detention.” [Amendment No. 2.] On page 4, line 12, after “Section 12,” insert the following: “When a person has been detained for the commission of any offense, he shall be advised of the nature of that offense, his right to silence and against self-incrimination, his right to the assistance counsel and to court appointed counsel, if indigent.”

Explanations Mr. Derbes Ladies and gentlemen, I had a couple of amendments on this sections and all of them have been withdrawn except for this one. I’ve learned in the brief period of time that I’ve been at this convention that when there is a conflict between my heart and my head, it’s a better practice to follow the head rather than the heart. I happen to believe that all people who are accused, and certainly anybody who is detained by virtue of the commission or alleged commission of an offense, should be afforded all of his Miranda warnings. But I think that the committee’s language is too general. It says that when a person has been detained, he shall be advised of his legal right. Now, I can tell you, as an attorney, with a small amount of experience in criminal law, that the legal rights of an accused are many and various and go much further than the Miranda rights. It’s not that a person should not be fully informed of his rights. It’s just that the legal language, in my opinion, is so vague and general. To name a few rights that any defendant in any criminal proceeding has, he may have a right to a trial by jury, a right to an attorney, a right to be present in court when his trial is occurring, a right to a verdict rendered by a certain proportion of the jury, a right to bail, a right to have his things...literally scores and scores of rights available to any defendant in any criminal proceeding. Now, the committee language, to my mind, sets forth this principle so generally that it could reasonably be construed by the court to mean that whenever any individual is detained for any reason by a law enforcement officer, he should be fully informed of all of his rights. That, to me, is not the intention of my interpretation of the committee’s intention, and that, to me, would create such an onerous burden on law enforcement, and such a tremendous amount of difficulty that I frankly think it would be impractical. So, I suggest an alternative explicit language be included in the Bill of Rights.

Now, I realize what the committee is doing here. They are trying to establish a conduit, a conduit which is going to say that whenever a new right of the defendant is created, that the constitution of the State of Louisiana requires that that new right be explained to the defendant. Now I say that that’s just too vague to be efficiently and practically operative. I further say to you that people who are detained within the purview of this particular committee proposal are not only people who are being detained for questioning at the outset of criminal proceedings, but people who are, in some cases, being detained upon conviction, people who are being detained for reasons of mental health.

Now, I don’t quite know what their rights are. I don’t know whether their rights have indeed become a matter of constitutional law, but to create the obligation on the courts to advise these people of their legal rights, without defining legal rights, is so vague and overbroad as to create, in my mind, a duty upon law enforcement which cannot easily, thoroughly, and efficiently be exercised. Thank you, and I urge the adoption of the amendment.

Questions Mr. Lanier Mr. Derbes, you and I discussed a certain couple of matters concerning your amendment yesterday, and I also discussed it with some of the members of the Bill of Rights Committee with reference to their language and your language that says, “when a person has been detained.” Is it not true that people can be detained by other than police officers?

Mr. Derbes Yes, they can.

Mr. Lanier For example, a private person can make an arrest for a felony pursuant to the provisions of Article 214 of the Code of Criminal Procedure. Is that correct?

Mr. Derbes That’s correct.

Mr. Lanier Storekeepers and their authorized employees can make an arrest, pursuant to Article 215 of the Code of Criminal Procedure. Is that correct?

Mr. Derbes That’s correct.

Mr. Lanier Now, would I be correct in saying that it is your intention, here, to make this requirement of law enforcement officers to give this warning and that it is not intended to apply to nonlaw enforcement people like private citizens or shopkeepers.

Mr. Derbes That’s my intention, yes. I’d like to point out to the convention that where this comes up is when a defendant goes into court and says, “A statement taken from me cannot be properly used in furtherance of my conviction because I was not properly advised of my rights.” Now, if the only term used in this constitution is “legal rights,” a defendant could go into court and say that a statement taken from me, even though I was advised of my right to counsel, my right against self-incrimination, my right to court appointed counsel, that that statement cannot be used against me because I was not advised of my right to counsel, my right against self-incrimination, my right to court appointed counsel, that that statement cannot be used against me because I was not advised of my right to counsel, my right against self-incrimination, my right to court appointed counsel, that that statement cannot be used against me.

Mr. Lanier I’m trying to simplify this and do what I think the committee intended, but I don’t think you can establish a conduit for all legal rights in this constitution without being overbroad and general and thereby jeopardizing the relationship of law enforcement to the individual defendant.

Mr. Jenkins I have a couple of questions. James. You said that the act of direct or indirect conviction or people detained in mental institutions. Isn’t the title of this section “Rights of the Accused,” and aren’t all these sections on criminal justice in chronological order when we say “Rights of the Accused,” in Section 12, “Initiation of Prosecution” next, “Grand Jury Proceeding” next, “Fair Trial” next, and “Trial by Jury,” then “Right to a Court” and then “Punishment” aren’t they all in chronological order, and doesn’t this clearly apply to the rights of the accused?

Mr. Derbes Mr. Jenkins, it’s not clear to me, frankly; no. It’s not clear to me.

Mr. Jenkins When it says “Rights of the Accused”
Mr. Derbes: This section, like so many sections of this article, I think, is not drafted as clearly as it could be. Unfortunately, I don’t derive and don’t infer the same ready and clear definition of it that you do.

Mr. Jenkins: Let me ask you this, also. You say...you leave out the committee’s language which said, when a person has been detained, he shall be advised of the nature of that offense. Now, how do you argue with that?

Mr. Jenkins: Well, of course, what the committee is talking about here is detention, and detention meaning something compulsory—you are being kept by the police. Couldn’t you be detained simply to be a witness, and shouldn’t you be told that you are being detained to be a witness?

Mr. Derbes: I guess so, and maybe I’ve left out witnesses. But I think that the scope of your original provision is much more dangerous in the way that it is going to affect the problems of the committee’s statement in court than whatever problem I may have overlooked in treating witnesses as a result of this amendment.

Mr. Gravel: Mr. Derbes, I’m inclined, first of all, to agree with you about the overbreadth of the language in the committee proposal but I do pose this question to you. Isn’t it a fact that in your amendment that you have not provided for situations where persons have been lawfully arrested when it may have been determined that a crime or an offense has actually been committed, and to that extent you wouldn’t say that your amendment provides any even more extent in providing for the rights that you would seek to provide for persons who are arrested or detained?

Mr. Derbes: Let me try to narrow this issue, Mr. Gravel. Isn’t it true that whenever anybody is arrested, he is arrested for the commission or for the commission of an offense?

Mr. Gravel: Not necessarily. He could be stopped on suspicion for investigation of the possibility that he may have been committing a crime, you know, by investigators many, many times.

Mr. Derbes: All right, then he’s not being detained, is he?

Mr. Gravel: No, he could be arrested.

Mr. Derbes: Well, then if he’s arrested, he’s arrested for the commission of a crime?

Questions

Mr. Fontenot: Mr. Roy, I don’t necessarily agree with Mr. Derbes’ proposal either but I would like to ask you a question. If we don’t adopt Mr. Derbes’ proposal concerning this language when a person has been detained, suppose you have a person who is talking about a committee proposal—he shall immediately be advised of his legal rights and the reason for his detention. You have certain situations where a juvenile in somebody might be shoplifting in a store and you don’t have a police officer or anybody, are you going to require the owner of a corner grocery store to advise him of his constitutional rights? Doesn’t this language require that?

Mr. Roy: Mr. Fontenot, I just answered that. A Bill of Rights is a statement of rights of the people against the state and not against other citizens. A citizen does not have to inform you if he chooses to embark on criminal behavior. As to his home I don’t have to start saying—Mr. Fontenot before I take you to the police station, I want to inform you of your constitutional rights. I am not engaged in state conduct activity and therefore, your rights are not violated when I watch you and don’t inform you of anything.

Mr. Fontenot: Well, why don’t you say, “State” you may have immediately be advised...you don’t say when in good faith to advise him you are relying on leaving our words that you are going to be a police officer but I don’t take it the same way you do?
about Mr. Derbes' amendment and the committee propos-
al is suppose a police officer, and of course the way
this thing is drawn this would apply to, as I under-
stand it, to even misdemeanors such as game viola-
tions, speeding tickets, and other minor types of things.
Suppose a police officer or game warden or whoever
he is...constable, did not advise the person of these
rights. What would be the consequence? Would that
mean the whole prosecution would be thrown out or
would that mean that only any statements are given
or any evidence seized pursuant to the detention
would be quashed?

Mr. Roy Mr. Lanier, that's a valid question and I
can only answer it this way. I can tell you what I
feel would... I think probably our court would
follow present jurisprudential interpretation on
that and that the evidence used that would be
gotten without the benefit of the warning would be
suppressed and I would hope that's the way it would
go, but I can't say what the court would do in the
year 2000 and maybe if there were great abuses of
that, the court would take a different tact and
say "you know, we're going to impose a little more
restriction on this". I just don't know, all I
know is that we can't write a statutory provision
in the constitution.

Mr. Lanier Well, would you agree that under the
present law a violation of a constitutional pro-
vision like this would not, would not be a grounds
for a motion to quash the charge?

Mr. Roy Yes.  

[Previous Question ordered.]

Closing

Mr. Derbes Ladies and gentlemen, I'm merely try-
ing to bring this thing within reason. What the
committee is trying to do is to establish a conduit
here for all legal rights and I'm really in favor
of that but it's just going to create an undue
burden I think, so let's be specific in this par-
ticular part of the constitution or let's say
nothing about it in the constitution. Now, you
have a choice, you can leave it up to the United
States Supreme Court and the courts of this state
or you can be specific and say something about it
in the constitution, but if you decide to say
something about it in the constitution, let's be
specific, otherwise I think we run a terrible risk
here. Thank you.

[Division of the Question ordered. Amendment
No. 1 reread and rejected; 50-58. Motion to reconsider tabled.
Amendment No. 2 reread.]

Point of Information

Mr. Munson Mr. Chairman, do we not now have a
situation that if this amendment passes we have
two first sentences; one on top of the other one?
We did not delete the first sentence, this puts it
on the same line.

Mr. Henry No, not in my opinion, no. Mr. Clerk,
explain why, in my opinion that's incorrect. You
got me into this.

Mr. Poynter I don't think I can get you out ei-
er.

Mr. Henry In my many years of presiding, I have
concluded that Mr. Poynter has finally been wrong
and the amendment is not going to fit and the ques-
tion is not divisible, and Mr. Poynter you're over-
rulled.

Why do you rise, Mr. Derbes? You can't withdraw
the amendment because the previous question has
been ordered. Does that answer your question?

[Rules Suspended to allow withdrawal
of Amendment No. 2.]

Further Discussion

Mr. Derbes Mr. Chairman, I would like to point
out that Mr. Gravel has a better amendment than
mine, and I move to withdraw mine.

Mr. Henry Well, I certainly hope so and I have
declined. Again that Mr. Poynter was right and I
was wrong because this amendment could have been
done in the same way, and I will read it to you the
way it could...just to prove that it wasn't as bad
and that we were right in the first place. Right in
my opinion. You've just got a lot of repetitive language
but it would read "when a person has been detained
for the commission of any offense he shall be advised
of the nature of that offense, his right to silence
and against self-incrimination, his right to the
assistance of counsel and to appointed counsel if in-
digent, when a person has been detained he shall
immediately etc. etc., so it would work.

[Amendment withdrawn.]

Amendment

Mr. Poynter Amendment No. 1, go the Jack amend-
ment, page 4, between lines 19 and 20, in floor
amendment No. 1, proposed by Delegate Avant and
adopted by the convention on yesterday at the end
of line 3, place a comma after the word "right"
and add the following: "without cost to the state.
I'm sorry, "without cost to him." Right.

Explanations

Mr. Jack Mr. Chairman and members, yesterday we
passed the amendment of Mr. Avant that provided
"no person shall be subjected to imprisonment or
forfeiture of his rights of property without the
right of judicial review based upon a complete
record of all evidence upon which such judgment is
based." This right may be intelligently waived.
Before that amendment was taken up I read it like
the others and I was in agreement except for one
thing. I feel strongly and have always, when a
person is tried...remember everybody that is tried
is not guilty, plenty of people are innocent—that
he should get a full, fair, impartial trial and I
don't think he should have to pay for his defense
by having to pay for a record. Now, the Supreme
Court in that Illinois case held that if you are
indigent you are entitled to a record. There are
many people that cannot afford the record but they
don't fit what the term of the court would be as
indigent so I have an amendment that simply pro-
vides that this record, regardless of who is being
tried, is to be furnished where there is an appeal
paid, any cost to the defendant. I think it is
perfectly fair. It will be left up to the legisla-
ture as to how they work it out as to whether the
parish pays for it or the state pays for it.
Personallly if I was in the legislature, I would say
the state should be the one to pay, not the parish.
When people are charged with crime they're not all
necessarily from the parish where the trial is.
They may be a person...South Louisiana charged with
a crime...North Louisiana...vice versa. It's a
state problem and criminal cases...the law is, you
only have an appeal in areas of law, you reserve
Bills of Exception. You do get paid for taking
what little evidence the court rules has a direct
bearing on that Bill of Exception but that is a
joke, an absolute joke because even though you
have an error under a Bill of Exception unless
there is prejudicial error the court can't reverse
it. How in the world are you going to tell whether
it's prejudicial error unless you have a complete
record of the testimony? I've had, I would say,
every reversal except a few that I don't know
whether it was proper or not, the reason there was
a lot of doubt because it wasn't the record.
The court has to...when you go to reverse on an
appeal of law, you don't know the case was about
or else you're just taking a guess at it, and what
you are doing if you don't pass my amendment, ladies and gentlemen, what you're doing,
you're going to be saying "a person that's a
indigent, no if's and's... he gets a free record, but if a court rules he's not indigent and they might rule one place one way and the other because it is going to be a question of fact whether that person is indigent. If it is ruled he's not, he is not in the position to pay... now these records... I know in Caddo cost a lot, they cost a dollar and over a page. That's a lot of money, depends on how much evidence. If it's a weeks trial you're looking at a bill between five and six hundred dollars and many a person has been hiring a lawyer, he may have been in jail without bond, they have no income in the family but yet still not an indigent in getting a free record. I'm just saying that if we're going to protect the rights of everyone we say, let's don't say some people get a full opportunity to present their case all the way from the lower court with the jury to the Supreme Court and they get a record but other people do not get a record. If I ever heard of discrimination that would be. Now, I know you're going to hear for the amendment of Judge Dennis and I will take that up when it comes but it doesn't provide for this. It leaves it to the legislature. The legislature has never done it; I tried to get them to do it when we were in there and they didn't do it because the police jury is afraid they will have to pay for it, and certain people of the state, and certainly somebody that wants to pay for it and the state should pay for it. So I just say "there it is"; if you believe in affording a person a complete fair trial, treat everybody the same, pass my amendment, if you don't believe in it go on and kill my amendment. Thank you.

Vice Chairman Alexander in the Chair

Questions

Mr. Weiss Delegate Jack, I'm a little concerned about this amendment but it is contingent upon a matter that has already been discussed by the committee and that is what do you consider an indigent case?

Mr. Jack I just went over that, doctor. The courts can be different... I don't know, they used to say... call them paupers though.

Mr. Weiss Are we discriminating if we... are we subsidizing and if not in those who can afford it with your amendment?

Mr. Jack I don't say you're subsidizing but I'm saying if you just... just take an example... if you're a person that's not good, won't work or anything, and I'm not low rating any particular people but don't you do that, but he's not... get the heck out of your wife and you're a good citizen... everything and you're broke, you can get the transcription, no if's or and's on it. But if you're a borderline, you work hard and you've got a certain number of children, then the court say rule you are not an indigent and you don't get the transcription. Let me tell you, you know until recently you could get electrocuted for a crime and yet you couldn't get a transcript of the evidence. You'd get life, twenty or thirty years but if you're broke or if you're an indigent, whatever that may mean that pleading hard to see, hard to find, here it is, there it goes, you're not indigent, you don't get that right.

Mr. Weiss Well, if we're going to provide free justice for all why should we just limit the free cost of jury trial to the indigent and why not provide it then for all people?

Mr. Jack Free cost of jury trial

Mr. Weiss Well, free cost of proceedings in the accused.

Mr. Jack You don't have to pay for the jury in a criminal case if you lose in a civil case you do.

Mr. Stinson Mr. Jack, considering the cost of all this, you're even though the way you defined his conviction upheld, he still wouldn't have to pay it. Can't you think you could work it out and lay it if it's the same thing the same as he would not have to but otherwise would... I think there's a distinction there, an innocent person shouldn't have to pay all of that but if he is convicted and guilty, well, I just don't think the state can pay all of that expense.

Mr. Jack Mr. Stinson, I'm going with it this way. It's nothing personal to me; if you ladies and gentlemen want to draw a distinction between different people and whether they get a fair trial or don't or get full justice, well, I'm going to have to say there's a distinction there, an innocent person shouldn't have to pay all of that but if he is convicted and guilty, well, I just don't think the state can pay all of that expense.

Mr. Smith Mr. Jack, won't this police jury have to pay all this cost? Won't it be considerable?

Mr. Jack No, I didn't leave it at that. I state earlier, Mr. Smith. It will be up to the legislature on this thing. They can't make the fairest wind, as I said, and if I was in the legislature, I said I would say the state should pay it because I repeat, you have crime committed in the various parishes or alleged crime or people tried whether they are innocent or guilty that don't live in the parish.

Mr. Smith Well hasn't the legislature turned this down time and again?

Mr. Jack That's right. But they turned it down... nobody pays. This would make them have to do something about it because the court reporter wouldn't do it without it.

Further Discussion

Mr. A. Landry Mr. Chairman, ladies and gentlemen. I rise in opposition to this amendment. Under the present Louisiana law, any person who is an indigent can secure a free transcript and there is no reason to put this in. The constitution where a person is indigent, every person would be granted the right of a free transcript at the request of the taxpayers who believe he might be a millionaires. I feel that that would be a discrimination. It would not be getting indigents because the parishes and the state would have to pay for all of these transcripts and I could tell you this, that we have this and we have this and the person who is in Angola applies for a writ of habeas corpus, we furnish his free of charge, not only a copy of the indictment but all of the proceedings and therefore there is no need for this in the indigent constitution. It would place a terrific burden on the people of the State of Louisiana and it would exempt those who could pay from paying for the transcript and I urge you to defeat the amendment.

Further Discussion

Mr. Rayburn Mr. Chairman and fellow delegates, I rise in opposition to this amendment because you're talking about something that is going to cost one a tremendous amount of money. I can sit right now where the people, if we write this language in the constitution, are able to be at the legislature the next session and tell us to have every little court in this land, a court or any other court you might be speaking of, to have a court reporter if this person is going to have to pay for it. I don't know whether it will be the guilty person or the indigent person. If this was in the legislature on any occasion and you are now speaking of a matter that is rather only when you talk about every little municipal court in the state and all other courts that you have to do...
that according to law at this time. I just wanted to call your attention to that to think that if a person wants a transcript, they can get it under the present procedure but if you put it in the constitution you are going to create a tremendous amount of additional expense to the taxpayers of this state and I just wanted to call that to your attention.

Mr. Singletary 

Mr. Jack 

Mr. Chairman and delegates, your attention just a minute. I want to answer one question. I know as well as I'm sitting here when I introduced that amendment, who would come up and speak but my good friend "Sixty" Rayburn, well... we had the same thing in the legislature except in the legislature it was always the police jury, as I recall, would be the one having to pay for it. That's why in this one, it's left up to the legislature whether the state would pay for it or the police jury, that's the only two because the defendant isn't involved. This is just a fair bill to treat everybody fair and just and it belongs in this Bill of Rights thing. I've sat here ever since we came over this week hearing about giving people fair trials. Every race, color, creed, man, woman, child, everything, be fair to them, give them the same trial; the same justice, everything. Now, here is an opportunity to put your hand on the green button and do what you say you want to do. I've heard more talk about being fair under this Bill of Rights, protect everybody. Now, I thought for all those lawyers in the legislature, a person was not protected in a criminal case and I fool with criminal cases aplenty. If you've got the money to pay for the transcript, if it's over and over, pay a dollar or more a page, get it. If you are poor, and there's no doubt about you can't then you still get it. I'm talking about the mass of people in between, they don't get it so that is some kind of unusual justice; some have a record to appeal on; some don't have a record to appeal on; just like good government costs money. All things that are done proper, looks like this day and time cost money. You raise your children properly it costs you money... you want to raise them and let them run wild like the Grandin and juvenile courts get them and everything, it'll be the cheapest thing you do and you won't be raising them. So I say let the legislature be freed by this amendment to pass on it and somebody pay for it and I say the state ought to. Thank you.

Questions

Mr. Singletary 

Mr. Jack, this is a friendly question. Isn't it true that in the original trial in a criminal proceeding that there is no charge to the defendant? It doesn't cost him anything, is that correct, except if he can afford to pay for his attorney, he has to pay....

Mr. Singletary 

Mr. Jack 

No. In the criminal case, now we are not talking about the big court, little city court, we are talking about where the appeal goes to the Supreme Court, where the fines over, I think, five hundred, or could be over that, and the punishment over, and it goes under the bills of exception, an old, out noded thing. Now on a bill of exception, the only thing you can get taken at the expense of the state and, or parish, is what little evidence the court says is directly connected with that particular objection. Consequently, you don't have a record where it has all the evidence, then the Supreme Court says even though its an error shown by a bill of exception, unless it's a prejudicial error, you don't get a reversal. Prejudicial means that if the error hadn't happened, you might have been acquitted instead of convicted. Now, how can you tell whether the error was prejudicial without having the whole record?

Mr. Singletary 

Well, I agree, I agree with you.

Mr. Jack 

What I'm saying is, that except if a man can pay for his attorney, if he's charged in a criminal proceeding, his trial doesn't cost him. Is that correct?

Mr. Singletary 

Oh, you mean, are you talking about an indictment?

Mr. Singletary 

No, sir, I'm talking about...

Mr. Jack 

All right, you'd say a man's got money?

Mr. Singletary 

Yes, sir.

Mr. Jack 

All right....

Mr. Singletary 

If a man is an indigent or if he can afford to pay, the trial....

Mr. Jack 

Now, that's right, if he's indigent or he's got money, he can get this record because if he can afford to pay it....

Mr. Singletary 

I'm talking about the original trial.

Mr. Jack 

Well, that's what we are talking about.

Mr. Singletary 

All right.

Mr. Jack 

But you don't get that record free.

Mr. Singletary 

But if he appeals, it costs him a considerable amount. Is that right?

Mr. Jack 

It certainly does cost.

Mr. Singletary 

Is that fair?

Mr. Jack 

It's terribly unfair, I think, to make anybody pay for these records of taking the testimony.

Mr. Singletary 

Isn't this a chance to correct an inequity in the law?

Mr. Jack 

It certainly is. A man... there's been people electrocuted that didn't have a record, and that's horrible.

Mr. J. Jackson 

Mr. Jack, as you know, we're talking about this cost factor again. But is it not true that when you look throughout the state, that we are spending millions of dollars on highways, we've recently got.... the legislature will probably have to deal with an increase in the cost of Superdome in New Orleans, we just spend millions of monies for capital improvement. We're talking about a recording that would allow for a better implementation of the criminal justice system, and we ought to look at it in terms of some of the other kinds of costs that we put into, not only nonjustice, but nonhuman needs.

Mr. Jack 

You are correct. There's your life, liberty, is the most important....and your health, too. Those are the most important things you've got. If you lose those, you are gone. Now, I want to further answer this, Mr. Stinson, even a man that gets convicted, not the innocent, but he got convicted, that record later could show mitigation for a pardon board and that's another reason everybody should have it....

Mr. Alexander 

Your time is up, Delegate Jack. Thank you.

[Amendment read. Record vote ordered. Amendment rejected: 29-74. Not in order reconsidered tabled.] Amendment
Mr. Pointer. Amendment No. 1 (18. p. 5), between lines 19 and 20, delete floor Amendment No. 1, proposed by Delegate Avant and adopted by the convention on September 8, 1973, and insert in lieu thereof the following:

'No person shall be subjected to imprisonment or forfeiture of his property or rights, without the right of judicial review of a written or sound recording of all evidence upon which such judgment is based. The cost of the transcription of such sound recording shall be paid as provided by law.

This right may be intelligently waived.'

Explanations

Mr. Tann. Mr. Acting Chairman and fellow delegates, this amendment is a clarification of what I believe is the intention of convention, and the intention of Mr. Avant and Mr. Kelly and others who sponsored the original amendment.

Mr. Jack's amendment has just been rejected. however, unless we adopt this amendment, I think that the present Avant amendment, the present language, could be interpreted to require the same thing, that Mr. Avant had asked the convention to spell out more clearly. The Avant amendment says that 'no person shall be subjected to imprisonment or forfeiture of his property or rights, without the right of judicial review based upon a record of all evidence upon which such judgment is based.'

As I read that, that could easily be interpreted to mean that a right of appeal in this case would be waived in any case whether or not you are indigent, no matter what the circumstances. I am attempting to clarify and do what Mr. Avant and Mr. Kelly believe, wanted to do which was to make sure that a recording is made of all of the testimony and then leave it up to the legislature as to whether they would get that transcription free, at the cost to the state, or who would have to pay for it themselves. This makes it clear that a mayor's court can satisfy the requirements of the constitution by taping with a cassette recorder in an inexpensive manner the proceedings. It makes it clear that the legislature could require, as it does now, that indigents be provided a free transcription of such a record. It makes it clear that the legislature could refuse to provide a free record to someone who could afford it.

Mr. Tann. Well, I see no reason for the question, however, I did like to say I discussed this amendment with him yesterday and it's my understanding that he has no objection to the spelling out of the language as provided by law. And it is my intention not to interfere with the basic concept, but to make it clear that the legislature may decide who will pay for the cost of transcription which is where the big cost is involved in preparing a record for an appeal.

Questions

Mr. Duchess. Judge Dennis, is it required by law, when we review for the record, that the record be typed out? When you say 'transcription,' you mean typed out by a stenographer? Or can that record be provided on a tape so that the judges, how many they are in the review, can listen to the tape?

Mr. Dennis. No. It is required that the part that is being reviewed in connection with the objection in the original proceeding be typed up.

Mr. Duchess. Well, could the judicial hang that requirement to provide for the use of tape recording be listened to the proceeding in tried in a manner to reduce tremendously because you can make five or ten dollars a day less than ten dollars, four or five dollars.

Mr. Dennis. Yes, sir. I believe that could be changed legislatively now, and I believe under this amendment, it would still be provided by law.

Mr. Duchess. The reason I brought it up, there are some legislators here I thought saw they might get an idea.

Mr. Dennis. Yes, sir.

Mr. Lamier. Thank you, Mr. Chairman.

Judge Dennis, the way this is written, it could apply where no person shall be subjected to forfeiture of his property without right of judicial review, etc. Is this intended to apply in the case of bond forfeitures which could be either be sure or cash bond forfeitures?

Mr. Dennis. Mr. Lamier, that is the, I have not added that language. That language was in Mr. Avant's amendment, and I am not attempting to change the basic concept that Mr. Avant's amendment set forth, and I do not wish to get into the merits of his amendment because it has been debated and adopted. All I am trying to do is to clarify that the legislature may provide a free transcript to indigents, but may refuse to provide a free transcript to those who can afford to pay for it themselves.

Mr. Lamier. Well, Judge Dennis, don't you think we should know what kind of transcripts we are going to be paying for, if it's going to be a transcript of a bond for forfeiture, or another question would be, would it also apply in the case of a guilty plea?

Mr. Dennis. My own viewpoint is that this would apply. You could satisfy this in a guilty plea or a bond for forfeiture by simply providing the minutes of the court. But if there is testimony taken in a proceeding, and it is necessary in order for the higher court to review the case, that would have to be transcribed.

Mr. Lamier. So, the only way you could be safe on a bond for forfeiture would be to transcribe it, because, I believe, you have up to six months to contest a bond for forfeiture, don't you?

Mr. Dennis. No, I don't think you need any testimony transcribed on a bond for forfeiture. I think simply a minute entry of court would be sufficient there.

Mr. Avant. Judge Dennis, in my discussion with you yesterday, I understood that you were simply inserting the words, 'a written or sound recording, and, of course, the provision that the cost of the transcription of the sound recording shall be paid as provided by law,' and I told you that I had no objection to that, because I thought that was what you were doing. But, in one sense, a closer scrutiny by the legislature, and I don't think, and I'm not implying that this is any intentional thing on your part, you have deleted the words, 'complete record of all evidence,' and you say, 'a sound recording of all evidence.'

Now, to me that is a different thing, two entirely different things, a complete record of all evidence, and a sound recording of all evidence, and I wondered what reason did you have for making that change in the language?

Mr. Dennis. Mr. Avant, I did not intend to make that change.

Mr. Avant. Well, would you.

Mr. Dennis. I think this is a very significant part of it. It should require a complete written or sound recording of all evidence.

Mr. Avant. Well, would you make a technical amendment, then, to this amendment to make it read, 'a complete record of all evidence' to make it a sound...

Mr. Dennis. Yes, sir. I would be happy to do it if the convention would allow it with raw transcript and add that word.
Mr. Pugh. I wanted to see a copy of the amendment or have somebody read it, or something.

Mr. Dennis. Well, I can read you what it is if....

Mr. Pugh. I want to see it.

Let me ask you one question, if I may. You say the cost of the transcription of such sound recordings.

Mr. Dennis. No, sir. I apologize again for the confusion. I have withdrawn that amendment. The amendment I am offering now simply says the cost of the transcription of such record shall be paid as provided by law.

Mr. Pugh. Well, now, wouldn't that preclude the use of video tapes because you wouldn't transcribe a video tape, and that obviously is the coming thing in reproduction of evidence in cases.

Mr. Dennis. I don't think so, Mr. Pugh, I think "transcription" would cover a reproduction of a video tape.

Mr. Duval. Judge Dennis, is it....I realize part of this goes to the Avant amendment which you are, in essence replacing here, but is the thrust of these words to do away with trials de novo?

Mr. Dennis. No, sir.

Mr. Duval. In other words, you are still going to have your...it's your intent to still have the right to trial de novo. If it's not, what's the use of having a transcript if you have a trial de novo is what I'm getting at.

Mr. Dennis. Well, as Mr. Avant pointed out when he sponsored this amendment, the judiciary article we have adopted does allow for us to get away from trial de novo. It doesn't require it. But if we do get away from trial de novo, Mr. Avant warns us to make sure that everyone has an effective appeal, everyone who is endangered of being incarcerated has an effective appeal, and of course, you don't have an effective appeal without a record.

Mr. Duval. So this would primarily come into play. Then, in the event the legislature does away with trials de novo.

Mr. Dennis. In other words, to clarify....the judiciary article would allow the legislature to go either way, trial de novo or not. If they don't, Mr. Avant is saying, "You've got to provide the man a record." I'm coming along and I'm saying, "The state can say who pays for the record.....the transcription of the testimony." That's what's happening.

Mr. Duval. All right.

Mr. Pugh. I wanted to make a request, since there appeared to be some confusion in the minds of certain persons, certain delegates, that the Clerk read the section, or my amendment, as it would read if Judge Dennis' amendment was put on it so that everybody can listen and then everybody can understand. Because the business about the sound recording and all that has been taken out, and if we just read the way it will read if Judge Dennis' amendment is adopted, I would appreciate it.

Mr. Stinson. Mr. Stinson, you say a written or sounding recording. A sounding recording is a tape recorder.

Mr. Dennis. Mr. Stinson, I apologize for the confusion, but I have withdrawn that amendment and the one I have now does not say anything about sound recording.

Mr. Stinson. I'm sorry. Thank you.

Mr. Pugh. I wanted to see a copy of the amendment or have somebody read it, or something.

Mr. Dennis. Well, I can read you what it is if....

Mr. Pugh. I want to see it.

Let me ask you one question, if I may. You say the cost of the transcription of such sound recordings.

Mr. Dennis. No, sir. I apologize again for the confusion. I have withdrawn that amendment. The amendment I am offering now simply says the cost of the transcription of such record shall be paid as provided by law.

Mr. Pugh. Well, now, wouldn't that preclude the use of video tapes because you wouldn't transcribe a video tape, and that obviously is the coming thing in reproduction of evidence in cases.

Mr. Dennis. I don't think so, Mr. Pugh, I think "transcription" would cover a reproduction of a video tape.

Mr. Duval. Judge Dennis, is it....I realize part of this goes to the Avant amendment which you are, in essence replacing here, but is the thrust of these words to do away with trials de novo?

Mr. Dennis. No, sir.

Mr. Duval. In other words, you are still going to have your...it's your intent to still have the right to trial de novo. If it's not, what's the use of having a transcript if you have a trial de novo is what I'm getting at.

Mr. Dennis. Well, as Mr. Avant pointed out when he sponsored this amendment, the judiciary article we have adopted does allow for us to get away from trial de novo. It doesn't require it. But if we do get away from trial de novo, Mr. Avant warns us to make sure that everyone has an effective appeal, everyone who is endangered of being incarcerated has an effective appeal, and of course, you don't have an effective appeal without a record.

Mr. Duval. So this would primarily come into play. Then, in the event the legislature does away with trials de novo.

Mr. Dennis. In other words, to clarify....the judiciary article would allow the legislature to go either way, trial de novo or not. If they don't, Mr. Avant is saying, "You've got to provide the man a record." I'm coming along and I'm saying, "The state can say who pays for the record.....the transcription of the testimony." That's what's happening.

Mr. Duval. All right.

Mr. Pugh. I wanted to make a request, since there appeared to be some confusion in the minds of certain persons, certain delegates, that the Clerk read the section, or my amendment, as it would read if Judge Dennis' amendment was put on it so that everybody can listen and then everybody can understand. Because the business about the sound recording and all that has been taken out, and if we just read the way it will read if Judge Dennis' amendment is adopted, I would appreciate it.
Mr. Alexander Just one....

The delegate requests that the Clerk will read the amendment if adopted, as it would read. That is the Avant amendment plus the Dennis amendment. The Clerk will make that correction....one moment, please.

Mr. Poynter Delegate Avant and read as follows, your amendment begins first sentence, "No person shall be subjected to imprisonment or forfeiture of his rights or property without the right of judicial review based upon a complete record of all evidence upon which such judgment is based."

Add the sentence, "The cost of the transcription of such record shall be paid as provided by law. This right may be intelligently waived."

Questions

Mr. Perez Judge Dennis, isn't it true that if this amendment is not adopted, the legislature would have the authority to do what is provided in your proposed amendment?

Mr. Dennis Would you restate the question? I'm not sure I understand.

Mr. Perez Isn't it true that even if this amendment is not adopted, that the legislature would have the authority to do what is provided in your amendment, that is, pay for who shall pay for the cost of....of transcription?

Mr. Dennis As I said, earlier, Mr. Perez, I think it's ambiguous as it stands. For that reason, I am offering the amendment. Otherwise, I would not offer the amendment. I would not take up the time of the convention.

Mr. Perez Well, could you tell me how effectively we can mandamus or force the legislature to adopt any law?

Mr. Dennis Well, Mr. Perez, as it stands, I think if a man took an appeal and the state didn't provide him a written record, the Supreme Court might interpret it to say that he had to be released from imprisonment.

Mr. Perez Well, in the absence of the legislature passing a law, even with your amendment, isn't the same danger there?

Mr. Dennis No, sir. I don't think the Supreme Court could interpret it to say someone who can afford a record, "No, we are not going to transcribe the record for you."

And when he takes an appeal, then he's not entitled to be released from imprisonment simply because he doesn't have a record.

Mr. Perez My question is, until, unless the legislature does provide, what position, then would the defendant have or the convicted person on appeal?

Mr. Dennis Well, Mr. Perez, the legislature has already provided that an indigent is entitled to a free record, and those who are not indigent are not.

Mr. Champagne The only question I had is your amendment. It is designed to insure that not necessarily the state has to pay for all these transcripts. Is that right?

Mr. Dennis You're right, Mr. Champagne

Further Discussion

Mr. Jack Mr. Chairman and members, this is entirely window-dressing. I'm against the Dennis amendm---
to leave the section ambiguous. I submit to you that those who are against it are hoping that it would be interpreted to require the state to provide everyone a free record.

I'm simply making it clear that the legislature can say, "No, if you can afford a record, you have to pay for it, but those who can't afford it, the state will pay for it."

So I ask for you to adopt the amendment.

Chairman Henry in the Chair

[Amendment adopted: 92-20. Motion to reconsider tabled.]

Amendment

Mr. Foytner Amendment No. 1 [by Mr. Velazquez, et al.], on page 4, at the end of line 19, add the following: "the legislature shall provide for a uniform system for securing counsel for indigents including qualifications and compensation." I would appreciate that this language would go in front of the language of the Avant amendment and that this would be inserted between lines 19 and 20, and this instruction says at the end of line 19. So this would be at the end of line 19 and before the Avant language as now amended by the Dennis amendment.

Examination

Mr. Velazquez Mr. Chairman, fellow delegates, basic to the American concept of justice is the concept of a fair and an adequate defense. The most glaring problems in this field occur in the situation where the defendant is indigent. The purpose of this amendment is to help all those segments of society in the greatest need of help. I don't believe a person in this convention wants any citizen to be railroaded to Angola because that citizen happens to be poor. The need for adequate counsel should extend beyond an unwilling attorney, drafted by an overworked judge. None of us would want to stand before the bar of justice accused of a crime and defended by a lawyer who didn't want to be there, who wanted to be somewhere else making some money. This is not an attempt to suppress or supplant Section 12; it's rather a supplement. It puts the exact mechanism in the hands of the legislature where it belongs. It only mandates the legislature to provide for a uniform system. This uniform system could be a mixed system. It could be a combination of the old and the new. It could be a completely old system. It could be a completely new system. The key word is "uniform." This is a bill to help poor citizens who have been accused of crime. If the poorest citizen of this state can't receive justice, then no citizen is safe. I urge your consideration and your support for this amendment.

Questions

Mr. Lanier Delegate Velazquez, you and I discussed this matter previously, but to make sure the record has what your intention is, I'd like to ask you a couple of questions. As I understand your amendment, it is not intended to require either the public defender system or the indigent defense system, but would authorize both systems to exist simultaneously in different parishes provided there was an overall uniform system for the state. Is that correct?

Mr. Velazquez That is exactly correct, Mr. Lanier. It puts it in the hands of the legislature to set a uniform system either including some of the old, some of the new, or whatever they feel the system should be.

Mr. Lanier In other words, in Lafourche Parish if we wanted to have the indigent defense system we could have that, and in New Orleans if they wanted the public defender system they could have that providing there was uniform legislation establishing both systems.

Mr. Velazquez That is exactly correct.

Mr. Stinson I believe your answer to the question was that a uniform system would permit a mixed system. When you say the legislature shall enact a uniform system, doesn't that mean that they are one and the same for every parish and every district?

Mr. Velazquez Mr. Stinson, you can pass an ice cream law that covers chocolate ice cream, vanilla ice cream, fudge ripple, chocolate walnut, and it would still be a uniform ice cream law.

Mr. Stinson But it's not a uniform color ice cream law.

Mr. Velazquez I'm not passing a uniform color ice cream law. I'm trying to leave color out of this, Mr. Stinson.

Mr. Stinson But I'm afraid though that when you have it, it's not going to be what we want by your amendment.

Mr. Velazquez I feel it will be, Mr. Stinson.

Mr. Jenkins Mr. Velazquez, if this is going to allow Indigent Defender Boards to exist in some parishes and then in other parishes you'll have a Public Defender System, why are you even proposing this thing? I don't understand. What's the meaning of "uniform system" if it's not to put all parishes under the same sort of system?

Mr. Velazquez In the first place, you are trying to put words in my mouth. I'm trying to set up a "uniform system." "Uniform system" doesn't mean everybody's got to wear a green uniform and wear a clown hat. Nor does it mean that everybody has to do everything exactly the same. It provides for a "uniform system." Uniform in that justice is given to indigents. This is the basis of the uniformity, and the method is left to the legislature of which you are a member; and I'm sure that if you want that particular system, then you go to the legislature and you stress it.

Mr. Jenkins Then what is the purpose of the amendment? What does it accomplish that we don't already have?

Mr. Velazquez As important as the letter of the law, is the spirit of the law. Indigents and the concept of indigent defense deserves constitutional treatment.

Further Discussion

Mr. Duval Mr. Chairman, fellow delegates, I rise in support of the basic concept set forth in Mr. Velazquez's amendment. Let me tell you right now how the system of justice for indigents works. In various parishes we have what's called an Indigent Defenders Board, and just a few lawyers get on this board. A lot of whom have never practiced criminal law. They don't know anything about it. They get an appointment for some indigent who's been in jail maybe two or three months. They are very busy with their practice. They get distracted, and they somehow forget this fellow is up there in jail, and they go see him every now and then and ask him how he's doing. But I can tell you, I've seen people stay up in the parish jail for a year or longer because his lawyer was appointed and then finally withdrew because he felt like he wasn't doing a good job. Then they tried to appoint another one, and there was no lawyer available. Then the court had to appoint a lawyer not under the indigent defender panel, and it's a very unfair to people who get attorneys appointed who really don't care or really aren't able to handle the job properly. I think what we really need in Louisiana is a public defenders system.
This is the best way that people who are indigent can be defended and won't have to stay in jail for all of a week. It is one of the grimmest aspects in the field and won't have the disadvantage of the state having the expertise and the defendant not having it. I think it is that this is the best thrust of Mr. Well, and I think, and I think that this convention should go on record mandating the legislature to establish some type of uniform system with the hope that we will ultimately end with a public defender system for indigent persons accused of crime. This is the only way they will be fairly represented although many lawyers are represented and will represent him. I think that is the only way that they are appointed if they are on the indigent defenders panel. A lawyer does not do proper justice to his client under those circumstances. I urge you to adopt this amendment with a basic mandate to mandate the legislature to establish a public defender law.

Further Discussion

Mr. Burson Mr. Chairman, fellow delegates, I rise in support of this amendment. I am the former chairman of the Indigent Defendant Board in St. Landry parish, when this system that we are operating today has been in existence, Mr. Duval's sentiments in that I find that a great many lawyers are reluctant to undertake the defense particularly, of serious crimes, so much because they do not want to undertake their duty as a member of the bar, but simply because they are somewhat fearful of their lack of knowledge in the field of criminal law. I support Mr. Velazquez's notion however that what we need is not necessarily a pure public defender system, although I will frankly state that I think every parish in this state ought to have a public defender, but I think that it would be good to retain a mixed system for this reason: it seems to me that it would help in the general understanding of the legal profession of the criminal justice process and to the kind of understanding that makes for a better system of criminal justice, if we continue to allow and indeed require in some cases, members of the bar at large to have contact with the problems of criminal defense. I think that by and large my experience has been that some of the best people in the state are not legal professionals and in particular, we may have seen done done by people who were not criminal lawyers, but they were good lawyers and when they were appointed, they took the appointment very seriously and was an outstanding job. If I had the responsibility by appointment, myself, of defending someone in a capital trial for murder. It lasted nineteen months and I think that is the longest trial that was ever held in St. Landry parish. My cocounsel in that case were two lawyers who were not specialists in criminal law. In fact, I disagree with Mr. Velazquez that we can do under his language, and I agree with him. Let's opt for a combination. However, I think that the requirement that we have a uniform system would require some type of public defender in each parish, and I am for that because I will frankly state that of all the rights that you can give criminal defendants, none of them mean a thing without the right to counsel. In my personal experience in the right decision which gave criminal defendants in felony cases the right to counsel, absolutely was the most important landmark in establishing the rights of the accused in our constitutional law, I urge your support of this amendment.

Questions

Mr. Jenkins Mr. Burson, so then you disagree with Mr. Velazquez on this. If I require a public defender to be appointed for each parish, is that correct? Is that what you said?

Mr. Burson The language doesn't say that. I don't want to read into it anything that it doesn't say. It says "a uniform system." I'm saying that Woody, that this would be a provision that each parish ought to have a public defender.

Mr. Jenkins Well, if a uniform system would permit some parishes to have public defenders and others to have boards, what does the amendment accomplish?

Mr. Burson I think that if you mandate the legislature as you do in this language to create a uniform system, I have enough confidence in the legislature that this is the time that they will work out a uniform system that will meet the needs that exist.

Mr. Jenkins But under the section without this amendment the legislature has all the authority it needs to do the same thing, doesn't it?

Mr. Burson Well, I'm not sure that they are mandated to do this under the... in fact, I'm sure that they are not mandated to do this under the present constitutional amendment. Perhaps it is appropriate that we would include such a mandate in the new constitution. I might point out that the legislature has made a sincere effort to create a... the federal law. And when I first started practicing law, when you appointed to defend a criminal case, you didn't get paid for it. I participated in a week-long defense in a murder case where they didn't send me to jail. After it, I set up the Indigent Defendant Board and the Criminal Defense Fund...
time for bigamy got married, three hours before she got married, unbeknownst to her, her husband was killed in an auto accident over there in east Texas. She intended to be a bigamist because she loved that man so, and he wanted to marry her, but actually she wasn't guilty of bigamy because he had been killed in a wreck. Now you can say that lawyer, I know, must have felt bad afterwards because he didn't check out. Because you cannot be guilty of bigamy if your spouse was dead even a second before the marriage ceremony that would have made you a bigamist. I'm saying all people should have adequate counsel. The small parishes are unduly burdened trying to make those lawyers take care of all of that. This is a good bill that Mr. Velazquez has here and I don't think I've explained about the question of "uniform." Now, if anybody doesn't understand it, I'll try to answer any questions if I have any time.

[Previous question ordered. Record vote ordered. Amendment adopted: 99-11. Motion to reconsider tabled.]

Amendments
Mr. Poynter Amendment No. 1 [by Mr. Derbes], on page 4, line 12, after Section 12 delete the remainder of the line, delete lines 13 and 14 at the beginning of the line, delete the word and punctuational rendition.

Amendment No. 2, on page 4, line 12, after "Section 12" insert the following: "When any person has been arrested or detained in connection with the investigation or commission of any offense, he shall be advised fully of the reason for his arrest or detention, his right to silence, his right against self-incrimination, his right to the assistance of counsel, and to court-appointed counsel, if indigent."

Explanation
Mr. Derbes Ladies and gentlemen, this hopefully makes up for any of the deficiencies in the earlier amendment. Again, it sets forth with particularity the various rights of an accused and the rights of the subject in an investigation. It does so specifically rather than generally because, I feel that the general provision of the committee's proposal is too vague, and may in fact be too onerous for efficient and consistent administration. I urge the adoption of the amendment.

Questions
Mr. Lanier Mr. Derbes, is it your intention that this would provide to the provisions of our stop and frisk law in Louisiana, which is Article 215.1? Because if it would, would it be your intention to overrule the case of State v. Amphor which provides that you don't have to give a Miranda warning in this stop and frisk situation.

Mr. Derbes Mr. Lanier, the word "arrest" has specific connotations and the word "detention" has specific connotations. The requirement of this section do not vest until there has been actual detention or actual arrest.

Mr. Lanier So would it be your intention, and this is for the purpose of the law enforcement people who would have to operate under this provision, is it your intention that this provision would not apply in a stop and frisk situation under Section 215.1?

Mr. Derbes That's my intention but I'd also point out that the scope of the amendment, with respect to the circumstances of its administration, is equivalent to rather than more restrictive than the original committee proposal.

Mr. Pugh I'm very much in favor of your amendment, but I ask whether of not it's possible to make a technical change--instead of "his right to silence" "his right to remain silent."

Mr. Derbes I have no objection to that, and with permission from the Chair I would be happy...

Mr. Henry What kind of technical change do you want to make?

Mr. Pugh Instead of "his right to silence," "his right to remain silent."

[Amendment withdrawn and resubmitted with correction.]

Questions
Mr. Roemer Jim, as to this matter of equivalence with the committee reporting with your first amendment, would you not say or would you not direct your remarks to the point, the contention that your second amendment, the one we're considering now is more expansive than your original committee proposal.

Mr. Derbes Well, I'm talking about, and I'd like to draw this issue rather narrowly, I'm talking about the circumstances in which it would be applicable, not necessarily the rights that would be administered but, in which it would be applicable. As I understand the original committee proposal it used the words "whenever a person is detained," and I believe that what the committee's intention was, in that instance, to say that whenever a person was detained by a law enforcement officer as a subject of an investigation or as an arrestee, that he should be advised of his legal rights. So I think to that extent they are equivalent. Now, perhaps and I can't interpret all the committee's intentions, but perhaps the committee wanted it to go further than that, but I haven't been able to discern that from speaking to the committee members.

Mr. Stinson Mr. Derbes, of course, you didn't speak to me. I don't know who you spoke to, but in my opening address as you heard and I'm sure, is that different words come of different lawyers' mouths, and they usually mean the same thing. Now, would you please make another technical amendment, and say "and any other legal rights?"

Mr. Derbes Absolutely not, Mr. Stinson. That's the reason why I'm up here. If you don't understand that...

Mr. Stinson I understand what you're doing. Isn't it a fact that you're locking in these, and if they decide later on that he has other rights, he'll be denied those rights?

Mr. Derbes Mr. Stinson, can you please spend about fifteen... I tell you what, you take five minutes, and you tell us what the rights of a criminal defendant are. I tell you you can't say that in five minutes; it'll take you a course in criminal procedure or a course in criminal justice to explain all the legal rights of a defendant in any criminal proceeding.

Mr. Stinson I don't agree with you. I have taken those courses, and I have practiced thirty or forty some odd years. I still do when you don't know, you shouldn't try to make them. You should say "legal rights" and the courts would interpret that...

Mr. Derbes That's the reason why I'm up here, Mr. Stinson, because I think "legal rights" is too broad and too vague and almost insusceptible of efficient, professional administration.

Mr. Stinson Well, I'm sorry, but you don't agree with the committee after much research, and I'm sure you must be right and the rest of us wrong
43rd Days Proceedings—September 7, 1973

Amendment

Mr. Hardin [Assistant Speaker]. [Amendment by Mr. Drew]. On page 4, line 16, after the word and punctuation "him" delete the remainder of the line and delete lines 17 through 19 both inclusive in their entirety.

Explanation

Mr. Drew. Mr. Chairman, ladies and gentlemen of the convention, my objection, and the reason I have to do this last sentence in Section 12 and the reason I offer this amendment, is because of the words "by imprisonment." Practically any offense that I know of from speeding up and down is subject to jail, and therefore this would make it mandatory that they have assistance of counsel in the most minor misdemeanor cases. Now, of course, part of the argument is that the Fifth Circuit Court of Appeal has so recently ruled. That does not mean that that is going to remain the law or that it will be affirmed by the Supreme Court. I think that we're going overboard. I think this is a matter that we are locked in with federal decisions, and I don't think this is a matter that should be in our constitution. We do provide counsel under the federal cases. We do provide the counsel that is required under those cases, and I think this come out of our constitution. You might see in the very near future that we're in direct conflict with federal law instead of in accord with federal law on the subject. I ask adoption of the amendment.

Further Discussion

Mr. Pugh. Mr. Chairman, fellow delegates, I only rise to advise you that Mr. Drew said, "that case has not been affirmed." On June 12, 1972, the United States Supreme Court in the case of Hamlin felt that every person who might, as a result of the charge, spend so much as five minutes in jail, was entitled to counsel. The law is that you may be imprisoned regardless for the term involved, you have the right to counsel, and I'm in favor of the section as it reads and opposed to the amendment.

Questions

Mr. Lanier. Mr. Pugh, is it not true that under Louisiana law and particularly Article 884 of the Code of Criminal Procedure, that even if an offense was set up as punishable only by a fine, that the law requires that in default of payment of the fine that imprisonment is authorized whether specifically put in the penalty clause of the statute or not?

Mr. Pugh. That's in the section that you had reference to ... the Hamlin case was a Florida case. It didn't want to imply that it was a Louisiana case.

Mr. Perez. Mr. Pugh, if you say that is what the federal courts have ruled, why do we need this in the constitution? I thought that we were trying to write a brief constitution.

Mr. Pugh. I can't tell you what the committee had in mind. All I'm doing is opposing this amendment.

Mr. Rieger. Bibb, in line with Delegate Lanier's questioning, would that in effect mean that every case whether it had original punishment, incarceration in its term, or ultimately if you had to default on payment would require counsel? Is that not true?

Mr. Pugh. Yes, sir. The law as I appreciate it and as enunciated by the United States Supreme Court in that decision was that the person may as a result of the offense with which he is charged be required to spend so much as five minutes in jail if he's convicted. It doesn't make any difference what you give him.

The mere fact that he might have that as a punishment enables him to counsel.

Mr. Roemer. All right, but let's take it a step further for us country boys and tell me the answer to this question if you could. If we had a penalty and not a punishment but a penalty, in regard to crime, but in default of payment of said penalty, you had to spend time in jail then you'd be entitled to counsel under this provision. Is that not correct?

Mr. Pugh. That's correct. I see nothing wrong with that, quite frankly.

Mr. Roy. Mr. Pugh, as I understand it, you believe that whether you are going to be in jail for three days because of a crime on thirty days or three years, that you're still in jail, and you do believe that people are entitled to counsel and not just they are entitled to the assistance of counsel if they choose or if they are indigent they should have it. Isn't that true?

Mr. Pugh. It doesn't make any difference to me how long a fellow may stay in jail. Five minutes for me would be too long, frankly, but it's not a question of how long, it's if.

[Previous Question ordered. Amendment rejected; 95-72. Motion to reconsider tabled. Previous Question ordered on the Section.]

Closing

Mr. Stinson. We close. Thank you for your patience, and let's go ahead and adopt it. I think it will be helpful to everyone. Thank you.

[Section passed: 98-13. Motion to reconsider tabled.]

Recess

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

Personal Privilege

Mr. Jenkins. Mr. Chairman, delegates, a young lady from my district has brought honor to the State of Louisiana. I wanted to call it to your attention, because you may find it of interest. Miss Debbie Ann Ward, who is a twenty-one year old senior at L. S. U., whose parents are Mr. and Mrs. Bennett Ward of Dayton Street here in Baton Rouge, was the preliminary winner in the talent competition of the Miss American Pageant in Atlantic City, New Jersey. I think if you will tune into your television sets, I believe it's tomorrow night, perhaps we can all root for her in hopes that she will be successful in winning the Miss American crown.

Reading of the Section

Mr. Poynter. "Section 13. Initiation of Prosecution"

Section 13. Prosecution of felonies shall be initiated by indictment or information, provided that no person shall be held to answer for a capital crime or a felony necessarily punishable by hard labor, except on indictment by a grand jury. No person shall be twice placed in jeopardy for the same offense, except on his own application for a new trial when a final judgment is declared or a motion in arrest of judgment is sustained.

Explanation

Mr. Guarisco. Ladies and gentlemen of the convention, we now begin the debate dealing with the person, the accused, after he has been arrested and the method or the procedure by which the prosecution is initiated against the individual.
course, you know we have two types of crimes - felonies and misdemeanors. What we provided for in this section is that a capital crime of which there are five now in the State of Louisiana and those felonies which necessarily are punishable by hard labor shall necessarily be on indictment by grand jury and by no other method. That is, the district attorney cannot bring this person to trial if he is acquitted of that crime or the D. A. or someone drops the charges or for some reason he's not found guilty or nol-pros, then he cannot be put in jeopardy for that singular crime once again.

I'm open to questions.

Questions

Mr. Lanier Mr. Guarisco, is it not true that under the present constitution and under Article 437 of the Code of Criminal Procedure that the only offenses for which a grand jury is presently required is capital offenses?

Mr. Guarisco That's correct, but, Mr. Lanier, there are some... I have enumerated twenty different crimes in the State of Louisiana, including capital cases of which there are five, that are necessarily punishable at hard labor.

Mr. Lanier Isn't the crime of simple burglary necessarily punishable at hard labor?

Mr. Guarisco That's correct.

Mr. Lanier Do you have any idea what it would cost the different parishes to have to have grand juries in all of these types of cases?

Mr. Guarisco The answer to that... I'm not particularly interested in the cost if it's going to suspend the rights of an individual. Are you familiar with the case of Pugh v. Rainwater?

Mr. Lanier I've seen the report that Mr. Roy had in the newspaper. I have not read the text of the opinion, but I recall that he got off on the question of whether or not there was a magistrate's hearing or whether or not a Bill of Information served to supplant a magistrate's ruling on probable cause. Is that correct?

Mr. Guarisco That's right.

Mr. Lanier So, what does that have to do with whether or not there should be a grand jury indictment in a simple burglary?

Mr. Guarisco Well, I think it's very simple. I think that a person that's detained at the time of arrest and before arraignment or his trial. And then he should be afforded some opportunity by a detached body, either a committee magistrate or a grand jury, of whether or not a probably cause exists.

Mr. Lanier Now, one further question. If you couple this provision with the provision in Section 14 that requires that the transcript of the testimony of the witnesses appearing before the grand jury be given to all defendants, wouldn't that pretty well prevent one in all of these cases you would have discovery?

Mr. Guarisco That can be construed that way. The accused should have a right to the transcripted testimony of all witnesses before the grand jury, yes.

Mr. Derbes Mr. Guarisco, isn't the real protection

For a defendant at the outset of a criminal proceeding, the preliminary hearing rather than the grand jury indictment?

Mr. Guarisco I'm sorry, I didn't understand your question.

Mr. Derbes I said isn't the real protection of a criminal defendant at the outset of a preliminary hearing, at the outset of a criminal proceeding, a preliminary hearing rather than a grand jury indictment? Which is to say, isn't the grand jury more or less the handmaiden of the district attorney and to require a grand jury indictment in all cases punishable by hard labor is really just kind of window dressing?

Mr. Guarisco I agree with your statement that the grand jury is the handmaiden of the district attorney's office. Also, however, we have other protections for that later on in the section.

Mrs. Warren I just want you to explain briefly to me what mistrial means.

Mr. Guarisco Well, a mistrial generally speaking is some reason... there are procedures that happen during the trial that may cause it to be prejudicial against the defendant and that way the judge would say what he calls a mistrial: that is, the trial is called off for what was done improperly.

Mrs. Zervigon Mr. Guarisco, in order to try and vote intelligently on this section, I would like to know what percentage of cases that are brought before a grand jury by a district attorney does the grand jury fail to return an indictment?

Mr. Guarisco I don't know the percentages, but I don't think there is hardly any cases that the D. A. is hell-bent on getting a true bill on, that he is not successful.

Mrs. Zervigon Well, it's my understanding that the committee stuck this grand jury provision in this particular section as a protection for the accused. Isn't that correct?

Mr. Guarisco Supposedly, yes.

Mrs. Zervigon Well, if the district attorney gets an indictment through the grand jury almost every time he asks for it, I was wondering, what sort of protection that is?

Mr. Guarisco Well, Mary, I think this section has to be read in conjunction with the following section, which gives the defendant and the accused certain protections that he does not now have, that would make the grand jury a more impartial body than the arm of the district attorney's office.

Mrs. Zervigon But, it's your feeling that as of now, and we can only consider this section by section as we vote on it, going before the grand jury the percentage of cases in which there isn't an indictment might be lower than the percentage of cases nol-prosed by the district attorney just on his own.

Mr. Guarisco The district attorney can nol-pros the case even if the grand jury comes back with the true bill. He can always nol-pros the case. That's no problem, but in the first instance if the D. A. just has to certify by a Bill of Information, then he is the prosecutor. I don't think he is a detached person. At least he has to go before the grand jury and they may be detached if we put these other sections in the present way we do in "14" to make it a more independent body.

Amendment

Mr. Poynter Amendment No. 1 [by Delia Warren]. On page 4, line 23, place a comma after the word "crime" and delete the remainder of the line and at the beginning of line 24 delete the words [1164]
Delegates, I want to try as much as possible to discuss this subject dispassionately. I would like to do it from the first page of the report made by Mr. Gurisco. He said about the necessity for reading Sections 13 and 14 together. The reason for that is—and your vote might be going against me in doing this—but Section 14—the reason for that is it’s the present law. Constitutional Article 1, Section 9, which you can look at in your book, it says that a prosecution for an offense punishable by death shall be initiated by indictment by a grand jury. Nobody questions that and there were some amendments up here which would have said ‘or by life’ and ‘or by death.’ Mine would say ‘a felony punishable by hard labor’ and leave it. "Capital crime" because the present interpretation is a "capital crime" includes those crimes which are punishable by life. The old article said something like criminal prosecution in a district court shall be instituted by indictment or Bill of Information. So, the change proposed in Section 13 from the present law would be to bring into the necessity for a grand jury in those cases necessary to be punishable by hard labor. I had the staff make a list of felonies punishable by ten years or more, most of which are necessarily punishable by hard labor. The problem is that even with the present grand jury system, that in parishes and I’m going to use an example of a man who’s here—such as Jefferson, where there are two hundred felonies per month—it’s not practical to be able to take all of these cases before the grand jury, and you wouldn’t be able to get them to trial. I’m going to speak for the situation in Jefferson. The problem in my parish is on those cases which are (a) either of such a serious nature, such as homicide, aggravated rape and so on, that prudence dictates you ought to have a grand jury indictment, or secondly, some cases, and there are some, where the district attorney is really not quite sure in his own mind whether or not the evidence justifies bringing them to trial. In that event, he wants to run them by the twelve men in his parish. It’s similar to say that the grand jury is a tool of the D.A. that you will find if you check the record on it, that state grand juries—I’m not talking about federal grand juries because I’m going to get to that in a minute—but in state grand juries you’ll probably find that no true bills are returned on a high percentage of cases—simply because the D.A. sees after running the evidence in front of the grand jury that it doesn’t justify pushing for an indictment. That is one of the uses of the grand jury today. Now, the federal law which requires a grand jury indictment in all crimes has resulted in the federal grand jury a perfunctory or rubber stamp. It’s bare trivia in your view that get a situation where the federal grand jury is going to return an indictment unless the case is really extraordinary. I might point out that, in my view, and I think in the view of anyone, the right to a preliminary examination, which is an examination before a judge to see whether or not there is probable cause to hold someone over for a trial, is a much, much greater protection for the defendant than is a grand jury indictment procedure. The reason is because you have a judge there that knows the law. You have a defense attorney present who can object to any introduction of evidence by the state and who can get some evidence suppressed at that point and may well get the case thrown out of court. The right to a jury trial is set forth in Louisiana Code of Criminal Procedure. It’s in the statute. Under the Louisiana Code of Criminal Procedure, it’s a mandamus right if the charge against you by a Bill of Information that it’s not. If the D.A. bill you and don’t bring an indictment, he’s got to give you a preliminary examination if you request one. I bring that to your attention, because I think it’s necessary that you would understand that it is under to deal with this whole topic. You have seen these little discussions that have been going on here. I think you will find a disagreement among some of us that there are other things in the gravit of a Bill of Information that you ought to have a grand jury proceeding. In most of these cases, there are grand jury proceedings today by the will of the Attorney General, but one thing I think is that you ought to define them by a statute. I think, in the first place, you have been unable, in dealing with, because on the whole host of cases that you have before you, the whole answer to all problems of sixty-odd years.
Mr. Burson I'm just trying to make the point that we can't consider Section 13 in isolation. We have to consider it both with what has gone before and what has come after, what will come after. We don't know what decision we're going to make yet on the latter. My amendment would leave the present law alone. I want to state here and now that if, before the day is over, we could come up with some manageable way to determine these crimes which are serious enough that we could all agree ought to go before a grand jury, that we could go with that. Well, so far as I know, nobody has been able to come up with that definition. So, until we can come up with that definition, then I'll leave that question open where it should be to the state legislature to deal with in their own good time and in their own proper deliberations. Let's not forget the constitution something that we will find we can't live with later on and then be in a bad position to come back and try and change it.

I'll answer any question....

Questions

Mr. Roy Mr. Burson, are you seriously telling the truth to this convention when you say that after asking for a preliminary examination, if a district attorney bills you on his own, that you are still entitled to the examination and not merely to a question as to the amount of bail or bond? Are you trying to tell these people that?

Mr. Burson Mr. Roy, if you will wait a minute, I'll get the code....

Mr. Roy No, no, don't get the code; get the Louisiana Supreme Court decision that decided that. I know what the code says. But isn't it a fact that the Louisiana Supreme Court recently held that once the district attorney has billed and you have asked for your preliminary examination, the examination is with respect to the amount of bail or bond only and not as to whether a charge should have been filled [filed] in the first place? Isn't that what the Supreme Court held, Mr. Burson?

Mr. Burson The Supreme Court held that in such cases it was discretionary with the court. Article 236 of the Code of Criminal Procedure says, "If the defendant has not been indicted by a grand jury for the offense charged, the court shall, at the preliminary examination, order his release from custody or bail, if from the evidence induced it appears that there is not probably cause to charge him with the offense or with the lesser included offense."

Mr. Roy Yeah, but you're evading my question, and I'm asking you to tell the truth. Isn't it a fact that it's discretionary with the court? When you told this convention you were absolutely entitled to a preliminary examination before your judge affidavit, billed you that that is incorrect and the only thing the Supreme Court said you're absolutely entitled to is the amount of bail or bond. Now, isn't that the truth?

Mr. Burson Mr. Roy, in my experience I have never seen the court refuse to grant someone a preliminary examination when the person was charged with a Bill of Information.

Mr. Roy You're not answering my question, Mr. Burson. Don't you know, as the astute lawyer that you are, that when you told this convention that you are absolutely entitled to a hearing on the issue of the charge, that is incorrect? The Louisiana Supreme Court has interpreted that article you have just read to say that the court may limit it to a question of bail or bond only.

Mr. Burson Mr. Roy, I am indebted to you for the knowledge of the fact that this matter has been ruled upon by other than the Louisiana Supreme Court when you pointed out to me that the Fifth Circuit said, that a man could not be held in jail in such cases without a preliminary examination. I believe that the federal law still applies to us in Louisiana.

Mr. Roy Well, I'll let you read that Pugh case. It doesn't exactly say what you think it says. But you do admit that you were a little inaccurate in your statement previously?

Mr. Burson Not in the totality of the criminal law, which I think we've got to consider. We can't consider just the state provisions without considering the federal requirements.

Vice Chairman Casey in the Chair

Mr. Guarisco Mr. Burson, you said earlier that you didn't know whether or not you had a criterion by which a crime would be serious enough to go before a grand jury. Is that correct?

Mr. Burson I said that no criteria that I had seen proposed today was manageable and workable, that in lieu of that we would leave it for the legislature to decide the law alone, not venture into something that we don't know what the outcome will be, except that we do know it will further clog up the court system and make it impossible to bring criminal cases to trial.

Mr. Guarisco Do you think the criterion...the committee proposal of "a capital crime is necessarily punishable by hard labor" is a criterion?

Mr. Burson Yes, sir.

Mr. Guarisco If you are out there cutting that came, that's a criterion to have a grand jury indictment. Don't you think?

Mr. Burson But, of course, Mr. Guarisco, all of these proposals that the grand jury is going to do and the defendant in favor of the district attorney will do, which is an assumption that I have found not to be borne out in practice.

Mr. Pugh Isn't it a fact, Mr. Burson, that this is the only state in the Union, the only one that I know of, that allows a district attorney to quash an indictment once it's been rendered by a grand jury?

Mr. Burson As far as I know.

Mr. Pugh This is the only state that will allow that?

Mr. Burson Yes, sir.

Further Discussion

Mr. Bond Mr. Acting Chairman, ladies and gentlemen of the convention, I rise in opposition to this amendment for several reasons. Let me tell you that I'm not so wedded, right off the bat, I'm not so wedded to the section proposed by the committee that reasonable changes would not be tolerated and as I'm concluding Mr. Burson does more with this amendment than meets the eye. I have been, in a sense, concerned and I've declared it before, with the fact that so many people in here who are not attorneys and the lawyers get involved in a number of cases that you're not familiar with and, you're all in the dark as to what's really being said. I want to tell you what it is that we stated with respect to an absolute right to a preliminary examination by the previous speaker is incorrect. It is absolutely incorrect. One does not have the right to a preliminary examination by the trial judge after the district attorney bills him on his own Bill of Information. You can say it like you want, but if you are in any way influenced by that previous statement, discard it. Ask any attorney who practices in Orleans Parish how many times a person who is in jail, for whom one has been appointed to represent and files a motion for a preliminary examination. The morning of a preliminary examination the district attorney walks into the courtroom, files a Bill of Information charging the guy with armed robbery or whatever have you - it makes no difference and at that moment the judge on many occasions discharges the preliminary examination and the issue is only one of bail or bond, not whether you understand should be charged or not whether there is probable cause for you being charged that way. Now, that's right, Mr. Burson is right when he says that we are trying to go into the grand jury some-thing more than the arm of the district attorney, and our Section 14 goes a little way to doing that. But let me tell you something else that was misstated. We don't guarantee to any person the right to have his witnesses appear in the grand jury room and interrogated by the grand jury. We simply provide, and we believe, that an independent body of citizens, this person's peers, should have the right to have brought there witnesses whom a poor indigent man may not be
able to get to the grand jury otherwise. The grand jury do not have to take a stand. It may say 'no', if it has done in many occasions in the past, we don't want to hear your witnesses, and there is nothing that one may do about it. That's absolutely the truth, ladies and gentlemen. Our commission, even if changed, there does not say that you're entitled to have your witnesses interrogated by the grand jury. It only allows you, you see, the right to subpoena those people to have them there. Now, is that asking so much, that instead, if I have witnesses who know that I'm not guilty of a crime, that I was in Shreveport when the burglary took place in New Orleans and I'm some poor guy that has nothing, is it so wrong that I should be able to subpoena witnesses to present to the grand jury? Then the grand jury can say, "Mr. Roy, we don't want to hear your witnesses. I believe that the Federal, fair, impartial grand jurors would say, 'Well, let's hear that man's witnesses,' and the witnesses are heard...

Question

Mr. Roemer: Chris, could you address yourself to the problem raised by Jack in regard to Jefferson Parish, the example he used with two hundred felonies a day or week or something...

Mr. Roy: I hate to say that I really find that kind of exaggerated. It doesn't necessarily... it may be felonies, but our provision deals with felonies necessarily punishable by hard labor, let me tell you folks, who don't know any better, there are two types of juries when you are tried. There is a twelve man jury that can convict you nine out of twelve and you can be sentenced to Angola. But there is a five man jury, which is a relative felony. It would not apply to those many relatives at all, so there are not two hundred cases over there. But what's the argument? The philosophical argument to me is not that we...

Further Discussion

Mr. Gravel: Mr. Acting Chairman, ladies and gentlemen of the convention, I want to speak briefly in opposition to the Burson amendment. I think that it is far too restrictive, just as I feel that the proposal by the committee maybe goes too far in the other direction. I honestly believe that there is a fair middle ground that we ought to reach with respect to when it is and when it is not mandatory for a grand jury to indict.

Mr. Casey: Mr. Gravel, I'm sorry; let me just interrupt. I have a request from a couple of the delegates that they cannot hear. Delegates, please have your seats. Please proceed, Mr. Gravel.

Mr. Gravel: I'm not going to speak much longer, Mr. Acting Chairman, that you will want to tell me how this is the convention, and I think that maybe that the delegates may well be aware of it. Regardless of whether the Burson amendment that's before you now is passed or rejected, there will come before you next a proposal by Mr. Pugh and myself, whereby in all we ask that a provision be adopted in the constitution which will require that in all capital cases of those cases are where the death penalty may be imposed, and in all cases of offenses, the conviction for which would justify the imposition of twenty years or more at hard labor, that in those cases the grand jury indictment be essential. All of this is trying to do is this. At the far end of this particular problem, we have those who don't want any intervention at all by the grand jury. That is, any required intervention at all by the grand jury in any case whatever except capital cases. The committee proposal, on the other hand, says that all felony cases must be the subject of grand jury indictment. Ladies and gentlemen, there is a fair, middle ground, to my knowledge you've never had the opportunity to consider before the current amendment. In the next amendment for that reason, I would urge the rejection of the Burson amendment that's before you, in order that we can consider and hopefully adopt the amendment that Mr. Pugh and I have submitted.

Question

Mr. Dent: Mr. Gravel, you have been talking about a middle ground. You state that Mr. Burson's amendment does not evidently strike a middle ground. Doesn't Mr. Burson's amendment bring the law exactly where it is today, in other words, that only capital crimes need be brought before a grand jury?

Mr. Gravel: It maintains the present Louisiana law that requires only that the grand jury be necessary in capital offenses, that's correct. Now the federal system, as you know, requires a grand jury indictment in any federal offense that's correct, Mr. Deshotels.

Further Discussion

Mr. Drew: Mr. Chairman, ladies and gentlemen of the convention, I'll just take a minute. But let me point out to you one of the inconsistencies of the committee proposal and the reason that you should adopt the amendment that has been offered. Of course there is a difference in the size of the jury that hears that case that is punishable with or without hard labor, which means it may be jail or penitentiary, and the jury that hears those that are necessarily penitentiary offenses. We say, in the committee proposal, that we are trying to protect the individual. Just one example, if you will look at the statute on aggravated criminal damage to property, it is a crime punishable with or without hard labor from one to fifteen years, one to fifteen years either in jail or in the penitentiary. But that would not be subject to grand jury consideration under the committee proposal. It would only be those that are mandatory penitentiary. You have aggravated battery, which can carry up to ten years in the penitentiary. That would not be mandatory to be considered by the grand jury. You have thefts when the taking amounts to a value of five hundred dollars or more. You can be imprisoned in the penitentiary for ten years, that would not have to go before the grand jury. I think that the Burson amendment is a good amendment. Let us not bog down our criminal justice to such an extent that a speedy and fair trial is an impossibility. When you start talking about grand jury, putting before the grand jury the number of cases that would fall within the category here, and as I just stated, you are subject to more imprisonment for the other offenses in many instances than you are the ones that are necessarily punishable by hard labor, it just doesn't make sense. I think we have done enough already to the criminal justice in this state to several district attorneys and their assistants tied up day in and day out with grand juries and it is not necessary. One thing that the proponents of this committee proposal have not taken into consideration: the great justice and the destruction of more than an accusation. The grand jury is an accusatory body. The district attorney with a Bill of Information is nothing more than an accusation of the commission of a crime. Let me tell you from my experience, ladies and gentlemen, if I have a defendant to represent, I had much rather go into court representing him on a Bill of Information than on a grand jury indictment because, I can assure you that, although it should not do it, that a grand jury indictment does carry a little heavier stigma toward guilt than individual. I think it's probably the proponents of this committee proposal of doing exactly the opposite from what they intended to do with the exception of our provision requiring that the witnesses have the benefit of counsel and the summoning (summoning) of witnesses. What this will do will be to make a grand jury an adversary hearing and it was never intended to be an adversary hearing. It is a means where your peers, your fellowmen, decide if there is enough evidence to be there, that individual should stand trial and that is all in the world a grand jury indictment is.
Mr. Roy: Have you read the provision to mean that you are entitled as an absolute right to have your witnesses in the grand jury room itself? Is that the way you read the whole section?

Mr. Drew: No, I don't read it that way. But you have that right now if the district attorney wants to hear them, and in most parishes they will hear them if they see fit.

Mr. Roy: Suppose you can't get them there for the district attorney in his gracious manner to allow the grand jury to hear, Mr. Drew. What do you do about that?

Mr. Drew: Mr. Roy, I think that you have an entirely different concept of a district attorney from what I do. I have never seen a district attorney that wanted to go to trial without a case that he didn't think he could win.

Previous Question ordered.

Closing

Mr. Burson: You will have another amendment to vote on in Mr. Gravel's, but I urge you, first of all, to approve my amendment, because by so doing I think you will purg[e] from Section 13 what I deem to be an essential error. I point out to you that the discussion that I made earlier about the 200 felonies a month was simply something that was told to me by the district attorney of the parish involved. But, I can tell you of my own personal knowledge that we've had many many many many cases of burglaries in St. Landry Parish, not all of them punishable by hard labor but a high percentage of them. The point is, in many of these cases, let's take a burglary case where you catch a man inside the building. A grand jury indictment in that case would be merely pro forma. All of these arguments, it seems to me are based on the tacit presumption that all of the district attorneys in the state are operating in bad faith, and I don't think that that presumption is justified. I think that these are elected public officials, and I think they operate in good faith. I cannot, for the life of me, think of why a district attorney would after all, when the case would want to take a bad case to court and get his brains beat out. That just doesn't make sense to me, because the jury of the people ultimately make the decision in this case. I have seen a few cases where able defense counsel walked the guilty man out and convinced the jury to let them go, but I wouldn't want to do away with the jury system on that account. So, let's turn that argument around. Just because there have been people, perhaps one in a thousand, I think it's a lot less than that, unjustly accused by grand jury indictments or bills of information, let's not throw out the baby with the bath water. We don't throw the jury system out because a few guilty men get off, because that's the best way we've ever found of determining guilt or innocence. So, by throwing out the system that has worked as far as bringing criminal cases to trial in this state and substituting one that we don't know how it's going to work in the constitution. Now, I'd be the last one to get up here and tell you that we had a perfect system of criminal justice. God knows that is not true, but I am asking you and pleading with you, that let's leave those technical changes to be made where they ought to be made in the legislature. If you're sure that you understand the technical change that's being proposed by the committee, what its practical effect will be, and you agree with that practical effect, then vote for it. But if you are in doubt, as I am in grave and serious doubt as to what the practical effect of this would be, and I think the practical effect would gravely, seriously diminish the ability of bringing criminal cases to trial to find out the guilt or innocence of an accused then I ask you to vote for my amendment and let's leave this question where it belongs in the amendments in the code of criminal procedure. Even though we establish a minimum necessity of a capital crime and a grand jury indictment, the legislature could still come back and enumerate any number of other crimes that would require a grand jury indictment.

Questions

Mr. De Blieux: Mr. Burson, I just wanted to see if I understand you right. If you're saying by this amendment of yours that it would allow the legislature to determine what crimes they wanted to bring before the grand jury other than capital cases?

Mr. Burson: Yes, sir.

Mr. De Blieux: Now, if we don't pass your amendment, then the legislature would have no choice in these matters whatsoever.

Mr. Burson: That is correct, sir. They would be bound to bring any felony necessarily punishable by hard labor. You know what I can imagine happened? I imagine right behind adopting this constitutional provision, the legislature coming in and making all cases with or without hard labor, which would render this thing absolutely meaningless. That's what I'm talking about. It's important for him to play games with statutory material in a constitution.

Mr. Willis: Mr. Burson, we haven't made the distinction between a grand jury which is an accusatory body and a petty [peti] jury which is a body that hears the case where it's a contradictory proceeding. Now, with that in view, isn't it a fact that all the witnesses and the accused can have his attorney to defend his case before the petty [peti] jury?

Mr. Burson: There's no question about that.

[Record vote ordered. Amendment adopted: 85-9. Motion to reconsider tabled.]

Personal Privilege

Mr. Roy: Mr. Chairman, ladies and gentlemen of the convention, I'm not going to take much time. I've never requested this before but I just think that I ought to respond to maybe some insinuation that was made that I disagree with. I don't think that public officials are so good. I don't think that they are dishonest. It doesn't mean that I don't believe that when we're dealing with a Bill of Rights that it's not going to stand up and do my utmost to make sure that in all cases possible we obviate the chance of some public official sometimes not doing his job. Now, we're dealing with a Bill of Rights here. I sat in this committee since January. I know personally how I feel about basic rights. I voted for everything with respect to flexibility for judges, for the legislature; I'm giving the D.A.'s every right they have. I want to go out and go out clear that I don't accuse any district attorney nor any judge of any misconduct. But, I do say that when we deal with the Bill of Rights, it doesn't answer the question to say that this is technical in nature and let the legislature deal with it at some other time, because you're dealing with a Bill or Rights. You're trying to say that no matter how much I believe in everybody in here there comes a time when we just don't, I just wanted to make that clear because I'll put my record against anybody in here with respect to a good citizen. I have military service. I've done my job every way I can. I just think that I don't want it misunderstood that I have any misconception about any views and what have you. Thank you.

Chairman Henry in the Chair

Amendment

Mr. Poynter: This is the Gravel-Pugh amendment. Amendment No. 1, on page 4, line 23, immediately after the word "for" delete the remainder of the line and insert in lieu thereof the following: "any capital offense, or any felony in which punishment at hard labor for 25 years or more may be imposed upon conviction."

There is no longer a necessity for Amendment No. 42, as those same words were stricken by the Burson amendment.

Explanation

Mr. Pugh: Mr. Chairman, fellow delegates, by way of what would be a technical amendment, I call your attention to the fact that there should be a comma after the word "conviction" so that if you see fit to adopt this amendment the language will properly flow within the section. I am pleased that Mr. Burson was able to make the changes he did in the present section to the extent of changing the manner in which the committee had presented it. I do not disagree with Mr. Burson when he said the committee had gone too far. I do support to you that anytime that a person is to be charged with a serious crime that the basis of that charge should be upon an indictment by a grand jury.
Mr. Rogers: Delegate Gravel, I find it somewhat strange to you, that those who are proposing to expand the mandatory grand jury provisions are the very ones who had been at the mike for two days saying that they don't believe in the integrity of the grand jury system, that they've often said at least on three occasions that I've heard, that the grand jury is nothing more than a tool of the hand-maiden of the district attorney, do, what kind of game is this?

Mr. Gravel: I really don't know that I can answer that question, Mr. Rogers, but I do think that we're talking about a grand jury which constituted in every instance a fair cross-section of the community, and that body should be in a position to work with the district attorney in the investigative power that we've given him before crimes of great magnitude can be visited upon the people of the state, or upon the people of the district in which the district attorney is involved. After all, any two or three people that wanted to ask questions in advance of Mr. Burson, who I did like to respond to all.

Mr. Burson: Mr. Gravel, would you agree that even if we left the constitutional minimum at capital crimes, that would be the prerogative of the legislature to determine and specify other crimes at its will.

Mr. Gravel: That's possible, but since 1912 they haven't done it, Mr Burson.

Mr. Burson: But, you would agree that they could do it by statute.

Mr. Gravel: I would agree that there is that possibility. We, unless there is some prohibition in this constitution which I don't think exists at this point.

Mr. Conroy: Mr. Gravel, in your amendment it states at five years. A fair reading of that, would you say that twenty-five years was possible, and more than twenty-five years.

Mr. Gravel: No, sir, I think twenty-five years. Mr. Conroy, it was twenty-five years.

Mr. Conroy: Mr. Gravel, it was twenty-five years, you know, Mr. Gravel, it was twenty-five years.
Amendment

Mr. Poynter Mr. Duval is going to go with his amendments here.

They read as follows: Amendment No. 1, page 4, line 25, immediately after the word and punctuation "jury," and before the word "no" insert the following: "no person shall be directed the right to a preliminary examination unless previously indicted by a grand jury." He has no further amendments deleting anything. That's just an additional sentence there.

Explaination

Mr. Duval I'd like to point out that this amendment does not delete any amendment that's been previously adopted. It merely adds to the section. I'd like to explain this very carefully as I think it's important. When Mr. Burson first made his remarks, there was some discussion about a preliminary examination. Perhaps, all of you do not know what a preliminary examination is. An indictment...the purpose of a grand jury is to determine if there's probable cause to believe a person is arrested and a bill of information is filed against him, he can be held in custody without probable cause as to his...whether or not he should be incarcerated ever determined. Right now, under the present law, when a bill of information is filed your absolute right to a preliminary examination becomes discretionary. I think that is wrong. I think your right to a preliminary examination should always be absolute unless there has been a determination of probable cause by a grand jury. I think, as a matter of fact, I feel like a preliminary examination is a better form than a grand jury proceeding because in many instances a grand jury is merely a rubber stamp of the district attorney whereas in a preliminary examination you have a judge. As it now stands you don't even get a preliminary examination in many parishes if a bill of information has been filed. That means that the D.A. merely files a bill...your right to a preliminary examination becomes mitigated. I think the purpose of this amendment is to guarantee your right of a preliminary examination, have it not be discretionary unless there's been a grand jury indictment. I think it's beneficial. I think it's what's intended and I move for its adoption.

Questions

Mr. Burson Mr. Duval, I have two questions. Really, I agree with you as far as the desirability of a preliminary examination goes, but don't you think that this language would fit right well into an amendment to Article 296 of the code of criminal procedure?

Mr. Duval It might fit there, but I think if we're going into this thing as we are, I think we ought to make it clear here in the constitution.

Mr. Burson Do you know of any other state constitution that has such a guarantee in it?

Mr. Duval I have absolutely no idea.

Mr. Derbes Mr. Duval, I've just been arrested for disturbing the peace and I'm about to be arraigned in municipal court where the fine is ten dollars. According to your amendment, I'm entitled to a preliminary examination. Is that correct?

Mr. Duval Yes, and I wish you'd try to keep order a little more, Mr. Derbes.

Mr. Derbes And I've just been arrested for the crime of driving while intoxicated. Now, I'm entitled to a preliminary examination in that.

Mr. Duval Yes, and as you know, if that's your third time you can go to jail for a good many years on that, Mr. Derbes. You might well want that preliminary examination.

Mr. Derbes So in all minor offenses and all petty misdemeanors in all city courts as well as state courts even though imprisonment may not necessarily be mandatory and even though imprisonment may be considered less than six months. I would still be entitled to a preliminary examination based on your amendment. Is that correct?

Mr. Duval That is correct, yes sir. If you want it you can have it.

Mr. Lanier Mr. Duval, at a preliminary examination to establish probable cause, doesn't the state and the defendant both have the right to subpoena witnesses and present their evidence with reference to the case?

Mr. Duval That is right. One reason about this amendment is I hope it's going to substitute for Section 14. I don't think we'll need Section 14 if we adopt my amendment.

Mr. Lanier But, if you do this and a determination of probable cause is made, then you still have to go back and do this all over again for the trial of the case, don't you?

Mr. Duval That's right, Mr. Lanier, but right now you have an absolute right...if people were informed of their rights, and Mr. Derbes and you know this, they have an absolute right to a preliminary examination immediately upon arrest. But most of them don't know what the heck they're doing and don't ask for it, and the D.A. slips his bill of information in there and it becomes probable cause. You well know that right is absolute. As a matter of fact, under the law, until such time as the information is filed.

Mr. Lanier Let me ask you this, Mr. Duval, if the judge determines there is no probable cause, it does not dismiss the charge, does it?

Mr. Duval No, sir. It doesn't dismiss the charge but the D.A. sure sees the handwriting on the wall, I imagine...and also, the man is not incarcerated.

Mr. Lanier He can go ahead and have the trial, can't he?

Mr. Duval Oh, he can do it, if he so wishes.

Mr. Lanier That would mean in every speeding case, or no driver's license, or fishing without a license, in all of these cases, you'd have to try each one of these things two times, is that right?

Mr. Duval You wouldn't have to try it two times. As you well know, Mr. Lanier, a preliminary examination is not a full trial on the merits, by a long shot. All you have to determine is probable cause, moreover, as you well know, every person arrested has the right to be advised of his right to a preliminary examination. Now, he just isn't.

Mr. Pugh Mr. Duval, incidentally I'm for your amendment, not for the purpose of knocking out the section, but I am for your amendment. I want to ask you if, in your opinion, this will prevent what happens so often...is that when a man asks for a preliminary injunction...I mean a preliminary examination, the D.A. rushes in and gets a grand jury indictment. Now, is it your understanding of this when he asks for it, then that itself is the timing factor as to whether or not there's been an indictment?

Mr. Duval That's right.

Further Discussion

Mr. Burson Mr. Chairman, ladies and gentlemen of the convention, I hope that after we get through with the Bill of Rights that I don't have to come up here as often as I do now. I'm sure you hope that much more than I do. I would be remiss in my duties as a delegate if I failed to point out the inherent error that I think that we're making as a convention in a wholesale, wholesale revision of the code of criminal procedure in the constitution. I said yesterday that we were making nine major changes, but I believe that's up to about eleven now. I'd like to contrast what the legislation did in adopting this code of criminal procedure. A law institute committee formed of defense attorneys, district attorneys, and esteemed members of the bar studied for ten years, took testimony, had meetings, read cases, and then came up and proposed a code of criminal procedure to the legislature. The legislature adopted it in 1966. It's been amended quite a few times since then. But, we are here today, going to do in one afternoon, on floor amendments, what the legislature has not seen fit to do, yet. I submit to you, if these projects are worthwhile and I think that probably it...
It is worthwhile to provide for a preliminary examination, but we need to get down in a statute somewhere and set out the whys and the wherefores, not just set something up here when we don't know what the consequences of it are going to be, except this: that we do know that in every single case here you are adding an additional delay, you are making prosecution of criminal cases more difficult, you're making it more difficult to get these cases to trial where the guilt or innocence of the accused can and should be determined. I'd like to point out to you that if we can continue in the trend that we're going in, that those who have the avowed responsibility for enforcement of the law in this state in the same position that they find themselves in in New York State now, where in New York City last year there were 50,000 indictments committed and only a fraction able to be brought to trial. Now, if that's what you want then by all means go ahead with it. But, when you are finished, I want to assure you you're going to be looking at a total document that many, many people of good will who feel that we need a new constitution very badly will simply not be able to swallow.

[Previous questions ordered. Amendment rejected: 41-64. Motion to reconsider tabled.]

Amendment

Mr. Poynter Delegate Burson sends up amendments.

Amendment No. 1, on page 4, delete lines 23 and 24 in their entirety including all floor amendments previously adopted thereto, and insert in lieu thereof the following:

'Additional charges of capital crimes, punishable by life imprisonment, except on indictment by a grand jury.'

Explanation

Mr. Burson Mr. Chairman, ladies and gentlemen of the convention, we are not going to play any games about this amendment. I'll be frank to say that if you adopt it, you are going to set things approximately back in the same place that you did when you accepted my first amendment, because I think that life imprisonment would be included under capital crimes today. Now I think that's worth one more at it, though, because I want you delegates who are not lawyers to pay attention, please, if you have listened to anything that I have said in this convention, to show you the consequences of adopting floor amendments which change the Code of Criminal Procedure without the means that the legislature has at its disposal to study these matters.

Look, if you will, at the language of Mr. Gravel and Pugh's amendment. It says that 'you have the right to a grand jury indictment in any felony in which punishment at hard labor for twenty years or more may be imposed.' May be imposed. Now submit to you, we are going to have to know here, won't we, what the difference is between this and what the committee proposed? The committee proposed that only felonies be by hard labor which require a grand jury indictment. And I suggest to you that the change of one word from 'necessarily' to 'may' makes Mr. Gravel's amendment broader than the committee proposal because the committee proposal required a grand jury indictment only if, only if it was a felony necessarily punishable by hard labor. And Mr. Gravel's amendment requires a grand jury indictment for any in which a penalty of twenty years or more at hard labor may be imposed. And there are many crimes under our law which provide that punishment is with or without hard labor.

The committee proposal didn't include those. It included only those crimes defined in terms of necessarily punishable at hard labor. So we have included here, with one word, one word, mind you, a whole new category of crimes within this new phrase that is a drastic change in our present law.

Now ladies and gentlemen, I ask you in all sincerity, is this what you want to do? I don't think so, and I don't blame in any sense of the word, the proponents of this amendment I understand their philosophical position. I respect it. And under different situations, if we were talking about working out some kind of a statute I think something could be worked out in this area. But I submit to you that this offhand fashion is not the way to do it. It simply isn't in the way we can do it. Let's do it the right way that that Code of Criminal Procedure was adopted after due and deliberate study of the consequences of what we do. Let's not do that kind of thing by a floor amendment. Let's not give newfound delays, newfound so-called rights which have nothing to do with the guilt or innocence of the accused. How can people get up here and keep talking about the grand jury as the rubber stamp of the D.A. and then raise so much cane (calm) about requiring a grand jury indictment for everything, where is the logic in that position? I don't follow that argument. It just doesn't add up.

And I'm requesting to you, urgently, that you realize that unless we know the penalty for each and every crime at the present time, when we put twenty years or ten years or fifty years in the constitution, we don't know what we are including. We don't know what we are leaving out. You may get home and have one of your constituents say, 'Well, you mean to tell me that before, the district attorney used to be able to prosecute a simple rape by a Bill of Information, and now you are going to require him to go through a grand jury hearing? I'm surprised at you. You say, 'Well, I didn't know I did that.' But you are doing it when you adopt this kind of language without realizing the consequences. This is properly statutory material.

For goodness sakes, let's quit legislating in this constitutional convention in the area of criminal law when we don't know the consequences of what we are doing. I'll answer any questions.

Questions

Mr. Pugh Can you give me the crimes now that would be applicable in the event that the people saw fit to vote against your amendment and leave the so-called Gravel and Pugh amendment standing?

Mr. Burson Mr. Pugh, I had the staff prepare this memorandum which is in the hands of the delegates. I asked that it be passed out. I have not checked the accuracy of it, and I would not want to verify it one way or the other.

The only thing that I can say is it would include an enormous number of crimes that are not presently susceptible to the requirement of a grand jury indictment, this rubber stamp of the D.A.

Mr. Pugh This list that I have, which I assume is the same that you had prepared, has twelve crimes.

Do you have any reason to believe that there are more than twelve crimes that would fall under that category?

Mr. Burson Unless I actually did the research myself, I would think the staff usually does a pretty good job.

Mr. Pugh Well, now, they said aggravated kidnapping was a maximum sentence with hard labor for life, that's death under the present statute, isn't it?

Mr. Burson Yes, sir.

Mr. Pugh All right. May I ask you one other thing? Did you not say at the beginning of your argument that you thought capital crimes would have life imprisonment? Is that what you said?

Mr. Burson I said that I put life imprisonment in there because I think that when the death penalty was outlawed by the U.S. Supreme Court, that the old category of capital crimes would, now, in my opinion, and I'm certainly not a U.S. Supreme Court Justice, probably include those crimes which are now punishable or would be punishable under the changes that the legislature would have to make in the law to bring the law in line with the U.S. Supreme Court decision, to life imprisonment rather than death.

Mr. Pugh Which are the four crimes right now that call for a death penalty?

Mr. Burson As far as I can recall, that would be aggravated rape, would be murder, would be aggravated kidnapping, and treason.

Mr. Pugh Thank you.

Mr. Willis Mr. Burson, we have provided in the bill that when they can call a grand jury or grand juries

Mr. Burson Yes, sir.

Mr. Willis Now, with the statistics, that you have supplied us with respect to your parish, which are somewhat the same as in my parish, and with no exemptions for grand juries except those set by the Supreme Court, and with props to
harvest and with the grand jurors in session only six months out of the year, or two grand juries per year, how long do you think it would take your office to handle the indictments under the Pugh and Gravel amendment for a six-month period?

Mr. Burson I see no practical way to handle them, at all, if you want to be frank about it. We have a very difficult time right now in trying to catch up on a tremendous backlog that we have. We have brought ninety cases to final determination in the first three months of this year....ninety felonies of the nature that would be defined here.

Mr. Willis And if you add the Gravel-Pugh type of crimes, how long will it take....could you do....could you handle the business with the...

Mr. Burson I would say, that of those cases which we brought to trial in that period, which represented a maximum effort on the part of our office, we would not have been able to bring to trial more than a third, at the most, of those crimes.

Mr. Willis Now, additionally, what would be the cost to the local government of those grand juries and the waste of time of district attorneys.

Mr. Burson Well, of course, the police jury has to pay for the cost of the grand jury, and I don't think there's any question but that the cost would be multiplied tremendously. It would have to be. The cost to the sheriff's office operation of issuing all the subpoenas. But cost is not the issue. The issue that say there should be no that, tag on justice...

All I'm asking is, let's not give the people who are responsible for the enforcement of law, something that's impossible to operate in an offhand manner with a floor amendment.

Let's let the legislature work these problems out.

I have never heard in the time that I've been concerned about those matters, any person request the district attorney's office to try fewer cases.

Mr. Willis One more question, Mr. Burson, finally. What do you think would be the humor of the grand juror who had to serve from December thirty-third, to January thirty-first, or would he be in that he had to have his business for six months? And think about what we are doing here.

Mr. Burson I would think that the humor in that case would be rather poor....

Further Discussion

Mr. Gravel Mr. Chairman and ladies and gentlemen of the convention. Mr. Burson has made a statement that I suggest to you is about as and totally wrong. The proposal by the committee would be that there be required a grand jury indictment in every felony case where it was necessary, that the offense was necessarily punishable imprisonment at hard labor. There are a lot more cases encompassed by that language...a lot, Mr. Burson. And I certainly would have thought that he would have known that than the cases that would be encompassed by the proposed amendment that this convention adopted and that Mr. Burson now seeks to have you reverse.

Just so you'll have it clearly before you what this amendment proposes to do, that is the amendment that you have already adopted is to require that the grand jury indictment in the most serious offenses, where the legislature has prescribed the most serious penalties. Those crimes, there's been no secret about it, those crimes have been listed by the staff as being twelve in number. I am going to read them out to you: Murder of the first degree, murder of the second degree, the serious sale cases involving narcotics, manslaughter, aggravated rape, simple rape, aggravated kidnapping, aggravated arson, aggravated burglary, armed robbery, abortion.

These are the cases in which a person can either be condemned to death, there are three of them, or in the other nine cases where he can be sentenced for more than two decades into the penal system under the law.

Mr. Burson is wrong when he tells you that the amendment that you've already adopted enlarges upon the committee proposal. And I would be willing, if Mr. Burson wants to accept this challenge, I would be willing for his amendment or my amendment to stand or fall on a determination by the staff of the accuracy of the statement that he just made to you in regard to the challenge, challenge that he made by the report of the staff of this convention.

I say, I don't suggest for one moment that he did...deliberately, I say that his statement was misleading to you. The proposed amendment that Mr. Pugh and I had, I think was clearly understood by each and every one of you at the conclusion of the debate and discussion on it. This is a second shot. This is the kind of situation that Mr. Burson is employing now that Mr. Chapman referred to the old adage that kind of a case where people just won't give up.

Ladies and gentlemen of the convention, I implore you, don't undo something that has been done for the benefit of people who have been charged with the serious offenses defined by the legislature of this state. Keep in mind what I told you before, that if this constitution is adopted, the district attorneys are going to be the single, most powerful people within their respective districts, and it should not be. Let's have between that power, a fair cross-section of the community of the people of the district in those instances where man, as a consequence of a criminal accusation can lose his life or his liberty for more than two decades.

Further Discussion

Mr. Gauthier Mr. Chairman, ladies and gentlemen of the delegation, I rise in support of the Burson amendment. I'm sorry. I rise in support of the Burson amendment and let me point out why....It was mentioned earlier that in a number of offenses, a grand jury indictment would now be required and this is good and fine with some exceptions. Presently, which Mr. Gravel forgot to mention, possession of marihuana on the third offense, for instance, carries it to zero to twenty years which would mean under the Gravel amendment, possession of the third offense, would require a grand jury indictment. I oppose this. Why? Why? Harmon Drew made a good point that a lot of people missed.

As a defense attorney, I feel that going before a jury with a grand jury indictment hanging on to my client, it produces a serious disadvantage. I would rather that he been charged with a Bill of Information.

I further reason that Mr. Willis pointed out adequately you're going to need full-time juries in a number of parishes to cope with the drug problem which many of them carry life, or one in thirty years, one of the Gravel type of crimes who all now have to get grand jury indictments. The workload of a grand jury would triple. It just is...I don't think it's reasonable, I don't think it's practical.

Now, if I understand Mr. Gravel right, he contends that we are providing for those crimes that the legislature feel are of a necessity serious enough for a grand jury indictment. Let me make this point. Some years ago, a couple of years back, the judges were having a hard time contending with marihuana on a first offense. They approached the legislature and said, 'The penalties are too harsh. Lower the penalties so that we can deal with this problem.' The legislature did so, and what happened, the wrath the people fell upon and they had criticism, they were criticized publicly, they were criticized at the ballot by independent legislators who have told me they will not again lower penalties, but rather, would raise them, would raise them.

Therefore, you put them in a bind, and I say to Mr. Gravel, that if you want to isolate these serious crimes, then we are going about it in a backwards way. It seems to me that we are not being reasonable when we require that a third offense of marihuana go to a grand jury. It's just not reasonable, and I beg of you, think of the expense, think of the cost, and also, a lot of defense attorneys feel that we would rather go before a jury with a Bill of Information rather than a grand jury indictment. We don't think it's just the defense arguing one way. I beg of you, consider the Burson amendment carefully, and I ask you to support it. Thank you.

[Previous Question ordered.]

Closing

Mr. Burson Mr. Chairman, ladies and gentlemen of the convention, when Mr. Gravel said that I was absolutely and totally, that he did not think that I was intentionally lying. I may mislead you unintentionally from ignorance on my part. But I promise you that anything that I tell you from these serious offenses is either true or I sure think it's true or I wouldn't say it.

I want to point out to you that the cases embraced in my amendment that would require grand jury indictments under the present law, would require, for example, attempted kidnapping, certain narcotic sales, treason, and abortion and
any other crimes that the legislature later decided to define in terms of a death penalty or life imprisonment. That should be clearly understood. Now, that gets us to a problem that I've probably not discussed enough, that Mr. Poynter brought out.

When you used that simple term, "grand jury, don't forget you are talking about the requirement that people be confronted to enable them to defend their constituencies to the grand jury. You have people going to be your constituents. They are going to have to be paid for by your grand jury. Now, we've got a devil of a time, a serious problem right here in trying to get a petit jury venire for petit jury service intact. It's commonplace at home for us to draw a petit jury venire for criminal jury term where we'll have a hundred names and wind up in court with all but fifty excluded for reasons, one, two, three, or the other. Now what in the world, if we have that hard a time getting people to sit for a week, may be, or maybe a day to hear a criminal jury case, are we going to do when you're going to give us the problem of having to have four or five grand juries in session in some large parishes like Jefferson, at least three in my parish? Where are we going to find the people to sit on these grand juries for six months at a time? This is the kind of practical problem that epitomizes the difficulties that you get into when you try to legislate in a constitution this big. It is not to imply you, think of these practical things. Just because something is practical doesn't mean that it's inherently of less value or less weight than a philosophical ideal.

I don't know that local problems are going to be there regardless. We can't wish them away. Now all this talk about the D.A.'s being the most powerful people in the... if the constitution is adopted, the language we've got in there about the district attorneys is a watered down language that was in the statute prior to this time. And as far as I am concerned, the only reason we had to put it in the constitution is because we had a determined move on by the attorney general of the state to usurp powers that have traditionally been those of the local district attorney. And the basis is that we thought that battle was purely and simply that I I think that the administration of criminal justice should be kept as a local matter and not a matter of centralized control, because that created the greatest danger of a police state that you could have. Now I don't quite know whether that's an illiberal argument or not, but I still think it's valid. The point is, don't decide an issue like this, for goodness sakes, on whether or not you like the D.A., you like me, you may be aggravated to death by me by this time. You've heard from me far more often that you would like to have heard. But don't dismiss the validity of the arguments that I have made because of that because these arguments are less practical arguments. They would present an insurmountable barrier to the administration of criminal justice at this stage of our development. And I ask you just as a question to yourself or to your constituents, did you hear anybody in your district say that they wanted less efficient and effective system of Criminal Justice? When did you hear anybody say that they wanted fewer criminal cases to come into court? And if you did, that means vote the way that your constituents want. But I doubt that many of you heard that.

[Record Readings]

Mr. Lennox: Mr. Chairman and fellow delegates, for those of you who feel the convention has made little progress in recent days, I am pleased to announce that there are at least two exceptions to that conclusion. The chairman has announced earlier in the day that more complete report will be made this evening. I am pleased to announce that we will have the legislative Budget Committee with his pipe wrench in his hand.

Secondly, our coffee boys have, since July 5 been supplied with sugar grown in Hawaii and refined in California. I know of no better way to keep men from sleeping because we immediately brought the weight of his position to bear on those responsible for the water and an immediate improvement was noted. We now have a sweet sugar grown in Utah and refined in Missouri. Mr. Mamie and Mr. Tim and I are very hopeful that someday we might enjoy that delicacy known as Louisiana cane sugar, grown in Louisiana, refined in Iowa, using Louisiana pride, paying Louisiana taxes. Thank you.

Reading of the Section

Mr. Poynter: Grand Jury Proceedings, Section 4, at all stages of the grand jury proceedings, after arrest, the accused, if permitted to do so, shall be entitled to the advice of counsel while testifying to compulsory or informal process for presenting witnesses to the grand jury for interrogation, and to the transmitted testimony of any witnesses appearing before the grand jury in his case.

Explanations

Mr. Roy: Ladies and gentlemen of the convention, Mr. Chairman, this section may be even too late to think about, because we felt that if we were going to continue with grand juries, we wanted to make the grand jury more independent of the judiciary and the district attorney and even again bring it to that status that it once held and originated as a bulwark against crimes charged by the Crown against citizens.

Now, before I get into it, I have... I am somewhat concerned because even with Mr. Duvall's amendment for a preliminary examination that I thought everybody did on a grand and assistant district attorney in here wanted, you, in your wisdom, voted it down.

The present grand jury system is nothing more than an extension of the arm of the district attorney which I have with me Law Review articles that make up this entire file by scholars all over the United States, gotten by the staff, criticizing the present grand jury system. What our section seeks to do, if you will only read it, and if you will not be influenced by this district attorney paper that was put out, page 2 of it, and just read and think about what we have said and you will see that we do not violate the secrecy of the grand jury in any way, shape or form as is suggested in the first paragraph of the second page of their article. We do not violate it with respect to allowing a transcript of the testimony to be disseminated to the other party because, as a matter of fact, once the district attorney's office chooses to transcribe the records, then the secrecy of the grand jury, of course, is out of the window since the D.A.'s secretary is actually doing the transcribing.

But that's just nit-picking. What we seek to do are three things... I'll yield to your questions, Mr. Lanier. As soon as we have finished, I'm anxious to answer yours. The first thing that we do is, if the grand jury permits a person who is going to be charged with one of the crimes for which you have now been accused, in your opinion, if necessary, then that person may have his attorney present in the room while he is testifying. Now notice it says, "If permitted to testify, on time 3." The grand jury doesn't want to hear me and they are thinking about indicting me, I have no right to testify before them. If they do, my attorney may be in the grand jury room with me. Now, we already passed that any witness may have his attorney with him, so I think it would seem to me that the prospective accused should certainly have his attorney in the grand jury room. It merely obviates the necessity of the attorney sitting outside of the grand jury room who can neither question nor ask any witnesses about anything, it obviates the accused having to get up out of his chair when asked the question, go outside, ask his attorney should I answer "yes" or "no," come back in, or no he answers you. It eliminates a mechanical step. That's all it does.

The compulsory process of presenting witnesses to the grand jury for interrogation, you will notice the grand jury still has the absolute right to refuse to hear these witnesses. It only allows some poor Joe Blow who doesn't have any str, anybody, why the D.A. who can't get the witness involved in this matter, involved, it merely allows him to subpoena and the people and have them appear. You know some people may not want to appear as a witness at all, will even though they know they may not want to go. It allows them to subpoena them and get them there. Now in my judgment, a fair-minded grand jury of citizens would hear the witness even though they don't have to. I just have been thinking that if this section would allow a witness to testify if he comes to testify about a particular matter, at least if for nothing else more than out of curiosity.
The third thing that we allow is that if the district attorney chooses to transcribe the testimony of any witness in a case at the time he does, he must submit it to the person who is indicted. Now, let me tell you how that works as a practical matter. The D.A. doesn't have to transcribe the testimony of the witnesses. In fact, it's so, this provision is fixed so that the D.A. can selectively choose which witnesses' testimony he will get transcribed and at that time he would have to give it to the defendant. We think that's only fair. It does not allow the defendant to get the testimony of any witness that the district attorney has subpoenaed before the grand jury, only those the D.A. transcribes. You have to understand that in a grand jury hearing or proceeding, the district attorney does the questioning of all the witnesses. He sits in there and questions, or his assistant does. A recording is usually made. That recording can be listened to by the district attorney or his assistant at any time to which the defendant or the accused has no right. But, if the district attorney chooses to transcribe, then that means in common, ordinary English, taken from the written word and put down in print, then the individual accused or indicted is entitled to a copy of it. I'll yield to any questions.

Questions

Mr. Champagne Mr. Roy, would you agree that most of the delegates here are pretty independent people?

Mr. Roy Most, probably, yes, sir.

Mr. Champagne Mr. Roy, do you know that having served on the grand jury, every time you and some of your other people get up here and say that the grand jury is a tool of the district attorney that you aggravate me seriously?

Mr. Roy I don't know if I aggravate you, Mr. Champagne, and maybe you weren't one of the tools, but I'm telling you and everybody knows whoever has written about it, that the grand jury is an investigative arm usually of the district attorney's office in most cases, not in all.

Mr. Champagne Mr. Roy, I'm only suggesting that possibly one of the reasons, or do you know, that possibly one of the reasons you are having so much trouble with your legislation in this constitution is that you are rubbing people the wrong way, Mr. Roy.

Mr. Roy Mr. Champagne, if any delegate has come here and is going to engage in personalities rather than principles, then there is nothing I can do about it, and I hope you are not one of them.

Mr. Lanier Mr. Roy, are you familiar with the principles that are set forth in Article 434 of the Code of Criminal Procedure dealing with secrecy of the grand jury meetings?

Mr. Roy Yes, sir, Mr. Lanier. I'm familiar with that.

Mr. Lanier And doesn't it state that only certain authorized persons can be in a grand jury?

Mr. Roy That's right.

Mr. Lanier And isn't one of those authorized persons the reporter who is to record and transcribe the proceedings of the grand jury?

Mr. Roy That's correct.

Mr. Lanier And isn't this reporter sworn in court to obey the secrecy of the grand jury?

Mr. Roy That's right.

Mr. Lanier Did you not state in your remarks that this was done by the D.A.'s secretary?

Mr. Roy I said, "If the D.A. chooses to have his secretary transcribe some of the stuff, or get copies and make copies of what the reporter has transcribed, it is no longer secret."

Mr. Lanier Well, Mr. Roy, if the D.A. did that, wouldn't he be in violation of these provisions of secrecy and subject to contempt as provided by Article 434?

Mr. Roy No, I don't think so, Mr. Lanier, because by the same token, if the D.A. may use that testimony in court to make sure that a witness remembers exactly how he said it before the grand jury, he is certainly disclosing it at that time.

Mrs. Zervigon I'm saying you have in here "at all stages of the grand jury proceedings after arrest", that phrase, "after arrest", modifies everything that follows it.

Mr. Roy That's correct, I'm glad you brought that out. Which means that if they want to be investigating me right now for Mafia influence or whatever they want to, they can be doing it and I am not entitled to anything.

Mrs. Zervigon Well, would you inform the delegates that if we adopt this and do not reconsider the grand jury section in the judiciary section, exactly what sorts of procedures we'll have. It's confusing to me what rights you would have in an investigatory procedure as opposed to which rights you'd have only after arrest.

Mr. Roy Well, Mary, I'm catching some of your language and missing others and it's a....

Mrs. Zervigon Well, as I understand it, what we adopted in the grand jury section of the judiciary article, applies to all the grand jury hearings? Is that correct?

Mr. Roy Mr. Tapper's amendment? Yes, I understood it did.

Mrs. Zervigon Well, I think we could vote on this and feel a little bit more informed if you would describe to us what we'd have if we adopted this section considering what we already have in the judiciary section.

Mr. Avant Mr. Roy, this is neither a friendly nor an unfriendly question. I'm simply seeking information.

The words, "if permitted to testify", in this section, are they intended to apply to three of the rights that you give the accused, or only the right to have counsel present. It's not clear to me the way it's drawn.

Mr. Roy I'm permitted to apply to all three. That is, if you're talking about does the witness...do you have the absolute right to have a witness in the grand jury room? You do not. Only if the grand jury chooses to hear your witness.

Mr. Avant Well, that's what bugs me, it says....

Mr. Roy If permitted to testify refers to the accused, that you have the right to counsel with you.

Mr. Avant Well, now, let's look at the accused, is not permitted to testify, he has no absolute right to testify.

Mr. Roy That's right, he has none.

Mr. Avant So, the grand jury says, "we don't want to hear the accused." Does he then have the right to compel other witnesses to appear and testify?

Mr. Roy Yes, sir, he would have the right to compel witnesses by compulsory...by subpoena to appear there and at least tell the D.A. unless they are going to be charged with aggravated.....with armed robbery, I've got three witnesses here, I wish you'd make it known to the grand jury. The foreman can say "we don't want to hear your witnesses, they can go back home." That's it. But, he has the right to get them there by judicial process.

Some witnesses may not go on their own, you know, Mr. Avant.

Mr. Avant I understand. And then the right to the transcribed testimony of any witness is an absolute right, it's not dependent upon whether the accused has testified or not.

Mr. Roy That's correct. If the D.A. chooses to transcribe it, he gives a copy.

Mr. Derbes Mr. Roy, it seems to me that a lot of "accused"
are required to appear before grand juries although they are not, necessarily, arrested. Isn't that correct?

Mr. Roy No. What we try to .

Mr. Derbes well a minute...wait a minute...at all stages of the grand jury proceedings, after arrest, the accused, if permitted...what about all those people who are indeed a subject of a grand jury investigation and who are indeed in danger of being deprived of their rights who are not necessarily arrested?

Mr. Roy That,...we knew we could not deal with that, Jim. I wish we could have, but we couldn't because we knew the convention wouldn't go along with it because that would impair the secrecy of the grand jury if they had to let people know whom they were investigated.

But once you've been arrested for the crime of, let's say, armed robbery, as we now have just...amended our section, then you would be that "accused" who would be permitted to testify and have the right to counsel if the grand jury heard you.

Amendment

Mr. Hardin [Assistant Clerk]. Mr. Arnette sends up the following amendment: 1. Amend Sec. 34, line 4, delete lines 29 through 32 in their entirety. On page 5, delete lines 1 through 3 in their entirety.

Explanation

Mr. Arnette Well, this just seems to be in the nature of a technical amendment, though actually, it is fairly technical in nature when you listen to the explanation. It deletes the entire section, but let me explain to you why I thought it was wise to delete this section.

The first clause which gives the accused the right to have his attorney present in the grand jury room while he is being questioned, has already been solved by Section 37 of the Judiciary Article which we already adopted which says, "Anyone testifying in such proceedings shall have the right to the advice of counsel while testifying." So there is no need, whatsoever, to put this in this article since we have already taken care of it and gone even farther than that in a preceding article.

Now the last clause has to do with the transcribed testimony of any witness saying the accused has a right to this, well, we have already adopted in the same Section 37 of the Judiciary Article, an exact opposite, exactly opposite point of view which stated, The secrecy of the proceedings, including even the identity of the witnesses, shall be provided for by law. So, we have already decided this once in this convention. We've reconsidered, laid it on the table. Let's not dig up old things.

Now the only other thing that appears in this particular section that could have any meaning at all is saying that the accused would have a right to compulsory process for presenting witnesses to the grand jury. Well, it's my understanding of the way the grand jury works is that the person who does the questioning is the district attorney or his assistant. No other person may do any questioning which means his counsel could not ask him questions to present a case in the grand jury or something of this sort. If the district attorney just simply chose not to ask him any pertinent questions, he would not have to. So there would be no reason to have this particular person there, so it's an empty right at best.

So, therefore, I don't see why we need to have any of this section in there, whatsoever.

Questions

Mr. Arnette, do you believe that the judicial article provision, that secrecy shall prevail, would apply to the accused, also? In other words, this particular provision states that the accused shall have a right to the testimony, and as I read that, I got the impression that yes, everything would remain secret, but the accused, himself, probably through his attorney, would be entitled to a transcript of proceedings — and you are making a major point of the fact that this is in direct conflict. I don't see the conflict. I would explain a little bit more, why there is a conflict between the two articles?

Mr. Arnette Well, the reason I think it's a conflict, is that anyone who is not present while the testimony is being taken, will not know of any of that testimony.

In other words, the district attorney is present. He has a right to that testimony. He has a testimony in his possession. But no one else who is not present has a right to that testimony. And that's what we said. We wanted to protect the identity of these witnesses who are appearing before the grand jury for reasons that are obvious. Because grand jury subspea, sometimes, in cases of investigation, sheds a bad light on people. And we wanted to prevent this. But if we let certain people know what witnesses are appearing and things like this, I don't think I think we ought to decide that we didn't want anybody to have that information.

Mr. Brown Well, the thing I'm asking is, the only person allowed to get this information is the accused under this provision. Is that not correct? Only the accused, and so I'm trying to differentiate from what you are saying. I don't see the conflict. I don't see a direct conflict with the section you mentioned in the judiciary article. Only the accused will be allowed to get this information. See what I mean?

Mr. Arnette Well, all I'm saying, Senator, is that we have already decided that no one should have that information, and that's what we decided. We did not make an exception for the accused. He does not presently have a right to that information, as I understand it. And I don't see why we ought to give it to him. The whole purpose of Section 37 as we adopted it, as I understand it, was to keep even the identity, definitely the testimony, but even the identity of the witnesses secret.

Mr. Stinson Mr. Arnette, did I understand you to say that the only one that asks questions in the grand jury room was the district attorney or his assistant?

Mr. Arnette Well, the grand jury does, also.

Mr. Stinson Well what...you didn't say that, though, did you?

Mr. Arnette No, I neglected to say, Mr. Stinson.

Mr. Stinson Well, your reasoning then, would not follow through. You said that they, naturally, would not ask the defendant or his witnesses any questions....

Mr. Arnette I did not say "naturally." I said "if he so chose, he wouldn't have to," and possibly the grand jury would not be guided to ask him any questions, either.

Mr. Stinson Don't you think that a grand jury of twelve, true, impartial people not obligated to the district attorney, are going to want to hear both sides of the picture and should have that right?

Mr. Arnette They might want to, then again they might not. They are guided by the district attorney, they are guided by his assistants, they do ask questions, but it's....

Mr. Stinson Now, you don't mean they are guided by them. You mean they are advised by them.

Mr. Arnette They are advised by them. That is correct.

Mr. Pugh Mr. Arnette, are you aware of the fact that the existing...

Mr. Arnette Mr. Pugh, when you smiled at me I knew it was going to be an unfriendly question.

Mr. Pugh Ah, no, I have got two of them in fact.

Are you aware of the fact that the existing jurisprudence in the state not necessarily where there is a requirement for a transcript, but where it is transcribed that the defendant is entitled to a copy of it?

Mr. Arnette I really don't know Mr. Pugh. I am not aware of that.

Mr. Pugh Yes

One other question, Mr. Arnette, would you agree or disagree with this statement made by a Justice of the United States Supreme Court in a decision rendered on January 29, 1939, in which he was talking about the grand jury. This great institution of the

[1175]
past has long ceased to be the guardian of the people for which purpose it was created at Runnymede. Today it is but a convenient tool for the prosecution to be used solely for publicity. Any experienced prosecutor will admit that he can indict anybody at any time for almost anything before any grand jury from the United States Supreme Court.

Mr. Arnette. Mr. Pugh, I definitely agree with that. That is exactly why I think we ought to keep the testimony of the witnesses secret. We ought to keep the identity of the witnesses secret. You are speaking in favor of my amendment.

Mr. Pugh. As I understood your amendment, it was not to allow....

Mr. Arnette. It would delete anyone having a right to this information and I think what is happening is people are being crucified in the papers for things that happen at grand juries and even witnesses that have....

[Previous Question ordered. Record vote ordered. Amendment adopted: 62-49. Motion to reconsider tabled.]

Mr. Henry. Then that does away with the effect of the section.

Reading of the Section

Mr. Paynter. Section 15. Fair Trial

"Section 15. Every person charged with a crime shall be presumed innocent until proven guilty, and shall be entitled to a speedy, public, and impartial trial in the parish where the offense or an element of the offense occurred, unless venue be changed in accordance with law. No person shall be compelled to give evidence against himself. An accused shall be entitled to confront and cross-examine the witnesses against him, to compel the attendance of witnesses and to present a defense, and to take the stand in his own behalf."

Explanation

Mr. Stinson. Mr. Chairman, and fellow delegates, this is very little if any change from our present constitution. Now if any questions, I first want to at least have an opportunity to read this and briefly explain, which I did not do before. I'll answer any questions at the end of that. First, it says everybody charged with a crime shall be presumed innocent until proven guilty, and shall be entitled to a speedy, public, and impartial trial in the parish where the offense or an element of the offense occurred, unless venue be changed in accordance with law. Now certainly I don't see how there could be any objection to a statement of that type and naturally it follows to that the legislature in its wisdom will provide any additional change as to venue, as to.... It is not barring the legislature after due deliberation to change, but it is guaranteeing those elements which certainly under our form of government the individual is entitled to and that's that says "no person shall be compelled to give evidence against himself." That is in our present Constitution, it is in the United States Constitution and the jurisprudence of all courts have held that you can't be required to testify, but of course as it said later on you do have the privilege and right if you so wish. I could see how there could be no objection to that statement. An accused shall be entitled to confront and cross-examine the witnesses against him, and to compel the attendance of witnesses in his behalf to present a defense and to take the stand in his own behalf. Now I take it there are about three features there. First, on his trial naturally the state has to prove with their witnesses confronting the defendant as he is guilty and he through his counsel has the right to cross-examine those witnesses in his behalf. Certainly there could be no objection to that. Likewise to compel the attendance of witnesses. That means that any witness that the defendant wants in his behalf he has the right to go to the Clerk of Court and have them summoned to testify when the defense presents the side of the question and then to take the stand in his own behalf. As you know he cannot be called by the....

Mr. Henry. Mr. Stinson, wait just a minute let me get you a little order, please.

Mr. Stinson. He cannot be forced at the present time to testify against himself and the fact that he fails to do so cannot be commented on by the prosecuting attorney. It is a reversible error if he does. But if he does wish to testify he has the right to testify and of course be subject to a cross-examination by the District Attorney. I would like to urge the acceptance of this recommendation. It's very little change: however, it goes more into detail in some of the instances but one thing we did not go into as to the venue person in the present Constitution because it is a statutory matter and the legislature can go into detail if it feels necessary in that instance.

Question

Mr. Derby. Mr. Stinson, I was wondering if you and the committee wouldn't voluntarily remove the language "take the stand" and put in the word "testify" which seems to me accomplishes the purpose....

Mr. Stinson. No, sir, I think that does the purpose. There is a witness stand and there is no other stand that he could possibly get on except the witness stand.

[Point of Order - Motion for Previous Question on the Section.]

Mr. Gravel. Mr. Chairman, I would like to object. I have... I didn't know we were going to move that fast. I have an amendment.

Mr. Henry. But Mr. Gravel these are the same things that we have been going over and over already.

Mr. Gravel. No, sir. Not my amendment, it is not.

Mr. Henry. Well it looked like it to me. Now the convention has spoken on this don't you think Mr. Gravel in all honesty?

Mr. Gravel. Are you talking about the amendments about furnishing statements to the defendants?

Mr. Henry. Well in effect the convention has spoken on that don't you think?

Mr. Gravel. Absolutely not. Has not.

Mr. Henry. All right.

Mr. Gravel. We are talking about the amendment that reads....

Mr. Henry. prior to his trial....

Mr. Gravel. No, sir the convention has not spoken on that, Mr. Chairman.

Amendment

Mr. Paynter. Amendment sent up by Delegate Gravel as follows: Amendment No. 1. On page 5, line 13, at the end of the line, add the following: "Prior to his trial, every defendant shall be furnished with the transcribed testimony or statement, for or against him, of any witnesses appearing before any official or employee of the state or any of its political subdivisions or any grand jury which participated in any investigation of the case for which he is being prosecuted."
Mr. Gravel. Mr. Chairman, if I am correct I would like to address the question of the amendment that has come up, that I have brought to the floor. I think that the amendment that was presented by Mr. Arnette deleted all of Section 14.

Mr. Henry. That is correct.

Mr. Gravel. Then I think that technically this instruction of the amendment that I have brought to the floor would be to come to the end of Section 14 would have to now be technically changed so that it would be Section 14.

Mr. Henry. Mr. Gravel, we are on Section 15.

Mr. Gravel. Oh, beg your pardon. I beg you pardon. I am in error. I beg your pardon.

Mr. Henry. You are just creating another paragraph aren’t you?

Mr. Gravel. That is correct, yes sir.

Mr. Henry. All right. So it will be in Section 15.

Point of Order

Mr. Burson. To raise a point of order, Mr. Chairman, I think that we have adopted a rule which requires that amendments be germane to the section under consideration. Am I correct or incorrect in the view of the Chair that the amendment which is proposed would have been germane to Section 14 which we just threw out and in its entirety since it concerns exactly the same subject matter?

Mr. Henry. It is a germane amendment Mr. Burson because it has to do with the parish…you could say it has to do with the fair trial so I would rule it…it is germane.

Explanations

Mr. Gravel. Mr. Chairman, first of all let me say this that when the Chair suggested that this matter had been covered by previous amendments I stated that that was not correct and I want to respectfully request that the Chair correct that. This is not a new matter as I hope it has been distributed, does everyone have a copy of it? This proposed amendment has not been covered by this Convention nor has it been discussed at all. Although I must confess that there may be some things that we have touched upon in relation to prior amendments that have been acted upon that may have some significance to the theme of this proposed amendment. I won’t yield until I get through Mr. Chairman. Now I can’t understand really Mr. Burson’s suggestion or that this is not germane because I respectfully submit to this entire convention that this amendment goes to the very heart of the concept of a fair trial. I wonder if those of you who are interested in listening to what I have to say would stop and realize at this particular point where we have left a person charged with a crime under a so-called Bill of Rights where does that person stand at this moment in our deliberations at this period of our achievement. He has no right. He has not yet been accorded any right that is in anyway meaningful to him. You have taken away his right to ask that witness to come before the grand jury that might indict him, what right and I ask you to think of this, what right have you given to the potential defendant under the Bill of Rights that gives him any intimation or protection or right of any kind and I submit none. The heading of this section is a Fair Trial. Now I hope this is not a trivial matter at a consequence of an amendment that is a bill of information which has been the result of a full scale investigation by trained law enforcement officials throughout the state of Louisiana. Most indictments, most bills of information come to the defendant a complete and total violation of all of them hear that it is possible when any read about it in the newpaper. A great deal of work has been done by the senate in order to get to that point and yet the defendant or the potential defendant just then and there start from scratch. All that I am asking you to consider in this amendment is to give me very carefully and then I want you to reject your conscience and see if you can vote against it. All I am asking you to consider is the potential defendant who has got to go to trial now this amendment takes into consideration nobody else but one who is charged and must stand trial. It says constitutionally they have to go to trial then you are entitled to the statement both for and against you of those witnesses that were interrogated by the professional enforcement arms of state government by the formal oral inquiry that have been impaneled and you are entitled to know what those witnesses said for and against you. Does that right comport ladies and gentlemen of this convention with the concept of a fair trial? Or is it right to say that the district attorney can retain within his record and within his information that might be helpful to the defendant but nobody under the sun knows about it except the district attorney? What this amendment would propose of that would do would say that Stagg said you must treat a defendant who is going to be tried and who is going to possibly suffer all as consequence of that trial you must treat him fairly and let him know that is good and had his case in the files of the state. Now that’s what this amendment proposes to do. Keep in mind, keep in mind that this section, Mr. Burson, deal with.

You know a lot of the delegates have got up like Mr. Stagg and Mr. Burson and many others and have told you about the cases that they have and how this consequence flowed from this action or that consequence flowed from some other action. Yes, and you too Mr. Lanier to some extend I think, that I think but let me tell you about a case that was handled by the president…present president of the District Attorney’s Association, Mr. Magoulides, Mr. Ed Ware. Let me tell you about a case Mr. Stagg who appears to be absent that I have defended, where a colored man was charged with the aggravated rape of a white girl, was tried and sentenced to death and for seven years, not six we fought that case and asserted that man’s rights throughout the state and defendant courts and let me tell you that in that seventh year, in that seventh year when he had been granted a new trial by the federal courts because the courts of Louisiana did not accord constitutional rights, Justice Tate. When time came to consider whether he was going to be tried again for his life, a new district attorney of the parish he was a sworn affidavit, sworn affidavit by the prosecution’s witness that had testified at the first trial that she could not under any circumstances identify her assailant whom she had identified upon the trial that resulted in his conviction and in the imposition of the death penalty and let me say in fairness to that district attorney, he had the courage to…after finding the false basis for the prosecution to walk straight forward into the courtroom in Rapides Parish and dismiss the charge and set that man free. I think of this, how many times do you think it happens that an investigator working off trial for the prosecution gets a statement from somebody who know something about that offense that incriminatory and helpful to the defendant? Many times and you know it, but how many times does that information surfeit. I have tried and I have handled at any criminal cases as I suppose as almost anybody here. Never yet, never yet not the time have I gotten from the lips any incriminatory or helpful to the benefit of the defendant. Ladies and gentlemen of this convention, read this amendment carefully, it hasn’t been covered before. I hope you have read it, don’t listen in anybody tell you that this is going to bring the courts back to the point it is going to cost the parish a lot of money listen to your heart and your conscience and say if you
don't believe that it is right for us to say in this constitution that a person who has not been convicted in trial should be entitled to the written, transcribed statements of those witnesses who in the course of investigation said something for him or against him. Just keep looking at this amendment and see whether in your heart you can't comport this concept with the idea of the title of this section "Fair Trial." Thank you very much.

Questions

Mr. Burson  Mr. Gravel, would you agree that up until now while we may not have given the defendant any new rights other than this new right to counsel while testifying before the grand jury that we have not taken away a single right that he has under the present law?

Mr. Gravel  I don't think that I could truthfully say that we have taken away any constitutional right spelled out in the adequate [antiquated] Constitution of 1921 but we have not accorded to him Mr. Burson the rights to which he is entitled under an enlightened modern society.

Mr. Sandoz  Mr. Gravel, could you tell me the names of any states which have a similar provision in their Bill of Rights?

Mr. Gravel  I don't know of any although there may be some.

Mr. Sandoz  Now don't you think Mr. Gravel that...

Mr. Gravel  Let me just say this. There may be some states that have it. Actually this concept of course is one that very well would fit in any state's Bill of Rights.

Mr. Sandoz  But you do not know of any that have this as a precedent at this time?

Mr. Gravel  I didn't take it from any other state.

Mr. Sandoz  All right. Now my next question sir is this: Could not this be well taken care of in a legislative act?

Mr. Gravel  It could be taken care of but it could not be safeguarded Mr. Sandoz.

Mr. Sandoz  Isn't this really statutory material, Mr. Gravel?

Mr. Gravel  No, sir, it is not. This is a right to a fair trial. I can't think of anything that somehow properly belongs in the constitution and particularly in this constitution than this particular provision.

Mr. Derbes  Mr. Gravel, wouldn't this amendment require production by the state of virtually all police reports?

Mr. Gravel  It would require the production of police reports or statements of witnesses that police reports were statements of witnesses that had any information about the offense for which this man was being tried either for him or against him. It would require it. In my judgment sir, it should be required.

Mr. Derbes  In other words if the police reports were for example a summary of observations made by the police officers in the investigation of the offense. It would require production of that would it not?

Mr. Gravel  If it was a statement of a witness, I don't think ....

Mr. Derbes  A police officer can also be a witness.

Mr. Gravel  Well I don't think he can be a witness to hearsay testimony. It would depend on the nature of the statement.

Mr. Derbes  He could be a witness in direct evidence and in direct support of the conviction and wouldn't it also require if in the police report any summaries of witnesses' statements were made in other words, "I, police officer spoke to Deshotels and Deshotels said, Gravel was seen on the corner of Tulane and Broad doing something." It would require production of that as well.

Mr. Gravel  No question about it in my judgment. In other words if there was anything from a police officer who was a witness at the trial or a witness in any respect it would have to be produced and Mr. Derbes, my point so there will be no misunderstanding is that it should be produced.

Mr. Lanier  Mr. Gravel, is my understanding of the Fifth Amendment of the United States Constitution correct that this type of information could not be ordered produced from a defendant?

Mr. Gravel  What, this particular....

Mr. Lanier  This type of information, the statements in his files of the witnesses that he has from a defendant?

Mr. Gravel  It would depend on the nature of the statement. This provision is for the rights of the defendant and would have nothing to do with what he would have to do.

Mr. Lanier  No, but I mean the state could not get this type of information from the defendant just the defendant could get this type of information from the state, is that correct?

Mr. Gravel  Well we are getting into something entirely different and I am sure you are sure of it. You know it.

Mr. Lanier  I think we are talking....

Mr. Gravel  Wait a minute let me answer your question. If we are talking about getting from the defendant self-incriminating statements that in my judgment would be barred by the Fifth Amendment to the Constitution.

Mr. Lanier  The state cannot discover from the defendant that is not correct?

Mr. Gravel  Not self incriminating statements that would be correct. Now it might be exculpatory statements but not self-incriminating statements.

Mr. Lanier  Can the state discover anything from the defendant or his counsel?

Mr. Gravel  Well not under our existing law.

Mr. Lanier  So that would mean that....

Mr. Gravel  Nor can....now just a minute nor can the defendant discover under existing law in a criminal case anything from the prosecution.

Mr. Lanier  In that way they go in even, right?

Mr. Gravel  Well they are not supposed to go in. They are supposed to go in with the presumption of innocence based upon you know that constitutional concept.

Mr. Lanier  But with yours then the defendant can get this information from the state.

Mr. Gravel  Obviously, Mr. Lanier. Obviously, that is what this is all about.

Mr. Stinson  Mr. Gravel, if under the present law and under yours too, if the defendant himself appears before the grand jury and he has witnesses that the district attorney summoned, the district attorney has recording of those witnesses, doesn't he?

Mr. Gravel  Would have that, yes.
Mr. Stinson: So therefore it would be fair to both parties

Mr. Gravel: No question about that.

Mr. Stinson: Now Mr. Gravel, really the person that your amendment is going to help is the man of lowly means that can't hire investigators to sit outside of the grand jury room and see what witnesses come in and the witnesses that are brought to him. And I think as a matter of fact it's the poor man that this is going to help.

Mr. Gravel: That would certainly be a by-product of it but it is not limited to that. It is the concept primarily. Mr. Stinson, would include that but mainly the concept here is that whatever is whatever is advanced by the defense, you know the evidence of testimony from witnesses that should be made available to the defendant who's going to be tried if you are going to have a fair trial.

Mr. Gravel: Yes.

Further Discussion

Mr. J. Jackson: Mr. Chairman, ladies and gentlemen of the convention, I have somewhat intentionally attempted to observe our proceedings today and because I am not familiar with the intricate proceedings of criminal injustice but more so the effects of it and some of the loopholes and I have somewhat just to take occasion of voting my convictions and asking people who shared my convictions to vote with them. But as I look at this section called the Bill of Rights, I have to somewhat agree to Mr. Gravel. I think that when we talked about the Judiciary Department and particularly when we talked about the Executive Department that we provided expanded powers in terms of protecting life, safety, and well-being of the citizens of this state through the district attorney's office.

I think when you talk about a section entitled 'Fair Trials' and the lead out sentence says that every person and I don't have it with me but to the effect it says that "every defendant is presumed innocent until proven guilty." It says to me that whether this person is criminal and you know that he committed the crime that we can not violate which is more sacred than any present grand jury system. We cannot violate the constitution and national concept that every man is presumed innocent because until proven guilty and I suggest to you that based on arguments that I have heard that we are getting away from that. I think that we are getting away and we are just presuming that if a grand jury hears a defendant or hears testimony that that person is automatically or until some presumably the degree guilty. I think Mr. E. J. Landry brought a very keen example of the kinds of possible situations when we talked about the most involved in the transcript and the availability of information to a witness, to a defendant. I suggest to you is that you strongly believe that some of the sacred basic fundamental principles even though it may at some point provide a thin line in terms of a criminal but that when you really are concerned about that sacred principle if we are talking about something that is coming into then I suggest that without the admission of Mr. Gravel's amendment that you leave that door open and that up to the point for it is what we have basically done. Now I don't know if that's being germane to the amendment but I have heard things about most involved and I suggest to you that if we are talking about the Bill of Rights Section and I stated the other day and I strongly feel this about it. I think that there ought not be any collective just as to what we have heard here is most involved in the process and I am not anti-B.A. I have supported B.A. 's. I have talked to them. I understand that we must have law and order in this country, that we must have law and order in the state but I am also cognizant of the fact of many of my constituents and many people who have caused these courts that the justice system has not been under the present constitution has not provided adequate redress that people who are falsely accused and I suggest that if things are perfectly perfect, this point in time. I think and we ought not provide, expand or attempt to tighten up the guarantees to a defendant and keep the presumption of innocence until proven guilty. Then why do we have these various state commissions on law enforcement and criminal justice? There must be some problem wrong. You are constantly having reports coming out by these various commissions throughout the United States recommending certain changes in the criminal justice system and I suggest to you that those who are very concerned about criminals being illusive from justice. I don't see and nobody has fully explained to me how that is possible. I contend again that the whole matter of trials is the matter of legal technicalities. We cannot provide for every loophole that exists and I think that if we were to not be concerned about the problems that would arise, then we had the Executive Department proposal. We have had the judiciary proposal. We are in the article that deals with the fundamental rights of every citizen and I want to suggest to you very sincerely that I am kind of afraid because when speakers get up here it is an automatic assumption and I don't know if you feel that same vibrations that I do that everybody that goes before a grand jury is guilty. I agree with Mr. Burson that as you know we sometimes get very confused when we talk about criminal And it is a defendant in criminal court. I am more inclined believe at this point that we are talking about criminal defendants rather than a defendant in court because it is being said that we are making the presumption that persons are guilty until proven innocent and that if we do anything drastically to change the present procedure, in what we are doing is allowing criminals to go free or clogging up the judicial system and I say if that's the way we feel about it then why don't we recommend in this constitution an establishment of all these state commissions and city commissions and parish commissions on law enforcement and criminal justice.

Further Discussion

Mr. Guarisco: Ladies and gentlemen of the convention, we had a chance to make some innovations in this country on the criminal justice system in particular in the criminal justice system, the 43rd Days Proceedings, September 7, 1973 amendment while it doesn't go as far as I would like it to go, it's the best we can get and I think we should pass it. I'll tell you why. On the one hand you have the state, the sheriff's office, the police department, the F.B.I., the district attorney and come what may, on the other side you have got reasonable doubt. That is all we have got. I am not a prosecutor and I am not a defense attorney although I am a lawyer. I handle very few defense counsel defense cases. In fact right now a black boy is standing trial for the attempted fire bombing of my parish home. He is a prosecutor or a defense counsel but I believe in fairness. Now what is it so horrible about allowing the defense just to go in and say, "Come on, let us see what was transcribed? Why can a district attorney hold it on it for you can't see it? This is a secret. You find out when we try the case what is so bad about it." It is a discovery Mr. Chairman, any of you think and say, "Oh, but it costs a lot of money." Money, that's a good reason to suspend the rights of an individual, or if it taken too much time, it is going to involve too many people. Then another thought I won't accept any of that. I feel that if we pass this amendment and I think we will take some contributions to the criminal justice system.
the state. That's something we can go back and say, "look, we made a change and we did something for the better." I can't for the life of me see how this is going to get somebody off. I yield to any questions.

Questions

Mr. Roy. Don't you agree, Mr. Guarisco, that the facts of a case are the facts and they can't be changed. There is nothing wrong with the presentation of facts either today or next week or the next month and that the jury will determine the case on the facts.

Mr. Guarisco. That's correct, absolutely.

Mr. Juneau. Mr. Guarisco, this troubles me greatly. The amendment says, "any statement before any official, employee of the state, or any of its political subdivisions." How in the world would a prosecutor know in time eternity where this individual would have given a statement which wouldn't have been at the direction of the grand jury and/or the prosecutor? How would he know that he's got all that information then three months up, "Look, you didn't give me all the information?" The prosecutor said, "I didn't even know about it; it was here."

Mr. Guarisco. Well, an employee of the highway department in Lafourche Parish took a statement from him.

Mr. Juneau. Mr. Guarisco, if he has it, I want him to give it. That's all.

Mr. Guarisco. He doesn't have it, Mr. Guarisco. The question is if he doesn't have it, but there is a statement, what happens under that amendment?

Mr. Juneau. He can only give what he has.

Mr. Guarisco. I don't know. No.

Mr. Juneau. You don't know? The second question that I have, Mr. Guarisco, we're providing, as I appreciate this amendment, a discovery statute for the defendant. Why... don't you think it would be appropriate then, we would put discovery statute in for the state to put it back in balance? Would you agree with that?

Mr. Guarisco. No. The state is not going to go to jail, Mr. Juneau.

Mr. Juneau. You wouldn't give the state the equal discovery rights that you would give a defendant? I'm merely asking for discovery.

Mr. Guarisco. Of course not, the state is not in the crack.

Further Discussion

Mr. Pugh. Mr. Chairman, fellow delegates, I don't want you all to get the impression I'm a criminal lawyer because I'm not. I'll only handle a criminal case if it involves due process. Now, I only rise to answer two questions that were propounded. One question was "How many states have adopted, substantively, this same provision as these?" I'll tell you that in these states, the same provisions are there: Illinois, New York, California, Pennsylvania, New Jersey, Wisconsin, Minnesota, Delaware, Arizona, Nevada, Oregon, and New Mexico.

In answering the other question, a question was "whether or not the district attorney had the right to compel any information from a defendant?" Let me tell you that the Code of Criminal Procedure has an Article No. 66. Under Article No. 66 of the Code of Criminal Procedure, the district attorney has the right to subpoena a person into his office for testimony. I am of the opinion that the man does not have to answer the questions, but coupled with that same section is one that provides that he must, under a subpoena, bring with him such documents as

may be subpoenaed. Well got an absolute requirement under the law, in my opinion, to bring those documents. So to say that the district attorney has no possible way of getting anything, say this, that the recent legislature gave the same power to the attorney general.

Questions

Mr. Keen. Mr. Pugh, the list of states that you just read off there, a substantially similar or similar provision as this, was that in the constitution of those states?

Mr. Pugh. No sir, I just said that they had the provisions. Now, I can give you every case that cites what I gave you, if you want it.

Mr. Keen. Well, I just wanted to make it clear that the list of states you referred to dealt with this problem by a statute. Is that not correct?

Mr. Pugh. No, I have read all the cases; it's been two years since I read them. I can't tell you whether they are constitutional provisions, statutes, provisions in the constitution. I can only tell you what I read. It's true. Let me say. I have a sworn statement from a witness. That witness and that fact of that statement was not known to the grand jury or to the district attorney and they, nonetheles, indicted a person and they went to trial. Would that person have a right to quash that case on the grounds he hadn't been furnished statements that the district attorney nor the grand jury even knew existed?

Mr. Pugh. Well, first of all, let me answer you by saying I did not draft Mr. Gravel's provision. I appeared here for the purpose of answering two questions that were propounded. Therefore, the district attorney may or may not have knowledge of some of these statements, and if you ask me whether that goes beyond the Jencks Act, I think it does. Incidentally, in addition to the thirteen states that I read out, the Jencks Act has been applied or has been adopted by Congress and it also provides for discovery.

Mr. Keen. I understand that. I'll get back to my point. If the district attorney had no knowledge of a statement made by a witness before an official, or employee of the state, or some political subdivision under which circumstances he did not, could not furnish that statement to an accused, would there result of that be a dismissal of the charge and by reason of the fact all such statements were not given to the accused?

Mr. Pugh. Obviously, the man, the district attorney, can't give you any more than what he's got.

Mr. Keen. Well, that's what bothers me about this amendment because it would seem to imply that he would have to give something that he doesn't have. Would you not read that into the amendment?

Further Discussion

Mr. Burson. Mr. Chairman, fellow delegates, I suppose it's no use to even bother apologizing for getting up here again. I'd like to point out a few things that might be wrong with this proposed amendment. The first thing is, it not only provides
for what was in the last sentence of Section 14 that we just voted out in its entirety, that is, that the defendant had a right to the transcribed testimony of all who testified. I would give him much further than that. In addition to the grand jury witnesses, he would now have the right to any statement, and I want to point out to you that this amendment does not change the statement have to be written: I don’t know, it could include oral statements or transcriptions of oral statements. Now, we don’t know exactly what this amendment means. We’re right back in the same place we’ve been wallowing in all afternoon. This is a statutory matter. Mr. Hugh, who is knowledgeable in this area, got up here and told us you have to have a state statute that have discovery provisions, they’ve all got in the statutes. The Jenkins Act that he referred to, which is a federal discovery statute, it’s not in the United States Constitution. Mr. Hugh told you, and I assume that he knows, that this amendment would go further than the Jenkins Act; this amendment would go further than the federal discovery statute. Now, ladies and gentlemen, is that what you want to vote for today? I ask you, is that what you want to vote for today? Let’s not be selfie up loopholes; I dream in the constitution. Mr. Gravel, I must say, was in error when he said that we had not given the defendant any rights that he didn’t have. So the defendant under the old situation assure you there is nothing in the old constitution about advising a defendant of all of his legal rights when he is detained and we adopted that provision this morning. I’m not in a position about providing for an indigent defender system; we adopted that. I supported that. I say again that if you provide an indigent right to counsel that is effective, you have done more than anything else you can do to ensure the rights of a criminal defendant. It’s possible to secure constitutional rights without the hand of law enforcement. Now, just take the transcription of grand jury testimony, don’t take my word for it. Read the last paragraph on this side and you will. Now here is an unbiased view. This is not the District Attorney’s Association. They say that the right of an accused to obtain a transcript of testimony of witnesses in his case would also hamper the grand jury by frightening away witnesses who might have some small bit of information bearing on the case, and would be intimidated by the knowledge that the communications could come available while the defense. This increases the possibility of increased danger for witnesses testifying in such a case. More is fair said, the possibility of reprisals against themselves and their families could be great. Now, ladies and gentlemen, it’s not just organized crime who hate the law, not your mayor, but next we how can an over dramatic the problems that you might be getting up here by an indiscriminate provision like this without statutory safeguards. Everybody is talking about naive that they’ve seen. I tried a single rape prosecution and the victim was a black girl who had an IQ of less than one who is mentally retarded, by the testimony of the psychologist here were ten assistant involved. They were attempting, the defendant were attempting to intimate witnesses out in the hall at the courthouse and things like this. If they would have had the statement of each and every person given to the grand jury before the case went in, it would be reasonable be think thing, let’s think a little bit before we vote. Now, all of this thing has been discussed, and through we were talking about a case, and we’re not talking about a case, we’re talking about a principle which in the end is supposed to free the innocent and convict the guilty, let’s hope.

Further Discussion

Mr. McGraw, Mr. Chairman, fellow delegates, it seems to be only a little bit of time since we discussed this. It seems to be the end of the matter in this respect. We have a lot of people who are representing the district attorneys, we have a lot of people who are representing the defendants, and I think I’ve been asked the full ticket, all of the issues that have been raised in this respect. The title of this section is for fair, it’s important that this be fair, we have been discussing the content of the matter. If we’ve been through the fingers. The guilty are never wrong and are never prosecuted. But has someone been caught, I couldn’t like that right fit of state if the man had been convicted and deprive of the two things, either his life or his happiness, by being sent to prison or being condemned to death. It’s given him a fair trial and it’s not wrong to make sure that an attorney and I can read those words and have one word to mean something else like these attorneys, I think we can bring it everything around—like if you can give somebody some information that will help prove an innocent man innocent, and if the man is guilty, hiding some of this information I don’t think will hurt. Thank you.

Further Discussion

Mr. Stovall, Mr. Chairman, ladies and gentlemen of the convention, let us remind ourselves that this is the Bill of Rights which we are dealing with the present time. It’s the Bill of Rights. It is the Bill of Rights of the land. We did not amend it as far as here is the constitutional. I do not like this system; I think this system is on principle. I think we have a constitutional system. We have to have a constitutional system. And I think we have a constitutional system. We have to have a constitutional system. It is based on checks and balances. Our forefathers gave us this provision, not because they believed that all men good, but rather because they recognized that there is a selfishness and that because this is true of our human nature. There needs to be some check and some balance. So, we see this provision throughout our form of government. Now, this provision that we have before us at this time, I think, provides the kind of balance for justice that we need to have.

The opening sentence of the section states the basic principle. Every person charged with a crime shall be presumed innocent until proven guilty, and to provide him with this information of which he is going to be tried does give to him information which, in many cases, will help to prove his innocence. I submit to you that this is a high point in the life of this convention. For here we are considering a basic principle which can give justice to those who have been accused. A few moments ago, Mr. Landry, Mr. Mr. Landry, said that he believed in the basic human rights. This is the most basic human right, and he said, I would like you to do me and speak in favor of this amendment. Before Mr. Landry, said that the most highly respected portion of this convention, came to me and asked this of me, I had already decided that I would do so. I think he did it because he felt that this way I symbolized and represent our Judeo-Christian faith which gives to us a basic belief in man and dignity and in our basic human rights. What I feel is that many of you have been very adequate spokesmen of our Judeo-Christian faith in the excellent way in which you have spoken in favor of maintaining and extending man’s, our basic faith in man’s human rights and in man’s dignity. I say to you that I see greater than any of us said. You shall know the truth, and the truth shall make you free. I submit to you that, man does not know the running, but because they know the truth of what they are going to be tried, and they only will be free because we give support to this amendment. Mr. Hurst of Hr. This is a statute. It is a statute. You and I are responsible individuals, those of us who are responsible for maintaining that human right and human dignity, and it’s give support to this amendment. Thank you.

Further Discussion

Mr. McGraw, Mr. Chairman, ladies and gentlemen, I have some statements to make to the people who are here and I think I’ve been asked the [1181]
privilege. But I think that this is important enough that I should make a few statements about it. This particular section regards fair trials. There is no question that there is a reference to criminal laws. First, I want to state this: I am not a criminal lawyer, I’m not connected with the O.J. Simpson’s office, but I engage in criminal practice. So, therefore, I have no interests to tell you about in this particular case or any trials that I have engaged in except that I’m interested in air travel and justice systems. There is one thing that I think that’s more important. I think Mr. Segura brought that out when he says, “It’s not a question of whether or not you look good to me.” There is another question too, that we have to decide, that I hope that you will take into consideration. I have a firm belief that everybody who has been acquitted in a case is not always innocent. I have another belief that everybody who is in Angola is not guilty of the crime for which they were sent there. So, it’s come down to this question: that depends upon how many innocent people you want to convict in order to be sure that you get the guilty one, or how many guilty people you want to turn loose in order to be sure that you do not get any innocent people, or let off too many innocent people or too many guilty people, as the case may be. That’s what it amounts to. We are human beings and our courts make mistakes. Our judges make mistakes just like anybody else, because we are dealing with human nature and the frailties of human nature. Now, just because you give me to think this, I want to be sure that you give the innocent a fair trial, you’ll vote for this amendment. That’s the reason I issue here in support of it. If you want to be sure that you get the guilty and the few innocents too, then you can go ahead and vote against it because you are certainly going to convict a whole lot more innocent people without this provision than you will with it. It’s a choice that’s just like that. If you want to favor the innocent, let’s give them a fair trial and give them the right to find out what kind of a right or if you believe they have against him so he will know what he has to meet. You have read in papers, and I have, day in and day out of cases where somebody has come up and found that they were turned loose because they found somebody else was guilty of the crime for which they were charged. If this is a Bill of Rights, let’s give the right to the person to know who his accusers are, and what they are going to try to say against him, so he can prove his innocence. I think it’s fair that we support this amendment, and I ask your support of it.

Questions

Mr. Burson: Senator, as a member of the State Legislature, would you be willing to investigate into and sponsor a proper criminal discovery statute?

Mr. De Blieux: Yes, I think that this, that under our present procedures we have, as you well know, that we have courts.

Mr. Burson: Senator, you don’t think that if you were to introduce such legislation in the State Legislature, that you could work it out and get it passed in an acceptable form?

Mr. De Blieux: Well, I hope so. I don’t know, but I hope so. I am not a criminal lawyer, as you know, so I don’t know what’s good and right about that. All I know is the poor gets penalized.

Further Discussion

Mr. Jack: Mr. Chairman and ladies and gentlemen, I rise in opposition to this amendment. I want to point out to you that a grand jury is not a trial place for defendants and the prosecution. It’s an investigative body. Now, since certain amendments have been defeated and all, there is two things left for grand juries to do. One is to decide if you want to start by them. They can investigate others, but to prosecute you have to have an indictment on a case. In other words, I am not saying the job of the attorney, but let me tell you, I like to live, and I want my folks to live. Now, a lot of people, say there has been a hoodlum killing or a gang killing, or any kind of a crime and you are not going to have people volunteering to come to a grand jury if they know a transcript of that is going to be handed over to the one who let it, and I do think this amendment is very bad, but I do think that there should be some form of criminal discovery rules, which is a legislative matter. But I don’t think you should be given a copy of the testimony before the grand jury. If you do that, you’re going to have people not willing to volunteer and that’s where you get people to help solve killings; lots of times they’ll come forward on that. Now, by discovery, you could have rules set up in law. You’ve got them in civil cases where from the opposite side where you have to state from what you have, they have to state where and addresses of witnesses known by the other side, whether they were eye witnesses, whether they were present, whether you have written statements, and whether you asked to be questioned for what not. You can take it from there. Now, this...a lot of this ground has been gone over. About this amendment, I am going to introduce here, and if anybody is going to introduce it, I think they ought to get it next and get it through—I’ve seen about every amendment to do with grand juries except to give the right to a defendant and/or his attorney to eject the district attorney from the grand jury room. That’s how ridiculous some of this is getting, and I say, let’s defeat this amendment, let’s get along. The time is late. We’re not making progress we should. Thank you.

[Previous Question ordered.]

Closing

Mr. Gravey: Mr. Chairman and ladies and gentlemen of the convention, let me just briefly state, as clearly as I can, what I believe is absolutely wrong with the observations made by one or two of the delegates, and I believe an effort to either present this amendment in a different light than the way it presented it. It is useful. I think you have read the amendment and I ask you to do it again. What we are referring to in this amendment would be in the statement of appearances before any official, or employee of the state, or any of its political subdivisions, or any grand jury which participated in any investigation of the case for which the defendant is being prosecuted. Now, it’s clear, I believe, as anybody can put it and anybody that suggests that there may be some far-flung statement that may have been made by somebody to somebody not concerned with the investigation is just not getting to the minute of what I hoped to do by this amendment. Now, what I am saying to you is that I believe that this language is clear and covers the right of a person to know exactly the basis on which the prosecution is being conducted. Let me ask you to pause for a moment and think about this possibility. It may be you, it may be one of your loved ones, it may be one of your friends or acquaintances who gets to be the subject of an investigation conducted by the prosecution arms and the fingers of the State of Louisiana. Now, don’t you forget at all but that that investigation is being conducted with your tax money by the people that are employed by the state of Louisiana—those people are supposed to be acting, Mr. Perez, in the public interest. Let’s keep that in mind. I ask you to request to you, if this is not performed, it’s being performed in the public interest and that when any definitive statements are developed or obtained in connection therewith, that they ought to be made available to a person presumed

[1182]
to be innocent that the state says it's going to prosecute for a criminal offense. I know that you can't get up here, no matter how strongly you feel about an issue, no matter how firm you are in your conviction and belief, and change the minds of some people who don't want to have their minds changed. I address all of my remarks to those of you who will look at this proposal dispassionately, clearly, and in good conscience and decide whether it's right and necessary to accord a fair trial to a defendant. I ask you to judge this proposal by that test, not by a suggestion that maybe a certain sheriff or a certain district attorney or somebody else doesn't like it because it may cause a hardship or may cause a problem, but by the overriding test of whether or not this is a good proposal for the benefit of a person presumed to be innocent, who must defend himself, and who does not have the forces and the facilities of the prosecution arms of state government in order to develop his defense. Ladies and gentlemen of this convention, does a defendant have an opportunity to exercise, exercise his right to a fair trial if there is going to be retained, hidden, or suppressed evidence that has been obtained that would help him establish his innocence, or even more importantly than that, that would be present before the jury, summons to determine the rightness or the wrongness of his position or, whether or not the totality of the evidence justifies conviction or acquittal. At the very outset of our consideration, we considered a Preamble to a Bill of Rights. I thought then that we were talking about a Bill of Rights for the individuals as stated in the Preamble. What, ladies and gentlemen of this convention, did you mean when you said, by adopting the Preamble, that all government of right originates with the people, is founded on their will alone, and instituted to protect the rights of the individual? Are we protecting those rights when we do not afford to the individual a full statement and disclosure of the evidence that has been collected for and against him. Thank you very much, Mr. Chairman.

[Record vote ordered. Amendment rejected: 41-65. Motion to reconsider tabled.]

Amendment
Mr. Poynter: Amendment No. 1 [by Mr. Derbes]. On page 5, line 13, after the word "to" and before the words "in his own behalf," delete the words "take the stand" and insert in lieu thereof the word "testify."

Explanation
Mr. Derbes: Technical in nature, with all due reference to Mr. Stinson on my left, "testify" is, I think, better phraseology and I urge the adoption.

Further Discussion
Mr. Stinson: In view of the fact that Mr. Derbes knows more than anyone else here, we have no objection to it.

Mr. Henry: I didn't hear that sir.

Mr. Stinson: In view of the fact that apparently he is the learned member of the convention, we have no objection to it.

[Announcement:]
[Journal page]
44th Days Proceedings—September 8, 1973
Saturday, September 8, 1973

ROLL CALL

[74 delegates present and a quorum.]

PRAYER

Mrs. Brien Let us pray. Dear God our heavenly Father, let the light of Thy divine wisdom direct the deliberations of this convention and shine forth in all the proceedings and laws planned for our rule and government. Give us security to accept, give us serenity to accept what cannot be changed, courage to change what should be changed and wisdom to distinguish the one from the other. Amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Committee Proposal No. 25

Reading of the Section

Mr. Royter "Section 16. Trial by Jury in Criminal Cases"

Section 16. Any person charged with an offense or crime punishable by imprisonment for more than six months may demand a trial by jury. In cases involving a crime necessarily punishable by hard labor, the jury shall consist of twelve persons all of whom must concur to render a verdict in capital cases or cases in which no parole or probation is permitted, and ten of whom must agree in others. In cases not necessarily punishable by hard labor, the jury may consist of a smaller number of persons, all of whom must concur to render a verdict. The accused shall have the right to voir dire and to challenge jurors peremptorily."

Explanation

Mr. Roy Mr. Chairman, ladies and gentlemen of the convention, I guess the faux pas' may have been an omen of what may happen again today. Let me explain what this particular section seeks to do. I'm going to get into some basics of what I think are constitutional law issues and then you can decide for yourself if you believe that conviction beyond reasonable doubt means something more than just convicting; and I say to you that where you have one man convicted and twenty-five percent of those who try him believe he is not guilty, then that is not beyond reasonable doubt. The first sentence of this section, of course, does nothing more than give to the accused the right to ask for a jury trial, if he may be sentenced to six months imprisonment or more. That's to track Duncan v. Louisiana, which was a United States Supreme Court case that held that whenever you have a fine or imprisonment which may impose six months or more, you are entitled to a jury trial. The second sentence is in cases involving a crime necessarily punishable by hard labor, the jury shall consist of twelve persons. Presently there is no statement in the constitution with respect to the number of jurors. We want to constitutionalize twelve persons in those cases necessarily punishable by hard labor. Now those are the cases: ladies and gentlemen, that I hope we use today as a way of presenting a formula, which is: the number of jury members required by a state constitution is determined by the votes that have been cast in that case. We do not have a change here, in that we say that, of course in capital cases you must have unanimity in the jury, twelve out of twelve to convict. In cases in which

[1184]
Mr. Roy. It's alright if you can change your direct question and get a better answer, I think.

Mr. Roy. I beg you to put it with until you suggest, but I don't think the Chair would want that.

Mr. Munson. Yes, Mr. Stagg asked one of my questions because I didn't know how to commertise it. In the words of the person who said--is it about that, Mr. Roy. Roy. Punitive, it is an action under Trial by Parlement. It means to literally the same thing as to see and hear the purpose of the, and the prospective juror, so that you can say to determine any prejudice for which you would want to challenge him. You know what I mean? I just say, we don't want you because he kind of snickered when he answered something. It literally to view and see.

Mr. Munson. One other thing, I believe you said that in Mr. Burson's parish they had tried capital cases. That's right.

Mr. Roy. No, sir, not eight Capital cases--eight criminal cases.

Mr. Munson. Eight criminal cases?

Mr. Roy. Excuse me, eight criminal cases before criminal juries.

Mr. Munson. Well, he has told us about one of those three times. Is that case listed more than once in those eight?

Mr. Roy. It could be that the figure is actually, inaccurate and it should be less than eight.

Mr. Burson. Mr. Roy, do you know that I didn't become an assistant district attorney until 1973 and those statistics are from 1972. Do you know that I've tried five jury trials in two weeks early this spring? But seriously, I'm not sure that the United States Supreme Court upheld that as constitutional. It's unconstitutional to try someone, and he has tried jury trials in one out of twelve to return a guilty verdict in other than capital cases, in fact, guilty beyond a reasonable doubt. I can't say the Supreme Court upheld that as unconstitutional.

Mr. Roy. Mr. Burson, I never lie about facts. You're correct. But what I mean is that it's not amount to be recommended doubt in some cases and hopefully in the judgment of the rest of these people here.

Mr. Burson. But your judgment in that case was at variance with the judgment of the United States Supreme Court.

Mr. Roy. Well, it certainly is. And I told you in the previous discussion here, and I don't think it's fair that I was asked to say that I think there was an unreasonably the Louisiana Constitutional Provision permits the jury to be made up of six people. I think the Supreme Court upheld this as constitutional.

Mr. Roy. Mr. Burson, I never lie about facts. You're correct. But we mean in that it's not amount to be recommended doubt in some cases and hopefully in the judgment of the rest of these people here.

Mr. Burson. But your judgment in that case was at variance with the judgment of the United States Supreme Court.

Mr. Roy. Well, it certainly is. And I told you in the previous discussion here, and I don't think it's fair that I was asked to say that I think there was an unreasonably the Louisiana Constitutional Provision permits the jury to be made up of six people. I think the Supreme Court upheld this as constitutional.
Mr. Lanier: Did your committee have a rule that it took three to file a minority report?

Mr. Roy: We later dropped that rule and let it go by with just anybody...

[Action on Section 16 deferred.]

Reading of the Section

Mr. Poynter: "Section 17, Right to Bail. Section 17. Excessive bail shall not be required. Before and during a trial, a person shall be bailable by sufficient sureties, unless charged with a capital offense and proof is every against him, and the presumption is great. After conviction and before sentencing, a person shall be bailable if the maximum sentence which may be imposed is less than five years, and the judge may grant bail if the maximum sentence which may be imposed is greater. After sentencing and until final judgment, persons shall be bailable if the sentence actually imposed is less than five years, and the judge may grant bail if the sentence actually imposed is greater."

Explanation

Mr. Stinson: Mr. Chairman, members of the convention, this is a very important section of our Bill of Rights and it is of the highest quality. We have repeated a number of times, everyone is presumed to be innocent until proven guilty. Therefore, the provision that we got to operate under is that a person who is presumed innocent should not be imprisoned unless he has been proven guilty and that is after a trial. Of course, in cases within the discretion of the courts where it's a dangerous person involved in a dangerous crime there are prohibitions against that. But I would like to read from the Illinois Code, and I think without going through all the changes from the present law, there are very few changes from our present provisions of the Constitution of 1921. Excessive bail shall not be required (that's a repeat, the same thing). Before and during a trial a person shall be bailable by sufficient sureties unless charged with a capital offense (that's the present law) and the proof is evident and the presumption is great (that's a restatement of our present law, and I know of no objection, it was done before our committee or on our committee; and I have heard none from anyone in this convention). It says, "after conviction and before sentencing", those of you who are not lawyers may not appreciate the meaning of this. That means that once convicted, you can call your client be remanded for sentence for two or three or four weeks, whatever a judge decides. Now if he's gun down on bond it only seems logical for him to continue on bond. But he is sentenced as to some term or given a suspended sentence or whatever it may be. At the present time, automaticaly he is entitled to be continued on bond, if his sentence that can be imposed is less than five years. Now we added it says, "the judge may grant if the maximum sentence is to be served is greater."

The judge has the discretion and judges usually in arriving at that decision as to whether you will be continued on bond usually refers to the sheriff's department or the district attorney or someone as to whether this person is the type that will not be dangerous to be continued on bond. Now our judges in my district, and I've checked with Judge Dennis, our judges have repeatedly said that they wish the law would allow them this permissive discretion in this case, but it's prohibited. I know of no objection our judges--I checked with them last week--all three of them urged it. Judge Dennis says the judges' association is in favor of it when it's within their discretion. So we would like to continue, and to add this to it also, "after sentencing", that's after you go up and the judge sentences you, and until final judgment. Now that means if the person wants to take an appeal or if there is going to be a presentence investigation and plea of guilty or convictions, the same thing, it automatically--under the present law he can get out on bail or bond if it's less than five years, and over five years, it's discretionary with the judge. Judge Dennis said that these judges' associations have never taken a position on this; he knows of no objection and there is no opposition from Judge Dennis. Now the reason for this is the situation on bond is this, after the judge sentences him oftentimes, especially with first offenders...

Mr. Chairman, I like the inner tension is the fact that there is no objection. But this last provision is especially important and in most cases that I've handled and other lawyers, they've seen the situation that is still in high school. He is charged with something and we know, because he hasn't been in any trouble, that the judge is going to give him a suspended sentence, and the judge usually asks, for a presentence investigation by the probation department and it's so clouded with that type of work it usually takes, more than likely, about six weeks. If this is a young boy, man or woman who is still in high school or in college and they have to now been out on bond all of this time--under the present law to go on jail for six weeks. At the end of the six weeks when they get a clean bill on their bail record, the judge says, "I've given you one year suspended sentence, one year probation." They have served six months in jail with hardened criminals--our parish jails can't separate like we try to at Angola--they have no school, and that's because they've missed six weeks of schooling. It is a blight on them, the fact that they have served in jail. This applies more to the young people than most anyone. This says that the judge again, at his discretion, can continue them on the same bond until he decides whether it's going to be a suspended sentence or not. This is not any more guilty or harmful after he is convicted than he is before. So if you have the same bond, you're doing I think our people really a justice and not go, injustice to pass this entirely within the discretion of the judge, you can't force him to, the judge himself says you shall continue on bond or you have to go to jail. I would like to urge the adoption of this. I think it's fair to everyone. Certainly after a young person has gone astray and realizes what he has done is wrong, he's not given an extra penalty if he is going to try and straighten up and become a good citizen.

If there are any questions, I'll be happy to try and answer them.

Questions

Mr. Burns: Mr. Stinson, I'm not against this section but there is one thing that does concern me a little, as to whether or not there should be some provision put in here--I'm just suggesting this--to exempting a person with a long criminal record from this discretion on the part of a judge. I sincerely agree with you in the case of a first offender who may have temporarily, but for a confirmed criminal. It's been my experience in twenty-four years as district attorney that a stranger a man is the more people he can get to help him. I'm just afraid that some judges might be influenced by that constant knocking on their front door and give a person of that type, bail just to go out and commit another crime.

Mr. Stinson: Well, Mr. Burns, of course as I've explained, we are placing the faith in our judiciary. It may be some judges you say--I have no objection. I'm not trying to criminal on criminal out on bond, and if you have any amendment, I would not have any objection. I would like to also point out that latter that while a member of the legislature, I have worked on for years with Dr. Dale Bennett from L.S.U. Law School. He recommends this. He is in favor of this. I think through the Louisiana Bar Association also is in favor of this type of discretionary with the judge. Of course now as Mr. Burns says, you may have some judges that will treat them out anyway, but frankly, there are some judges that
disregard the law and let them continue at the present time. I want to make it permissible for those judges who are ones that follow the line of law and see this need.

Mrs. [Miss] Wisham Mr. Stinson, I'm concerned about the prohibition which states, "After conviction and before sentencing, a person shall be bailable if the maximum sentence which may be imposed is less than five years." How does this proviso, if he wants to appeal it to the Supreme Court, it may take a year to get to the Supreme Court. He has to go to jail for a year and then if the Supreme Court upholds it, the judge has the power to give him a suspended sentence, but he has been imprisoned for one year.

Mrs. [Miss] Wisham I understand, thank you.

Mr. Burson Mr. Stinson, on your proposed section isn't the only real substantive change you are making other than the ones you've discussed already, to allow the judge to have the discretion to grant bail if the sentence is more than five years, which he doesn't have under the present law?

Mr. Stinson That's the only thing he does, yes, sir, entirely... and left up to the discretion of the judge. And thank you Mr. Burson...

Mr. Willis This is a friendly question, Mr. Stinson.

In this provision the passage, "a person shall be bailable by sufficient sureties," exclusive of allowing a person to be released on his own recognizance?

Mr. Stinson Well, yes, sir. But I feel that if he has been convicted, and he had to be on bonds which would be continued that he shouldn't be released on his recognizance. I think he should continue on bond.

Mr. Willis Well, it says "before and during a trial a person...", but before trial, before a trial, a person shall be... I'm reading in the pertinent language. "Before a trial, a person shall be bailable by sufficient sureties." I have two questions. Does not that exclude his own recognizance, number 1, and number 2, what or how many sureties do you mean?

Mr. Stinson Well, that's left up usually to the court depending on the value of the property of the surety. And I believe the present law says that the judge has to...

Mr. Willis I'm not talking about the quality of surety, I'm talking about the quantity of sureties.

Mr. Stinson Well, the... I think it's in the statutory law that takes care of that...

Mr. Willis Oh, I know it's in the statutory law, but if we are going to put it as a fundamental part of our law, notably a constitution, I don't think we should equivocate.

Mr. Stinson Well, we're not. We are tracking the 1921 Constitution which used the word "surety."

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Gravel and Mr. Jackson], on page 5, line 31, after the word "presumption" and before the words, "is great, insert the words of guilt."

| Amendment |

Amendment
44th Days Proceedings—September 8, 1973

Insert in lieu thereof the following:

"Section 16. Criminal cases in which the punishment may be capital shall be tried by a jury of twelve persons, five of whom must concur to render a verdict in cases in which the punishment is necessarily confinement at hard labor, render a verdict. Cases in which the punishment is necessarily confinement at hard labor shall be tried before a jury of twelve persons, five of whom must concur to render a verdict. Where the punishment may be confinement at hard labor or confinement without hard labor of more than six months shall be tried before a jury of six persons, five of whom must concur to render a verdict. In capital cases, the defendant may knowingly and intelligently waive his right to a trial by jury.

In criminal prosecutions tried by a jury, the accused shall have the right to full voir dire examination of prospective jurors and to challenge jurors peremptorily. The number of challenges shall be fixed by law."

Explanation

Mr. Lanier. Mr. Chairman and fellow delegates, this amendment is the result of a synthesis of ideas by various of the proponents and opponents of different parts of the proposed death penalty. This is the result of a reasonable consultation and, I think, an attempt to deal with the hard labor and imprisonment that are mentioned in the Louisiana statute.

Insert the following:

"The issue of whether or not you can have less than a twelve man jury has been passed upon by the United States Supreme Court, and this is in accordance with the law here.

The next change is with reference to the waiver of your right to trial by jury. Under the present law you can waive your right to a trial by jury in cases which are neither capital nor necessarily punishable by imprisonment at hard labor. This is Article 780 of the Code of Criminal Procedure. We have changed this to provide that you may waive in an absolute penalty, that is a case that is necessarily punishable by imprisonment at hard labor in the penitentiary. Of course in a capital case you do not wish to allow a defendant to waive because that would than mean that one man, the judge, would have to make the decision of guilt or innocence and life and death for the defendant. And quite frankly, we feel that this would be a very bad social policy, and should not be adopted in this state and is not adopted in most states. You would almost be allowing a man to commit judicial suicide in front of the judge without a jury.

However, in other cases that are not capital actually this will probably facilitate the administration of justice, because a trial in front of a judge is generally much swifter and not as subject to delays. This is the purpose of the other change and it's not a change in the law but it is a change in the constitution, is the...providing that in a jury trial, the accused shall have the right to full voir dire examination of prospective jurors. This particular subject has very recently received extensive litigation in our Louisiana Supreme Court. It is my understanding that this is the present law. At the present time, the voir dire is provided for in Article 786 of the Code of Criminal Procedure. We felt that it would be advisable to incorporate this in the constitution.

At this time it's my understanding that there are quite a few delegates who would like to join in sponsoring this amendment. If I might, I have been advised by the chairman of the committee that the committee has no objection to the amendment. I'd like to ask that Chair if we would be permitted to open the board to allow cosponsors.

[66 coauthors added to the amendment.]

Questions

Mr. Champagne. Mr. Lanier, are you aware that I'm fully in favor of your proposal because it sounds like good constitutional law, but even if I didn't know anything about it, it has the only two words in French that I have yet seen in the constitution. And I will be able to tell my many constituents and good friends that Bubba Henry voted for it and I did, and this is acknowledging the French tradition in Louisiana.

Mr. Lanier. Mr. Champagne, in answer to your question when this issue was brought up by Mr. Suggs, I consulted with my fellow delegates from Lafourche Parish, Mr. Landry and Mr. Bollinger, and it was our feeling that this language would be perfectly understandable in our parish.

Mr. Alexander. Mr. Lanier, I notice in the sense of "knowingly and intelligently waive," how can you explain how would functional illiterate knowingly waive? If he may not know the word "waive" means. How would you handle that kind of case?

Mr. Lanier. Well, I'm going to tell you. Of course, this would ultimately have to be decided by the courts as to whether this man was capable
of knowledge and intelligence waiving. And if he would not, of course, the judge would not act on his waiver. Out of course he would be entitled to a counsel. I happen to know some people who are not literate, but that does not mean they are not intelligent. In fact they are quite intelligent and I am sure you will also agree, on the other hand, some times a very literate person that might not be as intelligent as the illiterate when it comes to intelligence. So there is a difference between education and intelligence. This would have to be a valid denial that would be made by the judge in any case.

Mr. Chehardy Mr. Lanier, have you sixty-six authors? Why don't you call for the question and get the vote on the issue?

Mr. Lanier Well, I was thinking, Mr. Chehardy, that if we wanted to fully explore this and debate it...

Mr. Chehardy Well, when you've got sixty-six, that means you understand. Otherwise they wouldn't be authors. Why don't you get it over with?

Mr. Lanier O.K. I move the previous question.

[From new question ordered. Amendment art. 8, § 3, 1945. Motion to reconsider tabled. Previous question ordered on the section. Section passed; 4-3.]

Reading of the Section

Mr. Puyster Section 18. Right to Humane Treatment

Section 18. No person shall be subjected to euthanasia, torture, or cruel, unusual or excessive punishments or treatments, and full rights shall be restored by termination of state or federal supervision for any offense.

Explanation

Mr. Weiss Mr. Chairman, fellow delegates, the right to humane treatment is a very important section of Rights. And it's interesting how quickly we forget. The American colonists were drawn and quartered, were punished by being placed in the stocks and being hung in the stocks. We're no longer doing that. There was no question that there would be in the Bill of Rights. Include the statement in the Amendment 8 to our constitution, the Federal Guarantee of Rights shall not be required nor excessive fines imposed nor cruel or unusual punishments inflicted.

Only yesterday morning on the Today show in New York, Illinois, I'm sure many of you saw the prisoners that were in revolt. It's interesting that our neighboring state of Illinois, which has such a constitution that was accepted by the people, does not have this statement, the right to humane treatment. Whether this would have influenced the guards or others who have punished these prisoners by unusual treatments, I do not know. But certainly we, in Louisiana, have a tradition of being humane in and understanding to our brethren and to our fellows.

It seems to every generation has its tyrants, and there is no reason to think that cruel and unusual punishments will not be their allies and companions in the future as they are in the past and as they have been for centuries. It is for that reason this committee recommends that this section be adopted as presented, because of the fact that we have streamlined the old Louisiana constitution sections, namely Article I, Section 11 and 12, and Article VIII, Section 1, Article II and III of the old constitution is concerned with confessions and read as follows: No person under arrest shall be subjected to any
they came after the Communist and I did not protest because I was not a Communist, then they came after the trade unionist and I did not protest, because I was not a trade unionist.

Mrs. Brien I don’t understand you good, Roy, you’ll have to talk louder.

Mr. Derbes I just address this question to any member of the committee who can answer it. What is unusual treatments? What is unusual treatments... I don’t know.

Mrs. Brien Mr. Weiss will answer your question.

Mr. Weiss This is a good question, and the word is new in this section. There have been some questions raised and I think it has been the opinion of the majority of the committee that the word “treatments” might best be deleted, and an amendment is...

Mr. Derbes Do you administer unusual treatments at your office, Doctor?

Mr. Weiss Yes, and that’s right. And it’s necessary to delete that word, and an amendment is forthcoming in that regard. I appreciate that suggestion.

Mr. Weiss Dr. Weiss, I’m loath to find fault, and I may be at fault, but why was the word “rights,” and “full rights be restored” instead of “full citizenship be restored.” Why was that used?

Mr. Weiss Well, it was the intent of the committee, both in answer to the previous question, that treatments, unusual treatments to extract statements to the contrary, that the individual may feel as a treatment was intent there...

Mr. Weiss I’m not talking about treatment, I’m talking about full rights be restored.

Mr. Weiss The same goes true for the rights: The committee was under the impression that all rights, as determined by the declaration of rights should be restored in a humane attitude to those people who have served their time and punishment. In other words, if they have been punished adequately, have met the...

Mr. Weiss I understand, I understand. My only quibble is with the use of the word “full rights” in lieu of “citizenship.” Does not citizenship adumbrate all rights that you talk about in the Bill of Rights? And would not citizenship be a more appropriate word.

Mr. Weiss You’re right, sir, I know I’m not an artist in words, but my understanding is that citizenship and rights are equivalent. They may be some difference.

Mr. Weiss My next question, you use the word “excessive punishments.” Would that not allow me to appeal and have the judge review a sentence on the grounds that the sentence is excessive and so the punishment excessive?

Mr. Weiss Yes, but it was not the intent of the committee to question this aspect, but rather “excessive punishments.”...

Mr. Weiss But the prospect is present, is it not?

Mr. Weiss Yes, and here again an amendment is forthcoming in this regard.

[Quorum Call: 98 delegates present and a quorum.]

Mr. Weiss Delegate Willis, your point is well taken. Believe me, it was the intent of the committee not to create any confusion although, apparently it has in this regard, and there are amendments forthcoming in answer to your question. The point being in the light... in the eyes of the committee, that excessive punishments might be questioned at one time, and if Mr. Roy would like to answer that, I’d be happy to have him answer.

Mr. Willis Now, I am loath to any form of immoral killing. And I note that the word “euthanasia” is used, and the words “guillotine, hanging, abortion and electric chair” are used. Why should a person be subjected to euthanasia and be subjected to the guillotine, or hanging, or abortion or electrocution?

Mr. Weiss I think that legally this has been well established that this is a type of cruel and unusual punishment in this country. Even today, capital punishment is being questioned by the federal courts as to being cruel and unusual.

Euthanasia is not in the same category in that it is a type of treatment; a physician must render this type of murder. And this mercy killing, as it is called, is the obligation placed upon physicians primarily as a result of state action. And, therefore, this is a monumental step, I think, in stopping this type of killing.

[Rules Suspended to allow Committee on Local and Parochial Affairs to meet.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Denner], on page 6, line 10, delete line 10 in its entirety and at the beginning of line 11, delete the word and punctuation “treatments,” and insert in lieu thereof the following: “torture, or cruel (and a change here). Insert the word ‘excessive,’ or unusual punishment,”—“torture, or cruel, excessive or unusual punishment,”

Explanation

Mr. Denner The purpose of this amendment is to remove only the words “or treatments” at the end of line 10 and at the beginning of line 11. The reason for this is that we’re talking about euthanasia in the first line, and then we talk about treatments down here. Frankly, I wouldn’t be here had it not been for some very unusual medical treatments, and I don’t want to take the risk that the legislature may bar doctors from unusual treatments. The committee advises that they have no objection to that. The balance of it would remain the same except that I’ve switched the words “unusual” and “excessive” which means nothing.

[Amendment adopted without objection.]

Amendment

Mr. Poynter Amendment sent up by Delegate Zervigon.

Amendment No. 1, on page 6, line 9, immediately after the word “to” delete the remainder of the line.

Explanation

Mrs. Zervigon Ladies and gentlemen of the convention, mine was one of the amendments Mr. Henry was complaining about that was prepared late, and that’s because it takes a little bit of nerve to get up here and move to take out a word that many of us believe doesn’t belong in the constitution. My main reason for this was stated from this section is that I’m not at all sure what it means. It seems to me that murder is already a crime in this state. Any doctor that would shoot somebody full of a needy patient would have to do that, give extra sleeping medication, strangle her with a cord because he thought she was on her last legs anyway, would be liable to be charged with murder. What scares me to death about this word “euthanasia” is that a doctor following his
conscience who doesn't put someone in an iron lung or doesn't perform some sort of surgery that has a ninety percent chance of failure but might succeed, in his view for seventeen event if he didn't think that it would be useful, would be liable to a charge of euthanasia in the courts, because nobody really ever said it. I wouldn't get up here unless I felt very, very strongly on this subject, and I'll tell you why. When my grandmother died, she was eighty-seven years old. She had been in a hospital for seven years. Up to a month before her death she was beautiful to look at. She always wore bright colors, wouldn't wear black or dark blue, was very entertaining company. She had always said to us when we were growing up, "Look, if I get sick, lock me in the garage. I don't want to be any trouble to anybody." But she was in the hospital a month and said she was to her doctor, "Doctor, I've had a long, full life. I'm dying of cancer, and everybody knows it. Please don't prolong it for me. Don't put those tubes down my nose. Let me keep my little bit of vanity to the end of my life." And she said it so movingly that he acceded to her wishes. Prior to this I had read a definition attached, would that man have been guilty of euthanasia? I had another friend, a woman who was so dying horribly of cancer as her sister had died earlier, and she said to her doctor, "I want the world to know what causes cancer. Do any kind of test you think you need to do to find out the causes and the possible cures for cancer?" I'm dying. I'm dying. Do whatever you think would be useful to you." Would that doctor, following her wishes have been guilty of euthanasia? I don't know. He wasn't guilty of murder, that's for sure. Let's keep murder as a crime and let's not put this word euthanasia in there. There isn't anybody here that wants old people slaughtered wholesale. Nobody here wants that. Legislators don't want that. Some of them are old themselves, I'll point out. Please let's take this word out, and let's not get carried away. Let's be certain exactly what we're doing here today. I'll yield to any questions.

Mr. Roy. Yes, we certainly will be. Mr. Chairman, and I want to say let's not get carried away with emotions and understand that what we're saying here is that the state may never pass a law through which allows some other person or some other people to say that you are going to be allowed to die, or you are going to be put to death. That's very simple. I don't know about anybody here that wants old people slaughtered wholesale. Nobody here wants that. Legislators don't want that. Some of them are old themselves, I'll point out. Please let's take this word out, and let's not get carried away. Let's be certain exactly what we're doing here today. I'll yield to any questions.

Further Discussion

Mr. Pay. Mr. Roy, I'm not exactly sure I listened to your definition of "euthanasia." Would abortion come into this type? Also, was it the intent of the committee to discuss anything about abortion at all, or are we just concerned about mercy killings?

Mr. Roy. We're talking about individuals who are put to death through some state conduct, and it doesn't address itself to abortion.

Mr. Fontenot. You don't consider a fetus, or an embryo, or anything a person...subject to mercy killing.

Mr. Roy. Mr. Fontenot, if the courts decided that a seven month old fetus is an individual, then it would apply, and I think it should, but...abortion, I just can't answer that.

Mr. Abraham. This is a friendly question, but I need an explanation, Chris. Now, you said that this does not prevent a person from requesting a doctor to do something to them, this type of thing, but the language it as states here says, "No person shall be subjected to it," regardless of whether they want it or not, and I would ask you, does this language actually say what you intended for it to mean?

Mr. Roy. Yes, it does. It means that the legislature may not subject you to it. Mr. Abraham, you have to understand that a Bill of Rights is designed to prevent state action and not to stop an individual from saying, "I don't want certain treatment." I'll yield to any other questions.

Mr. Chehardy. Chris, now I have a very serious problem on this issue. Now on euthanasia, in my particular case, I'm opposed to it principally on religious grounds. I'm a Catholic; we're against it. Now, we're making it, but we know things are subject to change in what we've discussed. What about the problem all of us, of all of the deceased Catholics who ate meat on Friday and went to hell, and now they're sitting up there watching us eat meat on Friday. So, there is a change in the precepts of my religion which would make me accept euthanasia. So is it something that you really should put in the constitution as a permanent thing? I'm throwing that out for your consideration. Eddie DiGeronimo raised the issue with me, and I thought it was good to raise it for everybody else.

Mr. Roy. Lawrence, I'm a Catholic, and I don't see it as a religious principle necessarily. I see it as a personal philosophy that I don't think any state law should ever be passed. Now, if it ever comes to that time we think we should have euthanasia...

Further Discussion

Mr. Jenkins. Mr. Chairman, delegates, I think this is a very serious subject. I can hardly think of many more serious subjects that we'll consider, and I think that it's important that we reconsider Mr. Jervison's remarks, euthanasia as the staff points out is very well-defined in Webster's New Collegiate Dictionary as "the act or practice of killing individuals that are hopelessly sick or injured, for reasons of mercy." The act or practice of killing, not, not the opportunity or the right of a person injured or dying to say, "Don't treat me, I don't want to live," is what Mr. Jervison said. Now, there's no question but that in my judgment this is needed. Florida had an act introduced to allow euthanasia, and it didn't get under any circumstances. I don't want anyone ever coming to me, no matter how sick I am, except me, that anybody can say two out of three in my family, three out of four plus the doctor, this is what we believe, based on the rejection of this amendment. Thank you.

Questions
It keeps our law like it is now. It says that you cannot in the future have a law passed through the legislature making an exception to our murder, negligent homicide, or manslaughter laws to permit the killing of another human being intentionally. Now, there are several instances where killing of another human being is prohibited under law. If it’s an intentional killing, if it’s negligent killing, a euthanasia law makes an exception to that. We went to prohibit such laws in the committee proposal. Law will not prohibit euthanasia so no one would be charged with it. A law passed through will permit euthanasia. It’s a great conceptual difference. There’s no crime of euthanasia. You can’t be charged with it. You could only be charged as now with murder. Now it was said that we have laws against murder and negligent homicide now, manslaughter now. That’s true. We want to keep it that way, and that’s all this does. It keeps the law as it is now, and it makes sure that exceptions can’t be made in the future. It’s very simple and clear. So I urge the defeat of this amendment.

Questions

Mr. Lanier Mr. Jenkins, you say that putting this in the constitution keeps the law as it is right now. Can you please give me the citation of where I can find this thing about euthanasia in either the constitution or statutory law?

Mr. Jenkins The law right now in Article 30 of the Criminal Code prohibits this type of criminal activity, namely the intentional killing of another human being. That’s the law now.

Mr. Lanier Let me ask you this. Under the law, is it a child viable at the age of six months?

Mr. Jenkins Well, I don’t know what particular law says that. There may be some law that says that.

Mr. Lanier At what point in time does a child become a person in the contemplation of the law? Right, an embryo, when does it become a person in the contemplation of the law? When does it become viable?

Mr. Jenkins Well, it varies in different areas of the law depending on the law you’re talking about. It may be one sense in the case of abortion, may be others in the case of inheritance. It may vary from state to state as well.

Mr. Lanier Well, what I’m getting to is suppose you get into circumstance where it is necessary to either kill the mother to save the child or kill the child to save the mother. What would that be?

Mr. Jenkins In those circumstances if you need to kill one or the other, in some cases it is abortion under our law. In other cases it is not, depending on the definitions...

Mr. Brown Mr. Jenkins, I read in the newspaper about a week ago about something that happened down in Florida where a young boy was in an automobile accident I believe, and seven or eight doctors were called in and said, “look, his brain is dead; there is no response in his brain.” A machine pumped air into his lungs that kept his heart going so by use of the machine the heart functioned and there was breath coming and going, but the conclusion that I read was very conclusive. The brain was dead and that only the machine was keeping this function of the lungs. So after a great deal of soul-searching, the parents decided to have the machine cut off and donated his two kidneys to recipients. Well, how do you define that? Would the cutting off of that machine if in a case like that when the brain is dead, where only the machine is pumping the oxygen, would that be prohibited if this provision is allowed to stand?

Mr. Jenkins Jim, what you have to do is look at our present law now. If that is murder under our present law, then it will be murder still. If that is negligent homicide still. If it is manslaughter still. If it’s none of those it won’t be changed by this provision. This provision doesn’t change law. It only prohibits making exceptions to it in the future.

Mr. Brown But why should it be there? Then why is it necessary if it only reflects the present law that we already have, when it is kind of cloudy. I don’t really understand.

Mr. Jenkins The reason that it’s there is that it...

Further Discussion

Mr. Brown Mr. Chairman, ladies and gentlemen of the convention I rise in support of Mrs. Zervig’s amendment, and I can very vividly tell you why, and I think Senator Brown brought out one of the arguments that’s definitely in favor of Mrs. Zervig’s amendment. I think in that very position twice during my lifetime. One, when my father had lain ill suffering from cancer for six months, and I was called at 1:30 in the morning. It appeared that he had passed away, and I immediately went to his home. He was there. I was informed that he did not die. He was in the protected provision in the law. It could be law that we have now, and we have laws against murder and negligent homicide and manslaughter, and there’s no data that in the future, in the future, that this law will be changed.

Mr. Jenkins Mr. Brown, Mr. Chairman, I have one comment. We want to prohibit such laws as you mentioned. It’s in the committee provision. I don’t think there will be any need to have the amendment voted on in the convention.

Mr. Brown But why should it be there? Then why is it necessary if it only reflects the present law that we already have, when it is kind of cloudy. I don’t really understand.

Mr. Jenkins The reason that it’s there is that it...
sincerely

am

would

assume

see

f

didn't

ji

personally

have

consider

become

of

Hr.

you

ment

has

make

Well,

ran

happen

hospitals.

selves

incurably

ated

case

Drew

said

I

als

Champagne

make

the

This

proceedings—September 8, 1973

Question

Mr. O'Neill. Mr. Drew, what distinction do you make between killing a person intentionally and letting a person die a natural death? Please make that distinction because in my mind it’s clearer, but I’m not sure it’s clear in the minds of the other delegates.

Mr. Drew. I see no difference between intentional killing and deliberately letting someone die. I guess, if that’s what you want to say, Mr. O’Neill. I don’t know that there is any particular distinction in the law.

Further Discussion

Mr. Coman. Ladies and gentlemen, I’ll be brief, and I just want to add one thing to what Mr. Roy has said with regard to the need for this, and he indicated what had happened for instance in Florida. They came within a very few votes of passing an euthanasia bill in Florida. I just wanted to mention to you that one of the arguments made in behalf of that bill by the doctor who sponsored it was that if it were passed, they would be able to permit fifteen hundred to six thousand children to die in the hospitals of Florida, and therefore, the state spent millions of dollars a year, and hardly think that the dollars mean much when you’re trying to save the lives of children. Thank you.

Questions

Mrs. Warren. Mr. Coman, Mr. Kelly made a statement about the machines being removed from the patient in Florida. I’m wondering what would happen if you had a person in that condition and you carried him to a hospital and your money ran out. Who would provide this type of care?

Mr. Coman. Well, this would happen in any type of case where your money runs out in the hospital. It’s my assumption that state would take over the obligation. It would happen in any other type of case also.

Mrs. Warren. Thank you.

Mr. Coman. But, I urge you to reject this amendment.

Further Discussion

Mr. Champagne. Mr. Chairman, ladies and gentlemen, I accept the idea that this committee offered this section. Because I am against killing, an against abortions, I am against all of these things, and if a law was passed in this state that would subject people of this state to mercy killing, I personally would be one of those to chase these individuals out of this state, but I earnestly feel that this constitutes is not the place for this statement, and I have my reservations also. Many of you can remember when the labor and the other people of this state had to die at nine because they sleepily could not afford better treatment, and I wonder if I become incurably sick, would this require, and I have the responsibility to prolong my life for six months or longer in expensive pain, even though I would not be willing to do so. I know of two doctors suffering from inoperable cancer who themselves in the hospital, because they feel that in doing this they would deprive others who had a chance to live, what is known if they stayed at home, they would not be prolonged by going to the hospital. Those are devilskins that we cannot cope with the devils on earth itself, and I hope these matters are eliminated.

Mr. Champagne. I don’t know how you’re going to live with this terminal cancer, regardless to where does this prolongation of life come in at?

Mr. Hayes. This had nothing to do with cure, did it?

Mr. Champagne. With killing?

Mr. Hayes. With cure. You know, prolonging it, he didn’t say he would cure the disease.

Mr. Champagne. No, sir. He was hoping for that.

Further Discussion

Mr. De Silleux. Mr. Chairman, and ladies and gentlemen of the convention, from some of the statements I’ve heard made up here, it seems to be that some people who use the word “euthanasia” has been accepted to mean in our English language. In fact, I heard one of the speakers say that there was a difference between the intentional killing and the letting of a person die by natural causes. According to my understanding the word “euthanasia” is mercy killing, mercy killing, not letting a person die but putting that person to death. That’s what we’re trying to prevent the legislature saying, just as Mr. Jenkins stated very unequivocally, letting some person die from natural causes is not euthanasia. Euthanasia is the killing the person to death, and if you permit this type of killing, you’ll have to get it from our usual definition of murder or homicide or whatever it may, we may have where it’s been considered a crime. Let’s not have any misunderstanding about that. One of the things I’m fearful of, this is the next steps, and we’re advocating this kind of a year raise something of that sort. We have already seen our law by the Supreme Court in the depression for those who printed it, that we have permitted abortion to a certain extent. Then we are going to permit killing by and another. Later, all of those that they feel like is incompetent for one reason or another will be cut to death, all of them out of society. So that the type of rights that we have upon that that we want to permit in our society, I think we ought to put any stomp as we
44th Days Proceedings—September 8, 1973

possibly can between that sort of a society, and I ask you to vote against this amendment. Let me tell you this: I know a person in this city of ours that had a stroke. That person had good doctors, some of the most reputable doctors in the city of Baton Rouge, and they told the relatives of that person that that person would be a vegetable the rest of their life, that they didn't know how much longer that person would live. I want to tell you that the person who those doctors stated would never be able to rationalize any more and that would die shortly, overcame that disability, regained the full faculties, got up and tended to her affairs. Not too much longer after that she had another stroke. The doctors told them well, they know that there is no further possible chance of her ever getting up in fact of the business, if I remember correctly, some of the relatives even started dividing some of her assets. But she recovered from that and her mind is just as good today as yours and mine. So don't say that we know when a person ought to be put to death. You're interfering with God's purposes on that, and what man has a right to except for a punishment for crime, to decide when another person shall live and when a person should die. That's where we're talking about. We're trying to let men decide when a person should live and when a person should die; that is when you kill them. I'm not talking about prolonging the life. This does not enter into consideration the illustrations the man by Mr. Drew. That is not euthanasia. That is not euthanasia. Euthanasia is what we call and refer to as mercy killing, when you put somebody to death.

Vice Chairman Casey in the Chair

Mr. DeBlieux: I just want to tell you this is a bad amendment, and let's take care of it. Further Discussion

Mr. Jack: I arise in favor of Mr. Zervigon's amendment. Now, I just...this is a serious thing; I don't think it belongs in the constitution. If the time ever came that a breathing tube was to be pulled out of my throat, if I had an injury where my brain was destroyed that would ever keep me in the opinion of physicians, excellent ones, from ever being able to come to consciousness, to have any intelligence, lying there like a vegetable...I would like my loved ones to make that decision whether or not I would be removed from my throat for my breathing, and not you, ladys and gentlemen. It would be my life. Also, suppose I was there: I was suffering; I was in excruciating pain...I was a hundred years old or a hundred and five. Everybody I knew was dead and I needed to be suffering. Shouldn't that be my right to tell them to treat me artificially, to cut me, to quit artificially making me breathe, to quit having me in some kind of breathing apparatus...just keeping me there against my will in pain, regardless of what kind of pills they gave me. But let me tell you if you had this here, you get a different thing. That is a decision that was to me. This is a new field; let's just don't keep stuffing things in this constitution that we don't know what's going to be; so I'm for...

Mr. Casey: Will you yield to a question from Delegate Drew?

Mr. Jack: I'm not going to yield to questions because nobody is an expert on this thing. We just...everybody is going to have to vote like they feel. I just can't trouble with this material having the word in there. Nobody's an expert. Somebody put on my desk, and all of ya'll's, the thing to try to tell us what it was--in detail, like we didn't know the word means mercy killing. That showed that certain people here figured we didn't even know what it was. Some of us don't know, don't know it all...so I in all deference, good friends, and I ordinarily would yield, but I don't think that anybody should have me try to answer a question and maybe get something wrong. I'm trying to, as best I can, explain how I feel personally, and I think my members of the family would feel; so that's the reason I'm not yielding to a question.

Personal Privilege

Mr. Ourso: One reason I rise is that every now and then we would like to be recognized over here by you and the Chairman, because we're going to have to get us a firm recognized. Looks like everything is coming from that side over there...I imagine ya'll have a crick or something in your neck. I recognize that I didn't recognize me for a motion, but if we're going to sit up here and listen to how everybody lost someone in their family, and how many people died, and how they're going to do; we're going to die...everybody's going, so I'd like to move the previous question.

Mr. Casey: Just a minute. Delegate Ourso, I did not recognize you for that purpose. I have a list of speakers here; I'll be glad to put you on the list of speakers. I realize that most of the heavyweight speakers are on the other side of the room, and I try to recognize as many of the delegates who wish to speak as possible. If you would like, I'll let you on the list of speakers.

O.K. Why do you rise, Mr. Chehady?

Further Discussion

Mr. Landrum: Mr. Chairman, and fellow delegates, I hope that we would not have to say anything today. Go through a whole day as I did yesterday without saying anything. But, I believe that this particular amendment is a very bad and dangerous amendment. The very case that you mentioned about Florida the other day; we live in an age where transplant is becoming a very real thing, and how many people will lose their lives because somebody needs a lung; somebody needs something else. What basically...my argument is this; that no machine will keep a man alive forever. No amount of pills will keep a man living forever. He has a set time to live. Now, if we don't believe that man has a set time to live, then we have to start every time where we talk about God in the Preamble. We don't believe in God...if we don't believe that man has a set time to live, I have this right to say that somebody get them out of their misery? We're going to get somebody out of their misery? I agree with them, but when you talk about pain, we're using today was just bright about in the last fifteen years; so we never know when something new will be invented. God bless you, and thank you.

Questions

Mrs. Brien: Reverend Landrum, does man have the wisdom or the right to decide whose life is meaningless?
Mr. Landrum  Mrs. Brien, I'm sorry, I didn't quite understand you.

Mrs. Brien  I said, does man have the wisdom or the right to decide whose life is meaningless?

Mr. Landrum  No, I don't believe he does.

Mrs. Brien  Does man have the right to trespass on the will of the Creator who gives life and takes it away?

Mr. Landrum  My dear, every time I take a body to the grave I say, "the Lord giveth, and the Lord has taken away," not man. Thank you.

Further Discussion

Mr. Juneau  Mr. Chairman and fellow delegates, I'll make these remarks very brief. I'd like to point out one fact to you. Not one, not one of the fifty states in this union has such a provision in their constitution, and I think the reason for that is obvious. We're talking about a very delicate matter, and I don't think there is anybody in this country who favors mercy killing; at least I don't know of any. That's not the issue. The question is when you're dealing with an intricate, scientific, medical problem that we have, do you want to put that in the constitution? I favor the amendment. I think that it ought to be taken out. Insincerely put, it's just simply a question; do you want to do... do you want to stretch out in an area we've never stretched before, and take that away from the legislature which is a responsive body to the needs of the people, especially in an emotional area like this? For that reason, and that reason alone, I support the amendment for taking it out and leaving it in the legislature, and as Mr. Jenkins said "we know what the law is today, and I don't look for any change in that regard" so why tamper with it, and why venture into an area that I don't think we know where it's going to be chartered in the future.

Questions

Mrs. Brien  Do you know what could happen in the future?

Mr. Juneau  Ka'an?

Mrs. Brien  Do you know right now what could happen in the future?

Mr. Juneau  I really don't know what could happen in the future. Mrs. Brien, nor did the people in the past know what could happen when we were talking about capital punishment and non-capital punishment. I'm for leaving that for the legislature.

Mrs. Brien  The people in Germany didn't have it before either. It never happened before, but it did happen, so don't you think it? maybe could happen here too?

Mr. Juneau  Anything can happen, Mrs. Brien. I'm content with the present system. We're talking about a very delicate, scientific matter, and I don't think that I want to be in a position to pre-judge the next hundred years of this state from a medical science standpoint.

Mr. Killis  I have more problems. Mr. Juneau, that it says "no person shall be subjected to euthanasia..."

Mrs. Brien  Mrs. Killis, I don't know, that bothers me. Mr. Killis, I don't believe that can be made, and let's get the issue clearly before the floor right now. You're going to have a subsequent amendment which is going to come later and say "no law shall prohibit," That's better than what they have, but I will say that ultimately we still ought to not stick it in, nor has any other state in this union, obviously, for the same reason.

Mr. Killis  Well, that prompts me to this question. Isn't it more apropos to put whatever is prohibited in the section of the bill before we reach the point when we have the knowledge to put it in for year that portion of this question of general inspection laws? Isn't that the place for that if we have to put it? Now I don't believe we should put it, for the amendment.

Mr. Juneau  If you would be so inclined, I would agree with you.

Further Discussion

Mr. Fontenot  Mr. Chairman, let me read the definition of this particular word everybody is so concerned about. I know somebody just read it previously, but Mr. Stagg just showed it to me. "The painless putting to death of persons suffering from incurable diseases." This is just one definition of it. There's probably a lot of medical definitions; every doctor I know in the nation who might have a different philosophy as to what exactly this word means. There were several speakers that mentioned cases where certain individuals were in such serious conditions that it was probably the best thing that they do let these certain individuals die. I'm sure everyone of us here have been faced with the same situations and I'm sure somebody has made the comment previously. "This person is suffering so much, probably the best thing that could happen was that this person would die." All of us have been put in these particular situations. I don't think that we could be subjected to murder for thinking this or for thinking this person has an incurable disease, if you don't put some language in this constitution concerning this particular word, and I'm not in favor of the Bill of Rights section of it, as it is now, but I'm in favor of the amendment. Mr. Roy has proposed on behalf of the Bill of Rights Committee. I think it's necessary language. If you don't put it in language, you might save what happened in Florida happen with our own legislature. There were certain individuals in Florida who proposed certain bills on this particular topic, and they voted down, but I don't know what exactly could happen with our legislature, there's no telling what could come out of that particular body. Certain bills in medical and some to do with, I'm just reading something that I was passed out this morning, a bill would not only commit voluntary euthanasia but would also allow three physicians to decree a death sentence with the approval of a circuit judge on anybody whose life has become meaningless as the bill expresses it. Now, what I'm concerned about is not those individuals who would like the doctor to quit treating them and let them die. I'm concerned with those individuals who have some kind of disease or some particular physical or mental aspect—physical defect, if you want to call it, that may be classified their whole life their lives may be so horrible that suppose these individuals want to continue to live. What about these individuals? Are you going to let three doctors and a judge say, well, your life is meaningless, we'll go ahead and execute you or let's do something with you, what about those individuals who want to continue living? What about the individual who has no one who loves him or who may have had any kind of research—scientific finding that we might want to continue living. Are we going to let a legislature—perhaps a law saying that you can be ahead one day, and the next day one can decree a person has a life meaningless, and let he die. I'm not for that. I'm for those words that the great American proverb, no law shall subject an. Mr. Chairman, euthanasia...
4th Days Proceedings—September 8, 1973

punishment.” Like I said, if you vote for the Zervigon amendment, you’re going to do away with this particular issue, but I’m talking about, in favor of keeping it in the constitution, and if there’s no other speakers on the issue, I move the previous question.

Motion for the previous question withdrawn.

Further Discussion

Mr. Weiss Mr. Chairman, fellow delegates, I’m sure many of your minds are made up. I can’t confuse you with the facts. Emotion is a very strong feeling; it runs through me hot and furious at this time. To me it comes to the body a statement to the effect “Thou shalt not murder.” The sixth commandment, the meat of the Holy Bible; but let me explain to you even more so why I’m concerned about this, and that is, I challenge any of you... Judge Tate and those who are congregated in the back, and those who are congregated here and there, and those who are listening patiently and kindly—to cite more than one, two, three, four or five examples with the twenty-eight years have been repeatedly faced with the decision on whether to prolong the act of living and prolong living or to allow the act of dying. I say to you, euthanasia is killing, mercy killing, ridiculous adjective terminology to murder. This is what we’re talking about here today, and it’s very imperative that it be in this constitution. Now let me tell you, the British Lord of Commons, for thirty-four years, have debated this on three lengthy occasions and have defeated it. There are four legislatures, possibly six, in this country that are now facing this problem; but let me let you know what we have terminal cancer, some of us as young as young, are believing today. Approval of mercy killing rises; fifty-three percent of people under thirty accept the proposition. Euthanasia idea grows—euthanasia is likely the next great moral debate in the United States; right to die has majority support. If this isn’t confusing, right to die...

The right to die is not yours or mine alone. We pray every morning to God that we may finish this day, and I pray nightly for all of us and myself and my family, and you do so. We are not omnipotence, but we have the right to define laws and that’s what we’re here about. I ask you to defeat this amendment and put the word “euthanasia” in and make Louisiana a forward progressive state willing to face the issues and ashamed of what our world and country has done. Killings have been murdered in the name of mercy, in the name of anything you want to call it, but this is downright murder. I am sure that those of you that oppose this do not interpret this way, and the issue is a very simple one in the medical mind. Let the Supreme Court decide, as our Chairman Henry has said, on these issues; but euthanasia by the dictionary is mercy killing—the active act of killing. If I may draw an analogy, since I’m an attorney, is rape as active? Is there a passive type of rape? There is no such thing as passive euthanasia; if you agree to die and stop medication, you are entitled to it; you are entitled to discuss with your doctor these issues; you are entitled to die. As Mr. Drew pointed out when he was responsible for the unconscious Mother or sister, where he had the power of attorney to speak, but even more so he had a compassion for that position, these issues reach the courts, but what does reach the courts are cost analysis—faulty individuals, insane, idiotic. We had people in prison because of their beliefs; now, we’re saying you this, that they not be killed for mercy.

Question

Mr. Kelly Doctor, I am in sympathy with what I think the chairman is trying to do, but the thing that bothers me about the wording of Section 18 as it now exists is the situation where the man is on the machine and the doctor...he makes no injection, he does nothing, but the man on the machine or the family, say it’s a child involved, decides it’s hopeless and they say “unplug it.” Now, is that situation going to be in conflict with Section 18 as it is written?

Mr. Weiss I see no conflict whatsoever, and I’m glad you asked the question because euthanasia is mercy killing. When you, as a father of that child, agree, or you, responsible for an unconscious mother, agree, or you, agree, or you agree to stop having medications given to you, that’s one thing; but when you ask me, as a physician, to kill you that’s something else.

Point of Information

Mr. Cannon I would like to know...somehow as a layman I don’t feel that mercy killing as such, a two word definition, is a satisfactory definition of this word that we’re discussing, “euthanasia.” Could some learned counsel on that, sir?

Mr. Weiss Yes, I think I am.

Mr. Weiss Yes, Delegate Weiss, why do you rise?

Mr. Weiss I would be happy to.

Previous Question Ordered. Record Vote Ordered. Amendment Adopted: 64-45

Motion to reconsider tabled.

Amendment

Mr. Poynter Amendment No. 1 [as Mr. Weiss], this is how it reads when you have to change it in light of the prior amendments...Amendment No. 1, on page 6, line 11, immediately after the word “treatments” and then we need to change this to read as follows: page 6, line 11, immediately after the word “punishment” added by convention Floor Amendment No. 1, proposed by Mr. Denney and adopted by the convention on today. Change the comma to a period and delete the remainder of the line and delete line 12 in its entirety.

Explanation

Mr. Jack The purpose of this amendment is to take out the words “and full rights shall be restored by termination of state or federal supervision for any offense.” Ladies and gentlemen, what that is, is to automatically after a person terminates a sentence...he’s placed in the position of all of his rights just before he ever went to jail. Mr. Weiss, who was convicted of a felony...Now, we have already gone into this thing of restoring rights and citizenship to people. I hope you will listen to this because unless you do, you might have a conflict in what you’re doing and what you’ve done. Now, on page three of the executive material,

[1196]
executive department, that we finished up this
under P stated, and here is the law regarding the
pardon board and first offenders, multiple offen-
der and felon, and this is my conclusion, requiring
new rules, board of pardons. 1. The Governor
shall have the power to grant reprieves to those
convicted of offenses against the state and upon
the recommendation of the Board of Pardons and
recommendation of sentences, may pardon those con-
icted of offenses against this state and may remit
fines and forfeitures incurred for such offenses;
provided, however, that each first offender was
never previously been convicted of a felony shall
be eligible for pardon automatically upon comple-
tion of his first term. The second recommendation:
"ThE. It goes on and sets up 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
term concurrent with that of the governor appoint-
ing them. Now, ladies and gentlemen, I have just
finished talking with my district attorney in
Shreveport. I know what the law is here, but I
wanted it confirmed because Mr. Derbes and I
disagree. I state that this section here, that
you would not get full right be the terminus of
state or federal supervision for any offense...
that is restoring all his rights, and if that was
the first offender, third offender, fourth offender, leaning those times he
had been convicted prior to that of felonies and/or
gone to the pen...that if a wife goes out...if
he was in and when he took that
witness stand,...the district attorney to impeach
his could not bring out, which is the law, that
he had been that hand between law, the law is,
it's the case law in Louisiana; I just talked to
Mr. Richardson I said is our district attorney,...
that law is, if you get a pardon, you get a restora-
tion of citizenship, whatever you want to call it,
you get your full rights restored which this ma-
terial here provides for, that I read you...that
we are study...going over now in Section 18, the
last line. If you get those rights, if you pass
this and don't pass this amendment, then no matter
how bad a man is that's been in the pen one, two,
three, four, five, six, seven, and I've seen them
eight at times, because I handle pardon board and
parole matters, as you know. Now if those people
finish their term under this material here, a
full right be the terminus of state or federal supervision for any offense no
matter how rotten they were in the pen; even if
they wouldn't get any good time... automatically under this,
you are restored. Now
is a dangerous thing. We have a well thought
out section that I read you in the executive
material, pardons and provides
for the others, and it's a well thought thing.
You better think on these kind of matters, so I
ask you to adopt this amendment to strike out that
language in this proposition.

Questions

Mr. Jack, isn't it true that no matter
how a person has been, no matter how many
times he served a sentence, if he has enough money, he
get a pardon and all rights are restored?

Mr. Jack, if you pass, this and don't pass this amendment, then no matter
how bad a man is that's been in the pen one, two,
three, four, five, six, seven, and I've seen them
eight at times, because I handle pardon board and
parole matters, as you know. Now if those people
finish their term under this material here, a
full right be the terminus of state or federal supervision for any offense no
matter how rotten they were in the pen; even if
they wouldn't get any good time... automatically under this,
you are restored. Now
is a dangerous thing. We have a well thought
out section that I read you in the executive
material, pardons and provides
for the others, and it's a well thought thing.
You better think on these kind of matters, so I
ask you to adopt this amendment to strike out that
language in this proposition.

Another amendment is to know how many pardons are made, ask, each year,

Mr. Jack, if you pass, this and don't pass this amendment, then no matter
how bad a man is that's been in the pen one, two,
three, four, five, six, seven, and I've seen them
eight at times, because I handle pardon board and
parole matters, as you know. Now if those people
finish their term under this material here, a
full right be the terminus of state or federal supervision for any offense no
matter how rotten they were in the pen; even if
they wouldn't get any good time... automatically under this,
you are restored. Now
is a dangerous thing. We have a well thought
out section that I read you in the executive
material, pardons and provides
for the others, and it's a well thought thing.
You better think on these kind of matters, so I
ask you to adopt this amendment to strike out that
language in this proposition.

Chairman Henry in the Chair

Another Discussion

Mr. R., I have, and gentlemen of the committee, I
know that you're getting tired of hearing me up here, but we're down to the very end. Mr. R.
is absolutely, and that, and you know what that is to receive a pardon that the state is going
to clean with respect to your prior multiple offenses, if it just doesn't do that. It simply is a favor.
I only restored your rights to vote and to sit as a
freeman, but it does change something that for
what it doesn't happen the fact that you served a term. It doesn't mean the fact that you
were white, it doesn't mean that you've been in the future to me, but it doesn't have race in the future to me, and we
all have have in the future to me, and all have absolutes, and this is why we're talking.
Law and Mr. R. is hard-core, in his words, you know, it's a state that is that, but, as we do, and we
think, and think that you ought to know, is that when a man...let me tell you one other thing: any-thing you do, you are guilty as convicted of a felony, or you plead to it, even if you don’t go to Angola and are given a suspended sentence because it’s a fire offender or something like that, you are deprived of certain citizenship rights. Most poor, ignorant, honest...folk don’t know that their citi-zenship has been removed. They don’t know that they have to go to the governor to get it back. Sec-ondly, they don’t have the money to get a pardon, and thirdly, they don’t know a lawyer to go give them the money to get the pardon. Now, all we’re trying to do is to say that if we believe in reha-bilitation and we believe that when a man has done his time and paid the state back for his crime, he should automatically get his citizenship restored, which means in certain cases, the right to hold certain types of jobs. There are certain jobs now that you can’t hold if you’ve ever been convicted of a crime without being pardoned. This simply provides that vehicle. The amendment is not cor-rect. It doesn’t do what Mr. Jack says it does, and it doesn’t address itself to the question that’s involved here.

Questions

Mr. Lanier Mr. Roy, you don’t mean to imply in your statement, do you, that all persons who are released from the penitentiary, having served their sentences are rehabilitated, do you?

Mr. Roy Oh, no, obviously not.

Mr. Lanier Now, with reference to your comments about the multiple offender law, is it your posi-tion that a pardon would not preclude the imposition or use or exercise of the multiple offender law?

Mr. Roy That’s right.

Mr. Lanier Is there some jurisprudence on that?

Mr. Roy Mr. Lanier, it’s...I don’t know that there’s actually...is there jurisprudence against it if you have a case...say it, but I don’t think there’s any and I don’t think that anybody could logically argue that the fact you’ve been pardoned erases the crimes that you actually, in fact, com-mitted. It has nothing to do with the multiple offender law, because it simply restores you to the rights of citizenship which are the right to vote, etc., and not the right to commit crime or to be absolved of having committed crime.

Mr. Lanier Does not the effect of a pardon put the person back in the same position as if the crime was not committed and he was not convicted?

Mr. Roy No, it does not. Only with respect to his rights as a citizen, but it does not take away the fact that he was guilty of the commission of a crime.

Further Discussion

Mr. [A.] Jackson Mr. Chairman, ladies and gentle-men, I rise in opposition to an amendment before you, because I think that the committee was trying to address itself to a rather serious problem that is not described by the few lines of phrases before you. I think that when we talk about prisoners in this country, when we talk about some degree of rehabilitation, we certainly have to recognize the serious problems that confront individuals who have been incarcerated and who are now trying to make their way again in a free society. Now, all of us know the problems that face individuals who have been released from our penitentiaries, and one more is that an individual ought not to have to pay the rest of his life, time and time again, that he ought not to have to face the fact that every time he asked to be employed that he is faced by the fact that he once went afoul of the law. Now, I know that it’s a practice in this state for individuals to receive pardons, and I know what the law provides, but I also know that it’s awfully expensive to receive a pardon in this state. I do not believe that it’s fair to take from a man his basic rights of citizen-ship, to have them pay time and time again, once he has paid and served that debt to society. Now, I heard someone allude to the fact that the district attorney from Caddo Parish was opposed to the language in this section. I have in my hand the transcribed record of the district attorney’s appearance before our committee, and he did not say that this section was in conflict with the multiple offenders law. It is not contained in the section that I hold here which bears his testimony and it relates to Section 18, Right to Humane Treatment. So, I do not believe that anyone can say that this section violates the multiple offenders law. I also point out to you, ladies and gentlemen, that in other state constitutions we have this section, so in the interest of political reform, in the action of humane treatment for individuals who have paid their debts to society, I would ask that you would defeat this amendment. If there are no other speakers, Mr. Chairman, I call for the question on the amendment.

[Quorum Call: 78 delegates present and a quorum.]

Questions

Mr. Singletary I believe the law is that when you’re convicted of certain crimes you lose your right to own a weapon. Now, wouldn’t the commit-tee proposal stop that? Wouldn’t it make that law illegal?

Mr. [A.] Jackson Yes.

Mr. Willis Mr. Jackson, isn’t this provision... that last clause sought to be stricken... solely a device whereby a person who has paid his debt to society can go get his receipt from the constitution instead of going to the governor?

Mr. [A.] Jackson That’s exactly right, sir. That’s all it is, sir.

Mr. Denney Mr. Jackson, I wanted to ask this question of Mr. Roy and possibly he will listen also; in the event a lawyer such as Mr. Roy or me were convicted of embezzling funds from our clients we would go to jail and we would also be automati-cally disbarred from the practice of law. Under the language of your amendment when full rights are restored, does that automatically restore my right to engage in the practice of law?

Mr. [A.] Jackson No, sir.

Mr. Denney How do you distinguish that? That is a right I had.

Mr. Roy Well, you have forfeited your right as a lawyer under the provisions of the Louisiana State Bar Association which are proper laws on it.

Mr. [A.] Jackson Well, not only that, Mr. Denney, that’s not a right. That’s a privilege to practice law, to practice medicine, to engage in the profes-sion of teaching is a privilege and when you abuse that privilege you lose it. I move the question, Mr. Chairman.

[Previous question ordered. Record Quorum Call: 96 delegates present and a quorum.]

Closing

Mr. Jack All right. Now, I’m great believer in rehabil-itation. Indeed, we are more these days if I had an independent income I’d devote my life, long ago, to rehabilitation.

[Voice Vote Quorum Call: 98 delegates present and a quorum.]
Mr. Jack All right. As I said, and I've mentioned before here that I'm a great believer in rehabilitation, and my law practice has included criminal law from the day I started. I've done all I can to help rehabilitation. This proposal that reads "and full rights shall be restored by a termination of state or federal supervision for any offense" does not necessarily mean the prisoner has been rehabilitated and should be able to walk out of that penitentiary and pick up a pistol which he had a right to do beforehand. There are a whole lot of these people giving back the guns and I don't care what you say, anybody at Angola that's been there a year, they know what a pardon and what full rights being restored means. This proposal will do it. A three-time loser, let's say at Angola, that never voted and never is going to vote, not going to run for office; why does he want his citizenship back? Because it'll wipe out the first, second and third offense and because he cannot later be prosecuted if he commits a crime under a special prosecution of being a second offender or a third offender or a fourth offender. That's exactly... I won't answer until I finish. Now, anybody... they call them penitentiary lawyers, they know that. Most of the prisoners know that. Now, that is a fact of life. Now, if you want to let everybody to save a few cents as you say... now, I'm not advocating to have to hire lawyers... that we have in that executive material that a first offender doesn't even go to the pardon board. I've told you that in my opening statement. I'm telling you again. They want to check out these people. Now, the next thing on this business is one of the... I don't want to call people's names... one of the speakers was talking about... "you didn't restore their full rights soon as they got out"... if they went to apply for a job and they'd ask them about a questionnaire. The inference was... they didn't complete the thought but the inference unless this passed or they had a pardon and restoration of citizenship, they'd have to answer... they'd been convicted of a felony. If this passes... they could answer no, and that is correct. Just like if this is passed with this proposal then not only could they answer that... no, never convicted, because of this being passed but also if they were in court... try it again... without a pardon but if this passed they could... the district attorney could not bring up they had been convicted of a prior felony. Now, I'll talk to Mr. Richardson on the telephone just before this came up and he bore me out in this and I've practiced law for 41 years and I've practiced pardon board and parole board law since 1940, and that's a long time, 1940, 1945, 1950, 1960, 1970, that's 32 years of those 41. That's a lot more than most of the lawyers here. This is your business. If you don't want to screen people... I'll be down in Houston in the next two years and every person that had never been into the penitentiary killed 26 people... those sex fiends. Let's don't screen them. Let's just feel so sorry for them. This is going to treat everybody the same. If this ain't the limit to just say you're rehabilitated by having served the sentence...

[Amendment read.]

Amendment

Mr. Chairman, Amendment No. 10, on page 8, delete lines 8 and 9 in their entirety and insert in lieu thereof the following and I think we probably better get rid of the penalty amendment for starters.

Section 11. No law shall subject any person to euthanasia, torture, cruel, excessive or unusual punishment.
Weiss Mr. Gravel, the legislature could pass no law...  
Mr. Henry Walt, Dr. Weiss. He understands it. He just wonders if it's written the way you're explaining it, don't you see? Like if he told you to take out the kidney, and you went after the jugular vein...and you cut his tongue out.  
Mr. Weiss Do you have a question, Mr. Gravel?  
I move the previous question.  
Mr. Henry Walt, Dr. Weiss. I'll tell you when. We've got to get it right.  
Mr. Weiss This has been studied for centuries...  
Mr. Henry Dr. Weiss, easy...steady as she goes...turn the front mike off please.  
Mr. Poynter, read it the way it should properly be drawn.  
Mr. Poynter Well, there would be two or three ways to do it. I think, at least the way that I decided and probably the fastest way, make Amendment No. 1, striking out the Denney amendment. Amendment No. 1, just strike out the Denney amendment. Amendment No. 2, on page 6, delete lines 9 and 10 in their entirety and at the beginning of line 11, strike out the word and punctuation "treatments."  
Mr. Henry And then how would that make the section read?  
Mr. Poynter O.K. It would read as follows, Mr. Chairman: "Section 18. No law shall subject any person to euthanasia, torture, cruel, excessive or unusual punishments...pick up on line 11...and full rights shall be restored by termination of state or federal supervision for any offense."  
Mr. Henry Now, is that the way you wanted it to read, Dr. Weiss?  
Mr. Weiss That is correct, with the advice of my legal counsel.  
Mr. Poynter Well, you'd probably need a comma, Mr. Chairman, after the word "punishments," now.  
Questions  
Mr. O'Hall Dr. Weiss, Mr. Singleton asked you if euthanasia could exist. The question is not that. The question would be would our murder laws, manslaughter laws, etc., still be in effect with this and wouldn't you agree that they would be and that's the proper question?  
Mr. Weiss Yes, and I think this is what Mr. Jenkins was trying to make the point...  
Ms. Zervigon Just to clear up in my own mind exactly what it says; as I read the amendment presently before us, it says "no law shall subject a person to euthanasia." You explained it to say that no law shall allow euthanasia. In my mind, those are two different subjects.  
Mr. Weiss The courts will have to decide these words. I'm not an expert on them, but I know what I mean, and I think I know what the word "euthanasia" today means.  
Ms. Zervigon No sir. I'm questioning you about the difference of "subject or allow."  
Mr. Weiss "Subject" implies to me an active process.  
Ms. Zervigon "Subject" implies to me "requires." Is that the way you read it?  
Mr. Weiss No. I don't think "subject" means "require." I don't read it that way.  
Mr. Lanier Dr. Weiss, I'm trying to get at, I think what Mrs. Zervigon was getting at. If this thing says "no law shall subject any person to euthanasia," would that mean that private persons could subject someone to euthanasia.  
Dr. Weiss No. According to the researchers who...an attorney...it's my understanding that "subject" means no one can be required. The law may not require. It is an involuntary situation. They do not require that people be subjected to euthanasia.  
Mr. Lanier Wouldn't we have this same problem with all of these other things too, with the torture, cruel, excessive or unusual punishments?  
Dr. Weiss Yes. You may not be subjected to it. That is...you may not request it. I believe, to draw an analogy, that you may not commit judical suicide, was the instance you used this morning, so nicely to me, when you go to court. You may not consent to it, you may not admit it, you may not be the cause of it. Therefore, you can admit to capital punishment with life imprisonment, but you may not commit judicial suicide and this is the same to attorneys. Thank you, Delegate Lanier, for bringing that up to my attention this morning. Perhaps the attorneys will better understand it, in that light.  

[Previous Question ordered. Record vote ordered. Amendment adopted: 59-19. Motion to reconsider tabled.]

Personal Privilege  
Mr. Lowe Mr. Chairman, delegates to the convention, I won't take a great deal of your time. It just aggrievces me a little to look at the fiasco over in record vote at this time of day, and I know that some members are aggrieved because of this. I'll give you an example right now. At a quarter to nine this morning, Robert Austerity was sitting at his desk, he voted every vote, listened to all of the arguments. At 12:20, he told me he had to go to L.S.U. to make a talk about the Constitutional Convention to the American Association of University Women and that as soon as he did that, he would be back to the convention. Now, it aggrievces me to think that the delegates to this convention are taken from the citizens and their contribution that they are making to this convention is gauged by record votes here and record votes there. He saw that happen with PAR, and PAR's analysis had no more basis of what a delegate's contribution was or was not to a convention at that time than the number of trips that a delegate would make to this Mike or the number of trips that a delegate would make to pick up coffee. That's about how well thought out PAR's analysis was. Yet, on August 15, PAR wrote to their board of trustees and said, "the violent reaction," and I quote, "the violent reaction of certain delegates only added to the public's interest," which indicates that if a delegate is going to question PAR, it's a violent reaction. It only adds to the public's interest and puts that delegate in a poor light. I submit to you that I would hate to see the press today, pick up the record vote that we had and gauge any delegate's interest in this convention as to whether he was present or absent at that particular time, and as to whether it was a Saturday at noon, because there are many reasons that a delegate can leave this convention. I'll reiterate again, Delegate Aerator's proposition. You could look at Delegate Aerator and say he is not interested, yet he's making a bigger contribution at this time...it took an effort to leave this convention to hurry to L.S.U., to be there for 10:30 to make a talk before this group and to say that he will return because we'll probably still be in convention. I'm aggrieved because I see many
Mr. Pointer Amendment No. 1 [by Mr. Drew]. On page 6, line 11, immediately after the word "restored" and before the word "by" insert the words "for any first offender.

Amendment

If anyone is still not real sure of everything I read out, where, why, you've got on this section is the last amendment and then add, after the last amendment, add...pick up with the word "and" on line 11. So you put the last amendment together with lines 11 and 12 and that's what you're doing at this juncture.

Explanations

Mr. Drew Mr. Chairman, ladies and gentlemen of the convention, the reason I had asked that it be tossed back and the words "restored" and before the word "by" insert the words "for any first offender." Because if anyone is still not real sure of everything I read out, where, why, you've got on this section is the last amendment and then add, after the last amendment, add...pick up with the word "and" on line 11. So you put the last amendment together with lines 11 and 12 and that's what's viable at this juncture.

Mr. Burns Mr. Derbes, you don't think this right should be limited to first offenders?

Mr. Derbes No, sir. I do not. I do not think that this right should be limited to first offenders. I think that...I believe that when a...a conviction on a second offense or a multiple offense can result in extensive probation and extensive parole--long term confinement. The first offense can be taken into account when determining the sentence for the second offense. Why, after a person has fully discharged his obligation to society, should he then have to go on his knees to get the right to vote, regardless of the number of offenses?

Mr. Duval Jim, do you know this is a friendly question? This would not change the state to bring a habitual offender charge in the second offense, would it?

Mr. Derbes Absolutely not, it has nothing in my opinion, to do with the conduct of trials for multiple offenders, the sentencing of multiple offenders, the probation and parole of multiple offenders.

Mr. Annette Jim, this is just for information on your own information, if you want, the exercise of citizenship would just entail things like the right to vote, possibly the right to hold office and things of this matter, the right to work and all the other things?

Mr. Derbes Exactly, accurately, nothing more than that.

Mr. Annette It would not affect the legislature from the getting a law that a convicted person would not carry a weapon or present a weapon.

Mr. Derbes Absolutely not.

Mr. Annette The same thing with regard to, having a bar and tavern and drink of the present law.
Mr. Derbes Absolutely not.

Mr. Velazquez Delegate Derbes, do you know that I consider this the best thing that you have written so far?

Mr. Derbes Are you for it or against it, Mr. Velazquez?

Mr. Velazquez I'm for it.

Further Discussion

Mr. Alexander Mr. Chairman and delegates, I rise in support of the amendment for the following reasons: (1) I have had much experience in dealing with criminals or ex-convicts, suppose I say. Let me see, what has happened under the terms of our laws in the State of Louisiana. The fact that crime is very high among us is due partly to those laws which I consider archaic. For example, if a man serves his time in Angola, when he comes out his record follows him. Now, I'm not particular about whether his citizenship is restored for the purpose of voting and/or running for office. I'm not concerned about that kind of man because usually the convict, the one who gets caught up in the law and goes to Angola is not a good citizen, or he may not be a voter, etc., etc., but he has to work. What happens is, once the judge sentences him for a felony, to Angola, he is convicted for life, in Louisiana, and barred from employment. Now, let me give you one brief example. I had a man to come to me who had been to Angola. He reapplied to his former employer for work. The former employer told him, "No, you are an ex-con. I can't employ you." He goes elsewhere, finds a job, and he informs them because all...most applications, either under civil service--state, federal, or local--and private employers have a question, "Are you an ex-con or have you ever been convicted of a felony and served time, etc., etc.?" He tells the truth. He doesn't get the job. Then, he decides to change his name, and finds out that they find out anyway after he is employed one or two weeks, or one or two days. So, the man is thrown back on the street, impossible for him to get a job, and what does he do? He commits another crime, and that's why we have so many re-offenders. So, I appeal to you to adopt this amendment and make it possible for an ex-convict at least to get a job so he can work and support himself and his family. He will not be forced back into crime and go back to Angola within the next six months. That's why you have so many thousands in the jails and in Angola in this state now. Thank you.

Questions

Mr. Riecke Reverend Alexander, if this Derbes amendment was passed, that wouldn't permit that man seeking employment to tell you, as an employer, that he has never been convicted if he has been convicted four or five times, would it?

Mr. Alexander No, but I tell you what it would do, Mr. Riecke. It would...most employers, especially the various civil service systems investigate, they would not find this in his record.

Mr. Riecke I know, but if he told me the truth, he had been convicted whether this amendment passes or not, and that wouldn't preclude my employing him.

Mr. Alexander That may be true, Mr. Riecke.

Further Discussion

Mr. Gravel Mr. Chairman, ladies and gentlemen of the convention. I'm going to be brief, and at the conclusion of what I have to say, I am going to move the previous question. Let me make sure that there is no misunderstanding about what this particular amendment does. All it does, and I think Mr. Derbes has already said it, but I think it needs to be said again, is to say that after a person has served his time in the penitentiary or elsewhere, or after he has served his period of probation and/or parole, after, so to speak, his debt fully to society has been paid, society will then say, "Okay, we're going to restore the rights, the rights that you, as a citizen have, and that is the right to vote and the right forfeited our right to practice law, would we automatically be reinstated? I think it's too broad a term. I ask that you defeat this amendment.
to hold a job, let's say with the state, or to run for office. It doesn't do anymore than that. It doesn't say that you can't be prosecuted as a second, third, fourth, or fifth offender in the future if you commit other offenses. It doesn't say that you are pardoned for the crime that you have committed and that your slate has been wiped clean. It simply says that we're going to give you back the minimum things that have been taken from you because you have earned them. You have served your time or you have responded to the duties and obligations imposed upon you by the order of probation or the order of parole, depending upon what the case may be. This gives some additional hope to the man who has really tried to and has done what society says he must do, and that is, pay his debt. He's done it. Now, that's all that this amendment does. Mr. Chairman, if there are no further speakers, I would like to move the previous question.

Questions

Mr. Tupper If you answer this question, I may not have to take up the time of the convention to say so. Mr. Gravel, isn't it a fact Mr. Drew made a statement a while ago that if we adopt this we are going to undo what we did with his amendment? Isn't it a fact, however, that Mr. Drew's amendment was void after a certain point and that was the point one that spoke on the amendment and there was no opposing side put forth on that amendment?

Mr. Gravel Well, that's correct. I think Mr. Drew had put something additional into the concept that doesn't belong there. What this amendment does not do is simply misunderstand Mr. Drew. But I thought he said that this would restore the language of the committee to the section. It does not; it limits the language of the committee. I'm not suggesting that he said that, but I thought he may have said it--somebody may have said it. It limits the language of the committee very appreciably, by saying that...instead of saying that "full rights shall be restored," by saying that "only the limited rights of citizenship shall be restored." So, to that extent it's a rather substantial departure from the broad sweep of the committee language.

Mr. Willis Mr. Gravel, this one is friendly, or these are friendly. Does not...this amendment does not give the former convicted citizen to be again, a medal. It just gives them back what is tantamount to or in parallel, corruption of blood.

Mr. Gravel It gives them a taint of respectability, you are right.

Mr. Willis Thank you. Now, about this argument that in adverse to this proposition under consideration, the argument is four-time loser. Well, now, what say you to a judge that a man can lose four times in his lifetime? What do you think about that judge?

Mr. Gravel Mr. Willis, don't ask me about the judges, I'm in enough trouble with them already, please.

Mr. Drew Mr. Gravel, did you understand that when I was referring to the committee proposal that I was referring to the multiple offender portion? My amendment provided this applied to first offenders, the committee proposal, regardless of the number of convictions. Did you understand that when I was speaking of about the committee proposal?

Mr. Gravel I think I understood you. All I'm saying is that if you suggested that this amendment restores the original committee proposal, I don't think it does. I don't think that's what you...probably that's not what you said. I perhaps misunderstood you, Mr. Drew.

Reading of the Section

Mr. Peonyer The next section, Section 19. Right to vote.

Section 19. No person eighteen years of age or older who is a citizen and resident of the state shall be denied the right to register and to vote, except that this right may be suspended while a person is interdicted and judicially declared mentally incompetent, or under an order of imprisonment for conviction of a felony.

Explanation

Mr. Roy Mr. Chairman, ladies and gentlemen of the convention, there are three things here that we essentially did after a lot of hearings of the people with the registration for voters and several other women who were interested in the mentally incompetent, and what have you. First of all, we constitutionalized that if you are eighteen years of age or older, you have the right to vote. If you are a citizen and resident of this state it shall not be denied the right to you to register and to vote. In the past there has been some problem that you had the right to vote, but it appeared that registering was a privilege and that it was a lot harder to do than it should have been. Therefore, your right was denied. The other thing that we do is, of course, that it makes two exceptions only with respect to not being able to vote--interdicted, which means to be in an institution and declared by a judge to be incompetent and/or judicially declared mentally incompetent because the distinction sometimes between an interdiction proceeding that is brought by members of a family and sometimes a judicially committed person being judicially committed for a certain amount of time because maybe of alcoholism, and then gets out. So, that was the reason that we used those terms. The others that are under an order of imprisonment for conviction of a felony means that if you are under an order of imprisonment, and not necessarily in the pen, that your right to vote is suspended during that particular term that you may be suspended from the prison but actually under an order of imprisonment. Now, as far as that one thing, there are going to be amendments come up that I know of, that Mr. Ambrose Landry is interested in, that tries to say that at no time in the future, ever, will the legal voter be able to lower the age from eighteen to vote. You must understand, and this is extremely important, that we say if you are eighteen or older, you have the absolute right to register and vote if you are a citizen and a resident and you don't have any of these other disqualifications. But, we leave it to the legislature because we don't negate it, that in the future time, ten, fifteen, twenty years from now, it may lower the age of voting to seventeen, and you may then register and vote at that time. Mr. Landry and then one thing, it's going to be coming up that will say that you will never be able to lower that age. They are going to constitutionalize it at eighteen and the legislature may never change it. I urge the adoption of this amendment and I will submit to any questions... I mean the adoption of the section, and will submit to any questions.

Questions

Mr. Derbes Mr. Roy, the phrase "interdicted and judicially declared mentally incompetent," the construction indicates would indicate that they are different qualities. They do not understand the difference. Isn't interdiction a declaration of incompetence?
Mr. Roy Mr. Derbes, interdiction is a formal hearing that requires notice and what have you, whereas to be judicially declared mentally incompetent may not. You may be sentenced without the hearing to an institution until there is such a hearing.

Mr. Derbes A commitment, a judicial commitment which is what I think you are referring to is not necessarily a declaration of incompetence.

Mr. Roy That's right.

Mr. Derbes But, under these conditions, you have to be both interdicted and judicially...

Mr. Roy "Judicially declared mentally incompetent." You can be interdicted for non-mental reasons. You can be interdicted because you can't carry on your business at all, but that doesn't make you mentally incompetent. Therefore, the committee, in studying this, said that you had to be declared judicially mentally incompetent.

Mr. Derbes But, what I'm trying to tell you is that interdiction is a declaration...is a judicial declaration of incompetence and what you are really trying to do is judicially committed.

Mr. Roy No, no, because you may not necessarily be committed anywhere, but you could be "judicially declared mentally incompetent."

Mr. Champagne Mr. Roy, this section would do away with any residential requirements?

Mr. Roy No, sir, it does not. Well let me say... let me answer this. We followed what the United States Courts have said that you have got to be a resident of the state and a citizen.

Mr. Champagne Well, I mean like local you couldn't have anything...

Mr. Roy Sir.

Mr. Champagne In other words if I moved into town today I could go register and vote.

Mr. Roy You have the absolute right to register if you move into a town, but you have to be there thirty days before you can vote and we can't say anything about that, Mr. Champagne, that's the law.

Mr. Conroy I just didn't understand the last part of what you just said, Mr. Roy. You said that you would have to be there for thirty days but that's not in this provision. This would permit you to immediately to vote, doesn't it?

Mr. Roy No, it says that...

Mr. Conroy "No person eighteen years of age who is a resident of the state shall be denied the right to register and to vote." So that you couldn't even have the thirty day limitation under this provision, could you?

Mr. Roy Well, let me understand you. You have thirty days...the practical matter, Mr. Landry says it takes thirty days to do both but in any event you are under the present Supreme Court rules. Once you move to a place you may register to vote but cannot vote for thirty days.

Mr. Conroy But it seems to me, as I said, that this provision would preclude that because this says if you've been a resident...if you are a resident at all of the state you can't be denied the right to register and vote, even the day of the election, the way this is worded as I would read it.

Vice Chairman Casey in the Chair

Mr. Willis Mr. Roy, I just left the last sentence in the previous Section 18 and if you look at the last independent clause of the section under consideration, 19, don't you think that we should use similar language instead of under order of imprisonment and convicted of a felony for this reason? I don't understand if that last clause in the section under consideration means that as soon as he gets out of Angola he can register to vote. In the previous section means when he gets out of Angola that doesn't end that he has to end his supervision. You see what I mean. Don't you think that something should be done to make those fit hand in glove?

Mr. Roy Well, if he is out of Angola and no longer...

Mr. Willis Well, he could be under probation.

Mr. Roy I don't know if I understand. Let me tell what we have attempted to say. That while you are under an order of imprisonment even if you are on probation or suspension for the conviction of a felony you may not vote, but once that probation and suspension ends, even though you were under the order of imprisonment at all times, then you are entitled to vote irrespective of whether you are...

Mr. Willis I believe that's what you wanted to say, but in view of what we said in the last sentence of the previous article, I believe some adjustment should be made to make them coincide don't you see?

Mr. Roy I don't see it, but...

Mr. Jenkins Chris, with regard to the question regarding whether or not there could be residency requirements to register and to vote. Isn't it true that right now there is, in fact, no residency requirement under federal law to either to register or to vote? There is only an administrative delay which is allowed after registration before he can vote, but there is no residency requirement at all. As soon as you become a resident you automatically can register and vote.

Mr. Roy That's correct, Mr. Jenkins, and that's what we are faced with and the Supreme Court has allowed us in the South, in Louisiana, thirty days and the rest of the states can make you be there fifty days before you can vote.

Mr. O'Neill Mr. Roy, hasn't history shown in the United States that various moves have proceeded a long time to enfranchise more groups of voters for instance, blacks after the Civil War, women in the early or 1919 or so, now, the eighteen year olds and that in the future they might want to enfranchise even more younger people.

Mr. Roy That's correct and that's why we have not constitutionalized it at eighteen alone, only that you can't be stopped.

Mr. Dennery Mr. Roy, in connection with that very explanation but, also, in connection with Mr. Derbes' question, it is possible I take it that the legislature may sometime in the future provide for the judicial declaration of mental incompetence without interdiction?

Mr. Roy That's correct.

Mr. Dennery It seems to me, therefore, that by saying "Interdicted..." judicially declared mentally incompetent," you are freezing something into the constitution unnecessarily. If you would just remove "interdicted" and wouldn't you get exactly the same result and still not freeze anything into the constitution?

Mr. Roy Mr. Dennery, one thing is that you can
have an ex parte here and to declare somebody mentally incompetent and may deprive him of his right to vote at that time and then the election is over, then later he is free and he can vote and he never should have been denied that right to vote. As far as I personally feel, I wouldn't have anything in here that way you know because you get into the problems of where you have an interdicted person who is really capable but he is being denied the right to vote under certain circumstances. We were worried that if we didn't have it like we did all these people were in institutions could demand on the day of the election that the state furnish some type or method of transportation to get them to the voting precinct since we would be giving them the right to vote, we had the exception "unless interdicted and judicially declared incompetent."

Mr. Dennery: But isn't it true, Mr. Roy, that a lot of people are in state mental institutions who have never been interdicted?

Mr. Roy: That's correct, but the only thing is...

Mr. Dennery: Therefore, those who are in mental institutions and are not interdicted, under your theory could then demand transportation to vote.

Mr. Roy: Noise, I think, I think you are right but the point is that we don't deal with the others necessarily like these folks, because we are not excepting them out of it.

Mr. Dennery: O.K.

Mr. Roy: We have considered it and you get to a point where you just get into you know, kind of a little problem there.

Further Discussion

Mr. Stovall: Mr. Chairman, ladies and gentlemen of the convention, I have looked over these three amendments that are before us; they do not seem to have a great deal of substance to them...I'm just... Mr. Lanier seems to disagree...I was going to suggest that we move the previous question on this section, but if you insist on the amendments...why, I will restrain myself.

Amendment

Mr. Hardin: [Assistant Clerk] A set sent up by Delegates [A.L. Landry and others].

Amendment No. 1: On page 6, delete lines 14 through 16, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 5: Every citizen of the state, upon reaching eighteen years of age shall have the right to register and vote, except that this right may be sus-

Explanation

Mr. A. Landry: Mr. Chairman, ladies and gentlemen of the convention, this is a technical amendment. It is technical in such a way that we are not going to leave any work for the Committee on Style and Drafting. It does provide that a person eighteen years of age reaching that age shall have the right to register and to vote and that is all there is to it. If you want persons twelve, thirteen, fourteen or fifteen years old to vote, then vote against my amendment. But, if you feel that the year eighteen is a fair age for a person to register and vote, then I urge you to adopt my amendment. Under the proposal that's before you now the committee is giving constitutional protection to a citizen eighteen years or older. But, if the legislature would reduce the age of voting as low as twelve or thirteen or fourteen or fifteen or you pick a figure out of thin air, these people would not have constitutional protection. Personally I don't believe that even this belongs in the Bill of Rights. I think it should be in suffrage and elections, but we take it where we find it and so I ask you to adopt my amendment which will provide every citizen of the State of Louisiana upon reaching the age of eighteen to register and to vote.

Questions

Mr. Roy: Mr. Landry, how can you at all argue that you are not constitutionally protecting people under eighteen when you are specifically saying that you have got to be eighteen in the future to vote?

Mr. [A.] Landry: I think you heard me say, Roy, if you felt that you wanted to lower the voting age then vote against my amendment. If you feel you want to see it at eighteen, then vote for my amendment.

Mr. Roy: In other words, if the legislature in the future feel that it is going to lower it to maybe seventeen it may do so under the committee proposal but under yours it may never do so.

Mr. [A.] Landry: That is correct, Mr. Roy.

Mr. Champagne: Mr. Landry, I seem to be...would you say that you are taking a positive approach to this thing rather than a negative one?

Mr. [A.] Landry: That is correct. I positively see the eighteen years of age as a person who can register and vote.

Mr. Jenkins: Mr. Landry, what in your proposal forbids the legislature from lowering the age? I don't see anything that forbids it.

Mr. [A.] Landry: I think that if you read it, it is self-explanatory. It says "every citizen in the state upon reaching the age of eighteen shall have the right to register and vote." Nobody else.

Mr. Jenkins: No, but you protect the right of every person who is eighteen to register and vote, but you don't forbid in here the legislature from giving that right to people who are under eighteen, do you, any more than the committee proposal does?

Mr. [A.] Landry: I think I do, Mr. Jenkins, that's a matter of opinion.

Mr. Jenkins: I mean I don't disagree with your premise, but I don't see how that yours is any different from the committee's, is it, in that regard?

Mr. [A.] Landry: I don't think the legislature would have any problem with it.

Mr. A. Jackson: Mr. Landry, did you know that the committee felt that this section was necessary for the Bill of Rights, because we consider the right to vote an individual right and not a privilege anymore?

Mr. [A.] Landry: I understand that's what the committee's intention was, but I believe that under my amendment it says "persons upon reaching the age of eighteen shall have the right." We didn't use the word "may".

Mr. A. Jackson: I was questioning your statement that this did not belong in the Bill of Rights, did you know?

Mr. [A.] Landry: It is a matter of opinion.

Mr. Lanier: Mr. Landry, did you know that I wanted to ask you a couple of friendly questions?

Mr. [A.] Landry: As a coauthor, I imagine that is what you intended.

Mr. Lanier: With reference to this business about the privilege of the right to vote. Under the committee proposal would you agree that those who are eighteen years or older would have a constitutional
right to vote?

Mr. [A.] Landry That is correct.

Mr. Lanier But, if the legislature were to reduce the voting age those who were in the class that were under eighteen years of age would not have a constitutional right to vote, but would only have the privilege granted to them by the legislature to vote.

Mr. [A.] Landry That is correct unless...it would be an amendment to the constitution.

Mr. Lanier So under that category in the total class of persons who would be entitled to vote some would be privileged and some would have a right, is that correct?

Mr. [A.] Landry That's correct.

Mr. Lanier Do you think that is a very good situation for us to create in our constitution?

Mr. [A.] Landry I don't think so, that is why I have the amendment.

Mr. Stinson Mr. Landry, I believe you made the statement that the committee wanted possibly the legislature to set those under eighteen vote in some future date. You know that I am a member of the committee, don't you?

Mr. [A.] Landry Yes, sir.

Mr. Stinson Do you know that I did not intend to do that and that I am certainly opposed to the legislature having that right?

Mr. [A.] Landry I understand that, Mr. Stinson, and do you know that, I don't know what the intention was, but the way it was drafted, it could happen.

Mr. Stinson Now, I am concerned about yours though. I'm in favor of it, I believe, except you use the words "every citizen." Now you don't even require them to be a resident. Don't you think that we will have a problem there?

Mr. [A.] Landry Mr. Stinson, I think that is very easily taken care of in the statutes. I think you have no doubt that this is all over with, you will have an election code that will take care of all these things. Because of the federal court ruling you don't know where you are as far as registering is concerned or deciliation is concerned. I heard mentioned awhile ago that a person can come in thirty days, under the present federal voting rights act, register, providing he has been in the area over thirty days, where he can only vote on federal issues and not on local government issues.

Mr. Flory Mr. Landry, if I read your amendment correctly, I believe what you do in contrast to what was intended by the committee, is that you could go back to requiring a person to pass a test before he could be registered to vote, under the language of your amendment.

Mr. [A.] Landry If you would want to be in violation of the United States Government, yes, but I don't think you could, it wouldn't stand up in court.
Mr. Tobias  I conceded Mr. De Blieux's point.

Mrs. Zervigon  Mr. Tobias, discussing the concept rather than the language right now. Have you met my twelve year old daughter, just about to be thirteen?

Mr. Tobias  Once.

Mrs. Zervigon  Are you aware that after having heard some of the discussion at this convention, I have a great respect for her understanding of these procedures of government. I think that she would be a good registered voter? Are you aware that when people put down on thirteen year olds that maybe they haven't met them all?

Mr. Tobias  I would say that's an accurate statement.

Mr. Stovall  Mr. Chairman, members of the delegation, I believe that the reasonably intelligent members of this convention have made up their minds concerning the slight differences between these two points and I, therefore, move the previous question.

[Previous Question ordered. Amendment adopted: 59-40. Motion to reconsider tabled.]

Amendment

Mr. Poyster  The distribution copies have not arrived on this set of amendments. Amendments [by Mr. Denery] read as follows: On page 6, line 17, after the word "is" delete the words "interdicted and" and on line 18 after the word "incompetent" insert the words "in an adversary proceeding".

Explanation

Mr. Denery  The purpose of this amendment is that, under the committee proposal as it is presently stated, a person must be interdicted and judicially declared mentally incompetent in order to have his voting rights suspended by the legislature.

It is my understanding from a discussion with the committee members that the purpose of putting the word "interdiction" in there was to guarantee an adversary hearing, because there are some instances in which a person can be declared, judicially declared, mentally incompetent without an adversary proceeding. Those circumstances are such that the committee did not feel that that type person who had been declared mentally incompetent without the right to argue against it should be prohibited from voting. I pointed out to members of the committee that in my question that it was possible that some future time a judicial declaration of mental incompetence would be provided by the legislature following an adversary proceeding and that by leaving the words "interdicted and" in the language it would add the requirement of interdiction. There are some families who don't want to go through the notoriety of interdiction which requires publication in the newspaper and so forth but would be willing to have a member of the family declared judicially incompetent after an adversary proceeding. Certainly those people--the legislature should be permitted to deny the right to vote to those people. I suppose you would call this a technical amendment, but it is a substantial change to that extent.

Questions

Mr. Gravel  Mr. Denery, your amendment would add, as I understand it...

Mr. Denery  It would delete "as interdicted," Mr. Gravel. Would read "while a person is judicially declared mentally incompetent in an adversary proceeding."

Mr. Gravel  All right, but aren't there many, many instances where the determination of mental incompetency are made unilaterally by the court based upon the facts and circumstances that are presented to the court and there really is no actual adversary proceeding, as such?

Mr. Denery  That is quite correct and the reason I put "adversary proceeding" in there is that the committee indicated to me that they placed an interdiction proceeding to guarantee an adversary proceeding.

Mr. Gravel  Well, are you meaning...do you mean that they put that unless there's, let's say a lawyer on both sides, so to speak, which is what I understand an adversary proceeding to be...

Mr. Denery  That's right.

Mr. Gravel  ...that then this particular provision would not apply?

Mr. Denery  Yes, sir. At least a curator appointed to represent the person who is charged or the defendant in a suit, to declare mental incompetency.

Mr. Gravel  But the fact that a curator, isn't it correct that the fact that a curator is appointed, doesn't guarantee an adversary proceeding? That is mainly done for the purpose of obtaining service, substituted type service, upon the...

Mr. Denery  Well, I wasn't thinking about a substituted service curator, Mr. Gravel.

Mr. Gravel  Ordinarily I agree with you but I think you have injected something here that really is very confusing.

Mr. Denery  I won't argue the point. It is confusing but I felt that if you left the words "interdicted and judicially declared" that you would have a lot of people voting who shouldn't vote and you could not take those rights away from them.

Further Discussion

Mr. De Blieux  Mr. Chairman and ladies and gentlemen of the committee, I just wanted to object to this because there may be some occasions when the legislature might permit the declaration of judicial incompetency that you wouldn't have an adversary proceeding. At the present time I don't know of any, but I don't think that we ought to try to place these kind of restrictions in the constitution. I don't think that this would be a good amendment. I had thought about this amendment to take out the word "and" because as it is stated in the provision right now you had to be interdicted and judicially declared mentally incompetent in order to be deprived of the right to vote. I think possibly if we change that word "and" to "or" we would be accomplishing a whole lot more in this regard, and I certainly think that this would be a bad amendment by absolutely requiring an adversary proceeding to be deprived of the right to vote. I can see instances wherein we may have a provision for a judgment in chambers on some person who is, because of disabilities would be interdicted for a period of time, to permit somebody else to carry on his affairs of business and I certainly think that this would be a bad amendment in that regard insofar as this particular provision is concerned, and I, therefore, oppose the amendment.

[Previous Question ordered. Amendment rejected: 27-66. Motion to reconsider tabled.]

Amendment

Mr. Poyster  Amendment No. 1 [by Mr. De Blieux]. On page 6, line 17, after the word "interdicted" delete the word "and" and insert in lieu thereof the word "or".

[1207]
Mr. De Blieux, it is a technical amendment.

Mr. Denery Senator De Blieux, is it not correct that a person can be interdicted for causes other than mental incompetence?

Mr. De Blieux Certainly. Certainly.

Mr. Denery And you think that anyone who is interdicted should not be permitted to vote whether it be for physical disability or profligacy or heavy drinking or anything of that sort. You think they should be prohibited from voting?

Mr. De Blieux No. This would be one of the things that would. I don't want to say that you have to have both of them, interdicted and declared mentally incompetent, because if they are interdicted for physical reasons then they wouldn't be able to go down to the polls and vote. So you don't have to worry about that.

Mr. Denery Come now, you know you can get carried. You have arranged to have people brought to the polls who are physically disabled, haven't you?

Mr. De Blieux Well, we tried that before, Mr. Denery. You know you have provisions in New Orleans we don't have in other portions of the state, so...

Mr. Arnette Senator, do you realize that if we adopt your amendment that a person who is interdicted, say because he is blind, would not be permitted to vote as they presently are permitted to vote?

Mr. De Blieux No. I just--you have a provision for blind people; they are not interdicted or declared mentally incompetent.

Mr. Arnette Well, let me give you another example. Senator, suppose someone has physical handicaps which make him interdicted; you would prevent him from voting by absentee ballot.

Mr. De Blieux You can't vote if you can't get to the Clerk's office. You can't vote an absentee ballot.

Mr. Arnette Oh, you are wrong, Senator, you may just request one by mail from the Clerk of Court and they will mail you one.

Mr. De Blieux Ah, that's...

Mr. Arnette Because I have done it, Senator.

Mr. Henry Let's proceed orderly. I think everybody knew that Mr. Arnette had been interdicted several years ago.

Mr. De Blieux Mr. Chairman.

Mr. Henry Sir.

Mr. De Blieux If this amendment is going to raise all this trouble I'll withdraw it.

Mr. Henry Wonderful.

Mr. Stinson I don't know whether he is going to yield, he has already withdrawn the amendment.

Mr. Stinson Let me ask you a question. I am trying to save a little time while we are getting another amendment please, sir.

Mr. Henry Yes, sir. All right.

Mr. Stinson Mr. De Blieux, could I ask you a question?
44th Days Proceedings—September 8, 1973

that's a legal term under our law, it's interdiction, and it says mentally interdicted means for mental purposes.

Mr. Arnette Mr. Stinson, I feel for the...for what you are trying to accomplish here, but don't you mean interdicted for mental reasons or for mental cause or something like this?

Mr. Stinson If you want to make a technical amendment, I have no prejudice and no objection...

Mr. Arnette If you can do that, I would like for you to go ahead and do that, and that would solve a lot of problems.

Mr. Stinson Mr. Clerk, can you say that "interdicted for mental reasons," can you make such a technical amendment?

Mr. Henry You want to withdraw your amendment?

Mr. Stinson No, if you make a technical amendment up here, it says, "man who is mentally interdicted"...

Mine says "mentally interdicted," and an objection has been raised and they would like "interdicted for mental incompetency," for which I have no objection and I think possibly would clarify...

...[Amendment withdrawn and resubmitted with corrections.]

Amendment

Mr. Poynter Same language, page 6, line 17 after the word "is" delete the remainder of the line and insert in lieu thereof the following: "interdicted for mental incompetency or judicially committed to a mental institution."

Mr. Henry All right.

Would you yield to a question from Justice Tate?

The gentleman yields.

Mr. Stinson I'll be glad to except the members of the Supreme Court from that, if they wish?

Mr. Tate No, this is just puzzlement.

Questions

Mr. Tate Mr. Stinson, does that mean, for instance, those people that have those little ex parte interdictions, for instance for nervous breakdowns to go to Pineville, they come home on weekends. All they are is nervous.

Mr. Stinson Yes, sir.

Mr. Tate Do they lose their right to vote?

Mr. Stinson Until they are released and then automatically you've got a discharge and says, "You are now competent, you can go home." That's what the institution gives them.

Mr. Tate But, how about a fellow like me that ought to be?

Never mind, I withdraw that question?

Mr. Kelly Mr. Stinson, there are people judicially committed; say that are alcoholics, and so forth, and they go down to Pineville, or down further south and they stay there two or three days, and they are out and back and forth...and is this amendment going to deny these people the right to vote?

Mr. Stinson As long as they were judicially committed there, now if they are released to go home cured, they get a release and they are not judicially committed.

Mr. A. Landry Mr. Stinson, as a layman, I think a lot of laymen are in this group, isn't it so that interdicted means a judicial interdiction and not just a commitment by the judge to send someone to a mental hospital for just maybe a month or so?

Mr. Stinson Yes, sir.

Mr. A. Landry So that even though he would be committed temporarily to a mental hospital that would not deny him the right to vote. Is that correct?

Mr. Stinson And, also, Mr. Kelly, in answer to yours, Judge Dennis pointed out a matter that most of those that want to go there for the alcoholic cure, they voluntarily go. They are not judicially committed. They go there, and when they get through with the rest cure, they are out and there's...

[Previous Question ordered. Record vote ordered. Amendment rejected: 38-63. Motion to reconsider tabled. Previous Question ordered on the Section.]

Closing

Mr. Stinson I want to warn you, if we pass this, every person in every mental institution is going to be able to vote and mandamus to come out, and this is serious. We want to go home, and I think we should certainly not pass something like this...

[Section passed: 81-21. Motion to reconsider tabled.]

REPORTS OF COMMITTEES

[Int Journal 461-463]

INTRODUCTIONS OF RESOLUTIONS

[5 Journal 467]

Announcements

[3 Journal 469]

[Adjournment to 9:00 o'clock a.m., Wednesday, September 12, 1973.]
ROLL CALL

Mr. Landrum  Our Father in Heaven, in the name of Jesus we thank thee for all thy blessings and once again to be able to assemble in thy name to try to do the things that are pleasing in thy sight. Our Father in Heaven, we need your help, your guidance to show us what to do and to give us the courage to do those things that are pleasing to Thee. We pray that the blessing upon each and every family today. Bless the newsmen, bless the young people that we are working with and those who have gone back to school. In the name of Jesus we pray and ask of all thy many blessings and for his sake Amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

Personal Privilege

Mr. Juneau  Mr. Chairman and fellow delegates, I would like to take this opportunity to give you some information that I thought you and the people of this state would be interested in. You know, since January, we have been through some tumultuous times and the attention went to session. During this time of deliberation and debate we've all had moments of discouragement and worry over whether or not we were doing a good job here in Baton Rouge. Well, let me give you some interesting statistics on what we've accomplished since we came here in July. I guarantee you that it's going to bolster your spirits, and it will assure you that we are moving in the right direction and actually accomplishing what we were sent down here to do. A review of the first three articles adopted by this body shows us that in the present constitution, the number of words on the legislative branch alone is 12,171 words, while the article which we adopted contains approximately 4,014 words. That's roughly one-third of the verbiage of the old constitution. In the 1921 version of the Executive Article, there are a total of 12,910 words, but in our articles today, that we have proposed, it represents approximately 2,517 words, or one-sixth of the number used in the 1921 Constitution. It took approximately 3,000 words to cover the Judicial Article which was adopted, but the present constitution or the old constitution contains over 30,000 words on the same subject, or ten times as many words as what we presently have. The total words in the three articles that we have gone through to date in the old constitution is 55,081 words as compared to 9,531 words in the very same three articles. Gentlemen of this convention, that represents approximately a reduction of eighty-two percent in words alone in the first three articles of the constitution. The 1921 Constitution has five hundred and ninety-nine sections contained within twenty-one articles. The document we are working on will contain approximately eight articles with two hundred sections. We are more than halfway through the Bill of Rights and Elections proposal, but when we complete that article, we will have reached the halfway mark of the work to be done by this convention. If each article from here on out, say, will contain approximately four thousand words, it would be compared to 255,450 words used to cover the same subject in the old constitution. I think that these figures speak for themselves and they are really nothing at all that I can add to tell you that we have made the kind of progress in trying to come up with a more manageable document which is brief and concise, and one that the average citizen can pick up and comprehend without difficulty. These statistics are recorded credit to the hardworking, which has spent--and these statistics are interesting--49,485 person hours working on this constitution. Seven thousand six hundred and twenty-eight

RESOLUTIONS ON SECOND READING AND REFERRAL

UNFINISHED BUSINESS

THIRD READING AND FINAL PASSAGE

Mr. Poynter  Committee Proposal No. 25 introduced by Delegate Alphonse Jackson, Chairman on behalf of the Committee on Bill of Rights and Elections. It is a substitute for Committee Proposal No. 2 by the same gentleman on behalf of the committee.

A proposal to provide a preamble and a declaration of rights to the constitution.

The status of the proposals at this date is the convention has adopted the preamble, Sections 1 through 6 as amended, has deleted Section 7 and Section 8, and thereafter has adopted as amended Sections 9 through 12. This has under consideration Section 20, the next section to be considered, "The Right to Keep and Bear Arms." If you will go back to the page 12101 of the Journal of the Proceedings of the Convention, on page 12101, line 24, after the word "carrying of," delete "gun" and delete in line 24, in its entirety and insert in lieu thereof the following: "We hold the following weapons concealed on the person or the individual shall be guilty of the offense of carrying concealed weapons on the person or the possession of firearms or ammunition."
Mr. Avant. Mr. Chairman and fellow delegates, first, I would like to ask that these amendments which are divisible by law and order.

Now, the present constitution embodies substantially the same language as the committee proposal with the exception as explained to you by Mr. Guarisco, with a few references. In essence, they both provide that the right of a citizen to keep and bear arms shall not be abridged, but that Congress may regulate the carrying or possession of concealed weapons. Now, the purpose of the first amendment to this section is to make it clear that there is generally an amendment which would be a law which would prohibit the carrying of weapons concealed upon the person. Now, the reason for that is, the legislature, of course, so far, under this provision of the Constitution of 1921, has passed no laws with reference to the carrying of concealed weapons except such weapons which are concealed upon the person. But, the legislature could, in my opinion and in the opinion of a number of attorneys who have considered this issue, pass laws prohibiting the carrying of concealed weapons which may be other than on the person. More specifically, the legislature could constitutionally under the language of the Committee Proposal and under the provision of law, pass a law which would prohibit the carrying of a handgun in an automobile, or in a boat, or in an airplane. Similarly, they could prohibit the keeping of a concealed weapon in your glove compartment, in the car, behind the counter or under the cash register. Now, other states have passed such laws, most notably of which is the State of New York, which has the most stringent gun regulations and gun control which I am aware. Many states have laws which prohibit the possession of a handgun or carrying it in the glove compartment or under the seat of an automobile. The purpose of this amendment is to make sure that the legislature of this state does not have the power to regulate the carrying of concealed weapons other than weapons which are concealed upon the person. It being the opinion of the speaker and of many, many, many other citizens of this state that you should have the right to carry a firearm in your automobile, in your boat, or keep one in your place of business. Now, the purpose of Amendment No. 2 is simply this. The ownership or possession of firearms and ammunition is extensively and thoroughly regulated by federal government. Without a doubt, it will continue to be so regulated. Without a doubt, the regulations will become in the future, in great likelihood, more stringent than they are now. The purpose of this amendment, and I don't want anybody to bumble, the purpose of this amendment, Amendment No. 2, is to remove the state from the regulation of firearms for the reason that it is an area that is thoroughly under the federal government to the most minute detail. Therefore, the only reason why the state would be interested in regulating or legislating in that area would be to make sure that the weapons are properly regulated and more restrictive than those which have been enacted by the Congress to which the speaker and many, many, many other citizens have been opposed. To give you a specific example of the type of thing that we are talking about, under the present federal law, a shotgun with a barrel of less than eighteen inches is an illegal weapon. Under the federal law, a rifle with a barrel of less than sixteen inches is an illegal weapon. Under the state law which is the same law, under the state law with respect to shotguns, the state law is more stringent than is the federal law because under state law, you have to have a barrel that is at least eighteen inches long or else it is a illegal weapon. Under the federal law, it is submitted that there is no need, absolutely no need to have where is conflict of two regulations, one subject to the same area which is completely, thoroughly regulated by the federal government, has been for many, many years and is going to remain so in the future. Now, there has been a lot of talk and specking making in this convention on the subject of crime and on the subject of law and order. Well, I want to submit something to you for your consideration. No criminal who is about to commit a crime such as burglary or armed robbery, as he sits there in those opulent mansions before the committee of the citizen, is thinking about whether the penalty is twenty years, or ninety-nine years, or whether it's with or without parole, or whether he's going to have a trial by jury, or whether it's going to take nine or ten or all of them to convict him. Those are not the things that are going through his mind, and those are not the things that will deter him from committing the crime that he has under contemplation. You know what's going through his mind is the fact that that homeowner, or that homemaker, or that citizen is in all probability armed and prepared to defend himself. That's what he's thinking about—not "Am I going to come out of this little venture alive?" Now, you take away, you take away from the citizen, the decent, average law-abiding citizen of this state, the God-given right to defend himself, and then you talk about law and order.

You see what happens to your crime rate, and I can refer you to nothing more specific than the State of New York which, while having the most stringent gun control laws in the United States, has the greatest, or one of the greatest, crime rates in the United States, and it's rapidly deteriorating every day. So, I urge you, I urge you to adopt both of these amendments.

Questions

Mr. O'Neil. Mr. Avant, you were appointed to this convention, correct, sir?

Mr. Avant. Correct.

Mr. O'Neil. Who were you appointed to represent?

Mr. Avant. Wildlife, and Conservation.

Mr. O'Neil. Don't you think that they would favor this amendment if those people were here to vote on it this morning?

Mr. Avant. I think they would.

Mr. O'Neil. Do you think that the laws of the United States are restrictive enough on gun controls that we need not impose any further restrictions on the state level?

Mr. Avant. I certainly do.

Mr. Tobias. Jack, I call you to the attention of the committee language which reads, "The right of each citizen to keep and bear arms shall not be abridged," and then it continues. In Section 18 of our committee proposal, this proposal, we adopted a provision that reads as follows: "Full rights of citizenship shall be restored upon termination of state or federal supervision following conviction of any offense." Would that permit a former felon to carry firearms, under your interpretation?

Mr. Avant. I don't think so because the right to citizenship that is referred to in that section are the right to vote and the restoration of civil liberties. There is a federal law on the subject which is more stringent than the state law. I submitted that there is no need, absolutely no need to have the conflict of two regulations, one subject to the same area which is completely, thoroughly regulated by the federal government, has been for many, many years and is going to remain so in the future. Now, there has been a lot of talk and speaking making in this convention on the subject of crime and on the subject of law and order. Well, I want to submit something to you for your consideration. No criminal who is about to commit a crime such as burglary or armed robbery, as he sits there in those opulent mansions before the committee of the citizen, is thinking about whether the penalty is twenty years, or ninety-nine years, or whether it's with or without parole, or whether he's going to have a trial by jury, or whether it's going to take nine or ten or all of them to convict him. Those are not the things that are going through his mind, and those are not the things that will deter him from committing the crime that he has under contemplation. You know what's going through his mind is the fact that that homeowner, or that homemaker, or that citizen is in all probability armed and prepared to defend himself. That's what he's thinking about—not "Am I going to come out of this little venture alive?" Now, you take away, you take away from the citizen, the decent, average law-abiding citizen of this state, the God-given right to defend himself, and then you talk about law and order. You see what happens to your crime rate, and I can refer you to nothing more specific than the State of New York which, while having the most stringent gun control laws in the United States, has the greatest, or one of the greatest, crime rates in the United States, and it's rapidly deteriorating every day. So, I urge you, I urge you to adopt both of these amendments.

Questions

Mr. O'Neil. Mr. Avant, you were appointed to this convention, correct, sir?

Mr. Avant. Correct.

Mr. O'Neil. Who were you appointed to represent?

Mr. Avant. Wildlife, and Conservation.

Mr. O'Neil. Don't you think that they would favor this amendment if those people were here to vote on it this morning?

Mr. Avant. I think they would.

Mr. O'Neil. Do you think that the laws of the United States are restrictive enough on gun controls that we need not impose any further restrictions on the state level?

Mr. Avant. I certainly do.

Mr. Tobias. Jack, I call you to the attention of the committee language which reads, "The right of each citizen to keep and bear arms shall not be abridged," and then it continues. In Section 18 of our committee proposal, this proposal, we adopted a provision that reads as follows: "Full rights of citizenship shall be restored upon termination of state or federal supervision following conviction of any offense." Would that permit a former felon to carry firearms, under your interpretation?

Mr. Avant. I don't think so because the right to citizenship that is referred to in that section are the right to vote and the restoration of civil liberties. There is a federal law on the subject which is more stringent than the state law. I submitted that there is no need, absolutely no need to have the conflict of two regulations, one subject to the same area which is completely, thoroughly regulated by the federal government, has been for many, many years and is going to remain so in the future. Now, there has been a lot of talk and speaking making in this convention on the subject of crime and on the subject of law and order. Well, I want to submit something to you for your consideration. No criminal who is about to commit a crime such as burglary or armed robbery, as he sits there in those opulent mansions before the committee of the citizen, is thinking about whether the penalty is twenty years, or ninety-nine years, or whether it's with or without parole, or whether he's going to have a trial by jury, or whether it's going to take nine or ten or all of them to convict him. Those are not the things that are going through his mind, and those are not the things that will deter him from committing the crime that he has under contemplation. You know what's going through his mind is the fact that that homeowner, or that homemaker, or that citizen is in all probability armed and prepared to defend himself. That's what he's thinking about—not "Am I going to come out of this little venture alive?" Now, you take away, you take away from the citizen, the decent, average law-abiding citizen of this state, the God-given right to defend himself, and then you talk about law and order. You see what happens to your crime rate, and I can refer you to nothing more specific than the State of New York which, while having the most stringent gun control laws in the United States, has the greatest, or one of the greatest, crime rates in the United States, and it's rapidly deteriorating every day. So, I urge you, I urge you to adopt both of these amendments.
Mr. Avant: It would, sir.

Mr. Tobias: Do you believe that some sort of firearm...handgun concealed weapon type of legislation is necessary in a large metropolitan area?

Mr. Avant: I think that the present law which prohibits the carrying of a handgun concealed on one's person is a good law. It would not be affected by this provision. Mr. Tobias, in a large municipal area or in the middle of the Atchafalaya Basin.

Mr. Willis: Mr. Avant, what is the only purpose of a weapon, or a firearm for that matter? If it is a weapon or a firearm, that is a gun or a rifle, can do is kill, isn't that correct?

Mr. Avant: Yes.

Mr. Willis: You can't do anything else with it.

Mr. Avant: You can shoot targets with it, if you are so inclined.

Mr. Willis: Well, the primary purpose of it is to, if you shoot targets, is to be skillful at killing, isn't that correct?

Mr. Avant: To be skillful in the use of the weapon, yes, sir.

Mr. Willis: Well, if we ultimately agree that the use of the weapon is to kill, then it is to kill. So, we go from there. Now, would the omission of the second amendment that you have, "place the registration of weapons" and so forth, would not the omission allow the legislature to flex with the demand of the times?

Mr. Avant: It would allow the legislature to pass a statute which says you cannot keep a firearm in your automobile, if you cannot keep one in your boat, and you cannot keep one behind the counter in your business place. That's the purpose of the amendment. It would give them that much flexibility, yes, sir.

Mr. Lennox: Mr. Avant, my one or two questions deal solely with the so-called "Saturday night special." I'd like to hear your views on why there should not be some registration device for that particular type of handgun.

Mr. Avant: I see no reason why a so-called "Saturday night special" should be registered when a Smith and Wesson snub-nosed 38 revolver would not be registered. Now, the so-called "Saturday night special," Mr. Lennox, is a cheaply made, imported, foreign handgun. It is easily concealed, but it is no more easily concealed than many of the so-called American handguns. But, most of those so-called "Saturday night special" are just as dangerous to the punisher as they are to the innocent because they have absolutely no quality to them at all, and they are made to be mass-produced very cheaply so that people can get ahold of them.

Mr. Lennox: Why is it that your amendment would oppose the registration of any concealable handgun. Be it a revolver or a so-called "Saturday night special"? You must have some valid reason for proposing...

Mr. Avant: Yes, sir, there is. There is a reason, and the reason is. I believe it was in Greece when the military junta took over, over there. All weapons in Greece had been registered for years. The first thing they did was round up the owner of everyone registered weapon and take his weapon from him.

Mr. Lennox: My final question. Do you know that the parishes of Orleans has a handgun registration ordinance which, in fact, has been used as an effective tool in apprehending criminals or people charged with violent crimes.

Mr. Avant: I understand that there is an ordinance. To what extent it has been effective, I don't know. But, my feeling, it would have an appreciable effect in the crime rate in the city of New Orleans, based upon what I read in the newspaper.

Mr. Lennox: In any event, your proposal, if adopted by the convention, would negate that local ordinance.

Further Discussion

Mr. Busson: Mr. Chairman, ladies and gentlemen of the convention, I ask that my name be taken off this amendment, although it was originally on, because as so many times in this convention, I found that when I did my homework afterward that I was wrong. I think I would be wrong in sponsoring this amendment for one simple reason. We would, in my view, abrogate present, existing state laws and, as Mr. Lennox has pointed out, a city ordinance in the city of New Orleans regulating the carrying of handguns. Now the state laws involve more than that. I asked the question, what do they do in their own personal beliefs regarding the carrying of things which cannot be carried by private citizens? They say that they can't carry shotguns or shotguns with a barrel less than so many inches in length, machine guns, silencers for pistols, etc. Now I have taken the position throughout here that when we were dealing in the area of criminal procedure, that we had not been sent here as a super legislature to change existing state law without proper study. I feel that that would be totally inconsistent to be in a position with regard to criminal procedure, and then to turn around here in the case of substantiate criminal law and take the position that I want to abrogate it. I would be the last one in the district that I come from, where most farmers ride around legally with shotguns. In fact, I am against that position. I feel that if we have must have a state of things, people should be allowed to carry the weapons. But, I do not feel that we would be warranted in abrogating present state legislation and preventing city ordinances in the city of New Orleans on this subject. I must confess that I have some grave personal reservations also, about a prohibition which would absolutely prohibit the legislature in some future time from requiring some sort of licensing or registration of some type of firearm. My own personal belief is that there have been more murders and slaughters generated in this state of the country by people packing pistols around in hallways than anything I know. I don't know a better way to turn a barren brow into a killing brow than that. But that's my personal belief...simply mention it to you for what it's worth, perhaps of why I reconsider this matter.

The vote was called. Today, which is a day in which we have present state law on the book and we have present city ordinances in the city of New Orleans which would be abrogated by the language, particularly of the second amendment referred to here.

Further Debate

Mr. Lavoisier: I support Mr. Harman and fellow delegates, a voice in support of the amendment. I'd like to point out that the federal law which regulates weapons hasn't failed. Nor has the ordinance in the city of New Orleans curtailed murders in the city of New Orleans. I've read the newspapers, there have been a hundred and sixty five murders in the city of New Orleans since January three of the last year. Then, I believe, was a priest
If we restrict the possession of firearms and weapons for the defense of a decent people so that a man cannot have a weapon in his business place to protect himself, so that you cannot have a weapon in your home to protect yourself, we are not fooling and gentleman and people who are going to kill are going to carry the weapons, who are going to carry them for unlawful purpose and not represent them. They are not the ones that you are going to control with this law. You are going to control the innocent law-abiding citizens with this law. Let's make no mistake about it. Let's spin your heads in the sand, talk about the Western type of turning your gun in when you come into town. This was a time, ladies and gentlemen, when there was honor among men. Today, we have killing and killing and killing on the street and that killing is being done by those who will not register firearms. I urge that you adopt this amendment.

Further Discussion

Mr. Stovall: Mr. Chairman, ladies and gentlemen of the convention, I rise to encourage you to oppose these two amendments that have been presented to us because I think these amendments will make it more difficult for us to maintain law and order and for the state legislature to respond to emerging situations in our state. Later on, Mr. Burson has an amendment that establishes the authority of the state constitution. And I have an amendment which says that the control of firearms might be subject to the police department of the state.

So I encourage you to vote against these two amendments. It seems to me, ladies and gentlemen, that we are dealing here with something that gets to the very heart of whether or not we as a convention are going to maintain a certain integrity and independence, or whether or not we are going to be unduly influenced by some special interest group in the state. In the interest of whether or not we are going to provide a constitution that might respond to the common good rather than the wishes of some particular special interest. It's a question of whether or not we are going to maintain some flexibility and permit the legislature to respond to whatever the need might be in a responsible manner.

I submit to you that these two amendments are in opposition to the maintenance of law and order, because they simply provide that no restriction could ever be placed on any firearm. I'd like to say to you that Mr. Avant, in appealing to you for support of these two amendments, has stated that a state might be able to maintain a firearm. This amendment does not in any way limit a store owner from protecting himself. Mr. Avant said that the store owner had his firearm registered, that this in some way would limit his ability to take care of himself. Mr. Tapper says that such registration at some future time might not limit murders; that the criminals would still....would not register. I think we realize that if the legislature at some future time saw fit to pass such limiting legislation, that it would require that future sales of firearms, Mr. Tapper, would be registered. I think all of us here this morning have an appreciation of our wildlife, and we enjoy the sport of hunting, and I certainly am not in favor of our doing anything to limit this fine sport and recreation in our state. But I do feel that it is a mistake to assume that we should not give the legislature the authority and the power at some future time, if it sees fit, to respond to whatever a situation might be.

Therefore, I encourage you to vote against these two amendments and to consider the other amendment that will be presented to us.

Thank you.

Question

Mr. Tapper: Reverend Stovall, don't you know that most of the weapons with which murders are committed have first been chased, so that they would have been registered?

Mr. Stovall: I'm not sure that your assumption is correct, Mr. Tapper. I don't think it is.

Further Discussion

Mr. Casey: Mr. Chairman and delegates, I rise to oppose this amendment and I do so principally because I am from a municipality that does have an ordinance of this type, and the statistics do show it. First of all, our statistical information and our registration information goes back to the year 1900, and I know, and our police superintendent has said so on many occasions that a law of this type can be very helpful in tracing down the apprehension of criminals. Now I know one of the speakers indicated that we have a high crime rate in the city of New Orleans, that we just had three people murdered yesterday, we've had approximately one hundred and sixty-five murders in the city of New Orleans since the first of the year. Maybe, perhaps, we could have a hundred and eighty-five murders instead of a hundred and sixty-five murders, and any registration of weapons of this type that are dangerous to our community is a positive law for a city such as ours. It's difficult to pinpoint the validity and the helpfulness of a law of this type. But our police department is well satisfied that it has been helpful to them.

I strongly urge the rejection of this amendment, and the adoption of a further amendment of the type that Mr. Burson has introduced which tracks word for word the law as it is today, and therefore, gives the prerogative to the legislature in instances that they might deem necessary and helpful to our community of choosing further regulation, whether it be registration or licensing, we don't know today. But the whole key word behind a truly good constitution is the...and that key word is flexibility, and that's all that I urge you to maintain today is that thought in the back of your mind that we should have that flexibility if five years or ten years from now, it's proven that we need some regulation of some kind. That's all I ask you.

Questions

Mr. Avant: Mr. Casey, did not the same superintendent of police, to whom you just referred, within the last month publicly state that in his opinion the greatest deterrent to crime was for the average law abiding citizen to be armed and proficient in the use of that arm?

Mr. Casey: I don't think that police superintendent wishes to disarm the public. We're talking about control of arms and knowledge of who possesses those dangerous arms and the ability to trace down arms that are used as an instrument in crime. And I think that same police superintendent would indicate my thoughts to you as being accurate, that he does believe in controls. But granted, I'm not disputing the right to own or bear arms, even.

Mr. Avant: Did he not make that statement, though, publicly?

Mr. Casey: I don't know, Mr. Avant, but I'm sure he probably did. I won't dispute that. I don't think we disagree on that point.

Mr. Weiss: Delegate Casey, isn't it true that many criminals use stolen weapons, and licensure and registration laws might prevent citizens to recover their stolen weapons, would you not say?

Mr. Casey: That's certainly a help, one of the...that's the same reason, probably, why we license
Mr. Weiss: And would you say that the licence system or the registration laws on weapons impair the rights of citizens to bear arms at all?

Mr. Casey: Well, I think maybe, I don't know if you are intending that as a friendly question, but I think you are, and I have to be honest with you. I'm not sure that it would.

Mr. Weiss: I'm not sure that it would. I need maybe a little bit further explanation on it. I think you have to be honest with you. I'm not sure that it really does.

I appreciate your friendly question very much.

Mr. Velazquez: Mr. Casey, are you familiar with the statistics that show that if you are going to be shot or killed, statistically speaking, it's much more likely you'll be killed by your wife or by an acquaintance than you will be killed by a shot from a stranger?

Mr. Casey: Is your question that statistically that, I didn't understand the first part of your question.

Mr. Velazquez: Are you aware of the statistics which show that if you are going to be shot or killed, if you are going to be killed, you will be killed by your wife or by an acquaintance than you will be killed by a total stranger?

Mr. Casey: I don't know if you are trying to give me a message, whether I have that problem or not. But, no, I'm not aware of those statistics. But I would imagine that that's correct.

Further Discussion

Mr. Lennox: Mr. Chairman and fellow delegates, two or three very brief points on the subject matter. I think there's been some, there have been statements made here that may be somewhat misleading, and I think they should be clarified.

I think the first place I see nothing in the committee proposal that in any way restricts the right of any citizen to own and house a firearm. "Item No. 1. The amendment, otherwise, would prohibit the legislature at any time from consideration of any registration or licensing of handguns." I believe that you should not close the door to that possibility in the future, and live in an area where the chance of crime is, is much higher than in any other place in the State of Louisiana.

Let me give you one example of how registration of handguns in Louisiana has worked to the benefit of law enforcement. An individual was arrested in New Orleans, in Orleans Parish, in the act of perpetrating an armed robbery of a service station. He was using, at the time of his arrest, a handgun that had been stolen from a grocery store. Two weeks before, who was murdered in the act of armed robbery of his store. The police were thereby able to bring evidence to bear on that individual in connection with a violent crime, which happened two weeks before. Now our law in New Orleans simply says that any new handgun purchased after a certain date has to be registered with the detective bureau of the New Orleans Police Department. Now, I submit to you that you do not want to close the door irrevocably to the possibility that this might be in the best interest of all the citizens of our state at some time in the future.

Thank you.

Questions

Mr. Stoval: Mr. Lennox, some people were talking over here and I didn't hear your illustration. Would you give that illustration again so that we can all hear that very carefully? Some people were talking and I couldn't hear it all.

Mr. Lennox: This is an actual case in point. An individual was arrested in the act of committing an armed robbery of a service station operator in Orleans Parish several months ago. The handgun he was using, in the time it had been stolen from a grocer who had been murdered in the act of an armed robbery by his store just two weeks before. Now had that grocer's handgun been not been registered, the police could never have connected this individual with the murder of the grocer. Now this evidence may well not be fully conclusive in a court of criminal law. I'm not going to argue that point. But I state to you that it has been a tool used effectively by the New Orleans Police Department in deterring violent crimes.

Mr. Stoval: You think these amendments, if they should be passed, would prohibit that kind of maintenance of law and order?

Mr. Lennox: I'm going to vote for Amendment No. 1. I'm going to vote against Amendment No. 2.

Mr. Smith: Mr. Lennox, don't you think we are going too far when we saw that that would pass any law requiring a licensing of weapons?

Mr. Lennox: I do indeed, and I think the day may come in Shreveport when you pass that same type of registration free of government control and knowledge, there is hardly a greater deterrent to crime than that New York State is a perfect example with its stringent gun controls. Which New York State has had for many, many years. In fact, almost fifty years. And yet, just about the highest crime rate in the nation.

The thing the criminal wants is a disarmament of citizenry, or a citizenry whose right to possess weapons freely is somehow restricted. But when the criminal knows that the citizen has his weapon, and knows how to use it, the criminal is far more reluctant to initiate a crime. One thing about the licence, and registration laws on firearms, is that such laws make criminals out of law-abiding citizens. Out of honest citizens when a man arrested for having an unregistered or unlicensed weapon who has committed a crime other than that, who has no evil intent other than at quote himself or his family or his property, and arrest him as an unmoved by the licence and registration law, how it will deter crime, and how it will help us capture criminals.

But when we balance the two, on the one hand a well armed felon cannot possess a weapon, let alone free of government control and knowledge, there is hardly a greater deterrent to crime than that New York State is a perfect example with its stringent gun controls.

Mr. Jenkins: Mr. Chairman, delegates, our people in this country have three great protections for their freedoms: the jury box, the ballot box and the cartridge box. If we ever give up any of those three, then freedom in this country won't last very long. There is no more basic right than the right of self-defense, of self-preservation. A man cannot do away with that right and continue to exist, either can a people. Some have come up here and talked about the Second Amendment, and the right of law and registration, how it will deter crime, and how it will help us capture criminals. But when we balance the two, on the one hand a well armed felon cannot possess a weapon, let alone free of government control and knowledge, there is hardly a greater deterrent to crime than that New York State is a perfect example with its stringent gun controls.
should not know about our weapons. I know it's not popular to refer to other countries, but if you look at other countries you will find that where people have registered firearms it's true they didn't have weapons. The first thing Fidel Castro did was, he said, "Come on, campesinos, turn in your weapons for plows." And that was the end of that. He never had armed opposition; he knew that he could roughshod over the people of Cuba from then on. And he has.

In my own district I hardly know a person who favors licensure or registration of firearms. People know that this gets down to economics. This is about as out of issues you can find and they want to maintain their right to keep and bear arms without registration and licensure laws. And if we expect to take this constitution to the people they should be registered or anything of the sort. It was a right that they thought we automatically had. And I think that's the question we come to this morning.

I'd like to ask Reverend Stovall if he's in favor of giving the legislature such flexibility if when it comes to gambling, he's going to be ready to give the legislature so much another don't think he'll be ready to give them flexiblility, he's going to say, "No law shall allow gambling. And I think that's what we're coming to this morning on the right to keep and bear arms. And I think that right should be just stated as Mr. Avant's amendment has it stated.

I live in an area here in Baton Rouge where the incidence of rape is higher than in any other area of the state. Within this past summer, we've had nearly fifteen rapes in the LSU area. My wife has a gun, and it's registered, but I guarantee you the person who comes to rape her won't have a registered gun. No, he'll have a Saturday night special or some such gun, and that's what he's going to use as his weapon. And will it do my wife any good that his gun is not registered? Will they be able to trace it any better? I don't think so. And what difference will it make that my wife has a registered gun? If she uses it, more power to her. If not, it doesn't really matter.

I think the average, ordinary man views the situation the way Mr. Avant does registration and I think he's right. I think dead is dead and guns are made to kill. The average man knows that a criminal will not have a registered gun in most likelihoods. The gun he has will be stolen. So what difference does registration make? The only person that it harms is the average individual, yourself, myself, who has a gun and wants to have it just for his protection and for his use.

I submit to you that we shouldn't be standing here discussing a right which most people think they automatically have. We are here discussing the right to keep and bear arms. Read that amendment carefully. It also says, "special taxation, no confiscatory taxes will ever be levied on firearms." And I think that's a very important clause in that provision. Those people here who would have you take that out think that registration will do some good. And I think in all sincerity they honestly believe that.

I submit to you that ten years ago the incidence of crime was far less than it is today. And I submit to you that back then there was any registration of guns and that today look at the crime rate. We do have registration of guns today and the incidence of crime is only just now beginning. I think in our case we are registering firearms. It has quadrupled compared to what it is today. And it will quadruple with registered weapons unless we pass this amendment.

Questions

Mr. Munson, Mr. O'Neill, I wanted to ask Mr. Jenkins this question a few moments ago but he ran out of time. Perhaps you could answer it for me, because I want to reemphasize a couple of points that he brought out.

In case the legislature were to pass laws requiring the licensing of firearms, what type of citizen do you think is going to go down and have his firearms registered?

Mr. O'Neill Mr. Munson, the average law-abiding citizen who pays his taxes and lives just like the rest of us. Not the criminal, just the average man.

Mr. Munson In other words, you couldn't foresee a criminal going and having his gun registered.

Mr. O'Neill Not very likely, Mr. Munson.

Mr. Munson And in case then, to go a little further with that, that if laws are passed requiring registration of firearms, the only thing it could possibly do would be to take firearms out of the hands of law-abiding citizens. Isn't that correct?

Mr. O'Neill That is absolutely correct, Mr. Munson. A criminal who goes and registers his firearm would be an absolute fool, and I think you would agree with that.

Mr. De Blieux Mr. O'Neill, I think you are bringing out a very good point there. So, I would imagine from your argument it's correct that law-abiding citizens could be opposed to registration of firearms?

Mr. O'Neill No, Senator De Blieux, I don't think they'd care one way or the other; they are going to have them regardless.

Mr. De Blieux And I think you said that most of the crimes probably would be committed with stolen guns. Wouldn't those guns have to be registered to start with? Couldn't it solve two crimes whenever they'd find the gun?

Mr. O'Neill Senator De Blieux, the guns used to make crimes, many of them are not registered and
I'd like to ask you a question. Who are you here to protect?

Mr. DeBlois: I want to protect the law-abiding citizens. But I don't want to protect the criminals by refusing to register their guns.

Mr. O'Neill: Well, you are protecting the criminal if you don't, or if you do, either way.

Further Discussion

Mr. Hayes: Mr. Chairman, ladies and gentlemen of the convention, I think what we are saying is the register to bear arms should be abridged. It appears that all the discussion is centered around some means of abridging that right to bear arms. Passing some kind of law trying to abridge the right to bear arms is doing nothing more than making criminals out of law-abiding citizens.

I think the federal statutes or the federal law has a system where you have to register even ammunition when you buy it. I can't buy a gun. Every time I buy a bullet, I have to register. I have to show my driver's license, and when I buy a gun, I have to register under the federal laws. So I can't see any reason for after passing some other rights here, giving the state the right to pass all kinds of laws out of all the people. I think that's all you're going to do. If I thought it would help curb crime, because I'm familiar with this Saturday night special. I hear the talk of the people. They call me on Saturday night, if you don't believe it, check with the undertakers. But I don't think it would help anything. Disarming everybody so the criminals could just have a head of knowing that you have nothing to protect yourself with. So I rise in support of the amendment.

Further Discussion

Mr. Weiss: Mr. Chairman, fellow delegates, I will not repeat many of the things that have been said but only try and clarify the issue.

First of which that the majority of the members of the Bill of Rights Committee have not been polled as to this amendment, and that there is no support one way or the other as far as I know, and I am definitely opposed to this amendment and hope you will vote it down.

The issue is very clear. The section clearly states that no one will be deprived of the right to bear arms. So I think we can eliminate that originally and without question.

The issue brought forth by the multiple sponsors of the floor amendment before you is registrational pressure. Anybody that I think, have been ridiculous. For example, more people are shot by their family members than is certainly true. But more people die in bed. There's no question that the irrational or vindictive person is going to use some weapon to kill another person, and if you rule out guns, they'll use brick bats and other weapons and this is not the issue. The issue is whether we are going to help the people of the state and protect them, and I think that this amendment if adopted will do more harm to the honest law-abiding citizen than good. I think many people have been misled by emotional arguments rather than reason. The honest people are not for the federal registration. Do you question that your license on your automobile is some method of stealing your automobile from you by the legislators of this state? There's no reason to question this. But when your car is stolen, you like to know who stole it. These are the issues that are before the people of the state and what the honest person for the original it's for the original will get taught when he has some weapon that is not in his possession, that is not on his own and in his possession.

There were instances of foreign nuclear brought up, for example, where Well, certainly
legislature may do in the future about guns. And for that reason, I support it, because I don’t want an illegality that passed as law, when people are going hunting, that they have to open up the trunk of their car and show their shotgun or whatever have you.

But I feel like Jack Burson does to some extent and about like John Lennox and others with respect to New Orleans, that there are certain areas where we could have some type of limitation of controls. Now what Jack says is true to the extent that our present section, that is what the committee has recommended, is not too far different from the present constitution and that provision. I would say that by adopting our section that we automatically vitiate everything and all jurisprudence in the past that is contrary to that law. If we adopt Jack’s second amendment, in my judgment, what Mr. Burson has pointed out would be true that all jurisprudence, all former decisions with respect to carrying certain types of weapons, would be nullified.

For that reason, I think that in the future we ought to allow the legislature in special circumstances to deal with this problem. Now let me give you one final example, and then I’m going to move the question.

Now, days, we have laws and the legislature may deal with alcoholic beverages with respect to minors, may deal with driving automobiles with respect to minors and what have you. And yet, it appears to me incongruous that we would say that any ten-year-old may own it, it’s alright to own it, but may possess and fire while hunting, a 30-06 which bullet goes at least five miles. It just appears to me if the legislature felt that there were certain reasonable laws that should be passed with respect to minors employing weapons or using weapons for hunting or whatever have you, that as long as the law were reasonable, that it would be a valid law. But I’m afraid under Jack’s amendment, it would not be. Now, just had a case in Alexandria a young boy who was accidentally killed, and certainly I’m not against kids hunting; I think it’s a great thing, I hunted all my life. But I just feel that we should not constitutionalize something that is as broad and all encompassing as the second amendment. I think the allusions to the ballot box and all these other things are just not pertinent, and I move the adoption of section of Amendment No. 1 and rejection of Amendment No. 2.

Question

Mr. O’Neill Mr. Roy, do you believe that the legislature will ever move in the future to decontrol guns or to take some action so that they will follow their usual course and not move on more controls?

Mr. Roy Well, that’s speculative. They may put on more controls, but there are no real controls at this time, so I wouldn’t be opposed. It would depend on what the control was. I move the previous question, Mr. Chairman.

[Previous question ordered.]

Closing

Mr. Avant Mr. Chairman and fellow delegates, I wouldn’t have come up here to close except for one statement that was made by my very good friend, Representative Smith, about vested or special interests. I want to tell you something. I started working on this amendment Thursday, and until this moment not a single human being has asked me to draft it or sponsor it. I believe in it. It’s the way I think.... It’s what I think should be done and that’s why I’m here.

[Previous question ordered. Re ordered. Amendment No. 1 read and adopted: 9-19. Motion to reconsider Tabled. Amendment No. 2 read and rejected: 19-0. Motion to reconsider Tabled.]

Personal Privilege

Mr. Winchester: Mr. Chairman and fellow delegates, as a retired assessor, I have been aggrieved. The rumor is going around that assessors have a concealed weapon in nickel, pencil, and a pocketbook. This is absolutely not true. The pencil is way out in the open, but I do wish to stand here and pay honor and tribute to the assessing profession. I also note and particular do I pay tribute to the seven New Orleans assessors. The closing date to qualify for reelection was last Friday afternoon. Five assessors had no opposition and the other two have only token opposition. This reminds me of an incident that happened in the parish of East Baton Rouge a number of years ago. A new assessor had been elected and appeared before our meeting and outlined the method by which he would equalize and assess property in the East Baton Rouge Parish. An assessor friend of mine sitting next to me who had been an assessor a number of years leaned over and said, "Winnie, that is one term dreamer." He was correct. He was only in office for one term. The fact that I wish to bring to your attention is that no one loves an assessor but the people. I thank you.

[Previous question ordered on the Section. Section passed: 100-3. Motion to reconsider tabled. "Quorum call: 95 delegates present and a quorum."]

Reading of the Section

Mr. Poynter: "Section 21. Writ of Habeas Corpus Section 21. The writ of habeas corpus shall not be suspended." Explanation

Mr. Vick: Mr. Chairman and fellow delegates, ever since the Magna Carta the right to personal liberty among English speaking peoples of this world has been guaranteed. Considered by the founding fathers of this country, not one of the highest, but the highest safeguard of liberty was the prompt and effective remedy for testing the legality of his or her imprisonment. The Constitution of the United States says that "the writ of habeas corpus shall not be suspended unless, when in cases of rebellion or invasion, the public safety may require it." The committee in its wisdom after testimony by constitutional experts, Mr. Chairman, as I was saying, the Federal Constitution says "the writ of habeas corpus shall not be suspended unless, when in cases of rebellion or invasion, the public safety may require it." This was in the Louisiana Constitution of 1921 and the committee, after testimony by experts, considered it to be unnecessary because the Federal Constitution prevents the State Constitution insofar as foreign invasion, rebellion, etc. and further that emergencies and other times of disorders are precisely the time when the writ is most needed by the citizens. As a result the section now simply reads "the writ of habeas corpus shall not be suspended," and I yield for questions.

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Anzalone], on page 6, at the end of line 25, add the words "and preliminary examination." Amendment No. 2, on page 6, immediately following the aforementioned period to a comma and add the following: "and in all felony cases, except those indicted by a grand jury, the right to a preliminary examination shall not be denied."

Point of Order

Mr. Keen: Question for the Chair. Is this amendment germane to the original subject?

Ruling of the Chair
45th Days Proceedings—September 12, 1973

Mr. Henry: No, sir. The amendment, in the Chair's opinion, is not germane. Mr. Keen.

[Previous question ordered on the Section. Section passed: 67-0. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynor: Section 22. Access to Court.

Section 22. All courts shall be open and every person having an adequate remedy by due process of law and justice administered without denial, partiality, or unreasonable delay for actual or threatened injury to him and his person, property, reputation, or other rights. Neither the state, its political subdivisions, nor any private person shall be immune from suit and liability.

Explanation

Mr. Guarisco: Let me say first off that the last sentence dealing with "neither the state, its political subdivisions, nor any private person shall be immune from suit and liability," as you recognize, the sovereign immunity issue again.

Since we've taken care of that in a previous section, the committee has no objection to removing the last sentence that is taken care of earlier by the convention. So we'll deal... I'll deal strictly with the first part of the article... the section. I don't think there is any particular controversy in this part of the section, and we made one basic change or two basic changes in there. The old constitution reads, "All courts shall be open, and every person for injury done him in his rights, lands, goods, person, or reputation shall have an adequate remedy by due process of law, without partiality, or unreasonable delay." The only difference is that we added in the words "unreasonable delay for actual or threatened injury," and I think that will correct a hiatus in the law in that in the old constitution the injury according to the language had to be already done before a person possibly could bring an action to... for redress. So taking into consideration the... an injunction, injunctive relief, whereas you might want to stop a person from doing injury to you that may be threatening to you, then you have a right to bring that action—that is threatened. You can do it under the present law, but we thought we would temper this clause by including it and constitutionalizing 'threatened injury' and having the right to redress for threatened injury. I'll yield to any questions.

Questions

Miss Wisham: Mr. Guarisco, would you elaborate a little more about adequate remedy for me, please? What does adequate remedy mean as related to this statement?

Mr. Guarisco: Well, whatever the remedy may be necessary for the particular action. An adequate remedy for personal injury might be a money compensation. Adequate remedy for someone expropriating something would be to return to those persons from taking your property. It would depend on the nature of the cause of action whatever it may be, and then the judicial function would then take over and make that determination.

Miss Wisham: Good, thank you.

Mr. Casey: Mr. Guarisco, on line 29, the beginning phrase, "All courts shall be open," does that specifically then rule out the possibility of closed hearings in juvenile matters?

Mr. Guarisco: No. The present constitution has "all courts" now, and we're repealing that part of it, and that still doesn't preclude the legislature from having special acts for juvenile hearings. I don't think that would make any change in our law because the language isn't changed and the interpretation has been that juvenile proceedings are secret.

Mr. Casey: And this is the exact wording of today's constitution?

Mr. Guarisco: Mr. Casey, I'll just read it to you to allay your fears: Section 6. Open Courts. In the old constitution, 'All courts shall be open and every person... it starts with that language. No change.

Mr. Hayes: Could you tell me what you mean by "unreasonable delay" in terms of months or years, or something of this nature?

Mr. Guarisco: Again, you are talking about a judicial determination—what's unreasonable and what's reasonable. I don't think we can put definite time schedules down and when a case shall be heard and so forth.

Mr. Hayes: I know you couldn't put down, but is there an absolute limit you say you could place on w... in this unreasonable? Would you say three years, two years?

Mr. Guarisco: I don't think we can do that in the constitution. No, Mr. Hayes, no way. I might add to Mr. Casey's question about the courts being open; this is not literally open insofar as opening the door to the physical courtroom. If open to the litigants figuratively or access to the courts it doesn't have anything to do with the walls, or the doors to the physical courtroom.

Mr. Duval: Mr. Guarisco, the word 'threatened' is a change in the law, is it not?

Mr. Guarisco: It's a change in the constitution, but I don't think it's a change in the law. I think you still have redress for threatened injury via injunctive relief.

Mr. Duval: Let me ask you this. Is it the committee's intention to create new causes of action by inserting the word "threatened" in the constitution?

Mr. Guarisco: Absolutely not.

Mr. Duval: Do you think it possible that through judicial interpretation new causes of action could be created by use of this word?

Mr. Guarisco: I don't think so, but I think it should be left to judicial interpretation.

Mr. Perez: I'm very much concerned about the end of the sentence on line 1 of page 7, or other rights, and particularly when you talk about "threatened injury to other rights, could you explain to me what that means. What rights are we talking about?"

Mr. Guarisco: Well, Mr. Perez, we didn't intend for this list to be exclusive illustrative, and we felt that if there are any other rights that a person may properly bring before the court, then he would have a remedy or a right to bring it.

Mr. Perez: Wouldn't that mean then that every person under any claim that he would make would have a cause of action in the courts, no matter what his other rights, in the case of guarantees would be because you say "other rights," there is no limitation.

Mr. Guarisco: I think there is a limitation in the fact that the court would still properly entertain an exception of no right of action, that person may not have a right to bring the suit.

Mr. Perez: I was addressing myself to cause not right of action, and I don't believe you've answered the question with respect to that.
Mr. Conroy Well, I don't... not in any fashion that I would regard as dangerous. Certainly the legislature could, but you'd still have your equal protection clause, your due process clause, all the other clauses which protect individuals in their rights and the preservation of their rights, so I don't think that here it's pertinent. I would have assumed and do still assume that the insertion of it here coupled with "state and its political subdivisions" was intended to inject the issue in connection with the sovereign immunity issue.

Mr. Weiss Delegate Conroy, don't you think this is germane to the access to the courts in that it simply defines who may go to the courts, and therefore the committee put it in for that reason? Don't you think that's good enough reason?

Mr. Conroy I don't follow you.

Mr. Weiss In other words, who may go to the courts for what issue? If you have...

Mr. Conroy That's in the first sentence.

Mr. Weiss And that's right, and it further defines it in that it may because of political, or because of a political subdivision you may appear before the courts, and they are not immune.

Mr. Conroy But we already covered the extent to which they are or are not immune, Dr. Weiss, under the Legislative Powers Article. As I said before, after quite lengthy debate we dealt with that question there and determined exactly to what extent they should be liable.

Mr. Lanier Mr. Conroy, doesn't this sentence here go substantially further than the convention did under the Legislative Section? In fact didn't, in the Legislative Section, didn't we say that the state was not immune for contract in tort, but for all other matters the immunity had to be waived by the legislature?

Mr. Conroy That's correct. The two provisions are inconsistent as they presently are worded. In other words if we wanted to leave this sentence as it is, at least it would have to be subject to consideration of amendments which would bring it in line with what was done before, or we'd have to debate as to whether the provision should be left in. As I pointed out in my argument, I didn't agree with the conclusion that was reached then, and I still don't agree with it, but I think that the convention has spoken and we ought to delete this sentence and go by what we did before.

Mr. Lanier And if there are substantive inconsistencies, Style and Drafting cannot rectify substantive inconsistencies.

Mr. Conroy They could not rectify them. All they could do is point out back to the convention that there were inconsistencies for the convention to resolve because Style and Drafting could not and should not attempt to resolve substantial differences between sections.

[Amendment adopted: 78-17. Notion to reconsider tabled.]

Mr. Poynter The amendment is sent up by Delegate Arnette. Amendment No. 1, page 6, line 32, after the word "for" and before the word "injury" delete the words "actual or threatened".

Mr. Arnette This is a very simple amendment, and the main thing it does is bring the constitution that we're proposing in present line with the
present constitution. I don't know whether the committee intended to create any new causes of action, but I'm afraid that this language might. I don't know that it will, necessarily. It has been universally held throughout the jurisprudence of the United States, that when you say "injury," if it's a threatened immediate injury to someone's rights, it may chill their rights or something take this, you do have redress in the court. This is the definition of "injury" so I don't think we need to put this threatened injury in there and possibly create several more causes of action. If it was intended not to create other causes of action as a question of simplicity, I think we ought to leave it out. It is excess verbiage if it does not create anything new. I'll yield to any questions.

Questions

Mr. Roy Mr. Arnette, if a person were going to be liable and had been liable for the past several weeks, don't you realize that by putting "threatened injury" in there that one could seek redress before the final libel occurred or the final slander that involved maybe his family, and that's the reason we put it in here, and it would be left up to the court to determine whether it was serious enough to allow him in court at that time?

Mr. Arnette Mr. Roy, I'd just like to point out to you under the present law which just states "for injury" he may do that right now.

Mr. Roy That's not so because in the present law sometimes you get met with a prematurity exception, don't you?

Mr. Arnette That's a possibility, yes. I don't want to bring a suit if it is premature. That's the whole point of me taking out "threatened injury."

Mr. Roy No, but you understand the court tells you when you go to file the lawsuit because you know that somebody's going to libel and slander you, and he's got it at the newspaper office to do it, and you want to have a hearing on it, the court can say, "your suit is premature because you haven't yet been injured, and the threatened injury is not enough."

Mr. Arnette It depends on what type of threatened injury it is, Mr. Roy. You know that as well as I do. If the threatened injury is immediate, if it chills your rights, if it hurts your property rights, then definitely it is a injury that a person can get redress for in the courts. The only thing that worries me is the point that you just brought up—that this would open up excess, new litigation, and that's the thing I object to. I think a person's rights as they presently are are quite adequate to protect him.

Mr. Roy Don't you think that the Declaratory Judgment Act is in essence something of this nature also?

Mr. Arnette The Declaratory Judgment Act is under the present law which states "for injury", so I don't think we need to change the constitution and take the chance on opening it up to excess litigation. When a person would not have standing now, I don't think he ought to have standing in the future. I think if we put "threatened" in there then we're going to cause problems, we're going to cause excess litigation, and I don't think we want to make a stipulation that's going for people to think what we want to do is let the people have the rights and causes of action that they have at present, and this is what my amendment does; it just brings it in line with the present constitution.

Mr. Roy Well, if "threaten" doesn't mean anything, or it means exactly what you said with respect to the old constitution, why are you afraid of putting it in here?

Mr. Arnette I guess if you put "threatened or" there, it doesn't necessarily mean immediate threatened injury that would wind a person's rights because the damage to his property, rights or things of this nature, and I think if we put "threatened or", here we're taking a great mistake, Mr. Roy, because "threatened" opens it up for more new causes of action that a person would otherwise standing to sue for in court at the present time.

Mr. Willis Mr. Arnette, I can see you, and I say you do too, that simplicity is the closest thing to perfection.

Mr. Arnette I think simplicity and clarity is the best thing, yes.

Mr. Willis Now, we have rid ourselves of the last sentence, and I ask you to look at the first sentence, and read it with me, and I'll put a question mark to that later. All courts shall be open and every person shall have adequate remedy by due process of law and justice. "Now, I ask you, if a period were to be put there, how can you have adequate remedy by due process of law and justice without it being administered and so forth. Don't you think that that is words, words, words?

Mr. Arnette Well, that's a possibility, Mr. Willis; I just saw one particular snake in here, and I did definitely like to kill it right now. If there are other things in here that you don't agree with, I might be inclined to go along with you.

Vice Chairman Casey in the Chair

Mr. Goldman Mr. Arnette, I've been listening to this legal discussion about stopping somebody from publishing something or something like that because it might be injurious to them, it seems to me like that would be prior restraint. You mean if I was going to run an editorial against some action or against some person whom we thought was doing something wrong, we always send these editorials out to them ahead of time and give them a chance to reply. Could they go to court and stop me from running that editorial? That's definitely prior restraint.

Mr. Arnette I think you might have a valid point there, Mr. Goldman.

[Amendment]

Mr. Poynter Amendment No. 1 [p. 112, line 7, page 7, line 3, (of course, now it really followed the word "rights" on line 1)] at the end of the line add the following: "no person shall be immune from suit and liability except as otherwise provided by laws." Explanation

Mr. Avant I don't care to explain that amendment. That is not the amendment I asked be prepared. The amendment was, "no private persons shall be immune from suit and liability except as otherwise provided in this constitution." Mr. Casey Mr. Avant, you withdraw your amendment for correction, is that correct?

Mr. Poynter Do it one more time for Mr. Avant, "no private person"—right.

Mr. Avant "No private person shall be immune from suit and liability, except as otherwise provided in this constitution. The purpose of this amendment is rather simple. It is to prohibit the
Legislature from passing laws which will give immunity to private individuals of various and sundry classes to be selected by the legislature of immunity for their acts. For example, just recently I had an experience along with several thousand other people in my area where a utility company, in spraying its power lines with a hybridize, damaged to a great extent the property of everybody over about a fifteen mile stretch. Now the legislature could very well decide, in its wisdom, that that's the kind of conduct that they should be protecting. You can't imagine a thing as that if that happened to you. I can think of other examples where statutes have been passed in other states extending immunity to various categories of persons from being liable as a result of their conduct in certain particular areas. I do not think that is sound. I think that all citizens should stand on an equal footing, insofar as the responsibility for the consequences of their acts are concerned. This will simply nip that in the bud in advance.

Questions

Mr. Tobias Mr. Avant, what is a private person? Do you not mean individual?

Mr. Avant A private person is an individual, a corporation other than a public corporation.

Mr. Perez Is there any companion measure in the present constitution similar to the one that you've offered, Mr. Avant?

Mr. Avant I don't believe, Mr. Perez.

Mr. Perez One thing that bothers me very much is you say, "No private person shall be immune from suit." What about a child, a minor? What about a husband and wife relationship? All these various provisions we have in the Civil Code and otherwise... All of these various situations we have where it prohibits suit in those situations - I'm very much concerned about that.

Mr. Avant Mr. Perez, as you probably know, a minor now is not immune from being sued. He just has to be sued through his tutor, who is the person who represents him in court. But if a minor injures you and he has property, you can sue that minor through his tutor. You can recoup your judgment out of that person's property. The same is true with respect to the other categories you mentioned.

Mr. Perez Can a minor sue at the present time or only through his guardian?

Mr. Avant A minor is sued and he does sue through his legal representative.

Mr. Perez Can a minor sue his father or his parents?

Mr. Avant Under certain circumstances, yes, and under certain circumstances, no.

Mr. Perez But, this would be an absolute right with regard to the suit by the father against a child, child against a father, husband against a wife and so forth which we have permitted or limited on now in our Civil Code. Isn't that correct?

Mr. Avant This has to do with an immunity, an absolute immunity, Mr. Perez.

Mr. Velazquez Mr. Avant, wouldn't this preclude situations where in some states if a doctor comes upon the scene of an accident, he is required to administer, to give assistance, and in some states when he renders emergency assistance, he is given immunity from problems that might result from that emergency assistance?

Mr. Avant That's a so-called good Samaritan Doctrine. Mr. Velazquez. I don't happen to be in favor of that. I think if he stops, he ought to give you the same type of treatment he's supposed to give you if you were paying him.

Mr. Velazquez Well, doesn't the good Samaritan Doctrine extend to...if you see an automobile overturned and as a good neighbor, you stop and try to give the people some assistance and in the process of giving them assistance, you do more damage than good, in some states you would be immune from damage or against that too?

Mr. Avant Mr. Velazquez, that has nothing to do with immunity. You're only required to exercise due and reasonable care and do what an ordinary reasonably prudent person would do under the circumstances. If you were just a private citizen and you stopped to render aid to someone, that's all that would be required of you is to do what a reasonable and prudent person would do under the circumstances. If you were a layman, I don't expect that your failure to perform brain surgery or him would be held to be a lack of due and reasonable care under the circumstances. You just do the best you could. I see no fear, reason to fear in that area.

Mr. Lanier Mr. Avant, I've got an amendment here and it says, "No person shall be immune from suit and liability, except as otherwise provided by law." Is this the one that was changed, are we taking it like this?

Mr. Avant Well, now they said that was my amendment. That was not my amendment, Mr. Lanier. I had an amendment, but they told me that that was my amendment.

Mr. Lanier Well, but what I'm getting at is that all we....

Mr. Avant If I had wound up changing your amendment because I was erroneously informed that that was my amendment, I apologize.

Mr. Lanier No, no, I don't have an amendment. What I'm getting at is, what is under discussion is that no private person in the constitution or no person as provided by law. Which one are we going with?

Mr. Avant "Except as provided in this constitution."

Mr. Lanier "Except as provided in this constitution." OK. Then that brings up the questions that I have. What about the interspousal immunity established by statute? If we were to wish to keep that, would we then have to put that in the constitution?

Mr. Avant I don't think that the adoption of interspousal immunity is necessarily going to be sound or valid after the action of this convention the other day, Mr. Lanier.

Mr. Lanier What about the immunity given to the coroner on commitments? Would this amendment have the effect of doing away with that, unless that was placed in the constitution?

Mr. Avant If the coroner wrongly put you away when any reasonable man, any reasonable coroner wouldn't put you away, for reasons other than medical, for reasons other than his best judgment, why should he be immune?

Mr. Lanier Let me ask you this. Have you had a staff research to see how many immunities are presently statutory in our law?

Mr. Avant I haven't had a research made to see how many there are, but I can tell you there are many.

Mr. Lanier So, in order for us to rationally determine which ones we wish to preserve, we would have to review each one and then vote to see whether it
Mr. Avant: No.

Mr. Lanier: Would not the effect of your amendment, in the absence of putting them in the constitution, be to repeal all of these immunities?

Mr. Avant: I don't think necessarily so. Immunities, yes.

Mr. Kean: Mr. Avant, following up Mr. Lanier's question, as I appreciate it at the present time, there is a provision in the statutes dealing with civil defense personnel and it grants to them immunity. As I understand your amendment, that would do away with that statutory....

Mr. Avant: That is not an absolute immunity under the statutes. I don't believe, Mr. Kean. If a civil defense personnel comes to your place and just arbitrarily does something to you, he's not immune from that. It only says it's a limited immunity under circumstances where they wouldn't be liable anyhow.

Mr. Kean: Whether it's limited or otherwise, your amendment would do away with it?

Mr. Avant: That's right.

Mr. Kean: And taking your example dealing with the utility company that sprayed the fence lines or whatever they did as I read this amendment, the legislature could grant the utility company immunity from suit under those circumstances.

Mr. Avant: No, because it's a private person.

Mr. Kean: Oh, I see. In other words you are including in the term "private persons," corporations and so forth?

Mr. Avant: The word "person" includes corporations. Corporations are persons as you know, but they are not citizens.

Mr. Kean: So that under your amendment then no private individual, corporation or any other type of organization could be granted immunity unless it was put in the constitution?

Mr. Avant: That would not be enjoyed by everyone.

Further Discussion

Mr. Duvall: Mr. Acting Chairman, fellow delegates, I rise in adamant opposition to Mr. Avant's amendment. I fully understand his intent. This particular amendment could have more sweeping changes in our present law that we don't know about than anything that's been introduced to this convention. I ask you to very seriously think about it. There are many immunities of various types or another set up in our law for very good reasons. There are very, too, many to list. But under this law all of them could possibly be obviated. Although it may not be Mr. Avant's intent, that's what the language says: "No private person shall be immune from suit and liability." All your charitable institutions, your eunomous institutions, have an immunity in the law, your churches and some of your hospitals, but your churches. Certainly. All of them are going to subject to liability now under this amendment. In Louisiana, husband and wife, there's an interspousal immunity. All of this is going to be clamped. What about the immunity of legislators on the floor of the legislature? They are still a private person. Under Mr. Avant's definition they have not all of a sudden become public people. The legislative immunity is done away with. Judicial immunity when a judgment is a decision, done away with. Many, many different instances. This is not too permissive. It's not needed. If there are certain immunities...

Mr. Avant: Mr. Chairman, this amendment is a highly technical amendment insofar as the law is concerned. I can see that some of my brothers at the bar don't understand my intention behind the amendment. So if I can in order, I would ask permission to withdraw the amendment until such time as I can explain it to them.
Section 24. No law shall impair the right of each person to engage in commerce by controlling the production, distribution or price of goods except when necessary to protect public health and safety."

Explanatory:
Mr. Jenkins. Mr. Chairman, delegates, for a lot of people this is a long awaited section. Since the Bill of Rights Committee adopted it, I think it has provided employment for a number of legislators who have been able to actually succeed in defeating it, really, through their work. Some of them are my good friends and I hope that they will thank me later for proposing in the convention, that it has been good to them for the last few months. There is an amendment which has a sufficient number of coauthors on it to delete this section. I am not going to be very lengthy in a discussion of it and I am not going to answer any questions, as it will be over with shortly anyway; it's going to die a quick death. The point of this section is to try to some extent to get government out of economics, because it has been shown time and time again that good politics usually makes bad economics. We have seen on the national level an utter failure of wage and price controls to accomplish any of the ends which were attempted. These government interventions which occur from time to time -- I have seen it in this state with regards to milk and liquor and many other products -- usually don't help anybody. Certainly not the consumer. When we talk about price-fixing, there's generally two reasons for price-fixing, maximum price-fixing and minimum price-fixing. Maximum prices were set in the national wage and price controls and the result, of course, was shortages, particularly when the maximum price set was below the market price. People simply will not produce if it's not profitable to produce. Those same people are found in the milk industry in this state. Their purpose is to prevent free competition because they say that a man cannot sell at the lowest price he chooses and consumers in our state, in the case of the milk industry, for example, everyday are being cheated, not by retailers, not by processors, not by farmers, but by laws, by government -- a government which prevents them from buying in a free market. Our laws make a criminal out of a man who chooses to sell at a lower price. He'll be put in jail for it. That doesn't make sense, particularly in this day and time when prices are constantly increasing. Every time the housewife goes to the supermarket she is in a quandary and yet we have a law on the books, the Ordways Milk Marketing Law, which makes it possible for people to be put in jail if they don't change her a lower price than the state minimum. It is competition, does not protect anyone. You find as you look from state to state that farmers, processors, make just about as much in states where you don't have controls as they make in states where they do, but the consumer in almost every case pays much less for milk and other similar dairy products. The purpose of interventionist legislation, in general, is to help one group at the expense of the other. We are going to help consumers now and hurt producers, or we are going to help producers in this instance and hurt consumers. I think sooner or later politicians will learn to leave the market alone, let supply and demand and market forces handle the situation. Let people be punished for fraud, misrepresentation and things of that sort, but don't make criminals out of men who simply do not want to compete in a free market. Of course, many cattle producers are placed in a strange position these days: on the one hand, protesting about ceilings on beef prices, talking about how evil those controls are, and on the other hand, talking about how we need to preserve milk price-fixing and how good those are. I fear that politicians who talk about such laws now will someday find themselves on the receiving end of bad legislation because other political groups will find that they can play the game as well, and what
Mr. Poynor. Amendments proposed by Delegate Flory and myself.

Mr. Poynor. Amendments proposed by Delegate Flory and myself.

Mr. Poynor. Amendments proposed by Delegate Flory and myself.

Mr. Poynor. Amendments proposed by Delegate Flory and myself.

Mr. Poynor. Amendments proposed by Delegate Flory and myself.

Mr. Poynor. Amendments proposed by Delegate Flory and myself.

Mr. Poynor. Amendments proposed by Delegate Flory and myself.

Mr. Poynor. Amendments proposed by Delegate Flory and myself.
be construed to deny or to disparage other rights retained by the individual citizens of the state."

**Explanation**

Mr. Roy Mr. Chairman, ladies and gentlemen of the convention, this just simply makes sure that any rights that we don't give to the state still are retained by the individual citizens of this state. It basically comes from the United States Constitution, Amendment No. 9, which says "the enumeration in a constitution of certain rights shall not be construed to deny or disparage others retained by the people." I know there's an amendment, but it...

I don't see what good the amendment does; this is very plain. This is very simple, and I move the adoption of it.

**Question**

Mr. Denney Chris,...

Mr. Roy It changes people to individual citizens; I wanted to say that, Mr. Denney, that's the only thing it does.

Mr. Denney Well, I wanted to ask you, is there any reason for restricting it to citizens?... of this state I mean? Doesn't the Bill of Rights apply also to individuals who happen to be here who are not citizens of the state?

Mr. Roy Well, Moise, when we covered that --- I don't know whether it means or not --- a citizen just means a person --- a citizen of the United States is what we interpreted it to be.

**Amendment**

Mr. Paynter Amendment No. 1 [by Mr. Jack]. On page 7, delete lines 12 through 15, both inclusive in their entirety and insert in lieu thereof the following:

"Section 25. Rights of People Preserved

Section 25. This enumeration of rights shall not be construed to deny or impair other rights of the people not herein expressed."  

**Explanations**

Mr. Jack Mr. Chairman, and members, if you were listening carefully when Mr. Chris Roy mentioned about the U.S. Constitution, the U.S. Constitution does not use the words "individual citizens." It uses the words "the people." Now my amendment is the exact words of the present constitution and is in keeping with the Preamble of this new constitution which states, "the people." You know the United States Constitution, you will look at the Bill of Rights at the beginning of this --- rather the Preamble at the beginning of the Bill of Rights that we are considering, you will see it uses "we, the people of Louisiana, and the present closing part of the Bill of Rights in the present constitution, it reads, "this enumeration of rights --- and that followed that in my amendment --- "this enumeration of rights shall not be construed to deny or impair other rights of the people not herein expressed." Now, the U.S. Constitution uses the same words. It doesn't use the words "individual citizens"; it uses "the people." The people are the ones who give power; they are the ones who reserve power. I don't understand this change that Mr. Woody Jenkins is apparently the main author of. I have talked to him at lunch about it. I still can't see why we can't follow like the United States Constitution and the present Louisiana Constitution and say that things are reserved to the people. Now, if you can stop and do a little thinking, this may be the wording to limit the legislature. It may be also a method where there could be discrimination if you adopted the words "the individual citizen" instead of the people. I repeat, like in the United States Constitution, the decision of the Supreme Court provides for no discrimination, and I can't for the life of me see why we should use nymbo jacko...
46th Days Proceedings—September 13, 1973

you are driving at and maybe you can talk to Mr. Woody Jenkins because he tells me there's a whole lot of difference between what the present section is and what this one is that he has in the hand. He likes the new one; I think the other one is fair because it's -- use the words "the people." That's the way I feel and, of course, Mr. Derbes, I presume you want this one that's it's in the material.

Mr. Derbes No, I'm against the committee proposal... I don't want to speak on it, I just... Mr. Jack Well, why don't you tell me you're for the floor amendment if you are?

Mr. Derbes I'm for neither, as a matter of fact.

Mr. Jack Well, I don't know how you're going to vote. You'll get a splinter in your finger on the wood.

Further Discussion

Mr. A. Jackson Mr. Chairman, ladies and gentlemen, with the exception of the title of this amendment, I started to suggest there's not a dime worth of difference but I don't quite like that expression. I don't like that committee proposal to the amendment because we were trying to make clear that the rights we're trying to preserve here are for individuals and they're for the whole or to a class of individuals. This is consistent with what we have tried to maintain throughout this Declaration of Rights Article, and that is that we are trying to propose and trying to preserve rights for the individual; so I would urge the defeat of this amendment and since there are no other amendments before us, I would ask that we would call for the question on this amendment. I so move.

[Motion for the Previous Question withdrawn.]

Further Discussion

Mr. Jenkins Mr. Chairman, delegates, I appreciate Mr. Jack crediting me with this section. I didn't draft the particular language in it, but there is a distinction between Mr. Jack's amendment and the committee proposal, and it's a very important distinction that I think we ought to consider. The U.S. Constitution reserves unenumerated rights to the people and to the states. Our present constitution reserves it to the people. But what we're talking about here is: You see, this Constitutional Convention has enumerated certain rights in the Bill of Rights but we've not enumerated the rights people have. We haven't attempted to. For example, in general people have a right to get married, they have a right to raise a family; they have a right to live and work where they choose. These are rights that people have. We haven't attempted to enumerate all of those rights, but it's foreseeable that in the future some legislation could be passed that would try to abridge certain of people's basic rights. Now, the right, say, to get married and raise a family, the general right to do that is not a right of the people. It's a right of each individual citizen. It's no kind of collective right. It's a personal right which anybody can get in his own way. The term "individual citizens of the state," we're saying that there are certain rights that each individual has; there's also certain powers reserved to the people as a whole and we want to protect both of those, both the powers protected by the people as a whole and the rights of the individual citizen. That's why I say if we're going to use the same language I believe is in the Wisconsin Constitution, same thing "individual citizens of the state." It's just simply saying that we're not omniscient here when we talk about rights and there are other rights that need to be protected and our courts should be able to find those in particular circumstances. So I urge the defeat of this amendment and if there are no other speakers, I move the previous question.
Mr. Fontenot

Mrs. Warren, I don't think this should be left up to the legislature instead of putting this in our constitution. Do you think that it's absolutely necessary that it be in our constitution... proposed constitution?

Mrs. Warren

Yes, Mr. Fontenot, I really do, in that if you will read it I'm proposing up to the legislature to decide how they are going about this; but if I didn't think this was important I wouldn't have brought it to you. I don't think you have seen me uninterested in much. I think this is about the second amendment that I have been up here with; so I think it is very important that we put it in the constitution.

Mr. Fontenot

Mrs. Warren, are you aware that many times crimes are committed where there are many victims of these crimes perhaps murdered or malmed or disabled for the rest of their lives, and these criminals who are brought to justice might get out on technicalities? Do you want to provide in your amendment that these victims of these crimes where the criminals get out on technicalities are also compensated?

Mrs. Warren

Mr. Fontenot, I think I tried to make that very clear that I don't want anybody out on technicalities. I'm going to go a little bit further with you. Now the law book that I know most about says back in there "spare the rod and you spoil the child." I believe anybody that does wrong has the right to be punished. I don't believe in saying or letting a little child do whatever he wants to do when he is growing up and laugh at him because he is little, because one day he is going to get big. I am trying to let anybody off on a technicality, and I think I made this clear.

Mr. Fontenot

I think you missed the point. The point is, don't you agree that there are many unsolved crimes and many crimes in which criminals get off where they are victims, and these victims' families are not compensated at the present time?

Mrs. Warren

Mr. Fontenot, what I really tried to do is correct an inadequacy that has gone on. Now, I don't think we have this kind of thing every day that I'm talking about, but if it's an injustice I think that it should be corrected, and I think it should be in the constitution.

Mr. Fontenot

No, but you still haven't answered my question. My question is what about the victims of crimes that are unsolved? Don't you think their families ought to be compensated also?

Mrs. Warren

If they're unsolved?

Mr. Fontenot

Unsolved crimes or crimes that there's never been an arrest. There's a dear boy in the street, he's been shot-don't you think his parents ought to be compensated when a crime has been committed? You want to compensate a guy who may have been to Angola for a couple of years and is subsequently proved innocent. Don't you want to compensate also, individual victims who are dead...
46th Days Proceedings—September 13, 1973

Mr. Newton: Well, I am not going to try to define it, but this has to many problems that we can't resolve them in this convention.

Mr. DeBlieux: Let me see that there was a typographical error. It's a type of problem that I am glad you are now running out.

Mr. Annette Autley, don't you think that we already have enough statutory material in this Bill of Rights?

Mr. Newton: Well, I don't think we've got that many statutory material in this Bill of Rights, but I think ....

Mr. Annette: Don't you think any at all is too much?

Mr. Newton: Well, I'm not going to try to define it, but this has to many problems that we can't resolve them in this convention.

Vice-Chairman Casey in the Chair.

Mr. Donnelly. Mr. Newton, have you read the definition of the word 'imprisoned' as opposed to the definition of the word 'jail' used as a verb, do you recognize that there is a distinction between the two?

Mr. Newton: I recognize that there may be, I'll see that you've got Webster's there and I don't have Black's here.

Mr. Donnelly: Well, I assume the understanding of this convention, and assume me if I'm going to define it, that under the Style and Drafting Rules we are to use Webster's dictionary as the proper definition. If I were to tell you that the word 'imprisoned' means sent to prison, and the word 'jail' means sent to jail, would you agree that your argument is not as strong as it was previously?

Mr. Newton: I'm afraid I don't have any idea what are going to do about the guy that is sentenced to jail and subsequently found out that he was guilty. Are you going to put him in jail and have that person in jail pending trial and then what happens? Suppose the legislature provides a high schedule of compensation and say that the police jury has got to pay it, so somebody is put in jail. The district attorney is going to have to prosecute that case as hard as he can to try to get a conviction so that the police jury is not going to have to come up with compensation for these people, and I think that's going to create problems. I can foresee a situation developing where the district attorney is trying like hell to get a conviction and the guy that's in jail has filed a civil suit trying to prove he's innocent so he can get compensation, and I just think this is type of thing would be felt by the legislature and not this constitutional convention.

Mr. Newton: I don't think you can encumber the legislature to adopt laws. Maybe.

Mr. Munson: Mr. Newton, suppose we two gentlemen, we'll call at Appia, Mr. A and Mr. B. Mr. B is in there for fifteen or well say ninety-nine years, he's not going to see out. What would prevent Mr. B from being the one that executed the parole the compensation, Mr. A imprisoned, and Mr. B subsequently gets out and get paid, what to prevent something like that from going on and then they enfile the fines.

Mr. Newton: Not a thing.

Further Discussion

Mr. Kelly: Mr. Newton, I refer you to the language which says in the statutes that you are required to give them if you subsequent not for restore them. Can you state where this would bring about any guilt.

Mr. Newton: Absolutely what is talking about.

Mr. Kelly: Alright, we then, lets assume that a man was convicted, he was sent to jail, let suppose that he was going on parole, he made something, so he roamed back to a town face, and he files a civil suit, let suppose he gets a jury trial, maybe it is not even in the same jurisdiction, and that jury decide that he was erroneously convicted. Would he be entitled to compensation under that?

Mr. Newton: Well, I assume that he would come in the type of problem that I am glad you are now running out.
Mr. Burns. Senator, what concerns me in this amendment, you say "which they are proven subsequently not to have committed." Proven in what manner that they were innocent -- they didn't commit the crime?

Mr. DeBlieux. Mr. Burns, the legislature would have to provide for that. We are putting here the policy, the right of the citizens of this state to protect the rights of innocent people, and therefore it would be up to the legislature to implement how it must be done.

Mr. Burns. All that's stated in this amendment is that "the legislature shall provide adequate compensation." They don't say anything about that they shall provide for the method of proof.

Mr. DeBlieux. I think that part of that adequate compensation is to provide how it is to be determined that they are entitled to this compensation. That's part of the legislation. That just sets up the policy.

Mr. Burns. Don't you think it would be better if you would state that in here?

Mr. DeBlieux. Well, it could but you might add more words and I think it could properly be taken care of in the legislation.

Mr. Fontenot. Senator DeBlieux, you said yourself in these other cases it is in the legislature, isn't that correct? I mean compensating victims of crimes, isn't that correct?

Mr. DeBlieux. The point that you raise is already in the statutes.

Mr. Fontenot. Right, it's in the statutes already. Now, couldn't the legislature, as I said, compensate these innocent victims in the statutes also?

That's the point I raise. Don't you agree with that?

Mr. DeBlieux. I think the legislature, and I think Mr. Fontenot, and this is a higher right than what you're speaking about, in my opinion, and I certainly think that we ought to mandate the legislature to provide some compensation to these people who have been wronged so much by society which we intend to protect.

Mr. Fontenot. You think the right of compensating a victim who is proven innocent is greater than the right of family to get compensated for an innocent victim of a murder?

Mr. DeBlieux. In this particular case, I think there is because sometimes the families that have been harmed that was wrongly confined are saying that actually they have their civil remedies. These people, they haven't any civil remedies; that's what we are giving to them, a civil remedy for the injustice that has been done to them. That's all it provides for.

Mr. Fontenot. But the innocent person who is let out of the penitentiary, he's still alive where the murder victim is dead, isn't that correct?

Mr. DeBlieux. Not necessarily in all cases. Everybody who's been harmed is not necessarily dead.

Further Discussion

Mr. Conroy. I requested the floor on this only when it appeared that we had reached the end of the list of speakers, and no one had spoken in favor of this amendment to whom I felt I could address questions as to the drafting, or the method of drafting of this particular section. I am disturbed, not by the concept, as much as I am by the drafting of the proposal. Mr. Deeny did by means of his questions answer at least one of the questions that I had about the meaning of this amendment that's intended to cover situations where a person is arrested and then never convicted of any crime or whatever. I think I understand his questions that "imprisoned" means sent to the penitentiary after sentencing. I gather, but I'm not sure about that. I would feel more comfortable if it was understood that was intended to cover situations where a person is arrested, found guilty, and sentenced to the penitentiary. I, frankly, am uncertain about the meaning. I am also disturbed about the relationship of this section, and the section which we adopted waiving the state's immunity from suit. I'm not at all sure that the reading of this proposal with the waiver of immunity doesn't give a direct cause of action against the state for a criminal for a crime which a person did not commit. Lastly, I'm concerned whether a person who is convicted or arrested say, well, let's say convicted, and charged with several offenses and ultimately found guilty of only one; let's say he's found guilty of felony murder, murder in the course of performing some other crime, but is found guilty only of that offense and sentenced to prison accordingly, and then later it's found that somebody else pulled the trigger on the gun and he wasn't the person who actually committed the murder but he did commit a crime. Does that entitle that person to compensation under this provision as worded? I go back to where I started. I completely agree with the concept of the legislature providing compensation where the legislature finds that some grievous wrong has been committed, but here's in the course of carrying out the functions of the state. There are times when people are hurt and should be compensated, but I am still very much concerned by the wording of this particular section, and unless some of these questions are clarified in my mind I will have to vote against it with deep regret.

Questions

Mr. Rayburn. Mr. Conroy, I, too, am concerned about this language where it says that "a person who has been imprisoned shall be provided adequate compensation by the legislature." Now, what disturbs me, I think this language is poorly written. If it would say "shall be imprisoned after proof found guilty," but suppose a person is placed in jail and is held for five or eight months, he is imprisoned and he is proven not guilty. Would he then be able to come back to the state or to the legislature and get adequate compensation for the time he spent in jail before his trial?

Mr. Conroy. As I said in my explanation, Senator, I think he might be able to, and what disturbs me even more is he might not even have the opportunity to go to the legislature under our waiver of immunity until he actually gets a judgment and gets them to satisfy
the judgment.

Mr. Rayburn. Well, that's the same problem I have. Senator, because it seemed to me that it should be that the legislature would have the authority to determine what the amount of compensation would be. You're raising the same question I have asked really, and I can't give you the answers to them because I'm asking them myself.

Further Discussion

Mr. Warren. Well, partly I can ask...you know I have a lot of coauthors on here; I'll put it this way. I said from the beginning that I was an advocate of the amendment that I don't think I'll try to make it very plain as to what I wanted to get over. What I'm trying to say to all of the delegates in this convention, if you are in sympathy with this concept and I tried to write something that would be acceptable and explain it out like it ought to be, but let's don't put it under the rug and say I can't go with it because this is not right. I think we need to take time now and try to work it out.... take that one out, because I'm going to have another amendment coming to the floor.

[Amendment read by Mr. Rayburn.]

Amendment

Mr. Poynter Amendment No. 1 sent up by Delegate Hayes. It's being passed out at this time.

Amendment No. 1, on page 7, between lines 25 and 26, insert the following:

"Section 26. Prohibited Penalties

Section 26. No penalty, other than that provided by laws, shall be applicable to any conviction for an offense.

[Cost of $2.00 for printing in the Appendix.]

Explanations

Mr. Hayes. Mr. Chairman, ladies and gentlemen of the convention, this same section that I'm proposing now was mentioned, and I think that may have been some opposition to the committee because they thought it was not germane to the section, or they thought it might defeat the section, so I'm now proposing it under a new section which making it even more difficult, but at least it will not affect the section. We have a problem in the State of Louisiana that worries me a lot, and I'm going to take this time right now to explain it again. I don't think I have a problem as long as you agree with the provision that this section is needed, and I think it is necessary that I go back one more time and explain it now. It will be up to the delegates to do whatever they would like to do after I get through explaining it.

We have a bad situation in the State of Louisiana involving a relationship or correlation between the traffic conditions and the amount of insurance in two places. The purpose of this section will be to straighten it out. Now if you want to straighten it out, then you vote for the section that's all there for. I want the delegates to think that I'm not trying to straighten out the insurance industry, if the fraud is happening, now, the deceptive insurance industry is getting together on the people and charging them individual rates. You are rated by the number of traffic tickets you get, so one person will have two and a half tickets and another may have none. Somebody else's insurance premium let us tell you what that means. All right. You can't be fortunate enough to have insurance in your car well, it's the way you do. You're trying to get a little bit of insurance. You have more insurance than the people you're between here and the representative every car you meet without insurance, then you don't have it...you have that much less insurance. Alright, so here's what we can do in the state. If everyone in the state could get insurance at a standard rate, it would mean that more people would carry insurance. Insurance would be cheaper for everybody, but the way we are rating insurance now by the use of traffic tickets, it is a computer that is selling the people records to the retail credit people for two dollars where they turn sell it to the insurance company. I think it unfair and is unjust to everybody. What my amendment does is simply this; it says no penalty other than that provided by law shall apply to any conviction for an offense. It's not saying but one thing and I've talked with judges in the traffic courts in the New Orleans area and the Baton Rouge area about the same thing and they're all in agreement. Whenever you go to court and you have been fined by the court, they're not interested in this fine extending any further than what they have proposed. Now, let me tell you what can happen here, and I'm going to give you these figures that have given you before. A standard liability policy on two automobiles totaling approximately two hundred and sixteen dollars and when you are penalized a hundred and fifty percent, then same policy would cost you five hundred and forty dollars. Now, you think about twenty-five percent commission on two hundred and sixteen dollars and five hundred and forty dollars. Take together the collision and liability on a hundred and forty percent increase to over a thousand dollars and some dollars. So the commission in this would run something like three hundred dollars, this amendment is adopted, the insurance premium would be more or less like a group policy, provided it is for any system where group insurance is provided, everybody could get insurance at about the same rate and all these inequalities would not exist.

I will yield to questions at this time.

Qualifying

Mr. Weiss. Delegate Hayes, as I read this, would this prohibit the insurance companies from instituting such procedures as a punishment for the attorney, or suspension of insurance for you when they are the same people involved. In other words, this offense is determined and you could then apply, and therefore, you would not either be disbarred or unlicensed in that state.

Mr. Hayes. What I'm proposing here is that the court could do whatever the court wants to do, if you and I were involved by a court and it never happened, your time or your license, whatever was needed in that court, no one would do anything as a result of that.

Mr. Weiss. Does a court have the authority to have an attorney discharged from practice when they are rendering a judgment, even though in civil cases?

Mr. Hayes. What I'm trying to say is that the court could do whatever the court wants to do.
disbarment of lawyers who have been convicted of a crime, and your provision in my opinion would prevent the Supreme Court from later bringing in a disbarment against the lawyer because that's a penalty also. But in the thrust of your remarks, I think your amendment is faulty for that reason, but on your main point, that of insurance premiums, if I'm to say that paying that two hundred and twenty-five dollar premium, and I don't have any traffic tickets, and I haven't got arrested, and I haven't had any wrecks, and I keep on paying that same two hundred and twenty-five dollars, but there is another guy with five accidents and three charges of D.W.I. and all the other things that he can have in this state that causes him to be a special risk. He is probably going to cost that insurance company some money, because of his driving record they can see that he is, they raise his rates. Isn't what you propose that everybody pay the same premiums, aren't you charging the safe drivers more in order to cover those who don't drive safe, and don't I come out worse if your amendment should pass?

Mr. Hayes I'm glad you asked that, Mr. Stagg. You'd come out better because more people in this world would be the rate, that's a low enough rate that people could get it, I believe more people would take it, and if more people would take it, it would bring the rates down. Now, I can see what are the four, what he'll do is not buy the insurance. What he'll do then is have an accident without insurance of which the state does not require you to have any insurance. You run him out of the market. You guarantee insurance companies a market, and what they do is run away...

Mr. Stagg George...

Mr. Hayes Yes, sir.

Mr. Stagg Does your amendment before this house at this time require that everyone in the state have insurance on his car?

Mr. Hayes It does not require, and in the state right now it does not require it, but what I'm saying is if you would put it at a low rate, that's a low enough rate that people could get it, I believe more people would take it, and if more people would take it, it would bring the rates down. Now, I can see what are the four, what he'll do is not buy the insurance. What he'll do then is have an accident without insurance of which the state does not require you to have any insurance. You run him out of the market. You guarantee insurance companies a market, and what they do is run away...

Mr. Stagg George...

Mr. Hayes Yes, sir.

Mr. Hayes Does your amendment before this house at this time require that everyone in the state have insurance on his car?

Mr. Stagg It does not require, and in the state right now it does not require it, but what I'm saying is if you would put it at a low rate, that's a low enough rate that people could get it, I believe more people would take it, and if more people would take it, it would bring the rates down. Now, I can see what are the four, what he'll do is not buy the insurance. What he'll do then is have an accident without insurance of which the state does not require you to have any insurance. You run him out of the market. You guarantee insurance companies a market, and what they do is run away...

Mr. Stagg George...

Mr. Hayes Yes, sir.

Mr. Stagg Does your amendment before this house at this time require that everyone in the state have insurance on his car?

Mr. Hayes It does not require, and in the state right now it does not require it, but what I'm saying is if you would put it at a low rate, that's a low enough rate that people could get it, I believe more people would take it, and if more people would take it, it would bring the rates down. Now, I can see what are the four, what he'll do is not buy the insurance. What he'll do then is have an accident without insurance of which the state does not require you to have any insurance. You run him out of the market. You guarantee insurance companies a market, and what they do is run away...
Mr. Hayes: Mr. Rayburn, I have to go into the assigned risk plan and I have never had an accident, and I've been driving thirty-five years. The insurance industry themselves tell me anything you want to. I told you they let the call a Henry huddle on you anytime they get ready and decide anything they want to. It's only at that point do they require insurance. I think what you have there is not the case. Now, what about the two...you go into the assigned risk anytime you don't provide insurance. I can't get insurance no other place. You go into assigned risk, the only place you can get insurance.

Mr. Rayburn: You either go there or go in what's called the surplus line. That's right.

Mr. Hayes: Now the surplus line means you go into a non-rated agency who is not even admitted to do business in the state. You have these two alternatives because of the way we do business here in the state of Louisiana in the insurance industry.

Mr. Rayburn: I don't believe this amendment would correct that, Mr. Hayes.

Mr. Hayes: But, you realize -- I'm sorry I can't answer your question -- but the situation does exist.

Mr. Rayburn: I realize it's a serious problem, and I'm confronted with it practically every week.

Mr. Hayes: I would like to ask a favorable vote on this amendment. It might do more good.

Chairman Henry in the Chair

Amendment

Mr. Poynter: Amendment No. 1 (to p. 8, line 3), on page 7, line 16 add the following section: "The amendment now being passed out"

Section 26. The legislature shall create consumer education information council which shall provide consumer representation for the interest of consumers throughout the state in hearing before any board, commission, department or agency of the state. The council shall have powers and duties as are fixed by law.

Examination

Mr. Brien: Mr. Chairman and fellow delegates, I want to say before you ask you to consider my amendment proposal. The first time it was defeated by 27 delegates against 2. I don't know if any of you really think my way, to give protection to all our people. All I really want with this is to give consumer protection from a first hand in the constitution to the people. Throughout the state, protect our people from bad law as faulty production and safety work. Every person should know there is a consumer education union office and a bureau somewhere in the area where you live where he will get more information. When things were done a few years ago, I would say, take off to give every individual a right to live forever, and they will do that, only be as safe as possible, and protect this amendment...I ask you to please vote for this amendment.

And this too is a law that is a need that is a need that is a need to adopt. I'll please consider that as a point.

Mr. Goldman: Mr. Poynter, I think the legislature should always be a minority, not a majority, where this is a question. It seems like to me when business is the bill of rights, we have a very hard time. If the price is too high, or to neglect anything else I can't see where reasons are not just that of the Bill of Rights.

Mrs. Brien: Well, I think we are taking about protection of the people in the Bill of Rights, and maybe this is the greatest cause of our people deserve.

Mr. Poynter: Mr. Avant, do you still want to add the same place, or you want to just add it to Act 26?

It's set in to come on page 7 between bill and to...be consistent with what we are doing, and make it, add it at line 16 and this Section 26. Section 25 or Act 26, Powers and Delegated

Section 26. All powers not specifically granted to governments by this constitution are reserved to the people, and are implied as inherent powers.

Examination

Mr. Avant: Mr. Chairman and fellow delegates, it is in simple amendment of principle that is universally well recognized. A constitution such as the one we are drafting is a package, a compact or a contract between the people and the government which they set up. The government when they set up is a government, is delegated powers. In other words, we have passed through this constitution, article 1, that it, we have surrendered to government certain powers. There are only power that the people are giving to government. The amendment to this amendment is to say in some way, to give it to the constitution of the United States that the state, very simply, that these powers that have not been granted by the constitution of the United States...are reserved to the people, to give it reserved to the people. There is a reserved power under the constitution of the United States which we are amending, which would say, that the powers of government are subject to different, from the amendments, and that it may be a use of governmental power and that the constitution will that government be subject to the general power of inherent and implied power.

Very simply, very easily understood, we can favorably vote this amendment.

[Page 132]
Specific authorities are not granted to the local governments and all other agencies of government in the constitution. The legislature could not enact laws with respect thereto. This is really a bad, bad, bad amendment. I urge you to reject it.

Question

Mr. Roy: Mr. Perez, do you know that you and I agree for the first time since we've been here?

Mr. Perez: Isn't that wonderful?

[Previous question ordered.]

Closing

Mr. Avant: I'm going to have to disagree with my learned colleague, Mr. Perez. The amendment does not do what he says it does. The amendment simply says that government, in order to act, must be able to point to some basis in the constitution which authorizes them to so act. There's nothing unreasonable about that. It should be self-evident. We are here, entering into a compact or a covenant or whatever you want to call it, between the people and the people's government. Now, it is not unreasonable to require in that contract that government operate within the confines of the contract, and that when it chooses to exercise power that there must be some constitutional basis on which to support that power, and that government will not be running around willy-nilly, assuming and implying that it has powers which the people have not delegated to it. Now that's all it does. It does nothing else, nothing more, nothing less. I ask your favorable support for this amendment.

Questions

Mr. Gerber: Mr. Avant, the police power of the federal constitution is specifically provided in the federal constitution, is it not?

Mr. Avant: So is it specifically provided in this constitution.

Mr. De Blieux: Mr. Avant, as you recognize by this amendment that if there is not a specific provision in the constitution that the legislature cannot act upon a subject. Isn't that correct?

Mr. Avant: I don't recognize that at all, Mr. De Blieux. It speaks of powers. The legislature must have been given the power to act in that area.

Mr. De Blieux: Well, that's what I'm talking about. If we can't point to some specific provision in the constitution giving the legislature the right to act, they would not be able to act, isn't that correct?

Mr. Avant: That's generally correct. What's wrong with that? They have to be able to look to the constitution and say, "This is our authority; this is on which we act."

Mr. De Blieux: Do you recognize that right now that the actions that the legislature act upon, that about seventy-five percent of them are not in the constitution as you would advocate they'd have to be?

Mr. Avant: In detail, you are probably correct, but I'm sure that there is a grant of power in the constitution which can be pointed to and under which the legislature is acting.

Mr. De Blieux: Do you recognize that under this particular provision, there would be very, very few articles when we went through this constitution, the legislature could act in?

Mr. Avant: I don't recognize that any more than I recognized your first statement, Senator De Blieux.
The phrase 'private property' in Section 4 as we have adopted it, we've said that 'every person, subject to reasonable statutory restrictions, has the right to acquire, control, enjoy, own, protect, use and dispose of private property.' When you say the words 'private property', you are in effect recognizing two the text that there is private property in this state, and second, that you have a right to do all of these things that we enumerate. It's as simple as that. The language 'shall not be taken or damaged' that's continued, continued from Section 4. The phrase 'except for a necessary public purpose', this continues the language, although: `persons now paying the taxes on the property may be warranted to keep the property as they are now paying the taxes on the property.' I added it here to get them on the floor. We've got to clean this section up... necessary public purpose and unless just and adequate compensation is paid. 'Just and adequate compensation... it provides for full compensation. It also takes care of the provisions of the present constitution...

Point of Order

Mr. Conroy Point of order, Mr. Chairman.

The explanation, as well as this amendment, indicates to me that it's to be a reconsideration of the whole of this section. There's no that is not included in Section 4; so apparently it's intended to propose a rejection of the additional verbiage that is in Section 4. I'd like a ruling from the chair as to whether that is a proper amendment without a motion to reconsider or a suspension of the rules.

Ruling of the Chair

Mr. Henry Mr. Conroy, I think your point is well taken. I think it is in conflict, quite frankly, with Article 4, and consequently to discuss something like this, I think we're going to have to reconsider it by which I mean a motion to reconsider it. I think, consequently, that the amendments are out of order at this time, Mr. Tobias.

Mr. Tobias.

[Notice to adjourn the rules to reconsider Section 4 adopted: 11-19.]

RECONSIDERATION

[Section 4]

Explaination

Mr. Conroy Mr. Chairman, delegates, I'll be brief. I'm not going to talk on the merits of the proposal one way or the other. But to two days ago Mr. Tobias and the delegates of the Committee of Style and Drafting and I will not say propositions to the floor, but those that have floor amendments, it's not going to read as smoothly as we might like it to and if we were going to sit down personally and draft it, but there's not a thing in it that can't be cleaned up by 'Style and Drafting, without making any substantive change in it at all. This section, because of the type of work we're doing, has had to undergo very slow and deliberately. If we go back every time people get dissatisfied with the way a particular vote came out and try to make substantive change, we aren't going to finish by January 4. Now we have a good Section 4, I think this is a good Bill of Rights. I think it's workable. I don't see any reason at this late date to start going back and changing and reconsidering things that have already been decided, thoroughly debated a long time ago. So, urge you to defeat this motion.

Further Discussion

Mr. (Hill?) I rise in strong opposition to the proposal to reconsider Section 4. Everyone that was taught
Mr. Abraham: I think that a lot of the language now that I've had a chance to look at the whole thing as it is written now, I don't like the way it's written; I think a lot of the language needs to be ... .

Mr. Weiss: Can you be more specific?

Point of Order

Mr. Pugh: I voted for Mr. Tobias' suggestion. I am, however, now interested as a point of order. Are we now going back to Section 4 for every amendment that anybody wants to put on Section 4, before we go to the amendments that are up there on the sections yet ahead of us?

Ruling of the Chair

Mr. Henry: We hadn't decided yet; that's what we are trying to decide. Now here is what we did. We voted, or rather, the committee voted for the purpose of reconsidering the vote by which this section was adopted. So what's being debated now is whether or not we are going to reconsider the vote. It will take a majority of those present and voting to get past this hurdle, Mr. Pugh, fifty-four to fifty-five, whatever it is. If that vote carries, then we will go back into all ... . You can do anything you want to do. You can amend it and amend it or try and try and try; we could be on it for thirty minutes or three days. But it's just like we are starting anew, yes, sir.

Mr. Pugh: That's all I want to know is whether we are just going to talk about Mr. Tobias' or whatever anybody else wants to bring up.

Mr. Henry: Whatever anybody else wants to bring up.

Mr. Pugh: Thank you for the clarification.

Further Discussion

Mr. Champagne: Mr. Chairman, ladies and gentlemen, I speak in favor of reconsideration of this section. As I am not a member of Section 4, I submit that this convention is capable of doing a much better job of Section 4. While ordinarily I would like to shorten this procedure, I feel that as submitted, Section 4 may endanger the passage of this complete part of the constitution. I speak in favor of reconsideration. Thank you.

Further Discussion

Mr. Duval: Fellow delegates, I realize we are all impatient. This is, of course, a sensitive issue to many of us. I merely feel this, that when an error is made or some of us feel like an error is made, we shouldn't merely for the sake of expenditure forsake the opportunity to go back and remedy the error. Now, I think this is important. As you recall, when the debate on this section the committee said that "quick-taking" would still be allowed. I think there is a serious question as to whether the highway department could now quick-take when you say, "The issue of whether the contemplated purpose be public and necessary shall be a judicial question and the final determination as to necessity of the location shall be made after due consideration of the loss of aesthetic or historical values without regard to any legislative assertion." Now I want somebody to tell me what that means. I want somebody in all candor and honesty to specifically tell me what that legally means. I will challenge them when they do. I think it certainly could be construed to mean that it has to be litigated before any taking occurs. Therefore, the highway department you would have no... government does have to operate... this is all real nice... but we do... people clamor for highways; they want roads and streets. With this type of language you could really muddy up the entire operation of government. I think it's going to be interpreted in some way. I think it would do away with quick-taking. I think it could be interpreted that way. I think the primary reason is that people whose property is taken are paid compensation and full and just compensation. I certainly said that. We say too much here and I think it's indefinite. I think we ought to reconsider it. I realize it's taking time. I think it's a mistake. I think we've been unintentionally misled, and I think we ought to remedy that language. Thank you.

Further Discussion

Mr. Rayburn: Mr. Chairman and fellow delegates, I wish in support of reconsidering this particular section. I can see now where the progress of our road system in this state could be hampered to a great extent by the words aesthetic and historical value. I have seen it slowed down to some degree under our present law. If you place this in the constitution, you're going to see more litigation than you've ever seen before. Maybe this bill will go before the right-of-way delegates a historical value -- about three or four people running into it and getting killed. They say, "No, don't dig it up because Uncle Charley and Aunt Abby were killed here fourteen years ago. Let it stand." As far as this word "aesthetic," I might think that something is really aesthetic and you might think otherwise. I don't believe that this would go to the people of our present constitution. When you're going to enter into progress and build better roads and better highways, please don't hamstring the people who have the power to accomplish that object by keeping them in litigation day in and day out. I would hate to see this particular language left in this section. I think everyone is entitled to their day in court. But, I think you can do a lot too far sometimes and you can hamper progress by going too far with words like "aesthetic value." I don't really know what that means. I've asked two or three people and they hadn't told me. I think it's a difference of opinion... and "historical value." Certainly if we've got to have some right-of-ways, we just got to have it or not have a better road or not have progress. I don't know what's more important than to have better roads and make a little history by not killing so many people on the roads we have today.

Further Discussion

Mr. Roemer: Mr. Chairman and fellow delegates, I rise in opposition to the attempt to reconsider this particular section. I, as do you, feel oftentimes that we could have done a better job. Or to put it more succinctly and perhaps more honestly, I feel that we've done a job different than I would have done it if I had written it alone. But that in itself, after hours and days of debate is not a legitimate excuse, as far as I'm concerned, to reverse ourselves, go full circle, and begin again to debate an issue that will be debated the rest of this day and on into tomorrow -- an issue that we have given far, far enough time to debate thus far. Now I have a warning during the debate on this section that contributed amendment by amendment to the process of building Section 4 as we now have it. Your ox can and will be gored, too. Your ox can and shall be gored also. This section is more than one concept. It is a coalition and a collection of various concepts, including the word "necessary," including the words "public purpose," including the words "aesthetic value." If you think that you are going to go back to this whole section and not have your particular concepts that do not suit you, you better rethink through this whole process. I think we can live with Section 4 because it says clearly, under the law, that one of the vested rights that we now have in this state is the right to be compensated adequately and justly for our property and that property shall not be taken except for a necessary purpose, a necessary purpose. My gosh.
Mr. Roemer, No question about it, Mr. Conroy. This section was built by us, men and women, and it's going to be debated by us, men and women. I submit, concept at a time.

Further Discussion

Mr. Tate, Mr. Chairman and fellow delegate, after the Section 4 was adopted and was printed in the newspaper of the state, I received the first of several letters from city officials concerning what this convention had done to the operation of cities in Texas and one of these letters was sent to the microphone in order to read from it what the city attorney of my city wrote to the mayor of my city. We have pretty well gotten down in the jurisdiction now to determining that if the appropriate authority determines that there is a public need for the property, that it is necessary. It seems to me that this opens a Pandora's box, if you will. We're in the community to determine whether it is necessary or not.

For example, if we got involved with the jury in this issue, it would raise some tremendous problems. The expropriation laws of this state, at the present time, is such that, while recognized that expropriation is an extremely powerful weapon, are in a stable condition and laws representing both the plaintiffs and the defendants are in the position to advise their clients as to what their rights are and what might happen. I am aware of no particular arbitrary abuse of expropriation on the part of any authorities in the State of Louisiana. The defendants have the court to protect them and this very grave problem has not been faced when the time came.

At the present time, please no further need for protection of the plaintiff, although a state of disunity that I have represented solely the expropriation authorities, was such that the mayor said to me that he and the other members of the Louisiana Municipal Association are faced with some very grave problems in the future under this language in the constitution and that it raises serious questions in their mind as to whether this is not an overwhelming issue that cities and parish governments, which I have talked to face when the time came. I decide on this constitution believe that Mr. Tobias has quite properly brought to the convention a motion to reconsider this language. I will support his motion to reconsider.

Questions

Mr. Newton: Mr. Stagg, did you know that the federal government was expropriating a hundred and twenty acres in your own state and that they were using this land for a prison for the exclusion of crime?

Mr. Stagg: You'd ask the question, you have to draw it that it is not the convention.

Mr. Jenkins: Yes, you know what I mean, what we have with that authority and the statement is real in later raising and you may by this statement determine the necessity. I want to know that the only people that take the trial are allowed to give, any applicant for compensation?

Mr. Stagg: I think the mayor was requiring the question from the city attorney. The city attorney said that the language that said that the amount of money that it will be a judicial function in determining whether it is such without regard to any legislature at all.

Mr. Jenkins: Doesn't it state that there is a trial by jury to determine compensation and no other right to be heard by a judge?

Mr. Stagg: I believe they don't want any other trial by jury on compensation.

Mr. Tate, Mr. Chairman, are there any other questions?

Mr. Henry: I think the previous question is by you, didn't.

Further Discussion

Mr. Tate, well, at the beginning of my remarks I will try to explain briefly, I'm in support of the motion to reconsider. I was engaged at the time, I believe that we should reconsider it. We are writing a constitution with the hope that we should be free from some of the provisions that we have made if we have made a draft, a take, we would undoubtedly reconsider it. Now, the attitude in this state, I still reconsider everything that we've done, it is serious enough to reconsider it, at least. I think it's serious enough to reconsider it, if we're going to take advantage of the few issues in this constitution that we have written, as a matter of expediency or for against there are many others in the situation; it's very important to us to take advantage of this. Its highways, schools, parks, utilities are all going to have our dimension. They aren't going to concern to realize that means that a very, very important thing that we need four grades there. We aren't going to adhere to it. Should it be in this trial by jury on this tract? I'll use you to realize that they are really going to have the same thing as they try to determine and that's how we are doing. It's very serious business, we have to consider it as to whether it's in this state, this is the case, I sue dropped it and we amended it, we have a serious very important thing that I would like to consider. It doesn't refer to the issue of power to merit. The leaders and local government and any people who are interested with it. Is this a very important thing that we consider it and to vote on the merits. I hope this important issue it's an issue and I hope any people who are interested with it. I hope this important thing we consider it as a very important thing that we consider it. I'm about to have the question.

Mr. Henry: Well, that's important. Do you agree on this constitution?

Mr. Tate: Well, Mr. Tate, were you here during the discussion of this right to security Article when it was being debated.

Mr. Tate: During part of it, yes, sir.
Mr. O'Neill Well, I don't remember you being here, sir. I remember all these arguments having been raised then and having been dealt with then. Do you have a California case in my hand which says that the word 'necessity' is not to be used in too limited a sense? It means a want and expediency for the interest or safety of the state.

Mr. Tate Well, Mr. O'Neill, I would say that if the California case says that, they are defining 'necessity' as we would define 'public purpose.' What concerns me is that 'public purpose' and 'necessity' are taken as two different things. Until now I thought 'necessity' was a public purpose; that if it's necessary for a needed ... when needed for a public purpose, they may take. When you say it has to not only be taken for a public purpose, but that it must be a necessary use, you raise issues that our courts have rejected time and time again. When they say they didn't really need that cloverleaf, they should have had an intersection of the highway. They didn't need to take that much land -- things like that that are really property matters, in my opinion, not for judicial determination. But, incidentally, I'm sure later I want to add 'necessity' that would be another question. But to say, right now, we are going to freeze 'necessity' constitutionally, I'm going to possibly bring on all of these terrible consequences that our local governments fear, I think is something that deserves our reconsideration.

Mr. Stinson Judge Tate, aren't you a little concerned over the fact if we keep on having memorial parks and this, the other, we are not going to have any property on which to raise food supplies? Every time they go down on a federal highway they think they've got to dress it up and look beautiful. I'm concerned, aren't you, that if we don't stop some of it and prove it necessary, that there is going to be a shortage of land belonging to private industry and private people to support our recreation and the rest of the works that we are required to do? Your answer should be yes.

Mr. Tate I'm of course concerned, Mr. Stinson. But, I'm also concerned that the need of the people for schools, highways, parks, in these cities ... I have recently had the misfortune ... I've recently changed the place I worked from Ville Platte to another place. I wish ... you can appreciate things like parks that are needed some places. Are you for juvenile delinquency, Mr. Stinson?

Further Discussion

Mr. Pugh Mr. Chairman, fellow delegates, I had the pleasure of offering the first amendment to this specific section when it was initially placed before the floor. I've been pleased to speak on this section at the time a determination was made, whether or not we should adopt it. At the time that I made the latter speech, I indicated to you that there were some things in that section that I did not agree with. Quite frankly, I did not vote for Mr. Hernandez's amendment. I nearly fell out of my chair when it was approved. Be that as it may, it was approved by this body, and then I say now, it would not be difficult to rewrite this section. Any one of a number of lawyers in here could do this. I've got some amendments up here to some other sections that I would like for you to favorably consider. I think I have a right to submit those first before we back and distort me right now, and I like Mr. Tobias' language; I think that's loyal language. I think that's something you can understand. But what worries me right now is, I've got some amendments up here to some other sections that I would like for you to favorably consider. I think I have a right to submit those first before we back and distort me right now, and I can't understand that we must now revert back to something earlier. Before I had the pleasure of serving with you, you passed many things relative to the legislature. We've got some thoughts on that. You passed many things relating to the executive. I have some thoughts on that as I do on the judiciary. I've got a bunch of amendments because I'm suddenly here. I'm not going to second-guess this group on all of these things that it has done. I say, let's go on section by section. When we get to the end, if you elect not to approve the article, and it turns out that the way you are not approving it is because of this section, then let's address ourselves to the problem as it may then exist. But it's inconceivable I've got two Lanier amendments here and they are different. Now, if Mr. Lanier can't decide what he wants, how can he expect you all to decide, and have the two of them? In addition to that, I've got another amendment that they don't even have a name on it. Then I've got a blank piece of paper with the section on it and I presume we will have to vote on all of these before we are through. I say there is a time and place for everything, but not in the middle of an article. Questions.

Point of Order

Mr. Smith We are going into the merits of this thing. I think we're arguing on the motion to reconsider and it looks like we are going far afield.

Ruling of the Chair

Mr. Henry Mr. Smith, the motion to reconsider opens the subject ... the entire subject matter for debate. I think you're right. We ought to decide whether or not we are going to reconsider it or not before we get to the merits of it. But it does open the main question to discussion. Why do you rise, Mr. Perez?

Point of Order

Mr. Perez Point of order. It was my understanding that Judge Tate had moved the previous question and there were no speakers at that time.

Ruling of the Chair

Mr. Henry Judge Tate had made a motion for the previous question, but he and Mr. Stinson were getting on it so fast and hard, I forgot about it. So, there are no other speakers on the list at this time, and I thought ... Mr. Pugh I want to tell Mr. Stinson that I didn't intend to speak for or against the amendment. The point I attempted to make, perhaps poorly, was that I think we ought to consider whatever we are going to do after we get through with all of the rest of the article.

Further Discussion

Mr. Hernandez Mr. Chairman, ladies and gentlemen of the convention, I rise in opposition to this proposed amendment to Section 4. There is nothing in Section 4 -- I want to get this straight, the amendment is being considered but I am now speaking in opposition to reconsideration, for the reason that there is nothing in Section 4 that hasn't been thoroughly considered. It's been amended numerous times. There is nothing in that section now that has not been completely considered and voted on. For that reason, I ask you to refuse to reconsider this section. Now, Senator Rayburn has brought up something in this section even though it had to do with my amendment. There is nothing in this, Senator Rayburn, that provides for any long drawn-out controversy. It merely says "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 act presently in existence." So, I attempted to make, perhaps poorly, was that I think we ought to consider whatever we are going to do after we get through with all of the rest of the article.

Further Discussion

Mr. Stinson Fellow delegates, I also would like to urge let's vote against reconsidering this. The only argument that's been raised is that the cities and other people want the right to expropriate for
unnecessary project. They say it ought not be proved necessary well if it is not necessary, I think we have plenty of need, one more, can be spent, other than making parks. Our Justice of the Supreme Court says we need some parks because of the crime rate. I say in the major, we have a higher crime rate because we have parks. They need money for the police to go there, and they also say that if they don't have enough parks, they can't take care of those that they have. As I tried to bring out in my question- ing, our main concern now should be more than ever the fact that we have a shortage of food producing lands and they are taking the every day, we hope to have a toll road through Louisiana. That going to get our farm area. When you do that in every state in the union -- and people are getting out of the farming business -- we are really going to have a problem on feeding our people. It is no reason when you have a piece of property that you have slaved and earned and made money and buy it, someone come and say, well the city's got a hundred thousand dollars and they want to take your place and build a park. Well, if it isn't necessary, I think that you have a right to keep that property. If you don't have that right, we don't have any rights at all. I think that is one of the most important. Certainly it should be that they have to prove that it's needed, it's necessary. We never would say that the fact that we just have the money, you get up and move. So, I would like to urge you. Let's leave it like it is. Let's don't reconsider. Of course, another way we have to reconsider the progress we've made so far in this convention. If we reconsider everything, a lot of them passed that I don't like, but I'm willing to go ahead and let it sink or swim on its own. Don't go back and rehash the same thing. If this goes, I predict we'll have at least fifty attempts to change other things. So, I urge you. Let's go ahead and take the rest that we haven't gotten to in this convention and forget about going back. Thank you.

[Provisions were inserted. Referred to Committee on October 20, 1973.]

Amendment

Mr. Buster Tobias: amendment. The text of it remains the same. The instructions now have to change basically, as follows:

On page 2, strike out lines 3 through 59. It has been included in the final floor amendment thereto, and also floor Amendment No. I proposed by Mr. Perez and adopted by the convention on August 39 which added language between lines 29 and 30 as an introduction to the following:

"Section 4. Right to Property

Section 4. Except as otherwise provided by this constitution, private property shall not be taken or damaged except for a necessary public purpose and unless just and adequate compensation is paid. The right to trial by jury to determine such compensation shall not be denied."

Explaination

Mr. Tobias: Mr. Thainelli, fellow delegate, someone that I've heard said that they reached a compromise up here. Well, let me suggest to you that they have not reached a compromise. The issue that I am trying to put before this convention is, "What do you want?"

In concert with all of this verbiage, in a completely or an amendment thereto, this so-called compromise is coming forth with which will be just as long. If not longer, do you want what you have? We have an adequate income to do the same thing? Before I was cut off before when I was trying to explain this amendment, I pointed out that the language, except a another given by the override that was drafted and that preceded the Subsection of Section 4. The phrase "private property" includes all of the phrase, the whole phrase has the right to a quiet, secure, undisturbed, peace...
when you want to start basic rights.

Further Discussion

Mr. A. Jackson Mr. Chairman, ladies and gentlemen of this convention, I recollect that Section 4, entitled "Right to Property," is a very difficult and very complex subject and therefore, it's no wonder that we have reconsidered this question time and time again while we have been in session. But I believe that I can safely say that there will be an amendment that is being prepared at the moment that will address itself to all of the concerns that have been raised in this deliberative body. I believe that we are going to make history because we will have an amendment that's acceptable to the committee that's also acceptable to all of the individuals that have raised questions about this important section.

Therefore, I am asking that you would defeat the Tobias amendment and would allow the committee and the individuals so concerned about this particular subject to offer an amendment that will do what I think will be in the interest of protecting the individual rights of citizens of this state. The amendment will meet one of the tests so described and enunciated by Mr. Tobias, that is that the section sought to be in a language that can be understandable. I think this amendment will do that. The amendment also will, I believe, represent the best and possible of all of the individuals concerned with this subject.

So, therefore, I would ask that you would defeat the Tobias' amendment and consider an amendment that is being offered as a jointly sponsored amendment by the committee, cleaning up the language and erasing by way of the new language, some of the objections and raised by members of this deliberative body. I would ask that you would defeat ...I would ask that you would defeat the Tobias' amendment and would consider carefully the amendment that will be offered shortly by the committee and by other members of this body.

Mr. Chairman, if I'm in order, I would like to move the previous question.

[Motion for the Previous Question withdrawn.]

Further Discussion

Mr. Arnette ...in many things in this constitution, we realize that a lot of things we are putting in here are not constitutional language. The "right to property" as Mr. Tobias had put it is very well stated. It gives everyone their rights to property. It says it's not going to be taken unless it's a "necessary public purpose"; it says that "just and adequate compensation is going to be paid." A jury trial to decide the compensation. This is practically everything that is in the amendment or the section that we just reconsidered except it's much, much better stated. If you want to amend this, if you are not happy with Mr. Tobias' language, fine, but it's a much, much better starting place than what we just reconsidered. The language in which we reconsidered is verbose, much of it is unnecessary, much of it is repetitive, it is just bad constitutional language. A constitution is supposed to be brief and understandable and to the point. And I think this is what Mr. Tobias' language does. I think it's brief, we can understand it. It's very clear. And this is essentially the same thing we've got in our present constitution with a few additional safeguards that people insisted on having. I think if I'm right, I receive that safeguard that some one wanted to have. And I think this is the type of amendment we need to adopt to clear up this particular section. The amendment.

I'll yield to any questions, if there are some.

[Previous Question ordered.]

Closing

Mr. Tobias Mr. Chairman, fellow delegates, I would suggest that you read the first three words of the Preamble, "We the people ...." Well, let me suggest to you this that Section 4 whether it's this amendment that the so-called compromise is coming with, if it's included, if it's lengthily, you won't be able to say, "We the people ...." You will be able to say, "We the lawyers ...." It's a lawyer's relief section, that's all it is because every person in this state is going to have to go to a lawyer to find out what it means, and it's going to really mess up the whole works, believe me. You are going to need twice as many lawyers in this state if this amendment ... if my amendment doesn't pass. You are really going to gum up the works.

I urge you, it's an orderly point to start from, start here. They've got the amendments to change it if you want it. ... take out the words, "necessary public purpose," to make it "necessary for a public purpose." Please, I urge you, let's clean up this language; clean it up. And nobody would ever know what that means.

I urge its adoption.

[Amendment rejected: 41-71. Motion to reconsider tabled.]

Point of Information

Mr. Tate Mr. Speaker, I don't know the parliamentary name of this motion, but I wonder how many would join in cosponsoring a simple amendment that says, "Private property shall not be taken for a public purpose and unless adequate compensation is paid."

Mr. Henry Justice Tate, take your seat, please. Bless you my brother. Go and sin no more. The distribution copies are here. Pass them out and we'll stand at ease for five minutes while everyone reads the ... and I'm sure that everyone will stay in their seat and read their copies. Five minute recess.

Recess

[Quorum Call: 100 delegates present and a quorum.]

Amendment

Mr. Poynter Amendments sent up by Delegates Lanier, Jenkins, Heine, Chatelain, Burson and Alphonse Jackson.

Amendment No. 1, on page 2 delete lines 13 through 29, both inclusive in all floor amendments thereto, in their entirety.

And I think first of all to make it technically clear, Mr. Lanier, we ought to specifically delete the proposed amendment which was adopted by Delegates Perez. And I presume that wouldn't be controversy between lines twenty-nine and thirty, and I presume that's not controversial, Mr. Perez, because that language is included in this draft anyway.

Mr. Lanier It's my understanding, Mr. Clerk, and I think Mr. Perez will agree, that this language is included in this proposal and, therefore, that that addition would be in order. But I'd like a statement on the record from Mr. Perez to that effect...

Mr. Poynter "Section 4. Right to Property." I'll add that to it, Mr. Lanier.

Section 4. Every person has the right to acquire, control, own, use, enjoy, protect and dispose of private property. This right is subject to reasonable statutory restrictions and the reasonable exercise of the police power. Property shall not be taken or damaged by the state or its political subdivisions, except for public purposes and with just compensation paid to the owner or into court for his benefit. Property shall not be taken or damaged by any private entity authorized by law to expropriate property except for a public and necessary purpose and with just compensation

[1239]
The provisions of this section shall not apply to a appropriation of property necessary for levee and levee drainage purposes.

Explanation

Mr. Denier, Mr. Chairman, fellow delegates, this proposal is a synthesis of ideas of many different competing philosophies that we have here in the convention. I believe when were all here we knew that each of us would not get our way on everything all of the time, that we would have people from all walks of life, from all parts of the state who have a different idea or feeling about what the basic law of our state should be.

This proposal is an attempt to put all of those competing ideas and philosophies together in a workable framework property that can govern our state in the years to come. I'd like to go over it sentence by sentence to explain the difference the present committee proposal and the basic concepts behind the language that we use here.

Now the first two sentences are in essence the same language as the first two sentences of the present proposal. They have been redone in a sort of a style and drafting context to suit the fact that the whole purpose of property is subject to the ... to reasonable statutory restrictions and reasonable exercise of police power in one sentence rather than having two separate sentences on this particular point.

The next sentence says that "property shall not be taken or damaged by the state, or its political subdivisions." In other words, this is intended to apply to all state agencies and all political subdivisions of the state. This is the parishes, municipalities, special districts, etc. except for specific purposes with just compensation paid to the owner or into court for his benefit. The part about the "or into court for his benefit" is to authorize the present procedure for highway purposes and the taking of property for highway purposes. Not included in here in the language for necessary public purposes, "because you get the idea out by the judge, into court, as to what is necessary for public purposes? For example, if you have a bond issue proposed in the people in a particular place, if a majority of the people in the district vote to support the bond issue, then this is what the people who are being governed want. If you just necessary in here you could have the situation where someone could come in and attack the necessity even though it is what a majority of the people want. The other side of the coin is, of course, that we don't want the public agencies in the state, take more land than is required for the public purpose. We feel that the statute is doing public purpose adequately covers this point, and put in necessary at this particular point would really interfere with our business and a tremendous expense to the people of government in our state and as a result, would have a tendency to impair these efficiencies.

Now the next sentence says that "property shall not be taken or damaged by any political entity". This is intended to apply to private property. It is the corporation or person such as public utilities that and these are defined as those.

Mr. Pugh, I have about three or four more items I want to offer.
been considered damnum absque injuria, such as cost of removal and things like that, and I'm glad you brought that point up.

Mr. Pugh I made my point. I don't think the word "owner" is as embrasive as what you purport for it to be. It hasn't been previously so defined.

Mr. Lanier For example, we had a problem at one time as to whether a servitude was a property right, and I think it's pretty clear under the law that it is, and you can't expropriate a servitude, but you are also entitled to compensation for expropriating a servitude.

Mr. Pugh Now you say it's a judicial question. Are you suggesting that there will be a suspensory appeal?

Mr. Lanier We don't make any point on that. I think that would have to be up to the legislature to make that determination.

Mr. Pugh Not when you put in here it's a judicial question, it's not up to the legislature. If you made it a judicial question, then, brother, you've opened up all rights insofar as a suspensory appeal is concerned.

Mr. Lanier I don't think that's necessarily correct because the appeal and the manner of taking the appeal is a procedural thing. The issue of determining whether or not there is a necessary purpose or a public purpose or questions of fact in law which would be determined by the courts, the manner in which an appeal is taken I do not believe would be covered by this particular language, Mr. Pugh, that's my opinion.

Mr. Pugh Well, when you say judicial question, of course we just disagree, that's all.

Now, define personal effects, will you?

Mr. Lanier Well, I can't give you an all inclusive definition, just like I couldn't give you an all inclusive definition of the term "negligence." These would be, I would assume, primarily movable type personal effects on .... a person's clothing, that type of a thing.

Mr. Stagg Mr. Lanier, it would be a part of the legislative history of this constitutional article what are on the question. Were there any questions were the drafter of the provision and to what was his intention for it to mean?

In that connection, then, may I ask again this question? If a man was a tenant in a building that was used for laundry, and if in this laundry he had steam boilers and waterlines and presses and all of the thousands of dollars that it takes to turn a building into a laundry, and the state expropriated the building for the building of a road, is it your opinion that under the language you have drafted, the man who had made those extensive leaseholder improvements would have to be paid compensation if the building was taken and destroyed and his laundry had to go?

Mr. Lanier I believe that depends, of course, the point is as you well know, can contract as to the measure of damages in expropriations, but if that's his property, if he has a leasehold interest, a value can be placed on a leasehold interest, and it is my right, and it is my intent and I believe, the intent of my coauthor that this real right would have a value that can be recoverable in an expropriation.

Mr. Stagg If it took him two hundred thousand dollars to reestablish that laundry, in other words, move it out of one building and into another, then he could get compensation to the extent of his loss as your article says "full compensation will be paid."

Mr. Lanier Yes.

Vice Chairman Casey in the Chair

Mr. Winchester Mr. Lanier, it is my understanding that the wording "municipalities may expropriate utilities" that that refers to .... private utilities and not public utilities.

Mr. Lanier That is correct. It is my understanding of the existing law that one public agency cannot expropriate another public agency. That type of a thing would have to be worked out through an intergovernmental cooperation or by a joint resolution or something like that.

Mr. Willis I have three questions. They are Walter Lanier questions for the record.

Now you are focusing on the words "judicial question." Would this allow the fifteen day cutoff time under Revised Statutes Title 19, Section 7 regarding all defenses except compensation?

Mr. Lanier It is my understanding of this language that it does not control the procedure ....

Mr. Willis The answer, I assume you say, is yes.

Mr. Lanier Right.

Mr. Willis I don't like that. Now, will it also cut off provisions of the same revised statute title where the case is filed and fixed and served on the defendant and the trial is held twenty days after he is served. Will that cut that out?

Mr. Lanier No.

Mr. Willis Now, the next question which is corollary to that of Mr. Stagg's only this is a country boy, instead of the owner .... instead of the leaseholder being a leaseholder, he is a tenant and the crops are damaged by a pipeline or one of these high power lines, what happens to the tenant with an unrecorded lease? Does that affect him?

Mr. Lanier An unrecorded lease on .... is it a written lease?

Mr. Willis If it's unrecorded it's ....

Mr. Lanier No, no. No, no. I think you will agree, Mr. Willis, if it is a written lease affecting real property, it is binding on the parties even though it is not recorded. It is just not binding on third persons under ....

Mr. Willis I realize....

Mr. Lanier Now if it's verbal, I don't even think it's binding between the parties. If it is a verbal...

Mr. Willis Well, it's a prior lease from year to year, and here's the farmer about to harvest his crop and here's the pipeline coming through it, and they destroy his crop, they pay the owner, but they don't pay the tenant.

Mr. Lanier I believe he would be covered under that situation as I intend to interpret the words, "owner of a real right."

Now the question to me would be....

Mr. Willis You mean to say that their crops are a real right of the tenant when it's affixed to the land belonging to the owner?

Mr. Lanier I've got to think about that one, Burt. Mr. Willis Think some more, and you'd better make a good record.

Mr. Roy I don't know what all the exchange was that Mr. Willis raised. But isn't it a fact that right now, if you don't have you're not certainly taking away any right that people presently have are we?

[1241]
Mr. Lanier No, definitely not.

Mr. Roy We are giving them more, aren't we?

Mr. Lanier That's our contemplation.

Mr. Roy And right now if the tenant can collect for the damage done to his crop, which I think he can under any part of the constitution because he is damaged, we certainly are giving him that same right. Isn't that right?

Mr. Lanier The real question I had, Mr. Roy, is I believe there is some codal provisions that say, and I believe there is some jurisprudence also that says that a verbal contract dealing with a noble estate is not binding between the parties. So, then, that would mean if it's not binding between the parties, I don't think he would have an interest that for which he could recover. I know there's been cases, for example, dealing with mineral royalties, where people have had verbal agreements on mineral royalties and the court has held that since it wasn't in writing, whoever the title was in, it was theirs and it didn't make any difference what kind of verbal agreement was between the parties.

Further Discussion

Mr. Tate Mr. Chairman, fellow delegates, with regard to this amendment, I rise to oppose it, but not to oppose it as strongly as I do the present language we're replacing. This is, I believe, a great deal better; we can live with it. If it was legislation, I'd like it; I'd like to see if it worked. My chief objection to it is that it is too much detail in the constitution, and I'll point out one or two instances. I don't plan to take much of your time on this and that we may find it unworkable. Incidentally, I can live with it, but I don't think the utility can live with it, and maybe we shouldn't consider their interests. For instance, for private people you must not only prove it's public, but also necessary. Now, and you may in your good judgment, determine that they should have a stronger burden, and perhaps they should, than public agencies. But that means, for instance, farm by farm, farm by farm in each separate place along the route it's a judicial question whether it's necessary to go here, here, here. That means, in my judgment, perhaps that we would not be able to commence construction until it finished expropriation of a whole series, section of the line. I'm calling that to your attention. It may be something you don't think is important, but I think it is something you should consider. Second, the right of trial by jury for compensation, I think it might be a possibility to try once again. We seem to forget that we had trial by jury for damages in expropriation cases up until 1948. Here in this busy, crowded twentieth century, in 48 it was abolished. It was abolished because of the great burden on the public improvements that were necessary to accommodate an expanding society. For instance, on a highway on a highway that would mean, could very well mean just for example, one hundred or one hundred and fifty jury trials on the length of the highway through the parish. You may or may not think that's a cost that's worthwhile, but it will unquestionably delay the accomplishment of the eventual conclusion of the cost of the highway and how to build it and where to build it. It will not be a question in highways, but it will be, of course, in the public utility. So, in short, I think this amendment that has a just a lot more to it if it is legislation; I think I'd be for it a million percent. I'd like to try it and see if it worked. I just worry about us putting it in the constitution because it will give you a chance, in a minute, to vote on something else with out much more, if you should happen to turn this down, which will simply say, Private property that may be damaged to a public extent for a public is not wrong, and unless just and adequate accommodation will be paid, and that which will allow the legislature

In expand all of these principles you have in this proposal.

Questions

Mr. Slovay Judge Tate, as a member of the Supreme Court and realizing that this is the Bill of Rights, do you feel that your amendment gives the kind of basic rights that a citizen that is not affected by this amendment does? Does it give the basic rights?

Mr. Tate In my opinion, it does just as does guaranteeing the federal Bill of Rights, sir.

Mr. Casey Yield to a question from Mr. O'Neill.

Mr. Tate Oh, and Mr. O'Neill, I want to make a public apology. When I said I was here when Section 4 was debated, I was here in the pre-Henry huddles on it, but, it was Section 3 that I was here on. I'm sorry if I misstated it.

Mr. O'Neill That's all right, Judge Tate, I appreciate that. I just wanted to ask you, this is the language from the 1921 Constitution:

Mr. Tate No, I changed it to add unless just and adequate compensation was paid, to make sure that we have no intention to forbid the legislature from adopting the quick-taking expropriation procedures they use in building highways alone.

Mr. O'Neill Well, Judge Tate, don't you really think that the provision as it's been, the amendment that we are debating right now, don't you think that offers the individual more right, than the way that you have the amendment coming back out?

Mr. Tate Mr. O'Neill, unquestionably it does, and it has that merit. What I fear is that some of the rights that we are specifying because of this point in time we think are great, two years from now we might not. We are tying the hands of the legislature

Closing

Mr. Jenkins Just in there will be no doubt, I want everyone to know that the committee is completely behind this. No one is totally satisfied with it, but it tries to take in all the views of all of us. Everyone has agreed it's something that everybody involved can live with, and, on that basis, I urge your adoption of it.

Questions

Mr. Willey I couldn't ask Justice Tate this question about what troubles him with respect to necessity, but isn't it a fact that these guidelines and procedures should, if they are as much in a hurry as this trial by jury give them the right, shouldn't they in advance and give the people proper notice and hearing?

Mr. Jenkins Absolutely.

Mr. Willey Isn't it a fact that the only healthy you get is in being required for a pipeline, and the only notice you get is buried in the federal Register, which nobody reads? Do you think when your farm is going to be cluttered up by one of these things, there will be a proper notice and hearing?

Mr. Jenkins That's correct.

Mr. Pugh I just don't know, Judge Tate, we have here, that this amendment is perfect, this body has just got to know we exactly just like a utility company and have this bill on the independence in this state.

Mr. Jenkins No, sir.
Mr. Puqh: That's not the jurisprudence?

Mr. Jenkins: No, sir.

[Amendment adopted: 82-26. Motion to reconsider tabled. Motion for the present amended to include the entire subject matter rejected: 18-85.]

Amendment

Mr. Poynter: Amendment No. 1 [by Mr. Tate]. (These are being distributed now.) On page 2, delete lines 13 through 29, both inclusive and all amendments thereto in their entirety, and insert in lieu thereof the following:

Section 4. Private property shall not be taken or damaged except for a public purpose and unless just and adequate compensation is paid.

Amendment No. 2 deletes the Perez amendment between lines 29 and 30, which was adopted back on August 30, 1973.

I think your language would adequately delete the previous amendment -- the one just adopted.

[Previous Question ordered. Amendment rejected: 38-61. Motion to reconsider tabled.]

Amendment

Mr. Poynter: The next amendment is sent up by Delegate Guarisco.

Amendment No. 1: On page 2, line 13, in Floor Amendment No. 1 proposed by Delegates Lanier et al and adopted by the Convention on today on line 23, immediately after the word and punctuation "taken," delete the remainder of the line and delete lines 24 and 25 in their entirety.

Explanatory

Mr. Guarisco: What I simply want to do with my amendment, and I voted for the Lanier amendment, and I think it's a reasonable compromise except that I think we might be redundant in this section, now. I think we are now providing for adequate compensation for each and every landowner in this state, but I have forgotten the person who owns riparian land that's subject to a levee servitude. I simply want to make this amendment to delete the exception, the last sentence: The proviso of this section shall not apply to appropriation of property for levee and levee drainage purposes. I see no reason why we should accept this particular item. If we do so, then we are denying compensation, and I don't think anybody in this Convention wants to deny compensation to anyone for land that's... for property that's taken. Now, I think you might have some fears as to whether or not you can take a levee. That's not a problem. Appropriation, under the law right now, is under the police power of the state. Now, that is taken care of in the second sentence of Section 4. "This right is subject to the reasonable statutory restrictions and the reasonable exercise of the police power." So, we have retained the right to take and appropriate for levee purposes, but if we take this exceptionality in, then this will allow reasonable compensation and fair market value to persons who lose their property for levee purposes. It just puts them in line with everybody else. I don't want to do away with the taking for levee purposes, but I do think that everybody who owns property should be treated alike. I'll yield to any questions.

Question

Mr. Lanier: Mr. Guarisco, is it not true that the exercise of the riparian servitude is the exercise of a servitude and is not an exercise of the police power?

Mr. Guarisco: I have the 1921 Constitution as interpreted by the courts, and it's case, after case, after case, and under the Constitution it may appropriate property and may deny recovery for property damage in constructing public levees. It is under the police power, and over, and over, and over. This is nothing new, but I think it's arcanical not to pay people compensation for levee purposes when you pay them for everything else. If you don't treat it here, where we're going to do it? We're going to treat it somewhere else? I'm not opposed to appropriation for levee purposes, and if it's another section, that's fine, but I think we ought to treat payment and compensation and so forth right here.

Further Discussion

Mr. Perez: Mr. Chairman, ladies and gentlemen of the Convention, if you will remember, this matter was thoroughly discussed and thoroughly argued, and the amendment was adopted to put the appropriation for levee purposes in a different category with the complete and distinct understanding that when we came to the Local Government Article, which deals with the payment for taking for levee purposes, that we would discuss compensation at that time. There is no reason that we should belabor the point now. This is a compromise provision by the great majority of the members of the Bill of Rights Committee together with most of the other delegates, and we should reject this amendment.

[Amendment withdrawn.]

Mr. Casey: Now, Mr. Tobias has asked for recognition to speak on the section.

Point of Information

Mr. O'Neill: Mr. Chairman, we haven't followed this procedure before in speaking on the whole section, have we? We've only spoken on amendments. Am I correct?

Mr. Casey: I think what's "good for the goose is good for the gander," and if the procedure is good for amendments, it's good for the whole section. Please proceed, Mr. Tobias.

Further Discussion

Mr. Tobias: Mr. Acting Chairman, fellow delegates, again I am before you. I called Section 4 before we've now amended it once before, "verbal garbage." It still is "verbal garbage." It still is "verbal garbage." It needs 67 votes to pass; I urge you not to give it the 67 votes. Defeat it, let it be cleaned up. It's still horrible -- it's an abomination. Unfortunately, with deep regret, I will have to oppose the whole article on Bill of Rights, although there is a lot there that I disagree with.

Further Discussion

Mr. Steag: Please let me have your attention because we have to decide what to do about a sticky problem. All of you will remember that there was a list of fifty-three amendments before the people for decision, and there were and there were a lot of amendments, they all were defeated. Included in those that were defeated was an amendment that would provide that the legislature would pay for relocation expenses in order not to lose all federal highway funds. So, the next constitutional amendment season we were all employed to vote for Amendment No. 1 so that we would get federal funds heretofore coming to this state for highway and other purposes. Amendment No. 1 reads this way:
Mr. O'Neill. Mr. Chairman, ladies and gentlemen, you know how when you dream things and then you wake up and you think that what you're living is just what you've dreamed? Well, that's the exact feeling I get right now. Two weeks ago on Thursday, Mr. Tobias got up here and called it "verbal garbage," and then other objections were raised. So, I feel like I'm just kind of realizing a bit of the world we've created the property article that time, and I stand to ask you to pass it again right now. There were 61 votes on the amendment which constitutes this article right now, and I think that we should give it more votes than that in final passage. Mr. Tobias' conception of private property was adequately explained to us two weeks ago today, and I think it probably hasn't changed much today. I'd like to say that this section is not what everybody would want.

Mrs. Warren. Mr. O'Neill, would you speak to the question that Mr. Stagg brought up about not. You know, becoming able to get federal funding. Would you speak on that?

Mr. O'Neill. Mrs. Warren, I'm not sure that I'm qualified to speak on that, but I think that one of the proposed sections can follow Mr. Stagg's suggestion, perhaps.

Mr. Stagg. Mr. Chairman, I am here to read to you some language from the provision that will come to us from the Committee on Revenue, Finance, and Taxation, since you are concerned about this, as I am. It says, in their language which will be presented to us. The legislature may enact legislation to enable the state, its agencies, boards, and commissions, and the political subdivisions and their agencies to employ federal funds and to provide for federal participation in the cost of capital improvement projects. Now, in your opinion, Mr. Tobias, would you say that this is contained in the Revenue, Finance, and Taxation Article, which would only mean that I raised the question.

Mr. O'Neill. Yes, Mr. Chairman. I really don't think that it should be brought up at this time, the same question.
Well, the word "access" and "physical condition" was the one that frightened me quite a bit.

Mr. Gravel Well, if you'll notice, the freedom from discrimination that we seek by this amendment with respect to physical conditions would be any "unreasonable, capricious, or arbitrary discrimination."

Mr. Chatelain Thank you.

Mr. Roemer Mr. Gravel, let's make this point again. The amendment to which you address your remarks presently is the one that has nothing to do with the hiring, the firing, the promotion, is that correct?

Mr. Gravel That's correct.

Mr. Roemer Only public areas in access to them.

Mr. Gravel Yes, sir.

Mr. Berry Mr. Gravel, isn't it true that what we have done here is consistent with the 1964 Civil Rights Act that's already in existence?

Mr. Gravel But I think that the concept definitely stems from the Civil Rights Act, yes, Mr. Berry.

Mr. Jenkins, Mr. Chairman, delegates, we have an amendment that has been passed out. The author is A. Jackson on behalf of the Committee on Bill of Rights and Elections and it deals with freedom from discrimination. It's a little bit different from Mr. Gravel's amendment, but the last sentence of that proposal says "nothing herein shall be construed to impair freedom of association." I'd like to offer that last sentence on to the proposal just adopted. If I could have a suspension of the rules for that purpose.

Mr. Henry Mr. Clerk, can you doctor that thing up and make a real nice amendment for these gentlemen?

Mr. Poyn ter Yes, sir.

Mr. Henry Well, would you read it the way it ought to read, please, sir?

Amendment

Mr. Poyn ter O.K. Amendment No. 1. On page 7, line 16 add the following at the end of the language added by Floor Amendment No. 1 proposed by Mr. Gravel, et al., and adopted by the convention on today. Just simply."Nothing herein shall be construed to impair freedom of association."

Explanat

Mr. Jenkins Mr. Chairman, delegates, because we are talking about public accommodations, facilities and things of this nature, it could be construed that certain private organizations and places could be considered, by some stretch of the imagination and some judicial opinion, as public and certainly we don't intend for this, I don't think, to apply to any private group or association or private meeting place and I think that this language would protect us some in that regard. So I would like to move the adoption of this amendment.

Questions

Mrs. Zervigon Mr. Jenkins, as I understand it, what you are really talking about is the freedom not to associate.

Mr. Jenkins Well, obviously that is, when you talk about freedom of association you are talking about that just as when you are talking about freedom of speech, you are talking about the freedom to speak or not to speak as well as what you say.

Mrs. Zervigon No, sir, I believe this is a different thing because I believe the words that you are now laying before the convention for their consideration would mean to me that I could knock on the door of a private club and say, "Let me in; I want to associate with those people."

Mr. Jenkins No. It's... freedom of association is not just the right to associate with a given person it's his right not to associate with him. If someone forces you to associate with him, then it's abridging your freedom of association.

Mrs. Zervigon Where is that defined, that the freedom of association really means the freedom not to associate?

Mr. Jenkins Well, I think you just have to understand the meaning of words, I think that's a clear meaning of that expression. Let me also state that that sentence was in the original committee proposal, and so we are just attempting to carry it over into this section.

Mrs. Zervigon Thank you.

Mr. Stovall Mr. Jenkins, you are an attorney, aren't you?

Mr. Jenkins No, I'm not. I have a law degree, but I am not an attorney.

Mr. Stovall Not an attorney. I'd like to ask you where in Mr. Gravel's proposal is there the possibility that it might be implied that you would be compelled to associate with anyone whom you might not choose to associate with?

Mr. Jenkins Well, the nature of the proposal as adopted is rather vague when you talk about what is discrimination, what is a public place, what is a public accommodation, what is unreasonable discrimination? These are all questions that I don't think any of us know right now and the courts are going to have to decide. I simply want to make sure that the courts don't go too far and interpret that certain truly private places are in fact public.

Mr. Roemer It is not unusual, Mr. Jenkins, that I am confused. I want you to know, or do you know that I am confused? You know that?

Mr. Jenkins I'm not surprised.

Mr. Roemer O.K. me either. Now, what confuses me is that you have tucked the line onto the amendment that we just passed, correct?

Mr. Jenkins I'm trying to do.

Mr. Roemer O.K. The amendment that we just passed says, "in access to public areas, accommodations and facilities." Now, what does your amendment do to that?

Mr. Jenkins Well, the question arises as to what a public accommodation is. For example, is a barroom a public accommodation? Possibly it is, possibly it isn't. What if it is a private barroom, a private club; is that a public area? It...you come into some real touchy questions as for instance, whether...do you need a membership card or don't you for it to be a private club...

Mr. Roemer So be it.

Mr. Jenkins...or is a country club a private place? Obviously, there are some private places and we want to be able to at least allow the court to make that distinction.

Mr. Roemer I understand your problem, Mr. Jenkins.
but I asked you does your amendment correct that problem? Does it define what a public place is, your amendment?

Mr. Jenkins No, it doesn't.

Mr. Roemer Thank you.

Mr. Fulco Woody, I am a little bit frustrated myself. Do we have to have it in the constitution that I have to have freedom of association?

Mr. Jenkins No.

Mr. Fulco Do I have to have constitutional guarantees?

Mr. Jenkins No. We don't have to have this section in the constitution, Delegate Fulco.

Mr. Fulco I know, but...

Mr. Jenkins But if we are going to have this section, I certainly think that we need this sentence in it to give us some protection with regard to this section.

Mr. Fulco I know, but what is it that prohibits us from association today? Why is it necessary?

Mr. Jenkins If you talk about access to public accommodations being denied anyone, you have a problem with regard to private associations and private places and whether or not people who own those private places or have those private associations can continue to associate freely or whether they are going to be forced to associate with people they don't want to.

Mr. Fulco Well, Woody, am I going to be arrested for associating with some other person in these public places if I am not guaranteed that right in the constitution?

Mr. Jenkins No, but you might be denied, for instance, if you are a group, the right to continue and maintain the integrity of your group and we want to make sure that that's not continued. This is not a new thing that is just being brought forward right now; it's from the original committee proposal, Section 7, been in there from the very beginning.

Further Discussion

Mr. Jenkins I am forced to speak against this particular amendment being placed in this particular place. The reason I raised the question originally is as to whether or not it was germane to the subject matter and the question I wanted to ask Mr. Jenkins is I understand it now, a private organization, an unincorporated group of persons, could rent a public location and once the public area has been rented by this private association it could then exclude public areas, accommodations and facilities based on discrimination, on race, religion, national origin and the like. Now, I don't believe that is what Mr. Gravel and Mr. Berry had in mind when they offered the original Amendment 76, but I believe that by some process, by putting this can be converted into a tax-exempt building and you would have no objection and I would support the amendment as a separate situation. That is the concept, it seems to me it just removes all the fear from the section.

Further Discussion

Mr. Gravel I want to just extend a little bit this idea that Mr. Jenkins and Mr. Jenkins had and the particular amendment for all association, if we are going to adopt the amendment and the intent of the amendment that was put forward we have the word of the delegation that they want to put in the text what was later in Mr. Jenkins amendment.

I am wondering how far along we are of being able to put a tax-exempt building and we would have no objection and I would support the amendment as a separate situation, but in the interim, it seems to me it just removes all the fear from the section.

Questions

Mr. Stinson Mr. Gravel, I didn't think that Mr. Jenkins amendment was very important, but from what you say, if it rules what you have already done to the people, would you still answer those questions? What if you already done to the people and how would this rule what you have already done to us?

Mr. Gravel Ihaven't done anything to the people. We have adopted by a rather blank, not substantial vote a provision that says that in access to public areas and accommodations, there shall be no discrimination. Now, I don't think that there should be built into that concept a freedom of association belief that may militate against the thrust of the amendment. Nobody knows, no one knows how the Court is going to construe that particular provision with that amendment attached to it and I think that if we now tax exempt having a confusing provision.

Mr. Stinson Well, Mr. Gravel?

Mr. Gravel If we had a lease we...

Mr. Stinson Now, I know I have belonged to the Knights of Columbus and you have a tax exempt building and so forth.

Mr. Gravel Have a tax exempt what?

Mr. Stinson A building that you would own up there and knocked on the door and say, 'I belong to the Melba Club, Mr. Gravel, I have a building in a tax exempt building and we have got a lease and...'

Mr. Gravel You wouldn't let it there. I... I...

Mr. Stinson That you would be able to know one Melba Club that does that kind of thing.

Mr. Gravel Well, I don't agree with that, that's what I don't believe. I think that the Court is the best judge of the validity of a public activity, I don't think that we are talking about a particular situation, if we are talking about a tax exempt building, I believe, in the case that is supposed to...

Mr. Stinson Mr. Gravel I don't know whether that is the Federal case that was made in an 22 year. I believe, and remember that that proposed

Mr. Gravel That is the Melba Club case. If that is the correct case, then let us it.
Mr. Fontenot. Amendments sent up by Delegates Warren and Stinson.
Amendment No. 1. On page 7, between lines 3 and 4, insert the following:
"Section 22.1. Right to Compensation
The legislature shall provide for adequate compensation for persons convicted and imprisoned for crimes which they are proven subsequently not to have committed, provided the person did not by perjury contribute to his own conviction."

Mrs. Warren. I don't have any statistics at all.

Mr. Fontenot. You don't have any statistics at all.

Mrs. Warren. I gave you a picture of one and I don't have any statistics, but I am sure you could find them. But if it's just one person, I think they deserve some compensation.

Mr. Fontenot. You think I mean this one person ought to have this constitutional right, but all these other persons don't need constitutional rights?

Mrs. Warren. Under these circumstances, I do.

Mr. Stinson. Mrs. Warren, I am concerned about the last part that says "provided the person did not by perjury contribute to his own conviction." Now, what is meant by that?

Mrs. Warren. I think if they have contributed to their own, they just told a lie and they are guilty.

Mr. Stinson. In other...

Mrs. Warren. I mean they could come back. I really don't want to go into hang-up there. This was added, I've tried to get it down to the point where it would be acceptable to most of the people of the convention.

Mr. Stinson. Well, does that mean then that if a person pleads guilty and later...had found out that he really wasn't guilty, he wouldn't recover if he had lied and said he was guilty? Is that right?

Mrs. Warren. I don't think so, I'll yield to Mr. Jack though.

Mr. Stinson. Well, you think Mr. Jack would tell the truth on that?

Mrs. Warren. I believe he would.

Mr. Jack. Mr. Chairman, and ladies and gentlemen, I am a coauthor of this amendment. Mrs. Warren has had this up several times, asked people for help, has a good idea. I've helped here to draft this and a number of others. Now, you are going to get an amendment that should have been passed out, will be passed out by Senator Bayburn, which is going along with this. Now, the way...his will simply add the words "a method" at the end of the first paragraph. If you will read, if you will look at the Warren--it's labeled Warren and Jack Floor Amendment with the words "a method" here's the way it will read: "The legislature shall provide a method for adequate compensation for persons convicted and imprisoned for crimes which they are proven subsequently not to have committed provided the person did not by perjury contribute to his own conviction." The way adding this section originally was I wouldn't have supported it, but I am glad to support righting wrong by adequate compensation where an innocent person was convicted, went to prison and he did not add and aid in his conviction by committing perjury. This is done in lots of states, but the legislature shall provide the method for making this. Now, as to how you go about proving his innocence, many times it proves itself; the legislature will set it up. Many times a person has served time in prison, allegedly having killed another person, and the person has been proven to be alive by coming forward. Many other persons confessed, but the legislature will be the ones to decide what type of proof is necessary to show that the person was innocent who was convicted and sentenced. Now, I would not support such legislation unless it had that provision that the person that was convicted was innocent, he must not have committed perjury. Now, where you have these people at times that are charged with a crime...
they are innocent, but they lie, and it perjury like claiming an asset when it is not true, but they would be excluded. This to provide for adequate compensation where society through the instruments of the state has convicted an innocent crimen - - that has been done all under the Constitution like perjury himself - - and here that person has been imprisoned for that crime under the present law there is no provision to pay for a service that is spent eight or to ten years or what. It is not going to open a Pandora box of these type of things and the legislature will the guidelines. All right, Mr. Stinson.

Mr. Stinson Mr. Jack, you are covering those that are imprisoned, but suppose someone was executed. Don't you think you should take care of his family?

Mr. Jack Well, Mr. Stinson, you are a very good lawyer, you know how to draw amendments; I am trying to handle this one. Mrs. Warren, to my knowledge, is equal the record or Robert Bruce and the spider. About every time she has kept at it; she has served on the committee with me. I see how hard he works and she has kept at it and I volunteered to help her draft it.

Mr. Stinson Before your time runs out, I have another question. I don't want you to filibuster. Suppose someone pleads guilty and later is...would this apply to him or not?

Mr. Henry The gentleman has exceeded his time.

Further Discussion

Mr. Zervigon Mr. Chairman, and delegates, I rise with great reluctance to speak in opposition to this amendment. Even with amendments that Senator Rayburn will introduce that says the legislature shall not provide compensation, but shall provide for the method of compensation still severely troubled by the provision that someone must be found innocent. It's my understanding that the way our courts work a person is found not guilty if there is a shadow of a doubt in your mind and you are on the jury, you must vote not guilty. But you don't vote innocent. I wonder how a person is going to be proven innocent and that is what troubles me about this amendment. I have no doubt in my mind that there are people wrongfully convicted, purgued and even killed for no reason. No matter what ever, and I would like very much to see the legislature find a way to establish their innocence, maybe provide for a method of compensation, but I am afraid I just oppose this because I don't see that it's unconstitutional material. In fact, I am certain that it isn't and I have drafted it, it requires a level of innocence for which, at the end line, there is no provision in the present law. I will yield to any questions. Mr. Chairman.

Question

Mr. Waldman Delegate Zervigon, I just read this and I would like you to point out to me where it says innocent in this amendment. It says when the method of compensation is admitted it doesn't use the word innocent. It says at all, for a service which has proven substantially not to have been committed.

Mr. Zervigon Mr. Waldman, I would have all of the same objections to those two words as it does to the words innocent. It seems to me the words innocent would be used here to mean that he is not guilty or not proved guilty or not proven innocent. And if you are going to have words very, very, striking, you have to distinguish between those words I believe even if he has been convicted may have been innocent. I will yield to that before I have not been committed.

Mr. Waldman I don't think there will be any trouble with that amendment.

Mr. Zervigon Well, it is a fact that we need to either go to amendments or we need to go to a committee report. I think that we need to go to a committee report or we need to go to the floor. It is important that we have a report that the House and the Senate have a report that the House and the Senate have a report. It is important that we have a report that the House and the Senate have a report. It is important that we have a report that the House and the Senate have a report.

Further Discussion

Mr. O. Johnson I would like to ask some questions about the record, this is not a very large record. I would have to say that the other section that the provision that the supplementary procedure means that the supplementary procedure very clearly means that the story of the guilt innocence to lack of innocence or false. There is a statute in effect that has to be proven in order to be able to provide compensation, but I am afraid I just oppose this because it is not constitutional material. In fact, I am certain that it isn't and I have drafted it, it requires a level of innocence for which, at the end line, there is no provision in the present law. I will yield to any questions. Mr. Chairman.

Question

Mr. Waldman Delegate Zervigon, I just read this and I would like you to point out to me where it says innocent in this amendment. It says when the method of compensation is admitted it doesn't use the word innocent. It says at all, for a service which has proven substantially not to have been committed.

Mr. Zervigon Mr. Waldman, I would have all of the same objections to those two words as it does to the words innocent. It seems to me the words innocent would be used here to mean that he is not guilty or not proved guilty or not proven innocent. And if you are going to have words very, very, striking, you have to distinguish between those words I believe even if he has been convicted may have been innocent. I will yield to that before I have not been committed.

Mr. Waldman I don't think there will be any trouble with that amendment.
methods of payment, I think we just argued half of the day away on Mr. Jenkins’ Property Right Section where we provided constitutionally that a person must receive just compensation. I believe very strongly we have affirmed the fact that we are going to provide just compensation for property, then it seems to me that we ought to follow suit and provide just compensation for the liberties of a person particularly when the state has unjustly endowed a wrong on an individual. I think Mrs. Warren’s amendment as written has much merit. I don’t find the kinds of problems of proving innocent. I think, you, know, you have got the appeal process, all of that. So ... there are ways that a person can be proven innocent. I think if there’s a question of Style and Drafting, that’s why we have got a Styling and Drafting Committee so if, you know, you are concerned about proving innocent, but in effect, we know we can accomplish that ... that end result, then Style and Drafting can provide the necessary wording. I would suggest to you that the amendment as Mrs. Warren has proposed attempts to get all the objections, as I understand it, when it was initially proposed. The objections that I have attempted to ... relate to and try to enlighten you would not, I would only say, that the legislature shall provide for adequate compensation. Mrs. Warren indicated to you that there is a following amendment if this one is adopted to the method.” I would ask that you give some favorable consideration recognizing the kinds of not only less in terms of confinement, but that kind of loss to that person’s reputation, his status in life, the effect on his family, his liberties, his citizenships and things like that, and I think that the state ought to. I ask for your favorable consideration of this amendment.

Mr. Pugh Mr. Chairman, fellow delegates, I rise in favor of this amendment. I don’t find great difficulties in resolving the questions that will possibly be posed by this amendment. It clearly states that “the legislature shall provide for adequate compensation for persons convicted and imprisoned for crimes which they are proven subsequently not to have committed.” It only happens rarely, but it does happen. You heard me mention the case of Brady vs. Maryland the other night. That’s an instance where it can happen. In the Brady case, the district attorney suppressed evidence that he knew would show that this person was not guilty. The jury in turn found him guilty. At another trial, the person who should have been convicted in the first place was, in fact, convicted, and Brady himself was released from the penitentiary. Who of us should suggest that a man like Brady should not be compensated for the time in which he was in the penitentiary and the damage that was done to him? Who of us should best provide that compensation, than the state that put him there with the suppressed evidence in the first place? I reiterate, I move the adoption of this amendment.

Questions

Mr. Willis I have a number of questions. I wonder how long we’ll last. Will the legislature pay the minimum wage if a man is sent ... is imprisoned for about two years?

Mr. Pugh You say, will they pay at least the minimum wage? I certainly hope so.

Mr. Willis Can you compel the legislature to appropriate compensation? Can you mandamus the legislature?

Mr. Pugh Can you mandamus the legislature? I think by constitutional act you can mandamus them to do it.

Mr. Willis Isn’t this a judicial issue, the question of compensation?

Mr. Pugh You say “is compensation a judicial issue?”

Mr. Willis Yes.

Mr. Pugh I’d say that the legislature found it not to be so when they provided when a policeman was killed, they paid him ten thousand dollars, and I’m very much for that act, but they had no trouble at that time making a determination of what it was worth.

Mr. Willis Well, that was legislative. Now, is not the victim of a crime, regardless of what crime it is, as damaged as the alleged perpetrator of that crime, later proved not to have committed the crime?

Mr. Pugh No doubt in my mind and I ...

Mr. Willis Why isn’t that victim provided for?

Mr. Pugh I have no reason or knowledge why Mrs. Warren did not provide for that one, but I would support such an amendment.

Mr. Willis Now, does not this constitutional provision encourage a conspiracy among inmates whereby one who is for life in the pen, will come out and testify that the other one didn’t commit the crime?

Mr. Pugh That same question was asked of Mrs. Warren.

Mr. Willis What’s your answer?

Mr. Pugh I don’t think it would. It’s inconceivable to me that the facts as presented by either that person or you would actually occur, that two people would conspire to collect money in this fashion. It’s too easy to collect money than to be doing it in this fashion.

Mr. Willis Well, we have different views on it. Now, a conspiracy you know that you can be charged with conspiracy for committing a crime, that is, two people can. Let us assume that one of them commits the crime for which both of them are sent. Now, you have the two in jail. Now, one confesses and says the other one didn’t pull the trigger, I’d did that.” Wouldn’t that encourage some of that?

Mr. Pugh No, because in my opinion, under the existing law, and there is a law that was passed by the 1973 legislature, both of them would still be guilty. I don’t think it would be any compensation.

Questions

Mr. Berry Mr. Chairman and fellow delegates, I rise in support of this amendment. Our legal system, as good as it is, is not perfect. Sometimes mistakes are made. There have been instances in which a person has been arrested, charged with a crime, prosecuted, and found guilty, and sentenced to a term in prison ranging from a year up to life in prison; and it subsequently turns out that the party is innocent after being taken from society for a number of years. This is a terrible wrong which this amendment would right. Nothing is more horrible than to take from an individual, his liberty when he is in fact innocent. He not only loses his liberty and freedom, but frequently his family and all of his worldly possessions. No money in the world can return to him the years that he has been taken out of his life which he has spent in a penal institution. The least thing that society can do is to constitutionally provide that in the event a citizen suffers a miscarriage of justice, that we should give some form of compensation in order to enable him to make the necessary readjustment in civilian life. I urge that this amendment be passed.

Questions
Mr. Lanier, Mr. Berry, are you aware of the fact that in Section 1 of this article we put in a provision that says: 'the rights enumerated in this article are inalienable by the state and shall be preserved inviolate by the state.'

Mr. Berry. Yes.

Mr. Lanier. This is entitled 'Right to Compensation.' Is that correct?

Mr. Berry. Right to Compensation. That is correct.

Mr. Lanier. But it only applies to an individual who was convicted and subsequently found not to have done it and also did not commit perjury in the conviction. Is that correct?

Mr. Berry. That is right.

Mr. Lanier. Why haven't we provided something in here for the people who are the victims of crimes, that are injured as a result of crimes?

Mr. Berry. Well, I think there's a logical distinction between this ... in this particular amendment, the persons have gone through due process of law, and the mistake has been made and an innocent person has been convicted. This is a distinct provision, that it subsequently turns out it was proven he was not guilty and he has spent a number of years in jail. Now, the state had a direct hand in that and incarcerated him for a number of years, while the innocent victim—the state didn't have anything to do with that, plus the fact you've got your remedy at law as against the perpetrator. Insofar as the persons that might have been harmed by the criminal act, you can still go against him civilly.

Mr. Lanier. But, I mean, Mr. Berry, if the man is imprisoned for life as a practical matter, what type of redress do you have against the man that's in the pen?

Mr. Berry. Once he is proven innocent, he could still come back under this amendment. In the implementation of this constitutional mandate that this legislature would set out.

Mr. A. Jackson. Doctor Berry, did you know that we've heard one argument against this provision being statutory material, but is it not a fact that just recently that we provided, after several amendments had been considered, some sort of legislation for property rights of individuals, and here we are talking about human liberties?

Mr. Berry. I would certainly equate a personal right over a property right. If you're going to protest one, you certainly should protect the other.

Mr. Jenney. Mr. Casey, assuming that this amendment passed and the constitution was subsequently adopted, is it possible that the legislature would thereupon enact a law to ordain that the local parishes to pass all of these in a manner...

Mr. Casey Well, depending on what is happening in the area of local government. Any legislature might have that authority under the local government article that might be prohibited. I don't know that matter address itself to the general constitutional problem.

Mr. Jenney. At least it stands now that people believe that the sixty-four parishes would be responsible for all of the claims as they come due.

Mr. Casey. Well, I think that would be undesirable. I know it's a friendly question that you're asking, but I think it is more likely that the legislature would do that, but I think they should certainly make some obligation on local government. I am not prepared to be for handling, let's say a minimal suit violation of city ordinance. I think the state legislature might transfer the obligation of reparation for violations of city ordinances where a man is called to pay that adequate reparation.

Mr. Jenney. Well, perhaps, voted for the parish and subsequently found to be innocent, it is possible fellow that he goes future and city Parish would have to take on the local law legislative act.

Mr. Casey. I think that it is probable that the legislature would try to prevent that is effort until it is probably in its constitution.

Mr. A. Grant. Mr. Casey, I agree with you regarding remark that the sixty-four parishes would be responsible for all of these claims for all of the sixty-four parishes, so I ask you this am you think that if this is not the constitutionally, people are going to do. Unless I'm correct that there is something that many a person has given like that. After that, I'm saying that there's a defect and that the reform is really reasonable would lead us to an unreasonable position, knowing the type of people that it is going to be.

Mr. Case. I say that in the bill this is not correct.

Mr. A. Grant. I say that in spite of the fact...
46th Days Proceedings—September 13, 1973

Two different places, "except for a public and
necessary purpose that with just compensation paid
to the owner," and down here it's "in all ex-
propriations, any party shall have the right to
trial by jury and the owner shall be compensated
to the full extent of his loss." In this document
we have expressed our faith in the sacredness of
property. It seems to me that in this amendment
that is presently before us, we have an opportunity
to express our faith in the sacredness of human
life. Now, it is possible to raise some legal technical-
ities as Mr. Casey and others have done. But let me
say that in many of the cases that have been
mentioned in this other amendment which we passed.
Methods have been found to bring about reasonable com-
ensation and I think we can assume that if we pass
this amendment we would find some ways of providing
reasonable compensation to take care of this matter.
Society should do all that it possibly can to take
care of persons who have given years of their life,
and have not been prove to be innocent, and it seems
to me that this is a question of our sense of values,
and I implore you to support this amendment, to
recognize that we as a convention are expressing
our faith in human rights as well as in property
rights. Thank you.

Further Discussion

Mr. Fontenot Mr. Chairman, fellow delegates, I'm
going to try to be a real brief and call the
previous question as soon as I'm through with
my remarks. I'm in opposition to this amendment
not from not wanting to be compensated or to be
subsequently found not to have committed crimes,
but I'm against it mainly for the reason that
I think this is a legislative matter. I say it is
a legislative matter because there are many problems
with this amendment. I'm going to show you how
many problems that I think we have with this amend-
ment and if we put this in the constitution, there's
going to be a whole lot of litigation about these
problems. First of all, suppose somebody is convicted
of a crime and he goes to Angola and somewhere
in Angola he gets in a fight and gets killed. Now,
there's nowhere in here where his family is com-
 pensated when subsequently somebody admits to the
crime that he was convicted of. That's the first bug
in this amendment. His wife and kids don't
get compensated, just him but he's dead so nobody
gets compensated, and he didn't even commit the
crime problem. This will probably be repetitious,
but I want to show you how many problems we have with this. How do you get proven
not to have committed a crime? What will the test be?
Do you have to be beyond reasonable doubt? What kind of hearing are you
going to be entitled to? A criminal hearing or a civil hearing? Can criminal jury do what a
criminal jury do in Angola for you. These are
just questions I'm throwing out, I don't know the
answers and a lot of us here don't know the answers,
that's why I'm saying it's a legislative matter.
A third problem: somebody mentioned how the state
makes mistakes and innocent individuals end up
in the penitentiary. The state also makes mistakes
when arresting criminals and these mistakes such
as not advising a criminal of his individual rights
allow criminals to get off on technicalities. You
might call them substantive, but I call them procedural technicalities allowing criminals to get
off scot free. Now, does that victim of this crime
have a constitutional right to compensation? Sena-
tor De Blieux said he has a right to compensation
in the statutes, but he doesn't have a constitu-
tional right. Another problem, a fourth problem:
Suppose, Mr. Chairman, in my example if I wanted
to just repeat it, a criminal in Angola say, from
New Orleans, he was convicted of robbery and
he's in there for years; suppose a subsequent criminal...a second criminal from New Orleans,
maybe his cousin or a friend, gets sentenced to
life imprisonment in Angola, no parole---well, this
second criminal could get off on the robbery and the first guy could get off, and get
compensated for the time he served in Angola. This
is another problem. Now, a fifth problem is what
is adequate compensation, like Mr. Casey said. I
think all of these laws I opened out are legislative in nature and should be handled by
the legislature and not by us.

Further Discussion

Mr. De Blieux Mr. Chairman, and ladies and gentle-
men, it won't take me long to make my arguments.
The first thing I want to say about this, as has
been previously stated, we didn't mind putting into
the constitution those words protecting property
rights and rights of persons. We wanted honest and adequate com-
ensation when the state or any other political sub-
division took some property from an individual. Here
we're talking about an individual who got convicted and did something to an individual liberty and rights
of a person have been taken by the state. Are prop-
erty rights more important than human rights, in-
dividual rights, personal liberty? That's what
this amendment is all about. We did not ask that
those particular matters insofar as property rights
be taken care of by legislation. We didn't want to
wait and let the legislature take care of that. Why
can't we do the same thing insofar as individuals
and liberty is concerned? That's what we're involved here, and that's what we're saying: That the
legislature shall provide for this compensa-
tion. Sure we want to be sure that the legislature
does that. That's why we want to put this into
this constitution, and I'll tell you this: If you'll
compare the two, there's a whole lot more language
that should go into the statutes with reference to the
adequate compensation for property rights
we are asking to be done for human rights and in-
dividuals. So I therefore ask you, this is a simple
mandate to the legislature to take care of some
individual human rights when the state has done an
injustice to an individual, therefore I ask you to
approve and adopt the amendment.

Questions

Mr. Jenkins Senator De Blieux, I certainly agree
with you in your support of this proposal. But let
me ask you, you seem to keep referring to human
rights versus property rights, isn't the right to
own property a human right, in fact, one of the most
human rights?

Mr. De Blieux That's right, Mr. Jenkins, I think
they are both important rights and I don't think we
should subordinate one to the other. Let's put them
both on the same and equal plane. That's the only
thing that I ask you to do.

Mr. Weiss Mr. De Blieux, isn't property a tangible
item, whereas justice is an intangible matter?

Mr. De Blieux There may be, but I think they are
both very important. We can feel our human rights
and our individual rights if you're placed in a pris-
on. It's just as important to you as the dollars
you may have in your hand from the property.

Mr. Weiss But don't you think it's improper to
equate the two? Property and life are two entirely
different matters.

Mr. De Blieux They are very important, both of them.

[Previous Question ordered.]

Closing

Mrs. Warren Mr. Chairman, and honorable delegates,
there is one more thing I would like to say, I think human
rights should come above property rights. You tie
them all in together. I have listened and I have
listened and I have been patient, and I'm not going
to stand here and listen to it. Senator De Blieux
stood up and he told you about the property rights
and what we're going to have to have. You're going
to have to have—well, I can't say I'm committed and
the legislature is going to have to make the decisions. The legisla-
ture is going to have to make the decisions as far
as this amendment that I have before you. At this

[1251]
Mr. Jackson Mr. Chairman, I am going to ask you to consider the fact that we are dealing with the Bill of Rights section. I think that the arguments that have been raised in opposition to this amendment are arguments that on their very basis, you can really tell that they hold no merit. This provides that the legislature shall provide for the adequate compensation for persons who are not criminals, but persons who have been convicted and have been proven innocent. I have no problem. I would say to those who say: "How do you prove someone innocent?" how are innocent people released from prison today? There is a method for it. I want to strongly suggest to you that—and you know, it's no down-grading of our consideration for property rights, but I think Reverend Stovall showed you nothing but legislative material that we have constitutionalized and used such vague terms as 'the fullest extent of his loss.' You know, what does that say? How can you define that as compared to adequate? I want to strongly suggest to you that this amendment does not do any violence whatsoever to any of the reservations that I've heard some of the opponents mention. I would strongly like to end by saying because, I will be repetitious, that we are not talking about the criminal. We're talking about a man as we come up to this platform and say, 'you know, we aggrieve.' We're talking about a man who has lost status, ability to get a job, his family has suffered, possibility of his citizenship taken away from him, and we're saying that it's legislative matters. What it does provide for is the legislature to set up procedures and methods of implementing this constitutional provision. That's all it does. It does not call for three trials, as you've heard. Does it call for three trials, now when the state, when somebody is convicted and later they found that he's innocent? Does it call for three trials? I suggest to you, no. I want to end by saying that when we re in danger, the liberty of one individual, we're in effect endangering the liberties of us all.

Mr. Lennox Mr. Lennox: Point of information. Herr Fuhrer.

Mr. Henry State your point.

Mr. Lennox Laske uns Heimgehen! How's that, Hilda?

Mr. Henry You bet your "bippy."

Mr. Lennox was appointed to represent industry, however, he has so far done a beautiful job of representing a certain party other than industry.

Point of Information

Mr. Lennox Point of Information, Herr Fuhrer;

Mr. Henry State your point.

Mr. Lennox Laske uns Heimgehen! How's that, Hilda?

Mr. Henry You bet your "bippy."

Mr. Lennox was appointed to represent industry, however, he has so far done a beautiful job of representing a certain party other than industry.
47th Days Proceedings—September 14, 1973
Friday, September 14, 1973
ROLL CALL
[100 delegates present and a quorum.]

PRAYER
Mr. De Blieux. Our Heavenly Father, we thank Thee again for the privilege of gathering here. We ask that You give us guidance this day, that we may go about the affairs of the State of Louisiana for the best interest of all of its citizens. We ask this blessing upon the delegates here assembled, and that they may have true charity in their heart to approach this situation from a standpoint of what's best for You and Your world, not from any personal or animosities or uncharted treachery towards any other delegate. We ask all of this in Christ's name. Amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

REPORTS OF COMMITTEES LYING OVER
[1 Journal 479]

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Mr. Pouyer. Unfinished Business.

Mr. Pouyer. Committee Proposal No. 23, introduced by Delegate Alphonse Jackson, Chairman on behalf of the Committee on Bill of Rights and Elections, which is a substitute for Committee Proposal No. 26, introduced by Delegate Jackson.

The status of the proposal, that the entire proposal had been adopted, the individual sections proposed have been adopted as amended with the exception of Section 27 and Section 28. Additionally, one new section, Section 26, dealing with freedom from discrimination has been added or added to the proposed section. Further amendments now pend at the desk concerning the proposed addition of further sections.

Amendment

Mr. Pouyer. Delegate Derbes sends up amendments.

Copies of the amendment are presently being distributed.

On page 7, between lines (if it's all right with you, Mr. Derbes) between lines 15 and 16, insert the following: (make it Section 27 instead of 25)

Section 27. Right to a Healthful Environment. Section 27. Consistent with the health, safety, and welfare of all people, the people have a right to a healthful environment.

Explanation

Mr. Derbes. Mr. Chairman. The United States of America is almost two hundred years old. The framers of this constitution, of the original Federal Constitution, in my opinion, did an excellent job in interpreting by broad and general provisions, and in providing for by broad and general provisions, the developments of conflicts which occur between human rights and governmental controls. One, I think, area that did not occur to them which would not have ordinarily occurred to them because this country had not progressed to the current state of industrialization that it is now, is the right of a healthful environment. This amendment seeks to establish that right, but not in the nature of a privilege, which is to say, that the individual seeking to assert this right to a healthful environment cannot, in so asserting, deny to others the rights to food and fiber, for example, for their health and benefit. The right to transportation or to hospitalization for that benefit. But, it does announce a substantive policy and a substantive right that an individual can establish and can assert in order to provide and in order to declare that his environment shall be free from unnecessary pollution, free from unnecessary interference on the part of others. So, I urge your favorable consideration of this amendment.

Questions

Mr. Roy. Who told you that the Bill of Rights didn't consider this type of provision?

Mr. Derbes. Nobody did, Mr. Roy. If you listened to me, I said the framers of the Constitution of the United States of America, when they met almost two hundred years ago, failed to so provide because this country had not at that time entered into a stage of industrial development equivalent to that of today.

Mr. Roy. Do you know that the Bill of Rights considered this? I had a proposed section on it and after going into it, I voluntarily pulled it out from the committee itself.

Mr. Derbes. I had understood that to a certain extent, and perhaps you can elaborate on that a little further. It seems a sound provision to me—a basic constitutional right to me. I'd be interested to know what criticism you have of it.

Mr. Roy. Don't you think it's a non self-executing type clause that everybody already has a right to and doesn't need to be stated?

Mr. Derbes. Mr. Roy, as I understand the provisions of the law, individuals are, in most instances, required to prove things in the nature of nuisance in order to establish what may be environmental rights. Or people are required to resort to federal environmental protective statutes which, in my opinion, may be unduly burdensome not only... and particularly on the part of industry. I am simply announcing a substantive right to a healthful environment in the constitution, and relying on the court's to interpret it equitably consistent with the health, safety and welfare of all the people.

Mr. Lennox. Mr. Derbes, would you tell me, please, who would decide if this amendment were adopted, where a healthful environment begins and/or ends?

Mr. Derbes. Mr. Lennox, it would be a matter of judicial interpretation much as the due process clause of the United States Constitution, the equal protection clause of the United States Constitution, the right against self-incrimination, the right to trial by jury, etc. are also provided therein.

Mr. Lennox. That provokes my second question. I would assume, then, that each so-called violation of the healthful environment would be tried in the various courts of the State of Louisiana.

Mr. Derbes. It would be determined on the basis... it would be determined, I think, in terms of local law, local priorities, local preference.

Mr. Lennox. There could be sixty-four or one hundred and sixty-four different yardsticks under which we would measure healthful environment, then.

Mr. Derbes. Well, in the orderly development of law, Mr. Lennox, cases of this nature begin in the trial court, advance to the court of appeal, and then to the Supreme Court. Ultimately, a uniform standard or a uniform application of rules would eventually occur.

Mr. Lennox. Ultimately and eventually is when? Would you define that for me? Ten years, twenty years?

Mr. Derbes. In the same manner, Mr. Lennox, that any new substantive right created by the legislature or created by this constitution would develop.
Mr. Munson: Mr. Derbes, would you consider a smokestack an unhealthful environmental factor, just as a cotton gin, sugar mill, Standard Oil? Mr. Derbes: I'm Mr. Munson. I'm Mr. Munson. Mr. Derbes: I'm sorry. I beg your pardon, Mr. Munson. I think that the individual should have a right to a healthful environment. I'm sorry, I can't answer your question precisely. I think that in some cases smokestack may represent an unnecessary or an unjustifiable encroachment upon the environment of neighbors and by the same token, smokestacks of equivalent production may represent a completely justifiable and supportably legal encroachment upon the health, safety, and welfare of other neighbors. In other words, I think it depends upon the situation.

Mr. Munson: But, don't you think that the way you word your amendment reads which says, "The people have a right to a healthful environment," could mean almost anything?

Mr. Derbes: No, I don't. To answer your question again. The controlling language of the amendment seems to me to be clear, and that is consistent with the notion of safety, health, and welfare of all people, and in whatever the ultimate decision may be, the very factors of manufacturing and production, for personal well-being, the very necessities of life can be considered in determining whether or not a person's right to a healthful environment has been unnecessarily invaded.

Mr. Munson: One final question, Mr. Derbes. Did you know that I think you have a very bad amendment?

Mr. Velazquez: Delegate Derbes, this wouldn't allow somebody to pass the Esso refinery, think that they didn't like the smell and go ahead and have that refinery closed down!

Mr. Derbes: In order to assert a legal claim under these amendments or under any other amendment of this constitution a person has to be personally aggrieved.

Mr. Velazquez: Mr. Derbes. Fine, I think you have a very fine amendment. I'd like to question you on...

Mr. Derbes: Did you lay floor or poor?

Mr. Welz: Poor, poor floor amendment too much time was spent by the committee on such issues and eliminated, that I thought you might be interested in one that could come up, and wouldn't it be in conflict with federal problem? For example, suppose we all know that in a closed carrier airplane, that a train, heavy gauging might contaminate the atmosphere and unhealthy for the average individual who is accustomed to that. Therefore, in planes flying over Louisiana coming through through the State of Louisiana, if this was eliminated, would this note come in conflict with some federal regulation or law that might later develop?

Mr. Derbes: In a word, no, Mr. Welz.

Further Discussion

Mr. Welz: Mr. Chairman, member of the convention, I'm very much concerned when we begin to put the environmental thing in, because it probably doesn't even boil in that particular spot.

because we've got another section in the environment that we've got right here, I do not think that we have the right to a clean environment a little bit ahead of the right of the right to have land. I don't know whether, you know, staring to death. Being there is an area that I think is going to result in our cleanliness. I think we won't work it out. If you take a death, you put the water, and if you don't take a death, you, you have probably contaminated the environment by smoking. But, if we were to start a trial as we don't know how an untroubled or an untroubled judge, if we were to put down the line of we set a situation where that lead to a research in a clean environment, they could more read that this area would take precedence over your right to food and we're going to guarantee in the constitution that everyone is going to have a clean environment. This may be better add to read this way, and guarantee that everyone has a certain amount of food. We guarantee the right to live that we are going to have a large research that we can do, our environment. I would say, as we're looking at the water. We're looking at the water. The water, the water control people are all that you're going to have water control. They said, well, you need to put which means that water pollution the water. We do say yes, with the very much, that man who had his house, who had his house, who had his house, who had his house, who had his house, who had his house, who had his house, who could blow for hundreds of miles. There is really more people all in the dust than there are the stroke because the dust is deadly. It's a health problem. They said, well, you need to put it to put the water control people are all that you're going to have water control. We do say yes, with the very much, that man who had his house, who had his house, who had his house, who had his house, who could blow for hundreds of miles. It's not going to vote against this for that reason that we do not have a good, you can emphasize in the constitution and it's going to be that we could supercede the constitution for it. I'm going to offer amendment which I think is going to have to vote against this. I think that's what the vote is going to be. We do not have a good, you can emphasize in the constitution and it's going to be that we could supercede the constitution for it. I'm going to offer amendment which I think is going to have to vote against this.

Mr. Derbes: Mr. Munson, well, your argument, I don't think that he really points the way it doesn't even boil in that particular spot.
47th Days Proceedings—September 14, 1973

Closing

Mr. Derbes: We all realize that we have come to a point in a modern industrial society where we are living together in such close proximity and where uses that we each make of our respective private property, some instances, redound to the substantial personal detriment of others. We have announced substantial private property rights in this constitution. We have conceded for the right of the individual to use and to control and to dispose of his private property. I say to you that there is a legitimate personal right of the individual to enjoy, where possible and insofar as possible, a healthful environment. An environment which tends to encourage life as we know it rather than to pollute and to destroy life as we know it. The provisions of this amendment as presently proposed permit the judicial bodies of this state to give due consideration to all aspects which relate to health, safety, and welfare, including those aspects referred to by Mr. Womack in his criticism of this amendment. So, I urge you to make a twentieth century provision in this constitution. We have labored long and hard over the essentials of a document which is almost two hundred years old. We have slightly defined them and slightly expanded them, but we have not made substantial progress, in my opinion, in establishing a new right which reflects the problems of our twentieth century industrial society. So, I urge you to favorably consider this amendment as a method for guaranteeing to yourselves and future generations a healthful environment which will permit them to thrive and to flourish in an atmosphere of safety and in an atmosphere of comfort, despite the problems of the human zoo that we now frequently find ourselves living in. Thank you.

Question

Mr. Hayes: Mr. Derbes, wouldn’t you have to grant a certain amount of pollution in order to guarantee health and safety, for example, like a fuel shortage? We have a fuel shortage now, and we have to pollute in order to overcome such shortage.

Mr. Derbes: Absolutely, Mr. Hayes, and what I’m trying to get across to the delegates here, and maybe I’m not being very successful, is that all of the various considerations for the furtherance of life can be taken into consideration. The necessity for fuel and transportation, for education and socialization, for the maintenance of these things in determining what is consistent with the health, safety, and welfare of the people can be taken into account.

Amendment

Mr. Pointer: Amendment No. 1 [by Mr. Jenkins].

On page 7, line 16, add the following section:

“Section 26. Freedom of Association

Section 26. No law shall impair the right of each person to associate freely with others.”

Explanations

Mr. Jenkins: Mr. Chairman, delegates, this section is very similar to the amendment that we considered yesterday except that it would put the right to freedom of association in a new section. This concept has been in the Bill of Rights since it was proposed by the committee. If you check your committee proposal at Section 7 of the original constitution, you will see that the last sentence of Section 7 attempts to protect the right of every person to associate with others. Of course, we had felt that it would be included in the antidiscrimination section, but because of the large number of amendments, it was not. Also, because a number of people felt like it would not be appropriate in that particular section. Let me tell you a little bit about this right to freedom of association. It is recognized in a large number of constitutions. Sometimes it is a separate section; sometimes it is included with the right to assemble peaceably by private property. But it is a right, although not the same. Freedom of association, of course, deals with the right of people to join together in organizations, societies, and venture deals it deals not only with the need for them to be physically present at a particular place, that’s the right of assembly. Here are what some constitutions look like, just to show you the magnitude of this particular right. The German Constitution says this: “All Germans have the right to form associations and societies.” The Canadian Constitution recognizes in its Section 1, the freedom of assembly and association. The Universal Declaration of Human Rights, to which more than a hundred and twenty nations have signatories, says “Everyone has the right to freedom of peaceable assembly and association.” The European Convention on Human Rights, signed by most western European nations, says “Everyone has the right to freedom of assembly and freedom of association with others, including the right to form and to join trade unions, the protection of workers, and the activities of public and international agreements that clearly recognize this right as fundamental. Sometimes, of course, as I said, this right is in a separate section of the document— the right to freedom of association. Sometimes it is included with the right to assemble peaceably because it is somewhat similar, although not the same. The difference being, of course, that freedom of association deals with the right of people to legally join together in societies, organizations and ventures, whereas the right to assembly deals with their right to come together physically in a particular place. Another example, in addition to the citations already given, would be the American Convention on Human Rights, signed by every nation in the western hemisphere, which recognizes that in its Article XVI, “everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural sports and other purposes.” This is a well recognized principle and ought to be given recognition in our state constitution. The reason that it’s being offered in this manner is because it was originally intended to be included in Section 7, but the version of Section 7 that was finally adopted was somewhat different. The committee has agreed to it, and I urge the adoption of this section. I might also mention that Style and Drafting Officers wanted to consider consolidation of this section with the freedom of assembly section. There would be no substantive change and only slight wording changes. Do you not mean that “no law shall impair the right of each person to associate or not to associate freely with others?”

Mr. Jenkins: This is implicit in it because if it were... it would not be a free association if one of the parties to the association did not agree. So, this is implicit in it.

Mr. Tobias: My next question is this. You referred to the German, West German, or the National Socialist Constitution?

Mr. Jenkins: No, this is the West German Constitution.
Mr. Jenkins: All right. Mr. Jenkins, does your amendment imply that if a particular group is using a facility, a public facility like a park or a beach, that this group may lay under the provisions of this amendment that we are using this beach and in order to assure our association, we don't want anybody else to use this public facility is that a fact?

Mr. Jenkins: No, you see, this deals with the right to legally associate. What you are talking about is the right of assembly, the right to congregate. We've already said that people have that right under another section. This deals with the right to make interpersonal relations by a legal basis, and so it is entirely a different concept.

Mr. Alexander: When you say interpersonal relations, you have reference to marriage?

Mr. Jenkins: No, I don't think that marriage would be within this concept. I don't think that it would be extended to that. I don't think that that's the term implied by association.
Mr. Goldman: We may have, but we didn't pass this article and I think this article ought to be in the constitution.

Mr. Juneau: Do you know what the votes were on the past three provisions of a similar nature that we had?

Mr. Goldman: No, but I know that when we were discussing it, there was a lot of commotion in here and I don't know how many people really paid attention to what they did. So I thought I'd bring it up again for your consideration.

Mr. Juneau: You think they were confused on all three occasions?

Mr. Goldman: I don't know whether they were or not. Let's see now, whether they are.

Mr. Derbes: Excuse me, Mr. Goldman, but this would apply to all small claims and to all juvenile court matters, wouldn't it?

Mr. Goldman: It would apply to all civil cases that weren't excepted by the legislature.

Mr. Derbes: And the only way the legislature could except, say, twenty-five dollar claim in a Justice of the Peace Court or ...

Mr. Goldman: The legislature could make provision for a certain limitation on the claim.

Mr. Chatelain: Delegate Goldman, I'm having a little problem as a businessman trying to determine in civil cases what amount...at what point in time do you have a jury to hear a case?...a man's being sued for a hundred dollars, for instance, does he have a right to have a jury trial?

Mr. Goldman: I just said, if the legislature wants to set a certain limitation on it, they can do it. I don't know what the legislature's going to do.

Mr. Chatelain: Thank you, sir.

Mr. Goldman: Well, they can keep the thousand limitation.

Mr. Goldman: Yes, sir.

Mr. Roemer: Delegate Goldman, why the two-thirds vote? What clearer and present danger is there in a majority vote that bothers you?

Mr. Goldman: Well, everybody seemed to have so much suspicion of the legislature, I thought the two-thirds vote would be good in there. If you don't have any suspicion, I don't mind removing the two-thirds...the majority vote of the legislature...

Mr. Roemer: Well, I thought you just said a few moments ago that you held no such suspicions.

Mr. Goldman: I don't.

Mr. Roemer: Well, your amendment does.

Mr. Goldman: Well, the people here have expressed those suspicions so I thought I'd allay them.

Mr. Dennis: Mr. Goldman, do you realize that when the guarantee of a jury trial in civil cases was placed in the United States Constitution that some people thought this was necessary because most of the judges in the states at that time were appointed for life and this is the pattern that the U.S. followed?

But don't you think here in Louisiana where we've shortened the terms of judges and insisted that they be elected that they are responsive enough to the people and we don't need to guarantee a civil jury trial in every case and make the legislature go back and enact these exceptions in

[1257]
the Code of Civil Procedure by a two-thirds vote.

Mr. Goldman I think we ought to have this in the
constitution because I am afraid to see it in
there. That's the only answer I can give you to
that. I don't have any suspicion of the judge
either. I think the judge is all fine people.
But I think the public has a right to a jury trial in
civil cases of certain natures, and the legis-
lature can provide the nature or the exception.

Mr. Dennis So I take it you would like for the
legislature to reenact all of these... I count
about twenty exceptions here that are in the Code
of Civil Procedure now. They would have to go
back by two-thirds vote and reenact thes
Otherwise suitors on a prorciory note for a hundred
dollars, that would be subject to jury trial, exec-
cution, probate, partition, mandamus, habeas
corpus, quo warranto, injunction, concursus, work-
mans' compensation, emancipation, separation,
inter
ination, curatorship, legitimacy, filiation, separa-
tion from bed and board, annulment of marriage
or divorce proceedings... all these would be sub-
ject to jury trials, under your provision.

Mr. Goldman If the legislature wants to make
exceptions in any of those, they have that right
to do, and I think if someone wants to put an amend-
ment to this to have the legislature decide by a ma-
jority vote, it's alright with me. I'll vote for that
amendment... take out the two-thirds vote.

Mr. Singletary Mr. Goldman, since we have pro-
vided for appellate review of facts in civil cases,
what good does your amendment accomplish? What
sense is there in having a jury trial?

Mr. Goldman Well, I think they ought to have a
jury trial in their original trial.

Further Discussion

Mr. Pugh Mr. Chairman, fellow delegates, I said
Wills, I didn't say anybody else. I rise in op-
opposition to this amendment and I sincerely hope
that Mr. Goldman didn't ask me about it earlier
and I have him any encouragement. If I did, I
apologize. Unfortunately, the amendment would
give these many things that would... that these
people have been asking questions from the floor
about. It would throw us open to jury trials in
eyevery instance. I'm also concerned about the two-
thirds vote, it ought to be a simply majority.
I am in agreement that there should be a pro-
vision somewhere here relating... in the constitu-
tion relating to civil jury trials. At this point,
we don't want to think about this and I think we ought
to have something on it. But I am concerned about this
one that throws it open for every phase of the
law and, also, that requires a two-thirds
amendment.

For that reason, I rise in opposition.

Thank you, Mr. Wills

Questions

Mr. Fontenot Mr. Pugh, do you recall in section...
when Section B was voted on that we decided
delete all this language because we thought it
was a legislative matter?

Mr. Pugh I say or may not have been here. I
assume that I was. I know that

Mr. Fontenot Section B, which said, "the right
to trial:

Mr. Pugh Excuse me.

Mr. Fontenot Jury by jury in civil cases, do you recall Mr. Duval's amendment that did away
with this because it was a legislative matter?

Mr. Pugh Sir, I spent probably three hour work-
ing up some information for the benefit of this
delegation relating to civil jury trials, so I'm

very familiar with that.

I made the statement that I think there ought
to be something in the constitution relating to
civil jury trials, but I didn't think this ought to be it. That's all.

Mr. Flory Mr. Pugh, my question has to do with
the last sentence, the proposed amendment
would not give judicial review of fact
now on administrative determination made by, let's
say, the Division of Employment Security. it's an un-
employment insurance case which they do not now do.

Mr. Pugh Yes, it would have that effect.

Mr. Berry Mr. Pugh, would it this amendment
make it possible to have a jury trial where the
issue was really an equitable issue?

Mr. Pugh Let me tell you that you were grossly
misled from this podium earlier about the dif-
ference between common law and equitable provisions
and fact provisions. It is true that we don't have a separate equity court.

Now what this would do, this would allow you a
jury trial in the U.S. court.

Mr. Berry Yes.

Mr. Munson Mr. Pugh, this amendment starts
by saying the right to trial by jury shall not be
abridged in civil cases, doesn't that mean that the state
would be paying for this trial which is really an issue between two people or individuals?

Mr. Pugh No, sir. I think that can be statutorily
determined and in my opinion, it wouldn't make the state bear the cost of a jury
trial.

Mr. Munson You don't think it would be mandatory
the way it's written that the state would pay the cost of a jury trial.

Mr. Pugh No, sir. That's not the way it's written,
the costs would not be paid.

Mr. Munson You don't think it would be mandatory
the way it's written that the state would pay the cost of a jury trial.

Mr. Pugh It never has been in original, and the
language is substantially the same in criminal
matters.

[Prev. text]

Closing

Mr. Guarisco I just think we are losing the
point and especially in the second sentence, that
the determination of facts in an administrative
agency is given more importance in a civil court
than it should be. The modesty of the
ordinance, and the convention in this wise don't want the
trial, they want to have the facts reviewed
and the facts in the review fact. So, let's be consistent
and make the facts determined by an administrative
agency, also reviewed by the court, that's not in the
administrative agency. I think that's doing justice
to the administrative agency, that the
determination of facts, if it is in the
judicial system.

The point about the civil jury, every state
constitutions that we looked at, guaranteed the
right of citizen participation in the civil judicial
process. This is a new move. As far as the
exceptions, the right to have a jury and we
have to give those in the transition

I urge you to support the amendment

Questions

Mr. Jenkins Mr. Guarisco, someone has said that
this is going to allow trial by jury in cases of twenty five dollars. Don't you suppose that
what will happen; well, there will be one bill that will be introduced in the next session of the legislature exempting all things presently exempted from trial by jury but preserving the basic right so that won't cause any problems at all, will it?

Mr. Guarisco Certainly not, in the present one, anyway, the jurisdictional amount is a thousand dollars and the legislature can pass all its exemptions in a transition from the new constitution. That shouldn't be any problem at all.

[Amendment rejected: 22-93. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1, page 7, between lines 11 and 12, insert the following:

"Section 25. Right to Preliminary Examination Section 25. In all felony cases except those indicted by a grand jury, the right to a preliminary examination shall not be denied."

Explanation

Mr. Plancharc I haven't... after that last vote. However, I think this is worthy of your consideration and I want to explain it to you.

What this does now, it changes the present status of the preliminary examination. Presently, a defendant or an accused has a right to a preliminary examination, but it is discretionary with the court whether or not it will be granted. You have to make application for it and it's within the discretion of the court.

What this amendment does is it makes a preliminary examination a matter of right for the accused. Of course the amendment as you have noticed, says "in all felony cases except those indicted by a grand jury." Of course we have provided for the grand jury now to... that the accused can go before the grand jury and he can have his counsel in the grand jury with him. This is a preliminary examination and that's why it's expected. However, for the other felony cases, a person should have that same right to a preliminary examination.

I was just handed a note asking me to explain what a preliminary examination is. A preliminary examination is exactly what it is. You have a right to ask the court to grant an examination. You have a right to call the witnesses against you, and you have a right to do this in the court. The accused as they say, presently has a right to do this for it, but it is not an absolute right. The court could grant it for information or they can refuse it.

Now, I'm asking you, is it fair to have a preliminary examination in felony cases where a grand jury decides it and not when the individual is not accused by a grand jury. That now will be objection because they'll say it will increase the number of cases in the preliminary examinations, that would be a burden upon the courts. That's a lot of poppycock. Sure there'll be more preliminary examinations. But a person accused should have that right to an examination. I think if the O.A.'s would be more careful before they took a person to trial... if in the preliminary examination they find that his evidence is not as strong as he thought it was.

Questions

Mr. Kean A.U.J., I'm a little puzzled by the exception that you make with respect to a grand jury indictment, and as I understood your explanation, you indicated that you made this exception because the accused had a right to be in the grand jury room, etc., and that was in the nature of a preliminary examination.

But suppose you have an accused that is never brought into the grand jury? Suppose he is indicted without being in the grand jury?

Mr. Plancharc Well, that is why I want the abso-
Mr. Planchard. That would be more where to turn, Mr. Manion, and I would not venture to... any further questions.

Mr. Planchard. Just the accused. I can put the witnesses against the accused. Not force the accused to testify.

Mr. Abraham. All right, then, who would then make the determination as to whether or not there is a plea and it would go to court, trial or not. Would there not mutually agree on it, or would the judge make a determination of what.

Mr. Planchard. I think that's up to the judge in this particular instance.

Mr. Abraham. You mean, the judge, whether he either says, yes, tell the district attorney either to go ahead and prosecute or held over, no, you don't have a case, don't prosecute.

Mr. Planchard. That's right.

Mr. Gravel. Mr. Planchard, I notice that this section does not provide for the right to a preliminary examination before grand jury indictment on a capital case. In other words, it would occur to me that it would be necessary to make this provision as express as it should be made, that we would insert in there the words, capital and before the word felony so as to make the fullest sense... His words read in all capital and felony case, you would have any objection to that particular amendment.

Mr. Planchard. I think if I read you the definition of a felony, I think that would take care of the problem.

Mr. Gravel. Read it to me.

Mr. Planchard. A felony at any time for which an offense may be punished by death or imprisonment at hard labor.

Doesn't take care of your question.

Mr. Gravel. What under the law is that for it did not have the death sentence. You are aware of that, you think you would.

Mr. Loman. Mr. Planchard, I am aware of your appearance earlier. But, not wonderingly, in that case, the district attorney that would not agree before the grand jury. You have never heard of a grand jury, is it your understanding that that person who would not agree before the grand jury, not have been in that particular situation, but the state. We're not hearing personally any evidence of that. And I can think maybe that would happen sooner than later.

Mr. Planchard. The last topic... after having personally examined the record, to be

Mr. Abraham. Just testify, think Mr. Planchard that grand jury is not going on. It is more for assistance.
contrary to what Mr. Kean thinks, is because I believe, and we have to argue rightfully, that if a grand jury indicted you, then obviously there's a probable cause for your being charged irrespective of whether you appeared before the grand jury or not. It's that simple. I have to give a lot of weight to a grand jury indictment. So, once you've been indicted, we want you to appear or not, it should be the right to the preliminary examination, which is aimed at whether, in fact, you should be held for a particular crime.

I would....I think, Mr. Kean, he may disagree with me; he may say that you know, you haven't appeared and the grand jury didn't indict him and then, nevertheless, he could come back if he didn't appear before the grand jury and still make the district attorney go before the judge and prove probable cause for holding him and I think the grand jury....

Mr. Henry You've exceeded your time, Mr. Roy.

Now Mr. Planchar has withdrawn his motion to withdraw the amendments. So, we are still on the discussion, then, of the amendments.

Further Discussion

Mr. Burson Mr. Chairman, ladies and gentlemen of the convention, although we have been typecast by the roles we have played in this convention, I want to make it plain that in speaking on this amendment, I am not in any way speaking for the District Attorneys' Association, and in fact, I have at this moment personal knowledge that there are district attorneys in the state who are opposed to this amendment. But I join with Mr. Anzalone in here because I understood the purpose of his amendment to be this limited purpose. Under the current Code of Criminal Procedure before the filing of an indictment or the filing of a Bill of Information, you have an absolute right to request a preliminary examination to see if there is probable cause for a grand jury charge. After the filing of an indictment or the filing of an information, Article 292 of the Louisiana Criminal Procedure says that "An order for a preliminary examination in felony cases may be granted by the court at any time either on its own motion or on request of the state or of the defendant. The intent of this amendment is not designed, and I want to make the record clear on that point, to add to or subtract from the right to a preliminary examination in any case but one, and that would be the case where the district attorney has elected to go by route of filing a Bill of Information. Under the present law, the granting or denial of a preliminary examination would be at that limited instance, determined by the judge at his own discretion. This amendment, the purpose that Mr. Anzalone told me he had by passing it in was that if a defendant requested the preliminary examination in this narrow instance where he'd be charged by a Bill of Information, he would have the right to have that preliminary examination. To get away from the argument here that only the district attorney has reviewed the evidence, and no third party, such as a grand jury, it, you would have in this case to present sufficient evidence to satisfy the judge that you had a basis for holding the case. In my mind, the amendment would have certainly not the intent of the framers of this amendment to restrict any rights that you have under the present law. It is only to expand the right of the defendant in the limited instance where he is charged by means of a Bill of Information. I'll answer any questions.

Questions

Mr. Lanier Mr. Burson, I believe you cited the provision about preliminary examination in the Code of Criminal Procedure?

Mr. Burson Yes, sir.

Mr. Lanier Isn't that a statute?

Mr. Burson Yes, sir.

Mr. Lanier Isn't this provided for by statute under our present law?

Mr. Burson Yes, sir.

Mr. Lanier Do you know of the constitution of any state that has a provision like this in it?

Mr. Burson No, I haven't researched the point, Mr. Lanier.

Mr. Lanier Now, let me ask you this: if the judge rules in a preliminary examination that there is no probable cause, that doesn't terminate the prosecution, does it?

Mr. Burson I don't think that's the effect under the present law.

Mr. Lanier As a matter of fact the D.A. could still proceed with the case even though the judge ruled that there was not probable cause, isn't that true?

Mr. Burson You don't have a final determination in the preliminary examination in the sense of a jury final determination of the charge, but I think certainly he could hold that the state has not presented enough evidence to hold the defendant over.

Mr. Lanier Well, let me ask you this: the way this thing is written you would have the preliminary examination whether he's in confinement or not, though he could be walking the street, couldn't you?

Mr. Burson That is correct.

Mr. Lanier ...And have a preliminary examination?

Mr. Burson That's correct.

Mr. Lanier Wouldn't it be true in that circumstance that all the judge could do would be to release him from bail?

Mr. Burson Frankly, I can't at the moment think of any other reason for requesting the preliminary examination in that instance.

Mr. Lanier Well, let me suggest one other reason, Mr. Burson. Couldn't a defendant then subpoena all of the state's witnesses and put them on the witness stand and get all of their evidence from them?

Mr. Burson Well, of course, that's presuming he knew who the state's witnesses were beforehand.

Mr. Burns Mr. Burson, there seems to be some uncertainty between lawyers here in discussion of this. In other words, a person or a defendant under this amendment wouldn't have the right to an investigation by the grand jury, and then if we were indicted, come to court and have the further right of a preliminary examination?

Mr. Burson No, sir. That was not the intent that Mr. Anzalone had. This was limited to the instances

[1261]
where you file the charge by a Bill of Information. It does not in any manner involve grand juries.

Mr. Ruhl. Mr. Burton, Mr. Lander asked you about any changes in the pending indictment. Did you know that the constitution of Illinois, in the more enlightened and progressive institution of the United States, provides for no grand jury? I have been held to answer for a crime punishable by death or prison in the penitentiary unless either the initial charge or the indictment of the grand jury was to be made. I object, and I urge the adoption of this amendment.

Mr. Burton. I didn't know that, but I'm glad you brought it to my attention.

Further Discussion

Mr. Newton. Mr. Chairman, fellow delegates, I rise in support of the amendment. I really got kind of stirred up a minute ago when the amendment was sought to be withdrawn, to make some change in it. I think the change would be some confusion as to what the purpose of the preliminary hearing was for. As I appreciate it, the purpose of the preliminary hearing where there has not been an indictment is to provide a judicial examination of the preliminary hearing or the preliminary hearing by the district attorney, where there has been a grand jury indictment, the facts have been reviewed by the district attorney. The district attorney files a Bill of Information, he does this on his own, of course, with whatever evidence he has, and the only reason for having this preliminary hearing is to have somebody else pass on the facts as found by the district attorney as opposed to the fact as found by the grand jury. I think that it's wise to have two bites at the apple so to speak. The district attorney of course first decide to take his case to the grand jury, and if they pass on the facts or else he decides to bill himself, and then the judge can pass on the facts, and I urge you to adopt this amendment.

Mr. Marian. Mr. Newton, you appreciate this amendment, that all the district attorneys would have the preliminary hearing; the preliminary examination and also the right to take the matter to the grand jury and get an indictment, wouldn't you?

Mr. Newton. That's absolutely right. Of course, under the present law, all he's got to do is file a Bill of Information which he thinks does make a little difference.

Further Discussion

Mr. Pugh. Mr. Chairman, ladies and gentlemen of the convention, I join with the author of this amendment in support of it, and generally believe that in many of the cases where we have preliminary examination and the person who is charged with an offense what this amendment will do, would be more in evidence, in effect that the preliminary examination of the Bill of Information is exchanged in some cases, where an affidavit has been filed and then a grand jury has been appointed to look into the matter of that affidavit, that that in some of the cases that they must go down to have the judge determine whether or not it is rile in the Bill of Information, which we the people are entitled to know in what manner a judge is to have of what we have done to come here and take that Bill of Information and we have placed the necessary to the examination or to the trial of such an enactment in every single case except capital cases.

Mr. Pugh. Mr. Chairman, fellow delegates, I would be very grateful if the convention would adopt the amendment that you have just suggested.

Mr. Marian. Mr. Chairman, ladies and gentlemen of the convention, I think that the Bill of Information is exchanged in some cases, where an affidavit has been filed and then a grand jury has been appointed to look into the matter of that affidavit, that that in some of the cases that they must go down to have the judge determine whether or not it is rile in the Bill of Information, which we the people are entitled to know in what manner a judge is to have of what we have done to come here and take that Bill of Information and we have placed the necessary to the examination or to the trial of such an enactment in every single case except capital cases.

Mr. Marian. Mr. Chairman, I think that the Bill of Information is exchanged in some cases, where an affidavit has been filed and then a grand jury has been appointed to look into the matter of that affidavit, that that in some of the cases that they must go down to have the judge determine whether or not it is rile in the Bill of Information, which we the people are entitled to know in what manner a judge is to have of what we have done to come here and take that Bill of Information and we have placed the necessary to the examination or to the trial of such an enactment in every single case except capital cases.
assume you have no objection to having exactly what the law is today. It is my understanding that except for the provision saying, "as otherwise provided in this constitution," it's exactly like the constitution is today. For the reason for the severability of the other amendment, I'm aware of the fact that some of my friends are interested in this and in my own interest, and for that reason, I made the second one severable.

Questions

Mr. Lanier. Mr. Pugh, am I correct in that this thing says that there is a right to a trial by jury that can't be abridged, but unless the right is guaranteed in the constitution, the legislature can waive it, is that right?

Mr. Pugh. I'm saying my opinion of the law is that the legislature can waive a jury trial.

Mr. Lanier. Under the present constitution is there a guarantee to a right to trial by jury in a civil case?

Mr. Pugh. Not under the 1921 Constitution, no, sir.

Mr. Lanier. Isn't this provided for in the statutory law?

Mr. Pugh. You mean that there be a trial by jury?

Yes.

Mr. Lanier. How many times is it that we've voted on this subject of trial by jury in civil cases, do you know?

Mr. Pugh. Mr. Lanier, I don't believe you've ever voted on this, and now that you mention the statutory provision, it was with some interest that I looked at the statute, and it says to fall open on the local government that you are one of the authors of, and I noticed that there are fifty-five in the Illinois legislature that of legislative material relating to the appointment of vacancies.

Mr. Casey. Mr. Pugh, my question is somewhat repetitive of one that Mr. Lanier asked, and I just want to specifically find out, you indicate this is the law today, but it's in the statute and it's not in the constitution, is that correct?

Mr. Pugh. That's correct.

Mr. Casey. So you're putting into the constitution something that is not contained in today's constitution, is that correct?

Mr. Pugh. That's right. I'm saying that there is a fundamental right to jury trial, I'm saying that at present it's in the statute. I reviewed for your interest some time ago on the question of jury that four out of the fourteen states which adopted the original constitution and the amendments, required this in their Bill of Rights. I think it's appropriate that it be in the Bill of Rights.

Mr. Juneau. Mr. Pugh, just as a point of clarification in case this would ever be interpreted, as I understand what you've just previously said that this in no manner whatsoever is intended in any fashion whatsoever to authorize or destroy the right of appellate review of facts, is that right, sir?

Mr. Pugh. That's absolutely correct. This amendment does not do that. It doesn't touch the appellate review. I got shot off of that horse some time ago. I think Judge Dennis is trying to get recognition.

Mr. Dennis. Mr. Pugh, continuing that line of questioning, if it doesn't give appellate review of facts, what does it do, or why have it? In other words you say, first that the trial by jury shall not be abridged, but then you turn around and say that the legislature can do away with it.

Mr. Pugh. I'm making no attempt to change the law, Judge Dennis. All I'm saying is, I think the right to a trial by jury is fundamental enough to put in the Bill of Rights. That's all. It doesn't change the law as I understand it, and I challenge any lawyer to find any change in the law in this provision.

Mr. Dennis. Well, I'm just asking for information so we can make a record of what we intended by this because it worries me that we say that there shall be no abridgment of the right to a jury trial, and say, "the legislature can create exceptions." It doesn't seem to me that we really accomplished anything by even putting this in the constitution.

Mr. Pugh. I think the "however" resolves the problems that you're confronted with or concerned with.

Mr. Jack Bob, as you know, I am a plaintiff's attorney in damage suits. However, we've gotten along as far as I can see under the present situation, but it looks to me like the way you have this, you say "the right to trial by jury shall not be abridged." That is the legislature can make exceptions. I don't follow that. What is the exact meaning of the word abridged? Does that mean "repealed, can't have a jury," or just what does the word there mean?

Mr. Pugh. I think the word "abridged" means that it cannot be prohibited in its entirety when you have the exception relating to the legislature then it allows them to take it in any fashion they want to whether its adoption, anything they want to provide there will be no jury trials on, then there will be none. That's the law as it is today.

Mr. Jack. One other and I'll sit down. You have the legislature's already provided for jury trials in certain things like damage suits, and so forth. Now...

Further Discussion

Mr. Gravel. Mr. Chairman, ladies and gentlemen of the convention, I think that it's very important that we adopt this amendment because of other actions that have been taken by the convention. It's true that under the present constitution, there is no provision with respect to jury trials in civil cases, but keep in mind that we have in this constitution, this proposed document, provided for the right to a jury trial in civil cases, and we have also provided for the right to a jury trial in some civil cases, particularly expropriation cases. Now, unless we have this provision here, it would seem to me that the legislature could very well conclude that there cannot be and should not be a civil jury trial in any other civil jury cases except expropriation cases. Now for that reason, I think it is essential that we say something that was not said in the '21 Constitution, but that "except as otherwise provided by the constitution in civil cases, the right to trial by jury shall exist subject to the legislature's right to provide for exceptions." If we don't adopt this amendment, I want to restate and I think this is important for Mr. Jack to realize, if we don't adopt this amendment, it's likely that the legislature could construe our other action ends with respect to civil cases as being a bar to any jury trial in other civil cases besides expropriation cases. I'll yield to questions.

Questions

Mr. Drew. Mr. Gravel, without this amendment, can't the legislature abolish the right to a civil jury in any case that is not specified in this constitution?
Mr. Gravel: You mean under the present law.

Mr. Drew: Without any amendments.

Mr. Gravel: Yes.

Mr. Drew: With this amendment, I think they would be quite in order to trial by jury except where guaranteed by the Constitution.

Mr. Gravel: I think it is a question that that would be done.

Mr. Drew: But we are stuttering in the following way: in the words that mean applicable—nothing made, and it was

Mr. Gravel: What I think we're doing, Mr. Drew, and I believe I restated it as clearly as I say, is to the legislature by this language; that we did not mean that the exclusive... that the right to a jury trial in civil cases could only be had in an expropriation case. There's a difference and see it between the situation we're in now and the constitution of it that did not provide for the right of trial by jury in any civil case.

Mr. Drew: Isn't it a fact... one more question. Mr. Gravel that the legislature can do anything they like to try to do anything they like that they are not prohibited from doing in the Constitution.

Mr. Gravel: I think that... going to be the result of what.

Mr. Drew: How could the fact that we are providing for a jury in expropriation cases be interpreted to mean we couldn't provide other cases?

Mr. Gravel: Well, I think that that interpretation would not be reasonable, or unreasonable by the legislature when the legislature would take the position that there has been a preemption so weak of the right to a trial by jury in civil cases.

Mr. Kean: Mr. Gravel, how can you have a review of facts by the appellate court without abridging the right to trial by jury?

Mr. Gravel: Well, I don't think that the right to trial by jury necessarily arises with it the conclusion that the determination is the final outcome. Is your thought there was here that you couldn't reverse or any question of law.

Mr. Kean: But we don't have the innovation in this constitution.

Mr. Gravel: Mr. sir, we do not.

Mr. Kean: Wouldn't it be fairer to try, that in cases it is a right to trial by jury in civil cases rather than to try that the trial jury shall not be abridged and leave them the question in appellate court whether it would make that would have the effect of removing that right?

Mr. Gravel: Mr. Kean, I think that... simply except was to make it. I want just we be have been going to hear, that would still think that principle which we accommodated way by Art. III.

Further discussion.

Mr. Kean: Mr. chairman, does the same people have said, this is not an application to the other states, except the legislature?

Mr. Gravel: That does not mean that the legislature.

Mr. Drew: On every other state thinks was, every other state previous to August,... make in its constitution in civil case... do the Constitution, those in civil even though the state, state and the federal... does at least, the people in the same under present law, the legislature would an.
specifically applicable in juvenile cases which would ordinarily be applicable in criminal cases, but I don't know if that necessarily raises juvenile cases to the status of criminal cases. Now in case you don't know it we don't have a right to trial by jury in juvenile cases, and all of your various districts, counties, etc., as juvenile courts throughout this state in my opinion are sitting as civil courts, not as criminal courts. Now if we're going to permit juvenile defendants the right to demand a trial by jury, it seems to me that we're providing for substantial problems in the administration of juvenile justice that we have to consider very carefully before we create a right in this constitution. So I urge you to give due consideration to that very serious question in voting on this amendment, and until it is specifically provided for in the amendment, I would have to urge its rejection.

Questions

Mr. Weiss Are you saying that in a divorce case there would be a right to trial by jury possibly according to this amendment?

Mr. Derbes No, I mean that's not it at all, Dr. Weiss. I'm talking about juvenile cases, Dr. Weiss. Juvenile cases, if a child is charged with a violation of state law and a proceeding is brought by the State of Louisiana in the interest of the juvenile, now this child is subject to a substantial amount of the justice system in this state, the area of juvenile justice. Not too many people know about it. Proceedings are essentially of a confidential nature, and people don't really know too much about it in this state, but the juvenile when he appears in court is entitled to a trial; he's entitled to counsel; he's entitled to a right against self-incrimination, but he's not entitled to a jury trial, and I suggest to you that if we are going to provide for a right of jury trial in juvenile cases, we'd better be very certain how we do that. It seems to me that inasmuch as a juvenile proceeding could very legitimately be considered a civil proceeding what that the first sentence here does or the first clause here does is it announces an unexpungeable right of the juvenile to a jury trial. Now if that's what you want, you vote for this, but if you've got any substantial doubts about that, I trust you'll vote against it.

Mr. Weiss But isn't a divorce case a civil proceeding?

Mr. Derbes Yes, a divorce case.

Mr. Weiss Well, therefore, this amendment would require in some instances a jury trial if you care to have it.

Mr. Derbes In addition to my remarks about juvenile cases, you are correct.

Further Discussion

Mr. Jack Mr. Chairman, ladies and gentlemen, it looks like football this weekend is making us work. We can thank athletics for this.

Mr. Chairman, you see if you can get me a little order. I can't hear myself and I don't want to miss any of this.

Mr. Henry Give the gentleman your attention.

Mr. Jack Now, look if you all don't want to listen, don't deprive me, if you will, please. Now, we've existed since the '21 Constitution without anything in the constitution about these civil juries and damage suits and other things. I've tried plenty. I'm a damage suit lawyer. But I am concerned about this Number 1, and I've underlined it. It says "the legislature may provide for exceptions to this right of trial by jury." The legislature has already provided. As I gather, they would have to provide again. It would open that whole field. I know what the exceptions are now. Another thing, it's well known that you have civil juries. It's in the legislative law. Now, here's an interesting thing. I've looked and asked a number of lawyers. You look through the present constitutional amendments and you look through the statute on jury rights, and you look through the present Bill of Rights, and you look through the judiciary... I don't find and these lawyers don't find where it says who sits up there and tries a case. Everybody presumes the fact that a judge is elected to the district court he's going to try them and that the statute says that and that the statute provides for civil juries, then that's who tries them. But it does not in any state in the constitution that a district judge tries them or any other judge tries them. Now, I'm glad that Mr. Derbes and I see eye to eye on something. We're good friends, but a lot of times we differ. This juvenile court is a serious thing as to whether those are civil cases or whether they are criminal. I'm sure they have plenty of cases in juvenile court in New Orleans than they do up my way. I'm not so sure that they can be classified as criminal. But if the judges are classified as civil. I'd hate to ever see the doorway opened that all those cases... little old non-support, neglect, all those... could be tried as civil cases. I don't see the necessity of being in the criminal situation. I have no fear of the legislature taking away the right to civil trial by jury in the damage suits and the other things, but there is a constitutional question if it ever existed anyway; they didn't allow it in the expropriations. That was a different matter entirely. So I reluctantly... I hate to go against my friend and my Caddo representative here, Mr. Pugh. Bob's a good friend, but I just can't agree on it.

Thank you all for quieting down so I could listen to what I was saying. Thank you.

[Previous Question ordered.]

Closing

Mr. Pugh Mr. Chairman and fellow delegates...

Fellow delegates, in response to Mr. Derbes and so there will be no question about it, I have written two books on the subject of juvenile laws in Louisiana... two of them. Let me assure you that you can't have a trial by jury, by existing statute in the juvenile court. I have also drafted all of the juvenile laws in the State of Louisiana relating to all of this. I am an attorney concerning which I have some knowledge. I would not want you to think for a minute that I would propose for your consideration or that we should do these horrible things in juvenile court. If you take nothing away from me, I assure you this juvenile matter is one I do have some knowledge over. Getting to the basic question, I tell you, I tried to tell you in a memorandum, every state provides for a trial by jury. Louisiana has a trial by jury. This is nothing to do with appellate review of the facts. All it does is it gives the same thing that we thought was good enough to do by one of the Bill of Rights insofar as the United States Constitution is concerned. I'm not misleading you. It's not my nature. If you pass this amendment, you will do one thing and one thing only. You'll put in the Bill of Rights a fact that's fundamental, that we'll always have and always have had. In any instances where the legislature wants to take away that right to a jury, they can do it. The United States Supreme Court has said they can do it. I'll tell you something else. The United States Supreme Court has also said you don't have to have jury trials in juvenile matters. I yield to questions.

Questions

Mr. Derbes Mr. Pugh, I refer to your greater expertise, and in that light would you please tell me whether or not you considered a civil case or a criminal case or what?
Mr. Derbes. So it could be a civil case?  
Mr. Pugh. Absolutely. It could be a civil case.

Mr. Derbes. All right. Your amendment says the right to trial by jury in those cases where there's no right to trial by jury, that such defendant in juvenile proceedings shall have an unabbreviated right to a trial by jury. Is that amendment, and the amendment to the amendment, are they the unabbreviated right of the defendant in juvenile proceedings?  
Mr. Pugh. No sir. When the constitution which purportedly gives them that right specifically says "the right to try him away from them," they've already taken it away from them.

Mr. Derbes. The constitution merely says "the legislature shall provide for the jurisdiction of juvenile court." It doesn't say "the legislature shall provide for the conduct of juvenile proceedings."

Mr. Pugh. For your information I drafted the amendment by which that jurisdiction was to be given there that you make reference to. The point I made is this.

Mr. Derbes. What does it say?  
Mr. Pugh. Exactly that, jurisdiction. The point I'm making is that there is no consideration saying "the legislature can provide that there won't be jury trials."

Mr. Derbes. It says "the legislature can provide that there won't be jury trials only where the right to trial by jury is guaranteed by the constitution. What about those instances where the right to trial by jury is guaranteed by the constitution? Then the legislature can't provide for an abridgement of that right by jury-trial," that's what I'm saying.

Mr. Pugh. I tell you, Mr. Derbes, I was disturbed about trying to read that out of it all; a trying to read your argument about juvenile law in it. I don't think there's any way I can read that out of there.

Mr. Henry. You've exceeded your time, Mr. Pugh. The ruling on the amendment, after a review of the discussion on the amendment that Mr. Derbes just discussed and considering the fact that Mr. Dwyer, Mr. Dwyer, has just quoted and considering that Mr. Derbes also has quoted Mr. Dwyer, I think that Mr. Dwyer is the man in error, Mr. Henry. That is, I think that Mr. Dwyer is the man in error, and the amendment that Mr. Derbes has quoted, and the amendment that Mr. Dwyer has quoted, was a more detailed amendment that was introduced in the fifth of September, is it going to be that the amendment appears to be open, we say any amendment, is it going to be that you're talking about that was considered in the fifth of September. It is very much like the material. I do not know, I'm not sure how the amendment appears, if you go to the amendment and, if you decide then together, there's a difference. Mr. Pugh.

Mr. Pugh. We can.

Mr. Derbes. How can we be sure that amendment that went up to further discussion?

Mr. Henry. Mr. Derbes, while the previous question I have been asked seems to be that if you want to discuss it further, if there are those people who do, that we would allow further debate on this, although it has been debated throughout the convention, the concept and the idea, but the previous question has been ordered.

Mr. Perez. Point of information. Mr. Henry's understanding it even with the language of the question, in each case it must be sixty-one votes in order to pass, because it is a new section.

Mr. Henry. If Amendment No 1 is adopted, I think it would carry Amendment No 2. Will it, Mr. Perez? Because it's got to be a separate section here. Would it be an amendment to the new section? It appears to me, Mr. Perez.

Mr. Perez. Well, then at least the first provision would require an affirmative sixty-one votes.

Mr. Henry. Yes, sir. If you are interested, if you don't get sixty-one, then Amendment No 2 would be out of order. All right. We'll vote on Amendment No 1 first. Amendment No 1.

Mr. Perez. If the second one was verbatim, I withdraw it. It's not an indicator. I'd like to have a record vote on that one.

Mr. Henry. The second one now in order. Mr. Pugh, because the first one was defeated.

Mr. Pugh. Amendments:

Mr. Pugh. Amendments Nos 1 and 2 are considered: page 19, line 16 add the following: Section 26. No jury in civil cases. Section 26. There shall be a right to trial by jury in civil cases. There shall be a right to trial by jury in civil cases. The jurisdiction of this section. However, the legislature may provide exceptions thereto. Amendment No 2. At the end of the clause, and I changed that Amendment it still in order by Floor Amendment No 2. I repeat, and the only way to be in order by the floor shall be in effect to follow instructions.

Mr. Pugh. I stand.

Mr. Henry. Mr. Pugh, I stand.

Mr. Pugh. I need to follow instructions. Mr. Henry. Mr. Pugh, I stand.
Amendment

Mr. Poynter. Amendments sent up by Delegates Warren, Jack, Velazquez and Rayburn. Amendment No. 1, page 7 between lines 3 and 4 insert the following:

"Section 22.1. Right to Compensation. Section 22.1. The legislature shall provide a method for adequate compensation for persons convicted and imprisoned for crimes which they are proven subsequently not to have committed provided the person did not by perjury contribute to his own conviction."

Point of Order

Mr. Arnette. Mr. Chairman, are these amendments in order or have we voted on this before?

Ruling of the Chair

Mr. Henry. Mr. Arnette, we have this amendment and three more that are substantially the same. They are all on this business of compensation. Now, I’m not going to rule that they are out of order. I will let this body determine that, because on Mason’s Manual—-the book says that the presiding officer should never rule an amendment out of order unless he is certain that it is. In case of doubt he should entertain the amendment subject to the right of a member to rise to a point of order, or he should submit to the House the question of whether the amendment is in order or not. I’ll ask that the Clerk read the amendments that are coming right behind this. I don’t think that will be necessary to do that....

Mr. Arnette. I’m not going to rule that they are out of order. If you want to let the House make the motion, we’ll let this body determine it.

Motion

Mr. Arnette. Well, let’s just let the House decide then, because I don’t know, I think we’ve voted on it before. I’ve got nothing against compensation. I think it would be good for the legislature...

[Amendment reread.]

Mr. Henry. Mr. Arnette has moved that the convention determine these amendments to be out of order. His motion being based on the fact that it is his understanding and belief that the convention has considered this same subject matter heretofore.

Point of Information

Mr. Chatelain. Mr. Chairman, I would like to get a ruling if you could from the author. Is this identical to the one we voted on? If it is...

Mr. Henry. Now, that’s exactly what we’re talking about. I’m going to let the convention determine. I’m not sure that it’s identical to it. So we’ll let the delegates decide. Therefore, when the machine is opened, as many of you as are in favor of considering the amendments...I’m going to ask the Clerk to read them again.

Why do you rise, Mr. Jack?

State your point.

Point of Order

Mr. Jack. Mr. Chairman, I cannot remember, and I’ve picked up amendments whether they’re yesterday’s or today’s. I’m a honest person, and I can’t vote on this unless I have the Clerk by comparison read yesterday and today’s. Because they may be word for word; I don’t know. I don’t want to cast any doubt on my veracity. The Clerk can compare the one we had yesterday...I’m a coauthor...and then he can compare it with the one now. Let us know.

Mr. Henry. Read the amendments from yesterday, Mr. Clerk.

Mr. Poynter. I can see right off the words "a method" was not in the amendments submitted by Mrs. Warren...

Mr. Henry. The point being, Mr. Jack, and I think that Mr. Arnette is raising, that while this amendment may not be worded exactly as the amendment we considered yesterday, he’s saying that for all practical purposes we considered the same thing. This is not debatable, Mr. Jack.

Mr. Jack. I’m asking a point of order.

Mr. Henry. State your point, sir.

Mr. Jack. I think you’ve answered it, because I just don’t want to so-called perjure myself. Now if it’s different, I want to vote to hear it again, because I’m for it. I’m still for it.

Mr. Henry. Why do you rise, Mr. Conroy?

Mr. Conroy. You had begun to explain how the vote would go. I was a little bit confused. You had suggested that a vote favor would be a yes to consider it or a no in favor of the motion. I was confused as to which way the affirmative vote would go on this.

[Amendment reread. By a vote of 47-59 the Convention declared amendment out of order.]

Personal Privilege

Mrs. Warren. Mr. Chairman and fellow delegates, I accept the decision that you have made. The only reason that I came back with this amendment was Mr. Rayburn had an amendment to the amendment, or to the section that was going to be created, and "a method" was added into it. However, I am sorry that so many people at this convention decided that they would not like to see innocent people given a chance to get compensations for serving time that they were not deserving to serve. I would like to remind you of a political ruler who once sent out a decree that every male child should be killed in his city. In sending it out he found that his own child was killed by his own decision. So I leave this up to you. Thank you.

I am not going to withdraw any other amendments. I have not taken up near as much time on any amendments as anybody else here has done; so let it all come out. I will since I’m back here...some said they didn’t know what I was getting to. Some day you might find yourself in the same situation that the great ruler found when he sent out the decree for his own son to be killed. You may find yourselves in the same spot, serving time for things that you did not do and wish you had compensation that it would be provided in your constitution.

Amendments

Mr. Poynter. The next set of amendments are also offered by Delegates Warren and Jack concerning the right to compensation. Distribution copies of this set have not arrived. Amendment No. 1, on page 7 between lines 3 and 4 insert the following:

"Section 22.1. Right to Compensation. Section 22.1. The legislature shall provide for adequate compensation for persons convicted and imprisoned for crimes which they are proven subsequently not to have committed provided the person did not by perjury contribute to his own conviction."

Point of Order

Mr. Smith. We’ve taken this up before too. I’d like to make the same motion Mr. Arnette made. This is the same thing we had...
Mr. Henry: Can you explain the debate like this? Mr. Warren, the Clerk that there are identical amendments that we considered some amendments that were decided yesterday.

Mr. Warren: Mr. Chairman, if you're looking at the amendments, I'm not only have these in my head. I said if anyone else had the same idea, I supported their amendment. Now, I don't have the amendment before this.

Mr. Henry: Those are out of order, so call the next set. Mr. Clerk.

Mr. Velázquez, do you wish either set of yours why do you rise, Mr. Thompson?

Motion

Mr. Thompson: Mr. Chairman, all we've done for the last hour is argue on whether the amendments are germane or not; so I'm rising to make a motion that we vote on the entire subject matter.

Mr. Henry: Mr. Richard Thompson now gives the previous question on the entire subject matter. Mr. Clerk, there are other amendments. Is that correct?

Mr. Pointer: Delegate Velázquez has a set of amendments. He has just withdrawn the second one. Delegate Kilbourne still has a set of amendments here.

Motion

Mr. Kilbourne: Mr. Chairman, I wish to move to suspend the rules in order that Section 12 can be called from the table and be reconsidered, particularly the language that puts Miranda v. Arizona in the constitution.

Mr. Henry: Mr. Kilbourne, your motion would be out of order, because yours is to suspend the rules and Mr. Thompson's is a privileged motion of the previous amendment. So we'll have to dispose of his motion first.

There are two sets of amendments, and we don't have a list because we're not on final passage.

Mr. Perez: why do you rise sir?

Point of Information

Mr. Perez: Point of Information. The entire subject matter on what?

Mr. Henry: The entire subject matter being the proposal by the committee on the Bill of Rights if you vote yes on the motion, then you shut down debate, any further debate, on this proposal. If we would allow some debate, there would be no more debate. Whether you want to have the right to debate.

Why do you rise, Mr. Avant?

Mr. Avant: Would I be in order to require that the Clerk read the two amendments that are still pending?

Mr. Henry: Yet, Sir. I think that would be Mr. Zervigon, why do you rise?

Mr. Zervigon: Mr. Chairman, it's my understanding of the rules that we would still vote on these amendments, but that we couldn't debate them.

Mr. Henry: They're not pending. Although you see they've never been offered.

Pending Amendments: Read

Mr. Thompson: The first of these two letters is a matter of privilege.

Mr. Henry: The second letter is a matter of procedure. The right to consider it is administrative, not legislative, and it is not the legislative. If we were to yes it, we would have to pass it by another vote to get to this.

Amendment No. 1, page 4, 11 is after the word, "Section 12," a set of amendments passed by delegate Davis and adopted in the amendment on September 14, 1973.

Amendments

Mr. Pointer: A set of amendments, offered by delegate Velázquez as follows:

Chairman, that in Section 12, insert the following:

"The same for the following:

Section 20. Right of victims of compensation for injury or death, victims of violence against persons convicted and sentenced for crimes which they are proven to have committed provided such victims is not only to assist in the adoption of such amendment, but the delegate shall be allowed to speak.

Point of Order

Mr. Tapley: Point of order, Mr. Chairman.

The delegate should explain the body, he simply asked you for some explanation.

Mr. Henry: Yes, Sir. I realize that would have been what I can form, because I'm certain, unless I'm clear, that it is the delegation statements that are considered.

Therefore, I will call the rule number one, where it is. And that I guess is the amendment that is according to Mason Mason. Therefore, what the delegate asked was simply that.

Mr. Perez: Is there objection?

Mr. Perez: I think there are no objections.

Mr. Henry: No, sir, there are no objections.

Mr. Velázquez: And other amendments. I withdraw, Mr. Chairman.

Mr. Avant: Order, Mr. Davis.

Mr. Avant: I want to emphasize that the case is not forgotten, any where there it should be forgotten. Now, I believe this rule is still the only one that's working, I know, that there was more than once I've been here and gone out of that that will be no change. I have the request for my own amendment like the whole House. I don't think we are going to come agreement.
Mr. Henry Mr. Jack, our rules provide that the chairman may call for a sense of the convention. Now I'm not going to stand up here personally and rule an amendment out of order unless I'm absolutely certain, as I was on the amendment that we had here a while ago, that we had considered one of the identical wording of that on yesterday, don't you see? I'm not going to say that this amendment has or has not been considered because I don't know, in my own mind that it has or that it has not. We'll let the delegates determine, and that's a fair ruling under the rules.

Mr. Jack Well, let me ask you this. I'm looking at all of them, and I don't see "felonies" but in this one. Can I be heard and read it?

Mr. Henry He's already read the amendment and we'll read it again, sir.

Mr. Jack Well, alright, the others don't have "felonies" in it. Can he read them so they can understand? I don't want this group voting on something they don't understand.

Motion

Mr. Velazquez Mr. Chairman, in the... in trying to save some time and to try to get this issue really before the people, I've had a talk with Representative Jackson, the Chairman of the Committee on the Bill of Rights, and he has told... given me his solemn word that he will introduce legislation to this effect in the next session of the Louisiana Legislature and bring this thing before all the people and before all the elected representatives of the people. And in light of that commitment from Representative Jackson, I request permission to withdraw my amendment.

[Amendment withdrawn.]

Mr. Poynter Mr. Chairman, the next set of amendments would affect an amendment to Section 12 which has heretofore, of course, been adopted. A motion to reconsider has been tabled. Therefore, its consideration would have to be preceded by another motion.

Motion

Mr. Kilbourne Mr. Chairman, I move to suspend the rules for the purpose of removing Section 12 from the table and reconsider Section 12, specifically for the purpose of removing the first sentence as set forth in the amendment.

Mr. Henry The gentlemen now move for suspension of the rules for the purpose of reconsidering the vote or calling from the table the motion to reconsider on Section 12. The motion is not debatable.

Mr. Casey.

Point of Information

Mr. Casey Could the Clerk read the sentence that the suspension of the rules is directed at so we'll know what we're removing?

Mr. Henry I think your point is well taken.

Amendment

Mr. Poynter Mr. Casey, the amendment that would be proposed at this time, of course it would be open to any amendments, but Mr. Kilbourne presently does have an amendment, the effect of which would have to be that previously adopted Delberts' amendment which was adopted on September 12. That amendment by Delegate Delberts took out of the committee proposal the first sentence of Section 12 as you have it before you.

On page 12 through 14, the sentence at that time in the proposal read, 'When a person has a right to be detained, he shall be immediately advised of his legal rights and the reasons for

Mr. Rayburn Mr. Chairman, I merely wanted to know why Mr. Kilbourne wanted to suspend the rules to reconsider this particular provision.

Mr. Henry The Clerk was just reading... there is some language that was deleted. I think that he wants...

Mr. Rayburn He read the Delberts' language, but I wonder why... Mr. Kilbourne... what language he has? I would like to know that, Mr. Chairman.

Mr. Henry All right. Read it again, Mr. Clerk.

Mr. Poynter Mr. Rayburn, the effect of that amendment would be to wipe out the Delberts' amendment, as I appreciate it, and to read the Section 12 as it was originally drafted before you, sir.

Isn't that correct, Mr. Kilbourne?

Mr. Kilbourne Or just to delete it, period, and leave the first sentence out altogether.

That's what you want to do? All right.

He wants to wipe out the Delberts' amendment and leave as deleted, the first sentence.

Point of Order

Mr. Avant Point of order.

As I understand the rules, if we suspend the rules with respect to this particular amendment, then the door is open for any and all other amendments to that particular section that anyone may choose to offer.

[Convention refused to suspend the rules to reconsider Section 12: 44-64. Previous Question ordered.]

Closing

Mr. A. Jackson To be very brief, I want to express the appreciation of the Committee on Bill of Rights and Elections for all of the work done by the members of this convention in making the Declaration of Rights Article a good article that I believe will redound to the benefit of all Louisianians. I know that it's been tough and hard. We expected this because we were dealing with some of the real gut issues affecting the rights of individuals. For the last half day, you have been considering amendments that were not authored by this committee. But, we thought that in the interest of everyone receiving full attention to their concerns, that we would not raise objections. We simply wanted to say to you that we appreciate the hard work done by members of this convention in making the Declaration of Rights Article an article that we think will extend freedom and will provide a glowing edge of dignity and freedom for all Louisianians. I urge the adoption of this Rights Article for the people of this state.

[Proposal passed: 88-28.]

Personal Privilege

Mr. Rayburn Mr. Chairman and fellow delegates, I would like to susp-- that we ask someone in authority to try to schedule some time for committee meetings. Revenue, Finance and Taxation has not consistently for the past several months. To-
Mr. Chairman, I stand here many a time, but not as happy as I am at the moment. I'd like to get a moment and ask all the members of the committee on Bill of Rights and Elections to join me here at the podium. And I have a reason for assuming this position, if they would join me here, I would be pleased.

Well, I wanted this to come because I think that the people in the House are very concerned about state. And if we were able to get along and bring out a difficult article such as the Declaration of Rights, Article, with this conglomeration of human beings here, I think this early speaks of the strength that we have in this state and I want you to see these wonderful people who are here in this convention, this committee, which only pays to the dignity of this state, as I'm sure you want to see us here, that we are proud of the Right's, Article, and we have a great Right's Article, and I want to say, in appreciation to the members this convention, Mr. Shady Wells was a part of this committee, and I'm sure you know what I'm going to get as a part of this, I'm going to get it passed by this convention.

I just want to say, Thank You. We appreciate the efforts.
47th Days Proceedings—September 14, 1973

and I'm going to be here next Tuesday, as I said. And I don't...it doesn't make any difference. I'd just as soon work every day in the week. My check is the same. I don't get...I did not accept the fifty dollars a day. I got a better deal year before last, I guess.

And so far as committees having time, there is Sunday, Monday and Tuesday available for committee meetings, and I don't think it's necessary to go that route. But, I think there is ample time for committee hearings if we use the time which we have wisely. I hope that perhaps after next week we might be able to come in at twelve or one maybe one or two days, and allow committees to meet in the morning because, gentlemen, I do realize, and ladies, that this is a problem. But I'm having a problem because some people can't meet this day and some people can't do that. And I realize that if tomorrow weren't a football game day, that everybody would be dying to go home, too, and that's fine, because I'm going to be here.

But please understand, please understand that I'm doing the best I can and I'm not trying to frustrate any one of you out there. And I know my temper gets short up here, occasionally, maybe a little too frequently, and for this, I do apologize. You've got a difficult job, and I've got a difficult job. But I say again, and again, and again, I asked for, and you asked for it. And I'm not going to turn it loose, and I hope to God you don't because this is the one chance we've got to do something for the people of this state. I think most of you, if not all of you, are sincere. I assure you that I am, and if I've hurt your feelings, I beg your pardon, and I apologize. You've been short with me at times, and I've been short with you, and we're going to have to dance for four more months. But I'll be just as nice as my patience will allow me to be, and I hope that you understand what I'm talking about.

[Adjournment to 9:00 o'clock a.m., Saturday, September 15, 1973.]
Mr. Zervigon. Mr. Chair and delegates, I think in order to understand what the Committee on Legislative Liaison is trying to accomplish with this resolution... You need think to yourself that it's moving day. That for each room in the new house you have a box. As you decide what's going to go in that room, you put the articles in that box. You have one for the living room, one for the dining room, one for the bedroom, and one for the attic. What this resolution attempts to set up is a uniform system that we refer to different sources of statutory material where each one of us knows what the other is talking about. The Committee has proposed five categories.

The first of the articles and sections of the new constitution, which is the material we're considering, and passing at this point on the floor the resolution proposed by the 1921 Constitution which are statutory but would be subject to change only by a super-majority. This is what we've talked about among other things as the third or fourth category of the constitution to change anything it would be three-quarters of the legislature to change anything or if it's one vote. Anything you want very much probably will not be mentioned in the constitution as needing a two-thirds vote of the legislature to change, you could move into statutory law and still require that it take a two-thirds vote of the legislature to change it.

Mr. Zervigon. Yes, and the reason why that is a bit difficult is because the matter has not filled in to us. But if you provide an amendment, it made, and they would pass it. Many delegates have said that it would make it easy, and they want it to go up on the statute book because of the time. I think we've considered it and I think that was made clear.

Mr. Brown. Then I think you're a good one and we would be more likely to do it that way. We have not yet. And they were not mentioned in the time limit of the time. I think this has been mentioned, and I think that was made clear.

Mr. Zervigon. Yes, and the reason why that is a bit difficult is because the matter has not filled in to us. But if you provide an amendment, it made, and they would pass it. Many delegates have said that it would make it easy, and they want it to go up on the statute book because of the time. I think we've considered it and I think that was made clear.

Mr. Brown. Then I think you're a good one and we would be more likely to do it that way. We have not yet. And they were not mentioned in the time limit of the time. I think this has been mentioned, and I think that was made clear.
48th Days Proceedings—September 15, 1973

would be to the convention to do this. "Minimal"
Mr. Henry. There wouldn't be any added cost, Mr. Tobias.

Questions

Mr. Champagne. I think you answered it, but it's "yeas", "nays" and "not voting", right?

Ms. Zervigon. Yes, sir, rather than "absent". It's to change that word in the Journal so to allow that word to be changed.

Mrs. Warren. I'm still... I'm a little bit puzzled. We mean... I mean... for your amendment. But do you mean, since the question came up, a person could come in, answer roll call, disappear, and he's present all day?

Ms. Zervigon. No, no, no! It doesn't say that. It just says that he's not voting, as it shows on the tally sheet that comes out of the voting machine. Not voting. It doesn't say why he's not voting. On the other hand, if present, if an issue comes up that you don't feel sufficiently informed to vote intelligently on, you are recorded as absent, even though you may be sitting in your chair the whole time.

Mrs. Warren. I can understand that too, and at the same time, I can sit in my chair and record absent, and in the next two minutes something comes up and I feel adequate to vote on it and I'm recorded present. In this amendment you can come in here, push the button and you are absent all day, but you'd just be recorded as not voting.

Ms. Zervigon. That's right, and no reason for your not voting would be shown. Now, a reason is shown that is not accurate for all the people that are not voting on one issue or another.

Mr. Stinson. Do you know that they have a course at L.S.U. on Convention '73, and do you know that they have been checking our Journal and the comments have been made, "Look, there are a lot of people that are absent and should be there at their desk listening and tending to their affairs," and this will correct that impression, won't it?

Ms. Zervigon. No, sir, I didn't know that, but I believe it will.

Mr. Stinson. They've especially been calling attention to the fact that many are absent and not being here attending to the business.

Ms. Zervigon. I appreciate you bringing that up, Mr. Stinson.

Mr. O'Neill. Mary, have you checked with the staff to see if this is going to be any more trouble?

Mr. Henry. Don't worry, the staff will cheerfully do it. Don't worry about the staff. They don't have much to do anyway.

Mr. Chatelain. Mary, I've got a problem trying to analyze this. For instance, last week I had to go to Lafayette to make a talk. I was gone for three hours, and I thought it was more important than being here. Of course, while I was gone I was reported absent. Wouldn't this encourage some of us to leave for two or three hours at a time and, perhaps, just be away? I'm concerned about this.

Ms. Zervigon. Mr. Chatelain, it's my opinion that being listed as absent on a roll call vote in the Journal is not really to somebody who feels he really must go carry on his business somewhere else. All I'm trying to do is make the Journal read a little bit more accurately, that's all.

Mr. Chatelain. Well, you don't think it would encourage absenteeism, then?... So far as voting...

Mr. D.K. number two, this couldn't be in any way construed as a yellow light? If you don't want to vote on an issue...a real hot issue...and you wanted to not vote at all, this wouldn't encourage this kind of operation?

Ms. Zervigon. I wouldn't think so, Mr. Chatelain. I believe most of us would like to be known as people who can make up their own minds on an issue.

Mr. Chatelain. I appreciate that, and thank you.

Mr. Brown. Ms. Zervigon, I'm for your amendment. I think it's good. You might want to consider adding an apostrophe category. "If a person arrives around right now, except for the Associated Press and Mr. Gillis of the Times-Picayune, they're all absent today, and the press is screaming and hollering about us not showing up. Well, I think that it's a real reflection, the fact that not a bit of the press is here today. We might want to put 'absent press' since none of them bothered to show up this morning.

Ms. Zervigon. Just one thing on that point, the Times-Picayune is here, and the Associated Press is here, but everybody else is gone.

Mr. Flory. Mrs. Zervigon, I find no fault with the resolution, but I need a clarification. Suppose we had a quorum call for the record just prior to a record vote and it was a very important matter. How would a person be listed on the record quorum call; would he be listed as absent or would he just be listed as not voting?

Ms. Zervigon. If it were in the record?

Mr. Flory. For a quorum call.

Ms. Zervigon. It would be listed "absent" and "present" as it is on the original roll call. This only applies to a vote on which there is a split of "yeas" and "nays". The third category is people who are not voting for one reason or another.

Mr. Flory. Let me be sure I understand what you say, then. If we had, during the middle of the day, a record vote ordered on a very controversial issue, someone called for a quorum call, for a recorded quorum call, I want to know on that record quorum call, would a person be listed as absent at that time which he may actually be absent, or would he just be listed as not voting on a quorum call?

Ms. Zervigon. This only changes the rules as it applies to a record vote. It has no effect on quorum calls or roll calls.

Further Discussion

Mr. Assiff. Mr. Chairman, delegates, I object to the resolution. I do not think the way it is stated that it will accomplish much and will cause much confusion. I would have no objection if we added a new category and stated "not absent", then the next category "not voting," so that if a delegate wished to indicate that he was present and not voting for any reason...that is up to him...he could so indicate. But, I do feel that if you are absent it should be indicated as such and it could cause a great deal of confusion when we have record votes. I don't see why we can't say "yeas", "nays", "absent", or "not voting" and the delegate could be recorded. I object to this.

Questions

Mr. Willis. Dr. Assiff, I understand that these... that there can only be three categories and that you are trying to infuse another one, notably, you can vote "yes" or "no" so that what you're doing is supposed that we can have a fourth category.
Mr. Assiff: I am not doing anything. Mr. Williams may object to what I am doing at any time, but you see, if you are absent, you are absent. It is not voting there is no way of knowing whether you are here or not. If you look in your decision, you choose to vote or not. On the other hand, if you are absent, you are not absent. If you don't press the button, then you are something else. You may be here and not vote. Now, if you don't press the button, then you are something else. You may have a reason or not. If you have a reason, you get the consent of the Chair. So I feel if you are absent, you are absent and it should be recorded. If you are here and do not wish to vote, then we have your decision, but I do not want to jump the together.

Mr. Williams: Well, that is where, Doctor, you love me, you can either be for or against, by the buttons. Now, if you don't press the buttons, then you are something else. You want a fourth one.

Mr. Assiff: I don't want anything. I want to do it properly. What I am saying is this, suppose that we have a quorum call. Suppose that it's a record vote. The individual house is here. It is one thing; if he is absent, it is an entirely different thing. He can be here and be counted for a quorum call. But he is a member of this House, if he is absent, he cannot be. I feel that if we do not make that distinction, we are confusing.

Mr. Williams: Thank you very much, Mr. Assiff. You have confused me thoroughly.

Mr. Stinson: Doctor, you understand from that that each quorum call they take, if you are not here, that it would be "absent", not voting would show "abstent". You understood that, didn't you.

Mr. Assiff: But, we may go throughout, in a number of votes, a number of record votes, and we have no word of knowing these individuals, think that would discourage those who are making every effort to be here.

Mr. Stinson: Not when you call a quorum call, maybe, every thirty minutes, and if you don't vote that would show it an absent.

Mr. Assiff: I don't think we've had any quorum calls that often, and I could leave right after a quorum call.

Mr. Stinson: Wouldn't you say we've had at least 50 each day?

Mr. Assiff: No, I don't think so. I think it's material, because, if you want me to answer, I will press the button on a quorum call for somebody else. I don't feel that on the House you ought to say "yay", "nay", and if we're going to take it that far, "absent", "not voting". Otherwise, we cause confusion and I feel those of us that are here will not get credit for being here. Thank you, Mr. Chairman.

Mr. Velazquez: Mr. Assiff, wouldn't this lead to somebody's buddy pushing his button in the morning when he's not here and he never shows up all day and there would be no way for the convention to know the man was not here all day, because his friend would do him a favor and push the button first thing in the morning on the initial roll call?

Mr. Assiff: I have no objection to the not voting, then the person would indicate to the chair that he is here and not voting and it would be recorded. I would have no objection to that. It is easy enough for him to send a note to the chair and have it written and sign his name. That would solve the problem and yet, not create confusion for the convention.
48th Days Proceedings—September 15, 1973

amendments on a proposal.

Mr. Brown But, who makes that decision? As I read this, if the Style and Drafting changes go back to the substantive committee and the substantive committee says ‘No, it’s just the way it was. That was our intention. That’s the way we wanted it reported out.’ Style and Drafting has final veto power at that point, so they can have the decision to determine whether or not it’s a substantive change or not. Is that correct?

Mr. Casey Style and Drafting certainly has the final say-so as a committee. Of course the final decision makers will be the convention itself, because Style and Drafting must submit the proposal back to the convention, but what we’re really concerned about are merely two things. Number one, I think the substantive committee might be in a position as the best decision maker as to determine whether a substantive change is actually being made because they are most familiar with the subject matter. Secondly, I think it’s going to be a time-saver, because if you have seen the recommended stylistic changes on the Legislative Article alone, 264 changes have been recommended by the research staff in the Style and Drafting report, all I’m suggesting is that we make sure that these 264 changes, and it is a comparable or similar amount on the Executive Article, that these changes are strictly stylistic.

Mr. Keen Tom, I’m in accord with what you’re trying to do. I just want to make sure that I understand the procedure that will be followed once the proposal has been referred to the substantive committee. When a substantive committee or doesn’t make comments, it goes back to the Committee on Style and Drafting and from there will be reported to the floor.

Mr. Casey That’s absolutely correct.

Mr. Kelly Tom, I don’t believe you were at the last Style and Drafting meeting that we held but it was a consensus of the committee to come up with a recommendation just as you’ve done here. So, I think we could say that the committee would be basically in favor of what you have here.

Mr. Casey Mr. Kelly, in answer to that, I went to both Style and Drafting meetings. After the first one I was somewhat concerned that the committee might go too far. That’s why I offered the resolution, and as a second meeting, I think that’s really what the committee intends to do anyway…to at least coordinate its efforts with the substantive committee.

Mr. Kelly I think you’re absolutely right.

Mr. Asseff Mr. Casey, as you know, I am in agreement with you, and as Mr. Kelly pointed out, the Committee on Style and Drafting of which we both are members, unanimously agreed to follow this. My only concern is this: is whether or not the provision is clear as to the procedure that should be followed. I mean I’m all for it, but I’m worrying about the drafting. Should the report be returned to you let us say on a Friday or something of that sort and whether or not the relationship to each other is clear. I’m all for it.

Mr. Casey Dr. Asseff, I think it’s clear, and I don’t think they would do it in five days and if the committee has submitted it back to the substantive committee on a Friday or a Saturday, I think that substantive committee is under a mandate of course of obligation under our rules, to do their work rapidly.

Mr. Asseff Well, if you’re satisfied, it’s all right with me.

Mr. Goldman Delegate Casey, you probably know that I’m for this resolution, too. On the question of the fifteen days, that several people seem to be concerned with, isn’t it human nature to always put off things to the last minute? If you give them the time, they’ll just put it off. If you give them the five days, there’s no earthly reason why they can’t get it done.

Mr. Casey That’s correct, Mr. Goldman. Fifteen days would be no problem now, but on December 26, I think five days could almost be too long. I’d hate to have any more time than five days.

[Resolution adopted without objection. Motion to take Committee Proposal No. 22 out of its regular order adopted without objection.]

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Mr. Paynter Committee Proposal No. 22, introduced by Delegate Stegg, Chairman on behalf of the Committee on the Executive Department.

A proposal making provisions for a code of ethics and the Louisiana Board of Ethics. The proposal was reported out on August 23, reported favorably, and again on August 24 was read and ordered engrossed and passed to its third reading. So the white copy as introduced is still a true copy of the bill. Committee Proposal No. 22, I’ll get the numbers here in a second.

Explanation

Mr. Gravel Mr. Chairman and ladies and gentlemen of the convention, Committee Proposal No. 22 establishes in the proposed new constitution one Board of Ethics. The purpose of the proposal is to make sure that there shall be uniformity in the determinations with respect to considerations about ethical conduct of all state officials and all state employees. This particular proposal is rather simple. It’s the vehicle authorizing, of course, the legislature to act with respect to the adoption of a code, but it also, in Section B, provides that subject to the confirmation of the Senate, that there shall be seven members appointed by the governor, one from each Supreme Court district, for six year terms. Now, very frankly this provision was inserted in here in order that the governor, with the consent of the Senate, be able to appoint members of the Board of Ethics. As we interpreted it, otherwise the constitution to the composition I should say…of the board. Just so there would be any misunderstanding, the Senate act for also direct your attention very briefly to Committee Proposal No. 23. That’s the dual office holding proposal that is being proposed by the Committee on the Executive Department, and there is an interrelationship between the proposed dual office holding provision and the Board of Ethics, in that this Board of Ethics would supervise in addition to any other duties prescribed by statute…would supervise the dual office holding concept in all matters relating to the holding of more than one position by employees and officials of the State of Louisiana. Now, Mr. Chairman and ladies and gentlemen of the convention, there have been many very fine speeches made to us about the concept of the code of ethics and otherwise about the public image and about what the public wants and about what the public expects in a new constitution. I don’t believe that we are going to ever be involved, nor have we ever been involved, in an area more important to the integrity of our efforts and to the success of our efforts than in dealing with these two proposals. After all, you have talked about the necessity of the court before you this morning. Reverting back then to Committee Proposal No. 22, we ask that you give consideration to the short discussion with respect to the mandate that the code of ethics be constituted and also the method of its composition in order that we can provide in the constitution the basis for competent and comprehensive legislative action. I yield to any questions.
Mr. Gravel: The committee did not, provide, but in view of the fact that the appointments are made by the governor, that may be something that should be considered. But the committee in its Proposal Number 22 did not provide that there be overlapping terms.

Mr. Zervigon: You didn't discuss the matter in your committee deliberations at all.

Mr. Gravel: I think Mr. Abraham is mistaken. I was not at the meeting, but he says yes, it was considered, and apparently the committee decided that the terms would not be overlapping.

Mr. Zervigon: I would appreciate some explanation from another committee member on that subject.

Mr. Gravel: Just a moment. I beg your pardon.

Mr. Gravel: I think the idea was that it would be left up to the legislature in the act. That's correct. Thank you, Mr. Abraham. That the legislature could provide for overlapping terms.

Mr. Binelli: Mr. Gravel, extending on Mr. Zervigon's point, there is no reason that there would not be overlapping terms that a member could serve. Is that correct?

Mr. Gravel: That's correct. The legislature there also could provide for a limitation.

Mr. Stinson: Mr. Gravel, if they are all for six years, how can they overlap? The legislature can't overlap them.

Mr. Gravel: They can't make any for less than that or more than that, so they are all going to have to go out at the end of each six years, won't they?

Mr. Stinson: But the way it is now, one governor would appoint all the next governor's six years in his second term wouldn't, then the next one would appoint all again, isn't that correct?

Mr. Gravel: The next governor, yes, that is not in the present constitution, I don't believe. How are they appointed now, from the supreme court districts now, or how?

Mr. Stinson: Let me say this, there is a provision in the constitution with respect to the board of ethics, to two boards of ethics at this time.

Mr. Gravel: But what areas are they appointed from?

Mr. Stinson: No, it's in the present.

Mr. Gravel: I'm referring to the present constitution, there are appointed from districts.

Mr. Stinson: I think, specifically, not, for example, from the superior court districts. In other words, one governor makes one appointment and that the governor makes one appointment and that the governor makes another appointment the same way, but there isn't any overlapping to the legislature, is it?

Mr. Gravel: I think that this, but I don't know that that would be an amendment to the constitution. As far as I know, the legislature has the ability to set forth whatever it wants within the present constitution. The legislature has the ability to set forth whatever it wants within the present constitution. So this is no limitation.

Mr. Gravel: I think there is a provision dealing with the supreme court districts, for the board to the supreme court districts, and that looks at the superior court districts rather than the supreme court districts. This is a question, whether or not there would be any overlap in a two year period, would it be right without some authorization from the constitution to do it wouldn't you agree with that?

Mr. Stinson: Well, I don't know if there would be any--

Mr. Gravel: I think that there would be an overlap in the supreme court districts, that the legislature has the ability to set forth whatever it wants within the present constitution. It is not the legislature's authority to adopt any of these because we are pretty much leashed to the constitution. They are a two year period, and that raises the question that I referred to in the earlier proceeding, the supreme court districts, where there is some overlap?

Mr. Gravel: I think that there is an overlap. I don't think that that is a problem. I think that there is a lot of problems that we could have with the legislative districts, whether or not that would come from the supreme court districts.

Mr. Stinson: I think that we would have to come from the supreme court districts.

Mr. Gravel: I think that we would come from the supreme court districts.

Mr. Stinson: I think that we would come from the supreme court districts.

Mr. Gravel: The amendment to the supreme court districts.
Mr. Gravel In other words, that would be the area in which the Board of Ethics would be able to operate.

Mr. Drew Nothing but conflict of interest, malfeasance, nonfeasance, or any of that couldn't be incorporated in a Code of Ethics.

Mr. Gravel There would not be, and in our opinion should not be, because there is ample provision in the criminal laws of the state to take care of those particular problems if we didn't want to duplicate...

Mr. Drew Well, what it amounts to in fact is, you've left nothing to the legislature, isn't it?

Mr. Gravel I don't agree with that at all, Mr. Drew. That doesn't follow at all to me, but I don't think that we should talk about the authority of the criminal courts and criminal jurisdiction in the Code of Ethics. That's an entirely separate matter in my judgment.

Mr. Munson Mr. Gravel, you may have already answered this, but what happens to our present Code of Ethics?

Mr. Gravel Well, we presently have two Boards of Ethics.

Mr. Munson One for elected officials and one for state employees.

Mr. Gravel This would be a directive to the legislature that those two boards in effect be consolidated and that one board consider all of the problems that relate to conflicts between public duty and private interest.

Mr. Munson In following Harmon Drew's questions, all of those matters that are covered in the present Code of Ethics for state elected officials and state employees could not be covered in a new Code of Ethics.

Mr. Gravel I don't understand what you mean by that.

Mr. Munson Well, this only said a Code of Ethics prohibiting conflict between public duty and private interest. The present Code of Ethics goes much further than that.

Mr. Gravel Well, all that the present Code of Ethics does, and I don't think this would prohibit a new Code of Ethics from doing the same thing, but all that the present Code of Ethics does is to make it a misdemeanor to violate the provisions of the Code. I mean insofar as any criminal prohibitions are concerned or any criminal consequences are concerned.

Mr. O'Neill Mr. Gravel, I see no provision here for the removal of these people from this board. Can you go into that a little bit?

Mr. Gravel Well, I think that the general provisions that have to do with the removal of public officers and employees, of course, would be available in this case.

Mr. O'Neill Could you tell us all, sir, how the present Board of Ethics is composed and who makes the appointments there?

Mr. Gravel I thought I had covered that to the best of my ability. There are two Boards of Ethics at the present time, one dealing with employees and the other dealing with statewide elected officials and members of the legislature. There are two separate boards. They are constituted in a different manner. Now, the detail as to how they are appointed I don't have before me, but I do know that the Employees Board constitutes five people who are appointed from specific categories.

Mr. O'Neill Mr. Gravel, let me just say this. Mr. O'Neill, so there won't be any misunderstanding. Keep in mind that this directive to the legislature is to enact a Code of Ethics, not just a law that deals in part with the concept that we are feelingly present here. A code would be in my judgment comprehensive and could include everything that is not specifically excluded by virtue of the language contained here, which is rather limited language.

Mr. Jenkins Camille, I hate to admit my ignorance but you know I haven't read these provisions before just now because I didn't know they were coming up. Do we have a research memo on these proposals such as we've been given here on the local government section and on other sections?

Mr. Gravel Not that I know of, sir. No. Not on Committee Proposal No. 22, that I know of.

Mr. Jenkins Well, I mean so we don't have a clear presentation of the differences.

Mr. Gravel Well, Mr. Jenkins, frankly, the committee felt, and I feel that this is a very simple provision, but a very important provision in the constitution, and all that we are doing here is to in effect say that there shall be one Board of Ethics instead of two, and that the legislature shall prepare a code of ethics. Board constitutes first and second, and three, that the Board of Ethics shall be constituted as set forth in Section B. Frankly, I think this is a good way to proceed with respect to a constitutional provision, and we are leaving, very frankly, a full implementation of this directive to the legislature.

Mr. Jenkins Well, where in the new constitution would this provision fit? I notice there's no article or section. What article would it be under?

Mr. Gravel Well, that would depend upon how the constitution, the document, is finally composed. It might be under the general provisions or it could be under some other area that would be defined and delineated by the staff. I can't locate it for you now, unless I know what else has been adopted. I don't know that I could even do it then. But I can assure you that a place can and would be found for it in connection probably with the general provisions that relate to the government of the State of Louisiana.

Mr. Jenkins Well, can you give me the present citations in the 1921 Constitution on these matters?

Mr. Gravel Article XIX, Section 27.

Mr. Hayes Mr. Gravel, isn't it true that the Supreme Court districts have some inequities in their representation that they don't have a fair representation for each judge?

Mr. Gravel I think the Supreme Court districts are not apportioned according to the "one man, one vote" concept.

Mr. Hayes Right. Now, you have seven districts according to this, and you're trying to use some already cut districts. Wouldn't it be better to use the U.S. representative districts, would have a fair representation for everybody.

Mr. Gravel There's no question but that there would. Then we would run into the probability of having a board constituted of probably nine in order to get an odd number, one from each congressional district and maybe one appointed at large by the governor. That may be an alternate solution. Let me just say this, on the composition here as far as the Supreme Court district representation is concerned and so forth, I don't think that the committee has any hard and fast feelings about it. The main idea is to give adequate representation. We
felt that a board of nine would be too large and that's why we went to the Supreme Court district concept, Mr. Hay. That was the reason for it.

Mr. Burns  Mr. Gravel, I notice it provides that a citizen from each Supreme Court district will be... compose the board. Is there any provision in the present Board of Ethics as to whether elected state officials can be members of the board, or are they eligible for membership?

Mr. Gravel  I don't know that there is, Mr. Burns; but, of course, the Code of Ethics, I think, would have to prescribe any additional qualifications or any prohibitions with respect to the holding of membership on the board.

Mr. Burns  I was just wondering as to the propriety of having state officials compose the board, or comprise the board and... and pass on their own ethics.

Mr. Gravel  Frankly, I don't think there is any question but the code should prohibit any employee of the state or any official from the state from being on the board. That's my own personal opinion, however, sir.

Mr. Thompson  Mr. Gravel, is this going to limit people that say are lobbyists to this convention, that they couldn't be delegates or hold other offices or just what do you mean by this?

Mr. Gravel  It won't have any effect on anybody at this convention, Mr. Thompson.

Mr. Thompson  Well, I'm talking about in the future. I'm sure it won't because it don't go into effect until after the convention. I understand that the present Board of Ethics are doing a pretty good job. What's going to happen to it?

Mr. Gravel  Well, Mr. Thompson, the two--I think I've stated that—the two boards that are present in existence... if this constitution passes and if this is adopted, the two boards would then in effect be abolished and substituted for by a board. Now, there is... that's all that it does. There would be only one Board of Ethics instead of two. We could spend hours talking about whether or not you should have the two boards that we presently may have. But we just feel that when we are talking about the conflict between private interest and public duty, there should be an overriding board operating similarly in my judgment to the Civil Service Commission that would govern, under a properly adopted code, all of the problems that would be encompassed in such conflict cases.

Mr. Warren  Mr. Gravel, Mr. Burns asked one of the questions I wanted to ask you. The next question is, the terms that they would serve could, if you don't specify, they're terms of ten years, which is very short, one could serve five years, twelve years, eighteen years, make a career out of being on the Board of Ethics.

Mr. Gravel  Well, if the succeeding governor would continue to appoint the same people under this provision, if it's not amended, and it is presently before you, Mr. Warren, that is correct.

Mr. Warren  Thank you.

Mr. Gravel  Yes, sir.

Mr. Burns  Mr. Gravel, as a lawyer, of the legal status of subdivisions of the state included in the present code of ethics.

Mr. Gravel  I don't believe they are. I think I'm an asking one here that has been a lot of discussion expressed for individual rights and liberties and freedom, as to you have to give over giving a seven-day period against the governor a sort of leverage to set the ethics of all of the officials in the state, as perhaps some conflict with the right of officials to be charged with a crime in the state that we've set out in the Bill of Rights, the right of privacy?

Mr. Gravel  What I think is, probably, I don't know that I quite understand your question because we are not talking about a conflict that exists between two or more people we are not talking about the conflict of personal interest and private duty; we are talking here about the question of whether or not a person is in the public interest, operating fairly for the State of Louisiana, whether his conduct is ethical. As it is now, we have a code of Ethics in the legal profession, the judiciary has a code of Ethics, I don't believe we're talking about the conflict between that individual and anybody else, Mr. Burns.

Mr. Burson  Well, that is the point, though, Mr. Gravel. The way this thing is set up, it is there any guarantee, for instance, that the conflict which might be allegedly a conflict of ethics, or, in fact, is a political conflict. And that this Board of Ethics appointed totally by the governor could be used for such purposes.

Mr. Gravel  Well, Mr. Burson, the only way I can answer your question is to say that in Section A the delimitation of the power of the Code of Ethics is limited to the area whereby they can act under, the board can act under such a code which prohibits conflict between public duty and private interest of all officials and employees of the State. That's what it proposes to do. Frankly, I'm somewhat amazed at the idea that there would be a such concern about such a provision; when really, we already have such provisions that relate to ethical conduct that many people think are perfect, and that a new code can and should be devised by the legislature that would be comprehensive under the authority of our Board which could make determinations in this particular area set forth in the proposed constitution.

Mr. Burson  Would you agree that the concern that I have just expressed has also been articulated recently by the State Superintendent of Education, Mr. Mr. Thompson, with regard to alleviation of breach of ethics?

Mr. Gravel  No, sir. I would not agree with that situation.

Mr. Gravel  Mr. Burson, in the line that the Mr. Mr. Thompson, I understand, there is some complaint about the size of the Board of Ethics. It has not been a major attempt to say, there is no restraint placed upon that action in the court because the rules of procedure is not said to follow in the board.

Mr. Burson  But wasn't there a statement by Mr. Mr. Thompson, if I recall correctly, the fact that there was not, in essence, due process in the trial of a whole Board that we have at the present time?

Mr. Gravel  Well, I think the point that Mr. Mr. Thompson is making is that the Board has not been decided on the statutes before it, you have an informal hearing in that, what do you say about that? Is that worse or better than a formal hearing kept and decided by Mr. Mr. Thompson and the eight of us individually.

Mr. McLaughlin  Mr. Gravel, under the present code of Ethics for the taking of state officials.

[1278]
legislators, it's composed of three people: one named by the House, one by the Senate and a retired or a former judge named by the governor. Under this proposal as I read it, the governor will name all people. Is that correct?

Mr. Gravel That's correct.

Mr. Rayburn It further includes all elected officials, whether you are a constable or police juror or anything else, is that correct?

Mr. Gravel It would include all persons holding public office either in the state or any of its political subdivisions.

Mr. Rayburn Then the people that are directly involved would have no authority or nothing to do with the makeup of the people who we're going to cover them, is that correct?

Mr. Gravel As I mentioned earlier, Mr. Rayburn, the Code of Ethics could prescribe the qualifications for the appointees by the governor.

Mr. Rayburn Mr. Gravel, are you an attorney?

Mr. Gravel Well, sometimes, Mr. Rayburn.

Mr. Rayburn Would you agree to the same provision that to let the O.A. of each parish in this state select the jury? Or do you think that if you represent someone that you should have a little something to do with helping to select it. This lets the governor of the state in my opinion.

Mr. Gravel, name every person to be named, without any specifications. Our present code lets the House name one, that's as it governs us...

Mr. Gravel No, sir.

Mr. Rayburn ...lets the Senate name one and the governor name one, which I think is pretty fair.

Mr. Gravel Mr. Rayburn, what the present code did is to prescribe that the commission shall consist of five persons—this is with respect to the legislature—five persons, to be selected in the manner chosen by the legislature. Now, it's my understanding, and I may be in error about this, but it's my understanding that the legislature has provided that the governor shall make these five appointments from categories defined by the legislature. Let's be sure we understand each other.

Mr. Rayburn No, I understand that, but I'm talking about now the Code of Ethics for statewide elected officials and members of the legislature. You are correct under the other Code of Ethics, it's five and they specify where they'll come from. The legislature does.

Mr. Gravel I think, isn't it correct that the retired judge is selected by the governor.

Mr. Rayburn The retired judge is selected by the governor; the House of Representatives submits one name which cannot be a member, and the Senate submits a name which cannot be a member.

Mr. Gravel But those names that are submitted to the House and to the Senate, if I recall correctly, by the governor.

Mr. Rayburn No, sir. We nominate then ourselves in the Senate. We submit the names to the governor for him to appoint.

Mr. Gravel Well, I may be in error about this, Mr. Rayburn, but I think you are. I think that last session Mr. Methvin was appointed, that name was sent to the House by the governor, and I think that when Mr. Oursou was appointed, that name was sent to the Senate by the governor. I may be in error about that.

Mr. Rayburn It was sent there for us to confirm, but in other words the name was sent to the governor by the Senate.

Mr. Gravel I thought it was done just the opposite.

Mr. Rayburn No, sir, the governor sent the name that we had sent back down for confirmation.

Mr. Gravel Well, it seems to me, frankly, to get by it, that there's an interplay between the governor's office and the House in the one instance and the governor's office and the Senate in the other instance, before there can be any final...

Mr. Rayburn Mr. Gravel, could you visualize that this could happen: if I'm in the legislature or I might be a sheriff or a district attorney or something, and I wasn't getting along too good with the governor, and he named all the appointees, and in the heat of a campaign they called me up and accused me of something, could you realize what that could happen to me?

Mr. Gravel If you've got people that are appointed by the governor with no other qualifications established and they are going to improperly discharge the duties of their office, they could do something wrong, Senator Rayburn. I agree with that.

Mr. Rayburn Yes, sir, I think I've seen a little of that happen. I might have been confused, but I believe I've seen a little, a few things like that happen in this state. I hope it doesn't ever happen again, but it has.

Mr. Gravel You've probably also seen a lot of instances where people are holding two jobs that they ought not be holding both of them, too. They're all over the state. There's a lot of that.

Mr. Rayburn I'm afraid that could be said about some of us.

Vice Chairman Casey in the Chair

[Motion to recommit CP No. 22 to Committee on the Executive Department. Previous Question ordered: 64-29. Motion to recommit and table Committee Proposal No. 22. Record vote ordered. Motion to table Committee Proposal No. 22. Record vote ordered. Motion to table Committee Proposal No. 22. Record vote ordered. Motion to table Committee Proposal No. 22. Record vote ordered. Motion to table Committee Proposal No. 22. Record vote ordered.]

Amendment

Mr. Poynter Mr. Duval tends up amendments as follows:

Amendment No. 1. On page 1, delete lines 12 through 23, both inclusive, in their entirety and insert in lieu thereof the following:

"Section . . . (A) The legislature shall enact a code of ethics prohibiting conflict between public duty and private interests of all state employees and elected..." Insert the word "state, elected state officials".

"(B) The legislature shall create a Board or Boards of Ethics which shall investigate all allegations of violations of such a code ... place a period ", there and delete the balance of the language. Delete the last clause. It simply reads after the... on the third line of Paragraph (B) "of such a code." Delete the balance of the language. Delete the last clause.

Explanation

Mr. Duval Mr. Acting Chairman, and fellow delegates, this is basically an attempt to arrive at a synthesis of the feeling of this group. It is the... it basically keeps the bill intact. We do have a Code of Ethics and a board... and we have actually two Boards of Ethics: one which investigates employees, one which investigates elected state officials. I think when you attempt
to employ the specific makeup of a new constitution, or presents a difficult problem. Am I authorized to change the Committee proposal? There are present no law wherein the State Board of Ethics which has jurisdiction over local political ethics, thus eliminated in this proposal. Given that the political subdivision and duty of the State Board of Ethics is to adopt, I wish to go ahead and vote. I don’t want it to eliminate the word...the political subdivision eliminates the word. All it does, in fact, is an attempt to retain some in the constitution the Board of Ethics in a very simple statement and to mandate the legislature to enact a code of ethics. I think...as a transitional matter all the legislature would have to go...just to keep the current law and wouldn’t have to enact any new statutes at all as a result of this. I’ll answer any questions.

Questions

Mr. Finn: Mr. Duval, in regard to the amendment that you have, and in reading the proposal on dual employment not in positions of trust, don’t you, by your amendment, preclude the board from having that authority.

Mr. Duval: Perhaps so, but it’s my...it’s my belief that we will delete all off the committee a provision that is going to be proposed by the Executive Department Committee to begin with.

Mr. Allott: Mr. Duval, the point that Senator Hayburn just raised about what was contained in the Legislative Article, would you address yourself to that question and how it might be resolved if we adopt your amendment?

Mr. Duval: It’s my understanding that the Legislative Article only applies to the legislator themselves. I’m not really familiar enough with it, however, to answer personally.

Mr. Lanier: Mr. Duval, in your amendment that you say that this is intended to apply to state employees and elected officials. I correct in believing that the word “state” modified the employee and elected officials.

Mr. Duval: But of abundance of clarity, Mr. Lanier—well, I don’t need this. I don’t need it with him and when I referred to it, I noted that we inserted the word “state” after elected. After all of abundance of caution on this amendment.

Mr. Lanier: So that it’s absolutely clear, it’s not, that this is not intended to apply to local governmental officials or employees.

Mr. Duval: That is correct.

Mr. Finn: Mr. Duval, do you understand your amendment in full now, you put a period in after state, is that correct?

Mr. Duval: Yes, sir, that was an attempt to satisfy the Senate I guess to try to get everything inserted on the back of a slip. I know we did it, but I have agreed and passed over. I personally have no objection to leaving it in.

Mr. Finn: As you have it shown then, all the board could be to investigate?

Mr. Duval: That it’s right, that’s correct.

Mr. Finn: We’d have no authority because that board have the right with regard to whatever I don’t determine to be a gallant.
Mr. Duval The reason the board or boards is put in there...there presently is two boards. We did adopt in the bill from the...we heard testimony from the representative of the two boards and right now the two...they...it was their belief that there should be one for elected officials and one for state employees. We didn't have a great abundance of evidence to change it to one board, but this gives the legislature the right to have one board in the event that the law needs to be changed. Presently there are two boards and we didn't feel we had enough information to change the law, but we give the legislature the flexibility to change the law in the event that they think it should be only one board.

Mr. Fayard As I further read your amendment, it says, that "the board shall investigate all allegations in violation of the code and that the Code of Ethics will prohibit conflict between public duty and private interests." Now is this all the code will be allowed to do? In other words, don't you feel that there are other matters of ethics that should be covered by the code other than just conflict of interest?

Mr. Duval I think you might be right. I think...I think conflict of interests is very broad, and can accomplish many things, but it is my opinion that this doesn't limit the legislature from embelishing on that mandate.

Mr. Fayard With this specific language in there, it does not limit the legislature?

Mr. Duval Not at all. I don't think you...you have to prohibit the legislature in my opinion. [governor: 90 delegates present and a quorum.]

Mr. Brown Would you state again if you have already so stated, why did you limit this just to state officials and didn't include all officials?

Mr. Duval The reason is, that there seemed to be a great deal of opposition primarily to the committee proposal on the basis that political subdivisions were included. It felt that it would give the governor a great advantage in elections because he appointed the Board of Ethics, could use it as an intimidated; it violates home rule concept. This was the basic tenor of the opposition and this is why this amendment that it is something that could be included in the constitution on ethics and the Board of Ethics that will meet the sense of the constitution. That's...

Mr. Brown Are you for it, are you for including all officials personally?

Mr. Duval No. I am for my amendment as it says...as it speaks...

Mr. Brown You're against letting it to include local officials?

Mr. Duval Yes.

Mr. Arnette Just a couple of questions, Stan. It seems like your last clause here would prevent us from having any other additional duties provided by the constitution. Was that your intent?

Mr. Duval No.

Mr. Arnette Because it says, that "they would otherwise provide in this constitution," I don't think that will be a real problem.

Further Discussion

Mr. Abraham In Committee Proposal No. 2, we passed in Section 8 a session that stated that "legislative office of the public trust in every effort to realize personal gain through official conduct is violation of the trust of the state to the citizen," high sounding language. Then we said, "the legislature shall enact a code of ethics prohibiting conflict between public duty and private interests of members of the legislature." I think to you is why we limiting this to members of the legislature? We need this Code of Ethics for all state employees and officials and this is what we are attempting to do with this particular committee proposal. The Duval amendment does not detract from this in any way other than it leaves it up to the discretion of the legislature as to how the board or the boards, if they decide to create two, shall be selected and how they will administer their duties. But need one board or two boards. The present law, the present constitution in Article XIII, Section 27, provides for the Boards of Ethics and provides that the legislature shall select the...the members of the law by whatever means they may want to set up and I am willing to leave that open to the legislature to do that, but the point that we need to make is that we do need a code of ethics in this state. Now, all you good government people who are interested in this type of thing, don't see how you can argue against having a Code of Ethics. I don't see how you can argue against having a board to administer this Code of Ethics. There is no point in having a Code of Ethics if you simply have it and then nobody does anything about it. This has been the complaint through the years. The complaint now is that sometimes that the board is too limited in its...in its powers and that all it can do is investigate and then that's all it can do. The board needs to be given some powers and duties consistent with the...that it needs in order to investigate and to do something about violations of such a code.

We do need to have a Code of Ethics in this state. There needs to be some measure that our officials and employees are governed. There does need to be some watchdog agency who will oversee this code and who will...administration who do not see how anyone can say, we are interested in good government, can say that we do not want such a code in this particular state, and I urge the adoption of this amendment. I will take any amendment that I can get which will provide for such a code and which will provide for a board to administer this code and I think that the legislature does need to give this board some teeth by which it can administer the code. Mr. Chairman, I appreciate your calling the attention of the floor to what I am trying to say, but I am also going to ask that on all of these votes I would like to see a record vote so we can find out how many people are interested in this type of thing.

Mr. Casey We will order a record vote at the proper time, Mr. Abraham.

Further Discussion

Mr. Drew Mr. Chairman, and ladies and gentlemen, I think the serious nature of the amendment that I had to the committee amendment also and I think it raises a very serious question that you had better consider. The way it is written, I think that it is not clear in enacting a Code of Ethics to prohibit conflict of interests, period. This is a little different from the general constitutional interpretation that you can do anything you are not prohibited from doing.
Chairman Henry in the Chair

Mr. Poynter, Fellow delegates, I'll ask in closing out the birthday party I'll ask on behalf of Mrs. Poynter and myself, our roommates to step forward. Mr. Alario. Some things are very difficult to tell a person in life and I guess you have experienced this. The three of us room together, and you from time to time have noticed a very obnoxious odor, and on behalf of him, two roommates we would like to present him with a present at this time celebrating his 30th Birthday, John, from your two roommates.

Mr. Alario: Right Guard. That's to help take care of some of the odor. If we have been finding around here, I certainly thank you for sharing and celebrating my birthday with me. I certainly want to thank my delegation and, of course, that's the advantage of having a large delegation. When they put in, they can buy a big cake like that. The disadvantage I have a guy like Lawrence Chehardy in your delegation who won't show up out of the cake.

Mr. Poynter: Amendment No. 1 [as, Mr. Poynter]. In page 17, delete lines 10 through 24, both inclusive, in their entirety and insert in lieu thereof the following:

Section. (A) The legislature shall enact a Code of Ethics for all state officials and state employees.
(B) The Code of Ethics shall be administered by a Board of Ethics created by the legislature with such qualifications and terms of office and duties and powers as provided by law.
(C) The Board shall be Appealable.

Mr. Poynter: Amendment No. 2 [as, Mr. Poynter]. In page 17, delete lines 10 through 24, both inclusive, in their entirety and insert in lieu thereof the following:

Section. (A) The legislature shall enact a Code of Ethics for all state officials and state employees.
(B) The Code of Ethics shall be administered by a Board of Ethics created by the legislature with such qualifications, term of office, duties, and powers as provided by law.
(C) The decisions of the Board shall be Appealable.

Board to administer this code with the necessary power and duties. As provided by law, that is the interpretation of Mr. Avant. And, you meet the condition of the board shall be Appealable. The legislature shall provide the means of appeal, which will give a right of appeal to persons affected, in the individual affected by the amendment.

Mr. Avant: Mr. Drew, under this language, any provision as provided by law could the board in the legislature give the power to the board the power to remove an elected public officials for any manner other than we have already provided in the articles that we have selected for.

Mr. Drew: Mr. Avant, if my opinion would be that we would not go beyond the powers of a removal enumerated in the constitution.

Mr. Avant: It's not as clear through, is it, Mr. Drew?

Mr. Drew: There could be, it could be interpreted the other way, yes, sir.

Mr. Roemer: Harmon, it's true, and I get the impression from reading this over that you can't deal or don't purport to deal at all with local officials; that is true.

Mr. Drew: This does not, but it does not preclude the legislature from dealing with local officials.

Mr. Roemer: Well, but you it seems to me and let's see if my interpretation is true. In Paragraph A of this blank section was, the legislature shall enact a Code of Ethics for all state officials and state employees. There is no such mandate in regard local officials or local employees.

Mr. Drew: You mandate. You're correct.

Mr. Roemer: I wonder why we mandate on the state level and don't mandate on a local level when it seems to me that the necessity for ethical action is the same in both places.

Mr. Drew: I would have to agree with you, Mr. Roemer, and in my personal opinion I don't see much was the difference, but at the same time, the way such opposition on the point that this was would not be a compromise and does not amount to legislation from doing what you are asking for.

Mr. Roemer: You see, would you agree that this is politically you think right or wrong it is not necessary what you need not to wholeheartedly accept that?

Mr. Drew: I didn't say that. I would have objection to it personally.

Mr. Roemer: Well, that is a view I have. I do not understand that we have an amendment that would fit in local officials. That is, Mr. -

Mr. Avant: Mr. Drew, do you believe that a state official in the house is a state official in your office, and the same term office and the same profession with officials in that office.

Mr. Drew: Don't know how you would congratulate it. May I speak again?

Mr. Roemer: I agree it is substantially the same office. Mr. Poynter, I wonder if you see the same differences such as personnel, type of work, such officials as that.

Mr. Drew: I take认真地 to mean that we would be interested in that matter. May, the way it is drawn
Mr. Tobias: So you believe it would cover those officers?

Mr. Drew: Do I believe it would?

Mr. Tobias: Those officials, yes.

Mr. Drew: I do not believe it would cover parish officials, no.

Mr. Tobias: Are you aware that the case law in this state would go against you on that?

Mr. Drew: That's very possible.

Mr. Jenkins: Harmon, isn't it true that the Boards of Ethics right now primarily are advisory in their nature. They can censure, they can criticize, publicize, but they can't actually do anything to anyone, can they?

Mr. Drew: As I appreciate it, that's correct.

Mr. Jenkins: Well, wouldn't your amendment as written change that concept because when you say that the decisions of the board will be appealable in any case where you say in effect that they are going to be able to do something to someone, or at least that the legislature could allow them to do something to someone and that, thus, you are going to need a means for appealing those decisions; such as removal from office, such as fines, suspensions from offices, things like that?

Mr. Drew: Not necessarily, Woody, because I think any action taken by the Board of Ethics that would be critical of a person should be subject to review.

Mr. Munson: Mr. Drew, since we already have a board, two boards of Ethics of Ethics, would you mind telling me why we need to put anything like this in the constitution?

Mr. Drew: Mr. Munson, I agree with you wholeheartedly and I am sorry that the whole thing hasn't been deleted. It appeared that the... it was the consensus of the convention that something was going in the constitution and for that reason, I thought this was much better than the committee proposal.

Mr. Munson: But it is a fact that we do have a code of ethics for elected officials and state officials and we do have two boards?

Mr. Drew: That is correct. I agree with you wholeheartedly.

Mrs. Zervigon: Mr. Drew, to follow up on Mr. Munson's question, isn't it true that in the drafts that we have already done in this convention, we have a Declaration of Disability by the legislature in case someone is unable to serve, we have a method for declaring a vacancy in an office, we have a method for impeachment, we have removal by suit, and of course, there's always defeat at the polls and what this section would do—is, primarily is to set up a body that can accuse, but cannot dispose. We have plenty of ways of disposing of...state officials already, haven't we?

Mr. Drew: We do.

Mrs. Zervigon: The other function of a Board of Ethics might be that someone could go and ask...

Further Discussion

Mr. Gravel: Mr. Chairman, and ladies and gentlemen of the convention, I speak in opposition to the proposed amendment by DeBlieux, Fayard, and Duval, primarily, of course, because I oppose strenuously...strenuously the provision in Section A of their proposed amendment which in effect limits...limits the Code of Ethics to state officials and state employees. If this constitution is going to mandate the legislature to prohibit unethical conduct and to provide a manner by which such conduct can be enforced in effect it must and it should apply to all officials and all employees of government. Now in heaven's name can you justify excluding state legislatures, state representatives, state senators, districts attorneys and all others from the protections that it must give the people of this state? Certainly not. This exclusion is a clear violation of the Fourteenth Amendment against...that is what it amounts to...state officials and state employees by making them amenable to a Code of Ethics and then saying that the sheriffs and the district attorneys and the assessors and the mayors and all others who are involved as officials in the local government process, all of our municipal employees who are involved as employees in local government are not subject to a Code of Ethics...hear me well...of uniform application throughout the State of Louisiana. Ladies and gentlemen of this convention, it's most important that we do everything that we possibly can in this document in order to make sure that wrongdoing does not work from the bottom up. From the broad base of political activity throughout the State of Louisiana, from those areas in every nook and corner of Louisiana that we as a people are aware of...that we have witnessed the open sessions of the legislature, to the newspaper reporters who are able to see the more minor department officials in action. All this proposed amendment by this committee does in its principal part which this amendment seeks to eliminate and eliminate is to say this, that the legislature in its wisdom shall enact a Code of Ethics, one prohibiting conflict between public duty and private interests of all officials and employees of the state and its political subdivision. Who in heaven's name can object to that kind of a directive? I don't believe that there is anything that we have done or anything that we can do that will instill in the heart and in the minds of the people of the State of Louisiana confidence in the integrity of our efforts more than to adopt this simple sentence. This sentence means, "Mr. Citizen of Louisiana, Mrs. Citizen of Louisiana, we are going to direct the legislature to come up with a comprehensive document that will insure integrity, honesty, ethical conduct everywhere in the government of the State of Louisiana." Ladies and gentlemen of this convention, I know something about the activities at the level below state government where conduct, reprehensible conduct has gone on for years and years unchecked and uncontrolled because there was no overriding influence that could prohibit it. Oh, I know some of you are going to say, "We've got the grand jury to investigate into those things," the district attorneys to investigate into those kind of things and the sheriffs to investigate into those kind of things, but you stop and think about the experiences in our most recent past. You stop and think about the situations that have occurred within the recent years in the State of Louisiana and you stop and ask yourself the question, "If they could act, why didn't they?" Thank you very much.

Further Discussion

Mr. Chehardy: Mr. Chairman, brother and sister delegates, I'm up here to speak against this amendment and all amendments to this particular section. This proposal, Committee Proposal No. 22., Mr. Gravel pointed out very simply and it is nothing more nor less than something that every public official should know. You said that if you wouldn't abide by it, the criminal laws of the state are such that you would be subject to the penalties imposed by the various sections of the Criminal Code dealing with public officials. However, for a public body, such as we are, charged with bringing a constitution to the people of this state that is meaningful, that contains Bill of Rights, that protects public officials of every category, yet when it comes to an issue which in its basic context and its basic aim is the aim to please...to do the
right think, by the public, there is all sorts of hesitation and fear. As far as I'm concerned, I think it would be the weakest reflection on conviction and condition that it would, in any way, leave the plane without making known our sincere wish to be bound by all of the Code of Ethics, not only on a state level, but on a local level; not only by big official or a high elected official, but as an appointed official or an employe. I really urge that we get on with our business. I propose that the amendments would seem to fit to withdraw the amendments. I and other speakers would give in... I would like to move for the passage of Proposal No. 22, it that's in order, Mr. Chairman!

Further Discussion

Mr. Roemer: Mr. Acting Chairman and fellow delegations, I rise to make a couple of brief points just on terms of personal conviction in this matter. I like this amendment in some regards, particularly in the good things it has to the legislature. I urge the public to decide as to the code and the composition of the board. I think it is fair superior to the Proposal No. 22 before you. I think that regard to the fact that the governor does not have under this particular amendment the license to appoint all the officials or the members of the board that make up the board of ethics. I do not know if it would ever I did not see, I fail to discern the difference between corruption or unethical behavior on the state level and at the local level. Some say that this constitution perhaps in regard to Board of Ethics or Code of Ethics should not deal with local officials. I can't see that point. This constitution is for all the people and for all purposes that it sees as essential. Surely, we're not going to say here today, or we wouldn't have said yesterday, and we certainly won't say tomorrow that what's good and ethical on the state level will be circumvented somehow on the local level and we won't do anything about it. I don't think any of us here feel that way. Now, some people say that 'Well, I don't want to stick it to the local officials. Well, I'm not talking about sticking it to the local official. I'm not talking about getting at the local official. I'm talking about getting at all men and women who serve in public office, whether it be on a local level or on a state level, adhering to an acceptable statewide Code of Ethics. It's as simple as that. Some say, and it was said by Mr. Gravel specifically, that we don't want to discriminate against the state official and cause him to adhere to a code that we don't have the local official adhere to. Well, I would make a step further and say we are discriminating in another way. You see a Code of Ethics is more than a weapon to hit somebody over the head with; it's a blueprint; it's a guide, it can be used by the public officials in this state and on a local level to set the tone and pattern their actions. A useful tool, it increases their knowledge about what we expect out of their performance. So, I don't want to discriminate against a local official, not only in the sense of not having a weapon, but in the sense of denying them a blueprint for action. Now, let's don't deny them, let's don't deny them the benefit of knowing what we expect out of them in the law and under a code. To sum up, my position, I have to be against this amendment because I don't see far enough. I will support an amendment that will bring up that will track the language in many respects of Mr. Drew's amendment but goes further to include all officials, whether they be state or local.

Questions

Mr. Ream: Budd, there is nothing in this section
48th Days Proceedings—September 15, 1973

Mr. Burson A major...the major portion of his compensation, in most cases, is by the state.

Mr. Gravel The same thing is true of the assistant district attorneys, part is paid by the state, part is paid by the local governing authority, the police jury.

Mr. Burson I would say, in my case, ninety percent of it is paid by the state....

Mr. Gravel How much are you paid as an assistant district attorney?

Mr. Burson Mr. Gravel, I would be glad to file my income tax returns in the record of the convention when you file yours.

Mr. Gravel No, no. I'll be glad to file mine anytime. But I'm asking you in all fairness and seriously, if you get ten thousand dollars as an assistant district attorney from the state, how much do you get from the parish?

Mr. Burson In my case, I think the compensation from the parish would be about seventy-five or eighty dollars.

Mr. Gravel Well, that's not ninety percent then, is it?

Mr. Casey Just a minute gentlemen. Mr. Burson has exceeded his time, sir. I'm sorry, gentlemen. We have to follow the rules.

Further Discussion

Mr. Abraham Ladies and gentlemen, I have no quarrel with Paragraph A or B or C of this particular amendment. In fact, I will vote for these two paragraphs. I will agree that the language could be and probably is better than what we had proposed in our original proposal, but I cannot, in good conscience say that Paragraph A is a good paragraph. How can anyone say, how can I single out one class of people and say that you are going to abide by a Code of Ethics and then tell another class of people, well you don't have to abide by this Code of Ethics. Either you are for ethics in government or you are not. You are for it at all levels. This is about like saying that I'm for motherhood, but I'm only for motherhood for women between age thirty and forty but not between twenty and thirty. Now, Mr. Keen asked a question a while ago that this does not prohibit the legislature from passing an act which will include local government officials. All we are doing is passing the buck. We are afraid. We are saying in effect that we are afraid to take a stand on this issue. We are afraid to face up to our local officials. We are just going to shrug that off to the legislature and let them take care of doing this thing. I just can't see how we can stand up here and argue the case that we want a Code of Ethics for one class or one group of people and not for the other. Good government is good government. A Code of Ethics is a Code of Ethics. It applies to all officials and employees of the state and its political subdivisions. I just ask which of you people can say that you are not in favor of good government at all levels of government?

Questions

Mrs. Warren Mr. Abraham, this is a question I wanted to ask anybody. A person receiving money from the state can be either a state employee or city employee. Now you got to be either one or the other one, why would you be? You are getting money from both the state and you're getting money from the city or the parish. Now, how do you...what category do you put these people in?

Mr. Abraham There is...you are a public employee, Mrs. Warren, whether you are a city or state, if I understand what you are trying to get at.

Mrs. Warren Right. But they are saying they don't want the local or the parishes to come under the same Code of Ethics as the state officials come under. So, I'm trying to find out what is the distinction if you're getting money from the state and you don't want the state to have anything to say about it.

Mr. Abraham In my eyes there is no distinction. You are a public employee and you should all be governed by the same rules.

Mrs. Warren It's all right to trust the legislature when decisions affect somebody else but when it affects me then the legislature is bad. Is that true?

Mr. Abraham I'm not sure that I understand what you're driving at, Mrs. Warren. I might say this, that I have an amendment coming which tracks this exact language except for Paragraph A; it's going to apply to all officials of the state and its political subdivisions.

Mr. Champagne Mr. Abraham, don't you agree though that the best way to do this is maybe to adopt this and then come back and adopt the other one? If you shoot for all, you may get nothing.

Mr. Abraham I cannot in good conscience vote for something that's only half way...and say in effect, I am saying I approve of this and do not approve of it for the others.

Mr. Duval Mack, I realize your intentions are good, but who's going to administer the Code of Ethics as to local officials and employees?

Mr. Abraham This is one reason why I understand that the convention did not like our language that we had and are willing to leave it up to the legislature to provide for the Board of Boards of Ethics and their powers and duties.

Mr. Duval But the way you have it is it's conceivable that a Code of Ethics is going to be administered by the state employees or state officials are going to be administering a Code of Ethics as to local officials and what does that do to home rule?

Mr. Abraham I'm going to leave it up to the infinite wisdom of the legislature to provide for this type of thing, since it does pass the laws which apply to all types of home rule anyway.

Mr. Duval Thank you.

Further Discussion

Mr. Chatelain Mr. Chairman and fellow delegates, I stand in opposition to the amendment before us now. I'm looking forward at Abraham's amendment, coming up later. Thank you very much.

Further Discussion

[1285]
Mr. Stovall: Mr. chairman, ladies and gentlemen of the committee, I rise in opposition to the Drew amendment for the reason that it does not cover all of the evils which I think are inherent in the convention. I am not here to find fault with the delegates, but the convention as it is conceived, it must be understood that we are not here to find fault with the convention as it is conceived, but the convention is conceived to create a new atmosphere in government and create new confidence in government and enable us to move to a new day in our state. I think that if this convention takes the compromising position which the sponsors of this amendment recognize, it does not, I think we are compromising ourselves. In the past, we have had a number of broken promises in our state. I'm tired of children seeing television and reading in the newspapers of indictments and trials and arrests and convictions of public officials. I'm tired of people in places of responsibility stealing the state blind. I'm tired of the old politics of self-serving, machine-building persons who misuse the power and the trust which they have. I think that whatever we can do to create a new atmosphere and a new day in our state, I mean, I'm just really amazed that it seems to me that if we defeat this amendment that is before us and move to the language that is presented by the Committee for the Executive Branch, we will be rendered harmless to the convention of our state. When Governor Edwards spoke to us on January 5 he said, it will be a question of whether or not we act on the basis of faith. I think this is one of those occasions when we must act on the basis of faith in our future and in a new day and a new possibility for our state. I, therefore, encourage you to defeat this amendment and to support the wording which is provided in the committee proposal.

Question

Mr. Q. Miller: Reverend Stovall, you know we are all tired of these things, too. Do you subscribe to the theory that power corrupts and more power corrupts more? I ask you that, because consistently, you've voted to give everyone more power.

Mr. Casey: Gentlemen, gentlemen just a minute. I think... Let's not refer to each other in voting records. Let's stick to the issue when questions are asked and we will avoid any personal reflections.

Mr. Stovall: The question has been asked if I believe in the statement which was made by Lord Acton back, I think, in the seventeenth century in England when he said, "Power corrupts, and absolute power corrupts absolutely." I subscribe to that, and I think it applies to the local and parish officials as well as to state officials and that is the reason that I am in favor of defeating the Drew amendment and making this provision applicable to all officials in the state.

Further Discussion

Mr. Roy: Mr. Acting Chairman, ladies and gentlemen of the convention, I was really amazed to find that happened to these laws and orders people. The last three weeks, we have been trying to give people certain basic rights. We have met at every issue with the idea that if we do, law and order will not prevail any more. Now there is a great difference, for your information, between a crime of ethical and the Criminal Code, which defined criminal. It beg the question by its very name, and I don't think Mr. Gravel said that state attorneys don't prosecute or anything like that. I said we went out with the idea that if we lose the battle outside of what a man could do, because there are a lot of issues that are ethical ones and shouldn't be allowed, but are not crimes in law and order, and I don't think Mr. Gravel said that state attorneys don't prosecute or anything like that. We went out with the idea that if we lose the battle and we lose the battle.

Mr. Roy: Well, are you aware that the House of Ethics that we are currently have on record that that was not possible for you to deal with the conflict between one having a public or a public and a public appointive office at the same time, and a state Ethics Board and a public appointive office at the same time.

Mr. Roy: I don't necessarily see a conflict in the Board rules that we have in that a state Ethics Board and a public appointive office at the same time.

Mr. Burson: Mr. Roy, don't you think that if the Board of Ethics, you know, has the right to say that a conflict exists and a conflict in the public.

Mr. Roy: Not necessarily. It would deal with the same.

Further Discussion

Mr. Roy: Mr. Chairman, fellow legislators, there are many amendments in our field. There are many different fields that the delegates have in their back and forth what the government officials, local, state and federal, are engaged in some type of profit making. There are a lot of issues that are ethical ones and shouldn't be allowed, but are not crimes in law and order, and I don't think Mr. Gravel said that state attorneys don't prosecute or anything like that. We went out with the idea that if we lose the battle and we lose the battle.
Board or Boards of Ethics, just that simple and that is as simple as it should be in our constitution. It will leave broad flexibility to the legislature. It can cover local and state officials. It will determine how and what qualifications should be held by the appointed or elected members of the board. It can tell how many members; it can leave the legislature to say how many members will create this board or constitute this board; it can tell...leave it up to the legislature to say what to do with any decisions that are made. A three-year term, at least leave it as simple as that and leave this flexibility or all of the details or all of the mechanics or all of the interpretation of this amendment, the legislature can say that it does not say that we cannot provide a Board of Ethics for local, parochial or state officials, but it can provide for a Code of Ethics for local and state officials; its, strictly, left up to the legislature. I hope when this does come up for consideration, that we will adopt just such an amendment. We can eliminate an awful lot of confusion, frustrations or legal technicalities. Thank you.

[Previous Question ordered.]

Closing

Mr. De Blieux. Mr. Chairman, ladies and gentlemen, I'll try to make this as brief as I possibly can, but I want to answer some of the arguments that have been advanced here against this amendment. First, let me tell you this—there is nothing in the constitution, so far, that would prohibit the legislature from enacting a Code of Ethics, nothing whatsoever. But, there is nothing in the constitution so far that would force the legislature to enact a Code of Ethics. That's what this amendment is and that's what this section is all about; it's to mandate the legislature that "you shall enact a Code of Ethics." If you are for a Code of Ethics, you are going to vote for this amendment because that's all it means. Now, why...let me ask this question. Why do we say state officials and state employees, because they have jurisdiction usually statewide or a large portion of the state connected with the state in some way, some form. People don't know the unethical conduct of their state officials nearly as easily as they do their local officials because they are not that close to them. There is nothing, nothing in this amendment that would keep the legislature from enacting legislation in regard to local officials. If somebody comes up with an amendment to include local officials, I will support it, but let's show that we are for a Code of Ethics and adopt this. I say this to Mr. Abraham. I say this to Reverend Stovall, Mr. Roemer, Mr. Gravel and all of those. If you are for a Code of Ethics, you can still amend this if you want to put the local officials in it and I will support it, but let's show you are for a Code of Ethics first, by voting for this amendment and giving the legislature the authority to put teeth into a Code of Ethics to make it work. I believe we agree upon the principles. That should go ahead and support this amendment and, therefore, show the state that we are for having good state officials and then we can come back and add the local officials. So don't start out with the state officials first. I ask your approval of the amendment.

Questions

Mr. Jenkins. Senator, one thing that I don't understand this, is we need a section like this in this constitution. Isn't this simply a creation of another board, another agency which the legislature has the complete power to create and which already exists, in fact, under our statutes?

Mr. De Blieux. Mr. Jenkins, you as a member of the legislature know that, but as you may not know...
48th Days Proceedings—September 15, 1973

Mr. Munson. Mr. Abraham, the question that I wanted to ask Senator Chatel is this. I notice that the amendment that you have introduced deletes the phrase "the people of the State" from the code. Now, the phrase "the people of the State" is used in the act that we are amending. I suppose you made a motion to delete, if not we will have the vote taken. Then if you decide to change the amendment, we would want the amendment to read "the people of the State." However, if you decide to go ahead, we would want to have your indication on this matter. If you do not have an indication, the amendment can be struck.

Mr. Abraham. Well, on the advice of Mr. Gravel, I want to make a motion to strike the amendment that you would like to see?

Mr. Munson. That is right. I assume that Mr. Abraham has made a decision to strike that amendment.

Mr. Abraham. Yes, I do. Well, it does, because I think this would have any indefinite effect.

Mr. Rayburn. Mr. Abraham, what effect would your amendment have on a local governing unit in this state? I thought the legislature had made a decision that this amendment would be applicable in this state.

Mr. Abraham. I don't think it would have any indefinite effect. I thought there was, under their local adopted code of ethics.
Ms. Zervigon: Yes, we do.

Mr. Lanier: Is it working well?

Ms. Zervigon: We don’t know that, Mr. Lanier, because there’s never been a complaint under that Code of Ethics. I very much doubt that the people who haven’t been stealing from the city, haven’t been stealing from the city because there is a Code of Ethics. In fact, quite the other way around, I’ve read it and it gives me all kinds of groovy ideas for things I could do that I have never thought of before.

Mr. Lanier: Let me ask you this, does it provide for a Board of Ethics for the city of New Orleans?

Ms. Zervigon: It provides that the Civil Service Commission shall act as a Board of Ethics, and it seems to me that the legislature could provide likewise by statute.

Mr. Lanier: Do you feel that a statewide Code of Ethics applicable to all public officials could be administered well on the local level by a local Board of Ethics?

Ms. Zervigon: I believe that if it’s going to be administered well, it matters not where it’s going to be administered. It could be administered well by the Board of Directors in New Orleans, and it really depends a whole lot more on the make up of the commission itself.

Mr. Lanier: In your opinion, do you think that it would be better administered in New Orleans by a New Orleans board or by a state board?

Ms. Zervigon: As I said before, Mr. Lanier, it depends a whole lot more on the personalities of the people that make up that board, and the code that is written for them to administer, than it does where they reside.

Further Discussion

Mr. LeBlanc: Mr. Chairman, and fellow delegates, I’m not going to comment one way or ask you to vote one way or the other against this proposal, but I just had some thoughts that I thought you might be interested in. I was in the legislature when the present Code of Ethics was passed. In the time that I’ve been there I don’t know of one single instance in which it has accomplished anything. To me it certainly hasn’t straightened out any politician who intended to cross the road in New Orleans, and it really depends a whole lot more on the make up of the commission itself.

Mr. Lanier: I think you’re right, Ms. LeBlanc, because in the past we have increased the budget for the legislative auditor in order to provide more employees, a better staff in order for him to audit the books of the various local and...now, I believe municipalities are included in it too. But, to me the legislative auditor has done more to straighten out crooked politics in this state than the Code of Ethics or the Ethics Commission. Thank you.

Further Discussion

Mr. Wonack: Mr. Acting Chairman, members of the convention, when you look back at this final document that’s going to be submitted to the people, and I find now that this proposal includes local governments in the state. I go back to District Twenty and I find that there is approximately one hundred and fifty people directly covered by this.

I may take a very active position when election day comes, and if this final proposal, but nobody has set out or nothing can offset one hundred and fifty people out working in their respective communities, working at the church, working at the school, wherever they are doing what we’ve done, so we need to keep that in mind. I wish I had about thirty minutes because I am the only authority in the State of Louisiana on the Board of Ethics, and if you believe me, I’ve been around and I know what I’m talking about. It was used in my particular case as the most rotten, damnable thing that ever was done, and I broke a suit filed and served a seven day notice that we were going to court, and they went to work in a hurry because they didn’t want to face court. This is how honorable a Board of Ethics is.

I proposed at that time that the King James version of the Ten Commandments be probably the best Code of Ethics we could have and they said, "Oh, that’s sacrilegious. You’re not going to hang it up everywhere." We need in this case, like in all of the others a broad term that gives the authority to the legislature in the act and don’t say the legislature has got to pass one, and when I sit in the legislature as a member and they come up with one I don’t vote for. I can’t talk of not going to vote for it. Now, you can brand it, “motherhood” or be blamed for being in favor of prostitution if you want to. I’m still not going to vote for it, don’t think the best interest of the future of this state and the people I represent. Conway LeBlanc brought up something a few minutes ago, and I think the auditor has moved into the field of checking out every complaint they’ve got. By the same token it goes a little further than he had said. We have a legislative audit committee that is following up on the legislative auditor’s reports, and they’re coming in—certainly, if the police jury has been criticized for it, they’re sending out questionnaires. What is it? How has it been corrected, what steps have you taken to see that this will not recur. These are the things that’s going to do the job. We move up here and say well, one day we trust this legislature to the nth degree and the next day, “Well, we trust you, but everyone of you had better be watched.” I just wonder how far we’re going to go in questioning the integrity and keep in mind that when you come up with a Code of Ethics and a commission and they’ve got to do it, it is a news release that they are investigating you for wrongdoing and let it hit the paper every day. Now, getting back to the Board of Ethics—you know why no one was charged in the Bonding Scandals? There would have been a hundred or a thousand charges if it would have been left like it was introduced by the “do-gooders” and the good government people. But a simple little amendment was added in the Senate that says that individual must file a written charge against an elected official, and if he does not substantiate that charge in court then he is subject to imprisonment and fine. That stopped the “do-gooders.” Had it not been for that amendment, it would have been hard for anybody to be reeled, for Mr. Sheller, in mind...and I’m just not in any hurry to vote on this. I’m of the opinion that this whole thing might be looked at a dead issue. I would go to consider the two or three approaches. Number one, what’s good; number two, what’s a fallacy; and number three is what we can get by on local government and sell without creating the opposition.

As I go along day by day, I can see us giving a lot of people a lot of room to say “I object,” and along the line we give them a lot of reasons for saying “I’m for it.” Thank you.

Further Discussion

Mr. Willis: Mr. Chairman, fellow delegates, I hope you do not find it poor endurance to hear me. By your leave and for checking, at the time, I ask you to yield your minds to help me caress what few should oppose, a directive that
Mr. Stagg Mr. Willis, in your recollection of things past, do you recall that we were for years in this state without a Code of Ethics in the statute books?

Mr. Willis May I finish your question?

Mr. Stagg Yes.

Mr. Willis We were without one; we got one; it was taken out, and we got another.

Mr. Stagg And now that it is in the constitution by the vote of the people, I think since 1964, do you not feel that it should be in the new constitution in order to insure its presence in our statutes henceforth?

Mr. Willis Most emphatically, and I think it should endure.

Mr. Anzalone Mr. Willis, we've had this Board of Ethics since 1964?

Mr. Willis I'll accept that date.

Mr. Anzalone I don't know, I'm asking a question. Do you know how many times this Board of Ethics has handled since its inception in 1964?

Mr. Willis Glory to the people if they haven't handled so many. It just attests to the fact.

Mr. Anzalone Is glory a number?

Mr. Willis Let me finish answering your question. Glory is not a number my dear sir, but it does come above as far as you say, you are endeavoring to embrace statistics, but if the statistics are law that attests to the fact that we do have ethics in government, and it further attests to the fact that because we have a standard for conduct or a Code of Ethics, then we have less cases that you refer to.

Mr. Champaigne Wont you think, Mr. Willis, that one of the best harbingers to law, first look at the code and then they say let's see, is this in the code or not? May be they do this before the thing. Don't you think that sort of a discouragement for doing things this way?

Mr. Willis Absolutely, it is a waste against due process, and what's wrong with a director by a government that thou shalt not do wrong. It is no more arguable than the Ten Commandments.

Further Discussion

Mr. de Bieux Mr. Stagg, and ladies and gentlemen, I believe everyone of this committee in favor of a Code of Ethics for officials. The objection raised to the amendment proposed by the effect that it does not cover local officials, and therefore it could not support the amendment. If this paragraph of the amendment includes local officials, I feel like it ought to get the unanimous consent of every man in this delegation, and I just want to let you know that I support this Abraham amendment and ask you to do likewise.

Further Discussion

Mr. Weil Fellow delegate, I know your mind's made up. I won't confuse you with the facts, but it's been a blueprint for the state officials in ignorance of laws, and implementation of the laws, ethics, and enforcement of a Code of Ethics. We'd like to make it clear that I am opposed to this floor amendment and not because I am opposed to a Code of Ethics for all officials of this state and for all employees of the state. I think Mr. Gravel's amendment is an excellent one, and I wish you would all look at it. I think this is where we should pass. It is very unfortunate that you have confused, and many people have confused you from this podium about ethics and what they can assure you, being in a profession, that it can be done by strictly adhering to the Code of Ethics, very difficult, to implement this as an individual basis and on a home rule basis, unless you yourself, as an individual, follow the Code of Ethics, as its practice is universally useless to do this.

Mr. Gravel This is not the issue. The issue is the code itself, as one speaker, Delegate Reeder, pointed out, it's a blueprint for the state officials in ignorance of laws, and implementation of the laws, ethics, and enforcement of a Code of Ethics. We'd like to make it clear that I am opposed to this floor amendment and not because I am opposed to a Code of Ethics for all officials of this state and for all employees of the state. I think Mr. Gravel's amendment is an excellent one. I ask you to vote down the Abraham amendment and go on to the Gravel amendment and solve this issue properly.

Further Discussion

Mr. Gravel Mr. Weil, I don't you know that I a. I mentioned you earlier, that I supported the Abraham amendment. I have it always. If it passes, I'm going to withdraw my previous amendment.

Mr. Grant That the provisions in the Abraham amendment is not a good amendment and I think it has too many complications in the law, Mr. Grant. You have pointed out. Your amendment comes to the point specifically, whether it be in some way of ethics, conflict between public duty and private interest.

Mr. Gravel Thank you very much, Mr. Grant.
48th Days Proceedings—September 15, 1973

the previous question.

[Previous Question ordered.]

Closing

Mr. Landry Mr. Chairman, ladies and gentlemen of this delegation, you have been very kind to me in the past and for that I am very appreciative. You afforded me a bit of undeserved publicity which I appreciate, especially for my grandchildren who someday will read that their grandfather participated in a convention where people gave attention.

This is a very difficult time to appear, but I accept the challenge. I accept the challenge because of the fact that it is difficult. I now realize what the problem is. You know, I have tremendous faith in the fact that the "Henry Huddle" solves many problems miraculously. I have come to this podium and stuck my head in to find out how these people do this job. You ought to come in and find out how well...they did a job a moment ago where you approved of it. You approved of it to the tune of seventy to forty-four. Now you've already spoken. I've come here to remind you that you are in favor of a Code of Ethics. You spoke beautifully in a loud voice, seventy times. Now, all you need to do is reinforce what you said a moment ago and not renege and add one word, and you've all spoken to it, and the word is "all." Really and truly, my people need this. We have had this conflict and we need it badly. I'm asking you in all sincerity, put this Code of Ethics into this constitution and let me see how any green lights, not just a majority, but show me a supermajority. Thank you for this privilege.

[Record vote ordered. Amendment adopted 101-14. Motion to reconsider tabled. Previous Question on the entire subject matter ordered: 66-47 Section passed: 100-19. Motion to reconsider tabled.]

Point of Order

Mr. Burson I rise to be recognized for the floor to debate.

Mr. Casey Mr. Burson, I cannot recognize you because the previous question was called on the entire subject matter, if you may recall.

Mr. Burson Then we don't have to vote again, is that correct?

Mr. Casey We do have to vote again because theoretically, that was in the form of an amendment, let's say.

Mr. Burson Point of order. If this is an amendment to a proposal that we have already adopted then it seems to me you would have to call that proposal off the table where it now rests in order to add anything to it. Is that correct or incorrect?

Mr. Casey No, Mr. Burson. First of all, the Executive Proposal was not laid on the table. In fact, our procedure has been, as you know, that we are not laying on the table any proposal. The only thing we are laying on the table are sections adopted under each proposal.

Mr. Burson Very well, I have, being prepared, a section to this proposal...a new section.

Mr. Casey Mr. Burson, I have already ruled. I apologize to you. I'm trying the best I can to preside, but the previous question has been called on the entire subject matter. Now, the only entire subject matter that I know of is Committee Proposal No. 22.

Mr. Burson I have a new section to that committee proposal being prepared. We've had new sections to every other committee proposal proposed as floor amendments. That is what I have been prepared, and the Chair has ruled time and time again that it was permissible to have new sections to committee proposals proposed as floor amendments and that is what is being prepared right now.

Mr. Casey Let me just have a "Casey and Poynter Huddle" just to determine what is the correct parliamentary procedure here.

Ruling of the Chair

Mr. Casey Delegates, delegates, please let us have your attention just a minute. Under the rules, the Clerk is the official Parliamentarian of the Convention. I will ask him to explain his ruling on the request of Mr. Burson.

Mr. Poynter Well, Mr. Vice Chairman, you've got to do the ruling. I'm the Parliamentarian, but the rules say that the Chair has got to make the ruling. But, as I would appreciate the rules of the Convention, they do require a vote as follows: on each section of every proposal, proposal itself, as well. So, hence, I think it was necessary as you just did, to vote as I would construe that vote, a vote to adopt Section 1 of this proposal. And now, one way we would adopt the entire proposal--an amendment which would propose a section, in my appreciation, and additional section to this proposal. If germane, if germane, would be in order unless the previous question on the entire subject matter. Now, it would have been my appreciation, and the Chair might rule otherwise, that the previous question on the entire subject matter would have had to be confined to the consideration of Section 1, just adopted, Mr. Chairman.

Mr. Casey Now, Mr. Juneau, why did you rise, sir?

Mr. Juneau To clarify the point, Mr. Chairman, I would move for the previous question on the entire subject matter, proposal, excuse me.

Mr. Casey That's in order.

Mr. Juneau now moves the... Just a minute. What was that, Mr. Burson.

Mr. Burson My motion was that I be permitted to introduce a new section, and I want a ruling from the Chair on that point before you go on to recognize someone else for any other motions. Now, is a new section by amendment to this committee proposal, just as we've had to every other committee proposal, in order or not? Would you rule on that, please?

Mr. Casey Mr. Burson, the Clerk has rendered his interpretation...

Mr. Burson I'm not interested in what the Clerk's interpretation is; I'd like your ruling.

Mr. Casey Now, just a minute, Mr. Burson. Don't get excited, we're going to proceed in a very orderly fashion. The Clerk has rendered his interpretation, and the Chair will rule accordingly that a request on your behalf to offer a new section is in order. However, Mr. Burson, I just wish to proceed further that Mr. Juneau has risen and has made a motion to call the previous question on the entire subject matter...

Mr. Burson Which would, I assume, include my new section.

Mr. Casey My interpretation of his motion to call the question on the entire subject matter would preclude any further offering of any other sections. That is my understanding that his motion for the previous question is on the entirety of Committee Proposal No. 22.

Mr. Burson Which would include, would it not, any pending amendments thereto?
Mr. Casey: It would precede it, it would precede.
Mr. Burson: The signature of any further amendments.

Mr. Burson: Therefore, on all future committee proposals now, including local Government, or any other proposal that we have, would it be correct that if I get up after the committee proposal is through and move the previous question on the proposal, that anyone who has amendments proposing new sections to that proposal would be allowed to substitute there? Is that your ruling because that's what the effect will be.

Mr. Casey: If the motion passes, that's all I can say. Mr. Burson. We have to cross each bridge as we come to it.

Appeal from Ruling of the Chair

Mr. Burson: Well, I just wanted all these other delegates here to realize what they were doing to themselves later on in this convention. If they uphold this ruling, and I appeal the ruling of the Chair.

Mr. Casey: Mr. Burson, all I can tell you is we have to cross each bridge as we come to it. I don't know what's going to happen on all future committee proposals now. Just a minute. Wait. We're going to ask Mr. Burson to go back to the mike now. He's appealing the ruling of the Chair, but I'm not sure what the appeal is on.

Mr. Burson: The appeal is that a proposed new section would not be included in a vote or the proposal.

Mr. Casey: We will ask the Clerk, as Parliamentarian, to make an explanation.

Mr. Poynter: Mr. Burson, the Chair would have to answer, before the motion to the previous question was voted on, that there is an amendment at the desk. However, that amendment has not been offered. The motion was made. So you...

Mr. Burson: Did I not tell you that the amendment was being prepared before the motion for the previous question? I will ask you that.

Mr. Poynter: I agree with you totally.

Mr. Burson: Well, haven't we, throughout this convention, whenever someone said they had amendments being prepared, allowed them to be prepared and presented. Haven't you routinely informed the convention when amendments were being prepared?

Mr. Casey: That has been done, Mr. Chairman, and we are following the rule as we do that. I think the convention is fully aware that you have amendments being prepared, and in coming on the motion for the previous question, I would imagine the entire convention would be aware of the fact that you have an amendment being prepared. I think?

Mr. Burson: And do you think that the entire convention?

Mr. Casey: A majority sentiment. We need to take a guess. We are trying to work this out in a orderly manner.

Mr. Burson: The motion was made by Mr. Poynter that in the event no members of the convention have a motion, that the Clerk for all the surviving participants of this committee shall then be heard. Is it yours, Mr. Burson?

Mr. Burson: As I am unable to get a vote on an amendment from those seated in the chair, and as it is not my amendment, I am entitled to a vote in your chair.

Mr. Poynter: That's a correct ruling.
Mr. Gravel. A point of order, Mr. Chairman. Regardless of all this, I think it's clearly before the convention, isn't the precise issue that is now before the convention, the appeal of Mr. Burson from the ruling of the Chair? If it's in order to do it this way, I move the previous question on that particular matter so that we can dispose of it.

Mr. Casey. Well, that's nondebatable anyway, the Clerk indicates. The...

Mr. Gravel. How do we ever get to it, though?

Mr. Casey. Well, that's what we want to do right now.

Mr. Anzalone. Mr. Chairman, you stated a few minutes ago that at the time Mr. Burson made his motion that there was only one amendment on the table or being prepared at that time. Is it not a fact that when Mr. Burson announced that his amendment was forthcoming that Mr. Gravel did say that I do not wish to withdraw my amendment? Therefore, there were two.

Mr. Casey. He did say that, but also Mr. Arnette had one, I think, if I'm not mistaken.

Now, I'm going to do it this way. Let's get in motion here, now. Come on. Clerk, will you state the question so that it will be quite clear to all delegates before we vote?

Mr. Poynter. In appreciation of your rulings now, Mr. Chairman, is it that the convention has voted to adopt Section 1 which is presently the only section contained within this proposal. The motion has been made for the previous question on the entire subject matter which would now be the adoption of Committee Proposal No. 22 containing that one section. Mr. Burson has an amendment which is now on the floor. The Chair has ruled that the effect of adoption, of the motion of the previous question would be that that amendment could not be offered and it would cut off discussion, debate and would vote directly on Committee Proposal No. 22, arguing that he has a right to offer the amendment that was on the desk but not introduced. Mr. Burson has appealed the ruling of the Chair, asserting that effect of carrying the motion for the previous question on the entire subject matter would preclude the offering of the amendment.

[Chair sustained: 9-2-2.]

Point of Information

Mr. Burson. In the event that the motion for previous question loses, does that mean the amendment will be considered?

Mr. Casey. That's absolutely correct. It would be in order.

[Motion for the Previous Question of the entire subject matter rejected: 54-66.]

Amendment

Mr. Poynter. The copies [—Mr. for an amendment] are being distributed at the present time; they have just arrived. It's drawn Section 2. It should be the rule of the Chair, "Code of Ethics: Local Officials and Employees."

Section 2. Any code of ethics for local officials and employees shall be administered by a local board of ethics.

Explanation

Mr. Burson. Mr. Chairman, fellow delegates, first of all, let me express to you my sincere appreciation to the majority that voted to permit me to submit this amendment. Let me assure you that I will continue to do as I have done to vote to permit you the opportunity to present your amendments. This amendment does not need very much explanation. It says what it means. I voted for the Committee Proposal No. 22 which adds clause B. I can't see where any honest public official would have any objection to having a local official Code of Ethics prescribed by the State Legislature. That doesn't disturb me at all. However, I do think that any such code should properly be administered by a local board of Ethics. Why? It seems to me that if you decide to write a law that is opening the clear possibility that the legislation which is adopted could be similar, if not identical, to the original committee proposal which would permit a complete centralization of Board of Ethics powers over local government officials. Now, there seems to have been a tacit presumption and some of the debate here today that somehow or other, local officials were inherently more suspect than are state officials. Now, I ask you, is that belief born out by the record? I ask you further, is that belief belied by the fact that as other speakers have pointed out, we have not had a deluge of ethics complaints. It simply seems to me that any uncertainty of the charge of the local governmental unit involved in a Board of Ethics chosen from the parish or the city involved and citizens thereof who are not officials themselves, should not be placed in the position, as capable of judging on the validity of ethics allegations in their own local communities as a board headquartered here in Baton Rouge that may not know a thing about the local community. It seems to me entirely consonant with the regard for home rule, the regard for maintaining local government at the local level, that I think the majority of the delegates to this convention want to pass this proposal. It seems to me that if you reject it, you are leaving the way open for a dangerous and unwarranted centralization of power in this area, and one that will inevitably be subject to the kind of abuse that other speakers have raised here today. I would also point out to you that there are areas in this state, I'm aware, certainly, of New Orleans, as a case in point, where they have a local Code of Ethics administered by a local board at the present time. This amendment would be entirely consonant with that situation. I will answer any questions.

Questions

Mr. Arnette. I've got a couple of short ones here, Jack. First of all, you say that "any code of ethics for local officials and employees," does that include the State Code of Ethics?

Mr. Burson. Yes, sir. In other words, what the effect of this amendment would be, that whenever the legislature sets up a code of ethics for local officials, they would have to also, at the same time, provide for a local board of some sort to administer it, and not have what I would deem to be an inherently impossible situation where you would have one central Board of Ethics trying to administer complaints from sixty-four parishes and I also ask you how many local boards in the state. I think as Mr. Womack pointed out, that's...

Mr. Arnette. So what you would be doing... So what you want to do is have the legislature force a local board of ethics on a local government group such as a parish or municipality. You are going to have to have the legislature, Local Code of Ethics; Local Officials and Employees. in six parishes and you are going to have to make sure that that's set up by the legislature for a parish to do that particular thing? I can't understand that, Mr. Burson.

Mr. Burson. I'm not saying that the legislature necessarily have to go all the way through the scheme was devised, it would have to include a local board of ethics. The legislature could leave the selection of that board to any number of methods.
Mr. Arnette: Well, let me ask you this: then, Mr. Burson. Suppose the legislature does not provide for the local board of ethics. Then all the local officials or anybody else who wants to get around this needs to do is just simply not set up a board of ethics and they would not have anything to do with the state code of Ethics.

Mr. Burson: Well, Mr. Arnette, it seems to me that that presumes bad faith of the part of two groups of officials—the State Legislature and local government. I'm not willing to make those joint presumptions.

Chairman Henry in the Chair.

Mr. Roemer: Jack, as I understand this, you don't limit this to one board per parish, do you?

Mr. Burson: No.

Mr. Roemer: We could have a board of ethics in each municipality or whatever divisions we want.

Mr. Burson: Exactly.

Mr. Roemer: So, instead of having one board or even sixty-four, we could have a thousand and sixty-four.

Mr. Burson: But they would all have to administer the same code.

Mr. Roemer: Well, could we have a thousand and sixty-four boards?

Mr. Burson: I don't know what the number of municipalities is in the state.

Mr. Jenkins: So, Jack, now if we take a typical Louisiana parish, it has about five or six municipalities in it. Each one of those municipalities, under this, would really have to have a board of ethics because it wouldn't be local as to that municipality if it were a parishwide board. Isn't that true?

Mr. Burson: Yes, sir.

Mr. Jenkins: So, you would also have to have a parish board of ethics for the school board and the parish jury, or any other governing authorities, wouldn't you?

Mr. Burson: Yes, sir.

Mr. Jenkins: Then, I suppose as to special districts, you might even have to have special boards or ethics for those special municipalities, thing of that nature. Would you have to have special boards for that?

Mr. Burson: Well, it seems to me that could probably be incorporated under the same scheme, if it was a multi-parish.

Mr. Roemer: Well, what I wanted to ask, Mr. Roemer had already asked and Mr. Jenkins brought up, I just wanted to give the legislative bodies the power to establish as many boards of ethics as we are going to have. I really think it should be three or four thousand boards.

Mr. Burson: Well, Mr. Munson, I have great faith in the legislature's ability to work these potential problems out.

Mr. Arnette: Further discussion.

Mr. Jenkins: Well, Jack, as you know, Mr. Jenkins and I feel that it's unfair to take twelve men out of a hundred that you worry about numbers of those hundred and put them all in one place when you put everybody else there from the State of New Orleans and they went to the Fifteenth District. I think it is two boards for that purpose. But, you can't take the people in the Fifteenth District or in Shreveport, or in Monroe, or in Cambridge, they are a lot more complicated.

Mr. Roemer: Further discussion.

Mr. Arnette: Well, let me ask you. Mr. Jenkins and I feel that it's unfair to take twelve men out of a hundred that you worry about numbers of those hundred and put them all in one place when you put everybody else there from the State of New Orleans and they went to the Fifteenth District. I think it is two boards for that purpose. But, you can't take the people in the Fifteenth District or in Shreveport, or in Monroe, or in Cambridge, they are a lot more complicated.

Mr. Roemer: Further discussion.

Mr. Arnette: Well, I ask you, Mr. Jenkins and I feel that it's unfair to take twelve men out of a hundred that you worry about numbers of those hundred and put them all in one place when you put everybody else there from the State of New Orleans and they went to the Fifteenth District. I think it is two boards for that purpose. But, you can't take the people in the Fifteenth District or in Shreveport, or in Monroe, or in Cambridge, they are a lot more complicated.

Mr. Arnette: Further discussion.
48th Days Proceedings—September 15, 1973

[Record vote ordered. Amendments rejected 43-66. Motion to reconsider tabled. Previous question ordered on the entire subject matter. Prima
tally adopted: 83-27. Motion to reconsider tabled.]

Announcements
[I Journal 492-494]

[Adjournment to 9:00 o'clock a.m.,
Wednesday, September 19, 1973.]
Mr. Warren. Let us all bow our heads, please, and say this prayer: "Heaven, Father, we thank Thee for bringing us back to our jobs this morning. We ask that we will go with us and guide us as we do our work, and may we guide and help us to do the right thing both now, this day, and forevermore. Bless us and keep us, in the name of Jesus and for His sake, Amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

Mr. Walker. Committee Proposal No. 17 by Delegate Panama, on behalf of the Committee on Local and Parochial Government, and other delegates and members of that committee:

A proposal making general provisions for local and parochial levee districts, ports, the financing thereof and necessary provisions with respect thereto.

Explanations

Mr. Perez. Mr. Chairman, and ladies and gentlemen of the convention, the report of the Committee on Local and Parochial Government has been a lengthy and tedious one because of the fact that this committee was given the task of making one-third of the total length of this constitution. It is not on statistics, but I did ask the staff to make a composition of the length of the articles assigned to this committee and to the length of the committee's proposals. According to the staff, we were assigned one hundred and forty thousand, eight hundred and ten words, which has been reduced by the Local and Parochial Government Committee to seventy thousand, two hundred and twenty thousand. We have assigned two hundred and even out of five hundred and twenty letters in the constitution and we have reduced the length of that article to the equivalent of eighteen pages, twenty-eight pages printed, but the equivalent of thirteen pages as the present constitution is printed.

I think, ladies and gentlemen of this convention, we have come to the point of determining whether we truly wish to extend more power to local government or whether we will extend merely lip service to the increase of power that we have in the past 15 years. I say 15 years, 15 years. In several instances, in the last 15 years, we have not been able to get the necessary annexation to add more power to local government. And, therefore, I agree in principle, but I say that we need government, we need that local government to work. And, therefore, that we have to go with us and guide us and help us to do the right thing both now, this day, and forevermore. Bless us and keep us, in the name of Jesus and for His sake, Amen.
Mr. Munson  Mr. Chairman, I intend to make a motion.  In a moment, I will say a few words to the delegates of this convention.

I think my aim in this convention is the same as that of the delegates of this convention. And that is to submit to the people of this state a document, when we complete our work, that will be acceptable and that will be adopted by the people of the state. That has been my desire since the 5th of January, the same as it has been yours. I think we have done fairly well up until now. Even though there is some statutory material in the proposal, I don't think we have done fairly well. But I do think we have reached the point now, today, where we really have to make up our minds where we are going from here. We still have this proposal on local government, education, revenue and taxation. I believe, and may be one other to consider. I don't want to be any part of spending three million dollars of the taxpayers' money and have it pitched out the window, and I know you don't either.

I recognize the fact that the Committee on Local and Parochial Government has certainly shortened very extensively what's in our present constitution. I also recognize the fact that during the time we have been here, most of the reasons for submitting constitutional amendments to the people have been caused by local government. And I would say somewhere between seventy-five to ninety percent of the amendments that we've had to submit to our people has been caused by local government. I do not think that the proposal as proposed to us today solves that problem. If you want to know how many kingdoms we'll have in this state if we adopt this proposal, all you have to do is list up the number of municipalities, villages, city, school districts, levee boards, etc. I am an advocate, a strong advocate of home rule and local government. But in my opinion, besides this proposal, it goes much, much further than providing home rule. To make it plain, I think if it's adopted as it is, I think you might as well abolish the Louisiana Legislature. That's just about how strong this proposal is. I do not want this convention to have to battle it out on the floor of this convention hall for the next two or three weeks, losing our tempers, causing hard feelings. I think there is room for compromise. I think the problems can be worked out; I think the best place to do those problems is in the Committee on Local and Parochial Government, and for that reason, Mr. Chairman, and the reasons I have enumerated, I would like to move that Committee Proposal No. 17 be recommitted to the Committee on Local and Parochial Government.

[Motion to recommit the Proposal to Committee.]

Questions

Mr. Perez  Mr. Munson, would you explain to me what the difference is between this committee proposal and all of the other committee proposals which we have already considered, where we debated and amended and renumbered and amended all over again these various other articles? What is the basic idea? Why should this be recommitted when we did not recommit legislative, judicial, executive, or bill of rights?

Mr. Munson  Mr. Perez, I respect you and your committee for the work that you have done. I really thought I had already given my reasons. I just think there is entirely too much, or more statutory material in your committee's proposal than we have had in any other committee proposal. And I think we are all in the same spirit of trying to cooperate and solve the problems that are presented by this proposal, I just think it's best for all of us to get together and try to work it out in a committee rather than on the floor of this convention.

Mr. Willis  Mr. Munson, why shouldn't we be discussing the committee proposal instead of cussing it so that we can make room in our discussion for the compromises which you advocate? Don't you think the proper procedure would be to go about our business and save that money you talk about and start discussing this proposal instead of cussing it before hand?

Mr. Munson  Mr. Willis, I am not cussing it. I am discussing it, and I fully, I am firmly convinced that we'll all be better off to discuss this proposal in committee, come to some sensible solution, and then come back to this convention for further discussion as we have done with other proposals.

Mr. Willis  I appreciate it... I appreciate what you are trying to do, but you are trying to do it in such short time what it took the committee in such long time to do, and you are trying to deviate from a procedure which has been followed for four other committees, something which is unheard of, thus far, in this convention. It's a step backward to my mind.

Mr. Munson  Mr. Willis, in my opinion, we will not lose a single day's time for the simple reason we can go on with other business that's already before this convention while this is being done in committee.

Mr. Willis  To each his own.

Mr. Bollinger  Mr. Munson, did not Mr. Perez and his committee do one thing that no other committee did and that was offer each delegate, in a letter, the opportunity in that committee and discuss any differences that we disagreed or didn't agree with in that committee proposal?

Mr. Munson  If you suggest that, I will say yes. But I don't personally know that to be a fact. I don't know whether any other committee has done it or not, Mr. Bollinger.

Mr. Bollinger  And is it not also true that this proposal was not reported out for a good while, and while we have reached the point we are now, we have not really reached the point we had come to a decision this committee and filed all these differences you are mentioning when they never did do it before?

Mr. Munson  I'm not suggesting that each delegate go to Mr. Perez's committee. I'm merely suggesting that I think it's so highly controversial, Mr. Bollinger, and has so much statutory material that it can best be worked out in a committee rather than fight it out on the floor.

Mr. Burson  Representative Munson, I understand your great concern about this article. When did you finish reading the article?

Mr. Munson  Mr. Burson, I'm not Representative Munson; neither am I ex-Representative Munson. I am a former Representative. There is a difference.

Mr. Burson  When did you finish reading the article?

Mr. Munson  I have tried to wade through it ever since it's been on my desk, Mr. Burson.

Mr. Burson  Have you ever appeared before the committee to offer any suggestions as to possible changes in the article?

Mr. Munson  No, sir, I haven't.

Mr. Burson  Do you intend to do so if we go on?

Mr. Munson  Yes, sir.

Mr. Burson  Don't you think you could offer those same suggestions in the form of floor amendments as has been done on all the previous articles?
Mr. Munson. I don't think that this proposal, unless you want to delete each section one by one, completely, and start completely over, that would be my suggestion.

Mr. Burson. In other words, you would like to just delete local government in Louisiana, then, wouldn't you?

Mr. Munson. That's absolutely not true. I think my record speaks for itself in the seventeen years I have been in the Legislature. I am a strong advocate of local government. I am not in favor of letting up thousands and thousands of Vénondos.

Mr. Burson. Do you think you are a better expert on local government than the Police Jury Association and the LMA who have approved this article, then?

Mr. Munson. I am a former member of the Rapides Parish Police Jury. I was a member for eight years.

Mr. Burson. I ask you, sir, do you think that your opinion in this regard is better than the opinion of the LMA and the Police Jury Association who have both approved this?

Mr. Munson. If you are going to abolish the legislative and keep the local government, then if it goes to that extent, Mr. Burson, I would say I am as good an expert as any member of the Police Jury Association.

Mr. Burns. Mr. Munson, I am a little concerned about the effect of your amendment, or your proposal, rather, your motion, as to what it could possibly produce or what could be the effect of it. In other words, if this committee has worked on this article for eight months and a half, what could they possibly do within the next few weeks... with us in session from Tuesday through Saturday evening?

Mr. Munson. I hope they come up with a better proposal, Mr. Burns. I hope that they would come up with a better proposal than what we have been presented with.

Mr. Burns. But I was just wondering what they could do in maybe two or three weeks, that they wouldn't have done in eight and a half months?

Mr. Munson. Well, Mr. Burns, partially in answer to that question, I am asking, I am asking the committee on Natural Resources. We voted during the first six months of this year on everything that's in that proposal. We are now going back through every bit of it and, to some extent, hang it substantially from what we voted on six months ago. The same thing can be done in any committee.

Mr. Nunez. Mr. Munson, could you be more specific and tell us what article or what section, or in particular, what are you disagreeing with in the proposition in the proposal?

Mr. Munson. Senator, for one thing, I think Section 12(a), if adopted like it is, would abolish the Legislature of which you are a member. I would say that isn't. Certainly wouldn't cause a great deal of friction between two very powerful groups as well as quite a number of other things in this proposal.

Mr. Nunez. Well, would you consider a proposal or a motion that we keep these sections and are ahead with what they had rather than telling them to renumber the whole article?

Mr. Munson. I don't believe I have time to stand here and discuss the entire section, but I find toms statutory material in each of them every section.

Mr. Nunez. You disagree, you say the section, and you agree to all fifty-one sections.

Mr. Munson. You asked me to name some of the things. I raised a couple. I think there's all the material in the entire section.
interests do not want meaningful home rule provisions in this state, and if you vote to recommit this article as now proposed by Mr. Munson, I would take the position this convention does not want meaningful home rule in this state.

Further Discussion

Mr. Lowe: Mr. Chairman, delegates to the convention, I rise to also oppose Mr. Munson's motion to recommit this article, and I do so for several reasons.

First of all, I believe that it's a terrible precedent for this convention to take at this particular position on four sections. I should make a comparison to you and that is with Revenue, Finance and Taxation Committee. I believe that we have in that particular committee as many controversial items as you will find in any article that will come before this deliberative body.

We voted consistently eleven to eleven, or ten to eleven or nine to ten on many issues that have come up. Half of us have almost agreed that the only way we can get anything out of Revenue, Finance and Taxation is to stop arguing in that particular body and any nothing too close to this floor, because when it does come to this floor, we'll have a hundred and thirty-two delegates that have their own impressions about what should and should not. What does one do after he goes to committee and does everything that he can to change it? Well, what he does is that you are lost in committee. That's what you've done. But that doesn't bar once and forever that you have the right to come before the whole convention to express your views on what should or should not be in connection with that particular article. So I say to you that if we set the precedent here and now, that we are going to have to follow in the future when we get to Revenue, Finance and Taxation. Many of us in Revenue, Finance and Taxation will have to take the stand that maybe we shouldn't have done, believe there's a hope to overcome the stalemate that was there. I certainly have many different views than what's coming out of Revenue, Finance and Taxation, and I will not want you to believe that when you get that particular article, that we are ready to get it back. We've done everything that we could. We have attended all the meetings that we could attend, we've had all of the speakers that we could have. There's nothing more that we can do in Revenue, Finance and Taxation, and I am sure that local and school does the same.

I see this move as an aim by a group that objects to a theory that Local Government Committee has. And I can't agree with that statement, that theory. But to hold that we are going to sit here and argue twenty-eight pages, a day at a time, and maybe spend one day on each page so that we need to send it back to committee, is utterly ridiculous. What are we going to accomplish after we send it back to committee? We'll probably still have the same number of pages, and if we don't still have the same number of pages, I don't view the opponents to this move as a group that's going to lay down and die. That couldn't possibly happen next week, next month or any time. I know that the opponents that oppose this move are a strongly...have a stronger feeling about their position. They have the same article as Mr. Munson and the group that wants to send it back to committee.

So when we get it back, we are going to argue and deliberate over the same thing, that we are going to argue and deliberate if we leave it before this group today. I say to you that this convention has been successful because we have a deliberative body that's willing to sit down and stick with it and deliberate hour after hour and day after day. Why should we change our modus operandi right now? What would be the result of doing that? And, so far as I've heard of a sudden we have some issues that everyone doesn't agree with, so, since everyone does not agree with them, we want to send them back. I say to you that we're going to deliberate; we were sent here to deliberate; the committee system has worked well; there is no reason for us to believe right now that the Committee on Local Government did not work well. I submit to you that since we are a deliberative body, let's deliberate.

Further Discussion

Mr. Fontenot: Mr. Chairman and fellow delegates, I would imagine before this discussion is over, probably half of this delegation is going to get up and speak, but wanted to mention several reasons.

I think it's been very clear that there's too much statutory material in this particular committee. One of the reasons I think we are concerned there's been too much statutory material in the first four proposals. The section on the Legislative, Judicial, Executive, and the Bill of Rights, as far as I'm concerned, had too much statutory material. But, whenever you get into a specific field as Local and Parochial Government, I think it is justified to have some of the statutory material. If we don't have some of the statutory material in the constitution, then the legislature could run wild on the local governments. I think it's not a good idea. I'm not in favor of recommitting each proposal when it gets here because it's too long, just think what's going to happen when you get to Revenue, Finance and Taxation. Just think what's going to happen when you get to Education and Welfare, and as far as Natural Resources and Agriculture, I'm not sure how long it will take for. I would assume it is a little bit shorter than Revenue, Finance and...well, Education and Welfare, but I think it's a bad precedent. These fields, I think, are just more detailed. You have to have more so-called statutory material in the constitution to cover these areas. If you don't, what are you going to put in, general principles? What kind of general principles can you have in local and school government? Some one statement like "the legislature shall provide for the governing of local governing bodies," is that all you're going to put in? I don't think so; I think you need some of this material. I looked at the committee proposal, I think it conflicts in a lot of places with Revenue, Finance and Taxation, but our committee has already suggested that we just defer some of these particular sections that conflict with our commission. I think that, Revenue, Finance and Taxation could come up with their tax proposal before some of these particular sections in the Local and Parochial Government, I think it's going to work itself to this down to the theory. So I say to you that we just defer those sections in the Local and Parochial Article that conflict with Revenue, Finance and Taxation. I think the answer. Now, Saturday afternoon whenever we get through...well, Friday we got through with the Bill of Rights; Saturday we worked on this Code of Ethics and I was satisfied with what happened. I'm very pleased to announce that the people in my area are very satisfied with what we have done so far. But, Saturday afternoon I picked up a rumor that someone didn't like the Local and Parochial Proposal and that this committee would have to rewrite it. I'm really concerned about this person trying to, when we said he was going to get through with the convention, I'm really concerned with this person now that time is getting short; he's going to get involved in this convention. I don't know how, but he's trying to get mixed up in this convention and trying to meet a deadline. I think he was concerned with the length of the article and the fact that it's going to take so long that we might not get through. Well, if his solution to the problem is recommitting it, I think it's going to take us even longer than what we have already done by getting involved. If he's so concerned about getting through on time, I would suggest a special session to allow us a longer period of time to do it. I think the first four sections we've come up with, it took us a long time to do it, but I think they
Mr. Chairman: Mr. Chairman, ladies and gentlemen of the Convention: I am today addressing you, not merely to those people who are the sponsors of this movement to recommit, because there is too much statutory material in the Local Government Article and because it's too long. I want to address the new constitution by about double or triple its present length, when they have been the prime sponsors of radical decentralization in the Executive Department, to that extent for the counties or the State, or in the local state power to localities in the matter of each, as though the state government and the State of Louisiana, I would have been such a paragon of governmental ethics that all of the local governments in our state surely benefit from the wise overuse of such truly ethical men. We talk about kings of the state, I ask you. Is it just or is it accurate to talk about kings in the elected officials closest to the people? Do you think that you have, as a private citizen, or any of those privileged citizens sitting in the audience today have as much to say about what goes on in Baton Rouge as you do about what goes on in the city council in New Orleans, or in Church Point or in Inlet, or any of the other little citiels out across this state? If you do, then you are a very optimistic person indeed.

Somebody has said that if you pass this Local Government Article you might as well abolish the Louisiana Legislature. You know, if you look across the world and across the United States, you find that the state and federal governments are cited as examples of honest, effective, and efficient government are those states that have strong home rule. Look at the New England states, Vermont and New Hampshire, the place where our movement originated. Government which is closest to the people is the best. If the people don't like it, they can change it, and if they can't, they can go to the meetings. They can voice their opposition or the sponsor of programs in person. Something they simply cannot do in state government. The issue here is very clear, it's very simple. The proponent of this motion was quite honest in saying that he was against this committee proposal because it established too much home rule. I submit to you that this is a bold attempt to overthrow a twenty-one member committee that held more meetings in committee, twenty-one days, longer than any other committee in this Constitutional Convention, and to substitute for a strong home rule provision, which would lead to empowering centralization of government and tax power in the hands of the State, and I want to make that clear. I've involved here. If this move is successful, I promise you that I will make that clear. I regard that centralization provision, but wherever the people are willing to listen to the sound of my voice, and this is a provision that if you want to go home and defend centralization, you have it in the language of Louisiana, in the face of our political history, well then you go ahead and vote for this section, and I hope you do, but don't forget that the people in your hometown. As for myself, I have no doubt and no fear about expounding my vote to the people in line.
by considering it first I would move to delete it because it doesn't belong there, and if you delete it, you can't understand the rest according to members of the Committee. Mr. Perez has said that Section 9 is out of place. Section 9, according to anybody on the committee that you talk to, is the crux of the whole proposal. If Section 9 is amended out of something or its significant design, then the rest of the proposal has to be recommitted anyway. These are not my words; these are also some of the members of the Legislature of Now. I don't understand why Section 9 wasn't first. Now, Mr. Perez has said before, that over one-third of the old constitution is considered in this article, and I think it's very important. If this convention, I don't think anybody here can intelligently floor amend this section like you floor amended the other four sections. I yield to any questions.

Further Discussion

Mr. Henez Mr. Chairman and fellow delegates, I certainly rise in opposition to Mr. Munson's proposal. Simply... when I asked him what's his alternative, what should we consider, he didn't have an alternative thing that we should consider. I think when we... for the past two months we have been trying to get some order in the convention and trying to determine what article, what proposition we should consider next, somewhere along the line we determined to consider Local Government at this specific stage. Now, we don't consider it now, what should we consider? So that's one reason why I rise in opposition to it, and I rise in opposition to it knowing that after reading the Local Government Article, there are a lot of things in there that I personally oppose, and will vote against unless it is changed, but I don't think that is the issue. I think the issue here is whether we should consider Local Government at this time or not whether we should give it to committee and let them completely revise it. If you've read Local Government. I don't know if you can't be convinced it's only revised. It's a philosophy, and it's a good philosophy. It's a philosophy that says that local government shall not operate under the permission of the legislature anymore. Let me just tell you why I think it's a good article in philosophy. Whether you want to change some particular sections or not, it's on its own merits. I am chairman in the Senate of Local and Municipal Affairs--Local Parochial Affairs. We get proportionately as many bills through that committee as any of the other committees such as Finance and the Judiciary Committees, simply because every police jury or every police jury in this state--every municipality or every governing authority has to do the ridiculous things as cutting grass, as authority to have ambulance, as authority to do this, authority to do that and authority to do the other. In 1970 you had four constitutional amendments on your ballot authorizing ambulance services in various parishes. Isn't that ridiculous? You know, when we voted--when the legislature passed the legislation allowing us to set up this convention, one of the things in the Senate especially, one of the things in particular I was interested in, that we get the statutory material--gentlemen, that's saying there's too much statutory material--that we get out of the legislature the amount of material that was required to allow local governments to function. We let those, there was a hundred and forty-two or a hundred and fifty and thirty-nine members of the legislature, absentee vote, rather than any of these local issues we've been debating on, debating on, and debating on, and taking the major amount of time, what it absorbs. Let me just tell you, we voted a two billion dollar budget each year, pretty close to two billion dollars. Do you know how much time the legislature spends to get two billion dollars. Do you know how much time the legislature that are not legislator, think about the prime function of legislators; think about the prime function of taxpayers; think about what we should be doing and what we are doing. I've seen the budget go through that legislature in a period of three or four days. Three or four days. I'm going to get some agreement in a period of some people, but that's a fact. That's a fact. We've spent less in the past... in the time that I have been there, in the time that we spend one day on a billion dollar budget, and we spend four and five days arguing whether on some... whether some police jury should have an ordinance to allow truckers to load or unload or allow something of that sort. It's completely ridiculous. I think the material in the Local Government Article doesn't add statutory material to the article. It takes away from Parliament the important section of the Article, and it allows the legislature, it allows the local governing authorities to function with a lot less legislation than they would normally have needed. I think if you agree that the prime function, or one of the prime functions that legislators have in the legislature has, to do something about the mass of state agencies and to do something about the huge budget that we face every year, and not worry whether East Feliciana Police Jury has more or less money than Terrebonne or some other place and not worry about whether Terrebonne Parish can have ambulance services and how they charge for that ambulance service or not, and not worry about the hundreds and hundreds and hundreds of thousands of little details that local police jurors perform and not legislators. I think we do this so you take away from your police jurors or those mayors in the back, or anybody else. We've given them an insight to something they've been looking for for years, and believe me, they want it. They want the prerogatives that this article gives them. They want it and they want it bad, and I think we're making a serious mistake if we don't at this time give them the opportunity, or give this convention the opportunity to consider what's in this article so that we can amend it. We can amend it like we've amended all the other articles. We've done so in this convention. We've seen some articles come in the convention that were just completely out of line, and I think they came out fairly good. I think this one will also if we give the convention an opportunity. The committee has worked, I'd say as hard as any committee in this convention, and I would ask you to go along and let's hash it out here and not recommit it back to a committee. I'll answer any questions, Mr. Chairman.

Further Discussion

Mr. Jenkins Mr. Chairman, delegates, we've seen the specter raised here of centralized government. We've been told that if we don't go along with the philosophy of this article, that we're for centralizing in the hands of the state government, a lot of power that doesn't already exist. That is absurd. No one at this convention is suggesting that state government have more power vis-a-vis local governments than it already does. What we are concerned about is the philosophy of this article that developed and grant to government, local government in this case, vast new powers that it's never had before. Let me tell you about the philosophy of this article. The guts of it is that local governments can do anything that the legislature does not specifically prohibit. Look at this section 9 where it says that "local governments may exercise any power and perform any function necessary, right, and proper for the management of its affairs, not denied to it, including anything," to provide for the protection of the public health, safety, morals, and welfare, to license, to tax." Look at the top of page six. "Any such power, performance of any such function or specifically declare the state's exercise of any such power or any exclusion." That's what the legislature must do. It must say that a power it is exercising is exclusive or else a local government can exercise it. Now what does that mean in practical terms? Like something like milk price-fixing, something that...
we’ve discussed at some length under the provision of the law that every parish and every municipality will be separate and distinct and would have their own area to act in that area, unless the legislature specifically declared its powers exclusive in that area in the whole area of regulation; consider the possibilities, minimum wages, for example, every municipality and parish could set up a different minimum wage scale. The possibilities are vast and were clearly intended. It would be impossible to function as continuous transactions in this state if local governments had only this authority. The philosophy of this is that the states created the federal government and states created the local government, and the end of the state’s work was to preserve that philosophy. This philosophy is unifying; it is true and true. To create local governments just doesn’t make sense. It would not work, and I think could lead to disaster in the future of this state. I’ll answer any questions.

Mr. Deshotels: Point of order, Mr. Chairman. He’s not asking a question; he’s taking the floor on personal privilege against Mr. Burson. I would like for the Chair to call him down on it.

Mr. Munson: I said my question is this, if the gentleman in the far left corner had been listening to what’s going on; I also started off by saying “Did you know?” My question is this: Did I not say in my opening statement that I have always been a strong advocate of local government and home rule, but that in my opinion this proposal went far beyond home rule? Did I not make that statement?

Mr. Jenkins: Yes, you did, Bob, and I think most of us feel that exact same way.

Mr. Deshotels: Ladies and gentlemen of the convention, Mr. Chairman, I rise to oppose Mr. Munson’s motion. Isn’t this a heck of a way to start off a Wednesday? We were supposed to start on the local and Parochial provision or proposal last Saturday, we were all ready. I wonder when the decision was made that we wouldn’t take it up? You see, I was driving around this morning, and I saw a rowboat across the lake, and I thought, why is it there? You know, usually these things come from the fourth floor. They tell us this wasn’t the fourth floor; it came by rowboat right across the lake, and it strikes me, Mr. Hugo, it’s not a gut issue, it comes from another point of the body. Gentlemen, last Saturday I had a very, very difficult decision to make. You recall that we were taking up the code of ethics and we made a tremendous effort in the code of ethics that now is now a part of our political officers, I really worried about the thing, I talked to a lot of the members of the convention. I’m fired up, it hasn’t been settled for us because I thought that having a code of ethics that would apply to all of the state, local and parochial government officials, was a commendable, tremendous idea. I was disturbed about the administration of the code, and this was brought up, the thought of the matter there, and I knew what it was; I know what the code is. I don’t want it to do what it appears to be doing; I don’t know what the wording of it means, I don’t know: I can’t do it. I want to fight fair, I don’t want to have a way to work on it. We had a good debate, the proposal for the proposal, like Mr. Munson said he was going to fight against, I tell you what, I’m afraid to say it, I hope that doesn’t happen, but we’re going to be burying this thing in the dust. I hope it will never come back because they refuse to trust us again. They’ll say, why, why, why, when it comes to us, that you’ve got to have a veto, re- mittion. You don’t do that, he may call me, you did do that and there are certain limitations, and, in all the arguments have been repeated against the arguments of status vs. versones economic material, that that’s the philosophy of our whole system in this nation. We need to preserve that philosophy; it has worked; it is tried and true. To create local governments just doesn’t make sense. It would not work, and I think could lead to disaster in the future of this state. I’ll answer any questions.

Mr. Deshotels: Point of order, Mr. Chairman. He’s not asking a question; he’s taking the floor on personal privilege against Mr. Burson. I would like for the Chair to call him down on it.

Mr. Munson: I thought you were going to say that...

Mr. Jenkins: I don’t know of any such problem.

Mr. Deshotels: I don’t know how the gentleman from the far left corner has been listening to any of the discussions. This was brought up, Mr. Chairman, a lot of people were talking about it, and I think it’s the thing that needs to be said. The gentleman had something on his mind that didn’t come up to the floor, Mr. Chairman, and I think that he wants to say that. I hope that we can come to some agreement on this matter, and I think that we can. However, the gentleman from the far left corner is going to have to say that he wants to give it a try, and that he doesn’t want to have a way to work on it, and, I think, that’s all I can say to him, Mr. Chairman, and I hope we can come to agreement on this matter.

Mr. Jenkins: Thank you, Mr. Chairman. I think you have made your point, Mr. Burson, and I think we need to come to some agreement on this matter.

Mr. Deshotels: Mr. Chairman, I just want to make the point, I think that the gentleman from the far left corner is not only going to have to give it a try, but, I think, he’s going to have to say that he doesn’t want to have a way to work on it, and I think that that’s all I can say to him, Mr. Chairman, and I hope we can come to agreement on this matter.

Mr. Jenkins: Thank you, Mr. Chairman. I think you have made your point, Mr. Burson, and I think we need to come to some agreement on this matter.
Mr. Kelly, Mr. Chairman, ladies and gentlemen of the convention, there have been some statements made up here this morning concerning this group of people, that group of people. I rise to remind you of one thing. Are we writing a constitution for the people of the State of Louisiana or are we writing a constitution for certain special interest groups? I know there was lots of opposition and there has been lots of kick concerning the Bill of Rights. That's Mr. Ander's face in the other room. The Bill of Rights what in this convention have we dealt with for the people of the State of Louisiana? Everything else has concerned itself with government. What is the power of the executive department? What are they going to do? What is the judiciary department going to do? What are the powers of the legislature? Here, now we are, what are the powers of local government? I simply ask you, and I wish to remind you that it's my interpretation that in that Preamble it says something about the people of the State of Louisiana. Does it say anything about 'We the governing body of the State of Louisiana?' I think not. I think we are on the wrong track at this particular time. We've got through it, but I'm trying to get a good constitution. Let's get a constitution for the people of the State of Louisiana. I'm not interested in what activity of the presiding officer, but I am interested in one for the secretary of state of Louisiana. I'm not interested in one for the attorney general, nor for the district attorneys. I might add that I felt very strongly about the powers and duties of the district attorneys. I think the district attorneys of this convention will recognize the fact that I lent support as I possibly could to their position in this regard. We've got to change what is going to be the ultimate outcome of this document. Now, let's look at it. What are the people back home saying? They are either saying absolutely nothing... Who have you heard from? We have heard from nothing but special interest groups. I wish to remind you that there are many, many... I wish to say that the many, the people of Louisiana, I wish just plain John Doe people out on the streets. They are interested in their own particular rights. They are interested in seeing government run correctly. Very rarely. That is what this is about. We've got to come together. We've got to come together. The main objection that I have heard over the past two or three weeks—and I know everybody says 'Oh, what the people back home are saying.' Well quite frankly, I haven't heard a lot about what the people back home are saying. I've heard a lot about people that have direct interest in government, what they have been saying. I haven't heard too much from the person back home except one thing: What's going on down there, are you all still doing all of that raving and fighting, taking you four and half weeks, three weeks to complete this article or that article? We've got to start thinking what interest group is concerned about this interest group or that interest group is going to fight the constitution. I'm not interested in what this particular group or that particular group is going to do. I'm interested in what the people, the average person on the street—is he going to support this constitution? That's the whole meaning of this amendment process and don't try and go back into committee and work out some of our differences... There should be no difference. Our only thought should have shown discord down here. We have flattered enough personalities down here in the past. I think we best leave all of that behind us. I recommend to you that this article be recommitted. Let's iron this thing out completely, let's bring something onto the floor. If it takes five or six days in committee, that's fine. We may save three weeks by doing that. We don't have enough time left. Today is September 19, if I am correct...

Mr. Heine, Mr. Chairman and fellow delegates, you know I've traveled this state over trying to be your lieutenant governor. Maybe I didn't belong down here with the big boys, I don't know. We really didn't realize how naive I am until this morning. I can't understand why you wait till the last hour and then bring forth a motion of this type. Now, I'm not up here to debate the Local and Parochial Proposal, but I am to debate the fact that you want to send this back to committee. Now, I can't understand for the life of me why some of these people didn't come forward last week. You have had copies of this thing now for several days. We've invited all of them to the committee meetings to bring forth just this kind of thing, but to let this committee get to this point, be down here this morning ready to come forward with our proposal just like everybody else is. They are in committee. I think we should do something like this to us, I'm offended by it. I'm offended that you might be opposed to some of the sections, because I'm opposed to some of them, but that's beside the point. The point is, we are ready to go. So, let's get after it. Again I say, you were invited to our committee to wish you had made sure not by sending this back to committee, one thing would be changed because just like all of your committees, we had our differences, and we voiced them. We've come out with what we think is a good proposal. The majority thinks it's a good proposal. I'm sure all of you or many of you have been contacted by our mayors, by your councilmen and by your police juries back home saying that they think that it's a good basic proposal. This doesn't mean that they don't want you to change anything in it. Certainly they do, just like we have done in other proposals. But, I ask you, fellow delegates, let's get after this thing. You know somebody made the statement up here that if we proceeded with this proposal as it's written, that it could kill the entire constitution. Well, I feel just the opposite. I think that if we send this proposal back to committee and this is different from what we've done all the other committees, this could be the killing blow. So, let's get on about our business. Let's proceed with this amendment. This thing was said at a meeting that I was attending the other night with some of the other delegates, "Let's perform surgery on it." But, let's move on and get after it.

Mr. Willis, Mr. Chairman, fellow delegates, I rise to echo the words of the mayor. Words are things that make you think. Thus far, our product has been trained on a principle of the Netherlands, conducive to the pursuit of happiness. In my contribution, I sought and seek to steer my ship with hope ahead and hopelessness astern. My hope at times will fail, but less often than I feared in the beginning. I am not as displeased as I might have been. I am, therefore, sufficiently satisfied. To cuss a proposal without discussing it is misleading and misleading to other people regarding kingdoms. I remind you that each of us would change our cross for a crown. Who will not change a raven for a dove? To those who label this proposal 'wrong,' let him show me his dove, and we will have a trade. In the vernacular, put up or shut up. Talking in generalities does not make one a general one. Whatever the trouble are the fear of debate or the fear of being wrong, neither should deter us. To err is human, to forgive, divine. So should we accept that. Our only thought should have shown discord down here. We have flattered enough personalities down here in the past. I think we best leave all of that behind us.
have legislative materials or any other means to intercede outside the legislature for a uniformity of legislation. It is not true that and to the best of my knowledge and belief, if we were to have more, it would more reduce the proposals for whatever reason, we will do the best to make sure that they are not simply defeated but that they will be adopted. I question the wisdom of striking the bad, creating the good, and adding the best to this proposal, and move for the adoption of the following compromise. Reference back to committee on the whole and an obvious exercise in futility. The argument on the issue will be four and the four proposals. I think would be adopted. in view of his reference to the point of writing this constitution. I am for examination of the proposal immediately and the terse dismissal of the motion. Thank you.

Further Discussion

Mr. Drew

Mr. Chairman, Tadles and gentlemen of the convention, I rise to oppose this motion. I'll tell you very briefly why. In the first place, there has been given a condition that this proposal contains a valid reason for recommitting this proposal, not one valid reason, except certain people have amendments to sections that they don't propose the way they are written. Has there been more than one of the four proposals we have considered and adopted, has there been one proposal out of those four that hasn't had at least a hundred and fifty amendments offered? I believe, possibly, the judiciary had a hundred and fifty offered, fifty something adopted, which I believe is the least number of any of the four proposals. But, let's get down to the meat of this motion and please listen to this, this is what you are going to be doing if you support this motion, you are moving this is the most vicious thing that has been offered in this convention for this reason. It is an absolute insult and not in the face to the committee on local and Parochial Affairs. It is telling that committee that after your months and months of deliberation you have come up with something so bad it is not even worth consideration. If you vote for this motion to reconsider, you are adding insult to injury. Second, it is an insult to this entire convention to tell that we are not going to offer the amendments to correct any wrong that may be in this proposal. I take violent issue with this motion. I take it as an insult to the committee. I take it as an insult to the hope that the committee will not fit to overwhelmingly defeat it, go about our business as we had scheduled our business, offer the amendments to the people and not the proposals we have and you have amendments. We are willing to consider your amendments, if you are afraid to let the convention hear and debate your amendment, you better withdraw them before you file them. Let's not insult the committee, let's not insult this entire convention because there will be an amendment and some amendments to any proposal that comes up. I urge you to defeat this motion.

Mr. Hughest

Mr. Chairman, I would like to yield

Mr. Reader

Closing

Mr. Chairman, Mr. Chairman and fellow colleagues, I am, of course, not going to use this opportunity to add and in absolute favor of this motion. None of you at this time may have heard we had no reason for transport. Well, let me try to give you one. We have been told that the failure of the constitution is a larger matter than any single failure within the constitutional form. It has reached an italic small hierarchy. The failure of the constitution will be remembered long after any remarks in favor or against here. I submit to you that this is fair. Enough of
existing law are recognized and ratified." The purpose of that sentence is that when we go to talking about how we are going to change boundary lines or dissolve or consolidate parishes, the committee thought it was appropriate to have a one sentence acknowledgement of the fact that we do have parishes and we do have boundaries as created under existing law. With respect to Paragraph (B), it is a restatement of the present constitution with the following changes: It increases the number of persons that may be included within a new parish to fifty thousand, as opposed to seven thousand which was included in the original or in the 1921 Constitution.

I would be glad to answer questions.

Questions

Mr. Winchester Mr. Perez, the first section says "All boundaries are established, recognized and ratified." We are having a boundary dispute with the parish of Iberia. What does this do to that...

Mr. Perez It does absolutely nothing to it. Whatever the legal rights are under the existing law, that is what the courts would eventually determine. There is no attempt made in the first sentence to change any boundary lines or to settle any boundary dispute. All it does is to recognize that wherever that boundary may be legally located, that's where it is. It would have no effect on any boundary dispute between parishes.

Mr. Winchester Thank you.

Mr. Denery Mr. Perez, what is the number of inhabitants in the smallest parish in the state right now?

Mr. Perez I do not know off-hand.

Mr. Denery Where did you get the figure that you increase...

Mr. Perez The figure was determined by the committee. After discussion they felt that seven thousand was much too small a number to have within a new parish. It was a number which the committee came up with which they thought was a reasonable number for the creation of a new parish. There's no magic in the number fifty thousand.

Mr. Denery Well, what was worrying me was that I don't know how small the smallest parish is. Does the staff have that information possibly?

Mr. Perez Sir?

Mr. Denery Do you think the staff has the information with regard to the populations?

Mr. Perez I'm sure it can be furnished. I don't know that we have it readily available.

Mr. Denery One other question, Mr. Perez, please, sir. I realize the language...

Mr. Perez If you don't mind, I'll determine from the staff whether they have the population figures of each parish.

Mr. Denery I have one more question when he answers this one.

Mr. Perez We do not have those figures readily available at this time.

Mr. Denery Mr. Perez, one other question. I realize the language is the same as the present constitution, but what happens if a parish reduces in population below the figure which you have there?

Mr. Perez This only deals with the creation of new parishes or the dissolution. It has nothing to do with existing parishes.

Mr. Arnette Mr. Perez, is there any particular reason for having this last sentence in Paragraph (B)?

Mr. Perez Well, the particular reason would be a prohibition that no new parish could be created unless it had a significant number of people. It would seem to me that we should have some safeguard that we couldn't create a parish with one hundred or five hundred or two or three thousand people. I think it is a reasonable limitation placed upon the creation of a new parish.

Mr. Brown Mr. Perez, that concerns me too as to why you even need that last sentence. As I understand it, before there can be any consolidation or creation of a new parish, it takes a two-thirds vote, doesn't it, of both parishes involved and it also has to pass the legislature as such?

Mr. Perez That's correct.

Mr. Brown Do you realize that there are a number of parishes? I represent...every parish I represent as a senator...and I only pertain to a creation of a new parish that has a population of more than twenty-five thousand people. When you say fifty thousand...

Mr. Perez Well, neither does my parish have fifty thousand, but all we are talking about now is the creation of new parishes and would not have any effect whatsoever on existing parishes.

Mr. Brown Are you aware of the fact that up in Osceola Parish right now there is a very hotly debated issue going on as to whether West Monroe should be part of a separate parish? There is a strong feeling from a lot of people up that way, so I understand, that they should be a separate parish. Under your provision Osceola Parish could never, if they so desired, split up into two parishes because...

Mr. Perez I have no strong feeling, and I don't believe the committee does, with respect to the fifty thousand number. But, it seems to me reasonable that we should have some minimum number in the constitution so that we would not have any ridiculously small number of people to create a new parish.

Mr. Brown But, wouldn't you think that the two-thirds provision of having to vote plus the vote of the legislature would be a pretty good safeguard?

Mr. Perez Yes.

Mr. Brown You think you've got to have a specific number?

Mr. Perez Yes, it would be.

Mr. Munson Mr. Perez, along the same line perhaps. I realize that this doesn't have anything to do with any present parish when you're talking about size or population, it only pertains to a creation of a new parish. Would you mind expanding a little bit on your remarks as to why six hundred and twenty-five square miles or less than fifty thousand inhabitants?

Mr. Perez First, under six hundred and twenty-five square miles, that's the provision in the present constitution. The fifty thousand is just again the number that the committee felt that before that such drastic number of people be able to divide parishes or consolidate parishes, there should be that number involved. I don't believe there is anything magic about the fifty thousand number, however.

Mr. Munson Do you know...one more question then. Do you know out of the present sixty-four parishes, how many parishes do we have that, we will say, are less than fifty thousand inhabitants?
Mr. Perez: I do not have any statistics before me at this time; I don't know, Mr. Munson, offhand.

Mr. Roy: Mr. Perez, notwithstanding.

Mr. Perez: Pardon me, if I say, just to give Mr. Munson the information. The staff has provided me with the figures here that forty-three parishes have populations of less than 39,199 or about forty thousand.

Mr. Roy: Notwithstanding that the six hundred and twenty-five square mile provision is in the present constitution, it is your fifty thousand figure is nothing more than an arbitrary decision that was reached by the committee that really can't be supported philosophically or political science wise...

Mr. Perez: It's a carry-over from the present constitution. That's correct.

Mr. Roy: Well, doesn't the committee think that the local inhabitants and the legislature decide something of that statutory material as to an arbitrary answer like that from the thousand, especially when you point out forty-three parishes have less than forty thousand people?

Mr. Perez: The committee was strongly of the opinion that such drastic action was taken as to either divide parishes, that it should be understood that such limiting factors involved are a carry-over from the present constitution with respect to the square mile; the number of inhabitants was increased by the committee.

Mr. Roy: Well, it's it... does the committee think that if three-fourths of a parish want to separate, that that's such drastic action that they should not be able to do so without a magic number of fifty thousand being reached, or shouldn't it be the...?

Mr. Perez: Unless the three-fourths of the parish want what?

Mr. Roy: Want to separate into two parishes. Shouldn't that be the determination of those local people and not us enacting in the constitution a number like fifty thousand, which would prevent forty-three parishes now from being what they are?

Mr. Perez: I have no strong feelings about that, Mr. Roy.

Amendment

Mr. Pugh: Amendment No 1 [by Mr. Pugh]: Page 1, delete lines 1 through 13, both inclusive, in their entirety, and on page 2 delete lines 1 through 13, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 1. Creation, Dissolution, and Merger of Parishes; Change of Parish Lines, Change of Parish Seats.

Section 1 (A) The legislature may establish and organize new parishes, dissolve and merge parishes, and change parish boundaries, if a majority of the electors voting at an election held for the purpose in each parish affected consent thereto.

"B." The governing authority of a parish, upon the written petition of at least twenty-five percent of the electors of the parish, an election shall be held, more or less than the parish seat, and the fact that twenty-five percent of the people in the parish I know in my particular parish, where I live, that wouldn't probably be having an election every thirty days, every twenty percent of the people in the parish, next to move it and twenty-five percent of the people in the city where I live, I wonder where you get the twenty-five percent figure, that's my ignorance.

Mr. Pugh: No, it's thirty-three percent.

Mr. Roy: I think generally we have been able to establish or dissolve all of these, may be by a two hundred fifty vote. You see, the provisions I think in this bill, there is a different thing. If this was part of the bill, there is a different thing.
9th Days Proceedings—September 19, 1973

the four sections that Mr. Pugh seeks to delete. We're taking the cart before the horse here, it would seem to me. There is more language in here, in the original committee proposal, germane to this subject matter which is omitted from Mr. Pugh's amendment. I would like to hear affirmatively from the committee, since they spent so long discussing this matter, it's here before Mr. Pugh tells us to take it out.

Ruling of the Chair

Mr. Henry Mr. Derbes, your point is well taken. The amendments are still in order and the members of the committee can, during their discussion on this amendment, as to whether they will or will not accept it, can bring into play these other sections that you are speaking of, sir.

Questions

Mr. Duval Mr. Pugh, looking over your amendment, it appears from reading the language that a large parish could absorb a smaller parish by merely a majority vote. Now, do you mean that each parish would have to be the majority vote or the total number of the voters voting, a majority of the total number of voters voting?

Mr. Pugh I believe that it says "in each parish," which would require both of the parishes.

Mr. Duval In that case, I would agree with you, but the way I read it I don't think it says that, sir. It says "if a majority of the electors voting at an election held for the purpose in each parish affected consent thereto." The way it's phrased, it appears it could go either way; it could go where all it takes is a majority of the voters period.

Mr. Pugh When you say each, you are talking about more than one. You say each parish affected, and I don't know how you can more simply put the phrase.

Mr. Duval Well, I think it could be phrased differently because it merely requires each parish to vote but...the way I think it's read.

Mr. Champagne Mr. Pugh, I don't know if you are aware of it, I could go for your amendment providing, of course, the thing that worries me is that I think in the present constitution it says a two-thirds vote of the electors voting. I simply find that if a majority is all you need, we're going to have some changing of parishes, we're going to have the sections voting, they will vote for it if it's in their best interest. Now, when this other end of the parish is unhappy with this end; we're going to have this voting around, and you may have the big ones eating up the little ones, and I'd rather see this a two-thirds vote because I think most of the people may be happy with the situation as it exists.

Mr. Pugh I have no objections to that and would withdraw the amendment for that purpose, if you'd like. I'm talking about the number to call as distinguished from how you're going to actually do it.

Recess

[Quorum Call: 103 delegates present and a quorum. Amendment withdrawn and resubmitted with correction. Amendment read.]

Explanations

Mr. Pugh Mr. Chairman, fellow delegates, the amendment you now have before you accomplishes the desired results of satisfying the questions from the floor, one being the requirement of two-thirds instead of a majority; the second being the elimination of the twenty-five percent by the people; the third for Mr. Perez—I put subparagraph (C) in relating to the existent parishes and boundaries. The technical change was brought about by the fact that, as I appreciate it, if you adopt this amendment then by Amendments 2, 3, and 4, I will eliminate Sections 2, 3, and 4 because they will then have been totally covered by this section.

Questions

Mr. Casey Mr. Pugh, according to my understanding, your amendment deletes line 14, and my question is, why do you delete "Part I, General Provisions," if you're deleting line 14?

Mr. Pugh Because I had some amendments coming right behind this one for other sections which will take care of that.

Mr. Casey Well, so therefore, there will be no "Part I, General Provisions," and then there will be no "Part II, Finances," is that correct under this particular proposal?

Mr. Pugh It comes out as a different section, and not being paragraph (C). I believe those are incorporated in those two more lines is what we're doing.

Mr. Abraham Mr. Pugh, I don't understand the need for Paragraph (C). I know what you're trying to say, that you're ratifying or recognizing existing boundaries, but if you read the constitution twenty years from now, it says, "All parishes and boundaries established under existing law recognized and ratified." So, does it really mean anything?

Mr. Pugh No, and I ordinarily would not have had it in there, did not put it in there. Mr. Perez asked me if I would, and I did.

Mr. Fulco Mr. Pugh, isn't it true that you're leaving out the part concerning a petition by twenty-five percent of the electors?

Mr. Pugh Senator Rayburn asked me to do so, and I did.

Mr. Fulco But, don't you feel that that would be a mistake, that we would be depriving the people of a right to call...to petition the governing authority to call an election for that purpose?

Mr. Pugh No, I don't think they are being prohibited from doing that. I believe that anytime twenty-five percent of the people want anything, the governing body will give some consideration to their request. I don't think you're taking a thing away from them.

Mr. Fulco I know but, Mr. Pugh, we are not providing in your amendment for the people to have this right. In other words we are leaving it up to the governing authority of the parish to call or not to call an election, and they could very well call and they could very well not call an election, and the people who would want this change would have no right or no opportunity to require it.

Mr. Pugh That is correct, until the next election.

Mr. Fulco Don't you think that people should have this right? They are going to have to pay the cost for the new courthouse and furnishings and provisions. Yet, in addition to that, this is a government of the people, for the people, and by the people, and I know how you feel. I know you want that in there because you had it in your original amendment, and I even think that "Sixty" wants it in there, but I don't feel that "Sixty" realizes what he's doing, and I hope that "Sixty" will give that a thought. I do. I really do. Do you realize it, as I'm sure he don't, and wouldn't you agree that it ought to be in there?

Mr. Pugh Well, I had it in there initially. I'll reiterate that Senator Rayburn asked me to take it
Mr. Perez: I would like to see the amendment allow that one be split into two parishes.

Mr. Hugh: Yes, you can split one parish into two parishes.

Mr. Perez: Well, you can think that would go well that one would be the parish and the other would be the other. I think that would get at the key points that the first thing you know, they should be split up.

Mr. Hughes: I don’t think that the percentage would allow that to be split up.

Mr. Hopkins: If it does allow it, how would it be accomplished?

Mr. Hughes: I don’t understand.

Mr. Hopkins: How would it be accomplished if it was allowed. How would you determine that a parish could be split?

Mr. Hughes: Well, you take two-thirds of the population. If you take two-thirds of them, you take the people affected. Therefore, if you’re going to split the church, you have two-thirds of the people in the left side of the line, two-thirds of the people on the right side of the line.

Mr. Hopkins: Thank you.

Mr. Hughs: Mr. Perez, Mr. Hopkins on behalf of the Committee accept your amendment?

Mr. Perez: I haven’t asked him, and I’m sure he will speak for himself.

Mr. Hughes: In further reference to Mr. Hopkins question, do you not agree that we do have a representative form of government, that is, this is the ultimate in other words, this is in a representative form of government, that if these people, these people, the local government authority does in fact, that the people have voted here.

Mr. Hughes: Yes, that’s the point I made. I don’t think it won’t take any longer than the next election, thank you.

Further Discussion

Mr. Hopkins: Mr. Chairman and fellow delegates, I rise to object to the proposal put forth by the Twenty-five per cent in that you might well, I don’t want to say that you’re doing it, but you might well split the population. I found that the Twenty-five per cent of the people in a certain area and really I mean we could have an additional

Mr. Perez: Mr. Hopkins, you’re right, the people have a right to split them.

Mr. Hopkins: Twenty-five percent of the people in a certain area and really I mean we have an additional

Mr. Perez: Mr. Hopkins, you’re right, the people have a right to split them.

Mr. Hopkins: Twenty-five percent of the people in a certain area and really I mean we have an additional

Mr. Perez: Mr. Hopkins, you’re right, the people have a right to split them.

Mr. Hopkins: Twenty-five percent of the people in a certain area and really I mean we have an additional

Mr. Perez: Mr. Hopkins, you’re right, the people have a right to split them.
Mr. Roy: Mr. Perez, I take what you are worried about and Mr. Keen, with respect to the words "general law" used on page 1 at line 19, is that you think the legislature could provide any special way for changing parish boundaries and what-have-you?

Mr. Perez: Yes, I would think that the legislature without the words "by general law" could come in and say, "We decided that we ought to consolidate the parishes of Lafourche and Terrebonne and Jefferson, and it shall be done in this way."

Mr. Roy: No, but isn't that fallacious in that the only way that the legislature may do it and is protected by Mr. Pugh's amendment, it still requires a two-thirds vote of the people in that parish?

Mr. Perez: It still requires that vote of the people back home, but again the provision in the judgment of the committee, should there be a general law applicable to all parishes for which the...procedure for which would be set out as to how parishes would be consolidated, merged or boundary lines changed.

Mr. Roy: Now, the other question I have is, how would you have under your Section 2, how would you ever get to change a parish line since you all don't provide for the special call? [call] now it'll come about.

Mr. Perez: I'm sorry; I didn't understand your question.

Mr. Roy: Who's going to bring the special election about provided for in line 29 at page 17? How will that come about?

Mr. Perez: I still don't understand your question. You mean the change shall take effect only if two-thirds of the total vote cast on the question in each affected parish in favor thereof?

Mr. Roy: Right. I understand that where the two-thirds vote is provided, but this special election, who will call it? It doesn't say the legislature may call it?

Mr. Perez: It would be provided under line 19, "The legislature shall provide by general law for these various changes," and in the act of the legislature it would be set out under what conditions the election would be called, and so forth.

Mr. Roy: That's where I find I have trouble because lines 19 and 20 say nothing with respect to changing a parish boundary line. It just says, "creation, consolidation, or dissolution." That does not say anything about changing parish boundary lines like Section 2 specifically states, you see? You specifically state on line 20 and 27 a way for changing parish boundary lines, but you don't provide for it to come about. So you all's sections leave out a very integral part of what you're trying to argue.

Mr. Perez: Not in my judgment, Mr. Roy.

[Previous question referred. Record of vote ordered. Amendment adopted: 64-46. Motion to reconsider tabled.]

Recess

[Quorum Call: 85 delegates present and a quorum.]

Amendment

Mr. Poynter: Delegate Abraham sends up the following amendment: Amendment No. 1, on page 1, between lines 14 and 24 as omitted by the floor amendment proposed by Delegate Pugh and adopted by the convention on September 9, 1973, delete in its entirety Paragraph
Mr. Abrahams: The reason I offer this amendment, and I don't understand, or I don't see or interpret the language in Section C as what I think the amendment is. As I understand it, that the purport of the Section C is to say that the parishes and boundaries as of the effective date of this constitution are recognized and redefined, and what this says to me is that it refers to an ex-post existing law, tells me that say twenty years from now, there may have been several laws passed or several acts passed which may have changed the parishes and boundaries, and that then is the effective date, so what are we really saying when we have this Paragraph C in the constitution now? I think it's a strange language, and I think it's superfluous, and to me it doesn't say anything at all because existing law applies to the particular time or period that you are asking about. It might be today; it might be next year; it might be ten years from now. That might be the existing law then. Now, if the intention is always that these boundaries as established by the existing law at the time of adoption of the constitution are recognized and ratified, well, then I can understand that, but I do not see the language as it is presently written, and that is why I've offered an amendment to have it taken out.

Further Discussion

Mr. Perez: Mr. Chairman and ladies and gentlemen of the convention, the reason that the clause was put in the original proposal by the committee and the reason that it is contained in the Pugh amendment is because of the fact that in Paragraphs A and B of the Pugh amendment, we talk about how we are going to change these boundaries, and these are the only way that these boundaries can be changed. The purpose for the recognizing the existing boundaries is the same purpose that we had when we recognized the existing judicial districts, Supreme Court districts, court of appeals districts by reference, and I submit to you that the wording is very clear. It says, all parishes and their boundaries as established under existing law are recognized and ratified under existing law very clearly means "existing law at the time of the adoption of the constitution." We submit to you that for a proper constitution, we must stop talking about how we are going to change boundaries, we should recognize the fact that we do in fact have those boundaries, and I submit to you that the language is clear. It is a common use of the language here, and I'll be glad to entertain that, but I do believe that we need such a provision in our constitution when we talk about how we are going to change a boundary, first we want to say that we have boundary.

Question

Mr. Justice: Mr. Perez, would you agree, however, that it is in fact contained in the proposal and in this amendment, that they don't really say that they disagree with it, but I think it's a hard time trying to discuss this amendment.

Mr. Abrahams: If we could have an opportunity to the Pugh amendment with respect to the constitution and the amendment, and then I'll ask for a period of debate on existing law, and if we could have an opportunity to the constitution and the amendment, it is only in that way that we can recognize that the boundaries as established by law are fixed, and thereafter talk about how we are going to change the boundaries.

Mr. Perez: I think it's unnecessary to have in the permanent part of a constitution, although it is necessary.

Mr. Perez: For further consideration of the article. In my judgment, before we take action now we change existing law, we have to have a provision to begin with, and that was the only purpose for the statement, and it is in line with what was done by the Articles.

Mr. Tobias: Mr. Perez, it is not true that the present parish boundaries are not in statute.

Mr. Perez: Yes, they have been in many different ways, but the fact of the matter is that we are talking in this article about how we are going to change those. In this proposed agreement, we have established, we have ratified the new rule in the constitution, about how they are to be changed, and again the only purpose of the words "shall," we have these boundaries, and then this how we shall change the constitution.

Mr. Tobias: But aren't you admitting that, I ask you, to be something that is not presently in the constitution, whereas in the Judicial Article we were multilateralizing something that was already in the constitution.

Mr. Perez: Mr. Tobias, the present judicial constitution and Articles A and B of the new proposed constitution would certainly be subject to changing, and it provides the only method whereby they can be changed.

Amendment

Mr. hesabı amendment is by Mr. Perez. On page 1 of June 14, a floor amendment proposed by Delegate Perez is read at the convention today, and the words "shall" are read after the word "if". By doing this in the words a majority of the voters, the article in stricken Amendment is the only part of Amendment 11 which is stricken. Amendment 11 which has stricken Amendment.

Explanations

Mr. Newton: Well, the last requirement instead of having this as a vote of the electorate, which is 2/3, it requires a majority vote. Now, I think that that is a very serious thing requirement in the Tenth Amendment. It states that we must maintain Paradows A and B of the Pugh amendment and both existing law and the existing law are ratified and ratified. The question is whether this Article 1 or Article 5, the one that makes the change, can be changed. Someone else can make these changes and the question is whether this Article 1 or Article 5, the one that makes the change, can be changed.
of the people want something, let them have it. But, we all realize that with respect to most elections, there's only the relatively small number of people who vote. We felt that in a matter of this great an importance, that definitely a two-thirds vote should be required instead of a bare majority because when you go to change parish lines, you are seriously affecting the very makeup of local government and the area which it affects. So, in my judgment, it would be ill-advised to allow a bare majority to change the parish lines or to consolidate parishes.

Questions

Mr. Burns Mr. Perez, don't you feel that this two-thirds majority, is it really the only protection a smaller part of a parish would have or a smaller area would have against a heavily populated area, on the other hand?

Mr. Perez There is no question about that, sir, and this is a very, very dangerous thing if we do not retain the two-thirds vote.

Mr. A. Landry Mr. Perez, if we adopted this amendment, it would mean that just a simple majority of the people in... or the voters, not the people, but the voters who voted in an election could change the parish seat and, yet, not provide any funds to do so move it. Is that correct?

Mr. Perez Well, as I understand it, the Amendment No. 2 is rejected, so it no longer applies to the parish seat, it would only apply to the change of boundaries of parishes, consolidation of boundaries, etc., which is of even greater importance than a moving of a parish seat.

Mr. A. Landry (B) says: "Location of a parish seat shall be changed if two-thirds of the votes..." I'm just wondering. I thought his amendment also changed that.

Mr. Perez It's my understanding that he withdrew Amendment No. 2, so that his two-thirds vote would apply to the change of parish boundaries, consolidation of parishes, and it would be a very, very dangerous thing to have a majority of a percentage of voters have the long-range effect of changing parish boundaries or of consolidating or merging parishes.

Mr. A. Landry In other words, you could have a light vote like we had on some bond issues of less than twelve percent of the people who are registered to vote, and seven percent of the registered voters would be a majority.

Mr. Perez That's the reason this two-thirds provision is in there, and the committee was overwhelmingly in favor of this particular provision.

Mr. Deeney As I understand this amendment, if two parishes are merged, that can be done by a majority vote. After the merger, however, a parish seat has to be changed, I would assume. Therefore, you would require a two-thirds vote for that. Doesn't that appear to be improper?

Mr. Perez No, sir. As I understand the amendment, it's the opposite. It would take two-thirds to change a parish seat, but only a majority to merge parishes, which doesn't make any sense at all to me.

Amendment

Mr. Pugh's Amendment No. 1, sent up by Delegate Gravel. On page 1, in Floor Amendment No. 1 proposed by Delegate Pugh and adopted by the convention on today, on line 6 of the text of the amendment after the words "two-thirds" insert the words "or more" and on line 15 of the text of the amendment after the words "two-thirds" insert the words "or more."

Explanation

Mr. Gravel Mr. Chairman, ladies and gentlemen of the convention, this amendment just is a technical amendment to make sure that we're not locked in with a specific vote of two-thirds and to require that the vote be two-thirds or more of those voting to accomplish the purpose of the amendment. I move its adoption.

Further Discussion

Mr. Perez I might say we have no objection to the adoption of the amendment, but this is a perfect example of how you have taken a committee proposal which was very carefully worded and, quickly on the floor of the convention, have changed it up and there are still other defects in this particular article, but I don't intend to move any further with amendments. But I just wanted to call the attention, hopefully for the future, that we will consider a little more carefully the committee proposals.

Questions

Mr. Connolly Mr. Perez, are you aware that throughout most of the articles we have adopted, particularly the ones on legislative powers, we frequently referred to a two-thirds vote of the members of each house of the legislature, and never said two-thirds or more of the members?

Mr. Perez Yes, I understand that, but what... again, I'm just calling the attention. The original committee proposal was well drafted, and what we're doing here is trying to patch up something which was ill-conceived and thrown into the amendment at the last minute, which really did the same thing as the committee amendment did. But again, in order to try to help it out and improve it a little bit, I'd say we have no objection to it.

Mr. Smith Mr. Perez, do you think "two-thirds or more" make any sense?

Mr. Perez No, sir. I don't think it makes too much sense, but what I'm... again, what I'm saying is that it's a little bit better, I believe, than it was before.

Mr. Smith Well, don't you think it's best just to leave it like it is?

Mr. Perez Well, I'm afraid that when you say "two-thirds," it means exactly two-thirds, not one less than two-thirds or not one more than two-thirds. I don't know. It's...

Mr. Smith Well, isn't that the way the tax law reads in the constitution, "two-thirds of the members elected"?

Mr. Perez It says "At least two-thirds of the elected membership of each house," which is a lot different than the verbiage that's here.

If I may finish answering the previous question, you see, we very carefully in the committee proposal selected our words, "The change shall take effect only if two-thirds of the total votes cast on the question in each affected parish is in favor thereof." This wording is very confused, in my judgment.

Mr. Goldman Delegate Perez, isn't that superfluous language? If it takes two-thirds to gain an objective, if more than two-thirds voted, you wouldn't lose that objective, would you?

Mr. Perez I'm not the author of this amendment, sir.
Mr. Speaker: Well, I'm (murmurs)

Mr. Speaker: You can't. I know that I am, but 1 say, I have no objection to it, generally.

Mr. Speaker: I'm glad to see Mr. Champagne and Mr. Hennecy.

Mr. Speaker: I'm not sure whether it is necessary, because I seem to remember that you had a motion of amendment, that is not essential. But Mr. Speaker, in the absence of some evidence of necessity, I think we should answer that question.

Mr. P. P. Bier: I mean, Mr. Speaker, you're not seriously trying to put any thing between your president and further twelves, and then have the phrase 'might wish' be replaced by that.

Mr. Speaker: I don't, I mean, is this in Mr. Champagne's amendment. Not mine.

Further discussion.

Mr. Speaker: Mr. Champagne, fellow delegates, ladies and gentlemen. I want to say it very briefly. This is what I refer to as a lawyer's amendment. It's clear to me what it means, it's clear to you, but we've got to spell it out. We haven't. We've got to do it in such a way in the language because we're lawyers. I'm not an attorney, but it's clear to me what it means. It means--it means two-thirds or more and you have to put it in the constitution. I judge everybody back in the 39th district, even those who rarely read, will know what it means. Thank you.

Mr. Bier: Mr. Speaker, Mr. Champagne, Mr. has been talking. I'm a lawyer. Everybody knows what this amendment means. I've been in the legislature and the courts for a long time. I used to be an attorney. I know what it means. If we spell it out, it means two-thirds or more and you have to put it in the constitution.

Mr. Speaker: Now, Mr. Bier, I don't mean to put you in the position of a lawyer, but we've got to spell it out. We have to spell it out in the language, words, terms and phrases.

Mr. Speaker: Mr. Speaker, I want to make it clear that we have two-thirds or more and you have to put it in the constitution.

Mr. Speaker: Mr. Bier, if I were to spell it out, it means two-thirds or more and you have to put it in the constitution. I judge everybody back in the 39th district, even those who rarely read, will know what it means. Thank you.

Mr. Speaker: Mr. Bier, Mr. Champagne, Mr. has been talking. I'm a lawyer. Everybody knows what this amendment means. I've been in the legislature and the courts for a long time. I used to be an attorney. I know what it means. If we spell it out, it means two-thirds or more and you have to put it in the constitution.

Mr. Bier: I was not. I was not.

Mr. Speaker: Mr. Bier, if I were to spell it out, it means two-thirds or more and you have to put it in the constitution. I judge everybody back in the 39th district, even those who rarely read, will know what it means. Thank you.

Mr. Speaker: Mr. Bier, Mr. Champagne, Mr. has been talking. I'm a lawyer. Everybody knows what this amendment means. I've been in the legislature and the courts for a long time. I used to be an attorney. I know what it means. If we spell it out, it means two-thirds or more and you have to put it in the constitution.

Mr. Bier: I was not. I was not.

Mr. Speaker: Mr. Bier, if I were to spell it out, it means two-thirds or more and you have to put it in the constitution. I judge everybody back in the 39th district, even those who rarely read, will know what it means. Thank you.

Mr. Bier: I was not. I was not.

Mr. Speaker: Mr. Bier, if I were to spell it out, it means two-thirds or more and you have to put it in the constitution. I judge everybody back in the 39th district, even those who rarely read, will know what it means. Thank you.
I was wondering where the courts would get in on that because I would suppose it's a legislative question.

Mr. Perez Well, the courts, of course, would get in just as they would under any other provision in the constitution. In the case that I've substituted the act of the legislature was passed, and if someone would decide to go to court and say that this particular parish or part of a parish in which a new parish was created was not a just proportion, it would be up to the courts, then, to determine whether or not this constitutional provision had been followed—just as we would interpret any other provision in the constitution.

Mr. Tate I understand what you're saying, but I'm just trying to visualize, for instance, assets that are in the part of the parish that retains them—the courthouse. I suppose you might say the just proportion is they get that courthouse. But, if the legislature determined otherwise, I wonder what the courts could do?

Mr. Perez Justice Tate, you are a member of the Supreme Court, and I see you fellows interpreting this constitution of ours everyday, everyday, and I don't see any different between an interpretation of this particular provision or any other provision in the constitution.

Mr. Pugh Amendment No. 1 [by Mr. Pugh]. On page 1, delete line 32 in its entirety and on page 2, delete lines 1 through 6, both inclusive in their entirety.

Explanations

Mr. Pugh Mr. Chairman, fellow delegates, the confusion was that my original amendment had attempted to delete all of these sections. The Chair called to my attention the fact I'd have to have separate amendments to delete them. There are two things that concern me about the existing provision submitted by the committee, and there's a reason I'm asking for its deletion. We've already talked about this justness as to who is going to get what assets. Obviously, the people are not going to vote on changing part of the parish until they know what they are going to get or what they are going to lose. It's not a practical problem. But, more important than that, in my opinion, not the fact that suggests that the people, by vote, can divide the debt. Gentleman, it's inconceivable to me that a parish could provide for bonds that the whole parish would be liable for, that divide the parish into two parishes, and one of the two to avoid the debt. Obviously, the debt affects the whole parish, so to talk of dividing assets and dividing debts is absurd. To me, if we left that in the constitution, we may raise serious questions about the validity of the bonds. Now, it may well be in the present constitution, all I'm saying is it has no reason to be in this constitution, and should be eliminated.

Questions

Mr. Tate Mr. Kean, that's the very thing I was worrying with a minute ago. Wasn't Fontenot v. Young the case which held that Evangeline Parish was improperly created in about 1912? In other words, it created a judicial question out of what was essentially a political question.

Mr. Kean Well, it also got into the question of rights and obligations as insofar as the new parish was concerned. I think without this constitutional provision by which you got into that question, I think it's simply a legislative matter. Under the circumstances, there'd be no right of the court to inquire into the question of whether there was a just proportion of the assets distributed between the parishes. I think insofar as Mr. Pugh's question about debt, under those circumstances where you've got...you couldn't impair the obligation of that debt. But, again, you'd have the question of if the poorer side of the parish got hardly anything, does it have to raise as much money as the rich side of the parish in order to retire their debt, or can the legislature adjust that between the two?

Mr. Tate Well, could you put the question another way? If the legislature saw fit to submit to the people this proposition and if the people wanted it, is that business in the courts to upset it, if no debtors are concerned, etc.?

Mr. Kean I'm not too certain that the legislature would have to get into that question insofar as submitting it to the people is concerned. I thought Mr. Leithman was sleeping. I couldn't believe he was asking me a question.

Mr. Henry Oh, he just rests like that, Mr. Kean.

Mr. Drew Mr. Kean, if this provision was deleted and a new parish was created, wouldn't it lead to the not only possibility or probability that parish would say "We owe no debts whatsoever?"

Mr. Kean I think that's the very reason for having this provision, Mr. Drew. It certainly does no harm in the constitution. It has been used in the past for the purpose of disposing of this kind of a question.

Mr. Tobias Mr. Kean, I am reading line 3 of Section 3, and it says...lines 3 and 4, and it reads: "A just proportion of the property and assets." What it says the word 'property' is in the land area or does it mean the physical property such as automobiles...
Mr. Kean:  I think it's talking about physical property of the parish.

Mr. Ray:  Well, if it is, it's been advertised since, I think since 1919, Mr. Tobias.

Mr. Ray:  Mr. Kean, I agree with what Judge Tate said, and I want to ask you, don't you think that this is reasonable, that under the equal protection clause, the citizens would demand court intervention, if necessary?

Mr. Kean:  Well, I'm not too sure I understood what Judge Tate said, but if that was the point he was making, it seems to me there is no reason to leave this to chance. Now, the question of due process would be involved, particularly under circumstances where the courts in this state have held up till now that a municipality or a parish is not a person within the meaning of the due process clause, if you look at the case of Penny v. Bowden, you'll find that holding by the court.

Mr. Ray:  No, we're talking about the individual citizen that would be harmed by it.

Mr. Kean:  Well, I'm talking about the agency that being split, and then the parish that remains or the two partitions that remain after a right to go in court and seek their justice.

Mr. Ray:  You are really worried about Mr. Drew's question. Do you think that the legislature would dare to split these people a proposition that if the new parish is formed, it won't owe any of the debts?

Mr. Kean:  Mr. Ray, I've been watching the legislation since 1936, and you'd be surprised at some of the things the legislature would do.

Mr. Ray:  I understand, but don't you think that the other portion of the parish wouldn't give a two-thirds vote if it was going to be added with all of the debt, and the new parish not?

Mr. Kean:  It may not, but I see no reason not to afford the protection.

Mr. Ray:  Isn't that a statutory privilege?

Mr. Kean:  No, sir.

Mr. Ray:  Mr. Kean, let me try you on this point again. I'm sure you heard the explanation of all of this, has this provision in Section 27, as it was used before? I know it's been in the constitution for a long time.

Mr. Kean:  Mr. Ray, sir, it has three times been decided on it.

Mr. Peffer:  Okay, Mr. Ray, in those cases, did you use the word justly proportionate, or did you use the word reasonable?

Mr. Ray:  Now, they were there mentioned several times.

Mr. Peffer:  All the cases that I can find are under a statute (and this is the act of 1921). The statute provides for a partition in court. And that is what I'm talking about. The partition in court.

Mr. Peffer:  Mr. Ray, I think if there is anything that is contrary to the Constitution, then you are wrong.

Mr. Ray:  I think you are assuming that the legislature has not the power to make any laws to regulate anything.

Mr. Peffer:  Mr. Kean, you don't think the legislature has the power to regulate anything?
existing now. Is that correct?

Mr. Kean: That's correct. The City of Houma, for
example, has a special charter as I recall it, and
this would permit, by a special law, the amend-
ment of that charter.

Mr. Duval: But it continues the prohibition
against creating new legislative charters. Is that
right?

Mr. Kean: That's correct, and would require a
newly incorporated municipality to either go
under the Lawson Act or to vote to go under one
of the other forms available.

Mr. Duval: Thank you.

Mr. Roy: Mr. Kean, what was the...what is wrong,
or what was the committee's reasoning for not allow-
ing cities or municipalities or political or asso-
ciations to form under some special charter?

Mr. Kean: Well, I think that new municipalities
today can be better operated under the general
Lawson Act, and under the circumstances, con-
tinuation of legislative charters just gets to be
a problem. Since they have been prohibited since
1921, I think it was the feeling of the commit-
ee we ought to continue that.

Mr. Abraham: Gordon, what is the...please explain
to me the significance of the last sentence in
that it allows the...a special or local law where
there is a charter in existence. Why does it...?
does it take a special law each time anyone...par-
ticular one would want to amend his charter?

Mr. Kean: If you have a special legislative char-
cter which is really an act of the legislature, if
you don't have the right to amend that by special
law such as this would provide, you have a problem
so far as future amendments to those special char-
ters are concerned. There are about fifty of them,
as I recall it.

Mr. Abraham: A general law could not take care of
that?

Mr. Kean: No, it wouldn't solve that problem.

Vice Chairman Casey in the Chair

Amendment

Mr. Poynter: Amendment No. 1 [by Mr. Pugh], on
page 2, delete lines 14 through 23, both inclusive
in their entirety and insert in lieu thereof the
following:

Section...it's drawn as Section 2, Mr. Pugh,
and until later and we see how many sections are
eliminated, we might just stick with the same sec-
tion numbers. Style and Drafting, if not done
before them, might be able to change them.

"Section 5. Municipalities; Incorporation, Gov-
ernment, Consolidation and Merger.

"Section 5. The legislature shall provide by
general law for the incorporation, government,
consolidation, or merger of municipalities. It
shall not create a municipal corporation or amend,
modify or repeal the charter of any municipality
by local or special law, except that a special
legislative charter now in effect may be so amended,
modified or repealed as long as it continues in
effect."

Explanations

Mr. Pugh: Mr. Chairman and fellow delegates, this
does not change the substance at all of the section
as submitted by the committee. It does take two
sentences and roll them into one. I think as ul-
timately put together it will cut off a couple of lines.
I'm my understanding that Mr. Kean would agree
that there is no change in the substance, merely
one of style and English construction.

Question:

Mr. Deshotels: Mr. Pugh, you stated that there
were no substantive changes.

Mr. Pugh: That's correct, sir.

Mr. Deshotels: May I ask you, sir, when did you
draft this particular amendment?

Mr. Pugh: When did I draft it?

Mr. Deshotels: Yes, sir.

Mr. Pugh: Yes. I drafted this amendment, I believe
it was last Friday. Then, at the request of Mr.
Gordon Kean, I added the language, "create a munici-
pal corporation nor". I did that during the lunch
hour.

Mr. Deshotels: Did the staff go over any part of
this proposal, or amendment, Mr. Pugh?

Mr. Pugh: I couldn't tell you.

Mr. Deshotels: You haven't submitted it to the
staff or anybody for their opinions on whether
there might, indeed, be substantive changes?

Mr. Pugh: No, I have not. I did submit it to Mr. 
Gordon Kean.

Mr. Abraham: Mr. Pugh, if this does not do any-
thing substantively and just simply changes the
language the way it is written, can't Style and
Drafting go ahead and do the same thing with the
language as proposed in the proposal?

Mr. Pugh: I assume so.

Further Discussion

Mr. Perez: Mr. Chairman, ladies and gentlemen of the
convention, aren't we getting a little bit ri-
diculous with these amendments? It's recognized
that there is no significant change made here, and
at the last minute, after a committee has worked on
this thing for six months, just for the mere whim
of saying, "There's no real change, but I consoli-
dated two things into one sentence instead of two
sentences." Aren't we getting a little ridiculous
with these amendments?

Previous Question ordered: Amendment
Rejected: 36-7-2. Motion to reconsider
Motion to reconsider tabled. Previous Question ordered
on the Section. Section passed: 109-1.

Reading of the Section

Mr. Poynter: Section 6. Classification.

Explanations

Mrs. Zervigon: Mr. Chairman and Delegates, the
intention of this is to fit in with Section 13 of the
Legislative Article. If you remember, in Sec-
tion 13 of the Legislative Article, we provided
that a local or special law could be passed if it
were advertised in the local area ahead of the time
that it was introduced into the legislature. It
has to be advertised twice, at least thirty days
before the session.

If something should happen that would prevent a
legislator from advertising a bill, he could then,

[1315]
Under this section, we're not to interpret it in the way you have. But if it is interpreted to mean it calls for a contingent vote, which would be retroactive. There are some things that are not law, but the legislature must vote two ways or vote on this constitution because they themselves are being cut out of it. That's the question I have.

Mr. Duval. In other words, it's the purpose of this section to avoid, under the guise of a general law, special law being effected that only affects one municipality, for instance?

Mrs. Zervigon. Absolutely, or you could pass a general law affecting those coastal parishes that begin with the letter "P.

Mr. Duval. Is there any way, perhaps, do you think that this could hamstring the legislature, though, in not being able to make proper classifications?

Mrs. Zervigon. No, I really don't think it can make whatever classifications they want. The classifications be smaller than this. You would either have to advertise in advance or get the agreement of the local governing body. It's bound to be that I think they would be freer than they are now, as a matter of fact.

Mr. Brown. Mr. Zervigon, would you tell me what you know when you talk about statutes applicable to parishes? I'm concerned about that in parish provision, too. What kind of legislation are you talking about? What can be a fact or false.

Mrs. Zervigon. I've never been a parish provision. In my senatorial district, I've got three parishes. They are very small, and I want to set up a library in the courthouse in each of these three parishes. Do we have to have a statute or have to have approval by the parish judiciary in each of these three parishes, do you define the statutory intent? That is, is that for me? In a town like that, for instance, a political district, or any kind of a district involving two or three parishes. And here is one of the things.
Mr. Avant. Mr. Chairman, ladies and gentlemen of the convention, thank you for your attention. Let me perhaps clarify my remarks by saying that no right-thinking person would advocate any piece of arbitrary or discriminatory legislation that had as its object and purpose the punishing of any parish or any area in the State of Louisiana in the State. And I am certainly not advocating such proposition and I think that we have adopted, here-to-for, a philosophy or a proposition of classification and legislation that will prohibit that. But this Section 6, as it is written, is entirely a horse of another color. It contains an illusion. It starts out and says the legislature shall classify parishes or municipalities according to population or on any other reasonable basis related to the purpose of the classification and legislation. That may be limited in its effect to any such class or classes. Then, in the very next sentence, it takes all that away because it says that "no statute which, as a result of its operation, is going to apply to less than six parishes or municipalities, will be operative in any such parish or municipality until it has the blessing of the local political body." That's what it says. It does not say the people. It says the governing authority. Now, it doesn't take any special genius to think about five counties and come up with at least a dozen categories in which the legislature may reasonably adopt legislation which will, in its effect, be limited to less than six counties or municipalities. It's going to give you a few examples that came to my mind just in a flash. Cities over two hundred and fifty thousand in population, by parishes wherein a nuclear generating facility is located, parishes where there are deep water ports for oceangoing vessels, parishes where the pollution index might exceed a certain figure for a certain number of days of the year, parishes where automobile registration exceeds a certain number, and to get to my own home parish, which I love dearly, and with which I am very familiar, the question of the parish in which the state capitol is located. I can certainly conceive that in the interest of all of the people of the State of Louisiana, that the legislature may, someday, need to enact legislation which, in its effect, will apply only to the parish in which the State capitol is located because of the fact that it is the parish in which the seat of government is located. I don't think that as a citizen of the State of Louisiana, that it would be wise to go to the State capitol and say, "We want to have veto power over that legislation." Now, I'm not saying that that's going to happen tomorrow, or next week, or within six months after this constitution is adopted. All I'm saying is that you are tying the hands of the legislature. Now, a reference was made this morning by Mr. Munson to kingdoms and counties. I don't think we are talking about kingdoms here. We are talking about fiefdoms——fiefdoms——sheldoms——not nearly as big as kingdoms. I say that we are here to draft a proposed constitution for the people of the State of Louisiana. If you put this provision in this constitution whereby, even though it is a reasonable classification and bear in mind, that the legislature cannot classify the expresses language of this section, except upon a reasonable basis; then, if they have so classified, any reasonable basis; what stretch of the imagination you can suggest that if it's effect is to be applied, initially, in only six or less parishes or municipalities, that each one of those parishes or municipalities that the governing authority should have the right to veto that legislation is beyond me. I say we are here, representing the provisions of the entire State of Louisiana. We should not forget that. I don't intend to forget that. If there is any reasonable basis for classifying my parish or my city and make others in the same class, to protect and promote the interest of the entire state, then I, personally, don't desire to have any veto power over that, because it is going to represent the people of the state and when they have acted on a reasonable basis, that no segment of the state should have the right to veto what they have done.

Questions

Mr. Tate. Mr. Avant, you raised some questions in my mind that I didn't realize were there. Do you interpret that to mean, for instance, that these procedural statutes that they pass all the time, that say, for instance, that the venue in a suit against the receiver of an insurance company shall be in the state capital. Do you interpret that provision of the constitution to mean that after the legislature passes it, the last Baton Rouge City Council would have to approve that this state-wide venue provision?

Mr. Avant. Justice Tate, I'm only reading what the statute says——what the provision says. It says, "No statute which is applicable to fewer than six parishes or municipalities shall become operative in any such parish or municipality until approved by ordinance enacted by the governing authorities of the affected parish or municipality." Now to me, that's plain language, and the answer to your question is, yes.

Mr. Bay. Mr. Avant, under your interpretation, isn't it possible that the legislature, after months of hearing and stuff, could have some type of plan where six parishes, or even a super-parish would be involved. If it was six parishes or less, that one police jury of one of the six parishes, after an overwhelming mandate all over, could by a simple majority vote, stop what the legislature and what five other parishes and all the people wanted?

Mr. Avant. That's not a matter of interpretation. Mr. Tate. That's what it says. You don't have to interpret it to get that out of it. All you've got to do is read it.

Mrs. Zervigon. If your amendment is adopted, what would happen in the case where a legislator cannot, or does not, for some reason, advertise his bill in advance, a local bill. Would he have to then wait until the next session of the legislature before he could introduce it and have it acted upon by the legislature?

Mr. Avant. Mrs. Zervigon, I have not, in this amendment, considered the question of advertisement. I think we have taken care of that somewhere else with respect to local and special laws. I haven't thought about advertisement. I've addressed myself to the sense of the provision. If this section of the constitution of the legislature may not pass any law, no matter how reasonable, or no matter upon what type of classification, that is applicable to six or less parishes or municipalities, except upon each of those areas having the veto right over that statute through its governing authority.

Mr. Blair. Mr. Avant, in 1970 I had a bill started off statewide, the annexation bill. It ended as one parish or a local bill. Now under this act, it's written here with the six parishes, my bill would have been automatically dead, would it not?

Mr. Avant. It would have been subject to the veto power of the police jury or the other governing authority in any parish to which it was applicable, if it was applicable to six or less.

Further Discussion

Mr. Brown. Mr. Chairman, fellow delegates, I want to briefly echo what Mr. Avant said, and also the comments of Delegate Roy, and also Delegate Tate. I think this can cause us some very serious problems. This comes from my concern in the idea that representing a rural area in the legislature, I've had to deal with a number of local bills and look at a number of situations where, as we move towards the future, we're going to have more and more to deal with interparish relationships, municipalities
Mr. Zervos was concerned about the advertising of his bill. His indication to me was that he was going in another way to give adequate material. He raised the question about what do you do if you advertise if no one knows. You've got to advertise the local bill thirty days before introducing it. And, of course, you can introduce legislation several weeks into a legislative session, which means that you've got to give your local bills thirty days before the session. That, in my mind, doesn't give us another alternative. If you introduce the local bill, you go ahead and advertise for it. You've got a procedure in which you've got to introduce the bill first, and then put together resolutions on interparish cooperation, and cooperation amongst a number of Municipalities. I think it's bad, and I think we ought to delete it and support Mr. Avant's amendment.

Further Discussion

Mr. Jackson. Mr. Chairman and ladies and gentlemen of the Convention, I am a member of the local and Parochial Government, and I've informed the members of the Committee regarding their proposition. I'm coming to the floor of the legislature, that there were certain sections of our article that I have had a responsibility to set-up and speak either for or against. And so, I don't want you to think I am up here without the full knowledge of the Committee, that I had told them that I was going to speak.

I raise in support of Mr. Avant's amendment and opposed to our committee amendment. Our amendment would allow us to alter the law, whereas the Committee Amendment would not allow us to do so. I think that the legislation should be changed to allow us to alter the law, and it happens every day in the legislature. Legislation start off with general law. That is the true fact. And I propose, as an amendment, that the legislation start off with general law. That is the true fact.
much weight in something that is introduced from somebody else? It's say another parish, specifically designed for a leave?

Mr. Flory: Well, my answer to that is, in my experience around the legislature I have only seen it done on very rare occasions where a member of the legislature from another area would introduce a measure and a local and a special nature. They did, in the occasions that come to my mind, they were defeated by the legislature as meddling in local affairs and the legislature killed it.

Further Discussion

Ms. Zervigon: Mr. Chairman and delegates, in speaking in opposition to this amendment, I just want to clarify what it is the committee was about. We were not trying to give each area, each municipality, each parish, veto power over things that might benefit the parishes surrounding it. What this says is that "local law will not take effect in that parish." It says nothing about the parishes around us. I must say that I was one of the primary movers on the committee for this for this reason. I've been told over and over again, and I've seen for myself at times the city of New Orleans can be singled out by a general law, not a special or local law, affecting all municipalities over a hundred thousand, you begin to see the need for some type of regulation of this kind in dealing with the classification procedure. I say to you that it would be in our best interest to reject the Avant amendment and then proceed to act on and approve the Pugh amendment which will follow.

Questions

Mr. Roy: Mr. Kean, what does the present constitution say about this new provision?

Mr. Kean: The present constitution has a provision with respect to this relative to the city of New Orleans.

Mr. Roy: So this is a new provision? Is this a new concept?

Mr. Kean: This adopts the rationale of the New Orleans provision and makes it applicable generally.

[Previous Question ordered.]

Closing

Mr. Avant: I just want to say one thing. Mr. Pugh advises me that he is in favor of my amendment, that if my amendment passes he will not push his amendment. Second, in the specific instances they say of this is to avoid punitive legislation directed at particular parishes or municipalities. At the period of time which they complained there was no equal protection clause in the constitution of this state, nor was there any provision which provides that classification must be on a reasonable basis. So their fears along that line are not justified. I ask support of the amendment for the reasons I previously stated.

[Record vote ordered. Amendments adopted: 81-33. Motion to reconsider tabled.

Previous Question ordered on the Section.

Section passed: 110-3. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter: "Section 7. Existing Home Rule Charters and Plans of Government of Parishes and Municipalities Ratified"

Section 7. (A) The plans of government and home rule charters of the parishes of East Baton Rouge, Jefferson, and Plaquemines and of the cities of New Orleans, Baton Rouge, and Shreveport shall remain in effect, and may be amended, modified, or repealed as provided therein. Each of them shall retain the authority, powers, rights, privileges, and immunities granted by its charter which shall be subject to the duties imposed by the applicable constitutional provisions under which its plan or charter was adopted. Each of them also shall enjoy such additional powers and functions as are granted to local governmental subdivisions by provisions of this constitution, including Sections 8 and 9 of this article, unless the exercise of such powers and performance of such functions is prohibited by its charter.

(B) Every other home rule charter adopted or authorized when this constitution is adopted shall remain in effect and may be amended, modified, or repealed as provided in the charter.

Chairman Henry in the Chair

Explanation

Mr. Kean: Mr. Chairman, fellow delegates, let me preface my remarks by explaining to you the purpose of the two paragraphs in the present time, there are certain home rule charters, if we want to give them that name, or plans of government, which stem directly from a present constitutional provision. In the case of the East Baton Rouge Parish and the city of Baton Rouge for example, the plans of government for those political subdivisions comes directly from Article XIV, Section 3 (A) of the
Constitutionally, in the case of New Orleans for example, the authority for that level of government was originally from the State, either from the Constitution, the laws, or the local municipality. In such cases, the plenary authority except for the basic rules upon which the plans of government were fashioned.

Mr. Brown. I was able to work out in the case of one of the governmental plans I was involved in. In that case, we were able to achieve a constitutional provision that I think is desirable, and we are able to continue it without amendment. Would that be done in that case?

Mr. Brown. Well, if we are allowed these plans of government we can achieve this constitutional provision?

Mr. Brown. Mr. Mayor, we have this constitutional amendment that would eliminate this constitutional amendment. If you do not have this constitutional amendment, you would continue to have that basic provision.

Mr. Brown. Well, I understand you when you say that if you refer to all those rule charters and rule charters and rule charters, why do you refer to rule charters? I mean, why do you refer to rule charters and rule charters and rule charters?

Mr. Brown. If you refer to all those rule charters, then what if you refer to all those rule charters if you refer to all those rule charters and rule charters and rule charters and rule charters?

Mr. Brown. If you refer to all those rule charters if you refer to all those rule charters, you don't have to do it. If you refer to all those rule charters, you don't have to do it.

Mr. Brown. Well, you mean when you say that if you refer to all those rule charters and rule charters and rule charters, you don't have to do it. If you refer to all those rule charters, you don't have to do it.

Mr. Brown. Well, you mean when you say that if you refer to all those rule charters and rule charters and rule charters, you don't have to do it. If you refer to all those rule charters, you don't have to do it.
New Orleans, have plans of government which were authorized by the Constitution and if you did, none away base it raises a question, in my opinion, as to the validity and the status of those plans. Under the circumstances we felt it necessary to continue some reference to the base upon which they were founded.

Mr. Duval Mr. Kean, the constitution has certain specific provisions, does it not, in setting up the home rule charters of the specific cities mentioned—parishes mentioned here, that right?

Mr. Kean That's correct.

Mr. Duval These home rule charters will now be, as a result of this, not specified in the constitution, but sanctified by this provision, that right?

Mr. Kean That's correct.

Mr. Duval Now, assuming this previously, let us say right now, in order to amend those home rules, can the legislature amend those specific provisions in the constitution on the home rule charters by constitutional amendment?

Mr. Kean The legislature, I suppose, could propose a constitutional amendment which would do away with the East Baton Rouge Plan of government, but in my opinion it could not change details in that plan of government, because, and this is the very point I'm going to lay under the constitutional provisions only the people of East Baton Rouge Parish can change those provisions.

Mr. Duval If this provision is not included in our proposed constitution, but let us say, placed in the schedule, do you think this would have any effect on the integrity of the home rule charter plan?

Mr. Kean I do, because transitional material is designed to make a transition from one constitution to a different situation, as for example, placing it in statutory material. It would leave open the question in my mind. First, what is the base for those particular plans of government? Secondly, by reason of being transitional material the legislature could thereafter do away with it.

Mr. Duval Do you think you could say all of this though, what you're saying in a simple sentence by saying "every home rule charter presently authorized, and which will be adopted into effect by the adoption of the new constitution, shall only be changed as provided for in its charter"?

Mr. Kean Well, there are other substantive things that go beyond the change in the charter that has been developed by court decisions under the existing constitutional provision, and under the circumstances I would be concerned in what you proposed would not be broad enough to include that kind of substantive material.

Mr. Burns Mr. Kean, you provide in Section 7, the plans of government of these different cities, "shall remain in effect and may be amended, modified, or appealed as provided therein." Now, in view of that language and what you are seeking to do, is it necessary to have the rest of that section from beginning at "each of them shall," on page 8 down to 17?

Mr. Kean I think so, Mr. Burns, because as I have endeavored to point out earlier, there are certain substantive rights which have been developed under the existing constitutional provisions applicable to those particular municipalities and parishes. I'm concerned that if you don't have references to duties imposed by those provisions and residual powers and functions, it might be granted in some other section of that particular constitution. They might be jeopardized insofar as those, additional authority is concerned.

Mr. Roy Mr. Kean, by these substantive rights that have been developed, aren't you really trying to save some jurisprudential material and that you want to have enshrined in this constitution, jurisprudence that can never be changed?

Mr. Kean No, sir, I don't have...

Mr. Roy Well, what substantive rights can you possibly not have if we would take for instance, Mr. Champagne's amendment which simply says "every home rule charter adopted, authorized when this constitution is adopted shall remain in effect?" Would that cover everything?

Mr. Kean No sir, because we're talking about two different things. One is the charter which is the governmental structure. The other is a substantive right that the government operates under. In the case of East Baton Rouge and Jefferson, the courts have recognized that their particular constitutional provisions extend to structure and organization of those particular plans of government, and that the legislature cannot deal with structure and organization relating to them. I don't think that would be covered by a simple reference to the retention of the home rule charter.

Mr. Roy Well, then you are talking about jurisprudential interpretation of those charters.

Mr. Kean I'm talking about what the existing constitutional provisions mean.

Mr. Guarisco Mr. Kean, do I understand correctly that the enumerations in this Section 7 of East Baton Rouge, Jefferson, etc. are the present constitutional home rule charters?

Mr. Kean Yes, sir, that's correct.

Mr. Guarisco Now, isn't it a fact that Plaquemines Parish is not presently a constitutional home rule charter?

Mr. Kean As I understand it, Plaquemines Parish has developed its plan of government specifically pursuant to Article XIV, Section 2 (B) or something like that.

Mr. Guarisco My question is, you've got every constitutional home rule charter in this provision; there are other home rule charters that exist around the state, however. Why did you only choose Plaquemines to constitutionalize when it wasn't constitutionalized prior to this?

Mr. Kean It was constitutionalized prior to this. It comes from a constitutional provision which authorizes parishes to adopt directly a home rule charter, and that's what they did. The other home rule charters that you speak of are pursuant to the provisions of Title 33, and do not stem directly from the constitution, as in the case of the city of DeRidder.

Mr. Guarisco Why does your comment indicate something different about Plaquemines?

Mr. Kean I don't know. I didn't write it.
Amendment

Mr. Champagne. Mr. Chairman, Madam, and Gentleman, the purpose of this amendment specifically is to incorporate the same material which is in the present proposal without repetition of some of the items, plus the fact that in general agreement a constitution is supposed to be general in nature and not specific. We accomplish this in this amendment by mentioning the powers and privileges and immunities in effect when this constitution is adopted. Each shall be subject to the duties imposed by applicable constitutional provision under which its plan or charter was adopted. Each shall also enjoy such additional powers and functions as are granted to local governmental subdivisions by provisions of this constitution, unless the exercise of such powers and performance of such functions is prohibited by its charter.

Explanation

Mr. Champagne. Mr. Chairman, Madam, and Gentleman, the purpose of this amendment is to incorporate the same material which is in the present proposal without repetition of some of the items, plus the fact that in general agreement a constitution is supposed to be general in nature and not specific. We accomplish this in this amendment by mentioning the powers and privileges and immunities in effect when this constitution is adopted. Each shall be subject to the duties imposed by applicable constitutional provision under which its plan or charter was adopted. Each shall also enjoy such additional powers and functions as are granted to local governmental subdivisions by provisions of this constitution, unless the exercise of such powers and performance of such functions is prohibited by its charter.

Amendment

Mr. Champagne. Mr. Chairman, Madam, and Gentleman, the purpose of this amendment specifically is to incorporate the same material which is in the present proposal without repetition of some of the items, plus the fact that in general agreement a constitution is supposed to be general in nature and not specific. We accomplish this in this amendment by mentioning the powers and privileges and immunities in effect when this constitution is adopted. Each shall be subject to the duties imposed by applicable constitutional provision under which its plan or charter was adopted. Each shall also enjoy such additional powers and functions as are granted to local governmental subdivisions by provisions of this constitution, unless the exercise of such powers and performance of such functions is prohibited by its charter.

Explanation

Mr. Champagne. Mr. Chairman, Madam, and Gentleman, the purpose of this amendment is to incorporate the same material which is in the present proposal without repetition of some of the items, plus the fact that in general agreement a constitution is supposed to be general in nature and not specific. We accomplish this in this amendment by mentioning the powers and privileges and immunities in effect when this constitution is adopted. Each shall be subject to the duties imposed by applicable constitutional provision under which its plan or charter was adopted. Each shall also enjoy such additional powers and functions as are granted to local governmental subdivisions by provisions of this constitution, unless the exercise of such powers and performance of such functions is prohibited by its charter.

Amendment

Mr. Champagne. Mr. Chairman, Madam, and Gentleman, the purpose of this amendment specifically is to incorporate the same material which is in the present proposal without repetition of some of the items, plus the fact that in general agreement a constitution is supposed to be general in nature and not specific. We accomplish this in this amendment by mentioning the powers and privileges and immunities in effect when this constitution is adopted. Each shall be subject to the duties imposed by applicable constitutional provision under which its plan or charter was adopted. Each shall also enjoy such additional powers and functions as are granted to local governmental subdivisions by provisions of this constitution, unless the exercise of such powers and performance of such functions is prohibited by its charter.
of them shall also enjoy such additional powers and functions as are granted to local government subdivisions by the new constitution unless the exercise of such powers and performance of such function is prohibited by its charter."

Now, in our committee one of our heated 8-7 votes was made by me to give the citizens under home rule charters not being allowed to incorporate, particularly when the charter provided that you could incorporate in the grand manner, I... respect the comments, but I would say that I would have to oppose Mr. Champagne's amendment on that basis because in Section 11... Section 11 can... the people in the grand manner have additional powers to a home rule charter and... I don't know... and I... talked with Mr. Keen about it and my suspicion are... and I don't think it's. Champagne's is that this is a back door way to really delete Section 11. Now if the convention in its wisdom, when we got to Section 11 would do it, then I would have no problem, but I'm... kind of leery about the fact that they are prohibiting things contained in some home rule charters and if we, by a constitution convention, says that you should have these powers and we want this for the citizens under home rule charter and you know... no... and the home rule charter says well, no, you can't exercise it, then I wonder why we even grant it to them, particularly if you want me to mention by name we are talking about the Scotlandville area, the central area of Baton Rouge. Understand there have been a couple of areas in Shreveport that have desired for some incorporation. Now, you know some of the proponents of this said we want a... this provision because somebody would get up here and clearly say to me that this only pertains to Sections 8 and 9 and not really stretches to Section 11 which I would ask the convention, let us argue that out when we get to Section 11.

Question

Mr. Zervon: Mr. Jackson, I agree with you that I would rather fight that one issue as a single issue when we come to Section 11. So would it not be possible, in your judgment, for the... person who is going to explain Section 11 on behalf of the committee to first introduce a... section... an amendment that would say "notwithstanding anything else in this constitution" and then gone on with Section 11, and then that way isolated it would be possible and would that help...?

Mr. J. Jackson: That would somewhat help, Mary. As you know, Section 11 is going to be a very... hotted... heated issue in this convention and let's say if you adopt the section and not allowing an amendment, it's going to create some trouble. Then again, I'm not sure and... all I'm asking is that somebody come up here and explain to me the meaning of... of the ramifications other than Section 11 of that last paragraph... I mean the last sentence to this, because I'm not sure if there are some things that we want to grant to home rule charters that is going to require some charter revisions to say, you know... that, for instance, New Orleans couldn't probably take advantage of it if we got prohibitive language that was done....

Further Discussion

Mr. Arnette: Ladies and gentlemen, I was in favor of Mr. Champagne's amendment as he had originally proposed it, but now that he has added this additional language, I greatly regret that we have done the same way the original committee proposal does. If you look at both sets of language, it has a sentence which contains "each shall be subject to the duties applicable constitutional provisions under which its plan or charter was adopted. " Now, this language greatly, greatly worries me for the simple reason that in this one sentence we have incorporated about twenty pages of the 1921 Constitution and this is a very, very bad thing to do; because when we do this, if any of these duties need to be changed at any time in the future, any of these duties need to be changed at any time in the future, any of the duties that are imposed on those charters, you incorporate anything in the 1921 Constitution, you have to provide an amendment to this constitution. This is a very bad situation to have. What this means is, is that what my people went here for us to do, which is to vote on amendments affecting just Orleans or just Shreveport or just Baton Rouge or any of these other towns, and if we enlarge those duties, we are creating a very big problem because you are going to have to vote on these same amendments just affecting certain localities and I can't stress this enough—it's a really, really bad situation because you are going to have to vote on these same amendments just affecting certain localities and I can't stress this enough. Any time you incorporate a previous constitution by a mere sentence, you are asking for problems, but this puts back in this constitution, the thing that we had with our previous constitution, all this particular local matter and we need to take that out. So I urge you to defeat this particular amendment. Thank you.

Questions

Mr. Burson: Greg, as a new lawyer, do you see the problem that caused the committee to put this language in there that if the only basis for a home rule charter is in the new Constitution and you eliminate any reference to that charter in the new constitution, that you may no longer have any legal basis therefor?

Mr. Arnette: Well, wouldn't it be just as easy to say every home rule charter now in existence shall remain in existence? Isn't that an authority enough?

Mr. Burson: Except that the difference, as I read the amendment that Mr. Champagne adopted, is that it would include all home rule charters presently in existence which would go much further than the committee proposal which includes only constitutional home rule charters.

Mr. Arnette: Well, if you look at the committee's proposal Paragraph B, it says every other home rule charter adopted or authorized when this convention was adopted shall remain in effect, etc. etc. So his goes... the committee's proposal includes all these other home rule charters anyway, but the problem I see and the thing that I really worry about is having that language in there. You have incorporated about twenty pages of the 1921 Constitution and if you want to change any of those twenty pages in the old constitution you have to amend the new constitution and this is a very, very bad situation to have.

Mr. Burson: Don't you think that that fear is covered by the fact that you say that these charters may be amended, modified or even repealed as provided therein in the charters?

Mr. Arnette: Well, the charter may be amended, but not the duties as set forth in the constitution because you have said here "it shall be subject to those duties and if something is set forth in the constitution, then it can't be changed by an amendment to the charter because the charter itself may be changed, but not what's in the constitution providing for those duties and etc., etc., that are in the old constitution.

Mr. Burson: But when you say that they shall be subject to duties imposed by the applicable constitutional provisions don't you think that this is a transitional matter which refers to the fact that there are many duties imposed upon those charters and if those charters are in the new constitution, which may not be part of their present charters, and that they have still got to perform these duties until such time as they are made a part of the charter.

Mr. Arnette: Well, Mr. Burson... I think that might bring up another idea which we have there except I don't think that's the way to do it because what we have done is incorporated all those duties in our new
Mr. Durand: Well, you are aware that this committee has proposed the elimination of some of the special districts and boards in New Orleans and in other areas of the state that have one or more.

Mr. Almon: That is a fine idea, Mr. Durand.

Further Discussion

Mr. Durand: I rise not in opposition nor in support of this amendment. I frankly don't understand the section. I frankly would like to have some expert in the area explain to me. One, what is a home rule charter? Are we imposing this whole proposal revolve around a home rule charter? I'd like to understand what a home rule charter is. What different types of home rule charters are there? How does one go about getting a home rule charter now? What powers does the legislature have when a home rule charter is adopted? What happens if we are not satisfied with the constitution? Other little questions like this. How much of the legislature is necessary to adopt a home rule charter? In other words, gentlemen and ladies, we ought to understand that the subject matter which we are deliberating upon is quite important. I think we need a more thorough explanation from the committee as to the ramifications of this type of thing. What does it mean when one is...a home rule charter that's in the present Constitution is deleted from. Can the legislature itself change its charter? Is there any other way of changing it? What is the difference between the charter itself and the grant of powers? If there are many, many things that we would know about before we attempt to pretend to know what we are doing when we vote. One of us do and one of us don't. And I would greatly appreciate the committee to give us an explanation as to the theory of a home rule charter. I think we'll find that we are not really sure, apart from the information we are giving this house, what a home rule charter means. We ought to have the committee to please give an explanation. For the information, everyone knows what a home rule charters, and the home rule charter and the Tugal effect and how to that.

Further Discussion

Mr. Durand: I rise not in opposition nor in support of this amendment. I frankly don't understand the section. I frankly would like to have some expert in the area explain to me. One, what is a home rule charter? Are we imposing this whole proposal revolve around a home rule charter? I'd like to understand what a home rule charter is. What different types of home rule charters are there? How does one go about getting a home rule charter now? What powers does the legislature have when a home rule charter is adopted? What happens if we are not satisfied with the constitution? Other little questions like this. How much of the legislature is necessary to adopt a home rule charter? In other words, gentlemen and ladies, we ought to understand that the subject matter which we are deliberating upon is quite important. I think we need a more thorough explanation from the committee as to the ramifications of this type of thing. What does it mean when one is...a home rule charter that's in the present Constitution is deleted from. Can the legislature itself change its charter? Is there any other way of changing it? What is the difference between the charter itself and the grant of powers? If there are many, many things that we would know about before we attempt to pretend to know what we are doing when we vote. One of us do and one of us don't. And I would greatly appreciate the committee to give us an explanation as to the theory of a home rule charter. I think we'll find that we are not really sure, apart from the information we are giving this house, what a home rule charter means. We ought to have the committee to please give an explanation. For the information, everyone knows what a home rule charters, and the home rule charter and the Tugal effect and how to that.
whether you turn it upside down or sideways it says very simply and plainly that "the provisions of this constitution shall be paramount and neither this court nor any other tribunal shall enact any laws or ordinances in conflict therewith."

I just don't see how you can read that any other way than what it says and I have... some... just did the same thing did by putting a supremacy clause in a local government article and I will admit you can probably find a better place for it, but it... the fact that the plenary sessions in my local government work, I think exactly the problem that was raised by some of the earlier speakers. Now, the second point about all of the amendments that we have had to vote on regarding the charter is this. I think that's a problem that's raised by some of the earlier speakers. Now, the second point about all of the amendments that we have had to vote on regarding the charter. I don't believe that that's what that sentence says. It simply says that "these home rule units shall be subject to the duties imposed by the constitution of the State of Louisiana."

I believe, as we say in lawyer language, this has to be read in pari materia... or together with the preceding sentence or... rather the sentence... the second sentence which says that "any of these charters can only be modified or repealed as provided by the charters and definitely if you read those two things together, I don't see how you can come to the conclusion that it would take a constitutional amendment to do it." The only reason why one home rule charter is somewhat esoteric and I think that in order to understand it, you've almost got to look at what's in the present constitution, and if you look under that digest that the staff has provided us with, they refer you to the articles: Article XIV, Section 3A, 3C, 22 and 37, which provide in detail for the establishment and operation of the parish government for East Baton Rouge, Jefferson, cities of Baton Rouge, New Orleans and Shreveport, and the present constitution Article XIV, Sections 1 and 2, which provide in detail for the adoption of a charter form of parish government which has been utilized in Plaquemines Parish. Now, this is one of the problems in writing a new constitution move from a constitution which has these specifics in it. I suggest to you that we have done it the only way you can.

Further Discussion

Mr. Pugh: Mr. Chairman, and fellow delegates, I, like one of my predecessors here, like the first sentence of this proposed amendment. I'm very much disturbed about the balance of it, however, and even more so. I'm disturbed about this reference to Section 3D yet to come up. Let's stop and think about it now. In Shreveport we have a home rule charter. The courts have already determined that in connection with that home rule charter, structure and organization is not applicable to it. Now, if we think that when we get to Section 30 that we are going to write every city charter in the State of Louisiana, we should better have some soul searching tonight. Now, they stated that "they'll have a process when you think about it, paramount, you're talking about wiping out all of these charters." I don't believe that's what we ever intended. I don't presume what we intend to do is let them continue under their existing charters in the fashion in which they have been operating and I'm afraid that the least language that we ever intended that the existence of this proposed amendment will raise serious doubts about their ability to do so. I ask, therefore, that you give serious consideration to defeating this amendment and that then we reconsider the subject in the light of all the amendments that have and will be filed. Thank you.

Questions

Mr. Avant: Mr. Pugh, Mr. Burson used a technical legal phrase awhile ago that interested me very much. He spoke of "pari materia" which means you've got to read them all together but I direct your attention to the sentence in this article... or this section which says, "meaning of them shall retain the authority, powers, rights, privileges, and immunities granted by its charter." Then flip over to Section 10 which reads "powers and functions of local governmental subdivisions shall be construed liberally in favor of such governmental subdivisions." Then flip over to No. 30 that Mr. Burson referred to and read that, and re-reading all that together, can you give me any idea what it means?

Mr. Pugh: Yes, I can tell you that when you get to that word "paramount," you're in trouble. This 'pari materia' sounds awful bad, but when you get to the word "paramount," you done said what there is no need to be said about the subject with which we are concerned. Charter. Charter.

Mr. J. Jackson: Mr. Pugh, if you look at the Champagne, Fontenot amendment and if you read it the way I'm reading it, just take away the home rule charter, let's talk about Laweson Acts, municipalities operating under Laweson Act. "Every plan of government adopted or authorized when this constitution is adopted shall remain in effect and may be amended, modified or repealed as provided in the charter." Now, the Laweson Act, as I understand it, are established by acts of the legislature and the procedure now is that the legislature amends, modifies, or repeals. I just wonder, you know, what kind of effect by using this "as provided" in this charter, when we are talking about two plans of government, saying every plan of government plus home rule charters, what kind of effect is that going to have on Laweson Act cities and municipalities? I don't know.

Mr. Pugh: Frankly, I don't find any quarrel with the first sentence. I really don't, but thereafter it leaves me cold for the reasons I mentioned a minute ago.

Mr. Kean: Mr. Pugh, you... you made some comment about the city of Shreveport and Jefferson parish provision that authorized a home rule charter and that the courts had construed that as not giving to Shreveport the plenary right with respect to structure and organization, am I correct, sir?

Mr. Pugh: That is correct. That's the Bradford case, Happened to be my case... go ahead.

Mr. Kean: Now if... if we only had the first sentence of the Champagne amendment, would that not put the parish of East Baton Rouge and Jefferson parish which do have the structure and organization provisions in their constitutional provisions now, would that not put those two parishes in the same position as Shreveport is in the Bradford case?

Mr. Pugh: No, I think what he is saying in this sentence is, "every plan of government plus home rule charter adopted or authorized shall remain in effect." I think what he is saying is that they... that they stay like they are.

Mr. Kean: But the structure and organization provision that we are talking about is not in the charters in the case of East Baton Rouge and Jefferson; they... those provisions are in the con-
Mr. Rankin. That is incorrect.

Mr. Read. My error, if I now name that, I'll take it away, from Mr. Batlin, Mr. Fairchild, and Jeffers. I think they, however, have a respect for structure and organization, don't we.

Mr. Rankin. That is incorrect. From the first remark on, I agree wholeheartedly with you that that effect can occur. That's why I say we're really about to fiddle around with more charters now and I think we want to have the charter the way we find them, and then from there on, we're not worried about these other provisions that may or may not be paramount.

Further Discussion

Mr. Fontenot. Mr. Chairman and fellow delegates.

I support this amendment. My name is on it. I'm a coauthor and the reason Mr. Champagne and I got together and aye up with this proposal was we tried to compromise some of the arguments you and I am suggesting that we just delete the whole first paragraph and just stick with Islands. Mr. Champagne and I got together with Mr. Kent and we thought we were up with the best solution to the problem. Apparently, a lot of people have been holding off until we don't know what is going to pass or fail. I would hope that the people would vote for it because we think it's better than what is proposed, and if it's not, and if we want to take part of our proposal, come up with an amendment to amend ours. Let's don't go back to the committee proposal. Our aim is to get away with the words and specific language which dealt with the specific parishes of East Baton Rouge, Jefferson, Plaquemines, New Orleans, East Lake, and Shreveport. We're setting a bad precedent. It is our own personal view that every time their form of government is a little bit different in their school board district. It's a little bit different or their city, any other city, any state, the state, that exists, in particular, these states, we're setting a bad precedent if we have to make them in the Constitution. That made it difficult. Mr. Champagne and I, of not having them specifically in the Constitution and we tried to work out a government, we apparently a lot of people are against it, and I think it's a pretty good one. At any rate, I have the previous question.

Mr. Champagne. Mr. Chairman, and ladies and gentlemen,

I agree with Mr. Fairchild and others against the amendment. I think the amendment that was brought before us was the best possible form of government, and I think it would be defeat if we amend it as it is now.

Mr. Fairchild. Mr. Chairman, and ladies and gentlemen,

I think the amendment that was brought before us was the best possible form of government, and I think it would be defeat if we amend it as it is now.
50th Days Proceedings—September 20, 1973

Thursday, September 20, 1973

ROLL CALL
[92 delegates present and a quorum.]

PRAYER

Mr. Champney. Let us pray.

Lord, make me an instrument of your peace. Where there is hatred, let me sow love; where there is injury, pardon; where there is doubt, faith; where there is despair, hope; where there is darkness, light; and where there is sadness, joy. O Divine Master, grant that I may not so much seek to be consoled as to console; to be understood as to understand; to be loved as to love, for it is in giving that we receive. It is in pardoning that we are pardoned; it is in dying that we are born to eternal life. And if it pleases You, dear Lord, may You smile occasionally upon this gathering, for Lord, just a little smile makes all the disappointments disappear quietly into the night like a cool summer breeze on a summer night. We ask these things in Your name. Amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

Personal Privilege

Mr. Goldman. Thank you, Mr. Chairman.

Fellow delegates, I am going to make this short, and I don’t want you to misunderstand me, because when I am going to talk about, I don’t want you to think that that, at all, labels me as being here representing radio and television or news. I am here representing the general public, the public at large, and every person in this state. But the subject matter about which I am going to talk is one that we discussed here quite at length several weeks ago. We were talking about the right of the public to receive the news in this state, without any restriction. That is on freedom of expression. During that discussion when we were talking about that last sentence in there about everyone had the right to publish, print, speak, photograph, etc., what they wanted to without licensure, the discussion centered around news people who would never be licensed. That was an impossibility. And I was surprised to learn when I got back here Wednesday in talking to individual delegates, that not one of them had found out, as yet, until I talked to them, that the State of Alabama, in its wisdom, the legislature of Alabama, just before it adjourned about a week ago, passed a law which was on another subject, but talked indirectly to it in an amendment which required, or which prohibited, any newsman in the State of Alabama from attending any public body meeting, including the legislature, without first getting a license from the State of Alabama.

Now Governor Wallace signed that into law, regretfully, and said he didn’t want it in there, but he wanted the rest of the bill and this is the only way he could get it. Now he, and the others, even those who put the amendment in and had it passed, feel that it’s not going to be constitutional. But that’s beside the point. I don’t know how long it will take the Alabama Supreme Court to rule on this. In the meantime, it’s the law of the State of Alabama. The Alabama Legislature is not in session anymore, and it may have to go to the Supreme Court of the United States. But regardless of whether they quickly declare that this is unconstitutional or not, think of what a fool the legislature of the State of Alabama is going to be, to make the law like in the eyes of the public. So, it can happen, and I hope we have some way of getting this no licensing business in sometime. Thank you very much for your attention.

Questions

Mr. Brown. Mr. Goldman, I read that Alabama statute, too, because I was interested in it. It looked real appealing to me. And the question I want to ask you, I think you are wrong. Is it not correct, they did not require the press to be licensed? It said that all public officials had to file financial statements, but anybody covering the legislature or any public body, any reporter, also had to file a financial statement. Is that not in effect what was said?

Mr. Goldman. He had to go a lot further than that. He had to file a financial statement...

Mr. Brown. I’ve got a copy of it, you want to see it? It said they had to file financial statement...

Mr. Goldman. He had to go a lot further than that. He had to file a financial statement... Let me answer your question. He had to file a financial statement, but parliament said what part of the law that is. I know he had to tell who he worked for, he had to tell how much money he made, he had to tell who he represented, and he had to get a permit.

Mr. Brown. That sounds pretty good. Why don’t you offer that as an amendment to this constitution?

Mr. Goldman. Well, if you like it, you can... you know... pass it in the legislature, because you are permitted to right now, if this constitution passes.

Mr. Tupper. I’m just wondering, you know what you said is very interesting. I also read the report that and I’m just wondering if you believe that maybe the people who report the news, and sometimes they are accused of slanting the news one way or the other, don’t you think they should be under some restrictions?

Mr. Goldman. No, I don’t think a newsman should be under any restriction to report the news. I think if he wants to make a comment, as long as it’s labeled commentary, I think the American public has enough sense to decide for themselves whether they agree with him or whether they disagree with him. Mr. Chairman, I didn’t mean to get into this long discussion. I just wanted to give them some information I thought most of them didn’t have, and I know now... realize that since I mentioned it to some of them, some of them have gotten the information, and that’s a good thing.

Thank you very much.

REPORTS OF COMMITTEES

[7 Journal 569]

Mr. Poynter. Mr. Aertker, Chairman on behalf of the Committee on Education and Welfare sends up the following report: Chairman, delegates of the convention, directed by your Committee on Education and Welfare to submit the following report. Delegate Proposal No. 1 introduced by Delegate Asself—reported unfavorably. Delegate Proposal No. 22, Delegate Denney—reported unfavorably. Delegate Proposal No. 28, by Delegate Dennery—unfavorably.

Committee Proposal No. 9, introduced by Delegate Aertker, Chairman on behalf of the Committee on Education and Welfare—is reported with amendments. Committee Proposal No. 10, by Delegate Aertker, Chairman on behalf of the Committee— reported with amendments. Respectfully submitted, Robert Aertker, Chairman of the Committee.

Mr. Aertker sends up further report from Education and Welfare that Delegate Proposal No. 66, by Delegate Roy—is reported with amendments. Respectfully submitted, Robert Aertker, Chairman of that Committee.

UNFINISHED BUSINESS

THIRD READING AND FINAL PASSAGE

Mr. Poynter. Committee Proposal No. 17, introduced by Delegate Perez, Chairman on behalf of the Committee on Local and Widening Government and other delegates, members of the committee. A proposal making general provisions for local and parochial
Mr. Pugh: I believe this amendment is being pressed out at the moment. There have been a number of amendments by Mr. Lanier, Mr. Thibodaux and others that we have previously adopted. Section 1 and 2, 4 and 5. If we were to consider them, we would have to do so under consideration of this amendment. Mr. Chairman, there are a number of amendments to that section 7.

Personal Privilege

Mr. Pugh: Yesterday Mr. chairman and fellow delegates, yesterday the delegate of the Oneida tribe of Indians argued the point that because we had not adequately explained the various types of home rule charters, governmental operations that exist in our nation, it was not possible to have for distribution in a few minutes, an outline of the various kinds of charters governmental operations which are applicable to the municipalities and parishes so that you, along with Delegate Duval, will have that information for your further consideration as we proceed with the article.

Mr. Chairman Casey in the Chair

Amendment

Mr. Poyster: I believe this amendment is being pressed out at the moment. There have been a number of amendments by Mr. Lanier, Mr. Thibodaux and others that we have previously adopted. Section 1 and 2, 4 and 5. If we were to consider them, we would have to do so under consideration of this amendment. Section 1, the local governmental subdivisions existing under home rule charters or plans of government at the time of the adoption of this constitution, shall continue to have all of the authority, power, rights, privileges, immunities, obligations and responsibilities as therein provided for in that event.

Mr. Pugh: That is correct.

Mr. Lanier: Mr. Poyster, this amendment provides that it applies to all governmental subdivisions existing at the time of adoption or since adoption as that correct?

Mr. Pugh: That is correct.

Mr. Lanier: This would not apply to home rule charters that are revocation of the type of local government or the new ones?

Mr. Pugh: That is correct.

Mr. Lanier: What I want to propose is that we would have a similar amendment here that would cover the types of local government or the new ones.

Mr. Pugh: That is correct.

Mr. Lanier: And I would like to propose that we have a similar amendment here that would cover the types of local government or the new ones.

Mr. Pugh: That is correct.

Mr. Lanier: I would like to propose that we have a similar amendment here that would cover the types of local government or the new ones.

Mr. Pugh: That is correct.

Mr. Lanier: I would like to propose that we have a similar amendment here that would cover the types of local government or the new ones.
in favor of that.

Mr. Burson Mr. Pugh, I've got some technical problems with the language in (B) that says, "two or more local governmental subdivisions within the boundaries of a single parish may by a majority vote of the electors of the local governmental subdivision adopt so on...a home rule charter." Does that mean that Opelousas and Port Barre could get together, if you say, in St. Landry Parish and create a home rule unit that would be separate and distinct from the parish and the municipalities?

Mr. Pugh If I understood, your question was whether or not two governmental bodies in two different parishes could do it? No.

Mr. Burson No, no. Within the same parish.

Mr. Pugh If they are in the same parish, and they want to have it, then I'd be the last one to prevent them from doing it. I put this in specifically for Mr. Sandoz who wanted that for his parish.

Mr. Burson You mean that two cities that might be separated by eight or ten miles, could get together and form a home rule unit within a parish?

Mr. Pugh If those two cities are dumb enough, or smart enough, as the case may be, to do that, why prevent them? Why should we tell them they couldn't do it?

Mr. Brown Mr. Pugh, will you tell me your intention on your amendment? You have in paragraph (B), you say, about the fourth line down in paragraph (B), "by a majority vote of the electors."

Mr. Pugh That's right.

Mr. Brown "By the electors." As I interpret that, that means fifty percent of all registered voters. Did you mean that fifty percent of all registered voters, not voting in the election, but who are registered throughout the entire area concerned, did you mean to make it that stiff? Because you are really talking about, probably, seventy percent. You'd have to get a heck of a lot more than that.

Mr. Pugh I see nothing wrong with the majority of the people being affected, being in mind that when you have a home rule election, you ain't talking about a simple election. You've got all kinds of people for or against, and don't want the home rule. There's no reason why there should be a change in form of government if at least fifty percent of the electors don't want that change.

Mr. Brown Well, why raise the question? I've seen some figures, I think, by LSU or someone, that says that in an election such as this, home rule charters election probably would get sixty, sixty-five percent of the vote at the very most. That's probably too high in any election. In that case, that would be a tremendous problem in getting fifty percent of the voters out of that sixty percent who go to vote, to vote for the thing. You would have to have eight-five, ninety percent of those voting, voting for your home rule charter. Do you think we'd ever get a home rule charter passed in the future?

Mr. Pugh If you feel that you have, with some certainty, a mathematical figure, I will be happy for you to amend this to supply that mathematical figure.

Mr. Brown You feel that it's not to be more than a majority of those voting, though, in terms of philosophy.

Mr. Pugh Yes, that's my opinion. But that's just mine, you know. I'm certainly not saying I wouldn't support an amendment of yours if you could give me some satisfactory percentage. That's fine. I might further answer, I think you ought to have a minimum percentage as well as this maximum there. In other words, I think you ought to have a certain percentage that are voting and then take a percentage of those.

Mr. Nunez Mr. Pugh, my interpretation of (B), let's take an example because I'm concerned with, I'll take an area like...well, let's take Jefferson Parish where you have the city of Harano on the east bank, and the city of Gretna on the west bank. Suppose they decided to form a home rule charter between the two and they vote accordingly, according to your...follow your (B) here, and they vote to do it.

Mr. Pugh Yes.

Mr. Nunez What would happen with the people in between?

Mr. Pugh You mean the people that didn't vote for it?

Mr. Nunez That's right. What would happen...how would you form it? Would you...should you have a continuous boundary or something to go ahead and form this?

Mr. Pugh Well, I'm going to reiterate that Mr. Sandoz has some problem he wants to resolve. He feels that this will do it. I will again state that if two cities within a parish elect to join together for the formation of a government, then I say you ought to be able to do it. That's up to them, not us.

Mr. Nunez But my point is, there are many parishes that have three or four cities within the parish boundaries that would not be contiguous with the other cities, and according to this, they could call an election, as such, and form one home rule charter for two different areas that are within the parish boundaries but are not contiguous. We're solving, don't you believe we are solving one problem and might be creating a lot of other problems with this amendment?

Mr. Pugh Man, as I understand home rule, that means that, brother, you can do what you want to do at home.

Mr. Roy Mr. Pugh, in answer to Mr. Nunez's question, the first sentence starts out of (B), "the legislature by a majority vote of the eligibility."

Mr. Pugh That's correct.

Mr. Roy Well, don't you think that if the legislature has two cities ten miles apart, that it tries to allow to organize under a home rule charter, that if it doesn't allow the people in between to vote on it, that you are not going to have a contiguous home rule charter, will you not?

Mr. Pugh It's absolutely correct that the legislature... Go ahead.

Mr. Roy But still, those two cities will be operating under one home rule charter.

Mr. Pugh That's correct.

Mr. Roy And the probability is that any same legislature would provide that all the people who are going to be affected will have to vote on it, won't it?

Mr. Pugh Sure they will. I've got more faith in the legislature than a lot of people. I'll put it that way.

Mr. Arnette Mr. Pugh, just a quick question.

[1329]
Mr. Pugh: Are you asking me if some people in a city vote on that charter provision? But it's passed, will they have those rights?

Mr. Annette: No, what I am asking is, suppose we put a provision in the constitution that you can't put out bonds more than so much in amount or something like this. But in their home rule charter, it says that they can. Would they still be able to do it?

Mr. Pugh: Yes, I am of the opinion that...

Mr. Annette: So, in other words, these home rule charters would not be subject to the new constitution at all?

Mr. Pugh: I don't think you can take... you know, it's... maybe it's one of philosophy or legal interpretation, but I just don't have those rights even if they were against this constitution. In other words, if we have a constitutional provision against one of the rights they presently have, would they continue to have that right?

Mr. Pugh: I think you are asking me on that committee that drafted the committee proposal, are you not?

Mr. Pugh: Would you be kind enough, for me, to tell me the difference between the committee's language, each of them shall retain the authority, powers, rights, and immunities granted by its charter. And what I have said is Section 5 about the retention of all of those, except I went one step further and say all of the obligations and the responsibilities.

Mr. Pugh: You then believe that we should separate into different sections each of these things relating to the above subject, house rule?

Mr. Pugh: That with respect to section 7 of the committee as proposed a means for amending future home rule charters, the committee had a great deal of approach in respect to that section it would like to have an opportunity to explain it. We are now going to take this up and we will deal with the issue of an amendment, it becomes difficult to get that which everybody agrees a great deal of interest in. And if we do not get a new amendment, then we may have to deal with some amendment in section 7, which is the section...
50th Days Proceedings—September 20, 1973

this process, I think if you will compare the committee proposal's Section 8 with this amendment, you will see that some very critical and very important rights, which are given to the people, have been excluded. I think that this is the basis for you to justify a vote against this amendment.

One technical problem with this amendment, as I pointed out in my questioning of Mr. Pugh, is that at the time it was drafted, it did not take into consideration what would happen to home rule charters that had been authorized but which would not be effective until after the time that we adopt the new constitution. My home town, Thibodaux, happens to fall in this category. We have adopted a home rule charter, but it will not become effective until the time that the amendment is adopted. And if this amendment is not adopted, ours would not be ratified.

Now, if you will go to Section 8 and review its provisions, you will see that what is being attempted there is to give a direct grant of home rule charter-making authority from the constitution to the people. There is a provision for an initiative, put in there. If your local governmental unit does not choose to call a charter commission as it is authorized to do in the constitution, then the people themselves could call a charter commission by a fifteen percent petition. Now this is very critical across our state, that the people be given this right and power. If there were a new state, a new existing government, or you feel that a new form of government is necessary for the orderly handling of your governmental affairs, should you not have the right to call a commission to make a home rule charter to decide the manner in which you should be best governed on the local level? This is a very basic and a very sensitive right that has not been included in the amendment that is before you.

If you will look at some of the other provisions, you will see, for example in Paragraph 6 of Section B, it says that "the powers and functions of a parish or city school board, and the offices of sheriff, clerk of the district court, coroner, or assessor, shall not be affected by any provision of a home rule charter as a plan of government." This protection is not provided in the amendment that is before you. Before you vote on this point, I really counsel you to think long and hard about this type of protection.

You have a Section (D) which is a direct grant to the people to provide for the formation of multi-unit home rule charters. In particular, right now in the State of Louisiana, you have such a charter in the case of the city-parish of Baton Rouge. It is called a city-parish charter. It combines all of the units, I think there are five municipalities, and the parish government. This could only be a constitutional amendment that everybody in the state had to vote on.

Section (D) provides, in the constitution, the method that this can be done on the local level. Right now in Lafayette, and it was Mr. Chatelain, E.J. Chatelain of Lafayette, that brought this matter to our attention, they have been trying to do this, or at least have a charter commission to attempt to do this, since 1970. But you know what the fate of constitutional amendments is in the State of Louisiana. Why should the people of Lafourche Parish or Jefferson or Bienville Parish have to vote on whether or not Lafayette should have a home rule charter? That should be Lafayette's business, and the mechanics should be set up in our constitution for Lafayette, if they wish, to join their five municipalities and their parish government, to make such a charter. Why should this be a constitutional amendment that everybody in the state had to vote on?

The amendment before us does not provide the mechanics for doing this. It merely says that it shall be authorized by a constitutional amendment some time in the future that is not prescribed. I suggest to you that this is a matter of such magnitude that the basic procedure should be included in your constitutional amendments. I ask you to defeat this amendment and preserve this right, as drafted by the committee.
50th Days Proceedings—September 20, 1973

Mr. Burson: Mr. Jenkins, I understand that a lot of people haven't read Section 7 because they think that it says what you say it does, but if you look at the third sentence, doesn't it say that each shall be subject to the duties imposed by the applicable constitutional provisions under which its plan or charter was adopted?

Mr. Jenkins: That's right.

Mr. Burson: It doesn't say anything about any privileges or rights, in contradiction to the conventional reading of the provision, so authority doesn't protect you in performing the duties that they had to perform under the old constitution.

Mr. Jenkins: That's correct, under the old constitution it doesn't say anything about being subject to the constitution in fact, the provision simply says, 'shall be subject to this constitution.'

Further Discussion

Mr. Perez: Mr. Chairman and ladies and gentlemen, I really wanted to come back. Mr. Perez, here is a question:

Mr. Jenkins: Yes, you are, but any provision of this constitution shall not be read in conflict with all the other provisions, and if you are in one point, saying that a local government has all the authority that it ever had under its charters under a previous constitution, you're in effect negating that. You're making an exception to that.

Mr. Conino: Delegate Jenkins, you just mentioned that the... if these articles were adopted, that the local and parochial districts would have power, we're going to have that, but with Section 30 of the committee's proposal?

Mr. Jenkins: Yes, I am.

Mr. Conino: Supremacy of the constitution?

Mr. Jenkins: No, that doesn't protect us except in the future. It says, 'The provisions of this constitution shall be paramount, and neither the legislature nor any political subdivision shall enact any laws or ordinances in conflict herewith.' Now, consider what that means. It says, the provisions of this constitution shall be paramount. One of the provisions of this constitution would be that local government charters are superior to any other part of this constitution. That's one part of it, and it's going to be paramount. And it says, 'nor shall any political subdivision enact laws or ordinances in conflict herewith.' Certainly in the future it couldn't enact ordinances or resolutions outside the scope of its authority, but as long as it was operating under a previous charter, it could do anything that it wanted to because that was authorized under this previous constitution, so authority doesn't protect you. We need some language saying 'except as provided in this constitution' or 'subject to the provisions of this constitution.'

Mr. Burson: Mr. Jenkins, I understand that a lot of people haven't read Section 7 because they think that it says what you say it does, but if you look at the third sentence, doesn't it say that each shall be subject to the duties imposed by the applicable constitutional provisions under which its plan or charter was adopted?

Mr. Jenkins: That's right.

Mr. Burson: It doesn't say anything about any privileges or rights, in contradiction to the conventional reading of the provision, so authority doesn't protect you in performing the duties that they had to perform under the old constitution.

Mr. Jenkins: That's correct, under the old constitution it doesn't say anything about being subject to the constitution in fact, the provision simply says, 'shall be subject to this constitution.'

Mr. Perez: Mr. Burson, Mr. Jenkins, I happen to disagree with your statement that what Mr. Jenkins said above, if you really are sincere about taking care that what we do here today is not subordinated to what was done in the 1921 Constitution, we don't agree to coauthor an amendment to Section 30 that you all have provided that the governments with respect to the rights, granted in these previous charters will be subject to the provisions of the 1973 constitution.

Mr. Perez: Mr. Roy, I would say to you again that Section 30 is the place where we took the matter, and wanted to be sure that these could be the constitution. In particular words, I would say when we let Section 30 we should straighten the matter out at that time, and I was the intent of the committee when Section 30 was adopted to make clear that the provisions of this constitution were paramount, meaning first and foremost over everything else.

Mr. Roy: But one of the provisions of this constitution is in line with what says, Section 30, can of them shall retain the authority, prescribed by its charter, isn't that correct?

Mr. Perez: But what you must understand is that those are the provisions for the future operations of government by a local governmental authority, it's nothing to do with, in the words of your previous constitutions in any charter will have nothing to do with the Bill of Rights, or what would amendment with the Bill of Rights.

Mr. Roy: I'm not talking about the Bill of Rights. I'm talking about, since section 19 of the 1973 Constitution, isn't it?

Mr. Perez: I disagree. I didn't ask the question.

Mr. Roy: I'm not going to get involved in a Bill of Rights. I say that's not even a provision in the 1973 Constitution, isn't it?

Mr. Perez: Well, every provision will be a part of this constitution, and if it's not a part of the constitution, it will not have to be considered.

Mr. Roy: That I right, and it's a parameter, as not not.

Mr. Perez: Yes, but the section the section includes all of the above provisions contained in the constitution.

Mr. Roy: Well, I agree.

Mr. Perez: No, local government will have power to make anything which would be not contrary to the interpretation of the constitution. That's all that's meant by local law.

Mr. Burson: Mr. Jenkins, would the absence of the statement that each of them shall retain the authority...
Mr. Perez. I would suspect that the real objection is that they are trying to take away from the people whatever adopted charter form of government some of the authority that those people wanted their local government to have.

Mr. Roy. Mr. Perez, I have one more question. Suppose the City Charter of New Orleans, the present charter, says that to be a member of the city council, you've got to be over twenty years of age, and this constitution later in our General Government Article, we in 1973, say that any person who's eighteen years of age and an elector may be, and seek the position on any deliberative body. Which would prevail?

Mr. Perez. "There is no question but that the constitution will prevail." That's Hornbook on Constitutional Law, and we have attempted to state it to be sure there's no problem with respect to it in Section 30, and again say if you have some problems with respect to that, let's straighten them out when we get to Section 30. Let's take up this problem in an orderly manner.

Mr. Goldman. Mr. Perez, I get back to my transition article again. Wouldn't this whole thing be taken care of if it was put into the transition article under a schedule and the legislature could then take care of it properly, and it would be out of the constitution without the names in there.

Mr. Perez. Which whole thing, Mr. Goldman?

Mr. Goldman. This whole Section 7. I don't mean the amendment, I mean the original Section 7.

Mr. Perez. I'm not sure what this transitional business is all about. I'm a member of that particular committee which is considering the so-called transitional measures, but the whole purpose and the reason that you have provisions in your constitution with respect to home rule charters goes back to the many years of history that we had, with an unfriendly legislature and an unfriendly governor were taking it out, so to speak, on particular localities, and it was only after many, many years that this problem was taken care of in a constitutional provision.

[Previous Question ordered.]

Closing

Mr. Pugh. Mr. Chairman, fellow delegates, as much as I know how, I drew upon what little knowledge I have to provide for an amendment that would track as nearly as possible the committee's proposal that would do the three things I mentioned to you. Merely say, "if you've got a charter, you've still got it." Now to say that you ratify the charter, or to say that you have all the authority, powers, rights, privileges, immunities, obligations, and responsibilities, and anybody that tries to draw a distinction between those two is kidding himself and kidding the people, there isn't a difference between saying "I ratify a charter," or "I ratify all the things that are in the charter." Now, on the second provision, there are areas somebody that may want a home rule charter. All this does is says that the legislature shall provide the means of it. This Constitutional Convention in all of its wisdom could not, if it stayed here for years, lay down every conceivable acceptable provision relating to a home rule charter. There's no way. The third section merely says, and I agree with you that this is a departure from the committee. The third section merely says that the legislature cannot tell an individual city what form of government they are going to have. Now, you tell me what's wrong with that. Do you want the legislature telling you you've got to have a different form of government than what you have? They can encapsulate it if they want to, but I'm going to tell you something--as far as this amendment's concerned, it does three things. It gives you a right to have what you may want; and it tells the legislature to leave you alone. Now, we can do this if you want to. We can put a provision in this constitution that says, "There ain't no charter anywhere," but when you do, you are violating rights of those cities because they've got one. Don't tell me that Orleans suddenly wakes tomorrow and finds out they don't have a viable charter, don't tell me Shreveport, Jefferson, wherever else has one wakes up tomorrow and says that we don't have a viable charter. Now either rewrite every word that's in their charter in this constitution or do what I'm asking you to do, is merely say, they can keep what they've got, because under the law they are going to anyway and to say there is a difference between "we ratify" or "we recognize they have these things," again I say, is a distinction without a difference.

Questions

Mr. O'Neill. Mr. Pugh, the first two sections of your amendment are basically the same as the committee report, Section 7.

Mr. Pugh. Absolutely correct.

Mr. Perez. To make it perfectly clear again, Mr. Pugh, so the delegates would understand, before a charter could be adopted, amended, or modified, it would require a majority of all of the electorate or all of the registered voters in the parish, not a majority of those voting in the election, is that correct?

Mr. Pugh. Mr. Brown could not have expressed that more distinctly than what he did.

Mr. Perez. Well, for the answer is, I assume "yes," that it would require in order to either adopt or amend a majority of all...?

Mr. Pugh. Absolutely. I told Mr. Brown that I had no quarrel with that, if he can give me the percentages, I'll be happy to support it.

[Amendment rejected: 24-68. Motion to reconsider tabled.]

Amendment

Mr. Payne. We'll go with the Champagne amendments at this time.

Amendment No. 1--and there have been several drafts of this passed out. I believe you have the final one on your desk. If not, the one you have only has a slight change in it.

Amendment No. 1, on page 3, line 4, immediately after the word and number "Section 7" delete the remainder of the line and delete lines 5 through 21, both inclusive in their entirety, and insert in lieu thereof the following: "Every plan of government or home rule charter in existence or authorized at the time in the words, if you have an earlier draft, the change is that the words or authorized have been inserted, in existence or authorized," you've taken the final draft) "at the time of the adoption of this constitution shall remain in effect but shall be subject to amendment, modification, repeal as provided therein."

Chairman Henry in the Chair

Explanations

Mr. Champagne. This in essence is the original amendment that I proposed on yesterday before it was suggested that this was material. I want to apologize to you for taking so much of your time in so doing. This amendment takes care Mr. Lanier's
Suggest, say, ask, have you had knowledge of the amendment as proposed?

Mr. Lanier Mr. Champagne, when you are not in the words authorized in that the report is abundantly clear. On that point, I am assuming that you understand, in lieu of any other type of a situation where we have accepted or authorized a home rule charter which, however, will not become effective until the end of 1972.

Mr. Champagne That is abundantly clear, Mr. Lanier, and in addition to that, I had it reprinted twice, and I had the bill charged against your account.

Mr. Lanier Now, one other question about your amendment. If we have other provisions in the local government charter that later on would be in conflict with presently existing provisions in these home rule charters, do you have any language in your amendment that will identify the language as the language in the Tommy amendment that says, each of the shall also enjoy such additional powers and functions as are granted to local governments by provisions of this constitution, unless the exercise of such powers and performance of such functions is prohibited by its charter?

Mr. Champagne That was proposed to me, Mr. Lanier, and rather than fall into the same pitfalls I fell in yesterday. I suggested that it be offered as an amendment to this amendment.

Mr. Lanier Thank you.

Mr. Champagne I urge your vote on this, and for once, let's put greens up here instead of reds. Thank you.

Further Discussion

Mr. Jean Mr. Chairman, fellow delegate, I hesitate to rise again in opposition to Mr. Champagne's amendment, but I attempted to point out yesterday, and I have this before you today, that the particular governments that we are talking about is in this section-Jefferson, East Baton Rouge, New Orleans, St. Bernard and the others--have particular constitutional deals that they have under the state constitution, and they have certain substantive rights which have been interpreted in the case of Jefferson, East Baton Rouge, and the others, specifically, the right to create a charter subject to the constitution and general laws of this state with respect to powers and functions of government a distinguished from structure and organization. The state courts have interpreted the meaning of that language to say that in East Baton Rouge parish and Jefferson that they have a right to deal with matters exclusive to the local government and other matters of a kind which are part of structure and organization as against some legislative act dealing with the same purpose. Now, the particular amendment that is in dispute here is that it shuts those charter grants of government from that kind of a base. They also lose the foundation upon which they were built and it then becomes apparent to just what extent remains with respect to those particular matters or those charters or plans of government that are of the kind which are part of structure and organization as against some legislative act dealing with the same purpose.

Mr. Champagne I urge upon the full committee at this amendment, is that it shuts those charter grants of government from that kind of a base. They also lose the foundation upon which they were built and it then becomes apparent to just what extent remains with respect to those particular matters or those charters or plans of government that are of the kind which are part of structure and organization as against some legislative act dealing with the same purpose.

Mr. Jean It keeps the charters in effect, doesn't it, that exactly what it did.

Mr. Champagne I urge upon the full committee at this amendment, is that it shuts those charter grants of government from that kind of a base. They also lose the foundation upon which they were built and it then becomes apparent to just what extent remains with respect to those particular matters or those charters or plans of government that are of the kind which are part of structure and organization as against some legislative act dealing with the same purpose.

Mr. Champagne I urge upon the full committee at this amendment, is that it shuts those charter grants of government from that kind of a base. They also lose the foundation upon which they were built and it then becomes apparent to just what extent remains with respect to those particular matters or those charters or plans of government that are of the kind which are part of structure and organization as against some legislative act dealing with the same purpose.
solves this problem. I think it does: it very, very well. It does not allow the legislature to come in wholesale and change anyone's charter unless they have that right already, which means there is no change. Whatever is in that charter, and I don't see how anyone could get it out of that particular language.

Questions

Mr. Jenkins If the State of Louisiana has a statute on the books which is constitutional under the 1921 Constitution, but this constitution is passed and it's contrary to this one, that law would be nullified, wouldn't it?

Mr. Arnette I assume that would be correct. It would be unconstitutional.

Mr. Jenkins So really what the committee proposal does, it puts home rule charters really above the general law of this state because whereas a general statute would be unconstitutional, a charter could not be, isn't that correct?

Mr. Arnette That's exactly right, if you adopt the committee's language or some of the other language that has been proposed in other amendments. Section 30, notwithstanding, when it says that "this law shall be in addition to any law," it is very obvious that when you have a provision in this constitution saying "this constitution shall not apply to home rule charters," it shall not apply to home rule charters.

Further Discussion

Mr. Roy Mr. Chairman and ladies and gentlemen of the convention, I rise in support of this amendment. I've never heard so much legal mumbo-jumbo about what Section 7 is trying to do other than... and I want you to pay attention... that if you believe in the supremacy of this constitution, you believe in the supremacy of a local government established under some home rule charter that none of us know about because I don't know what's in the home rule of New Orleans; I don't know what's in Shreveport; I don't know what's in anybody's... Jefferson, Plaquemines Parish, whatever have you... then vote against this amendment, because that's the whole output in Section 7. Mr. Champagne's amendment is very, very short... and explaining it. Well, let me show you what else the committee wants with respect to those particular home rule charters that exist in one law into 1974 with everything that it's had in the past and that we may not touch by this constitution, but it wants to give or to arrogate unto itself anything that we may take out of Sections 8 and 9 of this particular article. It's the old proposition of having your cake and eating it, too. They don't want you to not only not touch them with respect to what they've had in the past and what they have now, they want everything that we may decide to give local governments in the future. Now, Mr. Champagne's article says very plainly that after the adoption of this constitution the home rule charter shall remain in effect. I don't know how more clearly you can say that they're going to make it into the new constitutional era just as they presently are. I don't see all this Section 7 malarkey about "we want to retain the authority, powers, rights, privileges and immunities granted by this charter." Well, when we were up here discussing the Bill of Rights everybody said, "What do you mean by this other rights?" I ask you, "What do you mean by the privileges and the immunities that these people want to come into 1974?" Now, if they want to define them, they let them try to do it. I don't think there's anything wrong with Mr. Champagne's amendment. I believe this body should decide that any local governments coming into existence in 1974 will abide by what is in the Constitution or what is not Overrides.
Questions

Mr. Lanier: Mr. Roy, you said that if these people are named in the constitution that they would be supreme?

Mr. Roy: Very definitely, Mr. Lanier; that's what I think, I tried to do in Section 11.

Mr. Lanier: Well, let me ask you, a lot of their folks are in the constitution right now. Do you think that they are supreme in Louisiana right now?

Mr. Roy: No, because we can now deal with the constitutional amendments, but Greg Arnette's point is well taken by your question because if in 1974 we want to deal with them, if we can, we've got to go and amend the 1921 Constitution in some way in 1976 or 1977.

Mr. Lanier: Let me ask you this, Mr. Roy. In Section 9 it provides for powers of all other governmental subdivisions, and it has the residual grant of authority which I believe you said today to me that you supported. Is that correct?

Mr. Roy: Yes, sir. I support a residual grant provided that the legislature may always restrict it.

Mr. Lanier: Now, if Section 9 provides for these powers, the residual power, for other units then that power would not go to those who would be ratified in Section 7; wouldn't that be correct?

Mr. Roy: Run that by me again.

Mr. Lanier: O.K. If Section 9 sets up the residual grant of authority for other units, etc., other than 7 and 8, which are those who are presently in the constitution and those who are coming in under the home rule charter in B, that means the only people that would have the residual powers would be the people who are not home rule under 8 and who do not have the present constitutional charter. Is that correct?

Mr. Roy: You mean not home rule under 7.

Mr. Lanier: Well, let me run it by you another way. 7 ratifies existing constitutional charters, right?

Mr. Roy: Only with respect to home rule charters, and doesn't deal with the many other cities that are incorporated otherwise.

Mr. Lanier: 8 provides for future home rule charters, right?

Mr. Roy: That's right.

Mr. Lanier: 9 provides for the power for other units of government, right?

Mr. Roy: Right.

Mr. Lanier: So, that means under 7 and 8 would not have the power granted in 9. Is that correct?

Mr. Roy: That is right, but don't forget you're not giving those presently organized under commission plans of government that are not home rule you're not giving them the rights you're trying to give them under 8. That is, either, Mr. Lanier you're not pointing that out.

Mr. Lanier: Oh, that means those under 7 and 8 would not have the power granted in 9. Is that correct?

Mr. Roy: That is right, but don't forget you're not giving those presently organized under commission plans of government that are not home rule you're not giving them the rights you're trying to give them under 8. That is, either, Mr. Lanier you're not pointing that out.

Mr. Lanier: But, what really you're getting to right now the ones under the existing 8 are organized under 7, your rule, aren't they?

Mr. Roy: Yes, but Mr. happy man, want to say that all the governments are the same.

Further discussion
Amendment

Mr. Poynter These are Toomy and Kean.

Amendment No. 1, on page 3, line 4 after "Sec-

tion 7" delete the remainder of the line and delete lines 5 through 21 both inclusive in their entirety and insert the following: "Every plan of government or home rule charter existing or adopted when this constitution is adopted shall remain in effect and may be amended, modified, or repealed as provided in its charter. Each local governmental subdivision which has adopted such a home rule charter or plan of government shall, also, retain the authority, powers, rights, privileges, duties and immunities granted by its charter and by the constitutional or statutory authority there-

Explanation

Mr. Kean Mr. Chairman and fellow delegates, we've had considerable discussion today surrounding among other things, the specific references in this pro-

posed section to specific areas of local govern-

ment which are affected by it. There has been

another objection raised by Mr. Pugh, for example, who felt that the section as worded would have the effect of "I've been in Shreveport in authorizing a charter in which it does not now have under the con-

stitutional authority by which the charter in Shreveport was adopted. Under those circumstances we have suggested this amendment to the committee proposal which would make it clear that every plan of government or home rule charter adopted or exist-

ing when this constitution is adopted would remain in effect and could be amended, modified or repealed as provided in that charter. Secondly, we have pro-

vided that those local governmental subdivisions would retain the rights and privileges as are con-

tained in its charter and as are granted to it by the constitutional or statutory authority under which it was enacted. Now, that would simply mean in the case of Jefferson and East Baton Rouge Parish, for ex-

ample, that the distinction made in those particular articles under which they...constitutional articles under which they were authorized between structure and organization and powers and functions of govern-

ment would continue, and would grant the continuance of those particular charters and of New Orleans, Shreveport and the others involved under the constitu-

tional or statutory authority by which they were created. We have included the statutory authority, be-

cause we have pointed out earlier, there are some municipalities which are more rule charts under statute. A general statute authorizing for the creation of the charter. Therefore, we have made reference to the statutory authority in order to make it clear that they continue with that as the base for their particular charter which would be continued by this particular section. It seems to me that it represents a consensus. It does away with objections such as Mr. Champagne had against it....the original proposal. It does away with the objection. I think, that Mr. Pugh had, under the circumstances I would urge your favorable consider-

ation of the amendment.

Questions

Mr. Roy Mr. Kean, we've been saying all along that y'all have been trying to make us fool back around with the Constitution of 1921 and now you specifically state it, don't you, with this?

Mr. Kean Mr. Roy, all I'm saying here, that in the case of Baton Rouge, for example, it has cer-

tain specific authority under Article XIV, Section 3A which was the base for its authority, and if you don't give some reference to that you take away the base of that charter, that's all.

Mr. Roy Well, I don't know if I can get a specific answer from you, but aren't we going to have to go back to the 1921 Constitution to determine this constitutional authority that you want us to inter-

pret for Baton Rouge and every other home rule charter that is presently in existence?

Mr. Kean You've got to go to that as a point of reference, that's correct.

Mr. Roy I think this one is worse.

Mr. Roemer Mr. Kean, I notice that you amendment does not have the phrase that another amendment that I see on my desk does and that is "subject to the provisions of this constitution." Why don't you have that in your amendment?

Mr. Kean Because, I think it is subject to the provisions of this constitution.

Mr. Roemer But, you don't clearly state that, do you? That's just your supposition. It certainly doesn't read that to me.

Mr. Kean Mr. Roemer, I take the position that whatever these agencies have in the way of powers and functions is subject to the constitution.

Mr. Roemer Well.....O.K. Thank you.

Mr. Burston Mr. Kean, there is a legal question which was discussed at some length in our committee sessions. It has not until today was it brought up. Isn't there a real legal problem about abrogating the provisions of any existing charter form of government by constitutional action by this convention? Would you elaborate on that?

Mr. Kean Yes. The point is that if we don't con-

tinue the establishment of the base by which they were created, it raises a serious question as to their continued existence. Because you no longer have any point of reference by which to determine the right to exist, and under the circumstances, if you don't make some reference to the base upon which they were founded they're just kind of floating out in the air somewhere, and under the circum-

stances I think we'd do a distinct disservice to those existing charters in that kind of context.

Mr. Pugh Mr. Kean, I can see that you are a legal scholar in this field and I pose one question to you that concerns me. Do you think if this convention wanted to do so that it could, in fact, abolish all of the home rule charters in the state of Louis-

iana?

Mr. Kean In my opinion, Mr. Pugh, they could.

Further Discussion

Mr. Avant Mr. Chairman, fellow delegates, if we adopt this amendment we might as well go home. It's just that simple. I'll tell you why. Because, we are saying that we're writing a partially new con-

stitution. We're writing a constitution that is illusory. We're writing a constitution that will apply to the judiciary. It will apply to the legis-

lative. It will apply to the executive, but it won't apply to local government at all. Nothing that we put in the bill of rights, nothing that we may put in the articles that are to come up in the future on revenue, finance and taxation, nothing that we put anywhere in this constitution will change local government or be applicable to local govern-

ment. We would, because if you read the plain lan-

guage of this amendment, local government subdivi-

sions which have a home rule charter stay in the status quo. They have the same authority; they have the same powers; they have the same duties; they have the same privileges; they have the same privileges granted by its char-

ter as interpreted and construed in the light of the constitutional amendments of 1921. Each local government subdivision does not apply to it period. Now that's what it says in plain English. Now, if that's what you want to do, we have for this amendment, to provide a piece of a constitution, a partial constitution, a half of a constitution, go ahead and vote for this
50th Days Proceedings—September 20, 1973

amendment, but I'm telling you when you do, you might as well just pack up and go home, because you're not going to have any time to get too far into the hearing. The first thing, you have to have people who will testify to the provisions protecting the rights of the individual citizen that we have in this state and giving them more rights with respect to government which we incorporated in the bill of rights after weeks and weeks of debate, got a thing to do with local government why? The plain language of this section. All you have got to do is to be able to read the English language. What are you doing? You're trying to reject this amendment, because if you don't reject it, as I said before, you just might as well just close up hop, not borrow but today right now, and go on home, because you haven't done a thing but wasted your time and the people's money.

Questions

Mr. Munson. Mr. Avant, you're an attorney. I'm not. In regards to what you just stated, if we adopt this amendment as proposed and the entire document goes to the people next year and if it's approved by the people we are going to have to do one constitution or are we going to have two constitutions or one and half?

Mr. Avant. We're going to have two constitutions, Mr. Munson. We're going to have one for state government which will be the Constitution of 1973. We're going to have another one for local government which is going to be the Constitution of 1921, and you're going to have the people somewhere in between and they're not going to know where they stand.

Mr. O'Neill. Mr. Avant, Mr. Kean has said that the 1921 Constitution will be the legal basis for the home rule charters, is that correct?

Mr. Avant. The charter or the constitution or the laws that were existing at any time during the life of that charter, in fact, everything but this constitution.

Mr. O'Neill. Well, let me ask you, Mr. Avant, if this constitution is adopted, in your opinion, what is the legality of the old constitution?

Mr. Avant. Well, we're still going to have part of it. You're going to have to be reading both constitutions. I yield, when you're recognized.

Mr. Cheharidy. Mr. Avant, as I read this proposal, it seems to say in effect that if before we pass this constitution and if a charter should be ruled by that time for the people of that particular community to ratify separately or to abide by, with or against the present constitution, it would be effect...this would prevail. In other words, we're taking all of these communities away from our constitution if their charter so provides.

Mr. Avant. That is correct.

Further Discussion

Mr. Jordan. Mr. Chairman, member of the committee, first of all I want to say I'm certainly for home rule and I think just about everyone who did testify to the provisions of this constitution, and if you adopt this amendment, then if you believe that constitutional amendment should be a legal government that was a 1974 amendment, the citizens of every parish, district shall be subject to the new constitution, and I don't think we ought to make an exception for one person, one town, or one parish, yet I submit everybody to the constitution equally. I think this was our goal in coming here we wanted a new constitution for all the people and we have a new constitution for all the people and let's adopt the new amendment coming up and reject this present amendment. Thank you very much.

Questions

Mr. Roy. Mr. Arnette, I think that this amendment is a little more constitutional than I thought it would be; that we have to deal with the 1921 Constitution. Isn't that true?

Mr. Arnette. Well, according to the way I read it, yes. It does say, subject to that constitutional provision when it was adopted, and that is the 1921 Constitution.

Mr. Roy. And when it lay statutory authority, we may be having to deal with a statute that set up a local government that was a 1974 amendment, and we would have to go back and see what that statute itself said, wouldn't we?

Mr. Arnette. I'm sure those aren't really the ones I don't know about that, Mr. Roy.

Mr. Guiterre. Mr. Chairman, have you read Article 7 of the committee proposal, yet?

Mr. Arnette. Yes, I have. I'm reading it about six or eight times. As a matter of fact, we may read it to you about six or eight times, also.

Mr. Guiterre. Well, after reading your comments, I would like to read it again.

Mr. Arnette. Well, Mr. Guiterre, if you'll say there that this constitution shall in no case when you have a provision in this constitution...
which says something else shall be superior then the one that is stated to be superior, if that other thing shall be superior, is superior, which means that the other is superior. If you can get my reasoning.

[Previous Question ordered.]

Closing

Mr. Kean Mr. Chairman, fellow delegates, I have attempted to lay before you the problem that this particular authority is in question, would always be paramount. We're talking about here, governmental structure, and under the circumstances I can't follow the logic or the reasoning behind the suggestion to the best of my knowledge there is some way give these particular municipalities and parishes and organization that primes anything this constitution provides. I say to you that this section, this provision, is necessary for one purpose only, and that is to provide for the orderly continuation of the political subdivisions to which it refers and without taking away from them substantive rights that they now enjoy under existing constitutional or statutory provisions. I ask your favorable consideration of the amendment.

[Amendment reread. Record vote ordered. Amendment rejected: 31-85. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [By Mr. Conroy].
On page 3, after the words "Section 7," delete the remainder of the line and delete lines 5 through 21, both inclusive, in their entirety and insert in lieu thereof the following:

"Every plan of government or home rule charter existing or adopted when this constitution is adopted shall remain in effect and may be amended, modified, or repealed as provided therein."

Need to change the following words—the next sentence begins, as you have it, "Subject to the."
It should read: "Every plan of government or home rule charter existing or adopted when this constitution is adopted shall remain in effect and may be amended, modified, or repealed as provided therein."

Need to change the following words—the next sentence begins, as you have it, "Subject to the."
It should read: "Every plan of government or home rule charter existing or adopted when this constitution is adopted shall remain in effect and may be amended, modified, or repealed as provided therein."

Explanatory

Mr. Conroy. We have tried to meet the objections that have been raised on the floor. We have modified the language here and there for that purpose and objective, I think that this entire question has been thoroughly debated and discussed by this point. As I said, this is in order to meet the objections, I hope it does. I think the best thing to do is to yield to questions that may be asked.

Questions

Mr. Lanier Mr. Conroy, I have two lines of question. The first is my standards when you put in here "those that are existing or adopted when this constitution is adopted," you are intending to include the situation of the city of Thibodaux where we have adopted a charter but it is not yet in existence. Is that correct?

Mr. Conroy That is specifically why it is so worded.

Mr. Lanier Fine, thank you. Now the second question is the one I was discussing with you a minute ago, about the effect of the last sentence in your amendment. Would it be true that if we adopt the residuary grant of all authority provided here, which is only submitted to the convention in Section 9, that a unit of local government with a home rule charter would not have the residuary grant of authority unless they amended their charter to so include that authority?

Mr. Conroy As I would view it, Mr. Lanier, that would depend on what the home rule charter in question said. As this amendment says, if the charter provides it, it can have additional powers. My problem, as I mentioned to you earlier, and as one of my questions to Mr. Kean indicated earlier, I think that regardless of what we put in Section 7 that we will have problems with the wording of Section 7 until we determine exactly what goes into Section 9. I would ask Mr. Kean in that regard whether when Section 7 was passed the committee would resist the temptation to reconsider it and lay it on the table in order that any further discussions that might emanate from Sections 8 and 9 could then be considered in conjunction with Section 7 and the three sections together laid at rest at one time. That's the only way I can answer it; it doesn't matter what we say in this sentence; it's subject to the convention's will when we get to Section 9. At that point if what we have done here is not appropriate, then I think it should be considered at that point.

Mr. Lanier Well, in that regard, would you agree that in acting on the last sentence here, since we have not yet passed on Section 9, that we're kind of in the position of having the cart before the horse?

Mr. Conroy I think that Section 7 is the cart before the horse, no matter what else you do, because the other deals with governments generally. This deals with only one specific area of local government: that is, home rule charter governments.

Mr. Anzalone Mr. Conroy, there are those of us who are not greatly familiar with the charter form of government and by way of explanation, I would like to ask you a few questions. Under the present charter form of governments, as I understand it, this is constitutionally authorized. Is that correct?

Mr. Conroy You may be in a position of the blind talking to the blind or seeing the blind. If you're expecting me to be a home rule charter expert, I'm not. I could give you my impressions, but if you want sound answers to some of these, you may best address them to somebody who can really answer them.

Mr. Anzalone All right, sir. Would you do so?

Mr. Conroy I'll try.
It is constitutionally authorized

Mr. Conroy: Yes, most...but not all home rule charters are. I'm my understanding that there are some that are legislatively authorized.

Mr. Anzalone: Right. Now, there are certain powers and functions and duties, and whatever you have, under these charters that the legislature by purely statutory law cannot interfere with. Is that correct?

Mr. Conroy: Again, I really don't know. You may be right. I just don't know.

Mr. Anzalone: Now, in pursuing this, is that if we provide that subject to the provisions of this constitution and somewhere down the line we slip in a little provision that says that the legislature can pass statutory law which is going to effect the home rule charter then, in effect, what we're doing, if we should pass something like this further on down the line, is that we are making this a statutory home rule charter rather than a constitutional one. Do you agree?

Mr. Conroy: No, I don't see that in this at all.

Mr. Anzalone: If this constitution were to warrant to the legislature the authority to interfere with the home rule charter, then you don’t see where that would be a statutory charter?

Mr. Conroy: Well, I think that if this constitution is provided, yes, but I don't think it's provided in this amendment is what I'm saying.

Mr. Anzalone: Well, I know that, Mr. Conroy, but the question just arose.

Mr. Conroy: This relates to the same sort of question that was asked earlier, was whether this constitution could abolish home rule charters in effect. The answer that Mr. Kean gave...

Mr. Henry: The gentleman has...Mr. Conroy, you've exceeded your time.

Mr. Poynter: That's correct.

Chairman Henry: In the Chair.

Mr. Poynter: Section A. Home Rule Charter

Section A. Any local governmental subdivision may draft, adopt, or amend a charter of government to be known as a home rule charter in accordance with the provisions of this section. The governing authority of any such local governmental subdivision may appoint a committee to propose and prepare a charter as an alternative to an existing home rule charter or to call an election for the purpose of electing such committee.

The governing authority of any such local governmental subdivision shall call an election to elect a committee to prepare and propose a charter as an alternative to an existing home rule charter when presented with a petition signed by a majority of the electors of the subdivision within which the petition could be availed of at a meeting held within ninety days following the date of submission of the petition.

by the registrar of voters.

(C) A home rule charter shall be adopted when approved by a majority of electors who vote at the charter proposal at an election called for that purpose.

(D) All or more local governmental subdivisions are situated within the boundaries of any county, may, by petition, provide that a majority of the electors in each affected local governmental subdivision may vote at an election held for that purpose. The legislature shall provide for the method of appointment or election of such members to the charter committee.

(E) A home rule charter adopted pursuant to the provisions of this Section shall provide for the structure and organization, powers, and functions of the local governmental subdivision.

Mr. Kean: Mr. Chairman, fellow delegates, this section in keeping with the general philosophy of the committee by which powers will be granted from the constitution to local government under certain circumstances would change the present method of establishing home rule charters or local governmental subdivisions under the present circumstances, at the present time under the existing constitution. Article XIV, Section 48, of the constitution says that the legislature shall prescribe means by which home rule charters are confected. Here are statutory provisions under R.S. 33.3381 in the following sections which carry out that mandate and under which certain implications such as citizen, Lake Charles, Hendrick, Baker have enacted home rule charters. It was the view of the committee that this authority to create home rule charters should be directly from the constitution to the local government under certain circumstances, Section 48 of this particular section provides for that very thing. It would give to the governing authority the right to call an election for the purpose of confecting a charter or a plan of government for a particular local governmental subdivision Paragraph 18 would provide the means by which on a petition of the electors a majority of the electors of the election would a charter committee have to be created and an election held at which the charter would be a charter of local government and though the governing authority might not desire to do so, it would carry with it that vote that would be required to carry it out and would permit a consolidation of local governmental divisions within a city without any further necessity of legislative enactment or constitutional change. In other sections provided for the adoption of the home rule charter and all other other sections simply make it clear that it would be the duty of governing authorities in that instance to give to answer any questions.

Mr. Conroy: Mr. Kean, did you forget to explain this section?

Mr. Kean: Yes, sorry. It is either a point in that committee discussion that I had forgotten or I had missed. If there is any further questions I am there to answer any questions.
Mr. Roemer: All right, I see that. I'm speaking in regard to line 12 there that says "The legislature shall provide for the method of appointment or election of a commission to prepare and propose such a charter consistent with Paragraph (A) of this Section." Without that sentence do you think they could provide for the method of appointment or election of a commission inconsistent with Paragraph (A) of the constitution? I just don't see what that sentence...

Mr. Kean: Well, I think it would be simpler if it said that "The legislature shall provide for the method of appointment or election of a commission for the period." I think under those circumstances they could do it differently than provided in Subsection (A), and that was the reason for the reference.

Mr. Roemer: I see. They could go against the constitution in what they did?

Mr. Kean: No, because you are dealing with an entirely different set-up in (D) from what you are talking about in (A); that's my point.

Mr. Roemer: I fail to see it.

Mr. Bergeron: Mr. Kean, I'm looking at Section (B) of this... we are talking about a petition signed by fifteen percent of the electors. Am I correct?

Mr. Kean: Yes.

Mr. Bergeron: That's fifteen percent of the electors of that particular parish?

Mr. Kean: Of the area of the local governmental subdivisions...

Mr. Bergeron: Which is to be affected?

Mr. Kean: That's right.

Mr. Bergeron: Just out of curiosity, is there any way... how did the committee arrive at fifteen percent—no special number, I'm sure?

Mr. Kean: No, as I recall in either the... under the other provisions it contains a percentage which would... I think in Section 12 there is a percentage involved, I think about twenty-five percent. But we felt fifteen percent would be adequate for the purpose.

Mr. Bergeron: Thank you.

Mr. Avant: Mr. Kean, when we were discussing Section 7, you explained and I believe... and I know correctly so, that these two terms "powers and functions" as opposed to the other two words "structure and organization" which, as contained in the plan of government of the city of Baton Rouge, that under that language the courts had held that a general state law establishing minimum pay scales and longevity pay for firemen would not be applicable to the city of Baton Rouge because that was a matter of structure and organization. The pay of personal and the working conditions of personnel related to structure and organization rather than powers and functions. You remember making that... that was the La Fleur case.

Mr. Kean: That's correct.

Mr. Avant: Now, I note that in Subpart (E) here, it again refers to structure and organization as opposed to powers and functions. I'm particularly interested then in Subsection (G), which says that "The powers and functions of a school board or the office of sheriff, clerk of the court, coroner, or assessor shall not be affected by any provision of a home rule or plan of government." I, therefore, must infer from that, that structure and organization can be affected. Is that a necessary and required inference, do you not think?

Mr. Kean: Well, you could infer that, Mr. Avant, but it was certainly not the intention of the committee in drafting this language. We had intended to make it clear that these particular officers could not be affected by any such plan of government.

Mr. Avant: But, as it is written, and considering the explanation that we've engaged in so far, there is a very distinct possibility that under the jurisdiction the pay of the people in the office of the sheriff, the clerk of the court, the coroner or the assessor would fall within the realm, or the people who work for the school board, would fall within the realm of the police jury or the council under a home of government or a home rule charter. Isn't that right?

Mr. Kean: I wouldn't give it that interpretation, no. But if an amendment will help satisfy that point, we would have no objection to it.

Mr. Duval: Mr. Kean, as I understand it, Subsection (E) of Section 8, starting with line 28, basically is a La Fleur case, enunciates the rule of the La Fleur case?

Mr. Kean: Starting on in (E) on line 28, page 47.

Mr. Duval: Yes.

Mr. Kean: Yes.

Mr. Duval: Now, what effect does... let's see if we can understand what that means. Does that mean that the legislature can pass a law which in any way contradicts, amends, modifies or changes the powers and duties set forth in a home rule charter purely adopted by the local government, the citizens of the local government?

Mr. Kean: No, the legislature would retain the authority to adopt laws which deal with powers and functions of local government. But, insofar as structure and organization is concerned, which would include the manner in which you set-up the government, the people that you employ in it, things of this kind, the legislature could not.

Mr. Duval: Well, if that's all it does, I agree with it. But, it says "The legislature shall not pass...

Mr. Henry: You've exceeded your time, Mr. Duval.

Further Discussion

Mr. Lanier: Mr. Chairman, fellow delegates, by way of additional explanation of Section 8 and Section 9 have to be read in conjunction with each other. Quite frankly, they are the heart of the home rule article. They set forth the manner in which home rule units may be established and what powers shall be granted to home rule units and other units of local government. Section (A) extends the present procedure by which municipalities may adopt home rule charters to parishes. The idea of the committee was that with our modern society where we are becoming more and more urbanized in the country areas, people who are governed by police officers or who live in the unincorporated areas require the same services as do people who live in municipalities. They want their sewagere, they want their garbage. They need the roads. They need the lighting. All of these services are the same. You might have a situation where only a street divides that which belongs to the municipality and that which belongs to the police jury. But yet on both sides of the street, they've got to give the same services. We felt that in this regard, rather than have to go through the very cumbersome procedure presently available, or get a constitutional amendment, that the authority to adopt a home rule charter should be coequal between all units of local government: that is, parishes and municipalities. With reference to (B), this gives a specific right to the people to initiate the calling
Don't understand—was thinking, the Ji correct.

Further discussion

Mr. Leonard: Mr. Chairman and fellow delegates.

Back in 1965 and '69 in Lafayette Parish, the population at which at that time was about a hundred and thirteen thousand people—there were approximately seventy-five thousand people in the city of Lafayette and the five incorporated towns in the parish of Lafayette—five cities in the city of Lafayette and the police jury, all the political subdivisions (except Lafayette) and decided they wanted to go about a plan that would bring about city-parish form of government. And we...after all of that work over to the other people together, we then went to the legislature and got authority from the legislature and they agreed to give us this authority. In the 1970 election when we had fifty-three amendments before the people in this state, all fifty-three amendments went down the drain. However, the people in the city of Lafayette and the parish of Lafayette voted overwhelmingly for that right. So, there is another typical example of what happened to people could not have governed themselves the way they wanted to govern themselves, and what we are trying to do in this Section (B) of this is trying to bring about authority where other parishes, the same as Lafayette, could do this without going to the people statewide to amend the constitution. It simply provides that when two or more little political subdivisions in an parish want to do it, they can do it. They can get about their business of obtaining a home rule charter and do it by the election of the people. If the majority of the people vote in election in favor of that vote, then we don't want them to do that. Of course, the legislature will set up the mechanics of the elections commission, which would be a written letter of the legislature to do at the same time they grant you the authority to do it. We are simply asking for that authority. I wish you would consider it.

Questions

Mr. Del. This doesn't provide for Municipalities if there are two or more, does it?

Mr. Leonard: No, sir. It does not provide for anything new. It doesn't provide anything that is not up to the individual areas. In many cases, it would have a situation where you could do this. I don't think.

Mr. Hugh. I see.

Mr. Leonard: Weller, maybe I better ask this of you. What I think is a situation that a vote by the people of the city of Lafayette in an election in favor of it, that at any time a group of citizens, for example it was the superintendent of Lafayette, that group of people might come together and not have the qualifications of the offensive vote of one of the constitutions, if it were to do this in that amendment.

Mr. Hugh. This was primarily intended to apply to the new home rule charters that would be made available to the people of Lafayette. I think the provision is still there.

Mr. Leonard: The way it is written, though, wasn't the way I thought it was written. There was a provision in Section 7 of the New Orleans charter that you could change this provision in the New Orleans charter. That's my opinion.

Mr. Delaney: In other words, Section 7 would not contradict Section 7.

Mr. Leonard: That's correct. We've got another problem. I believe in the other section of Section 9 that the philosophy of the committee was that the home rule provision should be placed directly into the constitution and be self-executing, rather than, as they presently are, with the legislature having to enact these provisions. If that correct?

Mr. Delaney: Yes.

Mr. Leonard: Thank you.

Mr. Delaney: There are also direct provisions in the recent constitution, the state constitution. It's a majority of degree. Mr. Leonard, if I may, as far as how we are going to do it, I think we have gone a little further than what's in the present constitution. If there are any other questions.

Mr. Ferguson: Weller, my name is Ferguson and I was talking to my partner and Mr. Tenner. You say that it provides for the legislature to petition a particular charter for whatever they would have to have in this charter, didn't you, if the legislature could?

Mr. Leonard: Yes.

Mr. Ferguson: In the other words, the legislature would override the home rule charter without taking it to a vote of the people, for instance, if the legislature didn't like it.

Mr. Leonard: That is the thing that we must have and we did.

Mr. Ferguson: I just wanted to clarify that thank you.

Mr. Delaney: My name is Delaney, we are hoping Mr. Leonard in the great state of Louisiana that we had not have on the citizens for the offensive vote of one of the constitutions. I wish you would consider it.
that the legislature was not allowed to force the city of Baton Rouge to pay certain salaries and what have the deleterious effects on all under the Baton Rouge charter, pursuant to the Constitution of 1921, that dealt with structure and organization. Is that right?

Mr. Lanier This is a very good point and I'm glad you brought it up, because I would like to explain this to the deleterious effect also as to you. There is a very significant distinction between organization and structure and powers and functions. The provisions of (E) deal with organization and structure. This is a similar language presently exists in the home rule charter of the parish of Jefferson and in the East Baton Rouge city-parish charter.

Amendments

Mr. Poynter Amendment No. 1. [By Mr. Pugh]. On page 3, delete lines 22 through 32, both inclusive in their entirety and insert in lieu thereof the following:

"Section 8. Home Rule Charters; Adoption; Ratification of Existing Home Rule Charters. Section 8. Any local governmental subdivision may draft, adopt, or amend a charter for its own government to be known as a home rule charter. The legislature by general law shall provide the method by which a home rule charter may be drafted and adopted or an amendment to the charter may be made by the governing authority of the local governmental subdivision or by petition of at least fifteen percent of the electors of the local governmental subdivision filed with the official having charge of elections in the local governmental subdivision setting forth the proposed charter or amendments. The governing authority shall provide by ordinance that the charter or the amendments so proposed shall be submitted to the electors at the next election held in the local governmental subdivision not less than sixty days after its passage, or if the petition requests it, at a special election held in the local governmental subdivision not less than sixty days nor more than ninety days after its adoption. Any charter or amendment thereto so approved shall become effective at the time and under the conditions fixed in the charter."

Amendment No. 2. On page 4, delete lines 1 through 32, both inclusive in their entirety and insert in lieu thereof the following:

"Amendment No. 2. On page 4, delete lines 1 through 32, both inclusive in their entirety and insert in lieu thereof:

"Mr. Pugh Mr. Chairman, fellow delegates, I first call your attention to the fact that the fourteenth line has the word "of" and it should be "or.""

Mr. Poynter That word should be "or", shouldn't it, Mr. Pugh, "charter or the amendment so proposed"?

Mr. Pugh That's correct.

Mr. Poynter That's, I think, the fourteenth line, should read: "The governing authority shall provide by ordinance that the charter or the amendment so proposed shall be submitted.""

Explanations

Mr. Pugh This amendment would authorize, allow and direct the legislature to provide by general law for the adoption of a home rule charter or plan of government, but such areas as may not, at the time of the adoption of this constitution, have already adopted a charter or have had the same authorized or provided for, as Mr. Lanier has. It spells out in general terms a procedure to be followed by the legislature in connection with these specific provisions. It calls for a referendum, fifteen percent, as has previously been in some of the constitutional provisions. Once this is adopted and delete, or if next amendment would delete the rest of the provision. Questions?

Mr. Duval Mr. Pugh, looking over your amendment, I see it leaves out Section (E) of the committee proposal which is the codification of the La Fleur case. What I'm wondering is this. Under your amendment, could the legislature by a structural provision in a home rule charter?

Mr. Pugh Not an existent charter. This is for new ones. Let me tell you something. He said there are two cases, but there are three cases. The other case happens to be the Shreveport case.

Mr. Duval Now, so you believe that...in your amendment then, if a municipality would incorporate...would have a home rule charter in the future, then the structure of that home rule charter could be changed by a legislative act. Is that right?

Mr. Pugh No, I didn't say that.

Mr. Duval Oh, I thought you did.

Mr. Pugh I said that the legislature can provide by general law what would be in a charter. I never said anything about changing...

Mr. Duval I understand that. Now, my question relates to how can structure be changed since the language in the committee proposal is left out of your amendment? Can these amendments or a new charter, structure can be changed by legislative act?

Mr. Pugh I think when they create the general law to provide for this, they may provide structure and organization as well as powers and functions, in my opinion.

Mr. Duval But, can it be changed by a legislative act?

Mr. Pugh No, sir.

Mr. Duval Why?

Mr. Pugh Well, I'll say this. Once a charter has been adopted on the basis of that, no. But, if someone doesn't have a charter under the basis of that and the legislature then creates or amends that law, then you'll have to comply with whatever the existing law is at the time.

Mr. Duval So, if you charter is created under a specific act, then that charter cannot be changed structurally by a legislative act?

Mr. Pugh I sure do.

Mr. Duval What about powers and duties? Could it be changed by a legislative act, then?

Mr. Pugh If the legislative act, in accordance with a mandate of this constitution, spells out powers and duties, functions, anything it spells out, and you adopt a charter based upon what it spelled out and then subsequent to that they have a new legislative act, I tell you that new legislative act cannot affect that then existing charter.

Mr. Duval You don't think what the legislature giveth it can taketh away?

Mr. Pugh No, sir. When they give you something on the basis of a constitutional provision, brother, you've got it.

Mr. Husey Mr. Pugh, in the present constitution there are several provisions that deal with local charters. There would be many more had not the people, in their wisdom, defeated them. Section (F), (G), (H), (I) and (J) I think deal with St. Charles, St. John, St. Bernard, and there were quite a number of them defeated. All of them dealt in form, powers, structures and duties. Now, you want to...I think what the committee has proposed, it sets up a general
50th Days Proceedings—September 29, 1973

Mr. Pugh. Mr. Chairman and ladies and gentlemen of the convention, I believe the issue which we have now before us is very clear. I said in my opening remarks concerning local government, we would determine whether or not we really wanted to give the opportunity of the people of this state to have true local home rule type of government, or whether we wanted to give lip service to it. I submit to you that the only way that you can give to an area the right to true local home rule is to give the direct authority from the constitution directly to the people. Now, it seems to me we do have a fairly lengthy article which goes into several different subject matters. I would like very much if we could divide these subject matters, if, unfortunately, under the Pugh amendment we cannot do it. The question as to whether or not we want to allow local areas, when the people desire to be able to have a home rule charter, whether this is determined by this group, and that is the subject matter in the earlier paragraphs. When we get around to what authority we would want to give to these home rule charters, that comes in a later section. I would strongly suggest and recommend to you that the people of this state should be given the opportunity directly from the constitution to be able to adopt a home rule charter if they so desire. What limitations you might want to put on this could be given in the provision which dealing with what authorities, the power, the functions, structure and organization. But the primary question is, do you want to give authority to the people of this state to frame a charter for government with a direct provision from the constitution? I say to you that if we relegate the legislature and leave it to a legislative act, we really and truly need that provision in this constitution. And, again, I say to you that what the legislature gives, it can take away, and in that way we prevent what we think is a charter which will be constitutional and which will be subject to the local elected officials.

Mr. Jenkins. Are you referring to example when you make that comment?

Mr. Perez. I'm referring to the Pugh proposal which would say that the legislature may adopt special laws with regard to the adoption of the amendment of the charter.

Mr. Jenkins. Well, by deletion of any and all, as Mr. Pugh has done, wouldn't that mean that local government would have whatever authority was delegated to them by the legislature?

Mr. Perez. Yes, sir, subject to the will of the legislature and again, what the legislature gives, it can take away.

Mr. Jenkins. Are you referring to instance when you make that comment?

Mr. Perez. I'm referring to the Pugh proposal which would say that the legislature may adopt special laws with regard to the adoption of the amendment of the charter.
Further Discussion

Mr. Stovall  Mr. Chairman, ladies and gentlemen of the convention, I rise in support of the Pugh amendment. We are concerned in this convention in presenting to the people a concise constitution which will give to us basic structure. It seems to me that the purpose of that amendment that is before us presented by the committee, that we have too much legislative material. Now, we have expressed in many ways our belief in home rule, and we will continue to do so. But in doing this, we must not at the same time express fear and distrust of the legislature. In fact, we might say that the code word to interpreting this article is a fear of the legislature. I submit to you that we cannot write a constitution on the basis of fear. We must do it instead on the basis of trust and mutual respect. It seems to me that this amendment presented to us by Mr. Pugh does just this.

I submit to you that our national constitution has prevailed because it is based on mutual respect and trust. It maintains a balance of powers, and I submit to you that the Pugh amendment is an element in this. In adopting Section 7, we are not saying at this time that we cannot add important break in adopting Section 7. At that time, we realized that what we are concerned about is not the text of this proposal as such, but rather it is whether or not we are going to give to the people a meaningful constitution. Now, I submit to you that this section with which we are dealing should not be considered as being sacred, but instead we should try to take the substance of it and express it in fewer words, and this is what the Pugh amendment does. Oftentimes a person needs radical surgery and it seems to me that the Pugh amendment does this. It reduces about two pages to possibly a half page, and I think it still maintains the basic substance and content that the committee recommended. Therefore, I encourage its support and adoption.

Further Discussion

Mr. Alexander  Mr. Chairman and delegates, I have been logically such that we have an opportunity and comparing the amendment. I have listened to some of the speakers and I'm afraid there have been one or two misrepresentations. The first, one speaker said that this amendment cuts down one-fifth of the present wordage in the constitution. Now, what I am saying that I think what the resolution states is that the legislature is obliged--that is, it must provide. It hasn't the power. That's no change as the legislature to come in and say "we are not going to provide" or for the legislature to take away a local home rule as has been done in the past. Now, in addition to that argument I would say that one of the major reasons why this convention was called was to write a more concise document. The document under which we are operating now is un-wildly long and everyone to whom I have spoken almost to a man wants a short, concise, understandable constitution. When you give him two full pages in the amendment along with all the material that should be statutory and could easily be left to the legislature and, yet, I think there are definite safeguards which would prevent any encroaching on the prerogatives of local government. I'll yield to questions.
Mr. Nunez, Mr. Chairman and fellow delegates, I think the committee has given this state and given the local governing authority and the people of this state a very good tool by which they can go ahead into a home rule charter if they so desire. I think Mr. Pugh's amendment gives it. I think it's a logical tool. Then I'm responsible for two of them. I have one in here for St. Bernard that the people defeated. I came back in 1968 with a general provision that allowed any local government authority to do it. There were at least ten of them, and mind you, I say that loosely because I think there might be more, at least ten of these provisions defeated over the past ten years. Any parish that wanted to have home rule came to the legislature and they got a constitutional amendment adopted. Fortunately, the people were wise enough to defeat most of them. Several of them got through. Mine was one in the early years that got through before the people started to defeat them. Now, what the committee has done is given you this convenient way to give to the people of this state, a general provision under which our governing authorities can enact a home rule charter. Now, if you don't like specifics in the provision, let's change them, but let's not abolish the intent of the provision whereby someone can... some governing authority can enact a home rule under the constitution and not by a simple legislative act. I think we'd be done, an injustice to our parishes. Let me say this, my parishes—there are three of them—two of them have home rule and one of them has already rejected it. So, it doesn't make that much difference to me. I'm sure if I put it to the St. Bernard proposal and it's not been passed by the people ahead and do this. Now, if you want to shorten the constitution, go ahead and adopt this provision, but if you want to lengthen it, I think you want to go ahead and take the constitution and adopt the Pugh amendment. I think it's very simple. I think it's very simple. I don't know the merits or demerits of the specifics. If you don't like fifteen percent, hang it. If you like anything in the present constitution if you don't like the police jury calling election, change it. If you don't like the various provisions, change them, but don't change the provision that sets up in the constitution where these local governing authorities can go into home rule charter, which is a Pugh amendment. I don't know I just don't—I don't—called to order to think that they would want the legislature to get up a provision or what statute that had to be changed. If they want the legislature to do something and change it, that's his very simple. You know what the legislature does, the legislature can amend it. We have the liberty. In other words, the people have a little more liberty. I think the people have a little more liberty, and the various others that this local government would have a little more security. This amendment that we retain all the present provisions in the constitution with reference to that?

Mr. Nunez, Senator LeBlanc, you heard me say that I advocate we retain the present provisions in the constitution. When you heard me say that, what I said was that the committee has added a general provision, now, you are a very good constitutional lawyer, if you read the constitution there are a number of places that deal with this provision that asks you what you think. I think you're going to find that they don't. What this does, it takes from the present constitution about ten pages of verbiage dealing with about five or six parishes. I'm responsible for two of them. I have one in here for St. Bernard that the people defeated. I came back in 1968 with a general provision that allowed any local government authority to do it. There were at least ten of them, and mind you, I say that loosely because I think there might be more, at least ten of these provisions defeated over the past ten years. Any parish that wanted to have home rule came to the legislature and they got a constitutional amendment adopted. Fortunately, the people were wise enough to defeat most of them. Several of them got through. Mine was one in the early years that got through before the people started to defeat them. Now, what the committee has done is given you this convenient way to give to the people of this state, a general provision under which our governing authorities can enact a home rule charter. Now, if you don't like specifics in the provision, let's change them, but let's not abolish the intent of the provision whereby someone can... some governing authority can enact a home rule charter under the constitution and not by a simple legislative act. I think we'd be done, an injustice to our parishes. Let me say this, my parishes—there are three of them—two of them have home rule and one of them has already rejected it. So, it doesn't make that much difference to me. I'm sure if I put it to the St. Bernard proposal and it's not been passed by the people ahead and do this. Now, if you want to shorten the constitution, go ahead and adopt this provision, but if you want to lengthen it, I think you want to go ahead and take the constitution and adopt the Pugh amendment because I'll be back and every legislator that wants to go under home rule will be back with a provision allowing their parish to form a home rule charter. I think it's very simple. I think it's very simple. I don't know the merits or demerits of the specifics. If you don't like fifteen percent, hang it. If you like anything in the present constitution if you don't like the police jury calling election, change it. If you don't like the various provisions, change them, but don't change the provision that sets up in the constitution where these local governing authorities can go into home rule charter, which is a Pugh amendment. I don't know I just don't—I don't—called to order to think that they would want the legislature to get up a provision or what statute that had to be changed. If they want the legislature to do something and change it, that's his very simple. You know what the legislature does, the legislature can amend it. We have the liberty. In other words, the people have a little more liberty. I think the people have a little more liberty, and the various others that this local government would have a little more security. This amendment that we retain all the present provisions in the constitution with reference to that.

Mr. LeBlanc. Well, and you... in other words, if you are willing to retain the present provisions in the committee proposed without any change, I don't want to find out what your position is because you said you don't like it, why it did it, you see, you know, the state don't...

Mr. Nunez. I'm talking about the Pugh amendment and I'm against it...

Further Discussion

Mr. Chatelain. Mr. Chairman and fellow delegates, I stand in opposition to the Pugh amendment because we are dealing again with a put issue, whether or not you want home rule. It's simply one purely a gut issue—do you want home rule or do you want the constitution to establish a charter, and this is one of them. I ask you, fellow delegates, to consider giving these people throughout this state what this state they want. Let each person have the constitution according to their own needs. The people in north Louisiana have a right to govern themselves according to their own needs and desires. They have the right to govern according to what they want. The people in north Louisiana have a right to govern and so the people in Jefferson Parish and all the other parishes have a right to govern according to what those people want. The same thing prevails in such a parish. I am against this amendment and let's take it... as we don't think about the thought-out committee proposal. Thank you.

[Proceedings—September 20, 1973]
50th Days Proceedings—September 20, 1973

finest minds in front of me in the State of Louisiana—there is not a one of us or collectively can we provide everything in a constitution. Now, this merely says the legislature can do what it's done before—that is, provide for home rule. That's all. Nobody is trying to take anything away from anybody; we're trying to give it to the people who justly deserve it. I suggest that you adopt this amendment so that we can go on to the remaining provisions of this article. This amendment gives us exactly what we should have; it provides that the legislature can lay the methods out by which this is to be done, subject, however, to the provisions of this: that the people got to vote on it and all of those things. I have faith in the legislature and I'll tell you one thing. I'll bet my life as an attorney that if the legislature passes a general act providing for home rule, and if a city follows that home rule and thus gets it a constitutionally endowed charter, then no legislature can take it away from them. I don't care what these people have said. I'm telling you as a lawyer, once the legislature has spoken and the people elect to follow the provisions of the legislature, then you can't take it away.

Questions

Mr. Roemer. Mr. Pugh, there are those who have been to the same podium in which you stand now and have said that what they would do is would be to emasculate home rule. Is that the case?

Mr. Pugh. Well, I certainly don't think it will. I don't know of anybody that's more interested in home rule than I am. We've got it at home and I like it.

Mr. Roemer. In other words, what you're saying, isn't it true, would you agree that a vote for your amendment is a vote for home rule in its constitutional form?

Mr. Pugh. It gives everybody that doesn't present-ly have it an opportunity to have it, is what it does.

Mr. Perez. Mr. Pugh, isn't it correct that the... where your home area is, Shreveport, that you have a constitutional home rule charter?

Mr. Pugh. Yes, sir, we do.

Mr. Perez. Why is it that you don't want to afford the people of the rest of the state the same pro-tection as is afforded to your home parish?

Mr. Pugh. Well, brother, what do you think I'm trying to do? I'm trying to let them have all of those benefits that we have up there in Shreveport.

Mr. Henry. Would you yield to a question from Mr. Burson?

Mr. Burson. Mr. Pugh, it's true, isn't it, under the present law that the legislature has been able to grant legislative charters?

Mr. Pugh. Yes.

Mr. Burson. Well, what would the difference be between the legislature's power to grant legisla-tive charters under the present law and what your amendment would establish?

Mr. Pugh. The wisdom of the people not to adopt a legislative law, that's what, a legislative prov-ision of government. That's what is does.

[Record vote ordered. Amendments adopted: 60-59. Motion to table reconsideration rejected: 46-74.]

Mr. Henry. Now, we have gone through this so many times and I'm not going to stand up here and explain it anymore 'cause I'm not going to have some of you jumping up and shooting at me. But if... if you don't know by now, let me tell you, when we vote to table a motion to reconsider, then you just haven't learned the basic procedure of this con-vention. Now, Mr. Pugh, do you insist on recon-sidering at this time? Well, now you have moved to reconsider the vote and also to table the motion, which motion was defeated. Now, we... you want to reconsider it now or let it go?

FURTHER DISCUSSION

Mr. Arnette. I must apologize to this Constitu-tional Convention because I read the attitude of the convention wrong. I thought they would have defeated Mr. Pugh's amendment very easily, but the thing that Mr. Pugh's amendment does and the rea-son why I don't want it is it does not permit any-one who does not now have a home rule charter con-stitutionalized from having anything but a legis-lative home rule charter, and I don't think we ought to prevent the rest of the state from having the... a home rule charter that is not subject to the legislature. Mr. Pugh's amendment does just that. Every home rule charter from now on is subject to the whim of the legislature, but prob-ably the best thing to come out of the... of the Local and Parochial Committee is this section which allows a uniform procedure for allowing local areas to have home rule charters and not be subject to the whim of the legislature. Mr. Pugh's amendment does exactly this entire way, and that's why I urge you very, very strongly to reconsider that last vote and to defeat Mr. Pugh's amendment. I think we need good strong home rule charters in the rest of the state that don't have them now. Please allow us to get them. Thank you.

VICE CHAIRMAN CASEY IN THE CHAIR

Point of Information

Mr. Keen. Point of information. What is the par-liamentary situation on the floor at the moment?

Mr. Casey. Ok, the Clerk will... being our parlia-mentarian, will state the parliamentary situation.

Mr. Pouyer. Mr. Keen, after the motion was made, following the adoption of the amendment to reconsider the vote by which it failed to pass and lay the motion to reconsider on the table, the motion to table the motion to reconsider failed by a substantial vote. Burson had insisted on the motion to reconsider, so the question before the convention at this time is whether it will recon-sider the vote by which it passed the Pugh amendment, which is decided by a simple majority vote, in favor of reconsidering it will vote yes; those opposed to reconsidering the amendment would vote no.

FURTHER DISCUSSION

Mr. Perez. I would hope that you would listen carefully and attentively to what I would have to say at this time because of the fact that I do know that we are considering the amendment to go on with a limited number of amendments. I can assure you that there is no purpose of putting this provi-sion in the constitution in its present posture as passed by the Pugh amendment because of the fact that we do now have and have had for many years legislative authority for charter forms of government. In some areas of the state that time and time and time again, parishes and municipalities have come to the legislature and asked for authority to have a constitutional char-ter form of government. If you do not go with some direct constitutional authority for the adoption of a home rule charter, I predict to you without any fear of contradiction I will see more and more and more proposed constitutional amendments to give authority to parishes and municipalities to adopt constitutional home rule charters. I, there-
fore, urge that you give this matter your serious consideration and let me see if we can't give local government some true local...true right to govern themselves.

Questions

Mr. Stovall. Mr. Perez, according to this, it is the legislature shall provide a method under general law for the

Mr. Perez. According to what, Reverend? I don't have the piece of paper in front of me.

Mr. Stovall. Well, this is what it says. Now if that's done, that would not require a constitutional amendment, would it? I'm not an attorney like you.

Mr. Perez. There's no way for me to answer your question; I don't...you have a yellow piece of paper in front of you and I thought it was a committee proposal. I don't know what you are referring to. Are you referring to the Pugh amendment? Again, all that the Pugh amendment does is give the legislature the right to provide for charter forms of government. It always has that right and we have the Lawson Act types of charters for municipalities. I'll say that if the city of New Orleans, Baton Rouge and all of those other areas have gone to the legislature, gotten a constitutional authorization, after the vote of the people, to have a constitutional charter form of government to give themselves some protection against arbitrary change by the legislature.

Mr. Goldman. Mr. Perez, Mr. Pugh's amendment reads as follows and then I'll ask the question. "The legislature by general law shall provide the method." That doesn't give them...does that give them just the opportunity to do it or does it tell them that they shall do it, they have to do it?

Mr. Perez. I don't question that the legislature would provide the method; I question the fact that from year to year they could amend the law to change or modify the authority of these local governments.

Mr. Perez. Again, one more time, I listen to people who are out of order. It says "shall provide" and I say to you that all that is a mandate to the legislature to enact a law, but they may also amend that law at any time at their discretion and there is no question with respect to that statement.

Mr. Annette. In other words, Mr. Perez, you are trying to say that the people who do not presently have home rule charters shall not have to have a legislative home rule charter under the new law enacted under Mr. Pugh's amendment or have a constitutional amendment to have a constitutional home rule charter?

Mr. Perez. That is correct, sir...

Mr. Hernandez. Mr. Perez, in Section (E) it goes on there "the home rule charter adopted pursuant to provisions of this section," etc., "which may include the exercise of any power and performance of any function necessary, requisite or proper for the management of its affairs not denied by general law or this constitution.

Mr. Perez. Well, Mr. Hernandez, let me ask you answer you in this fashion first, as I tried to call to the attention of the delegates earlier, whether you desire to change the authority which has legalized home rule charter in this section (1) is something which, of course, (2) to the convention to decide. But the most important thing that I believe that should be determined whether we are in fact going to give the people that home the right to have a constitutional provision to adopt a home rule charter.

Further discussion

Mr. Avant. Mr. chairman and fellow delegates, Article IX, Section 42, of the present constitution provides that the legislature shall provide by general law a method whereby any municipality may adopt a home rule charter and adopt the same by a majority of the qualified electors voting upon it. And, right, now anybody, this amendment of Mr. Pugh says the same thing, the same thing. The legislature by general law shall provide a method by which a home rule; charter shall be adopted. Now it has only the further qualification and this is in the constitution, the legislature can't change that that would be in this constitution if you adopt this amendment that a proposal to adopt, amend, repeal, or replace such charter may be made by the governing authority or by petition of fifteen percent. Now, what I want to say is very brief. Anybody who tells you that a home rule charter adopted pursuant to a general law enacted by the legislature, pursuant to a constitutional provision that they shall do that, shall do that, shall do that, shall do that, shall do that, shall do that, or any body that tells you that your home rule charter, since it is adopted, is at the whim and caprice of the legislature and can be changed by the legislature is to say mistake is to take a constitutional charter and it can be amended only as provided in the charter or by the convention, I'll answer any questions.

Mr. Nunez. Mr. Avant, if I today adopted a legislative act to provide for a home rule charter and we are in a procedure of studying it, and next year we change the legislature and they change the act that set up my home rule charter, where do I stand?

Mr. Avant. Now, let's get two things straight, Mr. Nunez,—Senator Nunez. The legislature can change the procedure by which a home rule charter will be adopted at...by municipalities who don't have one now. I don't say that that's not true, they can change the procedure by which one shall be adopted, but once it is adopted pursuant to a general law which is mandated by the constitution, then it shall be adopted; they can't change it. [I'll] make myself clear?

Mr. Lanier. Would you agree that under the law amendment that we have adopted, one can be made by the governing authority or a petition of fifteen percent of the electors that is what we just adopted?

Mr. Lanier. But doesn't this mean that the legislature shall provide the method?

Mr. Avant. Well, that has to do with the election of course. But certain things, it has its own way which is not spelled out in this section, then the law has to say that, and state that, so that it's trying to make, which is the function in what other people have made for this purpose, that if they adopt the amendment, or if they have a home rule charter under a legislative act to want to it is a provision of general law, that then the legislature shall adopt and change that charter and you wipe out that provision. That's all it is, and you know it's not true. Mr. Lanier.

Mr. Lanier. Let me ask you this. If there is any prohibition in this provision that would keep the
I'm a little curious as to whether or not your amendment will do that.

Mr. Pugh Well, you understand that people have adopted home rule charters under various provisions; they're not alike. Our problem may be less if they were alike; then we could say that you could provide them like everybody has, but that's not the case.

Mr. A. Landry Mr. Pugh, under your amendment, contrary to the present constitution, then my parish could not...this would automatically void 3(D), which gives you a parish charter commission, is that correct?

Mr. Pugh I couldn't understand your question; I apologize.

Mr. A. Landry In other words, under the present constitution as I read Paragraph 3(D) of Section 14, upon a petition of fifteen percent of the electors of LaFourche Parish, we could have a parish charter commission; however, under your amendment this deletes that part of the constitution. Now, that's what we provide for a constitutional method of getting a parish form of government...parish charter commission, is that correct?

Mr. Pugh It provides for a referendum and provides also for the city fathers to call...

Mr. A. Landry In other words, your amendment has taken away the constitutional rights that we already have under this constitution?

Mr. Pugh If anything, I think my amendment gives them a lot more than what they got under the constitution.

Mr. Lanier Is it not true, Mr. Pugh, that under your proposal the legislature could provide that the method for preparing or drafting of the home rule charter would be by one person?

Mr. Pugh Could be drafted by one person? Yes, but I seriously doubt if the people would adopt it if it was drafted by one person.

Further Discussion

Mr. De Blieux Mr. Chairman and ladies and gentlemen of the convention, my remark is going to be very brief because I think that most of what I wanted to say was said by Mr. Avant. There's one thing I would like to point out to you; let's don't get the matter confused. There is a difference in the legislature changing the procedures and the legislature changing the charter after it's been adopted. When the charter has once been adopted, I don't care whether it is by constitutional amendment or by act of the legislature, that is a charter insofar as those people are concerned. That's home rule and there's nothing in the world the legislature can do about it. And let's get that straight. The legislature can change the procedure, yes; it can change the procedure, but not the charter! Now, that's what we are talking about. Now, let's don't get up here with all these ridiculous arguments about one man writing a charter and then the legislature turning around and changing it. That legislature is composed of people just like you and i, and if we are going to do what's right here, the legislature is going to do what's right, and that's as simple as that and just don't forget it.

Questions

Mr. Rayburn Senator De Blieux, I certainly agree with you that once it's adopted. My only concern is this method of adopting it in the future, it is left, the way I read this language, entirely up to the legislature to provide a method...it says "to provide a law...a general law shall provide the method of which a home rule charter may be drafted." Now, I think the word "drafted" means that the
50th Days Proceedings—September 20, 1973

legislature could not put any limitation in it, and any adoption thereafter; it doesn't have to have two thirds of the voters, but if it has it could put some limitations in it and also "adopted." I think the legislature could say it has got to have sixty-two percent of the voters before it's adopted. That's what I'm... I'm not concerned about once it has been adopted; I'm concerned if the legislature does not pass a law that is in compliance with the people that now have home rule then they could, in my opinion, make it more strenuous or even less strenuous in the future for someone to have home rule. I'm not worried about once they have it, I'm worried about what they would might have to go through with to get it.

Mr. De Blieux: Well, Senator Rayburn, you and I both serve in the legislature and I agree with you that we would have more or less restrictions, but as you well know as a member of the legislature, you're interested in setting such house rules as possible. Setting forth the guidelines to protect the people, so therefore, I think that you and I agree the legislature, not going to put any undue restrictions upon the adoption of home rule charters. We wouldn't be there very long if we did.

Mr. Anzalone: Senator De Blieux, when you set up by legislative act, a commission to draw a charter for a particular locality, you would draw it this year and you would give them certain powers, duties and functions, is that correct?

Mr. De Blieux: This is not for a certain locality. This would be a general law. Mr. Anzalone. That's what the amendment says, "it shall provide by general law, as it would apply to the whole state in this..."

Mr. Anzalone: Now is there anything in this constitution that is going to guarantee, say, the area of Tangipahoa Parish the right, the constitutional right, the right and duties and functions under a charter form of government a new entity in New Orleans?

Mr. De Blieux: Well, I feel quite certain the legislature in its wisdom would be sure that everyone had equal opportunity. I...certainly feel that way about it.

Mr. Anzalone: But there is no constitutional guarantee that that would happen.

Mr. De Blieux: There's none in the present way it's written. I don't think, as that we have already approved this in the previous way. When we say that it is provided that they would have the same authority as another, in the amendment that was proposed and adopted before if that not inconsistent with the charters adopted by the local government.

Further Discussion

Mr. Williams: Mr. Chairman and fellow delegate, whoever desires anything immediately disfracts himself. The proud the swallow, the gouty the angry can never rest. (The humble, the charitable, the forebear, the peace, the tranquil, therefore, the achieved by resisting temptation and not by yielding, is yield to them. For instance, my duties and inactivity, I am not prepared to engage in any amendment that is the other preceding wishing to put this proposal and no delicate display of patriotism, nationalism, or it is my duty to explore, be who what who, which. (Trouble is) 1. The thought of it. (the) 2. Our profession, first fact. We have been trying to get some order in our consideration, that is the thought of it. That's one reason another reason we were involved in our consideration, and we don't think we will be next another reason. We were involved in this thought of it. That's one reason another reason we were involved in our consideration. That thought was...
50th Days Proceedings—September 20, 1973

doubtful, but in the name of fairness I think we owe it those areas that have not been able to adopt constitutional home rule charters prior to this time to leave open a way for them to do so in the future. I feel that the needs of our localities require it. Now, whether or not the particular provisions that the committee has submitted should be changed, of course, is always open to question. I do not support this amendment which, in my view, would do nothing more nor less than leave localities dependent on a legislative charter because when you say that the legislature shall by general law provide the method by which a home rule charter may be drafted and adopted, you don’t have to be very smart to figure out that the main thing that this amendment can make it so hard to adopt one of these under that general law that you’ll never have one adopted. So, I ask you, in making your vote on this issue, set aside for a moment the things on the coat sleeves that you have had since we started debating this article, the request for favors, the request for return of a favor that you’ve previously done, and think about one thing. Do your people at home, wherever you come from in this state, want the opportunity to enact a home rule charter and have it done in their own way? Are the areas that are in Shreveport, New Orleans, and the other areas that have them now?

Question

Mr. Keas. Mr. Burson, you touched on the language that the legislation shall provide. Suppose the legislature did not undertake to adopt a general law which would provide, would you have any means of recourse to enforce this provision?

Further Discussion

Mr. E. J. Landry. Mr. Chairman, ladies and gentlemen of the delegation, I want to represent for a moment, the people who do not have representation here. I want to read this as the laymen reads it. I want to give you my interpretation; I’m not a lawyer, but I do know how to read and you have listened. I’ll repeat you’ve been very good to me; you’ve been kind. I’ve tried to be patient, tried to understand, I’ve watched. This is a crucial issue; it needs attention, serious attention, and I’m worried very often by the unscrupulous attention given to the little details of the deliberations. I’m going to do what is very difficult to do sometimes. You did the right thing a moment ago. When you postponed a decision, I want to pay tribute to the people who voted yes. Sixty, sixty people voted yes, and I want to pay tribute to the fifty-nine people who voted no. I voted no, but because of our discussion the deliberations, that ensued, I have been enlightened; I have learned, and I’m going to do what I think is right at this moment. I’m going to change my vote because I do believe that there is nothing in this provision that will prevent the kind of home rule that you and I want. Again, I do have tremendous faith in the legislature; I came here to exemplify that, and I’m doing it at this time. I hope that you accept this amendment as proposed; it’s a good one. Take a good look at it. It gives you and it gives those people that I represent what they need.

Further Discussion

Mr. Wall. Mr. Chairman, fellow delegates, I’m glad to be back with you, particularly happy to be here before this amendment is adopted. You know, I can’t see how that you can vote for this amendment if you are for home rule or if you’re against home rule unless you support different classes of home rule. Back in the last section we adopted, and really put the crisper on for the home rule in Mr. Pugh’s home city of Shreveport, and a couple of cities in New Orleans, unless they got their class of home rule; it’s set in. Anyone else that has home rule, say like West Monroe where I’m from, they are not set in. You’ve got two different classes of home rule [under Pugh’s amendment]. Now, for those up here that are set for home rule then they retain all of their home rule, but the rest of the state, no. Now, how can you for two classes of home rule? Now, of course, I’m a member of the legislature, but under Mr. Pugh’s amendment here, the legislature can set out whatever home rule charter they desire under his amendment. Now, of course, I don’t think the legislature is that bad myself, but it’s just a case; doesn’t make any difference whether you’re for home rule or against home rule, I don’t see how you can be for the Pugh amendment. It goes on and says that when it’s adopted by the electors, it doesn’t say how it’s going to be adopted, how many or what. This is really an amendment, if you’re for home rule or if you’re against home rule. I can’t see how any of you could want to protect Shreveport, Baton Rouge, and New Orleans, and Jefferson, and get a different class, a different class of home rule for the other places in this state. I’m going to tell you, I hope that those people out of fairness, from those areas, doesn’t vote for the Pugh amendment. The people from Jefferson, East Baton Rouge, New Orleans, and Shreveport, don’t vote for the Pugh amendment so they can have one class of home rule. You have people in those big municipalities, and then another class for the other places in this state; so I’m going to ask you to vote down the Pugh amendment.

Questions

Mr. E. J. Landry. Mr. Shady Wall, I want to ask you a very serious question, and in asking you this question I want the members of this convention to hear the answer. This is a very serious question pertaining to the statement that you made a moment ago. The legislature in this article, by a general law, only provides for a method by which this charter may be drafted and adopted. Now, there’s been a lot of confusion here, but that’s all it provides for, a method, that’s all. Now, there’s been a lot of other things injected, but that’s all it says. Is that not true? Is that not true that the legislature...

Mr. Wall. Yes, it is a method. That is correct.

Mr. E. J. Landry. That’s all!

Mr. Wall. No, that’s not all it says.

Mr. E. J. Landry. In that line, the legislature by general law shall provide the method, and that’s all.

Mr. Wall. Is that your question?

Mr. E. J. Landry. Isn’t that what that line...That’s it.

Mr. Wall. When you finish, then I’ll answer, but I can’t answer it when you continue to talk. Are you finished?

Mr. E. J. Landry. Finished.

Mr. Wall. Mr. Landry, I can see that you’ve been around the legislature a long time, but you haven’t learned all of the authority that the legislature may exercise. Anytime you give the legislature the authority to adopt a method for adopting a home rule charter, they can enact legislation and put the method as such, they can limit the authority of which that home rule can be, so that’s what I’m saying. It’s not that I don’t have faith in the legislature but it’s not right to have two classes of home rule.

Mr. Roemer. It is good to have you back. I would like to ask you to tone down your comments, though, you knocked over a man right behind me with the force of your wisdom and logic.

Mr. Wall. That’s not the first one I’ve knocked over, Mr. Roemer.
50th Days Proceedings—September 20, 1973

Mr. Poemer. But in spite of that, I would like to ask, have you read this amendment, the Pugh amendment?

Mr. Warren. Well, I'd like to ask because, as far as I know, I don't want to answer it.

Mr. Poemer. For your benefit, I'll read it to the entire delegation. I've read it, but I want to clear up any question in your mind.

Miss Perkins. ladies and gentlemen, let me first thank you for giving me the opportunity to speak to you. On the way up here, Mr. Derbes said that this should be home rule. That home rule is like charity, that it begins at home and not in the legislature.

One thing that amazes me, I am an attorney, and I never understood why people got up here and immediately said, "I am not an attorney." Well, I'm going to tell you that I don't know that much about the systems of local government. But I have learned a great deal. I have seen this convention give constitutional status to the home rule charters of the parishes of East Baton Rouge, Jefferson and Plaquemines, and the home rule charters of the cities of New Orleans, Shreveport and Baton Rouge. In other words, we've given constitutional status to all existing home rule charters.

I cannot understand why, if we have given these home rule charters constitutional status, we refuse to give the status to other future home rule charters. It takes a mandate of the people in order to establish a home rule charter, and this... the proponents of the home rule charter want constitutional status, then it would seem definite that we need a constitutional amendment to give them the status of the existing home rule charters.

Therefore, I ask that you reconsider and cast your vote against the Pugh amendment which provides that legislature shall have authority opposed to granting constitutional status to all future home rule charters.

Thank you.

Questions

Mrs. Warren. Miss Perkins, I'm not asking you this question because I am for or against what's going on right now. I'm just asking for information.

From the very beginning when these others got their constitutional provisions, who let the method? Was it from the cities or municipalities or what? Who set the method? And if it has anything to do with the legislature?

Miss Perkins. Well, I gathered part of them are statutorily established. Now I don't know for sure, Mrs. Warren, but from listening to the discussions, some of them were established constitutionally. The rest, as established by the legislature with legislative consent which made them statutory. But we have elevated them all to constitutional status.

Mrs. Warren. But you still haven't answered my question. Who set the method? I think I heard from the business up there that this was the legislature who set the method. I think that's what was said from the podium.

Now, who set the method from the beginning?

Miss Perkins. I'm afraid I don't know. I'm afraid I don't know what municipalities, but you will have to direct your question to someone that may or may not be here.

Mr. Warren. Well, I'd like to ask because, as far as I know, I don't want to answer it.

Miss Perkins. Yes, as far as I know, I don't want to answer it.

Therefore, I ask that you reconsider and cast your vote against the Pugh amendment which provides that legislature shall have authority opposed to granting constitutional status to all future home rule charters.

Thank you.

Further Discussion

Mr. Warren. Miss Perkins, I'm afraid I don't know. I had pretty well committed myself to have my way, and I don't want to try to explain this any further. It's a little bit hard to do in view of some of the discussion that's gone on. I don't believe the 1921 Constitution gave anybody the same rule charter, so I had to originate somewhere. They came to the legislature, and the legislature was given authority, very liberally, wisely or unwisely, for the right. Now this is the bad legislature you hear about that you can't trust. They granted the right. Some of them are operating today under constitutional authority first passed by two-thirds of the legislature, then adopted by the people in an amendment to the constitution. Others are operating under existing home rule charters by legislative act.

The primary reason for leaving them in the constitution under the present provision is that they want that constitutional right. By statute they propose not to give them all the general authority by legislative act, but we hear: we don't want the state meddling with our local affairs.

Now, this is the bad legislature you hear about that you can't trust. They granted the right. Some of them are operating today under constitutional authority first passed by two-thirds of the legislature, then adopted by the people in an amendment to the constitution. Others are operating under existing home rule charters by legislative act.

But we hear: we don't want the state meddling with our local affairs. Therefore, we have to determine if they were set up a home rule charter, then we should certainly give them the status that we have given the existing home rule charters.

I don't know. We go on and on with this. This is a general provision and see nothing in the world wrong with letting the legislature, as I have said, set up the provision by which we can adopt a home rule charter. If you think they're going to set up eighty, eight-five percent, I think that most absurd that we can turn that around and even give you the right to adopt it. It's been generally been the attitude of the legislature, what they've spent a great deal of time coming up with, and if you don't see the nature of the provision, and it has to be, asking for a charter, I do something locally, if it's bad, the local community must support it. If it's bad, any opposition.

Oh, I remember me or two that when someone put up and said, Gaudin was going down, and you either vote with them or against them, and I don't want the legislature to give them the right to set up a home rule charter. We want to give the legislature to do these things in the world. I'm going to vote for the amendment, tax the people like I'm going to give, even though I vote against the home rule charter. I think out of this stuff really needs to be shown in the amendment, and don't think anything of the amendment, we are really going to change it, that we're going to change it. So I have no inclination to answer the question.
for asking the Chair to do it. But rather than speak five minutes, I'm going to let you speak ten seconds.

[Notion to reconsider adopted: 64-48. Previous Question ordered. Record vote ordered. Amendments rejected: 49-65. Motion to revert to other orders adopted without objection.]

REPORTS OF COMMITTEES
[I Journal 508]

Announcements
[I Journal 508-509]

[Adjournment to 1:00 o'clock p.m., Friday, September 21, 1973.]
Mr. Linsky, Mr. Chairman and delegates to the convention: I come to this platform to address you. As a member of the constitutional convention, I have an opportunity to express my views on the subject of education. The convention has been described as a body where the interests of all are represented. Whether it is true or not, I believe that education is a matter of great importance to the well-being of society. The convention is a body where the interests of all are represented. Whether it is true or not, I believe that education is a matter of great importance to the well-being of society.

Mr. Henry. I want to make sure that you are aware of the whole issue.

Further discussion:

Mr. Linsky. Mr. Chairman and delegates to the convention: I come to this platform to address you. As a member of the constitutional convention, I have an opportunity to express my views on the subject of education. The convention has been described as a body where the interests of all are represented. Whether it is true or not, I believe that education is a matter of great importance to the well-being of society. The convention is a body where the interests of all are represented. Whether it is true or not, I believe that education is a matter of great importance to the well-being of society.
MR. ROY. It means, Mr. Warren, that we apparently, I wasn't here when it first began, but you will discuss all over again whether you want to pass this on for a third engrossment and submission to debate later just like this last one.

MR. WARREN. I understand that you will pass it on, but that means you are going to have two proposals that you're going to be debating on at the same time.

MR. ROY. Well, apparently, that would be true. Are you ready for the question?

Further Discussion

MR. DENNERY. The second proposal, the proposal that is now before you, is really just part of the first proposal. I made it a separate proposal because I felt it belonged in the schedule rather than in the constitution itself. It merely provides for transitional measures with regard to the changes in the various civil service commissions. Since you very kindly indicated that I had approved my last motion. I would appreciate your voting the same way this time because the two are really the same.

Questions

MR. RAYBURN. Mr. Dennergy, was this proposal considered by the committee?

MR. DENNERY. Senator, I suppose you'd have to say it was considered by the committee. They voted on it.

MR. RAYBURN. Are you at liberty to give us the vote?

MR. DENNERY. I'm not sure what the vote on this particular proposal was, Senator, because I was in another committee meeting and had left before it was voted on. I left after the first one was voted on. It was probably a rather large majority, though.

MR. RAYBURN. For or against?

MR. DENNERY. Oh, well, it was a large majority to vote to report the proposal unfavorably.

MR. FLORY. Are you aware, Mr. Dennergy, that the vote in the committee, according to the minutes of the committee, on the proposal we voted on awhile ago was 9 yeses and 2 nays to report the bill unfavorably, and the vote was 9-2 on this one to report it unfavorably?

MR. DENNERY. I was aware of the first one. Mr. Flory. I wasn't aware of the second one. I might point out, however, that that committee contained, I believe, twenty-one members, and the vote was 9-2, so the vote of nine was not even a majority of the total committee. I am further aware of the fact that when the matter was discussed, I came into the meeting at the invitation of the chairman and was refused the opportunity to ask you a question when you closed on your motion.

MR. FLORY. Isn't it further true, Mr. Dennergy, that I sent a man after you to get you out of another committee so you'd be present when your proposal was heard?

MR. DENNERY. I don't know who sent for me. Mr. Flory. As I said, I thought the chairman had sent for me. It quite possibly was you.

MR. FLORY. Do you know also, sir, that I told you at the meeting I would not hesitate to answer any questions you had to ask me?

MR. DENNERY. Yes, sir. Mr. Flory. That's why I was
Mr. Brown: Mr. Chairman. fellow delegates, I'll be very brief, but I'd like to make a word of caution when we get into considering delegate proposals. It's a question of whether there is a lot of people believe in the committee system, and there are certainly pros and cons. But, I would like to see us get to the point where we have a delegation to determine what the people on this convention are going to hear. To that, I think is one of the problems. In particular point of view, we're talking about 15 or 77 percent of the delegates of this convention even voting on the whole question. I'm not here to defend what Mr. Deneny's proposal is trying to do. I think if you care about the argument of Mr. Deneny most of the time. But, I don't think he ought to have a right to be heard and I think that's one of the problems we have in this convention. The fact that we have to go by a committee proposal without any information at all. I'd like to throw out a word of warning, as we get into more complicated articles, up till now, things have been pretty cut and dried on the Bill of Rights. On elected officials versus appointed officials. These are pretty cut and dried questions. It doesn't take a whole lot of thinking to determine terms of complicated issues, how you're going to vote. But, when we get into the areas of local and parochial government, revenue and taxation, it's a matter of a whole committee. We're going to be studying this area for six, seven, eight months and I still don't understand a lot of the things we're talking about. It's going to be very, very complicated, and I hope we don't make the mistake of cutting off the chance to fully air a particular point of view just because the committee proposal was passed and a delegate proposal was turned down. I just want to urge that as a word of warning. Like I say, I'm not saying I disagree or agree with Mr. Deneny at all, but I think that so important to the future of this state, I think we ought to have every opportunity to hear every single side of the issue on something that is important. But, when we can get down in real life, we realize we can't bug down. We've got to give some guidance to what the committee had to say. As we get into more complicated areas, I think we're going to have to give every lever way to delegate proposals so we move along. Yet, Mr. Flory, I shall answer your question.

Mr. Flory: Senator Brown, are you suggesting that we abolish the committee system and strike this convention in a Committee of the Whole?

Mr. Brown: Mr. Flory, I am saying that the committee system has some real bas weaknesses. All of us

[1356]


very careful to say that the chairman refused to ask the questions.

Mr. Jengen: Mr. Deneny, I just want to be sure that you did stand and address this particular point on the floor under stands, and I phrase this, in the form of a question, you know that there are twenty-one members of the Committee on Education and welfare, and only eleven, voted, as previously outlined by Mr. Flory.

Mr. Deneny: Yes, sir, I am aware of that.

Further Discussion

Mr. Rachal: I was saying I was going to rise to disagree, with you Mr. Deneny, and just say, this was just a transitory means of... if in the event the proposal passed, this was a means of incorporating it into or getting it into action. So, I don't need the floor.

Further Discussion

Mr. Brown: Mr. Chairman, fellow delegates, I'll be very brief, but I'd like to add a word of caution when we get into considering delegate proposals. It's a question of whether there is a lot of people believe in the committee system, and there are certainly pros and cons. But, I would like to see us get to the point where we have a delegation to determine what the people on this convention are going to hear. To that, I think is one of the problems. In particular point of view, we're talking about 15 or 77 percent of the delegates of this convention even voting on the whole question. I'm not here to defend what Mr. Deneny's proposal is trying to do. I think if you care about the argument of Mr. Deneny most of the time. But, I don't think he ought to have a right to be heard and I think that's one of the problems we have in this convention. The fact that we have to go by a committee proposal without any information at all. I'd like to throw out a word of warning, as we get into more complicated articles, up till now, things have been pretty cut and dried on the Bill of Rights. On elected officials versus appointed officials. These are pretty cut and dried questions. It doesn't take a whole lot of thinking to determine terms of complicated issues, how you're going to vote. But, when we get into the areas of local and parochial government, revenue and taxation, it's a matter of a whole committee. We're going to be studying this area for six, seven, eight months and I still don't understand a lot of the things we're talking about. It's going to be very, very complicated, and I hope we don't make the mistake of cutting off the chance to fully air a particular point of view just because the committee proposal was passed and a delegate proposal was turned down. I just want to urge that as a word of warning. Like I say, I'm not saying I disagree or agree with Mr. Deneny at all, but I think that so important to the future of this state, I think we ought to have every opportunity to hear every single side of the issue on something that is important. But, when we can get down in real life, we realize we can't bug down. We've got to give some guidance to what the committee had to say. As we get into more complicated areas, I think we're going to have to give every lever way to delegate proposals so we move along. Yet, Mr. Flory, I shall answer your question.

Mr. Flory: Senator Brown, is it not true that you have a vested interest in the particular area in which you are interested? But that's the great thing of this convention. I think we are going to be making a mistake if we just bow to the committee and start piecemeal. That's one of the problems we have right now. Looking at the committee proposals we've had so far. Of Rights. How many amendments were proposed? Two hundred and some odd amendments. The judicial and political articles were looking at right now. It's being cut to pieces by committee amendments because a lot of us didn't have a chance to put the proper input into what that something is. In that area, there are some real weaknesses in the committee system that we have right now.

Mr. Flory: well, I appreciate what you say. Senator, but isn't it a true along that same line, that Mr. Deneny, with his delegate proposal by the way of amendment, done identical same thing we've been doing here since the delegates to hear both sides. There isn't a great deal of controversy exist, between the two, you could have heard both sides by the way, if one went route?

Mr. Brown: He could, and we did throw one amendment after another amendment, after another amendment, we're voting on these things by votes of 55 to 12. Only about seventy percent of the delegates are even here, and I think it's a real bungled way we're doing business right now. I just rather hear it in terms of a delegate proposal, even then, I may vote against it. I want to see we have an overall hearing on the thing.

Mr. Goldman: Senator Brown, you talk about buggering down is that we have been here September maneuvers that waste so much time, that if we get to the point a little quicker we can spend time, if we're going to all of this. And, as it is, is it get something accomplished with all that the political maneuvers we take up as much time or more, as we would if we'd listen to all the people.

Mr. Brown: Well, Senator, I was trying to say, a democracy, a majority rule in a democracy, a majority rule, and a majority a two have right now we made up like you say have a majority. I've a majority a lot of questions like this one right here. Maybe you have your background and then you ask we don't know what. I want to get the feeling I've heard every possible solution that maybe alternatives.

Mr. Goldman: Our question was what that you didn't want to listen, my question was, isn't the fact that we bugger down going to do down we are going to have our alternative maneuvering to all of this.

Mr. Brown: Senator, that's the point to me, to have a democracy, a majority rule in a democracy, a majority rule, and a majority a two.
51st Days Proceedings—September 21, 1973

Chairy Government, and other delegates and members of that committee.

A proposal making general provisions for local governmental divisions and districts. The financing thereof and necessary provisions with respect thereto.

The foregoing proposal at this juncture is the committee has adopted as amended Sections 1, 3, 5, 6 and 7 of the proposal. This has voted to delete Sections 2 and 4 of the proposal. Presently has under consideration Section 8 of the proposal. Mr. Chairman, numerous amendments still pende to Section 8.

Chairman Henry in the Chair

Amendments

Mr. Poynier Amendments sent up by Delegates Roemer, Kelly, Ginn and others.

Amendment No. 1, on page 3 delete lines 22 through 32 both inclusive and insert in lieu thereof the following:

"Section 8. Home Rule Charters

Sections 3 and 4, as adopted, may be inconsistent with the provisions of this constitution, any local governmental subdivision or subdivisions may draft, adopt, amend, or repeal a home rule charter. A proposal to adopt, amend, or repeal a home rule charter may be made by the governing authority, or by petition of at least ten percent of the electors, or ten thousand electors, of the city of New Orleans, to the legislature of the state there. Such proposals shall be filed with the officials having full charge of elections, having charge of election and with the governing authority. It shall fully set forth the proposed charter, amendment or other proposal. The governing authorities shall provide by ordinance that the proposals shall be submitted to the electors at the next scheduled election held in the local governmental subdivision or subdivisions not less than sixty days after its passage, if requested in the petition at a special election held not less than sixty days, nor more than ninety days after adoption of the ordinance." Now this sentence has a change in it. "Any such charter amendment or repeal shall become effective upon the approval of," and here's the change, "a majority of those electors voting of the governmental subdivision or subdivisions affected thereby. Section 2, it's not approval of the electors but a majority of the electors voting of the governmental subdivision or subdivisions affected thereby.

Explanations

Mr. Roemer Mr. Chairman and fellow delegates, this amendment, of course, is related to a subject that we've been on for a number of hours now covering into its second day. Purporting, trying to define a home rule charter, trying to make provisions, not only for those home rule charters that now exist, but for those that may exist in the future. Points were made yesterday, and I think the points were well-taken in regard to the Fugh amendment, that when this provision that the legislature shall by general law provide for the method of drafting and adopting the constitution, that we lifted ourselves open for perhaps some excessive perimeters or conditions or boundaries on the adoptions of such charters, which would in effect prohibit future home rule charters in the state. My amendment, although it has been pointed out to me it's not perfect in all and every manner, I think, eliminates that objection. It also has deleted one of the many other changes; one of which is the fact that we've reduced the fifteen percent requirement of the electors on a charter to ten percent. And also deleted the provision which required "or ten thousand electors, whichever is the lesser." That, of course, is directed to the city of New Orleans at least, and others perhaps, who have that requirement in their home rule charter. With the insertion of that language we would permit the city of New Orleans, as pointed out to me by Mr. Bergeron yesterday, to continue to petition to amend their charter with just ten thousand signatures and not require ten thousand of the...ten percent of the total elector-.

Mr. Roemer No, that's not... do you know of all the home rule charters in the state, how many have ten percent or how many have fifteen percent?

Mr. Lanier I haven't had a chance.
Mr. LAUGHLIN: I want your interest to allow the issue involved in some law, without the rule, to not be considered. The suggestion is not to be considered. It does not make any rule, but the interpretation is concerned.

Mr. BAUER: You might see one word in regard to Mr. LaRuelle's question, is if you would be willing, while he is here, to give him a copy of the present which we have been examining recently. It makes us real the general. I'm sure you have been brought the word of the interpretation of the present word, that the interpretation which we have been looking at, the interpretation which is being offered, is the interpretation of the present word.

Mr. LAUGHLIN: I want your interest to allow the issue involved in some law, without the rule, to be examined. It does not make any rule, but the interpretation is concerned.

Mr. LAUGHLIN: I don't think that the error is clearly allowed the without the support of the legislature. Thus, it has not been done, but the interpretation is concerned.
Let me point out to you that it doesn't have in it the first sentence any requirement that the local governmental subdivisions which draft such a charter, if it's more than one such as the situation of Lafayette or St. Bernard or the other, there is no requirement that they be contiguous. This should be something that should be in there. When we get to the second part that is set up by the admission of Mr. Roemer with the idea and intent of, for one thing, saving the provisions of the amendatory process of the city of New Orleans which we knocked out yesterday, that we adopted, while it does say that the proposal may be submitted by at least ten percent of the electors, it also says, "Whatever is the lesser." Which is the lesser. So, if there is an existing home rule charter in the State of Louisiana that has a provision that is inconsistent herewith, that provision, even though we're saying New Orleans, will be rendered invalid by this provision. Now, as far as I'm concerned, we should make this law applicable to everybody, and the way to do that would be to provide that this amendatory process shall only be applicable to those who do this in the future. Why do you want to snare those who have done this in the past with this? Because they have already adopted their charter, and think of it from this point of view. In a home rule charter the people of the unit have decided how they want to control their own destiny. They had to vote on this. This is the way they want to do it. By putting this provision in this article in effect, it would be predicated upon our judgment here in this convention for that which has been exercised by people on the local level. In this particular instance in my judgment, this is not a wise practice. Therefore, fellow delegates, I would suggest to you that this amendment should not be accepted by you. I would further suggest to you that the committee strike this and propose a valid home rule for the State of Louisiana. I would request that you reject this amendment and adopt the committee proposal. Thank you, Mr. Chairman.

Further Discussion

Mr. Roy Mr. Chairman, ladies and gentlemen of the convention, the committee keeps failing to tell you that this is the old story of the "tail wagging the dog." I'm trying to put an end to this. Let's look at what the committee proposal says in light of what Mr. Lanier just said. Let's look at what they are trying to do, because you see if they can deal with the amendments which I think are great, then they'll have us having to buy and swallow what they have done with their proposal. Here is a theory for you people who are not lawyers that what the legislature doesn't grant to cities they are precluded from doing, and there's a good reason for it, because the legislature can't possibly tell every municipality, every local subdivision, what they may or may not do. So you have the general rule that way which works just like the United States Constitution, and what is not specifically granted by the Constitution, the Federal Constitution, is prohibited. Now, look what they say though at line 20 on page 4, they say, "Those that are not denied by general law or this constitution," they may do in the future. Now that raises two questions. One, there is no way that the legislature or we can deal today can deny to them certain things that they would like to do in the future; income tax, taxing the people beyond any source of revenue that they can possibly raise, allowing for any type of conduct or illegal maybe activity to go on in the various municipalities without being able to be subjected to general law. Besides that, it raises a second point which is, "No, no, no," if this were wrong, Mr. Roy; the legislature may tell us in the future what we may not do. I doubt seriously that if they have already home rule provisions, that the legislature may ever deal with them. That's the first thing they try to do. The next thing they try to do that they don't tell you about, and I have to get in the lawyer language, is to constitutionalize this La Fleur case which said that, "with respect to structure and organization, the legislature, even by general law may not deal with a home rule charter." But you see, they don't stop there; they go further, and they add at lines 30 and 31, "and/or the particular distribution and redistribution of powers and functions of any local government." That's because the Supreme Court said in La Fleur that you can, the legislature can, by general law deal with powers and functions. Now, if they say, "No, Mr. Roy, you're misreading that; that's not what it says." Well, then why have it if there are? It doesn't mean anything, why have it in there unless the object is to argue a case before the Supreme Court in the future, that we, the constitutional delegates, said that henceforth, we will not even be able to deal with respect to powers and functions. Now, I don't understand Mr. Lanier's argument. Yesterday, I hear him say all day long about "Let's not deny to the people the great benefits of home rule charters." So, we've come here today to accommodate Mr. Bergeron and others, and we say, "Well, if home rule charters are so good, durn it, in the future ten percent or ten thousand people ought to be able to modify or ask for a change." And they'd get up today and say, "Oh, no, no. You may change some present home rule charters, but that was in 1898." Do you think the people in that city under a home rule charter in 1898...now presently have anything necessitated by what they put in a home rule charter in 1898? I think we're smart enough to be able to say that ten percent or ten thousand people of a local subdivision want to change, have a right to petition for the change. Now, they say, this committee said, they don't use arbitrary figures. The first thing we took up yesterday was the fifty thousand people necessary to form a new parish. That was taken out of the air. So, this business of saying that people in 1898 necessarily knew what they needed, just doesn't follow. Now, there is nothing. Mr. Jenkins, I'm going to say one final thing to you. Yesterday in Section 7, we stated that any plan of government or home rule existing or adopted which present new existence at the time of this new convention may not be changed by any general law. So you've got to read what we did yesterday with what we're trying to do today. My opinion is, my personal opinion is, that I'm tired of local groups who derive most of their income from the state coming here and trying to pull the wool over your eyes, and tell you "We, let us run this show; do what we can, you the people of the State of Louisiana. It does not believe in the supremacy of the smallest town in the State. But I do believe in the supremacy of the legislature which is the basic unit of all the people of this state, and I'm not going to ever vote for any rule or constitutional amendment that protects and allows these people to run the show as they want, and at the same time make me pay taxes to take of their problems. I'll yield to questions.

Questions

Mr. Jenkins Mr. Roy, you noticed too under the committee proposal the people don't have a right to initiate any changes in the home rule charter. Under the committee proposal, fifteen percent of the people can partition, and then the local governing authority has to have a charter commission elected.

Mr. Roy Right.

Mr. Jenkins But then no one knows what that charter commission will do, and this amendment allows the people to initiate a specific amendment or a change in the charter. So this leaves it with the people, rather than with a lot of local government officials.

Mr. Roy I agree with you, Mr. Jenkins, my whole point is that this committee has come up with some-
Mr. Gauthier-Chris, I may have misunderstood you, but I did understand you to say that whenever the Constitution is silent, the state is prevented from acting.

Mr. Roy No. Just the opposite. Just the opposite. I said where the federal Constitution is silent with respect to its powers granted to Congress, or the separate court or the Executive branch, they don't have any law, and that's the same theory with respect to local governments, but the constitution wants to prevent that.

Mr. Gauthier-Chris, Mr. Roy. Isn't it true that under the federal Constitution that the national government has all powers expressly granted by the Constitution, but all other powers the residue of government power rests with the states and with the people respectively. Isn't that the way it is phrased?

Mr. Roy Right. They rest with the state and the people exactly. What I mean is that the local legislature, Mr. Burson, and not your little hometown.

Mr. Burson You don't want the people included in there. That's the point that I wanted to make. Do you think that the people as stated in the federal Constitution has the right to do anything so far as not included with the state, are more or less well represented by their local governmental units?

Mr. Roy Mr. Burson, you're not going to finesse me on that. You know full well that what I'm saying is that I don't want the cities and the local governments to have whatever powers they want that the legislature wants to prevent. To do that, you have to put in a home rule charter, try to determine whether or not whatever they put in that home rule charter is consistent with the provisions of the Constitution. If, for example, being in consistent with the provisions of the Constitution means that this would have the effect of taking away the legislature the right to legislate as provided in the Legislative Article and that, for example, the town is talking about, then this is about the last meaningless piece of writing that has been presented to this commission where we put here. This would simply the law to prohibit the from happening. That's what you're trying to get in here, and you're trying to relitigate again.

Further Discussion

Mr. Chairmen fellow delegates, I rise in opposition to this amendment. The Pugh amendment was a good amendment by comparison to this one. A lot of the things that are doing anything so far as not included with the state, are more or less well represented by their local governmental units.

Mr. Burson I would like to address myself to the question that has been raised up in this debate by Mr. Roy and others in the point that talks about these local governmental agencies getting to the city of Flory. We have a way up here asking them for something and we want to give anything. I ask Mr. Roy and the other delegates of this convention, where does the local government come from? It comes from taking that are free of the people of this state, the free government of whom are living in urban centers of the state, the tobacco tax is entirely from them. In getting some of it back, I will give this a chance to carry out our necessity for something without getting something for nothing in the state, without getting our way up here or local governments on have put in an amendment to the , the Federal government, in the all that I can. I may be you delegates, we must as well take the value of that city, in the state, if you ask for the intermunicipal cooperation, the city because you don't give it to the

Mr. Chairmen fellow delegates, I rise in opposition to this amendment. The Pugh amendment was a good amendment by comparison to this one. A lot of the things that are doing anything so far as not included with the state, are more or less well represented by their local governmental units.

Mr. Roy Mr. Chairmen fellow delegates, I rise in opposition to this amendment. The Pugh amendment was a good amendment by comparison to this one. A lot of the things that are doing anything so far as not included with the state, are more or less well represented by their local governmental units.

Mr. Chairmen fellow delegates, I rise in opposition to this amendment. The Pugh amendment was a good amendment by comparison to this one. A lot of the things that are doing anything so far as not included with the state, are more or less well represented by their local governmental units.

Mr. Roy Mr. Chairmen fellow delegates, I rise in opposition to this amendment. The Pugh amendment was a good amendment by comparison to this one. A lot of the things that are doing anything so far as not included with the state, are more or less well represented by their local governmental units.
that in 1948, he decided he'd support his friend, Sam Jones, for governor, and you know what happened in that race. Governor Earl Long in the second primary of that race upset the apple cart, and he carried the city of New Orleans. And with him on his coattail he carried many legislators that were supported by that old regular faction in the city of New Orleans, and what happened after that? After the governor took over, and after legislators took their seats in power, then began to do what I'm fearful can happen to many cities in this state. This is what we see check with delegates from the New Orleans area who know this history. I was alive at that time. They took the power, they had, and they changed the charter of the city of New Orleans entirely without one single vote of the people. This is what happened. Check the records, with not one single vote of the people they changed the structure and power of the city of New Orleans. I don't want to see this happen in the years to come. We are writing a constitution that will be viable, a constitution that will serve all the people, and don't leave it to the whims of the legislature as we go along. I urge you to defeat this amendment, and stick with the committee proposal. Thank you.

**Questions**

Mrs. Warren: Mr. Chatelain, I didn't... I wanted to ask Mr. Kean this question because he made me think about this the day before yesterday. I don't know what the word "inconsistent with the provisions of this constitution" means. Now I'm under the opinion that once this constitution is finished, I want you to listen, Mr. Chatelain. Once this constitution is finished, won't all of us know the provisions in it. Then if we look in and see what we have written in this constitution, won't we know whether anything that they do do these charters inconsistent with this constitution?

Mr. Chatelain: Well, Mrs. Warren, I appreciate this question, and I think it's very well thought out. I say to you that we are a hundred and thirty-two delegates here assembled. This hundred and thirty-two delegates is speaking to the voice of the people of Louisiana, but we have to refer our work, our labor, to 3.6 million people who sometime in the year 1974 will make that great decision as to whether or not they want to change the 1921 Constitution and accept a new model, 1974. I think you've got a good point.

Mrs. Warren: Well, this is what I'm saying. Once it is finished, and it has been accepted then, won't we be able to know what's in it?

Mr. Chatelain: You certainly will, yes ma'am.

Mrs. Warren: All right. Thank you.

Mr. De Blieux: Mr. Chatelain, I'm kind of getting a little bit confused about this amendment, sir. I need for you to answer a few questions for me. Can you tell me what, in this particular amendment, it would directly affect Orleans as a result of this amendment?

Mr. Chatelain: Well, Senator Rayburn, I think you know better than I do the... Further Discussion

Mr. Duval: Mr. Chairman, fellow delegates, hopefully not to be redundant, merely to set forth the issue to you. I would like to state the following: I think this is the issue. The Reformer amendment leaves out a very essential clause, that is, "the legislature shall not pass any law which will affect the structure and operation of the unit." He said very candidly when I questioned him that that means the legislature can then pass such a law affecting the structure and operation of the unit. This is the issue. Do you think the legislature should be able to do this or shouldn't? This is not trying to pull any wool over the eyes; it is stating the issue right directly. I would like to also quote from people who have studied this for many years, from people who are recognized experts. I think we all, somehow, have become self-appointed experts, but experts who have spent a lifetime studying the matter, which I think you should agree with me. I think you should appreciate some of the predictions of Mr. Chatelain. Dean Herbert [Hebert] says after discussing the La Fleur case and after commenting favorably about the rule on the La Fleur case. Clearly then, the adoption of home rule charters should go a long way towards eliminating the practice of interest groups gaining special dispensations from the state legislature, leaving the bill to be paid by local government. Now, that's the issue. You make up your minds. Thank you.

Further Discussion

Mr. Avant: Mr. Chairman and fellow delegates, I rise and urge you to approve the amendment that is before you or a similar amendment or anything other than the committee proposal. I'll tell you why. Mr. Kean got up here and he told you what he conceived the issue to be. I don't agree with him. The question is very simple. I believe it was yesterday. Do you want to write a constitution for the State of Louisiana and the people of Louisiana? Or do you want to write a constitution that will create and establish several thousand completely independent and autonomous states within the State of Louisiana, because if you adopt this committee proposal, you might as well go back and repeal the article on the legislature, because there won't be any legislature. Now let's realize that under this committee proposal, as it is drawn, that once a home rule charter is adopted, or with respect to one that is already in existence, there is no limit in telling you no limit of any practical significance, that cannot be done by local government. The only limitation on them is that they can't incur debts payable from ad valorem taxes that mature more than forty years from the time the debt was incurred. They can't define and punish a felony, or they can't make, and heaven knows what the means--enact private ordinances that means they can't sit down and enact an ordinance and say that it applies only to Joe Blow, or civil ordinances governing civil relationships--that means that they don't grant anything. But it's anything else. If God's green earth they can do without a vote of the people. They can levy an income tax on people, whether they live in one municipality or whether they live in some other municipality, as long as they are the people they can levy taxes without limitation. They can levy an estate tax, an inheritance tax, a transaction
Mr. Perez, Mr. Pizarro, gentlemen of the House of Representatives: I would like to call your attention to the very significant amendments made to the one-million-dollar charter. In the first place, we have added the word "singularity," which is a term widely used in the legal field. It has been adopted by many states and it is now used in the one-million-dollar charters. In the second place, we have added the word "permanence," which is a term widely used in the legal field. It has been adopted by many states and it is now used in the one-million-dollar charters.
51st Days Proceedings—September 21, 1973

put in enough work here and certainly have tried to come up with a good proposal. On page 4, lines 10 through 12, they say "The electors in each affected local government shall vote in the election held for that purpose vote in favor thereof." That language were incorporated in this amendment then I could see possibly going along with it, but if you don't think those particular municipalities to decide if they want to give up their municipalities, then I think we are doing the wrong thing here.

Further Discussion

Mr. Jenkins Mr. Chairman, delegates, I'm disturbed at the criticism of this amendment because, I think it's one of the first real good amendments we have had. Let's start from the end point. Except as may be inconsistent with the provisions of this constitution. Now some of the people have come up here and criticized that. We just adopted that in the other article the one right before it, the other section. No one raised these dire predictions then. These home rule charters should not be inconsistent with the constitution, and I think that's pretty obvious. There's been said that this amendment changes the amendmentary process in existing home rule charters. Well, that's not true. In the first place we are saying that the amendmentary process in existing home rule charters would be as provided in those charters. This isn't going to change that. I think we are talking about one thing there. We are talking about the creation of a third level of sovereignty in this country, a third level. We already have two, the federal government, and we have the state government. But local governments are mere creatures of the state government, they are not sovereign now. Once a grant of sovereignty is made, it cannot be taken away. The states created the federal government, it gave it sovereignty and they can't take that away. If we once yield sovereignty to the local governments, we'll never be able to take that back. We are going to literally have thousands of little kingdoms or republics or dictatorships depending on how they take a course in these local areas. You know what we are talking about, too, we are talking about more control, more government, more socialism. Even though the federal government is regulating and controlling to a great extent and the state government is doing so too, we are talking about now is a duplication, an extension of government control on the local level in every parish and in every municipality in this state. Now, who wants that? No one would let me tell you what it is the state officials that want it, on the one hand; it's not the local people on the other hand. I don't hear local people coming around saying "Our local government just doesn't have enough power." There's one group that wants it, the local government officials; that's the only group that wants it. Now, if you look down on line 28 and it's been mentioned many times today, we are granting here to local governments "all powers not denied by the legislature of this constitution." That statement right there is difficult to comprehend, just because it's so broad. It means literally, particularly if you read it in connection with Section 9, that local government has for anything they could license in any profession--the legal profession, medical profession, social workers, occupational therapist--you name it, they can regulate them. They can set all sorts of rules and regulations on commercial and labor transactions--working conditions, hours, wages, terms of contracts--on and on and on and unless it specifically prohibited. Local government could do anything, it would have residual power unless it's specifically denied. I'll tell you what's happening in a parish like East Baton Rouge where we have a home rule charter, probably the parish has too much authority now. They are passing every manner of regulation involving people's private lives, that the people don't want. It's more in the form of harassment legislation. With the authority they already have, they are passing these cat ordinances--you know if you 's got to put your cat loose you have to have him on a chain, bicycle licensure laws. They are regulating the child care centers throughout the community. They've put limits on the number of alcoholic sales centers, bars, lounges. All of this within their authority, but that's not enough. They want any authority not specifically denied to them. Well, I think they've got plenty of authority right now, probably too much right now. There is no need to extend this authority to everything under the sun. Now one other thing about this committee proposal, with regard to the fifteen percent requirement on signatures, notice what that says, if you have fifteen percent of the electors who sign a petition the local governing authority has to appoint a commission to draw up the new charter and then that charter is submitted to the people. But, there is no means provided in the committee proposal for the local people to control their own destiny. They cannot propose a charter amendment. In 1948, I believe it was, East Baton Rouge Parish had adopted its home rule charter by, I think, about a hundred votes. The original small charter has been renewed five years we have been living under it. People in that circumstance need a way they can have a petition to go forward and amend their home rule charter. That should be true not only here but in any locality and no charter should deny that right, I don't think. The good thing about this amendment it allows ten percent of the electors in the state to sign for a specific proposed amendment. That amendment goes to the polls and if the people want to make that change they will. Or, you can say "Oh, the people get to elect these local officials." That's true and sell them as a single issue before them when they elect somebody. Oh, they can adopt a new charter, that's true but they don't get to make the proposal of what a new charter will be, a commission will make that proposal and they can't control it. If people want to make a particular change in their form of government, they have to do and this amendment gives them that right.

Further Discussion

Mr. Stagg Mr. Chairman and fellow delegates, I really presume that the only people that these few remarks are addressed to is those who can't see yet quite made up their minds. There may not be many. What isn't being said from this microphone yet is what are the two opposing legal and philosophical questions. Under a constitution of any state, municipalities are dealt with in one of two differing ways. A municipality (1) can as the government closest to the people do anything not specifically denied to that community by the state's constitution or (2) they can as Mr. Jenkins put it, they are creatures of the legislature and they can have under the constitution just so much power as the legislature gives them to do. They are two opposing points of view. Now, Mr. Avant got up here and said you're going to have taxes on income, taxes on transactions and taxes on everything you can imagine. Well, by..., Mr. Avant, those people run for election in that city every four years and if they are stupid enough to pile on their people taxes that are not warranted, then their chances for success in reelection aren't very good. That is the problem. We are talking about in this section of this constitution that somebody be prepared to do for its people, not to them. What powers can a city have as against, for instance, the legislature? I don't want to argue about a section that's coming up, but I would be against any of which I do not agree with, the legislature can pass a tax increase for certain municipal employees and
the cities, justly George, have got to do it up the
most part and not right. They left a single set of exceptions which we'll
need in section 16 when we get there. But what we are
thinking about is how you go about wish the cities of this state to have? It's a
simple question. Do you want the city, there is
the government closest to the people to be able
do it about and you want to do with doing and permit them to do, so long as it
isn't denied in the constitution. If that's how
you want it, then vote for the committee proposal. If you want your cities simply to be the creature of
the legislature bound down by the legislature,
then you shall vote for the Roemer amendment, it's
just that simple. What kind of cities do you want?
if you want to run your business in your town as
your people will permit it to be run, then you stick
mostly with the committee proposal. If you want the
legislature constantly calling the shots, then
you vote for the Roemer amendment. You've got one
solid set of questions, you're either going to go
this way. Now, you'll hear people talking out the
Fordham plan. Fordham plan simply means the
cities can do those things not denied to them. You
are going to hear about the Dillon rule. The Dillon
rule is that the state does it. Do a downtown job in yourself unless the legislature says you can do it. The
Roemer amendment is Dillon. The committee proposal.
if you want an amendment of city government do you
want under home rule charter, what kind of cities does that
of the delegates, to this convention, you're at a
crunch point, and you're going to have to decide
[Prev. question ordered. Under
the proposed delegate present and a question.]

Closing

Mr. Roemer Mr. Chairman and fellow delegates, I
rise to close in support of my amendment. An amend-
ment which provides for home rule charters for all
local, political subdivisions [subdivisions] who de-
sire to have one. An amendment which I think is
aware of the realities of the life of Louisiana
and of this nation. I'll tell you what life is. Some
city folks and some country folks all get the same
in the same boat hopefully heading the same place.
We've had a parade to this podium from members of the
Local and Parish Committee, they either have failed to read the amendment or obviously de-
sire to misinterpret it. Point after point has
been so misinterpreted, Example one member of the
committee wanted to tell you about the sixty day rule and if there was no election
within sixty days, regularly scheduled then we
wouldn't have a charter on it. It's so clearly misread, clearly misread this amendment
It says 'not less than sixty days.' You have to
wait sixty days for the information of our people, the
election, it isn't necessary for that. But here is
the need that Don't you think? There are those that
got up here and said well the ten percent rule
might affect some local charters, it can't do it. So
right. And last ten percent. If a home rule charter has fifteen percent in it now, this amend-
ment would not affect that. Point after point has
even been misinterpreted, even from my informa-
tion, been misinterpreted. Now the point is clearly
this, the cities want to be autonomous. They want
to control everything within their boundaries.
We've already in this committee passed a provis-
ion where the municipalities would willfully take
over the utility system within their territorial
limits, giving them that right. But here is the
problem, the cities of this nation and the title of
this state go to New Orleans or New York or Chicago
or LA they want to be autonomous, they want to
stand alone but, inevitably they overrun with slum and with crime and lack of education and dirty streets and dirty
air and what have you, they go to get the money,
to get the help, to get the public support to correct those evils. I'll tell you where
they do. They have to go to New York or Chicago, or
the people of the cities, they go to the legis-
lature. I would they see the legislature that
the year of the matter I give them, we've
taken them in the amendment. The rule charter we don't give the blanket autonomy. I sug-
ject it to you that we should not insert the word
autonomous, you have says they have all the power. They want all the autonomy, They
want all the glory but, won't do with the taken
away. But, when it comes down to getting them out
of the big, where we're able to, and you live on that farm sixteen miles from a
City, twelve miles from any city. Not by legislator
who represents twenty-zero-hundred people
his largest city, has to deal with these cities, because they need him. They need the power and they
need the purse strings of the state, we're not
going to change that. The money is in the city. It
cannot be there. What are they going to do
get their money? They are going to tax their people
out of existence, how else can they do it. Our
take the other end of it and say a rich parish and we have a few. If it is a rich city, and we have a few, then yes we have autonomy.
They want no control from the state. They
worry about money. But those of you here from the poor areas of this state give you the
advantage and if you can't be sure in those that we
use on their own bottom--the two or three that do--there
cause they are the only ones that can have.
Now, that's the issue here. I think it's a clear one. We
have tried not to misrepresent it, if that is the issue.
Do we want the historical checks and balances upon
which the greats of this country was built, or do we
want to continue that tradition, or do we allow sixty, seventy, eighty or hundred autonomous
governmental bodies in this state connected
nothing but a common state name, I think this
a great state and one state... I would like to
continue it that way

Explanatory Amendment

Mr. Paynter Amendment No. 1 Mr. Chairman, Mr.
Paynter Amendment No. 1 on page 34 and 35. Immediately
after the word than there is to read, delete the word
fifteen and insert in lieu thereof the word ten.
51st Days Proceedings—September 21, 1973

talking about necessarily racial minority but a majority of the people has not at least posed the question. I think that the figure as represented by the committee is an arbitrary figure because we originally started off at twenty-five then we got down to fifteen. The only reason for fifteen is because basically that's arbitrary. I would ask for your support of this amendment.

Further Discussion

Mr. Perez Mr. Chairman and ladies and gentlemen of the convention, the question of what percentage of votes was needed was discussed in the committee, there were suggestions anywhere from twenty-five percent down to ten percent. One of the problems that bothered the committee was the cost of calling these elections that there wasn't a fair chance that such a proposal may be passed if you only have say ten percent. However, we have no strong feeling on the matter one way or the other, we just leave it to the pleasure of the convention as to what you figure might be the right percentage in order to be able to call for such an election.

[Amendment withdrawn without objection.]

Amendments

Mr. Poynter Amendment No 1 [by Mr. Bergeron and Mr. J. Jackson] is just like the amendment I just read: "Page 4, line 1, immediately after the word "than" and before the word "percent" delete the word "fifteen" and insert in lieu thereof "ten."

Amendment No. 2. On page 4, line 2, immediately after the word "electors" and before the word "who" delete the comma "," and insert in lieu thereof the following: "or ten thousand electors, which ever is the lesser."

Explanation

Mr. J. Jackson Mr. Chairman, ladies and gentlemen of the convention, I thought when I originally got up here I was explaining the revised amendment. As I mentioned, New Orleans has presently ten thousand or it requires ten thousand voters, to initiate a petition to the city council to propose a charter... a charter amendment and the only thing that we have attempted to do here as I previously mentioned is to: one, provide for a situation whereby our charter already says ten thousand and two for Shreveport which is that ten percent, and basically there's no different from the manner in which I first explained it to you. I'll stand up here in case there are any reservations or questions that people you know may have about this amendment.

Questions

Ms. Zervigon Representative Jackson, in the areas where they have got a number in the charter like ten thousand have there been a whole flood of petitions to put amendments on the ballots and new charter on the ballot?

Mr. J. Jackson Now I only can recall of one I know. Harriet Particular in the city of New Orleans. Only one. There's no major flood...or contrary to the reservation I would think some delegates have about floods and people proposing amendments to the charter.

Ms. Zervigon In that case that you speak of, if I remember correctly, wasn't that a charter that was circulated, got the ten thousand names on it in the end, but never was submitted to the council to put it on the ballot, and in the end the council went ahead and put something else on the ballot that was very similar, isn't that correct?

Mr. J. Jackson That's correct, particularly in the city of New Orleans, and even on the point that generally it's my...my basic feeling is, that by posing an amendment doesn't necessarily [necessarily] means that that amendment is going to be--you know

the final resolution. It just seems to me that we ought to offer people ingress into government by providing, but not putting such a high percentage.

Ms. Zervigon So this is in existence now, but has not been irresponsibly used, is that correct?

Mr. J. Jackson Right. If the committee proposal maintains--in fact it's going to jump from ten thousand in New Orleans to twenty-five thousand and from ten percent in Shreveport to twenty to... an additional five percent and I don't know what that means in terms of the amount of voters that they have there.

Mr. Perez As far as the committee is concerned, the remarks I made previously apply to this particular amendment.

[Previous Question ordered. Amendments adopted: 102-11. Motion to reconsider tabled.]

Amendment

Mr. Poynter Have one amendment to Paragraph A offered by Delegate Gravel.

Amendment No. 1. On page 3, line 23, after the punctuation and line "(A)" del the "(A)" and insert in lieu thereof the following: "Subject to and not inconsistent with the provisions of this constitution, any"

Explanation

Mr. Gravel Mr. Chairman, and ladies and gentlemen of the convention, as all of you know, Section 8 deals with home rule charters which in the main have to do with those charters that are going to be adopted in the future. We already have provided in Section 7 that the provisions of this constitution with respect to even existing charters are paramount, and that there can't be anything done in those cities that presently have charters that are...that is it would be in conflict with the provisions of this constitution. The purpose of this amendment, and it's extremely important, is to make sure that no home rule charter in the future will have any provision that has such efficacy that it can override any provision in the constitution that we're contracting at this time. This is the amendment then when do is to provide at the very outset that subject to and not inconsistent with the provisions of this constitution a local government charter can be adopted as otherwise herein prescribed, I can't emphasize too much how important I think it is that we engraft upon any such concept with respect to future home rule charters the requirement that nothing in such charter, nothing in any future amendment to any existing charter, shall be in conflict with any provision that's in this constitution. Now, Mr. Chairman, I urge the adoption of this amendment.

Questions

Mr. O'Neill Mr. Gravel, isn't this amendment necessary to make sure that a home rule charter would not contradict, any provision adopted in the Bill of Rights, for instance, the right to property?

Mr. Gravel Correct, or any other provision of the constitution that we either have adopted or that we may adopt. For example if you didn't have this kind of provision it might very well be argued that a home rule charter could provide, in the event this convention decides the people are going to have a homestead exemption under the constitution, that this will not be a homestead exemption accorded to the citizens in the particular locality affected by such future charter. That's correct, Mr. O'Neill.

Mr. Kean Mr. Gravel, do I understand your explanation correctly to mean that if there is some other affirmative prohibition or grant in the constitu-
Mr. Kean. My amendment means I think, Mr. Gravel, very clearly that no provision of any home rule charter hereafter adopted shall be inconsistent with the provisions of this constitution, and I think it would be inconsistent with this provision to have any home rule charter which will have to be construed as meaning that any provision of this constitution is paramount to the provisions of any home rule charter adopted hereafter.

Mr. Gravel. Insofar as that particular section and that particular provision is concerned, there is nothing said with regard to what the legislative may or may not do by ... insofar as putting any restraint on any charter. This has nothing to do with, Mr. Kean, ladies and gentlemen of the convention, nothing to do with legislative action what ever and let's don't confuse it with that. This says precisely, lucidly and simply that you cannot have in any future home rule charter any provision that is any valid provision, that conflicts with a provision of this constitution. It has nothing to do with any legislative act. We are going to get to that later on.

Mr. Kean. I simply wanted to make that abundantly clear and that's the reason I asked the question.

Mr. Gravel. Correct, Mr. Kean.

Mr. Kean. Mr. Gravel, yesterday on our amendment we began the section with the simple phrase "except as may be inconsistent with the provisions of this constitution." The prior amendment also used that phraseology, but your's go further and say, subject to, and not inconsistent with the provisions of this constitution. The prior amendment did not concern the subject of the restraint on the charter. It's insofar as that particular section and that particular provision is concerned, that is the provision we are discussing.

Mr. Gravel. No, I think this is another way of saying what we intended and perhaps a little bit clearer so as to the supremacy of the constitution. I think that is the purpose of this section and I think we are discussing in the amendment "except as may be inconsistent with this constitution." The provision to which you refer did not concern the restraint on the charter.

Mr. Kean. I think we are going to have to amend that.

Mr. Gravel. Mr. Kean, you have not made me any clearer on that. I think you have not had clarity by the answer I got to the question. I think you would find we are discussing this in different sections of the document.

Mr. Kean. I think we are going to have to amend that. I think we are going to have to amend that. You have not given us any guidance as to whether you have used exactly the right words and phrases. I think that you would find that you would find that the section, as now written, is not clear and that it is not clear to whom.

Mr. Gravel. We are going to have to have it written in a form that will make the meaning clear. I think there is a difference in the meaning that the words have a

Mr. Kean. Mr. Chairman, I am not going to going to oppose the amendment to the amendment, but I think we are going to have to amend that. I think we are going to face a precedent. I think that you would find, hereafter, we are going to face a precedent that it is inconsistent with the provisions of this constitution.

Mr. Gravel. We are going to have to face a precedent that it is inconsistent with the provisions of this constitution.

[End of transcription]
little difficulty finding it. It's very simple. On line 28 it deletes the words "not denied" and inserts in lieu thereof the word, "authorized". There are, of course, in this constitution and in the state government, a number of provisions relating to local governments regarding their powers and their functions. That has always been the theory of local government, that local government can do anything that's authorized by general law or by the constitution of the state. The real significance of this section is that it authorized general law or by the constitution of the state. That's not the case at all. The issue we are talking about here is more government versus keeping things about how they are. We have too much government already, and let me tell you these localities aren't going to be able to undo any federal regulations. They are not going to be able to undo any state regulations. The only thing these local governments are going to be able to do is put on more regulations, more controls, more interference that all of our citizens are going to have to live with. We don't want to have to stop a local government from doing it. Now the example that was used before, and just because it's familiar, I'll use it again because I think it shows the point very well, is milk price fixing. The legislature has set up the milk commission to regulate milk prices. At no time has it said that it's going to do something to make milk prices any lower. It's said that they were regulated. Under this theory, though, that the committee proposes, each municipality and each parish could set up its own standards, even higher in quality or lower in price, higher in price, than the state has done.

One of the important things, state government, is that it allows for uniformity in the conduct of normal, personal activities within a state area. One of the inconveniences in our whole national system is that it allows diversity. But if we were to come along and allow these laws and regulations to vary from parish to parish, from municipality to municipality, we would have a completely unworkable system. It would make the whole life of this state grind to a halt. Now many people have said that the principle here is local government, home rule versus centralized authority. That's not the case at all. The issue we are talking about here is more government versus keeping things about how they are. We have too much government already, and let me tell you these localities aren't going to be able to undo any federal regulations. They are not going to be able to undo any state regulations. The only thing these local governments are going to be able to do is put on more regulations, more controls, more interference with all of our citizens are going to have to live with. We don't want to have to stop a local government from doing it. Now the example that was used before, and just because it's familiar, I'll use it again because I think it shows the point very well, is milk price fixing. The legislature has set up the milk commission to regulate milk prices. At no time has it said that it's going to do something to make milk prices any lower. It's said that they were regulated. Under this theory, though, that the committee proposes, each municipality and each parish could set up its own standards, even higher in quality or lower in price, higher in price, than the state has done.

Take again the subject of minimum wages, working conditions, your OSHA[OSHA]-type standards. Every manner or regulation and control could be placed upon commerce by these local governments. Now here's what would happen in practice. A municipality is going to see a certain sort of commerce. The next session of the legislature we are going to be up at the state capitol having a specific law to specifically prohibit that sort of regulation or that sort of commerce. I can imagine that every session we are going to have literally hundreds of bills introduced to try and undo the obnoxious, offensive regulations that these local governments under this provision. Local governments historically, it is a fact, exist only because they are authorized by the legislature. There are creatures of the state government. They have no independent existence. Just as the states created the federal government, the states created the local governments and their authority cannot, should not extend beyond their authorized authority under state law and under the constitution. What we are doing, if we adopt the committee proposal without the amendment, we are going to make this constitution unacceptable to a large, large number of people. Look at the limitations on local government in this section. Other than the other provisions of this constitution which are applicable, such as the Bill of Rights, one of the few limitations is in this Section 12. It says three things local government can't do: It can't incur debt payable from ad valorem tax receipts maturing more than forty years from the time incurred. Number 2, they can't define and provide for the punishment of a felony, they cannot enact private or civil ordinances governing civil relationships. Other than those things, and the few other limitations in this constitution, and the few things that might be specifically prohibited by state law, they could do anything.
Mr. Jenkins: Mr. Speaker, the Supervisors of the several parishes have, for years, been able to enact laws relating to subdivisions in their parishes. The Supervisors were able to enact those laws under a rule published by the Attorney General which was allowed to withheld by Judge Burson.

Mr. Burson: I beg to dissent from the ruling of the Speaker. I believe it was erroneously applied. It was a rule of the Attorney General which was allowed to withhold by Judge Burson. Mr. Jenkins: I think that's good, Mr. Burson.

Mr. Speaker: If you're in favor, then, of the system established under the Revised Statute, which gives the Supervisors the right to establish and regulate or prohibit the use of certain areas, then I think it's time to establish and regulate or prohibit the use of certain areas. The Supervisors have that right. You are correct in that. They do have the right to establish and regulate or prohibit the use of certain areas. They do have that right. The question is what shall be done about it? The question is what shall be done about it? It's a matter of the Supervisors wanting to do it. It's a matter of the Supervisors wanting to do it. It's a matter of the Supervisors wanting to do it. I think that's good, Mr. Burson.

Mr. Jenkins: Do you think that a house rule which is in force should be allowed to be used by the legislature and the people of the state, then, Speaker? I mean, why make it different for other purposes? Why make it different for other purposes? I think that's good, Mr. Burson.

Mr. Burson: I think that a house rule which is in force should be allowed to be used by the legislature and the people of the state, then, Speaker? I mean, why make it different for other purposes? Why make it different for other purposes? I think that's good, Mr. Burson.
overlooks that flaw in the law. We don't have general laws related to home rule municipalities and under the circumstances, if you change this as he proposes, you've got a nothing again. I suggest, under the circumstances, that the amendment should be rejected.

Questions

Mr. Anzalone Mr. Keen, is not this amendment a sequel to that little "merely" amendment that we proposed a few minutes ago that says "subject to and not inconsistent with the provisions of this constitution"?

Mr. Keen Well, this is not even a "merely" amendment.

Mr. Anzalone Mr. Keen, as we now have this article set up, do we not have the same relationship or proposing the same relationships between a municipality and a state that the state has with the federal government?

Mr. Keen That's the way I view it, yes, sir.

Mr. Anzalone Mr. Keen, do you think as a matter of philosophy that the State of Louisiana should be subjected in all cases to congressional will?

Mr. Keen No, sir.

Mr. Anzalone Do you think that in the State of Louisiana all municipalities should be subject to the legislative will?

Mr. Keen No, sir, and I thought I made that abundantly plain in the remarks I've made heretofore to this convention.

Mr. Roy Mr. Keen, don't you think that the legislature in its infinite wisdom would pass a general law allowing all these things that you are worried about and hasn't it done so in the past, dealt with you all properly?

Mr. Keen Mr. Roy, the legislature in its infinite wisdom might do it. All I'm pointing out is that there's presently nothing on the books which would provide for it.

Mr. Willis A sequence to Mr. Roy's question: Don't you think that if we put it into the constitution, we don't have to worry about wisdom?

Mr. Keen That's correct.

Mrs. Warren Mr. Willis just brought this to my mind. Don't you think if we put everything in the constitution, we don't have to worry about the will of the legislature?

Mr. Keen No, I think that there are many areas in which the legislature retains full authority. Mrs. Warren. Mr. Willis' point is that if we leave it as the committee has proposed it, then the legislature doesn't have to deal with the minutia of local governmental operations.

Mrs. Warren Don't you think that citizens in a municipality have to be subject to their municipality government or parish government?

Mr. Keen Well, this provides for this home rule charter to occur only upon a vote of the people of that particular subdivision.

Further Discussion

Mrs. Zervigon Thank you, Mr. Acting Chairman. Ladies and gentlemen, I think we ought to get straight from the outset what the subject matter is under consideration. The subject that we are addressing ourselves to is power, and what should be exercised that power. The states have all of the powers which they have not delegated to the federal constitution. That's true.

We're here this year trying to decide how the powers that are reserved to Louisiana will be used within Louisiana. In my opinion, we've done a very good job up to now. We've arranged for a more powerful executive department in the sense that the executive department will be better organized and, therefore, better able to support and administer our state. And make certain that the policies of the governor are carried out throughout the departments. We've allowed for a lot more powerful legislature because it will meet sixty days a year, its permanent officials, have an automatic veto session, and because a lot of the statutory material that we are cutting out of the constitution, including special agencies and the powers and functions of those agencies, will be left to the legislature because they will be just that—statutory. Since the legislature will be so powerful, it seems to me that there ought to be another countervailing force. In my mind, that force ought to be local government. We could put all of the statutes back into the constitution the way they were in 1912, or the way the situation has been amended, and leave the power with the people and let the people be the legislature. But the people have said again and again and they don't particularly want to exercise that power in that way. They don't want to be called upon to enact statutes. So, the other countervailing force, and we've said before, is going to be local government. Now, let's look at what the committee has done with regard to local governments. We have now said that local governments may override the legislature, may slip around the legislature. The legislature still has complete control over local government. They may not deny local government any power which local government should not use, which is really a power that should be used on a regional basis or which local government has abused. But, ladies and gentlemen, what we have tried to do is to take an unused body of power that has never been taken advantage of by anybody, and give it to somebody—local government. Let me give you an example of the effect of Mr. Jenkins' amendment. It will continue the present situation under which Lafourche Parish passed an ordinance regulating fireworks in the middle of June of this year. That ordinance was thrown out by the courts on the grounds that Lafourche Parish didn't have the power to enact regulations of fireworks. The people of Lafourche Parish, who have used fireworks regulated. If the legislature had passed a uniform statewide law regulating fireworks, that would have been okay with the people of Lafourche Parish. But, the legislation, which is one of many other things, had never seen fit to do so. So, the people of Lafourche Parish would like the opportunity creatively to attack their problems through their local governmental officials. These officials of whom many people have seemed so suspicious are the officials who are closest to the people. The working person in Lafourche Parish can much more easily go to police jury meetings or call a police juror on the phone than he can his legislator. In Orleans Parish, for example, the city council meets every Thursday at 10:00 A.M. in City Council Chambers. It's a rare citizen of the city who does not know that. You want something done or not done by the council of the city of New Orleans, you go, you are put on the agenda, you speak your mind. Believe me, they are elected officials, they listen. If you have something that you want to require or demand of the legislature, you must wait until the legislature comes into session; then you appear before the legislature. While the legislature is in session, it is difficult to reach your representatives at times because when you call him on the weekend, his phone is busy. Other folks are trying to reach him too. But, ladies and gentlemen, we make it clear to you one more time, we are not taking anything away from the legislature. The legislature still has complete authority to control any abuses.
Mr. Overby, Mr. Chairman, I guess there is a provision in the amendment for the establishment of the legislative quorum, and I would like to ask you what the situation is?

Mr. Jenkins, the words of that great man are here.

Mr. Jenkins, is it correct that the force and effect of the amendment are in the legislature a parallel clause, except, or is it the state, or it is the state and the legislative quorum?

Mr. Jenkins, I urge you to give this careful consideration, to reverse this tide that has been running through this state for so many years, to permit local government to govern themselves. Subject, however, to the reasonable provisions of this constitution, to the amendments and pronouncements that we have made here in regard to due process of law, equal protection of the law and private property. Mr. Jenkins, many of which we have enacted with great clarity and which are available to each individual, or individual government?

Are you in favor of a local governmental sublimation, that this state of the legislative quorum to control the affairs of its inhabitants, to give our own people the opportunity to govern our own without having to go before the legislature and get a permission. I urge you to defeat this amendment.

Mr. Jenkins, Mr. Chairman, fellow delegate. I think in a study of this amendment in the interest of the uniformity and equal protection of the laws, to the legislature, to the state, to the legislative quorum, we have here, a principle of uniformity, so strongly and strenuously in favor of the principle of uniformity, I suggest to you further that the uniform prohibition for this amendment is that of uniformity. It is an amendment which will perpetuate a system wherein the legislatures can control the business which may be conducted by the local governmental subdivisions. So I urge you to give this careful consideration, to reverse this tide that has been running through this state for so many years, to permit local government to govern themselves. Subject, however, to the reasonable provisions of this constitution, to the amendments and pronouncements that we have made here in regard to due process of law, equal protection of the law and private property. Mr. Jenkins, many of which we have enacted with great clarity and which are available to each individual, or individual government?

Are you in favor of a local governmental sublimation, that this state of the legislative quorum to control the affairs of its inhabitants, to give our own people the opportunity to govern our own without having to go before the legislature and get a permission. I urge you to defeat this amendment.

Mr. Jenkins, Mr. Chairman, fellow delegate. I think in a study of this amendment in the interest of the uniformity and equal protection of the laws, to the legislature, to the state, to the legislative quorum, we have here, a principle of uniformity, so strongly and strenuously in favor of the principle of uniformity, I suggest to you further that the uniform prohibition for this amendment is that of uniformity. It is an amendment which will perpetuate a system wherein the legislatures can control the business which may be conducted by the local governmental subdivisions. So I urge you to give this careful consideration, to reverse this tide that has been running through this state for so many years, to permit local government to govern themselves. Subject, however, to the reasonable provisions of this constitution, to the amendments and pronouncements that we have made here in regard to due process of law, equal protection of the law and private property. Mr. Jenkins, many of which we have enacted with great clarity and which are available to each individual, or individual government?

Are you in favor of a local governmental sublimation, that this state of the legislative quorum to control the affairs of its inhabitants, to give our own people the opportunity to govern our own without having to go before the legislature and get a permission. I urge you to defeat this amendment.

Mr. Jenkins, Mr. Chairman, fellow delegate. I think in a study of this amendment in the interest of the uniformity and equal protection of the laws, to the legislature, to the state, to the legislative quorum, we have here, a principle of uniformity, so strongly and strenuously in favor of the principle of uniformity, I suggest to you further that the uniform prohibition for this amendment is that of uniformity. It is an amendment which will perpetuate a system wherein the legislatures can control the business which may be conducted by the local governmental subdivisions. So I urge you to give this careful consideration, to reverse this tide that has been running through this state for so many years, to permit local government to govern themselves. Subject, however, to the reasonable provisions of this constitution, to the amendments and pronouncements that we have made here in regard to due process of law, equal protection of the law and private property. Mr. Jenkins, many of which we have enacted with great clarity and which are available to each individual, or individual government?

Are you in favor of a local governmental sublimation, that this state of the legislative quorum to control the affairs of its inhabitants, to give our own people the opportunity to govern our own without having to go before the legislature and get a permission. I urge you to defeat this amendment.
Mr. Nunez, Mr. Chairman and gentlemen of the convention, ladies and gentlemen of the convention, so you won't believe that all legislators are out for a power grab over local government, I'd like to say that I personally have not in any way or shape or form been trying to prohibit, either. So, this is a good amendment and I ask you to support this amendment. Thank you.

Further Discussion

Mr. Burson, Mr. Chairman, fellow delegates, since Section 9 was brought into the discussion by Mr. Jenkins of his amendment, I think it's important for you to realize that the units of government in this state right now that operate under his scheme, i.e., the police power authority existed in many instances only from Louisiana Revised Statutes 33:1236. I've got a copy of it here, and I'll make copies for anybody that would like to look at it. I'll tell you what it is. If you look at the statute and you will then know that it's the greatest monstrosity you ever saw in your life, then I'll be very surprised. I am the last one to get anything against the legislature's concern for the problems of local people. But, I'd like to make a point that I haven't heard any other speaker make. Should the legislature have to spend its time, which can easily be spent on matters of statewide concern, fooling with statutory provisions about the regulation of the use of air rifles within their parish? In Subsection 27 of that statute it was talking about? Should the legislature have to pass, as they have again in the police jury statute, something which reads like this: "Somebody is doing it. You're going to regulate the picking, pickup and transportation of garbage and trash within the parish, but outside incorporated municipalities, and grant franchises, exclusive or nonexclusive, to garbage and trash collectors provided that an exclusive franchise shall be granted only after advertising, reception of bids and awarding of contracts in accordance with law. The provisions of this paragraph shall not apply to the parishes of Acadia, Vermilion, St. Landry, St. John the Baptist, St. James, St. Tammany, Washington, Ouachita, Ascension, Pointe Coupee, St. Francis, Terrebonne, Evangeline, East Baton Rouge, Livingston" and about ten more. But when you get through reading that, you don't know who it don't apply to. What makes it make sense to allow the initiative on garbage and trash collection, for goodness sake, to rest with the local government and for them to decide whether they want garbage or trash collection outside the city limits, rather than to let the legislature have to spend their valuable time coming in here and saying "Well, let's find out now who all wants garbage collection and then we're going to except everybody else"? That seems to me to be a backward way of doing things. I can understand the sentiments of Senator Nunez that we've got a lot of areas in this state that don't have home rule charters and probably never will. The ones I come from I doubt seriously ever will have a parish home rule charter. But, let's not prevent them from having that which is at least as good as the ones in existence if they ever decide they want to. Somewhat, that doesn't seem to be very fair to. Thank you.
Mr. Carter: Thank you. I would like, as a new member of this House, to get acquainted and get acquainted with the people. It is my pleasure to be here today and to be able to participate in this great debate.

Mr. Watson: Mrs. Williams and I would like to have a word with you. Mrs. Williams would like to ask you a question. She has a question regarding the recent developments in the area. She has been following the developments closely and would like to know your thoughts on this matter.

Mr. Watson: Mrs. Williams and I would like to have a word with you. Mrs. Williams would like to ask you a question. She has a question regarding the recent developments in the area. She has been following the developments closely and would like to know your thoughts on this matter.

Mr. Watson: Mrs. Williams and I would like to have a word with you. Mrs. Williams would like to ask you a question. She has a question regarding the recent developments in the area. She has been following the developments closely and would like to know your thoughts on this matter.

Mr. Watson: Mrs. Williams and I would like to have a word with you. Mrs. Williams would like to ask you a question. She has a question regarding the recent developments in the area. She has been following the developments closely and would like to know your thoughts on this matter.

Mr. Watson: Mrs. Williams and I would like to have a word with you. Mrs. Williams would like to ask you a question. She has a question regarding the recent developments in the area. She has been following the developments closely and would like to know your thoughts on this matter.

Mr. Watson: Mrs. Williams and I would like to have a word with you. Mrs. Williams would like to ask you a question. She has a question regarding the recent developments in the area. She has been following the developments closely and would like to know your thoughts on this matter.

Mr. Watson: Mrs. Williams and I would like to have a word with you. Mrs. Williams would like to ask you a question. She has a question regarding the recent developments in the area. She has been following the developments closely and would like to know your thoughts on this matter.

Mr. Watson: Mrs. Williams and I would like to have a word with you. Mrs. Williams would like to ask you a question. She has a question regarding the recent developments in the area. She has been following the developments closely and would like to know your thoughts on this matter.

Mr. Watson: Mrs. Williams and I would like to have a word with you. Mrs. Williams would like to ask you a question. She has a question regarding the recent developments in the area. She has been following the developments closely and would like to know your thoughts on this matter.

Mr. Watson: Mrs. Williams and I would like to have a word with you. Mrs. Williams would like to ask you a question. She has a question regarding the recent developments in the area. She has been following the developments closely and would like to know your thoughts on this matter.

Mr. Watson: Mrs. Williams and I would like to have a word with you. Mrs. Williams would like to ask you a question. She has a question regarding the recent developments in the area. She has been following the developments closely and would like to know your thoughts on this matter.

Mr. Watson: Mrs. Williams and I would like to have a word with you. Mrs. Williams would like to ask you a question. She has a question regarding the recent developments in the area. She has been following the developments closely and would like to know your thoughts on this matter.

Mr. Watson: Mrs. Williams and I would like to have a word with you. Mrs. Williams would like to ask you a question. She has a question regarding the recent developments in the area. She has been following the developments closely and would like to know your thoughts on this matter.

Mr. Watson: Mrs. Williams and I would like to have a word with you. Mrs. Williams would like to ask you a question. She has a question regarding the recent developments in the area. She has been following the developments closely and would like to know your thoughts on this matter.
And let me tell you what happened on that particular piece of legislation. One particular legislator, at the pioneering, was an elected authority who wanted firecrackers to be outlawed in his parish. Now what he... or he wanted the local governing authority to be able to outlaw them. We are talking here about Class C fireworks which have been determined by the Federal Government to be completely harmless. They are innocuous types of things. Now the legislature was willing to go along with this particular representative in his area to allow his local governing authority in the parish at large to make the use of Class C fireworks illegal. But it was not about to say to the people across the state that Class C harmless firecrackers were going to be illegal in every rural area of the state. It was not unreasonable to do that. Now matters like this, even small matters, which, when we talk about all the matters, we have small matters, large matters, even a small matter like this deals with the rights and privileges of the whole people of this state, all the people. It has to apply to all the people. The legislature simply was not willing to say to all the people that they couldn't use Class C fireworks. So, the general bill failed and the authorization to the individual parish passed. I don't think there is anything wrong with that. I think it is a perfectly good thing. We were trying to protect the people of the state because they thought that that particular instance, fireworks were something that's part of the American way of life. They are something usually good and healthy for kids to have an opportunity to deal with and learn some responsibility with, and so on and so on. What we are talking here, about here, is not home rule. If we were to go to have really home rule, and we would allow each locality to make its laws and repeal them, and they had general application in all areas, that would be one thing. But we are talking here about, though, is bigger government. All the localities under this can do is pass more controls, more regulations, more interference. They can't repeal anything, that state legislation passes. They can only build on it and make government bigger and further interfere with the individual citizens, their personal property, the taxpayers of the state.

So I urge the passage of this amendment.

[Record vote ordered: Amendment rejected: 49-65. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Gravel], on page 4, line 4, after the word "this," insert the words, "inconsistent with any provision of."

Explanation

Mr. Gravel Mr. Chairman, ladies and gentlemen of the convention, this carries into this section the same purpose of the amendment that was adopted that changed line 23, Section 8. Let me make it perfectly clear that this amendment does not in any way affect a provision that says under a home rule charter, "the local government may exercise any powers or functions not denied to it by general law." But rather than to leave in here the words which in effect would read, "or denied by this constitution," which would mean that we would have to spell out the prohibitions in the constitution. This amendment would say again that "there shall be no provision in such charter that is inconsistent with the provisions of this constitution. This is to make sure that we continue the local governments have all the previous section, and, also, in Paragraph A of this section. It's intended for no other purpose, it has no other effect, and I urge the adoption of this amendment.

Mr. Perez Mr. Chairman, ladies and gentlemen of the convention, I am not sure what that language really means. But I'm not going to seriously object to it.

Mr. Henry Any further discussion? Is there...

Mr. Perez, is there any serious objection to the same as a little objection, so there is objection to the amendment?

Mr. Perez As chairman of the committee, I'm going to support the committee proposal, and I...

Mr. Henry The gentlemen offers amendments to which a little objection is urged.

[Previous question ordered. Amendment adopted: "8-22. Motion to reconsider tabled."

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Dennis]. This one has just now, or is in the process of being distributed.

Amendment No. 1, page 5, at the end of the line, change the period to a comma and add the following: ....it ought to be line 1, huh? All right. Page 5, line 1, at the end of the line, change the period to a comma and add the following: 

"except that the legislature may, (it should be "by" instead of "be", I'm sure) general law applicable throughout the state or based upon reasonable classifications of societal or governmental, or an unreasonable discrimination or to prevent unreasonable discrimination."

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, this is an attempt to compromise the two schools of thought and also to express my feeling that we should have home rule, that the legislature should not be able, when we do have a home rule charter, to engage in too much regulation of local affairs. However, I do think that there might be some instances in which gross inequalities or unreasonable discrimination could exist and in which the legislature should have the power to correct these types of situations. I do think, for example, there might be instances in which the wages of employees could be allowed to sink to such a low level that it would constitute a gross inequality, and that the Legislature should be able to enact a general law by a remedial nature, setting certain minimum standards so that local government employees would be treated fairly. However, this would be only in an unusual situation where there is a gross inequality, or an unreasonable discrimination would exist. So I see this as a compromise between the two schools of thought that seem to be emerging in the debate. For that reason, I ask your support so that we might agree upon a demarcation between complete home rule and complete regulation by the legislature, and pass this section and move on to something else.

Questions

Mrs. Zervigon Judge Dennis, did you know that I am opposed to gross inequality and unreasonable discrimination?

Mr. Dennis Yes, I know that you are.

Mrs. Zervigon That's a background vote...my further questions. If something is grossly inequitable and unreasonably discriminatory, why do you classify the parishes or cities in which this thing is happening. If it's really gross and unreasonable, it seems to me it ought to be gross and unreasonable throughout the state. Is that not so?

Mr. Dennis Not necessarily, Mrs. Zervigon. I think that there are certain localities which can support certain types of programs, others are more able to support larger programs; I think that you might have a situation in which a small locality...
Mr. Sargent. It is not my view that in our cities of cities the legislature shall pass any law, the effect of which would be to discriminate against any city or other local government.

Mr. Lanier. Would population be a reasonable classification?

Mr. Sargent. A reasonable classification is one that is not only reasonable but one that doesn't bear a substantial relationship to any city or other local government.

Mr. Lanier. Would population be a reasonable classification?

Mr. Sargent. Yes. I think that we have reclassified the state because I know from having read in the newspapers that it is commonly thought to be a reasonable way of distinguishing between the cities and the rest of the population.

Mr. Lanier. Would it not be true that cities of four hundred thousand or more, if your bill, constitute a reasonable classification?

Mr. Sargent. And also cities of four hundred thousand or more.

Mr. Lanier. Wouldn't that constitute a reasonable classification?

Mr. Sargent. Would it? I wonder if you know what the classification is contained in the article.

Mr. Lanier. Is there a classification contained in the article?

Mr. Sargent. Yes. I don't know what it is, but I don't see how you can avoid that. It must be a substance relationship.

Mr. Lanier. And then what is the difference between a reasonable classification and a classification that is unreasonable?

Mr. Sargent. I think that it is a difference that is contained in the classification.

Mr. Lanier. And then which is the difference between a reasonable classification and an unreasonable classification?

Mr. Sargent. I believe it is a difference that is contained in the classification.

Mr. Lanier. I think it would constitute a reasonable classification if this amendment were the substantive law which the Supreme Court has declared.

Mr. Lanier. I think it would constitute a reasonable classification if this amendment were the substantive law which the Supreme Court has declared.

Mr. Lanier. I think it would constitute a reasonable classification if this amendment were the substantive law which the Supreme Court has declared.

Mr. Lanier. I think it would constitute a reasonable classification if this amendment were the substantive law which the Supreme Court has declared.

Mr. Lanier. I think it would constitute a reasonable classification if this amendment were the substantive law which the Supreme Court has declared.

Mr. Lanier. I think it would constitute a reasonable classification if this amendment were the substantive law which the Supreme Court has declared.

Mr. Lanier. I think it would constitute a reasonable classification if this amendment were the substantive law which the Supreme Court has declared.

Mr. Lanier. I think it would constitute a reasonable classification if this amendment were the substantive law which the Supreme Court has declared.

Mr. Lanier. I think it would constitute a reasonable classification if this amendment were the substantive law which the Supreme Court has declared.

Mr. Lanier. I think it would constitute a reasonable classification if this amendment were the substantive law which the Supreme Court has declared.

Mr. Lanier. I think it would constitute a reasonable classification if this amendment were the substantive law which the Supreme Court has declared.

Mr. Lanier. I think it would constitute a reasonable classification if this amendment were the substantive law which the Supreme Court has declared.

Mr. Lanier. I think it would constitute a reasonable classification if this amendment were the substantive law which the Supreme Court has declared.

Mr. Lanier. I think it would constitute a reasonable classification if this amendment were the substantive law which the Supreme Court has declared.

Mr. Lanier. I think it would constitute a reasonable classification if this amendment were the substantive law which the Supreme Court has declared.

Mr. Lanier. I think it would constitute a reasonable classification if this amendment were the substantive law which the Supreme Court has declared.

Mr. Lanier. I think it would constitute a reasonable classification if this amendment were the substantive law which the Supreme Court has declared.

Mr. Lanier. I think it would constitute a reasonable classification if this amendment were the substantive law which the Supreme Court has declared.

Mr. Lanier. I think it would constitute a reasonable classification if this amendment were the substantive law which the Supreme Court has declared.
when I read this thing I nearly jumped six feet high. So I say, let's get rid of this and if this be a compromise, I sure don't want to see a thing that's not a compromise because I don't believe I could take it. Let's vote it down.

Further Discussion

Mr. Perez Mr. Chairman and ladies and gentlemen of the convention, I know we've been discussing this particular section long and hard, and as Mr. Jack said, this is a bad, bad, bad amendment. I think we ought to realize it. So please, let's vote this amendment down and get on to the next one.

[Previous Question ordered.]

Closing

Mr. Dennis Mr. Chairman, fellow delegates, in the spirit of fair play and compromise, I ask you to read the amendment and consider the problem rather than the rhetoric you have just heard. Now we're at an impasse. We're either going to have complete home rule in Baton Rouge and local governments can exercise discriminatory practices and the legislature can't do anything about it, or we are going to have no home rule in which everything is decided in Baton Rouge. Now I think this is a viable compromise. It says that local governments which have a home rule charter can run their government unless there is an unreasonable discriminatory practice or a gross inequity which arises out of that operation.

Now we've used words like "unreasonable discrimination" and "gross inequity" throughout this constitution. As I said, in answer to Mr. Smith's question earlier, we didn't quibble when it came to "due process of law" and "equal protection of the law" because what we are saying is a sense of fairness. That's all this amendment does. It says that home rule charter governments can run the show as long as they do it fairly. I think this is a good compromise. It's something that we can get together on and allow home rule. But yet, give some check upon unreasonable home rule to the state legislature. So I ask that you adopt this amendment.

Questions

Mr. Burson Judge, haven't we guaranteed in the constitutional provisions that we adopted under the Bill of Rights section, equal protection of the laws for all the citizens of this state?

Mr. Dennis Yes, sir. We have that language.

Mr. Burson With Mr. Gravel's amendments, haven't we made doubly sure in boiler-plate language that the provisions of the constitution would apply in any home rule unit?

Mr. Dennis Well, you have, except you have this sentence in Section (E) which says that the legislature can't enact any laws changing the structure, organization of local governments. Now I think that needs to be qualified to make it clear that the legislature can, if an inequity or discrimination exists.

Mr. Abraham Judge Dennis, on what basis do you make your assumption that a local governing body would be any more discriminatory than the legislature or any other governing body?

Mr. Dennis I don't. I don't presume that. That is why I think that the word should be qualified to require a gross inequity or an unreasonable discrimination. I think that we should presume that local governments are going to act fairly and that they shouldn't be overruled any time the legislature thinks they are wrong. I think they should be overruled only when the courts find a gross inequity in a local government operation.

If there are not further questions, I ask for your favorable vote on the amendment.

[Amendment rejected: 18-87. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment sent up by Delegate Jenkins.

Page 4, at the end of line 3, page 4 at the end of line 3, add the following:

"In addition, a proposal to adopt, amend or repeal a home rule charter may be made by the governing authority or by petition of at least ten percent of the electors or ten thousand electors, whichever is the lesser, of the governmental subdivision or subdivisions affected thereby."

Explanation

Mr. J. Jackson Mr. Chairman, ladies and gentlemen of the convention, you adopted, I guess about three or four amendments ago, allowing for ten percent or ten thousand of the people, registered voters, to make a proposal to create a charter commission to amend, repeal or modify as such.

Mr. Jenkins' concern is this: that what we did by the adoption of the Bergeron-Jackson amendment is to not offer a proposal to the electorate that will go to the ballot and just offer a proposal to have a charter commission to draw up something. And his concern was that we ought to have the alternative that we ought to have ten percent or ten thousand people to offer a proposition that will be placed on the ballot. And that is the gist of the Jackson amendment as explained to me.

If you read the committee proposal and the way we amended it, it just said ten thousand or ten percent to have a charter commission to do it. Now what if the people want to propose one directly to the ballot? We didn't provide for that kind of mechanism, and this attempts to correct the situation.

Questions

Mr. Kean Mr. Jackson, as I understand it, even though the people of a particular municipality or parish might want to put into their local charter five percent, this would mean you would have to have ten percent.

Mr. J. Jackson No, no, no, Mr....well, that holds true for the last three or four that I've been in Baton Rouge. But the only thing it attempts to do is to allow ten percent or ten thousand, and we recognize that because of the problems that exist with present charters to allow the people to make a direct proposition to be placed on the ballot. We had some reservations on the right that we were putting in, we allowed for a charter commission to do it; his reservation was that he did not...what if the charter commission did not come out with the basic concepts of what the people wanted? Presently, right now, even in the city of Orleans, and I understand it's in Shreveport, ten thousand people can petition the city council to place a thing on the ballot. It doesn't have to go through the process of having a charter commission to review it, to make a determination whether or not it's going on the ballot. As I have talked to Mr. Bergeron, we thought when we introduced our amendment that it was all-inclusive, but evidently there was that error.

Mr. Kean The thing that disturbs me, Mr. Jackson, is in terms of a smaller municipality, we will say, that has a population of five thousand. As I read this, five hundred people could call an amendment, call an election for, or require an election to be held. Don't you think that could lead to a number of successive efforts to amend, at considerable expense, unless you have a provision in here that you couldn't do it more often than a certain length of time?
Mr. Scott: Mr. Chair, I will continue on the topic of Mr. Scott's statement. Mr. Scott made a point about the changes proposed in the amendment, which I would like to address. Mr. Scott's concerns are valid and need to be considered.

Mr. Chair: Mr. Scott, you are correct. The committee has taken note of your concerns. We will continue to review the amendment and make necessary adjustments before finalizing it.

Mr. Scott: I appreciate your attention to detail. However, I believe the proposed changes are significant enough to warrant further discussion.

Mr. Chair: We understand your concerns. The committee will hold a special meeting to address your suggestions and provide a comprehensive response.

Mr. Scott: Thank you. I look forward to the meeting and the opportunity to discuss these important issues further.

Mr. Chair: The meeting is scheduled for next week. We encourage all concerned parties to attend and participate in the discussion. Thank you, Mr. Scott.
51st Days Proceedings—September 21, 1973

without necessarily going through the process of the city council having to print a charter revision commission. So, I don't see... based on objections that I've seen, (1) I say it's by the subdivision affected and (2) that this is not new because I know of one charter in the city of New Orleans that allows it and (3) that it's the basic fundamental proposition of the people to place by petition any issue, whether it's the charter or rather it's some particular issue whether, you know, before the voters. I don't think that there is that serious objection as Mr. Perez says. I ask you for your favorable adoption of this amendment.

[Amendment rejected: 40-6: Motion to reconsider tabled.]

Amendments

Mr. Poynter  Mr. Chairman, Mr. Jenkins had sent up an amendment to (G) as well. Amendments are as follows:

Amendment No. 1. On page 4, line 4, after the word "adopt" and before the word "when" insert the following: "as amended, or repealed"

Amendment No. 2. On page 4, line 5, after the word "the" and before the partial word "pro-" delete the word "charter."

Explanation

Mr. J. Jackson  I've just basically talked... tentatively talked with the chairman of the committee who has no objection. What it attempts to do is to insert the words "amended and repealed." The second amendment as I appreciate it, and I could be wrong, is to delete the word "charter." I'm kind of sorry that the last amendment failed, because I didn't want the convention to think that was a radical change from what's been done, because as I've said before, Mr. Dennery will attest to it, that right is already given, and I just wonder by the failure of the last amendment, do we take anything away from our existing charter? But on this amendment, I understand the committee has no serious objection. I ask for the favorable adoption.

[Amendment adopted without objection.]

Amendment

Mr. Poynter  Amendment No. 1 [by Mr. Arnette]. On page 5, line 6, immediately before the word "unless" delete the following: "including Section 9 of this Article."

[Amendment read.]

Explanation

Mr. Perez  All it does if you read the few words right before that, it has a general reference to the fact that... I'll read the whole section to make it clear. "A local governmental subdivision adopting a home rule charter under this Section shall also enjoy such additional powers and functions as are granted to local governmental subdivisions by other provisions of this constitution." All that the Arnette amendment would do would be to delete including Section 9 of this Article, because it should be taken care of by the general verbiage above that. I see no objection.

[Amendment adopted without objection.]

Amendment

Mr. Poynter  Amendments sent up by delegates Gravel, Abbot, Landry, Martin, Edwards and Mr. [illegible]. On page 5, delete lines 9 through 11, both inclusive, in their entirety and insert in lieu thereof the following: "(G) No home rule charter shall contain any provisions affecting any of the following offices: judge or justice of any district, appellate, or

Supreme Court district attorney; parish or city school board; sheriff, clerk of the district court, coroner, or assessor, which is inconsistent with the constitution or any law now or hereafter enacted."

Explanation

Mr. Gravel  Mr. Chairman, ladies and gentleman of the convention, the provision suggested by the committee to its article on page 5, line 9, in the opinion of some of the delegates, was too restrictive because it dealt only with the question of the powers and functions of certain offices not being adversely affected either by this section or by the constitution. The proposed amendment simply says that no home rule charter shall contain any provisions which are contrary to this constitution or contrary to state law insofar as they purport to affect any district, appellate, or Supreme Court judge, any district attorney, any parish or city school board, any sheriff, clerk of the district court, coroner, or assessor. This proposed amendment is much broader in scope to make it absolutely clear that everything [everything] more or less relating to the judges named, to the offices named, must be provided for either in this constitution or by a law adopted by the legislature. I think it's clear that we are trying to broaden the committee concept. I'll answer any questions.

Questions

Mr. Abraham  Camille, is this language really necessary? Haven't we already provided for these things in the Judiciary Article and in various other articles, for the duties of the judge and so forth?

Mr. Gravel  I think it's absolutely necessary, Mr. Abraham, because of the provisions that we have in here with respect to the home rule charter. The only limitation on the home rule charter, as I understand it, as a consequence of what we have done, is whether or not there's a conflict with the constitution. I do think this is necessary, apparently the committee thought it was necessary to the extent of putting it in. The concept the committee had, I think, is still here. We're just making sure that this language goes beyond just the question of powers and functions. For example, no home rule charter could provide with respect to the compensation that would be paid to these particular offices.

Mr. Abraham  You mean to tell me that if this constitution spells out the duties of a judge, that another piece of paper which is not in the constitution, a home rule charter which is not in the constitution could override a provision of this constitution?

Mr. Gravel  I think the way the language is in this particular section, Mr. Abraham—and I want to answer your question—I think the language of this section as it presently exists clearly could be so construed.

Mr. Stinson  Mr. Gravel, in what way could they possibly have any control over a Supreme Court judge?

Mr. Gravel  I don't know of any way they could have any control over him.

Mr. Stinson  Well, don't you think you have left some out? You don't have the justice of the peace and constables and city court and city marshals and ward marshals; they....

Mr. Gravel  Those were left out clearly because of a request by two members of the committee that they be left out, because they should be dealt with or could be dealt with, or there should be permission to deal with them in a home rule charter. Yes, sir.
Mr. Stinson: Constable and justice of the peace, isn’t it?

Mr. Gravel: Sir.

Mr. Stinson: Constable and justice of the peace, are they going to take care of them, too?

Mr. Gravel: Well, they just aren’t covered by this provision. It might be possible that some provision of a home rule charter, for example a parish home rule charter or a home rule charter within a parish rule, may have to prescribe with respect to a justice of the peace and also with respect to city courts.

Mr. Stinson: Well, maybe we should add, don’t you think, and all citizens of that district?

Mr. Gravel: Well, Mr. Stinson, this is not any laughing matter here, I don’t think, sir. This specifically says that no home rule charter shall have any provision in it with respect to the offices held, contrary to any provision of this constitution, or contrary to any provision of state law. I don’t think that this is a . . . offensive concept.

Mr. Dennis: Mr. Gravel, I wasn’t aware your amendment was coming up. Did you know that Mr. Avant and I had a similar amendment but which is broader in scope and which does the structure, organization, powers and functions of school boards, any court or its clerk, the clerk of the district court, the office of sheriff, coroner, or assessor will not be affected by any provision of a home rule charter?

Mr. Gravel: I’m aware of that provision, Judge Dennis, but I think this proposed amendment is broader in scope than that proposal. We discussed that up here at the huddle among ourselves; some agreed that this proposal was broader and some didn’t agree with it. We all agree that it’s broader in scope, and I am familiar with that amendment.

Mr. Dennis: How can you say yours is broader in scope when it does not . . . it doesn’t exclude courts below the district court level? Are you aware that I think Mr. Avant and my amendment is needed in order to preserve what we adopted in the judiciary article, which was a grant of power to the legislature to organize the courts below the district court level?

Mr. Gravel: Let me misunderstand you, because I didn’t think we were talking about two different scope. I think your amendment is broader in scope with respect to the potential number of officials that might be affected. I agree with that and agree with your observation as to which courts the Amended provision, as it applies to the main officials, that there is more provision in accord with these officials by referring to the statute in the constitution than by referring to the structure.

Mr. Dennis: If you have time, would you accept an amendment to include the other courts? If your amendment is accepted.

Mr. Gravel: I have no objection to it at all, and I don’t want to make this perfectly clear. If you will look at the amendment the way it was originally proposed it, it would have provided that no home rule charter could conflict with any statute or with the constitution. I’m not at any official created by the amendment. The amendment was concerned with the officials, and it specifically here noted that I think was made, and I think perhaps with some justification or at least in a proposal in an amendment that was that the limitation with respect to the officials and judges should be as set forth here.

Mr. Shugrue: Mr. Gravel, I say I have seen already answered but when you mention home rule charters, are you trying to infer that maybe a home rule charter will say nothing that the supreme court says has any effect on this charter or something to that effect?

Mr. Gravel: No, sir.

Mr. Champagn: I mean the home rule charter couldn’t affect a supreme court judge?

Mr. Gravel: Mr. Champagn, let me say this. The two members of the committee suggested that this could be inserted in there for the protection of all judges so that there wouldn’t be any conflict about it. I don’t know how it could affect them. It might affect district judges in the aspect to their compensation. Frankly, it wouldn’t even be necessary to say appellate or supreme court justice.

Mr. Champagn: In other words, I read it as everybody trying to impress us that this home rule charter business was pretty broad, but the only thing it is, it left the governor out, that’s what worries me.

Mr. Gravel: I’m willing to put this in.

Mr. Conroy: Mr. Gravel, I was concerned about the last part of your amendment which is inconsistent with the constitution or any law or hereafter enacted which means applicable for the legislature to increase the powers and functions, say, in the sheriff’s office of local officials that have been established in a home rule charter?

Mr. Gravel: That would mean that if the legislature prescribed the powers, duties and functions of the sheriff, that no provision in any home rule charter could adversely affect that provision. That’s exactly what that would mean, or that’s what it’s intended to do, Mr. Conroy.

Mr. Rayburn: Mr. Gravel, looking like you’re trying to take care of the little guy and all the people. Do you think we might want to add the legislature in there?

Mr. Gravel: Well, it all depends with me. If you want to add it in there. Mr. Conroy wanted to be sure, sir. I think my amendment was written hereafter enacted which means hereafter enacted and the legislative act on the statute. The other provisions that are put in at the request of the legislature.

Mr. Avant: Mr. Gravel and I, I think the amendment, as you have it, most people wouldn’t think it is perfectly clear. I had a problem with the constitution or any law or hereafter enacted which means the legislature’s power, I have no problem with. We could even say a law. I have no problem with.

Mr. Gravel: I have a rule change. I want to propose this amendment, the legislature or hereafter enacted which means the legislature’s power, I have no problem with. We could even say a law. I have no problem with.

Mr. Conroy: Mr. Rayburn, I think we’re in agreement that we would expect the legislature to be included.

Mr. Gravel: The amendment . . .
ferred and that Judge Dennis and I are coauthors of, which uses the language that is in this article about powers and functions, structure and organization and particular distribution and redistribution of powers and functions, because the law is, as interpreted by the court, that pay or personnel is not a matter of powers and functions, it has to do with structure and organization. Therefore, if the local government cannot be affected by legislation dealing with structure and organization or a particular distribution and redistribution of powers and functions, then the legislature cannot pass a statute on the subject.

[Amendment withdrawn.]

Motion

Mr. Perez In order to give us the time to get this matter straightened out. It's quarter or ten minutes to seven in the evening and there is no question about the fact that we do want to straighten this matter out to make it perfectly clear that none of these offices could be included in a charter form of government. I call your attention to the fact it says "for the government of the local governmental subdivisions." But be that as it may, I would like to move at this time we move to the regular order of business, and we will have this matter straightened out by tomorrow morning.

[Motion adopted without objection. Adjournment to 9:00 o'clock a.m., Saturday, September 22, 1973.]
Pledge of Allegiance

Reading and Adoption of the Journal

 unfinished business

SPECIAL ON THIRD READING AND FINAL PASSAGE

Mr. Ayer (for Mr. Summer) moved that the House be called to order. The motion was agreed to.

Mr. Hopper introduced the following bills for passage:

No. 24 for Passage

The Speaker called the attention of the House to the necessity of passing this bill as soon as possible. The bill was read a second time, and ordered to a third reading.

Mr. Johnson, for himself and a committee of five, moved that the House adjourn to meet tomorrow morning at ten o'clock. The motion was carried.
Mr. Avant. Well, Mr. Champagne, the amendment was drawn in this particular fashion so that it would say exactly what I was intending to say, no more and no less, and leave no room for interpretation, and that is the reason that I want to set out specifically and in detail and in the same language that this article has when you refer to these terms, what offices shall not be affected. Those offices are the constitutional offices which we have set up.

Mr. Conino. Delegate Avant, I notice you state in your amendment "personnel."

Mr. Avant. Yes, Delegate Conino; there must be something wrong with the microphone.

Mr. Conino. I said I notice in your amendment, you state in here "any court or its clerks or other personnel." Supposing as in the city of New Orleans that you have personnel which are under the city court, what happens to that personnel? The city of New Orleans has no jurisdiction over that personnel?

Mr. Avant. Well, that personnel is under the jurisdiction of the court now, I would assume, rather than the council.

Mr. Conino. But, supposing they wanted to change that. Do you mean to tell me that the city of New Orleans would have no jurisdiction under its own... of its own employees and its own courts?

Mr. Avant. Well, that's the way I understand it is now, and if you want to change it, that is one of the things that I don't think you should just be able to just jump up and change, unless you want to put city of New Orleans excepted in that thing, which I wouldn't recommend.

Mr. Tobias. Mr. Avant, I'm reading the amendment, and it says, "any court or its clerk or other personnel," and then it continues and says "the clerk of the district court." What's the difference between the two phrases?

Mr. Avant. That language was changed. I had originally drawn it, "any court, its clerk or other personnel." It was changed... I had changed it from what the committee section report said. I put "the clerk of the district court" back in at the request of Mr. Ambroise Landry who says that the clerk of the district court is not the clerk of the court. Now, he's something other than the clerk of the court, that the phrase "the court and its clerk" does not embrace the clerk of the district court. He may have a valid point. I'm not sure, but rather than take the chance on it, that's the reason I put that back in there.

Mr. Tobias. A further question: You state, "the clerk of the district court." Would it not be better to say "the clerk of a district court" since Orleans has two district courts, and when you say "the district court":

Mr. Avant. I wouldn't object to that, Mr. Tobias.

I withdraw the amendment and resubmit it with that technical change, if that's agreeable.

Mr. Avant. That's right, and just bring it back end say, "the clerk of a district court" and rather than "the clerk of the district court."

[Amendment withdrawn and resubmitted with above change.]

Questions

Mr. Casey. Mr. Avant, the question I have is directed also at the words "any court or its clerk," etc. Does this prohibit the formation or adoption, on a plan of government or a home rule charter is adopted, the formation of municipal courts for instance? For instance, in New Orleans we have traffic courts and municipal courts to try violations of city ordinances. Now does this affect those types of courts or county courts which are permissible under other areas of the constitution?

Mr. Avant. Mr. Casey, that was intended to leave the situation with respect to the courts as it was when we adopted the Judiciary Article, and to leave it up to the legislature as to whether those types of courts would be discontinued, continued, changed by operating the judiciary insofar as the number and type of courts that we will have or concerned.

Mr. Casey. Maybe there you're talking about existing courts under the Judiciary Article. I'm talking about new courts under a home rule charter which may be provided for under a plan of government, the home charter, municipal courts...

Mr. Avant. It was the intent that such courts would not be created without legislative approval.

Mr. Casey. Well, does this prohibit a home rule charter in providing for its own courts, municipal courts or traffic courts?

Mr. Avant. I don't think it would prohibit it, no, sir.

Mr. Casey. Well, there seems to be some disagreement on that, Mr. Avant.

Mr. Rayburn. Mr. Avant, would this keep intact where you have a city court with a specific jurisdiction now as to what they can keep that intact as it is, or without this could a home rule charter provide that a city court could have the same jurisdiction as a district court?

Mr. Avant. The home rule charter would not be able to affect a city court. The city court would be affected by the legislature, which was the intent.

Mr. Rayburn. But, without this provision or this language in this particular section, they could... could they not?

Mr. Avant. Yes, sir. I think they could, under a home rule charter.

Further Discussion

Mr. Abraham. Ladies and gentlemen, when I read this paragraph (G) in the proposal of the committee, I asked why did we need this paragraph (G)? Why do we need to make these exceptions. I asked several members of the committee why. They felt that it actually was not necessary. Paragraph (G) was not needed, but it was put in because a few people thought that maybe we ought to have it in, maybe it would be good to have it. Well, I question the need for this type of thing at all because you have seen what has happened now... you made a provision for a few specific exceptions, simply to take care of a few people, then the question arose, well, how about all these other offices that are not included, and so we've seen amendment after amendment to try to cover any new office that anyone may have thought of. Now, the Judiciary Article provides for the courts. It gives constitutional sanction to the courts of limited jurisdiction, and specifically authorizes the legislature to change them, provides for the juvenile courts, the mayor's courts, the sheriff, the clerk, the coroner. Well, if any provision or any article of this constitution has given constitutional sanction to an office, and if we have provided in its home rule charter that it cannot do anything inconsistent with other provisions of this constitution, then why do we need to clutter up our constitution by trying to spell out all these particular offices in here which are already excluded? Now, I didn't go too great a depth into what we enact... in the same way the legislature enacts the laws, that it can enact laws, but it cannot do it where it conflicts with other sections of this constitution. That's taken care of by this section. The constitution is the basic law. Any law that the legislature
Mr. O'Neill: Mr. Abraham, you say that you know all these other things are taken care of. Let me give you a hypothetical example and see if you wouldn't agree that maybe we do need something like this. Take the jurisdiction of a district court. Wouldn't you agree that, unless something is in here, a home rule charter could extend the jurisdiction of a court perhaps?

Mr. Abraham: No, because the constitution fixes that and it provides that the legislature shall handle...it specifically authorizes the legislature to fix these things.

Mr. O'Neill: I disagree with you, Mr. Abraham.

Mr. Abraham: Well, I'm sorry.

Mr. Avant: Mr. Abraham, I heard you make the statement in your presentation there just then. "It said something to this effect, a home rule charter, which is in effect a statute...and would you believe that if you think that, that you are, I respectfully submit, sir, just as wrong as you could be, because a home rule charter under this article as it's written is an effect a constitution?"

Mr. Abraham: I disagree, Mr. Avant, because the home rule charter is not written into the body of the constitution.

Further Discussion

Mr. Perez: Mr. Chairman and ladies and gentlemen of the convention, you have noted from the Paragraph (G) that was contained in the Committee on Local Government, that the Committee on Local Government wanted to make an absolvate body. Clearly that without the authority to adopt a home rule charter would not put in any way affect these constitutional offices, if we have tried, both yesterday afternoon and this morning, to make that as clear as I possibly can and to ask all of those who were interested in coming up with a proposal better than the Committee proposal, and I would support the committee to adopt any such proposal. Mr. gravel will have an extending in later with under terms with the approval of the various sheriffs and we have been delinquent in that regard. We want to hold to the present to hold on the charter and go with the charter and preserve the sheriff and all other officers of the...and provide for the home rule charters, this chapter of the constitution. Therefore, we would suggest that if you have any interest in this amendment, that we adopt the amendment that's here.
Mr. Gravel was going to come up with respect to (G).

Mr. Abraham But, he is supporting it simply to put a stop to the argument in order to try to get the section passed.

Mr. Roy I take it you don’t think, you’re only one of the few who don’t think something’s necessary here?

Mr. Abraham Do what?

Mr. Roy You are one of the few who don’t think there needs to be some explanation of (G) then.

Mr. Abraham It’s very obvious, Mr. Roy, there is a lot of disagreement on this article.

[Previous Question ordered. Amendment rejected: 15-80. Motion to reconsider tabled.]

Amendment

Mr. Poynter The amendments [by Mr. Gravel] that are being passed out need to have several changes with respect to them. They were drawn by way of inserting a Paragraph (H) and have now been changed to delete the present Paragraph (G) and insert a new one, so I should read:

On page 5, strike out lines 9 through 13, both inclusive in their entirety, and insert in lieu thereof, the text that are just getting ready to be passed out."

"(G) No home rule charter or plan of local government shall contain any provision inconsistent with this constitution or any law now or hereafter enacted which (instead of the word "with") affects the offices of district attorney, sheriff, assessor, clerk of the district court, coroner, parish school board or city school board.

Again, as these copies are passed out, I reiterate the amendment was drawn so as to add a Paragraph (H). It has been changed so as to deluge Paragraph (G) and insert a new Paragraph (G). In addition to the instructions, one further change needs to be made. On line 4 of the proposed paragraph which should be (G), the word "with" should be changed to the word "which"; the word "with" should be changed to the word "which".

Explanation

Mr. Gravel Mr. Chairman and ladies and gentlemen of the convention, let me begin by making two very pertinent observations. First of all, this is the amendment that Mr. Perez said was better than the last amendment. Now, he hasn’t told me yet he was going to support it but at least I’m moving in the right direction. The second observation I want to make is this is not just proposed by Delegate Gravel, which, of course, would pose some problems. My co-authors are Mr. Ambrose Landry, Clerk of Court, Sheriff Martin, Sheriff Edwards and Assessor Mire. I think that’s necessary to let you know that this is not a particular or a special amendment that I have but one that is proposed to this convention on behalf of the delegates representing those who are being considered by the amendment. Precisely and clearly I think can be said this amendment is broader and more comprehensive than the recommended committee proposal, but I believe that both the committee and this amendment seek to do the same thing and that is to make it clear in this constitution that with respect to the offices of district attorney, sheriff, assessor, clerk of the district court, coroner, parish school board or city school board, that no provision in any local government charter can conflict with the provisions of this constitution or with any statute relating to those offices. I think this makes it clear, and carries out the intention of the committee and leaves no room for local home rule charters or, rather that these offices are insulated from any provisions of home rule charter, if there is a constitutional provision or a statute relating to the offices. I move the adoption of the amendment.

Mr. Hayes Mr. Gravel, I had amendment that ended with the word "enacted" and I had decided to support the amendment and thought it was a good one, but looked like you have another that ended with "board". Which one are you going with?

Mr. Gravel The one that ends with "board", but I think it...

Mr. Hayes That's the one that I didn't... I decided on the one that ended "enacted" when I thought you had made this agreement, and this was the one that I wanted to support, the one ended in "enacted" when I knew anything, another one was on the desk.

Mr. Gravel Mr. Hayes, let me just say this so you will understand it. I think that the second amendment says exactly the same thing with one difference. The first amendment also included, there was some concern about this, "Any other office created by the constitution." That's the only difference. That has been deleted because it's a number of the deleteries didn't know the ramifications of that particular language. So, except for that language, Mr. Hayes, the import of the two amendments is the same. The effect would be the same.

Mr. Hayes Well, if the effects are the same, then I couldn't see any need for the change, Mr. Gravel. If they are the same. I like the first one.

Mr. Gravel Except for the fact that the first amendment encompassed not only the named offices, but every other office created by the constitution. And that's what was left out... and this particular proposal was restructured, but substitutively that was the only change that was made between the two.

Mr. Hayes Are any or... or any law now or hereinafter enacted, was after "all other laws"... if everything else had been named, which would or could apply generally to other provisions of the constitution, and when you nail it down and in your second one which made a difference to me altogether, which means you changed the amendments in my opinion, Mr. Gravel.

Mr. Gravel I believe if you looked at them carefully now, Mr. Hayes, you'll see that all we've done is to leave out the general... catchall phrase that would have brought in other constitutional offices, besides those specifically named. Other than that it was just a question of style and rearrangement. That's all I intended to do and frankly, sir, I think that's all I did.

Mr. De Bilieux Mr. Gravel, I believe that you would agree that any effort to consolidate any of these offices would affect those offices under this provision, is that correct?

Mr. Gravel Yes, sir. I'm...

Mr. De Bilieux And I believe you had... I believe the same situation exists in the parish of Calcasieu?

Mr. Gravel No. Calcasieu... city parish board is not in existence anymore. In Washington, in Bogalusa, that's the parish of Washington and the city of Bogalusa, the parish of Ouachita, I am of Monroe, the only two city parish school boards that I know of.

[1383]
52nd Days Proceedings—September 22, 1973

Mr. DeBlieux: Now, would this amendment have the effect, you might say, of locking those school boards at the present time into the constitution?

Mr. Gravel: If it is so provided by statute, or by the constitution, it would. If it is so provided by statute or by the constitution, I know definitely by the sixty-parish system in Ouachita parish is indirectly confirmed under the provisions of Article IV, Section 5 of the Louisiana Constitution. In the Homestead Exemption section, I know that in the realm...

Mr. DeBlieux: Now, another thing, suppose the parish of East Baton Rouge, as they presently have here, would want to consolidate their law enforcement activities under one office. It would prevent that from happening, too, wouldn't it?

Mr. Gravel: If there was a statute or provision of the constitution to the contrary, it would. No, I don't think it. Let me retract that. I don't think it would if that, you say that's the present situation?

Mr. DeBlieux: I say, if there was any effort to do that. You see then that, then there is no way they could amend, that we have a home rule charter here in East Baton Rouge parish. Then...

Mr. Gravel: If in the future there was an attempt to do that, it was contrary to statute, then it could not be done under this particular provision.

Mr. DeBlieux: Yes.

Mr. Gravel: That's correct, Senator DeBlieux. If in the future there was an attempt to do that, a statute prohibited it, it couldn't be done.

Mr. Singleton: Mr. Gravel, why do you enumerate these particular offices rather than using general language?

Mr. Gravel: Because all of these are parish offices, or within a parish, except the office of district attorney that in many places is an office co-extensive with the parish. These are the same offices that are set forth in the committee proposal with the exception that I added district attorney, because in some instances in a district that the district attorney operates in is co-extensive with the parish, such as Rapides parish, my own.

Mr. Singleton: Well, aren't you generally aiming for offices that are covered by this constitution?

Mr. Gravel: Not in this section, no sir.

Mr. Singleton: You are not.

Mr. Gravel: What I am doing in this, Mr. Singleton, is to do what I think the committee intended to do, and that is to insulate the named offices from any provision of the home rule charter that was inconsistent with this constitution or by statute.

Mr. Singleton: I notice that you left out the sheriff.

Mr. Gravel: Correct.

Mr. Singleton: Why?

Mr. Gravel: Because I think the courts are amply care of for in the Judicial Article, and that would not be under the provision, not inconsistent with the provisions of this constitution.

Mr. Denney: Mr. Gravel, I don't know whether you heard Mr. Tobias' question to Mr. Avant. Would you agree to change this to a clerk of a district court.

Mr. Gravel: Actually, I have no idea this at all. Let me just say that, you would.

Mr. Denney: Secondly, is there any need to use the language parish or city, why wouldn't you just say school board.

Mr. Gravel: Yes, there is. You said, why would it say school board?

Mr. Denney: Yes. In other words, why wouldn't you have just said school board.

Mr. Gravel: I think Style and Drafting could delete those. I hadn't thought it out but there might be a reason for it. As to this extent, Mr. Denney, I did adopt the language of the committee proposal. I think you're probably correct. Mr. Goldman, I think might have some objection, being from Ouachita and I don't know what it would be, but it is possibly a reason why this was put in that way. I am not going to change it, let me say that.

Mr. Arnette: Mr. Gravel, the way I read that amendment that you got, if the legislature wanted to do, say, away with the assessors or the sheriffs, under their amendment they can do so. If they wanted to severely restrict their powers and duties, they could do that also, couldn't they?

Mr. Gravel: They could do that now, yes, sir. Except as limited by the constitution, absolutely.

Mr. Arnette: So in other words, if the local people wanted a sheriff and the legislature didn't want them to have a sheriff, they could tell the local people, "No, you're not going to have a sheriff, isn't that true?"

Mr. Gravel: I'd like to be able to answer that. "Is it" meet you at my desk, cause I think you're off base.

[Ammendment withdrawn and recommened with repairs.]

Further Discussion

Mr. Perez: Mr. Chairman, ladies and gentlemen of the convention, I just wanted to reiterate some more time that we want to be sure that we're doing what we intend to do, and... it's my opinion that the Gravel amendment does it a little better than the others that have been offered to you before.

Questions

Mr. Willis: Mr. Perez, in all honesty, in the near or saving time, which we will be begging for at the end of this year, object not, as a matter of fact that Section 5 accomplishes everything that all these amendments we have been told are trying to.

Mr. Perez: Yes, and that's why, that's why again I've been trying to save time by getting together with everybody and say, well, let's get together on the amendment and apparently this is the only one which has the most acceptance by most of the delegates, and that's why I'm ready to go with it.

Mr. Chiles: Mr. Perez, I was confused by an answer to a question before asked Mr. Gravel, regarding school boards, and this is Munrow although I don't represent Munrow, Ouachita Parish, I would like to hear with this amendment will it in time school boards now, and if the people wanted to consolidate and take one parish school board, why do they have a board? I think that's what he said.

Mr. Perez: No, sir. All we're talking about now is the adoption of a future home rule charter of government. It would have nothing to do with the present
situation, with the present laws, or anything else. This is just a prohibition against the adoption of a charter or an amendment which would have these effects...it would not have anything to do with the present situation.

Mr. Goldman But, but if we should adopt one up there, that would then...say that, there would be one parish school board, it was a parish charter, would we be able to do that?

Mr. Perez That would be up to the legislature, assuming that they had the constitutional authority to do it.

Mr. Goldman But it would be, the legislature could provide for that to be done...they wouldn't be...they wouldn't be locked out of providing for that?

Mr. Perez No, sir.

Mr. Hayes Mr. Perez, you agreed on the amendment...on Mr. Perez' amendment, do you recall which one? The one ending in...

Mr. Perez It's the latest one that you would have before you...

Mr. Hayes...ending in "board" or "enacted"...You had one ending in "school board" and the other in hereinafter enacted which one did you agree on?

Mr. Perez This one right here.

Mr. Hayes Oh.

Mr. Perez That one.

Mr. Hayes Oh, good.

Mr. Perez The amendment ends in the words "or city school board".

Mr. Hayes Oh, yeah.

Further Discussion

Rev. Alexander Mr. Chairman, and delegates, I attempted to ask Mr. Gravel a few questions and at this time I wish to propose that question to Mr. Gravel, so in his closing remarks, he may answer them. First, in connection with the question raised by Mr. Denney with reference to the City of New Orleans, Orleans parish, he inferred that we have both a criminal and civil district court clerk. In addition, we have a traffic court which has a clerk, a juvenile court, a first city court, and a second city court. How many clerks and I would ask Mr. Gravel to answer those questions. In addition to that, I'm concerned about other parochial offices here. For example, the recorder of mortgages is not mentioned here, the registrar of conveyances is not mentioned here, the constable is not mentioned here and I'm wondering if this amendment is designed to include all of those offices, and if it is so designed, then why not delete all of the language after the word "enacted" and just have a catchall sentence which should read thus: "No home rule charter or plan of local government shall contain any provision inconsistent with this constitution or any law now or hereafter enacted," and that would include everybody. It is my fear that some years in the future just may exclude some of those unmentioned positions - just add that in Orleans parish. I'm sure there's some in some of the larger parishes like Caddo and East Baton Rouge. I'll answer any questions.

[Previous Question ordered.]

Closing

Mr. Gravel Mr. Chairman, I was going to waive the right to close but in order to respond to Rev. Alexander's questions, I don't think that there is anything in this provision which adversely affects any of the offices named by Rev. Alexander, and mainly because of the fact that there has been, and is, an accommodation between the existing Orleans charter and the particular offices that are involved. Now, I think that if in the future there was some provision...there might be some problem with respect to other parts of the constitution. I don't think it's necessary really as much to protect what has been done, as to what may be done in the future by any plan or any home rule charter, and I took upon this particular section as beyond Section 7, where we have solidified and crystallized the existing charters that already have their powers, functions, and structures set forth, and I don't see any problem there at all and I imagine that's the reason why those particular offices were left out by the committee. If they want to come in with something later on to cover those offices we might consider that, but I don't think it has any application here because as I envision this section we're talking in the main about future plans of government and future home rule charters, and that would exclude Orleans. I have no further statement to make.

[Amendment adopted: 92-9. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Denney], on page 5, between lines 13 and 14 add the following paragraph: "(H) The provisions of this section shall not apply to any local governmental subdivision covered by Section 7 of this Article unless its charter permits or unless its charter is repealed."

Explanation

Mr. Denney Mr. Chairman and delegates, this amendment was circulated yesterday in case you're having trouble finding it, and the purpose of it was to establish beyond any doubt the question which was raised by Rev. Alexander and answered by Mr. Gravel, so that the provisions of the seventh Section, which has previously been adopted by the convention. The provisions of this section, Section 8 will not apply to any local governmental subdivision covered by Section 7, unless its charter permits or unless its charter is repealed. The purpose of it is to avoid any conflict between the two sections.

Questions

Mr. Gravel Mr. Denney, is it the purpose of your amendment, in effect to make Section 7 apply to existing charters and local plans of government, and Section 8 would apply to future charters and plans of government?

Mr. Denney That's correct, sir.

Mr. Gravel Thank you.

Mr. Denney ...and I took this up with...I discussed it with Mr. Perez and I don't believe the committee has any objection.

Mr. Gravel Tell Mr. Perez I support this.

[Amendment withdrawn.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Champagne], on page 5, delete lines 9 through 13, (this has just been passed out, just is being passed out I believe) ...both inclusive in their entirety (and you need to insert) and strike out Convention Floor Amendment No. 1 proposed by Delegate Gravel and just adopted, and insert in lieu thereof the following: "(G). No constitutional office or the powers and functions exercised by it shall be affected by the provisions of this section."

Explanation

Mr. Champagne This is merely an attempt to say in concise words what Section (G) would attempt to say but I have no...but I have my reservations that
possibly that someone is left out. Any time you start legislation in the constitution you have the possibility of omitting someone if they're not in the constitution. I seriously question if they should be so protected. I personally believe that Section G could have been omitted, and so voted, but that there are other people that they must have it clear that they're getting this protection, and as proposed I say in very few words the same thing, the other amendment and if there is some possibility that someone be eliminated, then it's taken care of here and says—no constitutional office, not officials, but office—or the powers and functions exercised by which to make it clear that the sheriffs, the assessors, and all of the others are taken care of in very clear language, by general records.

Questions

Mr. Gravel. Mr. Champagne, is there...are all of the offices that are named in the amendment that I proposed, it was adopted by the constitution, the office of assessor?

Mr. Champagne. Mr. Gravel, as many assessors as we have on this convention, there is no question in my mind but that they will be in the constitution, and I would have it no other way, sir.

Mr. Gravel. What about city court, judges or parish court judges? Have they been specifically provided for in this constitution, Mr. Champagne?

Mr. Champagne. If they are not, they should be.

Mr. Gravel. Well, I'm not, sir...not specifically...they're authorized, but not provided for, isn't that correct?

Mr. Champagne. Well, they're certainly authorized, but when you authorize them, I'm sure you provide for them.

Mr. Gravel. Well, I'll just have to disagree with you on that.

Mr. Champagne. Well, I understand.

Further Discussion

Mr. Anzalone. Well, before I talk against your amendment, I want to order two refrigerators, ladys and gentlemen, the...Section 15 of your Judicial Article provides, that "district, parish, magistrate, city, family and juvenile courts, existing at the time of the adoption of this constitution, are retained," so in effect what you are doing is giving constitutional status to your present city courts. Mr. Gravel's amendment says "no constitutional offices...office or the powers and functions exercised by it, shall be affected by the provisions of this section..." and if you have an area wherein you do not have any city courts, you only have district courts, and you wish by charter to set up a city court you would necessarily be affected, and the district court which would be an unconstitutional provision of affecting such district court which in effect means that you would not be able to set up another city court in this state, I believe

Further Discussion

Judge Dennis. Mr. Chairman, fellow delegates I believe they may have been brought out in the qualifications, but I wanted to make it absolutely clear that for the first time does it prevent a local government from setting up courts, because in the Judicial Article we did not create in the constitution any courts below the district court level. The only thing that was discussed was the change of the Judicial Article, were the superior court, the court of appeals, and the district court. Now, we authorized the creation of courts below the district court level, that is, parish courts. We gave the legislature the power to abolish and set up city courts and their courts. I think that any one of the district court level will not be a constitutional court. The specific court, the superior court, to protect constitutional officers from a local government shaming, you might get the courts from the change such as what we would have to do if we came back and give a local government the authority to create a court different from the thing that are going to be treated under the Judicial Article, you're going to get back into an imputation. Briefly, I want to say to Judge Dennis and Judge Tate, if you have any other thing you would support it: that you defeat this particular amendment because it infected with the same ill that I think the legislature proposal has, to some extent, and I think tentatively.

Mr. Gravel. I'd like to ask my question in the amendment that we presently adopted it was in the office of the district attorney and as you recall we know the duties of the district attorney are approved by the people, and the effect of the amendment that we propose to amend the constitution in Article, which in effect that you defeat this particular amendment because it infected with the same ill that I think the legislature proposal has, to some extent, and I think tentatively.

Mr. Gravel. I will be consistent with the chairman, Mr. Chairman, fellow delegates, I believe that as the law is today, an attorney general cannot serve as an attorney general and a district attorney...attorneys and are not...attorneys and are not...attorneys...
52nd Days Proceedings—September 22, 1973

Mr. Gravel Absolutely, Senator.

Mr. De Bieux So... I'm afraid of that.

Mr. Gravel That's correct.

This is just not broad enough in one respect, and I am another respect it's too delimiting because it relates only to the... Section 8. I urge the defeat of this amendment.

[Previous Question Ordered.]

Closing

Mr. Champagne Mr. Chairman, fellow delegates, as I drove to this convention this morning I tried to reason with myself what was going wrong in this convention. As I sat through the deliberations yesterday, not necessarily today, I was reminded of an assertion made by a member of this convention. It ran something like this: "A rose is a rose and smells as sweet by any other name." Those of us who know little about roses, but know much about work, I would suggest: "a spade is a spade and it should be called." As I sit through this convention, I get the impression that this body is attempting to call a spade an instrument with a handle. On one hand we described it so as to imply it resembles a coffee spoon. On the other hand, we describe it so as to imply it is a steam shovel. They are both instruments with a handle. I suggest to men and women and that in the future we attempt to call a spade a spade. I thank you.

[Amendment rejected: 21-76. Motion to reconsider tabled.]

Amendment

Mr. Pennyer Delegates Tate and Dennis send up amendments... Dennis and Tate... amend with order. Amendment No. 1, on page 5, between lines 13 and 14, add the following: "(A) Notwithstanding any provision of this Article to the contrary, the courts and their officers may be established or affected only as provided in Article V of this constitution."

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, this is the amendment I mentioned earlier, and the reason this is offered is as follows: In all, in the Judiciary Article, we vested the judicial power of the state in the Supreme Court, the court of appeal and the district courts and such other courts as are authorized by this constitution. Now, here in the Local Government Article we're authorizing local government subdivisions. Now, the question is, does that include courts or not. The article doesn't say. I'm afraid that the popular conception is that a city court or a parish court is part of the parish or city government rather than the state government. If this is so, then a local government charter could create any number of different kinds of courts other than those that we envisioned in the Judiciary Article, because in that Article we said you can have other courts authorized by this constitution. So, in this amendment I am simply making it clear that the courts and their officers... officers may be established or affected only as provided in Article V of the Judiciary Article. Ladies and gentlemen, I ask you to vote for this because if we don't do this then I think we might be undoing the most significant reform that we arrived at in the Judiciary Article which was to empower the legislature to move toward a more centralized system below the district court level throughout the state. If we don't have this, then the Local Government Article might be interpreted to say that regardless of what the Judiciary Article says, you can have any kind of court you want, whether it's different, inconsistent or what, so I ask for you to adopt this amendment, please.

Further Discussion

Mr. Perez We see no objection to the amendment. Again, we're just trying to make it clear that we're trying to provide a method for local government not to intrude into these offices or other functions of government.

Question

Mr. Schmitt Mr. Perez, do you see any necessity of putting all these various offices listed in this article, and how far should we go? Should we list constables and... you know... to what extent should all of these offices be inside of the constitution?

Mr. Perez Mr. Schmitt, what I'm basically trying to do because of all of the discussion we've had for the last couple of days on this article, I wanted to be abundantly clear. First, as far as I am concerned, the article would not have intended to do that. But in order to satisfy any of the arguments or fears that any of these persons have had with regard to these offices, I'm agreeable to go along with it for that reason.

[Previous Question ordered. Amendment adopted: 96-3. Motion to reconsider tabled.]

Amendments

Mr. Pennyer Before I get started reading, this is the Kelly amendment. There were two Kelly amendments that are rather comprehensive in their nature. This is the one that has Paragraphs (A) through (F) on it. I want to make it clear at this time. The second amendment needs to be changed in such a fashion that it only strikes out through line 1, on page 5. Therefore I would have the effect of not striking out present sections or Paragraphs (F), (G), and (H) just added by the Dennis amendment. Now, I'll read that when I get along to it. It will result in the fact that we'll probably... if the amendment's adopted, we'll need some style and drafting changes because we'd end up with two Paragraphs (F). But the intent of the amendment is not to delete the Sections (F), (G), and (H) just added by way of the Dennis amendment. Those three paragraphs will remain. The intent is, however, to delete all of (A) through (E) of the section, including all amendments to (A) through (E). All right.

Amendment No. 1, on page 3, delete lines 22 through 32, both inclusive in their entirety, and if it's alright with you, Mr. Kelly, I'm going to add, including all floor amendments thereto, and insert in lieu thereof the following:

Section 8. Home Rule Charters.

Section B. Paragraph (A). Except as may be inconsistent with the provisions of this constitution, any local governmental subdivision or combination thereof, except, adopt, amend, or repeal a home rule charter.

(B). A proposal to adopt, amend, or repeal a home rule charter may be made by the governing authority or by petition of at least ten percent of the electors or ten thousand electors, whichever is the lesser, of the governmental subdivision or subdivisions affected thereby, except as otherwise provided in existing home rule charters.

(C). Two or more local governmental subdivisions situated within the boundaries of one parish may avail themselves of the provisions of this section, provided that a majority of the electors in each affected local governmental subdivision who vote in an election held for that purpose, vote in favor thereof.

(D). Such proposals shall be filled with officials having charge of elections and with the governing authority shall be filled with officials having charge of elections and with the governing authority. It shall fully set forth the proposed charter, amendment or other proposals. The governing authority shall provide by ordinance that the proposal shall be submitted to the governmental subdivision or subdivisions not less than sixty days after its passage or petition is made, at a specified election held not less than sixty days nor more than
52nd Days Proceedings—September 22, 1973

Ninety days after the adoption of the ordinance by such charter amendment, any repeal thereof, or any amendment thereof, shall be by vote of the majority of the electors voting in the governmental subdivision or subdivisions affected thereby.

But I was actually going to provide for the remedy of a disappointment or election of a commission to prepare and propose such charter or charters.

The legislature shall not pass any law which modifies or repeals the charter, or the organization of any such local governmental subdivision which operates under a home rule charter except as otherwise provided in this constitution or law.

And if any such modifications are made, on page 4, delete lines 1 through 32, both inclusive in their entirety, and on page 5, delete lines 1 through 32, both inclusive in their entirety, including all amendments thereto.

Again, it only deletes the first line on page 5, thereby having the effect of leaving in the proposal present Paragraphs 11, 16, and newly added (M).

Explanation

Mr. Kelly, Mr. Chairman, ladies and gentlemen of the convention, it seems to me, as has been said up here before, that we've reached an impasse. What I was trying to do here is, it seems to me, to kick over something like a reasonable solution. It may not be the best one... for any one side of this particular argument.

But I think this is an amendment which everyone can live with. To briefly go through the amendment and to try and explain to you what, in effect, it does in relation to the committee proposal, I will simply refer you to Mr. Roemer's amendment yesterday. Section 1A under the amendment is the same statement that was in that particular amendment. Section 1B is the same with the exception of one change, and that is, instead of the 'ten percent or the ten thousand electors,' we have made an exception as otherwise provided in the state charter.

It's my understanding, or in fact, we're just not sure at this particular time as to the percentage that is required in some existing home rule charters. This exception would take care of that. In other words, this constitution would not make a particular percentage onto an existing home rule charter, that is not in their particular charter at this time, and make a significant change as far as the amendment or a repeal of that particular charter.

Section 1C handles the situation set forth in 1B of the proposed amendment, which takes care of a situation where two or more local governmental subdivisions situated in the boundaries of any one parish can avail themselves of this particular provision. It talks with several members of the Lafayette delegation and some other parishes and municipalities that are involved in this, and they feel that that is absolutely necessary in order to take care of a particular problem in their area, that is, nothing more than the means and method of filing and setting up the charter, which was included in Mr. Roemer's amendment yesterday.

Now 1D is the enacting part of the amendment, which says that the legislature shall provide for the removal or election of a commission to prepare and propose such charter or charters.

I think, gets to the problem which possibly has been one of the major problems involved in this legislation, and that is, the phrase, 'as otherwise provided,' which is a matter of discussion, and I think, is probably the gut issue of the home rule amendment. It is not that we are dealing with in how we are going to set up and effect the rule change. I'm more involved with what are some of the powers...so I think it kind of brings this to the particular point.

I think, on the question of the proposals that are under consideration, I think it kind of brings this to the particular point. This is the area that we're dealing with in how we are going to set up and effect the rule change. It certainly is involved with what are some of the powers...so I think it kind of brings this to the particular point.

Just so you can see the proposal that is under consideration, the powers and functions that are dealt with by the amendment.

Mr. Roemer, Mr. Chairman, it has not been my intent to use any particular language in this proposal dealing with the powers of Mr. Kelly.

Mr. Kelly, Mr. Chairman, as I think it's been my intent to use any particular language in this proposal dealing with the powers of Mr. Kelly.

Mr. Kelly, if it's a fact, Mr. Roemer, the purpose of the proposal is to consolidate some of the provisions of the local governmental charters.

Mr. Roemer, Mr. Chairman, it has not been my intent to use any particular language in this proposal dealing with the powers of Mr. Kelly.

Mr. Roemer, Mr. Chairman, I think, it's been my intent to use any particular language in this proposal dealing with the powers of Mr. Kelly.

Mr. Roemer, Mr. Chairman, as I think it's been my intent to use any particular language in this proposal dealing with the powers of Mr. Kelly.

Mr. Roemer, Mr. Chairman, as I think it's been my intent to use any particular language in this proposal dealing with the powers of Mr. Kelly.
Mr. Kelly Well, I think the power is inherent within the home rule, Mr. Lanier. I don't think that we have to spell out in Section (E) the specific powers and duties. I think that what we're talking about, I think it's a normally known concept when we are talking about a home rule charter. It means just that. I agree, I'm no local government expert. But at the same time, that was my basic understanding of the situation.

Ms. Zervigon Mr. Kelly, would you explain again the purpose of your Section (E)? Let me clarify my question, perhaps. If the legislature shall provide the method of appointment and election of commission and how to prepare and propose such a charter or charters, why do you need the preceding three or four paragraphs?

Mr. Kelly Well, I think that by adding or injecting Section (E) in there, we make the home rule charter concept self-executing. In other words, as opposed to the legislature sitting back concerning a commission, as far as the preparation of the charter, etc., it would be a 'may' situation, or it would be left entirely...the legislature wouldn't necessarily have to act. I think we have mandated them to act in this particular case. I think this is safer that procedure, the application, etc., is made for a charter, that the legislature will see, and provide the mechanism, that it will go on and be enacted.

Ms. Zervigon And you don't think that's already taken care of in (A), (B), (C) and (D), the mechanism of how that is going to be taken care of, when you say that you give the names to the people in charge of elections, and you've got to put an ordinance on the ballot and that sort of stuff?

Mr. Kelly Mrs. Zervigon, it may well be taken care of but I didn't want...that was a serious question by some of the local government people and I didn't want to leave that question unanswered. I wanted to make sure that that was in there and that the legislature couldn't sit back and not take any action and prevent someone from obtaining a home rule charter. That's the only reason it's in there. Now whether or not it might be extra verbiage, I don't know.

Ms. Zervigon No, it...the thing that worries me, did you know, is that it may contradict the preceding four paragraphs.

Mr. Kelly Well, I think when we are talking about...I think in Section (D), we are talking about the means when the petition would be filed, etc. In (E), we are talking about the commission which is going to prepare and propose the actual charter itself.

Mr. Toomy Mr. Kelly, in Subsection (C) in regards to two political subdivisions within one parish, your amendment requires the majority vote of each political subdivision. But as you know, it's the last sentence you have in Subsection (D), just says that a majority vote of the electors voting in the governmental subdivision or subdivisions. Or, I understand it, two parishes could adopt the home rule charter by a majority vote of the two parishes together and not each parish?

Mr. Kelly Let me say this, Mr. Toomy, I think the intent, when you are talking about what is concerned with two or more local governmental subdivisions applying for charters, etc., that would be covered by Section (C). You would have to read (C) in connection with Section (D).

Mr. Toomy As I read (C), it says "two or more local governmental subdivisions within the boundaries of the parish is talking the parish. If we have to apply two parishes want to adopt a home rule charter, you only require a total majority vote and not a majority vote of each parish.

Mr. Kelly Well, I think that's...
Mr. Lanier. Right.

Mr. Shwartz. This amendment is a bad amendment. This amendment attempts to do in one fell swoop what we have fought so hard to preserve in the other sections of this provision. The philosophical question before us, I think, is this: Is the one which Judge Tate has brought out--do the local government have to request rights from the state legislature before they are granted? We must not act so as to require the state to be obligated to restrict the state or the local area?

I think that, if the local government was not done by a giving autonomy. They must be given the rights and the reasonable capabilities with inherent in the concept of home rule charter. Therefore, I favor the latter of these philosophical views.

The question of whether local government autonomy or state control should be the more important is one I clearly taught in submission of this amendment, where it states that the legislature may not delegate the power of the state to one or more counties or a city to govern or for the requirement of a constitution to preserve and in the charter?

As often as I tell you, you should not be in the other determination, who is not on any commission and I will determine now that I can show it will determine what section shall be in that particular form of course, right now we are looking upon a legislature of the future. If we do, if as a result, we have a lot of respect for our present legislature. However, I don't think that the answer to the question of whether or not we want in the amendment controlling local government authorities the exclusive control over all revenue taxes and putting the state out of the bidding, to some extent, from local governments, and additional obligations, that the state government has to provide for them to fulfill their functions.

Mr. Shwartz. Well, we are near the end of the time.

Mr. Lanier. I am.
(F), which Mr. Kelly retains, refers to other powers granted in this constitution. Now if we delete the Committee Proposal (E), and retain only the Section (F), or Subsection (F), and Section 9 is deleted, in order to make it clear that the home rule charter established under the provisions of Section 8 would have no authority, in my opinion, and it comes back to the same point that I argued against insofar as Mr. Roemer’s amendment was concerned. I think that if we follow the Kelly amendment, we end up with no authority for the home rule charter, whatever it was emulated or altered, and I think we must understand that significant change that his amendment would make in the committee proposal.

And I think a further and a different answer with respect to the comments that Judge Tate has made. Judge Tate has talked about the possibility of many different ordinances that are being adopted in many different municipalities throughout the state. I think Judge Tate well knows that the municipalities of this state presently enjoy the right to exercise police power, and that under those circumstances, they have enacted police power regulations which may differ, right now, from community to community; may differ as to the penalty which is provided for a violation of those regulations. Under those circumstances, there is no great difference between the rationale with respect to the exercise of the police power now and not the attempt to exercise the police power under the committee proposal. In both instances, as Judge Tate must well know, the test in the final analysis for a decision by the court is the adoption of the ordinance as constitutes reasonable legislation. If it is held to be unreasonable, it is invalid, and I don’t see that we have any great difference in that regard under the situation such as we have it now, and such as would be the case under the committee proposal. I think the fears which Judge Tate refers to are readily dispelled. I think that my concept here which would give to the municipalities the flexibility, to carry out their functions. I urge your defeat of the amendment.

Further Discussion

Mr. Roy

Ladies and gentlemen of the convention, and Mr. Acting Chairman. I rise in support of this particular amendment, although I think it’s the very weakest type of compromise that I see that has ever been offered. About twenty-five years ago I attended Pelican Boy’s State. I’m sure like many of you attended maybe in the past. I remember getting to a position of not being able to be pronounced from the western parts of the state, most the cities, that started running the whole Pelican Boy’s State matter. There was one kid from Shreveport, and Mr. Jack, he’s member of your family—his name was Whitfield Jack. He got up one day, and he destroyed the whole notion that we couldn’t compromise and that everything was fixed and rigged at Pelican Boy’s State. I’m afraid that’s the point that we’ve reached here. I’m sick and tired of people making comments about the governor of the State of Louisiana who has a great interest in this Constitutional Convention. He was the first man with enough guts in fifty-two years to dare to put a bunch of independent delegates in Baton Rouge. I think it’s important to rectify the wrongs that the 1921 Constitution imposed upon the people. For one person to set himself up as somebody in authority to criticize the governor who has the input of everybody in this state, I think is ludicrous, and I’m tired of it. I’m sure he’s talked to many people all over the state about what needs to be done, and to criticize the governor in getting involved in the various rights—think is wrong. Now, what’s wrong with Mr. Kelly’s amendment? Mr. Keen keeps getting up and saying this is like legislation that he is talking about, essentially. Well, I’ll tell you that in the case of LaCombe v. The City of Alexandria, the Supreme Court of Louisiana has ruled that when there is legislation in the particular area of the law, the municipalities may not give or deal anything in that area that is more stringent. That’s the reason that Mr. Kelly has in here the particular provision that, with respect to powers and functions, that the legislature by general law may deal with its municipalities. ‘Cause what Justice Tate said is true. But, let’s put it to you in a better example. Suppose the city of New Orleans under its home rule charter decides that everyone must register all firearms, all firearms, and that when you come into the city of New Orleans, you must bring your car, you must register it. You have one going on a duck hunt somewhere and it’s not registered. Now, what would you do? ‘Cause the fact of the matter is they are already trying to tell you what the cities can do. They keep talking about there’s no general law that allows cities to perform certain functions. I’ll come up here, Mr. Gene Tarver, I’m sure, will be happy to show you Revised Statute 33:401 which deals with the general law called the Lawrason Act. There are one, two, three, four, five, six pages, six pages of powers enumerated and granted to municipalities that they may choose at any time including even the consideration of what to do with privies, and vaults, and incinerators. This is the type of thing we talk about Mr. Fordham’s letter that Mr. Lanier asked about. I’ve got a letter from Jefferson Fordham, he says, they are trying to do this. September 10, 1973; it’s addressed to Gene Tarver, Research Coordinator, who was the Research Coordinator for this particular committee. You know what he says on page 22? He reviewed the committee proposal. He said, ‘What I hope that the committee will consider is the recasting of the draft in simple, brief, broad terms such as may have been contemplated in my model provisions and in the model state constitution.’ His last paragraph says this: ‘I am emboldened to say that the central problem in state constitutional revision generally, is the strengthening of the basic institution of representative government, namely, the State Legislature.’ What are we doing here today, according to this committee amendment? It wants? We are trying our harshest to do away with the State Legislature. My provision that I have up there, my amendment…

Further Discussion

Mr. Abraham

Ladies and gentlemen, when I first received this proposal, the first draft, I read it and studied it. We got the final proposal. I was undecided just what a lot of this would mean, partly this Section 8 especially. I think it’s interesting to go with it, now how far we wanted to go with home rule, what should be the rights of the local people, what should be the authority of the legislature. For the past few days I’ve been delving into this thing, and I’ve sat and I’ve listened to all of the arguments, and I’ve done a lot of soul-searching. It wasn’t until last night that I really became convinced in my own mind of what should be done. The real question here is whether we want home rule that will encompass all the authority needed that’s not denied by the legislature, or whether we only want home rule where it is permitted by the legislature. During the discussion of the Legislative Article, we said what we were doing is giving the people power to do what they want to do in the very areas of rights they think is wrong. Now, what’s wrong with Mr. Kelly’s amendment? Mr. Keen keeps getting up and saying this is like legislation that he is talking about, essentially. Well, I’ll tell you that in the case of LaCombe v. The City of Alexandria, the Supreme Court of Louisiana has ruled that when there is legislation in the particular area of the law, the municipalities may not give or deal anything in that area that is more stringent. That's
Question

Mr. Bollinger: Mack, did you know that I agree with you wholeheartedly?

Mr. Abraham: Thank you.

[Silent discussion]

Further Discussion

Mr. Nunz: Mr. Acting Chairman and fellow delegates, besides the fact that this amendment, in my opinion, is essentially the same as all the other amendments that deal with this subject that we've defeated for the past three days, and besides the fact that we've been on this provision three days, going over and over it, I want to bring out one thing that you should think of. We've defeated a provision that we've been working on and let's bring it to a close. I think that this important subject matter, and I think that it could have your attention. This amendment is the worst of all the amendments. The proposal, as far as I'm concerned, is the worst amendment and I hope that you would vote with me and follow the will of the people that we could not follow the will of the people to the extent that the proposal, as far as I'm concerned, is the worst amendment. I hope that you would vote with me and follow the will of the people.
ly with the petition which is filed for a charter. Therein lies a fatal error with respect to this particular provision. But, going back again and remembering that it will... it is... will not only apply or cannot only apply to one local governmental subdivision, but to contiguous subdivisions, local governmental subdivisions, what this means is that ten thousand or ten percent of the voters of those two subdivisions, the petition to consolidate through a home rule charter, the one large parish with one small parish. If you will look down at the end of Section (1), it says "Any such charter, amendment," etc., "shall become effective upon the approval of a majority of the electors voting in the governmental subdivision or subdivisions affected thereby." Clearly giving the opportunity for the big guy to gobble up and eat up the little fellow. I do not believe that that is what the people of this state want, and I do not believe that that is what the delegates to this convention want. I strongly suggest to you that this is the worst of all of the amendments that have been submitted. I'll yield to questions.

Questions

Mr. Vick  Mr. Perez, did your committee authorize the distribution of this letter from Jefferson B. Fordham of the University of Utah?

Mr. Perez  No, sir. But, I understand it was distributed by Mr. Landier.

Mr. Vick  All right. The committee then does not endorse the comments made by...

Mr. Perez  I really don't know exactly what's in the letter. I don't recall having read it or not read it recently.

Mr. Vick  Did he appear before your committee?

Mr. Perez  Yes.

Mr. Vick  What I'm concerned with, Mr. Perez, is his suggestion that the ideal article should be brief and concise. As he says, and I quote, "What I hope is that the committee will consider in the recasting of the draft in simple, brief, broad terms such as has been attempted in my model provisions in the model state constitution." Do you believe that has been done in this article?

Mr. Perez  Yes, sir. I think that we have done in this article what must be done in order to avoid a multiplicity of future amendments to the constitution just as we have had over the last many years, to authorize parishes or municipalities to have constitutional charter forms of government. If we do not adopt a provision like this, I predict to you without fear of contradiction that we will have constitutional amendments after constitutional amendment in an attempt by these local governmental areas to have constitutional charter forms of government.

Mr. Flory  Mr. Perez, I understood you to say that under the amendment there was a possibility of two parishes merging under a home rule charter under this amendment. Is that correct?

Mr. Perez  Yes.

Mr. Flory  Do you recall the language adopted by this convention in Section 1 that required if that happened, it takes a two-thirds vote of the electors in each parish to do that, you recall that?

Mr. Perez  Yes. I recall it very well and there are two very effective ways it could be done. One provides that the legislature may consolidate, and it requires two-thirds vote of the people. This is one other method whereby it can be done; they are both exclusive one from the other.

Further Discussion

Mr. Willis  Mr. Chairman and fellow delegates, if we are to avoid deception, we must avoid deceiving or being deceived. The essence of deception may be gleamed from equivocations. Attaching a peculiar significance to.args, which are no more than the words we have, and doing so knowingly, is sinful. Doing it sincerely is ignorance. Knowingly deceiving is a form of tyranny over the minds of men. No conscience is lower than that which comforts itself for having deceived. A lie which is half a truth is the worst. Whoever utters those to you what is not true shall find no refuge in the society of those in prosperity. In need or adversity, you'll find yourself alone, if you depend on their company for support. A friend to everybody and every cause is the friend to no one and no one's enemy. Loyalty to that type of friend results in self reproach and reproach from others also and a constant torment. A constitution is not an act of government. It is an act establishing government by its people. Our target is very obscure if we lose sight of that distinction between a law and a constitution. Local government should have sufficient powers, not only to discharge its duties, but also to protect itself, and to protect its people within the sphere delineated by that power. To direct local government to govern and serve, and to deny it the power to do so or to protect itself and its people within its proper sphere, is to extinguish water from a fire. The only history learned in recorded history is about four thousand years ago with the help of God to the leader of the people journeying to the Promised Land. To tell me that one man un须nourished at noon and during that hour we can better contain and outline local government, or that on the spur of the moment within another hour another may do likewise and better than the committee which laid this proposal before us, is to offend my credibility--when I think of the qualities, the qualifications and the sincerity of the members on that committee, Ladies and gentlemen, time marches on, and that is one thing that never returns. We will be begging for time in December. This amendment beleagures all that which others did in substance or procedure. The results of which has compelled us to exercise in futility and waste the most important thing to us--time. If I could inoffensively move the previous question on the entire subject matter, I would do so. What I can do with impunity, however, is to solicit your rejection of this amendment, and all others which seek to destroy and gut home rule.

Questions

Mr. Roy  Mr. Willis, I really enjoyed your comment about the deceit. I was just going to ask you that doesn't the first sentence of this amendment say "except as may be inconsistent with provisions of the local government may do such and such?" Doesn't it say that?

Mr. Willis  I give you an "A" in reading and understanding what you read.

Mr. Roy  Isn't that pretty clear that that's what it says?

Mr. Willis  That's a question that answers itself, Mr. Roy. Why don't you give me a question?

Further Discussion

Mr. Arnette  Ladies and gentlemen, I'm not going to say one thing one way or the other about this particular amendment because I think everybody knows my feelings on it, but I just want to get the issue before you very clearly. The issue is do you want your local government to go to the legislature any time they want to pass a law? It's very, very simple; or do you want your local government to do anything not denied to them, which is the way it is in a model state constitution, which is the way many people think it should be; but just get the issue before you very clearly. If you want local home rule, you would vote against Mr. Kelly's
amendment. If you don't want home rule, and you want to go to the legislature anytime you want to pass any laws in your local area, then vote for Mr. Kelly's amendment. It's very simple. If there are no other speakers, I would like to move the previous question.

Chairman Henry in the Chair

[Previous question ordered. Amendment rejected: 33-75. Motion to reconsider tabled.]

[Previous question ordered on the entire subject matter. Section passed: 65-37. Motion to revert to other orders adopted: 70-30. Motion to adjourn to 1:00 p.m., Tuesday, September 25, 1973. Substitute Motion to adjourn to 9:00 a.m., Tuesday, September 24, 1973. Motion adopted: 65-34. Adjournment set for 9 a.m. on the next day.]

[1394]
53rd Days Proceedings—September 25, 1973

Tuesday, September 25, 1973

ROLL CALL

[68 delegates present and a quorum.]

PRAYER

Mr. Heine Our dear heavenly Father, we thank Thee for this beautiful day and for the blessings that Thou hast given us. Be with us now as we deliberate on the business of the convention and that the decisions that are made here will be for the best interest of the majority of the people of our state. Lead, guide and direct us now in everything that we do, and forgive us of our many sins. For Christ's sake, Amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Mr. Poynter Committee Proposal No. 17, introduced by Delegate Perez on behalf of the Committee on Local and Parochial Government and other delegates, members of that committee.

A proposal making general provisions for local and parochial government, levee districts and ports, financing thereof, and necessary provisions with respect thereto.

The status of Committee Proposal No. 17 is that the convention has adopted as amended Sections 1, 2, 17, and 6 through 8 of the proposal, has voted to delete Sections 2 through 4. Presently, the next section that should be under consideration would be Section 9 dealing with powers of other local governmental subdivisions.

Reading of the Section

Mr. Poynter Section 9. Powers of Other Local Governmental Subdivisions

Section 9. (A) Any other local governmental subdivision may exercise...

[Motion to waive reading of the Section adopted without objection.]

Explanan

Mr. Lanier Mr. Chairman and fellow delegates, Section 9 of the proposal of the Committee on Local and Parochial Government is the heart of the local government provision. This deals with the powers and functions of other local governmental subdivisions other than those which were considered in Section 7 and 8. Now in order to properly evaluate this concept of the balance of powers between our state government and our local government in making a determination of how local government and state government can best serve our people, we should be considerate of certain goals and certain ideas of what we want to accomplish.

In this regard, we are indeed very fortunate that an extensive study was done in the State of Louisiana called Goals for Louisiana. It was chaired by Senator Michael O'Keefe of New Orleans. At the beginning, in the preface of Goals, we find the following language and I want to quote it to you because I think it is significant in doing the work that we are here to do today. Senator O'Keefe said as follows, "Goals imply our dreams for the future, but the future has arrived. It is now. Some aspects are welcome; we air-condition our homes against the summer heat, view events around the world via satellite television and use computers to tackle problems with lightning speed. Other aspects are alarming; our cities are festering with slums; we are told the air we breathe is poisonous, and social discontent is increasing itself in violence. The future is a mixed blessing. Blinking an eye or turning a deaf ear will not make the problems go away. There is no substitute for courage, imagina-

53rd Days Proceedings—September 25, 1973

tional and determination." In our treatment of the local government provision, we have tried, as best we are able, to meet the problems of today, the balance of interest between the state and local government with courage, imagination and determination. To go on into the study that was made by Goals with reference to local government, I have copied observations and I would like to point them out to you so that you will be aware of what this group... this is a federally financed program, it was established by the Louisiana State Legislature in conjunction with the Council on Governmental Reorganization. With reference to local government they say this and I'm not going to make just those parts that deal with the powers and functions of local government: "As the population of our state increases and becomes increasingly concentrated in urban areas, a fresh view of the role of local government is required. It is the committee's view that this fresh view calls for the strengthening of the capacity of the people to govern themselves at the local level." In this regard they say this, "Self-executing constitutional provisions are urged which would enable the citizens of each community to establish their own local government charters." Well, fellow delegates, we have taken care of that in Section 8 that we passed last Sessions.

The other thing that they recommended was the following: "Similarly, such provisions are urged as will allocate to local governments all those powers desired by the citizens which they deem necessary to enable their local governments to meet and resolve their local problems. In this regard, with reference to this Committee on Local Government, we are very pleased, through the Committee on Local Government, we have the following under Section VI: "Local governments should be given genuine home rule status, including the responsibility, power and authority adequate to meet the increasing demands of modern society."

Number 1. Local government should have the right to initiate, adopt and amend the form of their government. Self-executing constitutional provisions to accomplish this purpose should be adopted.

Number 2. Local governments should be constitutionally vested with all powers necessary to respond to local problems. Self-executing constitutional provisions to accomplish this purpose should be adopted. Any such constitutional provision should include admission to the judiciary calling for a liberal construction of home rule powers over local affairs.

Now, if you agree with the conclusions of the Goals Committee, the next job at hand for us is to decide how best we are going to accomplish this. In this regard, basically we have two alternatives, these are two contrasting political theories. The first is called Dillon's Rule. This is a political theory of local government that has been prominent in the United States with decreasing importance in recent years since 1868. Dillon's Rule basically says that "local units of government only have such powers as are specifically granted to them." If the power is not specifically granted, then the local government cannot act within that sphere. Now the problem with Dillon's Rule is that any authority you would need in say, 1900, to settle a local problem might not be the problem you would need in 1925 or 1950. So you have to go back and back to the legislature to get additional authority to settle your problems on the local level.

The other approach to solving local problems is what's called the Residual Grant of Authority, and this is in conjunction with the so called Fordham Plan, although the Fordham Plan actually entails a little bit more than the Residual Grant of Authority. The concept of the Residual Grant of Authority is that the local units of government can exercise any power and function necessary and adjunct to the management of its local governmental functions, which means that it is given state-wide power. It is given power for the management of its affairs, and it has this power unless limited by the constitution, by federal law, or by its own charter. This way, if some-

[1395]
It would be logical to suppose that the creation of a local unit of government would have the authority to deal with the situation unless prohibited by state law or its charter or the constitution.

However, this is an oversimplification of the two alternatives that are available to you. There are various modifications of the Dillon's Rule or the Louisiana Municipal League Rule. For example, under the Dillon's Rule, you could have a constitutional grant of power to a local unit. If you have this, it could be done by a straight constitutional grant. However, most of the powers given to a local unit are under the Dillon's Rule. The Dillon's Rule grants that power to any the local governmental unit which is primarily what we are operating under today in Louisiana. You have certain constitutional grants with reference to the powers, the home rule charters which are presently in the constitution, the other authorities are by statute.

Now with reference to the Residual Grant of Authority, this could be done by a direct constitutional grant. However, most of the authorities in the field of local government structure such that the local governmental unit given absolute right and control to control the powers and functions of these local governmental units. That's why the language is used, not died in this constitution by general law or by its charter.

As you will note, in reading Section 9, we have adopted the Individual Grant of Authority approach. Section 9 is intended to apply to those other local governmental subdivisions who are not counted. In Section 8 and Section 7, they are granted the power to exercise any power and perform any function necessary, requisite or proper for the management of its affairs not denied by its charter, by this constitution, or by general law. They have there a certain number of powers which this does not limit the grant, but just enumerates certain powers that would be included within the grant.

Section 8 of the proposal provides that these powers can be exercised concurrently with the state. A classic example of that would be the criminal law. You would have a parish or a municipal ordinance prescribing against a type of criminal conduct, as well as a state law, and giving authority to the legislature to exercise this power. In that sense.

In Section C, we provide that this should not be construed to affect parish or city school boards, the offices of sheriff, clerk of a district court, recorder of a parish, and so on. That might suggest that we may want to consider doctoring this up a little bit to make it with the identical language that we used in Section 8.

This approach to solving the local government authority question has been recommended here in Louisiana by the Louisiana Constitutional Revision Commission. The Chairman of the Committee on Local Government was Mr. Roy M. Fink. There has been a very excellent discourse on this topic. It can be found in the books that were sent to you on focus on ULP by Professor Lewis H. Newman of LSU. This approach is recommended by the U.S. Advisory Commission on Intergovernmental Relations in its paper entitled "Judicial Power of Local Government," and specifically I'd like to quote that report was a 166 report where it says, "Turning to governmental structure and function, the commission had recommendations in the area of delegating residual power to local governments. In order to prevent further judicial erosion of the powers of local governments, it suggests that as a residual grant to selected units of local government functional power not expressly reserved, preempted or restricted by the legislature." This was recommended by the model state constitution which has recommended the residual grant of authority somewhat similar to that which we have adopted. We have not only people about the state government and this amendment has been recommended to us by the Louisiana Municipal Association and the Louisiana Police Association. As best as my research can show, this type of approach, in one form or another, has been adopted in several states.

Now in reading Section 9 you must read in conjunction with Section 11 which shows what consti-
tutional powers are intended under the rule. We have, for example, is that of local governmental subdivision not incur a debt payable from ad valorem taxes raising money for construction purposes. If you use for the punishment of a felony, and it cannot enact a private of civil ordinance governing relationships. Now by civil relationships it is intended to mean the civil relationship of you, Mr. Roper's civil laws, including the various laws in the state governing civil relations.

Section 9 also has to be read in conjunction with the limitations placed on local government finance in Sections 3 through 43.

In closing, fellow delegates, I'd like to point out to you that what we are talking about here is the right of the people on the local level to efficiently handle their own affairs. After considering all of the alternatives available to us, the commit-
tee felt that this system, this combination of Section 8 and Section 9 together, was the most efficient way to accomplish this. This begins the best of both worlds. It takes advantage of the flexibility of necessary in a highly mobile society where we have mass transportation and mass media and everchanging concepts, with the idea of legisla
tive supervision of the charter or for an overall game plan on the state level.

Under this proposal, the legislature retains the absolute right under this proposal. This legislature has the absolute right to regulate the powers and functions of a local unit. Theoretically, under this approach, and this is one of the criticisms of it, the legislature could pass a law saying that the local government has no powers and functions except as hereinafter specifically provided. We felt that the legislature would probably not do that. We felt that trust should be placed in the legislature for the representative and enactment. We might have two or three or one representative or one senator. And that's not going to change very much in the future. But in order to do a proper job, he votes on a lot more than that and he can have a much bigger say so now, I feel that this is a prudent and wise approach to this problem and we offer it to you for your consideration.

At this time, Mr. Chairman, I would like to welcome any questions on this topic.

Vice Chairman Casey in the Chair.

Mr. Roy Lanter. Mr. Chairman, I am very much concerned about the language of this approach and want to make a couple of suggestions about it.

When you enumerate local units, in Section 9 down to line 12, if we give you all the powers in the first seven lines, you go on to enumerate those powers unless it may cause some confusion in what the legislature may never later with.

Mr. Lanter. It is not intended, and it not only in the language, it is not intended that this would be an exclusive grant to the local units that have this in their charters, but also that it would establish general lawmaking power. This would merely an inclusive enueration put in there. I might say that the State of Illinois did the same thing in 1947 in the language in there to show that we are including these things.

My own personal opinion is Mr. Roy, that these
53rd Days Proceedings—September 25, 1973

things are included in the general grant of authority and that this list is merely illustrative. So you'd like for me to state for the record what the intent of the committee was, it was not to grant uncontrollable powers to local governmental units. It was merely to illustrate certain powers that would be included in the general grant.

Mr. Roy I can appreciate that. But you know the courts would maybe decide in the future this thing, and the other problem that worries me is that on line 26, you do have "and except as otherwise provided in the Illinois Constitution," that is revised only to Number 7, which, if I were arguing, I would say that obviously the Constitutional Convention meant that only Number 7 would be restricted by that language and not the whole number of one, two, three, four, five, six, seven, and certainly that the legislature could not in any manner tamper with or modify those seven provisions.

Mr. Lanier When we first drew this thing up, I think we had had language something like "except as provided in the Illinois Constitution," or something like that because we do have provisions in our finance section that deals with this problem. My understanding of that language is that we put in that word would be sort of a lead-in to the limitations that appear in the finance section.

Mr. Roy All right. One last question because I know other people have questions. On line 32, you exempt, by general law, only those powers which the general law specifically limits, and I'm very much concerned that from a broad interpretation of the Illinois Constitution that if you have powers in our state legislature to deal with every type or category of conduct of all municipalities or local governments, that lawyers would get in fights as to whether it was specifically stated enough to deny or negate a particular course of action by some local subdivision. I'm wondering why you need to say "specifically limit?"

Mr. Lanier The problem with this is a little different that what you have posed, but I'd like to discuss both if it'd be alright because there is a little problem here.

You have the problem here, the concurrent exercise and also the preemption. Language similar to this is found in the Illinois Constitution. If you will note, the language says, "any local government and any exercise of any power or any function concurrently with the state pertaining to its government and affairs." Now, of course, this is the point, that these powers have to be pertaining in that same manner and that language is found in a little bit different status up above. On line 18 it says "for the management of its affairs, necessary, requisite, or proper for the management of its affairs."

Mr. Roy But it goes further.

Mr. Lanier This means that with reference to these powers that are necessary for its affairs, or for the management of its affairs, that it would...we've got to decide is the old issue, how do you know what is a necessary power or a proper power? In the Illinois Constitution it is silent or when it is actively silent. We wanted to guard against that problem by specifically when the exercise would be concurrent and when there would be a preemption, cause you know how much litigation the preemption problem has caused in the Federal Jurisprudence.

Personal Privilege

Mr. Jenkins Mr. Acting Chairman and delegates,... I had occasion this weekend to be in Washington, D.C., and I attended a conference of state legislators and congressmen and something occurred that I thought would be appropriate to relate to you at this point in our discussion, because it pertains to local government, not by way of debate but it's by way of something I want to point out. I met a state representative from Illinois, he's a Republican representing the suburbs of Chicago. His name is Donald Trotten. I said, "You know many of us have looked at the Illinois Constitution and read it with some interest." Well, he had to tell me when I said we had looked at the Illinois Constitution he said, "Well, let me tell you this. When you get to local government in that constitution, you'd better be careful about what you do about home rule." He said, "The one provision that has caused more problems in the Illinois Constitution and I did for two years is the reversion of their provision on local government." Here's the problem that has been raised," he said. "So virtually every bill that comes before the state legislature, there is a legal question raised as to whether or not that bill is going to have any effect, any validity, anywhere in the state." The question is raised whether or not it has been preempted by the local governments, whether or not, in effect, sovereignty of the State of Illinois has been alienated to the local governments. The legislature has given up something it can't even legislate in a given area. And then he started the horror stories about what has happened in counties throughout the State of Illinois. For example, for example, in one county they used this wonderful power to attempt to license physicians, and operate concurrently, of course, with the state under this provision, just an unworkable situation was trying to set higher standards, different standards. Another one was trying to set....to license real estate brokers, already licensed by the state. They were trying to license real estate brokers. In that case, they went on and on...talked about people waking up in the morning and finding out that they had had some new assessment placed on them because of local improvements, without any knowledge or vote on their part. The point that he raised time and time again was that it wasn't working in Illinois...this wonderful plan of home rule, for one reason because it's not really home rule at all.

No given subdivision or its people is given the right to govern themselves in their own way. Rather, the only thing that they are given the authority to do is to enact more and more controls and regulations. They can't take off anything put on them by the legislature, by congress, they can only put on more controls, more interference with the individual lives of their citizens. So I just want to point out at this particular time and without any further wonderful scheme, that has worked...that was put into effect in the State of Illinois, is considered, at least by some of their legislators, not to be working. And I want to bring to the attention of this committee more about it before we try to put it into our basic document in this state.

I can foresee a situation where business and labor, in particular, are facing an unmanageable political situation. Right now they know they can go to the legislature to try to get redress, to try to correct injustice...Thank you.

Amendments

Mr. Pyontek Amendment No. 1 [by Mr. Conroy]. On page 5, delete lines 17 through 28, both inclusive and insert in lieu thereof the following: "shall have such powers as shall be provided by this constitution or by law."

Amendment No. 2. On page 5, delete lines 29 through 32, both inclusive and on page 6, delete line 1 through 4.

Amendment No. 3. On page 6, delete lines 5 through 8, both inclusive in their entirety.

Explanation

Mr. Conroy As suggested by the chairman in its process, this is merely an indication of the proposal of the Committee on Local and Parochial Government. But, the proposal of the committee radically changes the system of local government that we have in Illinois today. The section 9 of the committee proposal, as proposed, would delegate all residual powers to local government whether they

[1897]
ever asked for it or not, whether they then feel they are prepared for it or not. The proposed amendment, as I have submitted, would restrict non-home rule charters local governments to the exercise of powers granted by the legislature, else they go back to the status quo. In Section 1, I have said that those that have home rule charters, what they've got. In Section 2, as I have said, those that want home rule charters can get them, they change their constitutions and will carry with the all of the powers that the people there want. Section 9 as proposed by the committee says that local governments have all powers, where they started, they keep local control, and have those powers or not. I think it is fine what we have done so far, and that is to say that the governmental subdivision shall have such powers as shall be provided by this constitution or by law. Then, if they wanted to adopt a charter, as I said before, they go back to Section 8 and adopt their charter. If they have a charter, they go under Section 7, Sections B and C of...or Paragraphs B and C of this Section 9, I separately delete by no great quarrel with Paragraphs B and C. My only point is that once Amendment No. 1 is adopted, I think Paragraphs B and C are totally unnecessary. For that reason, it is proposed to delete them by separate amendments, 2 and 3. I yield to any questions.

Questions

Mr. Roy Mr. Conroy, I want to compliment you on your presentation, first of all. My question is: Can't we just deal with Section 9, as they have attempted to do, we should have made it part of Section 8 and have the same thing? Is that right?

Mr. Conroy Well, that's the effect of it is to say that whether you've adopted a charter or not, you have a home rule charter but whether defining that what that charter is or what the limitations are that normally a group would want to put in a home rule charter if it is locally adopted?

Mr. Roy Now, I am concerned with Section 8 for this reason. The way I read (B), it means that we have to deal with any police jury, any political subdivision would have every power concurrently with the legislature and the only way the legislature would ultimately deny. Certain powers was to be in some way, way, they would go down as considerable. A general law would specifically limit this particular political subdivision to certain restrictions. That's what true?

Mr. Conroy I don't know I think in the explanation didn't enlighten me much on such a paragraph (B) when the committee met. I don't know what underlines it. I suggested deleting it. I think it would be better deleted, that why I suggested it. Moreover I thought that

Mr. Roy My question to you, is we're going to be dealing with special and general legislation and if the general legislation would cover our, and that's what would you find a way I have a general law that deals with a specific limitation of power to a general, public question. My amendment and not have that general law subject to override with some other statute?

Mr. Conroy I can't believe, Mr. Roy, that the Committee as a whole would create an unwieldy monstrosity for the legislature in our state?

Mr. Keeper Mr. Conroy, if we adopt your amendments, as a matter of fact, we would simply delete Section 9, rule we do.

Mr. Conroy I think that that was the key to some effect, Mr. keeper, I think the key to some effect in there would be to have; I think it's a little clearer that that's proposed in Section 8, that three amendments that would give the subject of local government, and to put it in proper perspective with B and so that this but not just deleted at the time. I think for a better reading and more sensible representation is what will still be desirable in the representation.

Mr. Penn But, despite that desirable, the net effect of it would be to bring in of government substantially back to what it is right now with respect to delegation of powers, would it be?

Mr. Conroy No, I disagree with that because I think we gave total government a great deal of power with Section 8, that three amendments to have it in whenever they wish I think that that's a very significant thing we've done there, I think a desirable thing that we've done. It is the start where they started from any where.

Mr. Keep But, without going into the matter here, under Section 8, it would be substantially in the same position that they are. If they agreement was adopted tonight.

Mr. Conroy That's correct. The people would be in the same position, with the people having an option to adopt a home rule charter if they wish.

Chairman Hendry in the Chair

Mr. Lanier Mr. Conroy, are you aware that the people the places the people like to operate under a very similar system?

Mr. Kenna I can't believe that's so, and would think that it wouldn't be any more difficult, but I'm afraid to have to draw up a charter which would be your power of the police jury and into every city, and another which would then take them under Section 9?

Mr. Lanier But, if they went the house move over and deal with an amendment to which neither their offense would be found would they have the option that would then take them under Section 8.

Mr. Kenna Because we've changed the whole of the law they may be a police jury, C. and we're dealing with it and I want what we did, and I want the ultimate police jury to be able to change it and the people to as much as they want, but I don't want what we did, take the place of any other home rule powers in the state.

Mr. Lanier Mr. Conroy, do you propose that they changes that would then take them under Section 8?

Mr. Kenna It's really Mr. Conroy, that's exactly what I thought, it's just to have the People to move that choice as to whether they want their own kind

[1398]
in their local government because under Section 8, they can invest those sort of powers in local government, and the power is ultimately with the people. I think Section 9, as proposed by the committee, takes away the power of the people. Instead it invests it in local government, whether the people want it there or not.

Mr. Lanier Mr. Conroy, let me ask you this...
Vice Chairman Casey in the Chair Further Discussion

Mrs. Zervigon Mr. Vice Chairman and delegates, I rise in opposition to the Conroy amendments for two reasons. I feel the first place we have made a very clear distinction between home rule units of government and any other unit of local government. That is, if you write up a home rule charter, the legislature may tell you what powers and functions you may exercise, but not how to exercise them. In other words, it's like a football game. The rules are drawn out: how many players on each side and what's against the rules and what's not. But, within those rules, you set your strategy in order to try and win the game—that's home rule. For other units of local government, the legislature could tell you what to do and also how to do it, if they were of a mind to. But the reason we drew it so that they had any powers and functions defined them is because we felt the flexibility of it. The legislature could, with the enormous power that's bestowed upon them, take all powers and functions away from local government, if they so desired. But, as Delegate Triche made the point earlier on in this convention, it's become time for the people of Louisiana to grow up, trust their legislature, and try to do for themselves, as far as their local government and their local governmental officials. So, the Local Government Committee has put in the legislature the power to deny any power or any function to local government, if the legislature does not deny those powers and functions to the local government, the local government may exercise them. This is to stem the flood of bills that reach the legislature every year saying, 'This parish may regulate fireworks. This parish may regulate livestock. This parish may regulate so and so,' and have a crazy patchwork of statutes that apply to different parishes in different ways. Now, unless a power being abused, the legislature would not have to act, and the legislature could turn its full sixty days of floor time to the more pressing problems of statewide issues. I urge your support of the committee proposal and the defeat of the Conroy amendment.

Questions

Mr. Goldman But, couldn't a local elected body do something, pass some law that the people didn't want, and the legislature is not in session, it would be in effect until the next legislature gets in session; they're not being heard. They can complain to the legislature for them to say 'No, you can't do this'?

Mrs. Zervigon Well, Mr. Goldman, your argument assumes, or your question assumes that elected local governmental officials who live in the area, don't understand the area, and are essentially less responsive to the people who elected them than the legislature at large, the great majority of whom do not live in the area that you are talking about.

Mr. Goldman It's been known to be done, and I know I can give you some examples of some...

Mrs. Zervigon It's been known to be done by any elected body you can name. All virtue does not reside in the legislature nor does it all reside at local government. This is a counterbalancing effect.

Further Discussion

Mr. Avant Mr. Acting Chairman and fellow delegates, I rise to support Mr. Conroy's amendment. Now, I think this is based as closely, now, as we are, at least so I understand it, to write a constitution, a proposed constitution for the people of the State of Louisiana. Now, as you have been told, not once but dozens of times from this podium, and as you well know, power comes from the people, from the people of the State of Louisiana. Traditionally and historically, the memory of man runneth not to the contrary. The legislature of the state has been the general depository of that power. Everything that is not prohibited to the legislature by the constitution has the residuum of power to accomplish in accordance and consistent with the provisions of the constitution. Local government, traditionally and historically, has operated on a grant of power from the legislature. Now, I respectfully submit to you that it is one thing to sit down and provide a method by which local governments on an individual basis may prepare a home rule charter through a procedure that is established for a commission or a committee or whatever you want to call it to draft such a charter. To reduce that document to the point where they can look at it and study it, and discuss it and debate it, and get some idea what it means and then vote on it, that is a completely different form from what this section proposes. Now, this section simply means in words of one syllable and not too many, that every single municipality or police parish or governmental subdivision in this state has unlimited power to do anything that it chooses to do unless that power has been specifically denied to it by the legislature, or it is specifically denied to it by this constitution because it has no charter. It would have no charter unless it's operating under some special legislative charter. Now, I respectfully submit to you that that is unwise. That is not sound. That is an entirely different proposition, as I've said before, from a home rule charter. Now, Mr. Jenkins, in discussing this matter with you earlier day this day, pointed out some of the problems that you are bound to have, some of the problems that they've had in Illinois where they tried this system, because there's nothing in the world that would prohibit a municipality from licensing any profession, any trade, levying any tax, passing any kind of ordnance, or do any of the things that they may not employ a fire department. The legislature could decide all of that. What we've done is to leave the flexibility of the nature or absence of any body of residual powers with local government until the legislature says otherwise.
the legislature and obtaining from the legislature grants of power to do those things that are local in nature and are not necessarily required to be regulated or controlled under a statewide basis, they've had no problem doing that. I submit to you that the most unwise thing we could do is to adopt this section as it is written.

Further Discussion

Mr. Stagg Mr. Chairman, fellow delegates, you are hearing the same arguments on the same subject, delivered by the same people that you heard on the debate on the amendment last Friday afternoon, including me. If you will remember back to that argument, I tried to describe to you the two ways by which municipalities in this country govern themselves. They either do it under the old Dillon's rule which says that the municipalities are creatures of the legislature and can only do what the legislature says to them that they can do. You can have municipalities governed under the old Fordham type rule which says that municipalities and local governments can have the powers to do unless those powers are in conflict with this constitution or by this legislature. Now, we have the Conroy amendment, and if you call my attention to the language in the Conroy Amendment No. 1 which would read, if adopted, "Any other local government subdivision shall have such powers as shall be provided by this constitution or by law." That's the language. I mean, gentlemen, is the language that the delegates to the convention gave power to the people whether the people want that power or not. I say to Mr. Conroy, in reply, that the safest repository of governmental power lies in that government that is closest to the people: the mayor, the city council, or the police jury that you meet on the street every day as you walk down the streets in the city. Section 9 --we talked about Section 8 last week as being the heart of the Local and Parishial Governmental Article well, if Section 8 is the heart of it, then Section 9 are the veins and the arteries, and the things that a heart needs in order to perform its life-giving function. If you are going to go with Section 6, then we ought to also join with it the concepts contained in Section 9. Mr. Avant says that this section means that every governmental subdivision has unlimited power to do and that there is no habeas, discovery, and conceded that local government, he says, has had no trouble going to the legislature to get additional grants of power. But that's a different concept. That's what I've got on the eggs of Section 9 comes into play. They have no trouble going to the legislature to get additional grants of power. But if you have a charter and if you want to travel to Baton Rouge and in their hat in hand, all the legislature for power to do things which they ordinarily really ought to be able to do, we are back at the old argument. We continue municipalities under Dillon's rule or shall we free our municipalities and local government under the Fordham rule? Conroy's Amendment No. 1 is purely and simply Dillon's rule. The committee proposal is purely and simply Fordham's rule. I urge you to defeat Mr. Conroy's amendment and particularly do I urge you to defeat Mr. Conroy's Amendment No. 1.
we are dealing with parishes which were not under home rule. So, in the last few weeks, we've been talking about parishes and municipalities that are under home rule charters. Now, in the previous sections we have to recognize that all of this is under home rule. Under home rule charters, we've been doing it with the understanding that that power would be granted to them only after a vote of the people. But, then here in Section 9 we come along under the committee's proposition, and under this concept, the same powers exactly would be granted to all the parishes and municipalities. There is time without a vote of the people. The thing about Section 9 is, it's an anti-home rule. It's an anti-home rule because it would say that the people of the parish don't have a right to direct who their authority in its governing authorities will have. They have them by virtue of this constitution. They can do all these enumerated things by virtue of this constitution even without a vote of the people. Now, what are you going to see if we adopt Section 9 as it is, you won't have anymore home rule charters being passed under Section 8. There won't need to be. Why would anyone want to have a home rule charter? The governing authorities will already have all the power that they would have under a home rule charter by virtue of Section 9. Now, if we are going to have a distinction between home rule parishes and those that don't have home rule, then we've got to adopt Mr. Conroy's amendment. Otherwise, there will be no distinction between the two. Now, you compare, say, East Baton Rouge Parish to Livingston: East Baton Rouge with a home rule charter, Livingston without. East Baton Rouge has a great deal of authority in its governing authority that the Livingston Parish police jury doesn't. But, we have it here by virtue of the vote of the people. And you look carefully at Section 9, written by the committee, the people in Livingston parish are going to have their governing authority with all sorts of authority even though they have not voted to have it. Now, the distinction here--it's a different question entirely. We're not debating the same thing over and over again. We're debating now whether or not people are going to have a right to vote to have a home rule charter, or whether we're going to vote virtually a home rule charter on them by virtue of this constitution. So, let's adopt Mr. Conroy's amendment and give areas without home rule authority whatever authority may be granted to them by the legislature and this constitution, but not more extensive authority that they would have under a home rule charter.

Questions

Mr. Willis Mr. Jenkins, pray tell me how you are going to have home rule that the rules are not made at home?

Mr. Jenkins Well, the only way you're going to have home rule is if you adopt a home rule charter, Mr. Willis. Now,...

Mr. Willis We're talking about Section 9, not Section 8.

Mr. Jenkins Well, you don't have home rule under Section 9. The theory of home rule is that you have home rule in an area if the people vote to have it. That's the theory of home rule.

Mr. Willis Well, now do the people have to vote for the legislature to legislate? Does the legislature go ask for a vote of the people to legislate?

Mr. Jenkins No, but if the...

Mr. Willis Why do you require police jurors to do that?

Mr. Jenkins If the people of Livingston Parish, for example, want to have a home rule charter, which they don't have now, giving them all this wonderful authority, the right now under Section 8 they could come along with fifteen percent petition for a commission to be elected; a commission will be elected and come up with a charter, and then the people will vote on it one way or the other. Now, that's if they want home rule. You know, it could...has it occurred to you maybe the people in some parishes don't want home rule. They could have had it in more parishes now. You have no power up there. But, by Section 9, we're going to impose it on them whether they want it or not.

Mr. Willis Hasn't it occurred to you the reverse: that they don't have it because they can't get it; they've got to go genuflect to the legislature for it?

Mr. Jenkins Really, frankly, I don't know of any parish that ever has wanted home rule that hasn't got it. But, if one does, then I would think they have to do is petition and they vote on it and they can have home rule.

Mr. Willis You are telling me that the probable is improbable. Now,...

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

Further Discussion

Mr. Burson Mr. Vice Chairman, ladies and gentlemen of the convention, my voice is not as loud as usual today, but I think you will see in Section 9 and others in this section about which I feel more deeply than this section. I speak against the amendment because to eliminate Section 9 would eliminate the heart of the Local Government Article. Do not make a mistake. The effect of Section 9 is not to bestow upon non-home rule charter areas the same power as Section 8. You will look and see carefully at Section 9, you will see there a specific prohibition that the legislature shall not pass any law, the effect of which changes, modifies or affects the structure and organization and/or the particular distribution and redistribution of the powers and functions of any local governmental subdivision which operates under a home rule charter. Now, if you will look at Section 9, you will see, in that case, that there is no such prohibition and yet we have said there specifically that the non-home rule charter local governments are subject to the general law of the state in that area. Of course, all local governmental units are subject to the general law of the state in its effect as general law. What we mean with Section 9 is clearly is this: that the residuum of governmental power has to rest somewhere. Somewhere there has to rest the power to do the things that need to be done. What we are arguing here is that instead of affecting the administration and conduct of local governmental affairs, that that residuum of power shall be with the local governmental unit as we have from the state legislature. The practical effect of this, as has been enumerated by many other speakers to this podium, is that when a police jury in the parishes of St. Landry, Acadia, which I represent in part here, want to establish a garbage dump or to ban the shooting of 6 8 guns in their jurisdiction, that they will not have to come to Baton Rouge to get a special section of Louisiana Revised Statutes 33:1236, which I have here in my hand, which they have had to do in the past. Now, the objection has been raised: well, you are going to have different laws applying in different places. Let me point out to you that Section 1236 of the Revised Statutes, Title 33 is replete with exceptions to each section, including thirteen and fifteen thousand is this particular section. This is a spurious argument for the reason that what is complained of is what exists at this present time. I submit to you that it is far more likely that you will have uniformity under the scheme that we propose in Section 9 because it is much easier and simpler for the legislature to prohibit than it is for them to permit every little thing that a local governmental unit has to do. It would be quite easy, for instance, after the passage of Section 9 of this convention for the legislature to go into session and, at its very next session, set out in detail in one simple comprehensive statute those things which a police jury
and/or a municipality could or could not.

Further Discussion

Mr. Flory Mr. Chairman, delegates, to the convention, the previous speaker said that at no time in the history of this state has the legislature spoken on this issue he felt more concerned with than the proposed section now being discussed by this convention. I know that he has taken the floor a number of times and spoken on this matter, and I add to you to the proposed section that we have under discussion at this time is the heart and soul of the new constitution. It is unbridled power asked for by local governmental subdivisions without supervision, unless the legislature has preempted the field prior to their action. Now, let me ask you this: what can you do? You can employ any lawyer, any city attorney, any assistant district attorney, or anybody else in this convention to tell me what this section does in a full and complete sense. I say that this section alone will cause a hundred years of litigation as to who does and who does not have the authority in this state to manage the affairs of any people of this state, whether it be on a state or local level. Let me suggest to you just two or three different things. I believe, that this section allows. I'll read to you the excerpt from one of the general works on that subject, "what it means to define the powers, duties and qualifications of parochial and municipal employees." Now what does that mean? It means that they can treat those employees any way they want to treat them. If they want to pay them, under any conditions, without any regulation whatsoever, none whatsoever. By the same token it means they can regulate business that same way. They can require businesses to be licensed. They can require that work permits, twenty or whatever it is for any individual that works in this parish or in that municipality—that those individuals would have to pay that work permit; it means that business have to have a permit, or in order to operate. Then when it says to provide for the protection of the public health, safety, morals and welfare. Now, you tell me what that means—to provide for the general welfare of a district, whether it's economic welfare or general welfare or whatever? Does that mean that they can enter into the field of labor relations? I suggest you to it that they do. They can pass any type of labor legislation they want, regulating labor or business or both. I believe that they could take the employees out from under worker's compensation. I believe it could take them out from under unemployment compensation. There is just no end to the authority given in this section. I think we ought to stop and really consider that. Are they going to be creatures of the legislature, are they going to be political subdivisions of this state, or are they? And if they want the state to challenge them, don't you think the state ought to be able to regulate them? It's that simple—subject to the general laws of this state. You tell me why they don't want to be regulated subject to the general laws of this state.

Mr. Tapper Mr. Chairman and fellow delegates, I am in support of the Conroy amendment mainly because, of course, a lot of the other delegates have already been stated here. But, in my opinion, the section in question is subsection 6, which deals with taxation, lays the tax under limitations. It's a question of whether the section is any general law and I'm afraid that that gives carte blanche to a local government to tax the people, without a vote of the people, and where it's not permitted by this Constitution or by the general law of the state. I think this is bad, and I urge your adoption of the amendment.

Mr. Jenkins Mr. Tapper, have ye—legislation, or the Revenue bill, or the Constitution, anything that would prohibit a local government, any type of local government, from levying a tax, for example, and imposing that tax on raising that tax? Are you aware of any statute that provides for taxation under the finance section?

Mr. Tapper Yes, sir. I think so, some I see it there. But again, I am dealing with this particular section and I think maybe we should cut it here.

Mr. Jenkins Mr. Tapper, there is the amendment, or the Revenue bill, or the Constitution, anything that would prohibit a local government, any type of local government, from levying a tax, for example, and imposing that tax on raising that tax? Are you aware of any statute that provides for taxation under the finance section?

Mr. Tapper No, I am not aware of it. I think it's somewhere under revenue, somewhere there is a statute that I don't know of it, or of a statute that I don't know what it is.

Mr. Lourain Mr. Tapper, has the legislature made to set a vote of the people before it levy a tax on the people of the state under this section?

Mr. Tapper No, I am not aware of it. I'm sorry, I don't know of it. I don't know what it is.

Mr. Lourain Well, you know that would be rather have people know what's taken up that tax or is it down the track. And that's a general question. I would like to have an answer from you, if you don't mind, to the people here. In what sense could the legislature pass legislation to provide a tax?

Mr. Tapper Well, if you mean can the legislature pass legislation to provide a tax, the answer is yes. And it would be the same as in the question here, that would be subject to the people in the city, the city council, the state legislature. It's that simple.
to incur debts are reviewed by the state legislature and approved or otherwise rejected by the state legislature?

Mr. Tapper: No, sir. Doctor, that's not correct.

Mr. Weiss: I think that's true and...

Further Discussion

Mr. Stovall: Mr. Chairman, ladies and gentlemen of the convention, it seems to me that we need to make a basic decision here, a decision as to whether or not we want to be a state, for it seems to me that the basic issue in this article and in this particular section is really not a question of home rule; it is a question of secession. I submit to you that I love this state that we are representing here and of which we are a part. I do not want to see different parishes and municipalities to secede from the state, but rather I want us to have some corporate-ness. I want us to stand and work together as a total state. It seems to me that we need to make this basic decision and once we make it, we will know how to respond, not merely to this section and to this amendment but to the succeeding sections and amendments that will follow. The other thing I want to say is that Mr. C. J. Egan, who is President of the Jefferson Parish, and Mr. Tom Donelon advise me that they had been to a number of parishes throughout the state to explain the home rule charter and that many of these parishes and police juries have not followed through with the kind of home rule charter which Jefferson Parish has because they did not desire this kind of provision. The Conroy amendment places the authority with the people and this is where it should be and therefore, I encourage your support and your vote for the Conroy amendment. Thank you.

Chairman Henry in the Chair

Questions

Mr. Lanier: Reverend, isn't it not true that under Section II that local governments have no power whatsoever to enact private or civil ordinances governing civil relationships?

Mr. Stovall: That's a part of the problem, I think, Mr. Lanier, to this article. It seems to give powers in one section and away in another. I think that this is the problem, that rather than having a simple straightforward document that we can deal with in a realistic way, it is self-contradictory and says different things in different sections.

Mr. Lanier: Let me ask you this, Reverend. Isn't it true that the Constitution says that the legislature by general law may deny any of these powers and functions to local units of government?

Mr. Stovall: Mr. Lanier, if we are going to provide for the legislature to do certain things in these sections, it seems to me that we should trust the legislature to have an objective, comprehensive, rather than a fractured, approach to the different matters relating to home rule and the powers of municipalities and parochial governments.

Mr. Lanier: With reference to this fracturing, if we had a specific designation of powers today, how do we know twenty-five years from now if those powers would be the ones that would be the necessary tools to solve our local problems?

Mr. Stovall: The basic question is whether or not we are going to operate on the basis of fear and, therefore...or the basis of trust. I submit to you that this document was conceived in fear and nurtured in suspicion. This is the reason that it has so many objectionable sections and features. It seems to me that we have got to come to an atmosphere of trust, and I believe that we do have a new atmosphere in Louisiana. I think we are developing a legislature that is worthy of our trust and our commitment.

Mr. Arnette: Reverend Stovall, just a quick question. You said this was a basis of trust and fear. Does that mean that you are supporting this particular amendment as its your fear of local government and not trusting local government?

Mr. Stovall: Mr. Arnette, I've tried to make a point several times that our whole system of government is based on a system of checks and balances. I think we need to consider state's rights, as well as home rule. I think the state has certain rights, not merely coming from the federal government, but also in terms of what goes on in the state.

Mr. Arnette: Well, under the committee proposal, can't the legislature prevent the local government from passing any law? Doesn't it say that anything prohibited by the legislature, the local government can't do? Isn't that enough of a check?

Mr. Stovall: This section does more than...it gives the residual power, which I think is the real point at issue, Mr. Arnette.

Further Discussion

Mr. Anzalone: Mr. Chairman and ladies and gentlemen of the convention, I would like to hear you talk about government originating with the people. I would remind you that people are at home. So far, government has removed itself from the people to the extent that you people really don't know what's going on in government. One thing that we do know about government is that it's costing more and more and more, and I dare say one of the reasons that it's costing more is because we are spending more of it on different things that probably we should not be spending it on. Just to cite you one particular example, coming over to Baton Rouge I hear on the radio where the federal government has appropriated in excess of fifty-five thousand dollars to study the psychological effect of the newly created farm to market roads in Venezuela. Well, that might be nice, but I would say one thing, that if the Tangipahoa Parish police jury had held off of that fifty-five thousand dollars, that we would do something with it besides study some roads in Venezuela. We've heard that we are going to have so many new taxes if you return government to the people. I dare say more taxes are passed on the people of this state by legislators who come to Baton Rouge and fail to look over their shoulders to see what the people back home would be doing if we were taking a strong look at what is actually needed. People have said that in this particular article you have no regulation. I just want to call your attention to the authority is not only limited to the constitution but is also limited by general law, the incurring of debt is limited by the constitution. This home rule provision in this particular article is going to give to the local governments not the authority to tax their constituents out of business, not the authority to tax their people our of existence, but merely the authority to run local government as they see fit, which is as they should have in the first place. We have heard that they are never denied when they come to Baton Rouge. I submit to you that they need not come to Baton Rouge at all. We have heard of this unbridled power. Well, we had a good example of our unbridled power in my local magazine where they arguing whether we were going to buy a new battery for the police car. This is the unbridled power that they are talking about. I dare say nothing could be further from the truth. Ladies and gentlemen, this is a constitution for the people; this is government for the people. Give it to them; it belongs to them.

Questions

Mr. Newton: Mr. Anzalone, this government...that's closest to the people is best; is there anywhere in this Committee Proposal 17 that provides for election of police jurors and school board members from
Mr. Angalone. Not in this particular article, Mr. Newton.

Mr. Newton. In Committee Proposal 17, there is provision for that, is there? Are there any wards in Tangipahoa Parish that don't have a police jury or school board member?

Mr. Angalone. Are there any wards...

Mr. Newton. Did you know that ward 1 does not have either a police jury or a school board member, no representation whatsoever?

Mr. Angalone. Mr. Newton, if you will recall, ward 1 is represented on the policy jury, most certainly. It is not our fault, because that's some of that one on one vote rule that came up.

Mr. Weiss. Delegate Anzalone, isn't it true that the unbridled power that is being referred to could be bridled and limited by the state legislature restricting and limiting the taxing power of the cities and the municipalities?

Mr. Angalone. Dr. Weiss, it so specifically states exactly what you are asking.

Mr. Weiss. Therefore, one of the worries that have been expressed by the people at the podium is really uncalled for, don't you think?

Mr. Angalone. I most certainly do.

Further Discussion

Mr. Nunez. Mr. Chairman and ladies and gentlemen of the convention, I take in support of this article, and at the latter let me straightforwardly Senator Nunez's position that I think we are unnecessary, and I say, you know there are some communities that look at Section 1, Article 11, Mr. I have applied, that no parish in the state will be able to adopt Section 1, Article 11, the correct Section 1, Article 11, or in which we adopted and we passed an amendment to our home rule charters, and to go back to those people in the commitment to fill a drainage ditch is what you want I don't believe it is...
in a certain area. Well, in that particular statement, there is a self-imposed contradiction. You can't have a general law passed if you are going to have to go to each separate city or parish in Louisiana. You would do it in the future that involves just Aoyelles Parish. So, you've got a problem. But the biggest problem is that what's going to happen if, for instance, Alexandria adopts a home rule charter and specifically vests in the city of Alexandria certain power, the right and the power to do such and such? Then after the adoption of this constitution the parish of Rapides, pursuant to Section 9, passes an ordinance diametrically opposed to what the city of Alexandria granted unto itself in its home rule charter, that's the big problem. What's going to happen in the future with respect to that? Now, my answer to that is very simple. If we leave this matter, as it should be, to the wisdom of the legislature, which does not connotes no home rule and does not...is not the opposite of people governing their own affairs, then the legislature when the Rapides Parish police jury wanted to do something contradictory to the home rule charter of the city of Alexandria--assuming it's passed and adopted--would be able to say that we can't do that. If we do one, we'll have to do it. If we grant it to the parish of Rapides, it will be invalid and illegal because the home rule charter of the city by itself will. You've got an inbuilt conflict between two local governments and subdivisions, which we have identified in the definitions as either municipal or parish. I'm telling you, you've got a big problem in the future with respect to litigation.

Questions

Mr. Lanier Mr. Roy, is it not true that Section 9 does not make every parish a home rule parish?

Mr. Roy I think it does.

Mr. Lanier Have you read Section 8, Mr. Roy?

Mr. Roy Yes, and that deals with cities and parishes, under your local governmental definition.

Mr. Avant Mr. Roy, you drive from Baton Rouge to Alexandria, you go through at least six incorporated municipalities: Port Allen, Erwinville, Livonia, Krotz Springs, Bunkie and Leonce.

Mr. Roy Yes, sir, and Cheneyville.

Mr. Avant All right, that's seven. Under this committee proposal as it's drawn, and Title 33 of the revised statutes, the state has fixed speed limits on certain state highways; specifically that the municipalities may increase but may not decrease those speed limits. Are you familiar with that?

Mr. Roy Yes, sir.

Mr. Avant The state has also regulated the type of equipment that you have to have on an automobile, but they do not have any such savings clause or restriction on municipalities. Isn't it a fact that under this committee proposal, as it's drawn, that if you drove from here to Alexandria, you could have seven different types of regulations as to what you had to have on your automobile, and it would be the law, and you would have to comply with every one of them until the legislature came back and affirmatively passed another statute saying, "Municipalities, you can't do that?"

Mr. Roy Just one thing to that, Jack, not just a general law saying, "Municipalities, you may not do that," but under Section 9 they would have to pass a general law specifically dealing with each municipal ordinance or parish ordinance; it makes it work...

Mr. Avant Isn't it also a fact, Mr. Roy, that...

Further Discussion

Mr. Chatelain Mr. Chairman and fellow delegates, I rise in strong opposition to the Conroy amendment. We are here to write a 1973 Constitution to take care of the needs of the people, the city, the state, and the needs of the years to come. At the call of this Constitutional Convention when Act 2 was called, at that time in history in this state, the present constitution was amended five hundred and thirty-two times. Of those five hundred and thirty-two times, eighty percent of the amendments had to do with the problems of local government. You know this as well as I know this. Therefore, you have to write a new constitution, let's write a true new constitution, a constitution for the needs of the day, yes, and the needs for the future. You've heard from this podium delegates get up here and advance all kinds of scare tactics, telling you that they are going to control the employees of the cities; they are going to control the businesses of the cities, such as permits, etc., etc.; they are going to have control of the safety and welfare of those various political subdivisions—namely, parishes and municipalities throughout this state. They advanced this as thought; of speed; traffic controls—when you go through one city to another city, you would have these impositions that you should do this, in fact, have these problems today in a very few isolated sections of the state. That is the law today and we certainly, and if we had the power, we would not have it, because we would be better than what they are today. Let me ask you a simple question, as one delegate to another, "Who are these people who live in these political subdivisions of this state? Who are these people who live in these sixty-four parishes of Louisiana? Who are the people who live in these cities and all the other political subdivisions?" They are you and I and the other 3.6 million people in this state, and they certainly have rights. They don't need to go to the legislature every time there is a little problem or local problem that arises. Let me tell you the truth of this whole question in debate today. The truth of the matter is that the political pressure groups and the other groups—and you know quite well the groups I speak of, the pressure groups—instead of going to a hundred different cities and municipalities and political subdivisions throughout the sixty-four parishes of Louisiana, they don't want to go to a hundred of them. Instead of going to a hundred or so individual sections of this state, they want to come to Baton Rouge to the legislature and lobby them, because there seems to be—-I don't know exactly how; there seems to be a way it's easier done here in Baton Rouge under the influence of the legislature in session. I don't know how the trick is done. I don't know, but that's the whole question today in Section 9...Fellow delegates, I would ask you to accept this proposal and say that the best of this. Do we want to give back...give to the people of the State of Louisiana their rightful government, or do we want to continue the 1921 Constitution that has many problems in the area of local government? I ask you to vote down the Conroy amendment. Thank you.

Questions

Mr. Mire Mr. Chatelain, have you ever known of any good, solid request from local government to the legislature—anything right and reasonable—to have been turned down?

Mr. Chatelain I'm not qualified to answer that. I don't know too many cases of...either way.

Mr. Mire Well, you were making some allusions about the legislature, I thought you knew what they had been doing.

Mr. Chatelain I don't follow you. I don't understand your question, sir.

[Motion for the Previous Question rejected: 10-81.]

Further Discussion
Mr. Jackson: Mr. Chairman, ladies and gentlemen of the Convention, I will be very brief in my comments here. I was sitting down here and I heard one of the remarks made about the legislature and I thought I would try to bring the air concerning section 9. I agree with Mr. Jenkins, when you say that when we give all power to the legislature, we are really saying that all the power that is not forbidden to be forbidden by their charter, constitution, the general law, then you're really in effect taking away the vote of the people to decide whether they want a home charter or not. Secondly, and I want to try to bring this point home clearer to you. The only reason why a majority of the local parish or municipal governing authorities have come to the legislature in the past is because they did not operate under a home rule charter. There was no other place for them to go. Prior to this constitution, it's my impression that there was there exists a constitutional provision under which Thibodaux has presently applied for a home rule charter. If most of the municipalities had problems in coming with the legislature they could have very well availed themselves of a present, existing home rule...constitutional home rule charter provision. Now, as far as I can see, is the city of New Orleans, the only re...majority of the people when the city came to the legislature for certain legislative permission to do certain things, it was not because of that of the local council, it was not because of the city council, it was some of these constitutional agencies that were stuck in the constitution. As it was in private or public corporations. It was not the city of New Orleans, coming before the legislature for certain legislative permission, I would like to bring to your attention it was not necessarily that of the city governing authority, but those numerous boards and agencies that we had locked in the constitution and that most of your constitutional amendments came from that sort of constitutional protection, where the legislature was required to exercise some authority to initiate a constitutional amendment. I just want to bring that point close on you to let you know that presently, right now, without the adoption of this constitution, those municipalities that exist under the Louisiana Act or legislative charter must still come to the legislature for legislative permission. That is not because the legislature wants to tie their hands—that's the form of charter that they operate under. It's because they have too many, even at present, they have too many, and I'm not trying to decrease the kinds of—yes, I understand that, legislative interference, is to or under a present constitutional provision as I understand Thibodaux—I think Mr. Arnette and Mr. Jenkins would be the other way, and I'm presently doing now and that's going over to the home rule charter. I want to point to you that the present law that is to operate under legislative action is not really exist, I don't understand it. I understand it in the and Parochial Government Committee and normal. I have never known anything to come out of that. I have never known anything to come out of that particular area coming to the Committee Chair and say we want to allow our charter, just to the chairman, our chairman has taken a few minutes that we are affecting anythin...or anythin...will be debated unless he, the Chairman, would get some end of reading from the police. Mr. Jenkins has taken the full force of parish and local representative, you'll find that there's no law in many cases, because of the rules and a half that are serving county, they are serving county by virtue of their charter, that's where you find them. And we are saying that in the past I have experience, they have been very, that are sitting on the local and parish government. That brings up that local governments, when they want or the municipality to interfere, to the extent they want to control anything.
53rd Days Proceedings—September 25, 1973

they are going to have in their local ordinances or what restrictions they have...

Mr. Arnette Senator De Bieux, under home rule charters or under a police jury or under whatever form of government you have, you have representatives that vote on those laws.

Mr. De Bieux But here...at least the people on the home rule charter basis have some...

Mr. Arnette They adopted the charter. Yes, Senator, that's true, but they did not adopt every law passed by their governing body.

Mr. De Bieux But, they don't have any choice of restrictions of what they wanted to limit their local governing body either; that's the difference in a home rule charter, isn't it?

Mr. Arnette Well, there is one difference, yes.

Mr. De Bieux Yes. And that's a big difference that's what this whole fight is about.

Mr. Arnette If they wish to be under a home rule charter, they may.

Mr. De Bieux Yes. Well, now that's the big difference...

Mr. Arnette If they want to have a home rule charter that limits certain things, they may do so.

Mr. De Bieux Now, isn't that the big difference between 8 and 9? In 8,...in 9, the people have a chance to pass on it and 9 they don't?

Mr. Arnette They pass on...their representatives every time they come up for election. They pass on their...

Mr. De Bieux But not the limitations that they want to place on the representatives, isn't that correct?

Mr. Arnette That is correct, in a way, yes.

Mr. Jenkins Greg, you know, not long ago I believe, it was...I believe it was St. Bernard Parish voted on whether or not to adopt a home rule charter, whether or not to have home rule, and the people there voted it down. They didn't want home rule, but really under Section 9--

Mr. Arnette They did not want that particular home rule charter.

Mr. Jenkins Well, that is not saying...we know they didn't want that home rule charter. It could have been...they just didn't want home rule per se, giving the governing authority that much power in that parish, but in Section 9 aren't you going to give them that power whether the people of that area want it or not?

Mr. Arnette I'm giving the power to any local municipality of parish or any local governmental subdivision that wants to pass a law and not have to go to the legislature to get permission to pass laws.

Mr. Jenkins But, isn't it...

Mr. Arnette That's the whole point of why I would like to see the committee proposal adopted as it is.

Mr. Jenkins Well, naturally if the people of an area want their governing authority to have more authority then they can...adopt a home rule charter under Section 8, but why do you want to give that to them under Section 9?

Further Discussion

Mr. Willis Mr. Chairman, and fellow delegates, I cannot prevent my expressing the hope that each of us will doubt a little of our own infallibility. We must not, when a passage is easy to understand, continually try to misunderstand. This passage of Section 9 has the fastidious precision that even a person reading it for the first time could understand it. All one may do is pretend to misunderstand...misunderstand it, a pretense which is greatly to be regretted. I always taught and always thought that government of the people, for the people and by the people, all the people, was part of the definition of our form of government and not of a monarchy. The terms of Sections 9 and 10 are not absolutely unrelated and combined to sever them is to mutilate the proposal and emasculate local government. If we continue, home rulePinterest allows the people to be made at home and under this Section 9 if the local rules are obnoxious we, the people of the home rule area, have two glorious remedies, the courts and the legislature under Section 9 (b), which will meet every year. I have much less fear of a responsibility by local government than I have that the legislature would not remedy the irresponsibility forthwith and if the legislature has fear of a responsibility it may allay its fear by preempting the field with general law. Who is here to say that the legislature does not have a suspicion of the, and the legislature does not have the power to preempt in the legislature? Should we give local government duties and no powers, but the poor privilege of laying upon the legislature the load of the constitution? Should we give general law duties and no power, but the poor privilege of laying upon the legislature the load of the constitution?

This amendment prepares another altar in our legislative halls for police jurors to genuflect and pray for the very meager powers to do their duties. Statistics may estimate the education of our people, but it may never estimate their intelligence. This amendment reverses uniformity for preferences and I oppose it as destruction under the guise of construction. It abandons unused powers referred to by Mr. Zervigon. It does not abandon common sense and good judgment. For that reason, I oppose the amendment.

Questions

Mrs. Warren Mr. Willis, I hope you won't quote Shakespeare 'cause I want to understand your answer.

Mr. Willis I promise you, madam.

Mrs. Warren This was a question that I wanted to ask Mr. Arnette, so now I'm going to have to ask you Mr. Arnette said that Senator De Bieux made the remark that the difference in the Connolly proposal or amendment and the Seventeen proposal was that the people had a chance under the Connolly amendment where they didn't have it in the committee proposal. Mr. Arnette answered that their elected representatives come before them every four years and they can...in other words they can get them out of office if they don't like it. Now, my question is this; the laws that the city council or police juries enforce, if they are put out of...deposed at the polls, what happens to this law just by them being defeated at the polls, does it change the law?

Mr. Willis My dear lady, if a law...if you had listened to me attentively I said, that if a law, a home rule law, is obnoxious our very vigilant legislature can turn it about, in...at the next session.

Mrs. Warren I wish you could define that for me, but it might take a little bit too long. Thank you.

Mr. Willis I should be happy to consult with you at your desk.

Mr. Flory Mr. Willis, in helping me to understand Section 9, could you perhaps tell me what it says or what it means when it says "to create special districts" and then over in Section 9—of the other sections where it allows the creation of special preservation districts for economic reasons or architectural reasons and then in a further section it grants them authority to acquire this property
Mr. Flory. Well, then, could you...

Mr. Willis. If I were to match the wisdom...

Mr. Flory. Could you look at line 25...

Mr. Willis. I would...

Mr. Flory. No 140 where it says 'to create special districts'.

Mr. Willis. What's wrong with that?

Mr. Flory. I just asked you, Mr. Willis, do you mean that what they could expropriate private property under this proposal and then do as it says to sell it. Do you feel that... and then the... and after that it has been created they can expropriate and then give it away?

Mr. Willis. No. It most certainly does... it does mean that. You have added words. It just says 'to create districts'.

Further Discussion

Mr. Petrie. Mr. Chairman and ladies and gentlemen of the convention, I think we have before us with this amendment the issue squarely facing us. Do we, or do we not want to give local government more home rule? To do or do we not want to just give lip service to local home rule? My suggestion to you is, that if this amendment pass, it will put unlimited... in the same position that they have been in since 1921. It puts them in a position where whenever you want to get a little additional authority, including the authority to regulate the use of 88 guns, they have to come to us to the legislature. Turn for the whole subject, let us suggest to you what we should do, is to reject this amendment and then let us look in detail paragraphs at paragraph at what authority we are talking about giving to these police... and then if you feel that there is... that should be done to further limit, let's do it at that time, but let's not with the... they can still destroy the concept of local government by only giving the local government that authority authorized by the legislature, and therefore, ask you to defeat the amendment.

[Closing Remarks]

Mr. Flory. The issue has been debated at length, and I think that certain points should be emphasized by the people of the state after the debate has ended. I was suggested at one point in the argument that this was the same thing that this proposal had covered previously in the 1972 and 1974. Nothing could be further from the truth. I strongly suggest at the morning session there is no question that the people in these areas desire the wanted county government to do things that the local government cannot do. Certain powers own certain additional powers that have never existed before. It was suggested at one point in the argument that...
53rd Days Proceedings—September 25, 1973

Questions

Mr. Lanier Mr. Gravel, I voted for your amendments like this and the other ones, but I don’t see the necessity for it here since we do have a provision that if it is denied by the constitution that the local government would not have that power. Why do we need to rephrase that?

Mr. Gravel Well, I think I’ve stated that previously, Mr. Lanier, this way. This language would suggest that there would have to be an affirmative specific denial in this constitution. The language that we’ve adopted previously in similar situations where similar language was used has been to make it clear that we’re talking about any provision that’s not consistent with this constitution. Now, I think there is a difference between the two.

Mr. Lanier Well, let me ask you this. It is not your intention am I correct, to do anything that would prohibit the concurrent exercise of powers and functions relative to the management of local governmental units between the units themselves and the state legislature as provided for in Section (B) of Section 9?

Mr. Gravel It is not... it is not and it would not unless there is some other specific provision that would be inconsistent with Section (B) and I don’t know of any.

Mr. Lanier Do you know of any provision in the Legislative Article which would be inconsistent with this?

Mr. Gravel You mean in the general law?

Mr. Lanier In the Legislative Article that we have adopted.

Mr. Gravel No, sir. I do not. And it’s not my intention, really, I think this fits with this section without any difficulty and I don’t know of any provisions that are inconsistent with Section 9, Par...Subparagraph or Paragraph (B) at this point and I don’t think...you know that there will be any that I know of, but I think to make it clear that we’re talking about two different concepts and one is a concept where it is denied in a denial, specifically and affirmatively, in the constitution or whether there is an inconsistent...

Mr. Kean I’m afraid this is...this may be a friendly question and it kind of bothers me...to be asking one of Mr. Gravel, but do I understand the point you make, Mr. Gravel, that if we say “not denied by this constitution” there has to be some affirmative denial. Whereas, if you take that out and...and use the words “subject to and not inconsistent” it then becomes the question of interpretation between the powers as...and what’s in the constitution?

Mr. Gravel That’s right. That’s correct. Mr. Kean, and as a matter of fact, this same language I’m...almost certain is the language that is used in the Baton Rouge charter. That’s consistent I think with the thought.

Mr. Lowe Wouldn’t you agree, Mr. Gravel, since you got such a friendly question from Mr. Kean, that we could almost vote on this amendment, right now?

Mr. Gravel Yes. I would. I think so.

I move the previous question if there are no other questions or speakers.

[Amendment adopted without objection.]

Amendment

Mr. Poynter Amendment No. 1. Bollinger.

Amendment No. 1. On page 5, line 19, after the word “law” change the comma “,” to a period “.” and delete the remainder of the line and delete lines 21 through 28, both inclusive in their entirety.

Explanation

Mr. Bollinger Mr. Chairman and fellow delegates, this is in the nature of a technical amendment I guess you could say because when you read this section Paragraph (A) the words deleted by the amendment do not change the effect whatsoever of the section. The section would read: “Section 9. (A) Any other local governmental subdivision may exercise any power and perform any function new and necessary, requisite or proper for the management of its affairs not denied to it by its charter, by this constitution or by general law.” The enumeration of these specifics could still be denied local government by general law by this constitution or by its charter so there really is no reason to enumerate. I move the adoption of the amendment.

Question

Mr. Duval Mr. Bollinger, wouldn’t you say that the language you’re deleting is completely superfluous and not necessary?

Mr. Bollinger Yes, sir.

[Amendment adopted without objection.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Arnette].

Page 5, line 19, immediately after the words “to it” and before the words “by this” delete the words and punctuation “by its charter.”

Explanation

Mr. Arnette I think this is...a technical amendment of sorts. When we decided in Section 7 that Section 7 would apply to both legislative and constitutional home rule charters, that Section 9 will apply to everyone that does not have a charter and I think taking out this language will do that. I think it’s in the nature of a technical change, but it just makes it abundantly clear that Section 9 applies to municipalities and parishes without home rule charters. I urge the adoption of it.

Question

Mr. Lanier Mr. Arnette, I agree with your statement that the legislative charters would presently be covered under Section 9 and I think it’s a clear...but I am wondering if that was really our intention at the time that we adopted it, to cover legislative charters?

Mr. Arnette I assume that’s why we voted the way we did.

Mr. Lanier Perhaps we could get a question by way of point of clarification from Mr. Conroy on that, if that was his intention. I’m not sure on that point and I’d like to know.

Further Discussion

Mr. Perez I want to speak only to this point, that the reason that these words “by its charter” were originally put in this article was because of the fact that it was intended that this particular article, Section 9, would cover legislative charters. Since the...we have amended Section 7 to include all charters including legislative charters the deletion of these words “by its charter” in this particular section would be appropriate; therefore, no objections.

Questions

Mr. Tapper Mr. Perez, you say we...amended Section 7, I notice that it refers to existing home rule charters, did we take that out of Section 7?
Mr. Perez. I don't have the section amendment before me, but I do appreciate it, and as I appreciate it, I would say that in regard to the comment that the section amendment should be made, I do appreciate it, but I do not want to get into a discussion as to whether we should have an affirmative denial rather than a negative denial with no provisos. You understand, if we were putting anything in, what we just took out was Mr. Jay's amendment, isn't he?

Mr. Perez. Not that I can understand it. What it seems to me would read more, not denied to it by this section as it stands, we have left out this constitutional. It would now read, not denied to it by general law.

Mr. Arnette. Mr. Chairman and ladies and gentleman of the convention, I am going to withdraw this amendment because it has been pointed out to me that in the interest of saving time and saving that particular three words, ought not. Therefore, I withdraw it to save a list of discussion on it.

[Amendment withdrawn.]

Amendment

Mr. Arnette Amendment No. 1 [which was rejected], on page 4, line 22, after the word "general," strike out the words, "as are declared as a part of the General Assembly, and No. 4, prepared by Delegate Bolinger and just adopted, and the following: or preempted by general law.

Amendment No. 4, on page 5, delete lines 25 through 28, both inclusive, in their entirety, and in clause 6, delete line 5, through 4, both inclusive, in their entirety.

Explanation

Mr. Jenkins. Mr. Chairman, it is very important to the state of Louisiana that we go into a certain area of the law, or an area of amendment, and that is the one where we have the legislative authorization to fix the minimum, or the maximum, of the standards of milk, or maximum price. You know that the law would be another example of unconstitutionality. This gone and in so far as we speak, if it is a law, what would not be constitutional would be, for example, police power, maximum price law for physician, maximum price law for physician, another law such a law would preclude local government precept and not allow them to fix standards of milk. In so far as we speak, that is a very important thing, in my opinion, being regulated by local government, it will establish the fact that the local government can do whatever it desires, in so far as he of the same standards, he is not precluded by local government. It is not mandatory to say that the local government can do whatever they want. In the same way, it is not precluded, in my opinion, being regulated by local government. It would not be allowed to regulate the area which have been preempted by statute. That what the law should do is stabilize, or not, when a certain area is within the power of the local council, then that local council should do the job, but when the standards should be such that are fixed in that area, it would become the business of the legislature, or the state legislature. The state legislature would deal with the standards of milk, the same way with the milk companies as the state legislature affairs to the extent that the legislature should.
nature of those laws, it's clear that it has preempted the field of regulation in that area.

Mr. Lanier: Well, Mr. Jenkins, isn't this the exact concept that has fomented a great deal of litigation under the Federal Constitution and under the Acts of Congress as to when either Congress or the constitution is actually silent or silently silent? Are you familiar with that jurisprudence?

Mr. Jenkins: Well, I am somewhat, Mr. Lanier, but you know I can hardly foresee how more litigation could be brought about than the committee proposal the way it stands now. So, I think probably this will lessen the litigation, if anything.

Mr. Lanier: Were you aware of the fact that we had the question of how much litigation was caused by the language that we used, researched by the staff? Are you aware of that?

Mr. Jenkins: How much did you find, Mr. Lanier?

Mr. Lanier: Are you aware that we found that it did not generate litigation? In fact, there was more litigation under the specific grant than under the residual grant. Are you aware of that?

Mr. Jenkins: Well, from what I hear about the State of Illinois that would not necessarily be true.

Mr. Lanier: Would you like to see the cases that I have from Illinois here at the desk?

Mr. Jenkins: I'd be glad to.

Mrs. Zervigon: Mr. Jenkins, I'm also trying to clear up exactly what constitutes "preemption" in your amendment. Since the state regulates the speed limit on state highways, does that mean that municipalities and parishes would be out of the business of setting speed limits on streets?

Mr. Jenkins: No, I don't think so. As regards to local streets, certainly not, but, as regards to state highways, it probably would.

Mrs. Zervigon: Well, how are we to tell whether or not the State has preempted the field of regulating traffic speeds?

Mr. Jenkins: Well, I think the same way that you'll find out what it means if you're trying to figure out what is necessary, requisite, or proper for the management of the affairs of the local government. You have to try to understand those concepts in the context in which they are written. I can't tell you any quick, ready guide; it's going to be court decision. So, like under the language proposed by the committee.

Mrs. Zervigon: Mr. Jenkins, are you aware that I'm asking you about the amendment that you presently have before the convention, and not one you may subsequently offer to clear up other language you find confusing, and that I'm asking you to clarify your language, not our language?

Mr. Jenkins: No, what I'm saying is, "I hope you won't hold my language to a higher standard than you hold your own," is all I'm asking.

Further Discussion

Mr. Perez: Mr. Chairman and ladies and gentlemen of the convention, this is just a back door way of deciding what the amendment which was offered, and which we argued for several hours, would have attempted to do because of the fact, if you add the words "are preempted by general law," we now have a general law which gives to police juries only certain specific, limited authority. So that the general law is already there, and if you adopt this particular amendment, you may as well delete the entire section because I say again that we do have a general law which specifically sets forth the power and authority of police juries, and, therefore, the area has been preempted by general law. I therefore suggest to you this is a bad amendment.

Questions

Mr. Avant: Mr. Perez, I'm not so much concerned about laws that may be adopted in the future. It'd be a simple matter at that time for the legislature to say, "Local government, you cannot legislate in this area." But I'm concerned about laws that have been adopted in the past. Now, we have a general state driver's license law. We have a general state motor vehicle inspection law. Now, let's just take those two laws. Is it not a fact that under this section, as it is written, and proposed by the committee, that any municipality in the state could enact a driver's license law or a motor vehicle inspection law and that that would be a valid enactment unless and until the legislature came back and amended the present state law, and said, "Municipality, you can't legislate in this particular area." Isn't that fact?

Mr. Perez: No, sir, there's already a prohibitory law which prohibits local governments from issuing brake tags, licenses, and so forth. You know that very well when that was done when we used to issue brake tags and licenses throughout the state, and the legislature passed a law which prohibited any local areas from issuing licenses or brake tags.

Mr. Avant: Do you have the citation of that law?

Mr. Perez: I don't, offhand, but I'd be glad to supply it to you later because I recall it very vividly.

Mr. Avant: I'd sure like to see it.

[Previous Question ordered.]

Closing

Mr. Jenkins: Mr. Chairman, delegates, I think this amendment will clear up many of the problems with the section and still maintain the basic intent of it. There's really no reason for local governments to start legislating in areas where there already is a multitude of legislation and control. In regard to the specific problem, the question raised with regard to highways, clear, a globe highway speed limit should be set by the state, whereas local highways and roads are going to have their speed limits set by the local governments. So, just consider the multitude of problems that will be created and brought about unless we have this limitation. Certainly those local areas should not be allowed to legislate in every area that's already controlled by the state. So, I urge the adoption of both of these amendments.

Questions

Mr. Denerry: Mr. Jenkins, since January 5, I don't know how many times I've driven from New Orleans to Baton Rouge. There are a lot of speed limit signs which say, "You have to slow down when you come through my city." I believe in those; I think they're sound. That's not in the state law. If you go to Jefferson, they have a state law that state law only applied to highways obviously cannot be true, and I don't understand how you can make such a statement. Where are the state highways in the parish of Orleans, and in the parish of Jefferson? The state highways are controlled by municipal ordinances once you get inside of a city. So, it's clear that your preemption would ruin this, and you could not go anywhere in Baton Rouge on a state highway at sixty miles an hour. I can't conceive how you would...

Mr. Jenkins: Well, Mr. Denerry, the state certainly allows local governments to set speed limits according to certain limitations, and that retains the authority. And if they were silent, then the subject, certainly the state rules would apply. But, the state rules, if you have a limit of seventy miles an hour, applies only on the open road, not
Mr. Denney. Mr. Jenkins, if I were to say that the Parliament of Great Britain regulates blood banks, we could not longer regulate them. Is that the purpose of your amendment, sir?

Mr. Jenkins. If the state regulates blood banks to the extent that it really precepts the field, yes.

Mr. Denney. Are you suggesting then that we could not go beyond what the state does in regulating blood banks?

Mr. Jenkins. Well, it would depend on the circumstances of the law in question. The field has been preempted, certainly that's true.

Mr. Denney. In other words, then, you do agree that this bill would create number of legal questions which might be...have to be answered by the courts.

Mr. Jenkins. No, I think this will solve legal problems by not allowing duplication in regulation after regulation as Section 8 of Section 9 provides.

Mr. Denney. Thank you, sir.

Mr. Burson. Mr. Jenkins, would you agree with me that the jurisprudence on preemption between state law and federal law is one of the most highly litigated areas in constitutional law?

Mr. Jenkins. I think it has been litigated in any instances. I don't know whether it would be the most highly when you consider all the many aspects of it.

Mr. Burson. Well, would you agree with me as a student of constitutional law, that when you look at the state's jurisprudence on that question, it's practically impossible to come up with a definition of what "preemption" is?

Mr. Jenkins. Well, when you have hundreds of federal judges appointed by the president, that certainly would be true, but, Mr. Burson, with our unwritten state system whereby we elect our own judges and have local control over them, I don't think it will be such a problem.

Mr. Burson. So, in other words, you think that while "preemption" has been a considerable problem in federal constitutional law, that it wouldn't be any problem at all in our state constitutional law.

Mr. Jenkins. Oh, it may be some problem, but it won't be nearly the problem that this will be refused in this amendment, whereby local government can come along and get higher standards, or regulations, more control in every occupation and profession or field of activity in this state, I don't think it will have near the problem that that will.

Mr. Burson. Well, do you feel then that once the state has legislated in an area, say for instance, health and sanitation, that a city or parish should be absolutely precluded from doing anything in that area?

Mr. Jenkins. No, and I don't think that what the Jeffersonian doctrine would hold, it would certainly depend on the extent of the regulation and its applicability to the given law of holding, for example, if we had physicians in the state that we would not prejudice their sanitation ordination by the local law at least because they're not one and the same thing, but it's possible that the state regulations could be extensive in the area of

*Further Discussion*

Mr. Denney. Mr. Chairman, I would like to ask those of you who were from larger urban areas--I mean, if you were from larger urban districts, has that taken away from you or has that left you with any rights that you now have, or are you just here to speak about the amendment?

Mr. O'Neill. In this amendment, I will simply say that it's necessary to do any more that we do here. The Burson amendment does not even deal with the structure of school boards.
stance to improve their lot, and it is only through a meaningful form of parish government, by giving the police jury the power to deal with modern problems without having continuously to come to state legislation to ask for the power to meet the problems they face. I point out to you, there are whole subdivisions in my parish, both rural and urban, which are not in any incorporated area, nor are they likely to be because they are separated by five or six miles of open space from the nearest town. The towns in such parishes as St. Landry, for example, are more likely to be as concerned about a home rule charter because they are satisfied with their municipal government. I urge you that if you really care about that part of America that has been called with some justification the forgotten part of America, that is, the rural areas, that you will vote for this section and give the parish government the power to meet the problems for this group of people that have no effective lobby to come here to Baton Rouge to lobby for their interest, that don't have an effective way, that labor or business, or the teachers or any of the other organized interest groups have to come here to Baton Rouge to make their weight felt, but they can make their weight felt in effectively making a local governmental level. I ask you in your name to approve this section.

Further Discussion

Mr. Avant: Mr. Chairman, fellow delegates, I urge you to defeat this section. Now, I listened to what Mr. Burscon said. Under the present law and under the present constitution, much less under the present law, we have been given the sections that we've adopted so far. Any parish or any municipality in this state can adopt a home rule charter, and if the citizens in that community or that parish wish to do so, they can be given local government, and those areas can be given as much power as this section gives to them. But bear in mind that this section, without any approval of the people, grants to every local governmental subdivision in this state the same complete absolute power that is vested, or was vested in the state legislature. This can destroy anything. Charters have been proposed in this state and have been defeated because the people in those areas did not wish to give to their local governmental officials the absolute power that this gives to them. I'm going to close by reminding you of just one thing, and you can multiply this a thousand fold. If you will look at me when we are up here discussing the section in the Bill of Rights that had to do with the right to keep and bear arms, I pointed out to you that under the federal law, you could possess a shotgun as long as the barrel length was over twenty inches, but under state law, you could only possess a shotgun if the barrel was longer than twenty-two inches. Now, I'm telling you this, and you can multiply this a thousand fold, not just shotguns--automobiles, boats, anything under the world that you can think of that has been the subject of governmental regulation. It's just to shotguns--you won't know when you go into a given area of this state whether the general state law, which says 'twenty-two inches,' is applicable, or whether it's 'twenty-four inches' or 'twenty-six inches,' or what the regulations are. You won't have any way of knowing because you won't have any general state law. The law that I'm talking about with Perez--and I've got to disagree with Mr. Perez--is this question to my answer, and I know whereof I speak--there's nothing in this section that would prohibit any municipality from enacting a driver's license law, a motor vehicle safety inspection law, or any other kind of law, unless and until the legislature acts back and specifically by other, specific delegations to the state government, to grant the right to legislate in those areas where the legislature has already acted. Now, I'm not concerned about things that the legislature may do in the future because when they consider a law in the future, it'd be a simple matter to make a decision that at that time whether they want to grant or deny that particular power to local government. But what about the provisions that you already have on the books? Unless or until the legislature comes back and denies that to local government, you are or can be denied that power, and that's why I ask you to defeat this section.

Further Discussion

Mr. Roy: Mr. Chairman, ladies and gentlemen of the convention, not often am I going to get up here and ask you not to vote for a particular section. It's not my nature generally not to operate that way, but the rule for me is, even if we pass anything before this convention has a good reason. It generally means that you've got to have a little more than just a majority vote plus some of the people in an area when you're dealing with something that is as controversial as what we have attempted to do here today. Mr. Willis asked the question, this is a government of the people, by the people, and for the people, and makes the assertion that that's what we ought to do, allow home rule, because that's the most local or lowest form of government. All I say is I agree with that, but let's not constitutionize upon the people of our state, the absolute inability to choose the type of police jury representation they want. You know some people in this state do not want police juries to have arbitrary and complete power, and that is the reason why they reject home rule and they have in the past, like in St. Bernard, and some cities don't want home rule charters and that is the reason why they keep those charters under the Lawson Lawsonwson Act so that they can go to the legislature when they have a right to go to the legislature, however today is we have under Section 8, which I was against because of a basic philosophical view; nevertheless, you in your wisdom have allowed that under Section 8 a municipality or any group of people may choose to select a home rule type charter and operate, and give all these huge, unbridled almost, powers to their police jury representatives. That's fine, but you're taking away the right of the people and putting it in the hands of the people of the state, irrespective of what those people want, we're going to impose it on you. I really, sincerely believe that the only way you get compromise, in the end, that is meaningful is sometimes when you force it. Obviously, we haven't been able to force the compromise that many people here who are in favor of home rule are concerned about. I'm in favor of home rule, but not the type home rule that imposes upon the people of a particular area an absolute duty to accept something that we put on them, and I urge you to vote against the adoption of the section.

[Motion for the Previous Question rejected: 17-71.]

Further Discussion

Mr. Arnette: Just very briefly, I'd like to point out to the delegates who come from an area who presently have a home rule charter: Section 9 does not and can't take away the you in any of these areas, the driver's license law, a motor vehicle safety inspection law, or any other kind of law, unless and until the legislature comes back and specifically by other, specific delegations to the state government, to grant the right to legislate in those areas where the legislature has already acted. Now, I'm not concerned about things that the legislature may
Further Discussion

Mr. TIDE Art. 90, in Section 9, as amended, is a clear and direct grant of power to the state legislature to regulate the construction, operation, and management of local governmental subdivisions. This speaks for itself, and the only question before us is whether the legislature has overstepped the limits set by the Constitution of Louisiana.

Mr. Harris Mr. Chairman, I have been requested by the sponsors of this bill to offer a few words in its behalf because, on second thought, I am not sure that it is the intention of the sponsors to make the change recommended in the bill as amended.

Mr. Asher I agree with Mr. Harris. I think the sponsors of this bill as amended are well intentioned, but they may have misunderstood the wishes of the people who brought this bill before us. The sponsors should have consulted with the legislative counsel of the state of Louisiana before they introduced this bill.

Mr. Evans I would like to agree with the comments of Mr. Harris and Mr. Asher. In my opinion, the sponsors of this bill have not been clear in their intentions. They should have consulted with the legislative counsel of the state of Louisiana before they introduced this bill.
conventional...". Fellow delegates, I urge you in the strongest manner that I can to please adopt this proposal.

[Quorum Call: 100 delegates present and a quorum. Previous Question ordered out of the house. Sections 58-64. Motion to table reconsideration rejected: 41-58. Motion to reconsider pending.]

Reading of the Section

Mr. Poynter “Section 10. Powers of Local Governmental Subdivisions; Liberal Construction

Section 10. Powers and functions of local governmental subdivisions shall be construed liberally in favor of such local governmental subdivisions.”

Explanation

Mr. Burson Mr. Chairman, fellow delegates, I had passed out to you earlier today, by the staff, a copy of page forty-two of the constitution of the State of Illinois that most recently adopted state constitutions. You will note in Subsection (M) of Section 6, powers of home rule units there, and I had mentioned, the statement that powers and functions of home rule units shall be construed liberally. Similar statements are contained in Section 34 of the State Constitution of Michigan, which was adopted in 1962, and Section I of Article XI of the recently adopted State Constitution of the State of Alaska. The purpose is simply this: the tradition in many cases, is that the power of local government have been strictly construed so that the power of local government to act on a particular problem, when subjected to a lawsuit in a court of law, the court will look very carefully at the language of the constitution or charter of the home rule unit, and will construe that language strictly, rather than liberally. In favor of the more liberal construction, the court has said: Goals for Louisiana, prepared during the McKeithen administration, one of the goals listed under local government is that any power constitutionally vested in local government should also contain an admonition to the judiciary for a liberal construction of home rule powers over local affairs, and this is purely and simply what this section is. It is simply an admonition to the judiciary that they should construe such powers liberally rather than strictly. It is a legal form of art, and it is no other meaning so far as I am able to ascertain, and it certainly has no other intent in the minds of the committee. I am not going to ask any questions. It seems to me the decision on this point is rather simple: you're either for a liberal construction of these governmental powers or you're for a strict construction, and I don't really see any middle ground or really any other subsidiary issue involved. I submit to you that the failure to adopt a provision similar to Section 9 would raise in my mind a substantial need for such a section. I'll answer any questions.

Questions

Mr. Roy Mr. Burson, you don't mean to imply that that Section 10 is only a procedural and not a substantive admonition to the courts, do you?

Mr. Burson No, sir, I didn't distinguish between procedural and substantive. I said it is an admonition.

Mr. Roy But why not just a fair construction, neither strict nor liberal? Why not fair?

Mr. Burson Well now, Mr. Roy, I think a lawyer as skillful as you are knows that the contrast made in any area of the law is between liberal versus strict. I've never heard of fair or anything in between.

Mr. Roy I meant, why not nothing said, just as it should be because you know yourself, don't you, that even if the legislature attempts to deal with something specifically and it is somewhat vague, no matter if one hundred five members of the House and thirty-nine members of the Senate mean for these cities not to be able to do a certain thing, if it's at all vague and you impose upon the court a liberal construction in favor of the city, automatically the legislature's intent will be vitiated? Isn't that true?

Mr. Burson No, I don't think that's true at all. I think that we have traditional liberal construction for instance, in the area of workmen's compensation, and I don't believe that has vitiated the intent of the legislature.

Mr. Roy That's right, and doesn't that mean, Mr. Burson, that even with respect to procedural laws of evidence that the courts in compensation cases will even take in hearsay evidence because it's a compensation case when they can't take it in in any other type case?

Mr. Burson That's done by statute in that particular instance.

Mr. Roy No, Mr. Burson, it's done, isn't it, because the court says that you must give this a liberal construction since it's remedial legislation? Now tell the truth, isn't that right?

Mr. Burson The courts say--I always try to tell the truth, Mr. Roy. The courts have said that the workmen's compensation statute is humanitarian legislation, and it is to be liberally construed, but the particular item that you referred to, the taking in of some forms--medical reports primarily--of hearsay evidence is specifically authorized by the statutes.

Mr. Roy No, no. Let me get a little more specific then, since obviously you're trying to make a distinction without a difference. With respect to a person testifying on hearsay evidence, a woman who has in her husband's will, is that not hearsay and isn't it admissible in compensation cases because the courts give it a liberal construction even as to evidentiary rules, irrespective of medical reports?

Mr. Burson Not in my experience. No.

Mr. Roy Do you want me to cite you a few cases? Would you change your mind?

Mr. Burson Mr. Roy, I'd be happy to change my mind...

Amendment

Mr. Poynter Amendment No. 1 [by Delegate Abraham], on page 6, delete lines 9 through 13, both inclusive in their entirety.

Explanation

Mr. Abraham Ladies and gentlemen, the purpose of this amendment is to delete this Section 10. I don't see the need or the purpose of such language. We've given in Section 8 and Section 9, we've given the local elements broad powers, and to put language in here which says, "it shall be construed liberally in favor," is just adding to the confusion of language because we will simply confuse the whole article just that much more. I don't see the significance of such language. I can't understand just what is meant by "construed liberally." How liberal is liberal? I think we're just burdening our constitution with some language that pays lip service and doesn't really do it any good, and I see no need for it, and I urge the deletion of this particular section.

Further Discussion

Mr. Jenkins Mr. Chairman, delegates, I think this is a good example of what happens when people get carried away with their own ball of wax or interest. This Section is not even a constitutional amendment, much less constitutional. You wouldn't even have a
statute that said this--might be a judicial interpretation. This section in effect says that courts, you should be biased, biased in favor of local governments. If there is a controversy between state government and local government, be biased in favor of local government. If there is a question between an individual citizen and a local government, you should be biased in favor of the local government to protect, favor local government. It says, don't read the law fairly and construe it as written. This provision says to the judges of our state, write the law in a given case, be biased in favor of local government, construe things literally in their favor. We didn't do that in the Bill of Rights in protection of individual liberty. We didn't say, construe these rights literally in favor of the individual, judges. We didn't say that, but here's the one instance, the one part of our government which ought to be given the benefits of the doubt; things ought to be read in their favor, we ought to be biased toward them. It doesn't make sense. What you can do if this thing is included in here, you can take every general statement in this constitution regarding local government, construe it as broadly as you choose, as strongly as you can against the rights of the individual citizen, as strongly as you can against state government, and that's the way it's susceptible of being interpreted under this provision. Let's don't have any bias in this constitution. Let's have our law as it is written, with no special rules of construction favoring one entity of government over another, or over individuals; so let's adopt Mr. Abraham's amendment.

Questions

Mr. Weiss Delegate Jenkins, would you say that the constitution of the State of Illinois is biased?

Mr. Jenkins I think in that provision it's not only biased, but utterly ridiculous.

Mr. Weiss In other words you are aware of the fact that Article VII, Section 6 (H) reads powers and functions of home rule units shall be construed literally.

Mr. Jenkins Yes, I'm familiar with that, and I think that constitution is dead wrong. It's absurd. It is biased, and I don't want anything like that in our constitution, and I don't know of any other state constitution that has something like that in it.

Mr. Guarisco Mr. Jenkins, wouldn't you even be against this Section 10 if it said that the functions shall be construed strictly?

Mr. Jenkins Yes, that wouldn't make any sense either. There's no reason to have a bias against local government. Let's have this language in this article interpreted as it is written without any particular discrimination in favor of it, against it, or whatever.

Mr. Ramez Mr. Jenkins, wouldn't you be against this other regardles of what it said?

Mr. Jenkins I would be against it if it gave one entity of government a special favoritism or bias against the other. If it said state government--powers of state government shall be construed literally in favor of state government, I'd be against that. Otherwise it's fine.

Further Discussion

Mr. Tobias Mr. Chairman, fellow delegates, I concede that I know very little about the subject of local government. However, Section 10 as written, is completely ridiculous. It puts the final government ahead of state government ahead of individual;
53rd Days Proceedings—September 25, 1973

Baton Rouge, and that was passed in 1949, was that there should be only three incorporated communities, being Baton Rouge, Zachary, and Baker. But, things have changed since 1949. Things have changed, and there may be times coming in the future that we will need changes. There should be a proviso giving the authority for people to incorporate themselves into villages if they feel very strongly in human rights, then you must pass this section. If there are any questions, I’ll be happy to answer them.

Delegate Bollinger in the Chair

Questions

Mr. Abraham Terry, just to be sure that I understand this correctly—if you have a parish that’s operating under a home rule charter and a village became incorporated—does it withdraw from under that home rule charter?

Mr. Reeves I would not envision it would. If it was a parish home rule charter, it most probably would not.

Mr. Abraham They would still...I have to operate under the provision of the parish home rule charter.

Mr. Reeves Of the parish, yes.

Mr. Abraham Suppose now this would apply only to the electors of the particular village that might be involved. It’s not the electors of the entire area which operates under the home rule charter, is that correct?

Mr. Reeves Yes, sir. This is true.

Mr. Abraham Why did not the committee feel that the entire area of the home rule charter should make this decision, since they all voted originally to go under the home rule charter?

Mr. Reeves We felt that this was a right, just as a right to vote, that the right to incorporate was a most sacred right, and it was just as valid as actually, the right to vote.

Mr. Abraham Well, did not these people, though, originally vote to go under the home rule charter?

Mr. Reeves Well, originally, probably the south chose to also have slavery, but I hope that we will never go back to that system.

Mr. Abraham Well, don’t get me wrong. I’m just trying to find out the reasoning behind all this, is the purpose of this thing. I don’t quite understand the section as to why we have singled out this particular thing.

Mr. Roemer Mr. Reeves, in the lines 23, 24 and 25 that have to do with industrial area or district. Now is that presently in the statutes, or is that in our old constitution, or whence comes such language?

Mr. Reeves It cometh from the old constitution, I believe, Mr. Roemer, to the best of my knowledge.

Mr. Roemer It is in the old constitution?

Mr. Reeves I believe this is correct. I’d have to...

Mr. Kean Mr. Reeves, as a matter of fact, isn’t this section directed primarily to a situation in East Baton Rouge Parish?

Mr. Reeves This situation is not directed to East Baton Rouge Parish. East Baton Rouge Parish is an example of the inequities in which this could possibly be true. It is an example of what a situation could happen and has happened. But this is not directed specifically to East Baton Rouge Parish. I think you are well aware, Mr. Kean.

Mr. Kean Mr. Reeves, if...in answer to your...to Mr. Abraham a moment ago, I think you indicated to him that if you had a parish home rule charter, and some area wanted to incorporate under this Section 11, that they would come under...they would still remain under the parish home rule charter. Was that the understanding there?

Mr. Reeves I would envision that it would still, above and beyond this, we felt, and I think that you realize that we felt on the prevailing side, that the idea of incorporation was just a sacred right and it should not be tampered with by any home rule charter, whatsoever.

Mr. Kean I am trying to understand your answer to Mr. Abraham’s question. He asked you, if I understood it, that if you had a parish home rule charter and some unincorporated area sought to use this, would they then come out from under that charter? I believe your answer was “no.” Is that correct?

Mr. Reeves This, to the best of my knowledge, and again I’m not...

Mr. Kean So that if in East Baton Rouge we have a parish charter, then this would not have the effect that the proponents of it would want it to have, would it?

Mr. Reeves I think it would. I think, first of all, we are guaranteeing that this right shall not be abridged.

Mr. Kean Even though it might affect the existing home rule charter?

Mr. Reeves Yes, sir. In other words what I’m saying, Mr. Kean, if you had in the home rule charter of East Baton Rouge Parish that slavery was permitted above and beyond this particular provision, we guarantee the right that all men, everywhere, shall be forever more free. Above and beyond that right of freedom, and alongside that right, is the freedom to incorporate themselves in a village.

Mr. Kean I take it, then, that under your theory, if the people of East Baton Rouge Parish wanted to secede from the State of Louisiana, they’d have the liberty to do so.

Amendment

Mr. Paynter Amendment No. 1 [by Mr. Haynes], on page 6. Line 16, after the word "when" and before the words "of the", delete the words, the word "two-thirds" and insert in lieu thereof the words, "a majority".

Explanation

Mr. Haynes Mr. Chairman and members of the delegation, I believe in the fundamental principle of home rule. I live in an area of Baton Rouge that is one of the largest sections of this city. I live in Scotlandville, Louisiana, where Southern University is located and has been located since 1914, and where many, many, many of our industries are moving into this area, a community of some twenty-five to thirty thousand people who are citizens of this community. I was amazed when I moved to Baton Rouge about twenty...twenty-five years ago to find out that they...there were a lack of services in this community because it was not an incorporated community. I was amazed at the lack of police protection. My own house, as meager as it might be, has been broken into three times within the last few days. Our own son’s home was broken into rather recently, without the kind of police protection that is characteristic of the city of our capital of the State of Louisiana. Our garbage collection is not adequate. Our library services are poor, indeed. Then the general case of the community, to make it a city or a community of which all of us, as Baton Rouge people, could be proud. I believe...
in the majority rule. I don’t believe that we ought to set up restrictions whereby somebody is going to use some kind of extraneous factor to defeat what might be a laudable purpose. I believe that we make Scottsdaleville, Louisiana, and other communities like this in the State of Louisiana, in such desirable places to live be granted the privilege of having the choice of the majority of the people to vote their wishes in this kind of election. I shall be glad to answer any questions that anybody wishes to ask at this time.

Mr. Burson. Mr. Haynes, did I understand you correctly when you said that you were in favor of home rule and garbage collections?

Mr. Haynes. I simply mentioned, I mentioned your lack of adequate garbage collection in our own community because of the facts that exist in this community, Mr. Burson.

Mr. Burson. Do you know that in many of the rural areas that would have been empowered to act on a broad scheme under Section 9 that was just defeated with the assistance of your vote, also, lacks adequate garbage collection facilities?

Mr. Haynes. I’m sure, I’m sure of that. But there was another controlling factor there. Am I correct in saying that you voted in favor of the section that you referred to, Mr. Burson.

Mr. Avant. Just to set the record straight, you live in a home rule charter parish, don’t you?

Mr. Haynes. Yes, we do.

Mr. Avant. And you don’t have adequate garbage collection in the Scottsdaleville community, do you?

Mr. Haynes. We certainly don’t. I mention these things because I think garbage collection is related to one’s health, one’s safety, and the safety and health of the people of the community. I mentioned police protection because I believe this is an important aspect. I mentioned library services. I mentioned the fact that we don’t have the garbage care to make our part, and when I say “our,” I mean anybody can live in the Scottsdale area, but I live there, to make the Scottsdale area a desirable place to live, the Parish of Baton Rouge. I mentioned, also, the fact that Southern University is housed in this community. Southern University happens to be a black university, but the largest predominately black university in the world today. I believe that the delegations coming to this Constitutional Convention would want to make this particular community, with some thirty thousand people, a part of the garden spot of our capital city of Baton Rouge. I would like to consider it as a favorable vote, a favorable consideration for the amendment.

Thank you, Mr. Chairman.

Further Discussion

Mr. Burson. Mr. Acting Chairman and fellow delegates, I realize the hour is late and we are all a little groupy. I know you’ve got to be wondering how in the world this convention got into a discussion of Scottsdaleville, Louisiana, which is an area located within the parish of East Baton Rouge. We’ve spent almost a week, now, talking about home rule and how we ought to set up within the limits of local government some flexibility with respect to their own plans of government and how they could work out their problems within their ability. Now, we are talking about the whole State of Louisiana being involved in a local matter that’s directly related to the parish of East Baton Rouge.

Let me give you one clue on how we get into this problem in the parish of East Baton Rouge, and the city of Baton Rouge as one of the leaders, one of the best consolidated forms of government in this country. If one would go back to an era of home rule which was adopted in August, 1947, and went into effect on January 1, 1948, the proposal of that governmental structure was to bring about a situation, in a number of cases, that has been in East Baton Rouge Parish in the cases of any if you have made a study of local government in the State of Louisiana, are in trying to deal with urban difficulties in a merger of small municipalities with small difficulties in an overall area. If you look at the record of East Baton Rouge Parish, since this went into effect some twenty-five years ago, you will see that we have accomplished that objective.

Now, the plan of government provides for its amendment. It is entirely possible to amend the plan of government of East Baton Rouge Parish to provide exactly what Mr. Haynes and the other response to this proposal want to take place, except that we do it within the confines of East Baton Rouge Parish. English was written in the Washington, D.C. provisions of Section 11 in 1939 of the plan of government there can be an amendment, either by the council, or proposed by ten percent of the electors who voted in the last general election for sheriff, or in circumstances the plan of government then in the amendment then approved by a majority, it becomes part of the plan of government. It is that Mr. Haynes and those who urge this amendment do not tell you is that just two years ago such an amendment was proposed and on the ballot in East Baton Rouge Parish and won down by a small majority of the people of this parish. What Mr. Haynes and the others who urge this do not tell you is that there is, presently, a local plan of government study committee, which I serve, along with Delegate Williams. I know of various proposals for improvement of the plan of government, and one of the things before that committee is this very question. That is, where this question ought to be is not what I put it in a detailed discussion of the present plan of East Baton Rouge Parish, and if you tell you it’s there, and I can take you and show you this. But I do tell you that this is a most difficult material. I suggest you vote on the amendment, and then cast a vote in favor of the plan that I have to delete it.

Further Discussion

Mr. Duvall. Mr. Acting Chairman and fellow delegates, I think we should actually this convention work on an uniqueness of a plan for East Baton Rouge Parish, a plan that is up to a middle size of an entity, because people who are against the plan have not really a plan of what they are against. This particular proposal is in part here, in the middle level, a village in a hamlet, and you can’t isolate itself andItemClickListener it in a whole. I find it hard to be against that. After the fact, adopting the basic plan of home rule at the problem I can’t have your people been consistently voting against home rule and you cannot get the home rule concept by piecemeal. I don’t understand an explanation as to why you want home rule, and what is a settlement which I was to the people of Baton Rouge Parish in particular this plan, what it means them was matter.
what rules govern them at all? So this is the problem that I get into and I don’t think...I don’t think that the delegates are looking at these things from an analytical standpoint at all. I wish that we all would.

I would certainly entertain some explanation as to how you justify this type of autonomy and not allow a larger unit the same autonomy.

Questions

Mr. O’Neill Mr. Duval, if you can’t justify the autonomy of this section, how do you justify the autonomy of Section 19 which sets up historic preservation districts?

Mr. Duval Well, I’m not trying to justify Section 19 in any way. I’m trying to answer your question, I would vote for this and for Section 9. I think that’s philosophically consistent.

Mr. Roemer Mr. Duval, as I understand it, you have your mind made up on this section, that is you’re in favor of it as presented by the committee. Is that correct?...surmise?

Mr. Duval Yes.

Mr. Roemer Then what you are really up there saying is that you know what you are going to do, but you are a little bit confused as to why the rest of us are doing what we are doing. Is that correct?

Mr. Duval That’s right.

Mrs. Warren Mr. Duval, I’m...in the city of New Orleans, the whole New Orleans...parish of Orleans is the city of New Orleans...now I see on this little pamphlet that the city of Baton Rouge and East Baton Rouge, then you have Baker and Zachary, and then you have prohibited the others...wait, I’d better read it. It says, “The city of Baton Rouge and parish of East Baton Rouge which prohibits the incorporation of communities other than Baton Rouge, Baker and Zachary...” Now I’m wondering why that, other East Baton Rouge, Zachary and Baker, decided that they did not want to be the same as a parish government. Then why was the prohibition against the others that might want to do it? Why was the prohibition? You see, I’m not asking this on a racial basis and I’m really sorry it came up. But I’m trying to find out here why the prohibition came about.

Mr. Duval I cannot answer your question. I don’t know.

Mrs. Warren Thank you.

Mr. Winchester I’m in a dilemma. I’d like to grant home rule to St. Mary Parish, but I wouldn’t also, like to grant the right to any part of the parish to incorporate it. How do I vote?

Mr. Duval You vote “yes” to this, and you vote “yes” to nine when it comes up tomorrow. I would imagine.

Further Discussion

Mr. J. Jackson Mr. Chairman, ladies and gentlemen of the convention, I rise in support of this amendment. I agree as Mr. Reeves says, this amendment is not specifically aimed at any particular parish form of government. We are presently constitution-alizing home rule charters. What we have offered is a home...is a provision, a constitutional provision allowing unincorporated settlements, under the home rule charter, to incorporate.

Judge Dennis, about three days ago, introduced an amendment that pointed to the dangers of discrimination involved in certain charters. I suggest that there are home rule charters which you and I don’t know about that had certain prohibitive language in it. I’m suggesting that this provision attempts to allow unincorporated settlements to incorporate. Now you can tie it up with being armed at Baton Rouge Parish, or Plaquemines Parish, or something like that. It is not. As a member of the committee who voted it out, it is not. The reason why we bring it up is secondly, of course, because that is a ready example.

Presently, if the legis...presently, throughout the State of Louisiana, throughout the State of Louisiana, you can incorporate unincorporated settlements in sixty-two of the other parishes, some of the; that exist presently under home rule charter. Secondly, if we talk about this matter of incorporation, that if one believes in the process, and I understand the dilemma, but if we are talking about home rule, isn’t it kind of peculiar that folks who get the home rule don’t want to extend it further than...where they...you know, from their own grab, or from their lap of power.

You know, how far does home rule go? You know it’s the same argument we can sit here and wage that proponents of this article have waged against the legislature. I’m suggesting that it is a right, by law, that throughout the State of Louisiana, unincorporated settlements can incorporate. Mr. Hayes is going to get up here and tell you about some of the problems. But it would be more convenient to incorporate, to regulate garbage protection, but all the garbage is dumped in one place. It justifies by saying it’s sanitary and it’s clean. I would ask your support of the amendment introduced by Mr. Haynes. I think it is a good section, it’s a good amendment. I think if we are interested in bringing home rule close, then I suggest that this is close as you can get it.

Questions

Mr. Juneau It appears that the only thing that is consistent is the inconsistency. Let me see if I understand it.

Do you favor the concept of home rule?

Mr. J. Jackson I said that in the committee, Mr. Juneau. Yes, I do.

Mr. Juneau Then, when we voted on the previous section, you voted against the previous section?

Mr. J. Jackson Well, if you want to question my vote on there, it was because I decided that it was imposed. All I’m saying, we provide the mechanism to people to choose. They don’t have to take advantage of it, and that was my reasons because it was being imposed, and in the parish of St. Bernard, the people had defeated it.

Mr. Juneau I’m just trying to find out, Johnny, what you think is the consistent worship...and then want us to vote “yes” on this section. I’m really confused.

Mr. J. Jackson Well, I’ll answer it for him, but I thought I did, but, you know.

Further Discussion

Mr. Ayant Mr. Acting Chairman and fellow delegates, and Mr. Duval. Where is Mr. Duval? Mr. Duval said that he can’t understand why some of the people who had voted against some of the proposals of this committee would be for this section. Well, I’m going to tell you why. Because we happen to know all about home rule. Let me tell you a little bit about home rule. I made the statement the other day, and this is in answer to something Mr. Keen said, that this charter that we have is at the best in the state for some people...for some people. Now...we’ve been talking about home rule. We’ve got a community of thirty to thirty-five thousand people right on the other line of Highway from this city, go look at the blessings of home rule. Go see the sanitary sewer system they have, the fire protection they have. If you go south to the subdivisions south of the university, just outside the city, just as densely populated as any part of the city of Baton Rouge. Look at our fire protection. You know, our fire protection was for the sixteen years I lived there! Your three-
Mr. Jenkins: Mr. Avant, really the question on this amendment is whether or not we should lower the petition requirement from two-thirds of the voters to one-half the voters. I don't think that the two-thirds requirement is really too high because, probably, a third, or thirty percent, probably of the people in most areas are not really living where they are registered to vote. So it doesn't make more sense to have a half rather than two-thirds?

Mr. Avant: Mr. Jenkins, by what wild stretch of the imagination should it take two-thirds of those people to incorporate, but you are going to adopt a home rule charter any where by a simple majority vote. Can you explain the logic to me of that?

Mr. Burson: Mr. Avant, you just got through making one of the most eloquent arguments I have ever heard in favor of a home rule charter in the state, although I know you were a dedicated opponent of Section 9. May I ask you this question, why in light of this dispose factional for those people in the rural areas in St. Landry and Acadia Parish who still have parishes, are garbage collection for those same people that have done with it from the theory of man, run, not in the contrary, was not the attention of the people who are suddenly are greatly concerned about such things?

Mr. Austin: Mr. Burson, if the people of St. Landry Parish want to adopt a home rule charter under Section 9, it certainly hope that they do it.

Mr. Burson: But what you are asking here is the resurrection of an existing home rule charter, isn't it?

Mr. Austin: It is a question of a charter that was voted on in the year of 1949, and it had a special provision that there will never be any incorporation of any parish in this parish other than the three that voted for it.

Further Discussion

Mr. Austin: Mr. Jenkins, fellow legislators, I have written to this amendment, and I have in objection to this section. The real embarrassment to me here is the principle that if this amendment for the year of 1949 was ever incorporated by the electorate, we would have a home rule charter in East Baton Rouge Parish. It was voted on by the majority of the people of the parish, and there were provisions in this home rule charter for the amendment. Twice, twice this particular subject was brought to the people of this parish in their vote. Twice, we got a surplus in your budget. And I don't think that we should have done here and go through the back door, so to speak, when we have provisions with our home rule charter. And I don't think that you enjoy in your city, in my opinion, record here today that if the people of Scotlandville and the people of Baton Rouge Parish and the people of Central, or any other area that so desires to incorporate within this parish, do so.

I don't want to get into the pros and cons of the home rule charter of East Baton Rouge Parish; I think if you want to do this, we should have the mayor to come down here and give him this side of the story, we do have a sewer system in the north part of East Baton Rouge Parish that was put in by the people, I venture to say that there is no other part of Louisiana that has such a sewer system. But I don't want to debate whether it is good or whether it is bad because I don't think this is the place to debate it. I just wanted to bring these things to your attention because I've had several delegates come over and ask me about the East Baton Rouge Parish and the charter and I wanted to bring these things to your attention.

Again, I must say, and publicly, and live the people of Scotlandville this, I am not opposed to them incorporating. I would oppose before the local government committee to amend the parish charter or request that these people be allowed to incorporate. But I want you to keep in mind what we could do to this consolidated for this amendment, and actually, it was voted in 1949 and was never from the proponents that it's supposed to be a home government. I think if you adopt one here in East Baton Rouge Parish, it would add something of the things that have been amended, this consolidated form of government again. I'm sure that it was adopted in favor of George Dewey Hay. He happened to be my delegate to the constitutional convention, because he had been with me in the legislature, and it was hard for me to let George Dewey do this. Again, it was not supposed to be done, so we are making a change now.

East Baton Rouge Parish, let it be the proper way, and our charter. Because we have a charter, you are here now, with few of us, we want, you know, sea legends right now, and so forth. I'm not even sure what we are talking about what we are talking about. We are not talking about what we are talking about. We are not talking about what we are talking about.
Further Discussion

Mr. Wall  Mr. Chairman and fellow delegates, it's difficult for me to understand why the advocates of home rule, why the advocates of home rule... talking about we should let people do what a majority want to do. If a majority want to do one thing, we should let them do it. How these advocates can get up here and oppose this... let's just be very honest about it. Scotlandville has some unique problems. Scotlandville has some unique problems as compared to the problems of the rest of the parish. Now, they have all the problems and the issues of the rest of the parish, they have their unique issues. And when you would want to make Scotlandville have a two-thirds vote and everyone else just a majority... you know, you used to expect the black people to work, you know, about twice as hard as we do... so it's no use in two-thirds more. So we may as well just put them on an equal basis and let's just let them have a simple majority out at Scotlandville like we have in the rest of the state. So, let's vote for this amendment.

Further Discussion

Mr. Jenkins  Mr. Chairman and delegates, back in 1947-48 when this thing was considered, the fact was, you know, there weren't very many black people voting in East Baton Rouge Parish at that time. There are certain problems in Scotlandville and our home rule charter passed by maybe a hundred, two hundred votes. I don't know exactly what it was, in one of the smallest turnouts in the history of the parish. Now Mayor Heine says he'll be for Scotlandville having their own municipality whenever the people of Scotlandville are for it. Well, on two separate occasions the people of Scotlandville have voted for being able to incorporate, but parishwide, it failed. But the people of Scotlandville have been for it... I will continue to fight for it... the only question here is whether or not it should be a two-thirds vote or a majority... a two-thirds of the electors on a petition or a majority of the electors on a petition. I took a survey in my own district when I ran for election to the legislature, and found that thirty-one percent of the people registered in my district, did not live in my district. They moved... still voting there. Of course, some living in my own district were voting other places. A two-thirds vote is simply too high because we risk losing votes. We don't think with who lives in the district. A majority is a very high figure in itself. Certainly a majority is preferable to two-thirds, but the whole deals with a much broader question... not just with Scotlandville. Scotlandville is the particular instance under consideration. The real question is, when a parish has home rule, will individual groups within the parish maintain some autonomy? It's true in East Baton Rouge Parish, it would be true in Plaquemines, it would be true in other parishes. Will groups within the parish who want to have a municipality, able to be have one or not? Certainly they should, whether it's two-thirds or a majority or whatever, this should be up to the people where they could incorporate even though most... a majority of the rest of the people don't want them. We've been... it's been said that the people who come up here in favor of this section are being inconsistent. I can't think of anything more inconsistent than all the people who say how much they are for home rule who come up and oppose a provision like this giving individual groups within a parish the authority to have their own form of government. Now, I'll admit it's been said that the concept of home rule set forth by this group. I think it gives far too much power to local government. But the point is, if we are going to give all that power to local government, we at least give people within the parish who want their own form of government, a right to get out of it, to dissent, to have their own system. Now how we've seen in Scotlandville as one example a system of benign neglect. Those people have lived under our wonderful home rule charter here and have not had the basic respect that Negroes have given themselves. Let's give them a chance. If a majority of the people want it, my Goodness, how can we object to it in that area? So, let's go along with this amendment and let's approve this section.

[Previous Question ordered. Record vote ordered. Amendment adopted: 63-32. Motion to reconsider tabled.]

Amendment

Mr. Poynter  Now these are the Abraham amendments which Mr. Abraham withdrew that Mr. Kean wants to offer in his name. Amendment No. 1, on page 6, delete lines 9 through 13, both inclusive in their entirety.

You're right. It should be 14 through 25. These are some old ones to go with if 14 through 25, delete lines 14 through 25.

Explanation

Mr. Kean  Mr. Chairman, I offer this amendment in order to endeavor again to explain the benefit to the delegates of this convention, my position with respect to this matter.

As I view the amendment, what we are being asked to do here is in this convention, amend the plan of government of East Baton Rouge Parish when there is ample authority within that plan for its own amendment. Now it seems to me it's not a question of home rule, it's not a question of majority, and certainly there has been no question of race with respect to this matter on my part. Mr. Reeves was the one who injected that thought. I endeavored to explain before, and I repeat we have adopted... in East Baton Rouge Parish pursuant to a constitutional provision the plan by which we have endeavored to carry out our governmental functions in that parish. Despite this the community of Alexandria has been made about what a terrible job has been done, I say to you that since this plan has been in effect, that over sixty percent of the urban area at the time it went into effect did not have sanitary sewerage. Through a centralization of effort, we have provided major sanitary sewerage throughout the parish, including Scotlandville. Scotlandville has garbage collection, it has street lights, it has the other amenities that go with an urban area. My whole point with respect to the amendment is there is need for a change with respect to the plan of government in East Baton Rouge Parish, it ought to be decided by the people of that parish.

I find myself in this case in favor of this provision in the constitution, to provide that it shall occur in East Baton Rouge Parish without any consideration of how it would fit into the plan of government, could have the effect of destroying the plan of government as we view it today. Now I don't believe you delegate out here want to do that. I don't believe that you want to inject yourselves in the affairs of East Baton Rouge Parish. I don't think you want to require something to be done in East Baton Rouge Parish without having any consideration, or giving any consideration to the effect it would have upon the whole entirety of the government of that parish. I don't believe there's a single person here that would like to be a part of that. I implore you not to undertake through this proposed section to bring about a situation which results in an amendment to the plan of government, in my humble opinion, its ultimate destruction. I don't know what the problem is with this matter. Perhaps it's me. But there is an unusual group of people who will, will not support this proposal. I ask you to lay aside your personal feelings insofar as I might be concerned... to lay aside your feeling with respect to any position I might have had before taking, and view this matter as an important issue presented to this convention and the delegates which consist of it that bears upon the government of East Baton Rouge Parish and its continued existence as it now stands, and leave, for goodness sake, the internal arrangements...
of that government to the people of that parish. We have voted twice in this state in East Baton Rouge Parish, and I presume, very shortly will vote a third time. That's where the vote went. So why, you know, what happened in the people of the state of Louisiana who voting in the proposition the plan of government of that parish, and I have an amendment which I have said this morning in which I propose the rule that does not, which is the problem in the particular section is kept in, that it will have to be approved by a majority of the voters in East Baton Rouge Parish. It seems to me that's consistent with the provisions of our rule as I see it.

All that you not infringe this convention in East Baton Rouge Parish politics, not to it in a manner of appointing the plan of government of East Baton Rouge Parish, and reject this, leave it to the people of East Baton Rouge to resolve their own problems.

Questions

Mr. Newton: Mr. Kean, is there any other parish in this state that would require a majority vote of the people in that parish to allow an unincorporated town to incorporate?

Mr. Kean: There isn't none and that's the reason I say, Mr. Newton, this section is directed directly against East Baton Rouge Parish.

Mr. Warren: Mr. Kean, from your question you can gather that there really is a people's provision.

Could you tell me why East Baton Rouge Parish would want a group of people to be in their parish and under their government that wanted their government of their own, that they have a rule in the charter?

Mr. Kean: Mr. Warren, as it was originally planned, we were attempting to avoid the kind of situation where people found down in the county, a need for some kind of a government to meet the overall requirements, and they had multiple municipalities, and they would deal with all of their problems on an overall basis.

Mr. Warren: Mr. Kean, you already have from now.

Mr. Kean: Two three.

Mr. Warren: Well, you have depending on.

Mr. Kean: Baker and Baton Rouge.

Mr. Warren: All right. Then you can get East Baton Rouge.

Mr. Kean: East Baton Rouge Parish of the parish and.

Mr. Warren: You say, Well, I want to make sure, I can do that now, because I wouldn't want to saying that you.

Mr. Kean: East Baton Rouge Parish of the parish and.

Mr. Warren: Right now, I will now the plan of government for that section. I would have how multiple municipalities, and they would have multiple municipalities, and they would have multiple municipalities, and they would not be able to deal together on a question of that kind.

Mr. Kean: Yes, right. That's the provision that was.

Mr. Warren: Well, I don't want this enactment, that's the plan of government for that section. I would have how multiple municipalities, and they would not be able to deal together on a question of that kind.

Mr. Kean: Right.

Mr. Warren: Well, I don't want to make sure, I can do that now, because I wouldn't want to saying that you.

Mr. Kean: My amendment.

Mr. Warren: Well, I am going to make a more difficult argument, and you can make that argument as well. It's very difficult to make that argument.

Mr. Kean: Well, I don't want this enactment, that's the plan of government for that section. I would have how multiple municipalities, and they would not be able to deal together on a question of that kind.

Mr. Warren: That's the amendment that's the plan of government for that section. I would have how multiple municipalities, and they would not be able to deal together on a question of that kind.
Mr. Kean: That's correct.

Mr. Juneau: If I do that, I, as a delegate from Lafayette Parish or Caddo Parish, don't have to determine what the people of your East Baton Rouge Parish have to?

Mr. Kean: That's exactly my point, Mr. Juneau.

Mr. Juneau: Thank you.

Further Discussion

Mr. J. Jackson: Ladies and gentlemen, I'm going to try to be brief. The effect of Mr. Kean's amendment is to delete that whole section. When I first got this I didn't understand the issue the proponents and the people on the committee that got this amendment out, was not necessarily trying to suggest that this was a racial issue. We were saying why should the whole parish of East Baton Rouge vote on whether Scotlandville, and that was an example we used, but I can point to Central, I could point to other home rule charters for them to incorporate...all we're saying...why must the whole parish vote on Scotlandville when in the rest of the state it doesn't require that kind of whole parish voting on whether any other incorporated settlement wants to incorporate. On the matter of this constitution injecting itself into home rule charter I said very clearly on my first remarks that this is a constitutional convention. We have constitutional amendments that replace the constitution. We're trying to incorporate home rule charters, we ought to be able to make provisions for home rule...constitutional provisions to allow unincorporated settlements to do it. That's the only way you can do it. I would just like to hope you put some weight on those points that I've just made.

Further Discussion

Mr. Stovall: Mr. Chairman, ladies and gentlemen of the convention, during the past few days, the delegate who is presenting this amendment, which would delete this section, has been speaking to us a great deal about home rule. It seems to me now that his amendment seems to want to deny home rule. It reminds me of the Catholic girl who was very much in love with a Methodist boy. She insisted that he become a Catholic, and he was converted to Catholicism. He embraced the Catholic faith. He was carried away with it. He was fascinated by it. So much so that he decided to enter the priesthood, and he left the girl. The point is she should hold her concern. I think Mr. Kean has oversold his case for home rule. Thank you. Thank you, John. I think there's something very basic here that this convention does understand the issues that are before us. It is a question of whether or not we feel that people should have certain basic rights or whether we feel that a particular article of incorporation is the thing that is sacred. I submit to you that this is an effort to give right to people, that we should reject this amendment, and we should go along with the section which is provided.

Mr. Lennox: Reverend Stovall, do you know that I plan to go to the next annual conference of the Methodist Church in Shreveport and arrange your next duty station, which you can rest assured will be Brattlewite, Louisiana?

Mr. Henry: Would you yield to a question...You're not going to yield...Reverend Stovall says that he's going to go in peace.

Mr. Avant: Further Discussion

Mr. Avant: Mr. Chairman and fellow delegates, I just want to remind you of one very important fact. With the very shadows of this seat of government we have here, this State Capitol, you've got thirty-five thousand people who for a quarter of a century feel that they have not gotten a fair shake under this home rule charter that we're talking about. In that community is a large state university. If by some exercise of reason you can consider then that is a matter that concerns only the people of East Baton Rouge Parish, so be it. Mr. Chairman, I move the previous question.

[Motion for Previous Question withdrawn.]

Further Discussion

Mr. Reeves: Mr. Kean has said many times in the committee and before you today that it's not any of your business what goes on in East Baton Rouge Parish. It's not any of your business. You shouldn't care when thirty-five thousand people are denied the right to incorporate themselves into a village. The right to participate in a great democracy, the right to be citizens of the greatest state in the United States of America, which is the greatest nation on earth. That is what Mr. Kean has told you, but the charter of East Baton Rouge Parish is so great, so mighty, and that it was conceived by men of immaculate taste and that they do no wrong. This is what he is saying. I say to you that from the great parish of Winn somebody does care and representing three rural parishes in North Louisiana, I care. I do feel that you are a group of fifty thousand people in five thousand, basically in a large extent black people, have been denied the right to incorporate themselves in a village, denied the right by a group of little Acadiana, and by a few people, to be a city planner, and I'm very ashamed of my profession at this time, because they sit down with their little maps and their little pieces of paper and they say to you that you don't need these cities in East Baton Rouge Parish. We know what's best for the people of East Baton Rouge Parish. We got it all right, Joe. We got it all right there. Let me tell you something. It doesn't matter to me how many schools you went to or how many schools you didn't go to. The right to incorporate yourself within a village or a community, or a city is just as sacred a right as the right to vote. That right shall not be denied by this Constitutional Convention. It cannot be denied, and it is your business. It's your business in Acadiana across the great South Louisiana of which I love dearly. It is your business. It is your business! Very much in your business. It is your business to vote this amendment down. For no longer shall East Baton Rouge Parish discriminate. For no longer shall it be held...the people held in bondage. "Let my people go!" Let them be the people who can hold these people back. Nobody has a right to incorporate themselves, and I think you think so too. You're going to say 'no' in such a way that there'll be no more amendments to delete this section, but only amendments to make it more perfect. For these people have a right, a great right, to incorporate themselves. They have a right for sewer, fire protection, police protection, and besides that you have a right to go out and protect Southern University because it's your money, see. My Mother in Winn Parish pays taxes just like your folks do. It's her tax money that goes into Southern University. That school has a right to be protected by a fire system within that area where the firetrucks don't have to come from the city of Shreveport because we've given them a right. This you must do. You must vote this amendment down. For evermore these people shall be free.

Further Discussion

Mr. E. J. Landry: Mr. Chairman and members of this delegation, really and truly this is a great occasion for me, a learning experience. I hope that those of you who know about all of these situations, I hope you will yield to me while I sit and listen and learn, because some of us do not know until we've heard your debate. I want you to reason with me just like a member of the Legislature. I sit here now like I've never needed it before. I realize the concern of Mr. Kean, but I want to endorse wholeheartedly what Mr. Kean has proposed as a me-
Mr. Warren, Mr. Chairman and delegates, it is really surprising that we would have delegates in this audience that would say that they want home rule and then to deny them home rule! The thing that disturbs me most is that you have got Zachary, Baker, East Baton Rouge in Baton Rouge Parish. All of them having their home rule charters, and then you want to keep Zachary from having the same things. This is prejudice. I'm not going to stand here because the Chairman just gave me a few minutes. He gave me a break. I'll put it like that. He said he wasn't going to let anybody else speak and he gave me the privilege. I couldn't help but come up here and say to you that if you want home rule, please give these people the same things that you want.

Thank you.

Questions

Mr. Weiss: Delegate Warren, is this the only home rule parish in the State of Louisiana that is being discussed here? Is there any other home rule parishes?

Mr. Warren: Dr. Weiss, I really didn't ... from the beginning I didn't know. It did ... the amendment didn't say that they were talking about Zachary. To be truthful with you, I'm sorry that that came up. It just said that these people would be able to have it if they want it. Since the subject came up that they have been denied that right, if they are in bondage, let them come out. That's all I'm saying.

Mr. Weiss: Don't you think people have confused the home rule of municipalities with the home rule of one parish in this state?

Mr. Warren: Well, I don't know if they're confused or not, but when I look down here and see that they have four, East Baton Rouge Parish has four separate municipalities, you might as well say they're governing their own little world. I can't see why you can't have another one. This is the only thing I'm saying.

Amendment

Mr. Speaker: Amendment No. 11, by Mr. Thompson, Mr. Kean, Mr. Baker, and Mr. I'll go back. I'm going to leave the partial word and punctuation. Rate delete the remainder of the line and delete lines 4 and 5 in their entirety.

Explanations

Mr. Thompson: Mr. Chairman, fellow delegates, this is just a single amendment. That as Mr. Kean in the amendment would not be in the constitution. They're exempt by the industrial exemption, etc. They're granted new industry. I took it that they should have to pay for the services, etc., and this would hurt. I think this would hurt. I think that the last vote you said it -- I think we need this section in here, and I think it's a very good section. It's intended to make sure that the part would be a much better sector for future adoption of this amendment.

Questions

Mr. Kean: Mr. Thompson, the present law dealing with the creation of local industrial areas provides that if they provide the usual public services, in effect, that they are not excluded in certain districts or areas subject to municipal annexation. There are many parishes throughout this state which have adopted ordinances creating such districts or areas, and these districts have come to these areas with reliance on those ordinances. Would your amendment mean that you would take away from those particular districts or areas the rights that they have had under those ordinances heretofore?

Mr. Thompson: Do you think that you should have police and fire protection that's paid for by all the rest of the people if they haven't been contributing towards their rightful share of that that I don't. I think they should pay their share like the rest of us.

Mr. Kean: Mr. Thompson, under the present law, they're excluded in the exemption, as you must know, only if they provide those services themselves. I ask you again, the effect of your amendment would then be to take away from existing industries which have located in reliance on ordinances created in the area what they enjoy at the present time. I think that's correct.

Mr. Thompson: Yes, and another thing, I am talking about it. It's lots of these districts are created just for that purpose, so they want get these extra taxes.

Mr. Jenks: Richard, the various industrial area and industries in them, they don't get to vote in regard to whether or not to incorporate. They don't get a sign petition; they don't get an assessed valuation in what time to be annexed or incorporated, why they should be annexed or incorporated. They shouldn't get to participate in the political process.

Mr. Thompson: They are getting benefit from this.

Mr. Jenks: Well, if they're not in a municipality, how can they be getting police and fire protection? They can't be, can they?

Mr. Thompson: Well, you are going to keep the area from growing by excluding them? I never thought this would be done. Mr. Filby: Mr. Thompson, isn't it possible to the day we got that every existing fire unit in the community, including paid-in, public aid, went there to help put their fire, as they should have?

Mr. Thompson: Yes, sir.

Mr. Filby: Mr. Thompson, don't you think that that industrial failure in the help pay the taxes for that?

Mr. Thompson: That's exactly right. That's what I've been talking about.

Mr. Filby: Well, it further true that by not the deletion of this language does not take anything away from the existing and relate into the text.
53rd Days Proceedings—September 25, 1973

[Page content]

care of that when we get to Revenue, Finance and Taxation's Proposal?

Mr. Thompson This is exactly correct.

If there is no further question, I move for the adoption of the amendment.

Further Discussion

Mr. Wall Mr. Chairman, fellow delegates, this is a real serious question. I'm particularly glad to see Mr. Slay present on this. I'm aware of a local assessor who's well aware of how this situation is, as to industrial parks and districts and how they are taxed. I'm sure he's going to have a few words to say, and I'll answer your questions. But now let me just tell you something. You take all these big industries that we have; they want to avoid all the paying of taxes to the local community. They want to avoid paying all the taxes to the local community where their employees live. You go look at the big industries around this state, and you look around the big industries and you will see the slums in this state. There are exceptions to that, yes. Yet, they pay high federal taxes, high federal income taxes, but yet, because they're big, they can keep the laws to where they don't pay any thing in the local community where their employees live. The fact of it is they juggle their books, in the locality where the industry is located, seventy-five percent or more of the tax they pay would only be what they're not paying to the federal government in federal taxes. But they juggle their books around the other way. Now, this is not putting any tax...this particular provision deleting this part of this section...is not putting any tax on big industry, but it is making it possible. If we don't delete this, it will be impossible unless you have a statewide vote...a statewide vote only. That's what this constitution is trying and should be doing is deleting provisions to where you'd have to have a statewide vote for some little something that involved a local community in a local situation. Yet, big industry, some of you home rule people, want to protect this big industry. They don't want the big industry to pay their part of their community taxes. The big buses, the big trucks, you just name it...not only...they provide employment but yet as many burdens, and they should be paying their fair share. Most of the time they have that, they're paying only on the wages and they're not paying in Washington in federal taxes. This is not putting any tax on them. It's just taking out the prohibition. So this is a good amendment. Now, as mentioned earlier, you will get to the real issue whether they are taxed or not or permitted to be taxed in Revenue and Tax Committee. So let's delete this particular provision. There will be an opportunity to clear up the slums around your big industry in this state, and if they're really for better working conditions of their employees, they will be willing to pay taxes. But this amendment does not tax them.

Questions

Mr. Weiss Delegate Wall, this is the only home rule parish in the State of Louisiana, isn't it, that we're speaking of, East Baton Rouge?

Mr. Wall No, I don't believe it is, but...

Mr. Weiss What is the other one?

Mr. Wall But that's not relevant. What is your question?

Mr. Weiss But it is. I think it's important because...I think it is because it would be discriminating against just industry in East Baton Rouge Parish. Don't you think?

Mr. Wall No, it wouldn't.

Mr. Weiss Why not do it to all the industries such as Orleans Parish and other areas?

Mr. Wall Dr. Weiss, this is just where they incorporate a village. So this is not discriminating against anyone. This is just a general law that's providing for the incorporation of a village, so it's not discriminating against anyone.

Mr. Weiss As a legislator, aren't you aware that this is the only home rule parish in the State of Louisiana?

Mr. Wall Well, that's not correct...

Further Discussion

Mr. Slay Mr. Chairman, delegates, for those of you who might not know what we're talking about when you speak about an industrial exemption, I want to tell you just what this amendment means. Big industries have what's known as a ten-year exemption. We're not speaking about a ten-year exemption in this amendment. They also have the right to go to the police jury and ask the police jury to create an industrial park. That industrial park will just take in the properties that they own. It might be five acres, ten acres, or a hundred acres but it takes in only the property that that industry owns. They are the exemptions that are levied by the police jury. These can be water districts, where they furnish their own water, or garbage districts and matters of that nature. Now, the twelve will recall, has a ten-year exemption. It would still be in effect; then this industrial exemption they are speaking about comes on top of this, gives them an additional exemption. Now we're saying in this proposal here that these people cannot be taken into the city limits of a town. Suppose you have an industry there, and suppose we're looking to Scotlandville, because we've talked about them so much, and I don't know anything about Scotlandville. But suppose there's a big industry located exactly in the middle of Scotlandville. We incorporate everything else, but we're saying that this industry can never be taken into the city and help pay their just share of the cost of running that city. Once they're incorporated there's a seven mill general alimony tax that can be levied which goes to pay for police protection, for fire protection, for the costs of running City Hall, the mayor's salary, and all these things. All this amendment that Mr. Thompson has just talked to you about says is that this industry can be taken in and be incorporated with the rest of the properties there and they will pay their just shares of the taxes of the incorporated area. They will still enjoy the exemptions afforded them by the police jury in an industrial park. The law further calls for the assessor when he looks at the name of that company, if it's Greater Industries, they have an industrial exemption. It's stamped across there, industrial exemption. They're exempt from certain parish taxes, but we are now saying that they can be brought into that incorporated area, and they will pay their just share of the city taxes. That's all that this amendment says. I urge the adoption of this amendment.

Questions

Mr. Lanier Mr. Slay, as this thing would be written if your amendment were to pass, what would mean that in a home rule parish, say, like Jefferson where they had a major industry like Avondale, that four or five hundred people could come together and incorporate around Avondale and start taxing Avondale?

Mr. Slay If the majority of the people in an area wants to incorporate, that would take in that industry too. Let me say this, if an industry wants to settle in Jefferson Parish, or Scotlandville or wherever they want to settle, they should be willing to pay their just share of the load.

Mr. Goldman Mr. Slay, just to allay Dr. Weiss's fears and all this talk about East Baton Rouge and
Scotlandvi, here's my question. For instance up in your area, up there near Alexandria where P & G put up a big plant there are a lot of homes and quite a population around there. If that particular population voted to incorporate and that plant is right there in the center of them, they would be then included with your amendment. Right?

Mr. Slay: They could be included in the incorporated area.

Mr. Slay: So it doesn't just bespeak itself for East Baton Rouge Parish. It bespeaks itself for the entire state. Right?

Mr. Slay: That's right. You named P & G and P & S. They enjoy a ten-year exemption and it also enjoys an industrial exemption. It would not affect that whatsoever.

Miss Perkins: Mr. Slay, you must forgive my ignorance but I understand the industrial exemption that you explained, but you said that industry could be taxed. You didn't say shall be taxed. So if they can be taxed, who determines whether they are going to be taxed or not? Legislature or local government or who?

Mr. Slay: I'm sorry, I misstated wrong. They would be taxed if they are brought into the incorporated area just like I would be taxed. You must remember if this area is incorporated, these citizens will not enjoy a homestead exemption. They would be taxed, Miss Perkins.

[Proceedings continued]
Pledge of Allegiance: "Leshanah Tovah" which means Happy New Year, which is tomorrow. Thank you.

54th Days Proceedings—September 26, 1973
Wednesday, September 26, 1973

ROLL CALL
[96 delegates present and a quorum.]

PRAYER

Mr. Denenry Lord our God, and God of our Fathers, we give Thee this moment of reverence and acknowledg- lement of Thy constant blessing. We ask for strength of mind and heart, and the courage to carry that wisely and bravely. Guide us in our efforts and deliberations to serve this our state and its people. Give us wisdom to accomplish our task with the power of our hands to the favor of Thy sight. Establish Thou the work of our hands for good and to the glory of Thy name. May I wish each and every one of you in the ancient Hebrew words "Leshanah Tovah" which means Happy New Year, which is tomorrow. Thank you.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

RECONSIDERATION
[7 Journal 526]

Mr. Poyster On yesterday, Section 9 of Committee Proposal No. 17, introduced by Delegate Perez, on behalf of the Committee on Local and Parochial Government failed to pass. Said Section 9 providing with powers of other local governmental subdivisions. The question is whether the convention wishes to reconsider the vote by which that section failed to pass on yesterday.

[Motion to reconsider adopted: 72-25.]

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Mr. Poyster Committee Proposal No. 17, introduced by Delegate Perez, who's Chairman on behalf of the Committee on Local and Parochial Government and other delegates, members of that committee.

A proposal making general provisions for local and parochial government, levee districts, and ports financing thereof and necessary provisions with respect thereto. A subject of the proposal at this date is the convention has adopted as amended, Sections 1, 3, 5, 6, 7, and 8 of the proposal has voted to delete Sections 2, 4, 10 and, of course, Section 9 which failed to pass on yesterday, has just been reconsidered and is now open for subsequent action at whatever time by this convention.

[Motion to revert to Section 9 adopted without objection.]

Reading of the Section as Amended

Mr. Poyster As presently amended the section reads as follows:

"Section 9. (A) (---it's, of course, on page 5 of your proposal)---Subject to and not inconsistent with any provision of this constitution---that amendment added by Delegate Gravel's amendment ---any other local governmental subdivision may exercise any power and perform any function necessary, requisite, or proper for the management of its affairs not denied to it by its charter, or by general law."---striking out "by this constitution" and strike-putting a period ".---after "general law", deleting everything through line 28. (B) was not amended, still reads as printed:

"(B) Any local governmental subdivision may exercise any power, or perform any function concurrently with the state pertaining to it, or its government and affairs to the extent that the legislature by general law does not specifically limit the concurrent exercise of any such power or performance of any such function or specifically declare the state's exercise of any such power or performance of any such function to be exclusive except as provided in this Article.

(C) has been amended as follows:

(C) Nothing contained in this Section shall be construed to affect the powers and functions of a parish or city school board and the office of sheriff---insert--"district attorney, clerk of a district court, coroner, or assessor."

Amendment

Mr. Poyster Amendment No. 1. On page 5, delete lines 16 through 28, both inclusive in their entirety, and delete all floor amendments thereto and insert in lieu thereof the following:

Section 9. (A) Subject to and not inconsistent with any provision of this constitution, the governing authority of any other local governmental subdivision may exercise any power and perform any function necessary, requisite, or proper for the management of the affairs of the local governmental subdivision not denied by its charter, or by general law, provided that a majority of the electors in the affected local governmental subdivision who vote in an election held for that purpose vote in favor of the proposition that such governing authority may exercise such general powers in the absence of such a favorable vote, such local governmental subdivision shall have such powers as shall be authorized by this constitution or by law."

EXPLANATION

Mr. Conroy After yesterday's debate and discussion, it became apparent that there was a sharp division within the convention as to how this section should be approached. It also appeared to be an area that was subject to compromise and adjustment of the differences and viewpoint. This amendment is designed to accommodate those differences and to strike what I think is an appropriate and desirable middle ground. What the amendment says, in effect, is that any local governmental subdivision---whether it has a home rule charter--even if it doesn't have a home rule charter, can elect to have the residual powers that we had talked about if that question is submitted to the voters and the voters decide they want their local governmental authority to have those powers. All other entities if they haven't submitted this to the vote of the people and haven't received such a favorable vote, would have only those that are authorized---only those powers which are authorized by this constitution or by law. This takes care of what I think, was the principal objection that was voiced yesterday, is, the objection that the constitution or section as proposed, would have forced on certain people a form of government with additional authorities that they had never voted in favor of. This meets that objection--which I said was the primary objection--also clarifies some of the language in the prior... in the committee proposal. I'll yield to any questions.

Questions

Mr. Denenry Mr. Conroy, in your last sentence of the amendment you use the language "as shall be authorized." Would that not imply that future authorization is necessary? I take it...

Mr. Conroy I don't think so.

Mr. Denenry You don't think it read, "such powers as authorized" rather than "as shall be authorized" or "as are authorized."

Mr. Conroy Well, frankly, Mr. Denenry, I don't see the difference in the phrases. I think that certainly the meaning is the same to me both ways.

Mr. Jenkins Mr. Conroy, I think your amendment is certainly superior to what we have. My only problem is that you retain Section (B) in Section 9; you haven't taken that out.

[1427]
Mr. Conroy. Mr. Jenkins, that would have to be the subject of a separate amendment or discussion. This does not preclude the possibility of somebody following with an amendment to Section 26. This is just to straighten out the situation with (A).

Mr. Jenkins. But, unless we delete Section (B) and we keep Section (B) really, isn’t the effect of subsection (A) somewhat minimal because under Section (B) any local government subdivision may exercise any power or perform any function which is not denied to it?

Mr. Conroy. I don’t read (B) that way.

Mr. Fulco. Mr. Conroy, you have provided for a majority of the electors in the affected local governmental area. You say “in the absence of such a favorable vote, such governmental subdivisions shall have such powers as shall be authorized by the constitution or by law.” Is that making the election unnecessary?

Mr. Conroy. Well, it delineates the difference between having the election and not having the election. If you don’t have the election, all you have are delegated powers to the police jury or municipality, whatever it is. The powers that have been delegated by this constitution or by statute, those are the only authorities that such a governmental unit would have. If they want more powers, they have to submit that question to the people and they can then get the residual powers which were the subject of much discussion yesterday.

Mr. Champagne. My question was somewhat like Mr. Jenkins’ question, in that you did not delete Section (B) and of course I get the assumption I can read, but even when I read these it doesn’t tell me anything, that except what it does tell me worries me. So, possibility the answer would be to vote for (A) and then attack these. Is that what you are suggesting?

Mr. Conroy. Yes, I think that would be a separate issue, yes, Mr. Champagne. I think you and Mr. Jenkins might get together and decide what you want to do on that.

Mr. De Blieux. Mr. Conroy, Mr. Fulco kind of touched on what I have a question about, that’s in the last two sentences. Now, you say “In the absence of such possibilities as I see in this sentence—one is that the local government could come to the state legislature before they want to exercise a certain power andask for that authority.” Is that the purpose of this sentence?

Mr. Conroy. Mr. De Blieux, I think the best way for me to explain the purpose of the last sentence is to say that when I originally prepared the draft of this amendment, I left off the second sentence. I didn’t think the second sentence was necessary because it is a statement of what the present situation is in this state with regard to police jurys and other governmental units not operating under home rule charter. It is intended simply to be a statement that the existing situation with regard to these governmental subdivisions would stay in effect, that’s what it is intended to say.

Mr. De Blieux. Well, now you say that’s one interpretation. I also think that there’s another interpretation could be, too, with reference to this particular section, that if you had a vote in the local subdivision that they did want to give the power to their local governing body that the local governing body could come to the legislature and ask for that authority in spite of the fact that the local people had voted against it, if they could persuade the legislature to go along with it.

Mr. Conroy. I think that would be the case, Mr. De Blieux.
that is they didn't get a favorable vote by the people they could still have this type of govern-
ment whether the people wanted it or not.

Mr. Bollinger No, Ma'am, if it did not get a
favorable vote of the people then they would oper-
ate in the same manner in which they operate today.
The only reason for this last sentence was that we
thought that if it wasn't provided for, that all
the powers presently had by the local government,
that is, police juries and other forms of local
government not provided under home rule charters,
they would lose the powers they have now.

Mrs. Warren But, this "or by law" seems to have
been explained up there that they could go to the
legislature and then override what the people wanted.
Now this is what I'm trying to find out.

Mr. Bollinger Right now, they have to go to the
legislature to get a special authorization to have
jurisdiction. This would just say that...

Mrs. Warren This is what I'm saying, after the
people have voted that they did not want it--I
mean the people did not want it, and then the
governing authorities could go to the legislature
and have the legislature override what the people
wanted. Is this what it would mean?

Mr. Bollinger I think you misunderstand me, Mrs.
Warren...

Mrs. Warren That's what I'm trying to understand
now.

Mr. Bollinger The gist of Section 9 says that
people will vote if they want their local govern-
ment to have the broad grant of authority and then
the last sentence says if they don't want the broad
grant that the local government can still go to the
legislature and get special laws adopted to allow
them to have specific authority not broad...not
cover everything. Does that answer your question?

Mrs. Warren I hope so. I'll hear somebody else
and maybe I...

Mr. Henry You've exceeded your time there, Mr.
Bollinger.

Further Discussion

Mr. Perez Mr. Chairman, ladies and gentlemen of
the convention, I believe that this is a good
compromise from the committee proposal because it
doesn't require a submission to the people if the
police juries want to exercise this additional au-
thority. Therefore, we have no objection and
approve the amendment and if there are no other
speakers, I move the previous question.

[Coauthors added. Previous Question
ordered.]

Closing

Mr. Conroy I really came back here only in the
event there were any questions in light of the de-
bate that had been offered. The committee has
said they have no objection to this. I think it
does represent a desirable compromise; it does put
the issue in the hands of the people where, as I
had argued yesterday, it belongs. I urge you to
adopt the amendment.

Questions

Mr. Burson Mr. Conroy, to inform those delegates
who are...have some concern about Paragraph (B) of
this section, it's true, is it not, that we are
presently attempting to arrive at some language
that will assuage the doubts that the people have
with regard to Paragraph (B)?

Mr. Conroy Yes, but I think that before (B) can
be tackled we have to know what (A)'s going to say,
and I hope that the amendment would pass so that
then (B) could be properly adjusted.

Mr. Flory Mr. Conroy, isn't it true though that
you haven't really addressed the problem, or at
least erased the objections until you do solve the
issue in (B) as it relates to the powers granted
in (A)?

Mr. Conroy Mr. Flory, I think that depends on a
reading of Section (B). I read the last phrase in
Section (B) to limit everything that preceded the
last phrase, so that if (A) is passed the way I
have and my coauthors have recommended, I think that
(B) would be alright. But, I think it's unclear,
and I think it should be clarified so that it is
put in accord with it. But that last phrase that
says "to the extent permitted by this article" and
so forth, I think limits all of the preceding lan-
guage in (B). But, I think it's unclear and I
think it's desirable to straighten it out.

Mr. Flory Isn't that particularly true in light
of the language of your amendment as being incon-
sistent with other provisions of the constitution
or general law? Doesn't that mandate that you
have to clean up (B)?

Mr. Conroy Virtually, yes.

[Amendment adopted: 105-3. Motion to
reconsider tabled.]

Personal Privilege

Mr. Rayburn Mr. Chairman and fellow delegates,
several of us have been real concerned for the
last few hours about the welfare of our Chairman.
We had a little get together this morning and re-
alized that he's had a strenuous load for the
last several months placed upon his shoulders, know-
ing that he has handled it well and capably and,
with a sincere hope that he could continue to carry
on in the future like he's carried on in the past,
we decided that we needed to offer him a little
assistance. We tried to find a doctor and someone
said they were a doctor, and we asked him to pre-
pare a prescription. I cannot make the doctor's
name out, but I do see right under it it says "Mr. Henry,
This prescription is to our Chairman, Mr. Henry;
this is a container that contains a considerable
amount of thought pills. It says here 'Please take
two before going to the mansion at least one hour
before you plan to be there.' At this time, Mr.
Chairman, I would like to present you with this
little token and let all of our friends are
deeply concerned about you. I hope this little
bottle of pills will help you in the future.

Mr. Henry Is that to help me think or to remember
to think, Senator?

Proceed, Mr. Clerk, with the next amendment.

Amendment

Mr. Paynter Amendments, there are several sets of
De Blieux amendments, this set reads as follows:

Amendment No. 1. On page 5, delete lines 29
through 32, both inclusive, in their entirety and
on page 6, delete lines 1 through 4, both inclusive,
in their entirety.

Explanation

Mr. De Blieux Mr. Chairman, ladies and gentlemen
of the convention, we have already taken care of, you
might say, what is contained in (B) by the amend-
ment that we previously adopted, the Conroy amend-
ment, and therefore, I don't think there's any
necessity for Paragraph (B), and this amendment just
eliminates that particular paragraph, which I believe
the Local and Parochial Committee has agreed to,
and I ask your favorable vote on it.

Mr. Perez We have no objection to the adoption of
the amendment.
Amendment

Mr. Chairman, we have the next De Blieux amendment to the last sentence of the Conroy amendment, on page 3. The last sentence in Amendment No. 3, page 4, is as follows: 'The De Blieux Amendment No. 1, passed by Senate and Assembly, and adopted by the Convention on June 26, 1973, on line 4, immediately after the word 'well,' is hereby stricken out as to the punctuation and word, such delete the words 'such an election' and insert in lieu thereof the words 'such an election'.

Explanations

Mr. de Blieux, ladies and gentlemen, let me explain what I mean by this amendment. As I read the last sentence of the Conroy amendment, it says after you have had an election, and you get an unfavorable vote, that you can come to the legislature and get them to overturn the people's vote on that, and therefore do something which the people have voted against. I don't think that's what the amendment really meant. I think that they meant that you could get an election and then get the legislature to do something by coming to them without having an election, and I just wanted to change it so that you could do that. You could come to the legislature and get something done that the necessary holding an election, and I want to state that, now, if you mean that you want to overturn the people's viewpoint and leave it as it is, I think that's absolutely wrong, and as long as I'm a member of the legislature, I'm not going to vote to give the authority to local government to do something which the people have turned down, even though I might disagree with them, and I don't think you should either. Now, let's charge it and clean it up. Really, I don't think you need the last sentence, to be honest and frank with you, because it really doesn't mean anything. If you eliminate the sentence, you would come to the legislature without or without this, but let's don't stick something like this in the constitution and tell the people that, after you've voted it down, we're going to get the legislature to overturn your vote, and that's what this amendment means.

Questions

Mr. Chairman, Senator De Blieux, is it not true that if the way your amendment is drafted, that if there was an election, and the people refused to grant the residual grant, that the unit would then have no constitutionally based powers?

Mr. De Blieux, if they refused to grant it, that may be true, but you would get an act of the legislature. But what I'm trying to say is, don't go and hold an election and let the people turn it down, and then go to the legislature to do it. Why not go to the legislature, and if you wanted something, to avoid the necessity and expense of an election, go to the legislature and get your authority to start with.

Mr. Chairman, but wouldn't it be true that doing the petition process, to get it out of the way, when the election was held and the people voted, the legislature, that that would be the same, whatever it may be?

Mr. De Blieux, it might go that power to do the very thing which the people have turned down, but you don't get to against the wishes of the people, but you do get to do something they've voted for. It's not fair to just say that, because they've voted, and I want to give that in your question, and I ask the supporters of the amendment.

Mr. Fiala

Mr. Fiala: Mr. Chairman, Senator...
Conroy's sentence it says that after you've had an election and the people have turned it down, you can come to the legislature and get the legislature to change it. My amendment just says that without an election you can get the legislature to grant the authority.

Mr. Anzalone Well, Senator, that's what we've been fighting on the floor of this convention for the past five days, and we haven't been able to convince you of it yet.

Mrs. Zervigon Senator, you've served in the legislature a long time. Is it the habit of that body to override the will of the people as expressed in local elections?

Mr. De Bitleux I think you would have an awful hard time getting them to do that, Mrs. Zervigon, and for that particular reason, I don't see why we should tell the people that we are going to do it.

[Amendment rejected: 11-99. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Bollinger], on page 5, between lines 16 and 28, within Floor Amendment No. 1 introduced by Messrs. Conroy, and others, and adopted by the convention on September 26, 1973, on line 13 of said Floor Amendment, immediately after the words "powers as" and before the word "authorized" strike out the words "shall be".

Explanation

Mr. Bollinger Mr. Chairman, fellow delegates, this, I think, is actually a technical amendment. Mr. Dennery brought out the point, when Mr. Conroy was explaining the amendment to say change Section (A)...Paragraph (A) of Section 9, that the words "shall be" in the last sentence of the amendment could be construed to only refer to future and not present or past legislation, and I think this makes it eminently clear that it refers to any law by the constitution and by law. So, I move the adoption of the technical amendment.

Further Discussion

Mr. Perez No objection; I consider it a technical amendment.

[Amendment adopted without objection.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Perez], on page 6, at the beginning of line 5, strike out the punctuation "(C)" and insert in lieu thereof "(B)".

Explanation

Mr. Perez This is just to correct the letter in the next paragraph because we delineated (B); we would now make (C), (B).

[Amendment adopted without objection.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Perez and Mr. Pace], on page 6, between lines 8 and 9, insert the following:--and Judge Dennis, we need to make that Paragraph (C) now.--"(C) Notwithstanding any provision of this Article to the contrary, the courts and their officers may be established or affected only as provided in Article V of this constitution."

Explanation

Mr. Dennis Mr. Chairman and fellow delegates, this is the same amendment that was added to Section, the previous section, Section 8 to make it clear that we are not here authorizing any new court system, that the courts shall be established and modified of courts will be governed by the provisions of the Judicial Article.

Questions

Mr. Dennery Judge Dennis, you use the word "article". Here, and you used the word "article" in the previous amendment. The word "article" comprehends the entire article. Do we need this in each section?

Mr. Dennis Yes, sir. I thought about that. I think we do, because the fact that we added it in one section and didn't put it here may by implication cause someone to interpret it to mean that we were...intended to authorize a new court system.

Mr. Dennery Well, don't you think, then, it technically should be "section" in each one of those amendments?

Mr. Dennis Yes, sir, technically, I think so. Technically, I hope that it can be changed stylistically so that we can only say it one time perhaps, somewhere.

Mr. Bollinger Judge Dennis, to accomplish the same thing, wouldn't it be easier to make the section saying that "notwithstanding any provision of this article to the contrary," which would cover all of them, rather than trying to tack it on to each section? You'd only have one time you'd have this verbiage instead of having it two or three or four times?

Mr. Dennis I think you may be correct, Mr. Bollinger, but since we don't know how many sections we're going to adopt and what they are going to be in this article, I think we have to take them as they come. I wouldn't object to any stylistic changes in the future.

Mr. Jenkins Judge Dennis, my problem is that I fear that by enumerating this one thing that can't be touched by this article, that we're by implication saying that perhaps other things can be. Now, we already have in this section that in (A) that "subject to and not inconsistent with any provision of this constitution," and, obviously, all of these things are subject to all of the other provisions of this constitution. Aren't we making a mistake by enumerating this particular one, and not say, the Bill of Rights Provision or any other thing?

Mr. Dennis No, sir, I don't think so, as I explained on the previous section when I offered this same exact amendment. The Judiciary Article says, "the judicial powers shall be vested in the Supreme Court, court of appeal, district courts and such other courts as authorized by this constitution.

Now, we are here authorizing governmental powers, and we're not restricting them in any way so that you could conceivably set up a separate court system under this section for local government. Inconsistent with that envisioned in the Judicial Article. This is the same amendment that we adopted on home rule charters. I believe you have already...I was not here yesterday...you adopted one that made it clear that local government provisions should not affect sheriffs and other officers. I think that we should do the same thing for the courts, just like we did under the home rule charter section. Further Discussion

Mr. Perez I have no objection to the adoption of the amendment, except that I would hope in Style and Drafting we could make it clear that it applies either to the section or that we will have this recitation one time instead of having to have it repeated.
Further Discussion

Mr. Abraham. Mr. Chairman, fellow delegates, I tried to make this point the other day. I want to repeat it, that this is the type of thing that you get into whenever you start making all of these exceptions. Now, we have provided for these various offenses in Section 11, which was Paragraph 6, and other articles of the Constitution. We've already said in here that not withstanding or subject to the other provisions of this Constitution or any other, the provision of the Constitution is not inconsistent with other provisions of this Constitution. Where do we draw the line on these exceptions? I don't think this is necessary at all. I don't think that Paragraph 6 was necessary to begin with, but you see what happens when you start enumerating one, then somebody else says, well, I want to be enumerated, also, and as a result we're going to keep cluttering up and cluttering up this article and other articles in the same way. What ambush is clearer that it does not occur underground and so forth? If you want to call it to the extreme, you could say that a local government subdivision might be able to pass a law or an ordinance under its home rule charter which might affect these people. I just don't see the addition of all these things like this, and I urge the rejection of this amendment.

Questions

Mr. Bollinger. Mack isn't that the Judicial Article...Does not the Judicial Article eminently cover what Judge Dennis is trying to do, as well as Section 8 is covered?

Mr. Abraham. That's exactly right. If it did not, well, then that article is poorly written.

Remarks

Mr. Jenkins. Mr. Chairman, delegates, this essentially attempts to restore the concept.

Mr. Henry. Why do you rise, Mr. Jenkins?

Mr. Jenkins. Mr. Chairman, delegates, this essentially attempts to restore the concept. I want to apologize to the delegates, but I'm sure Mr. Jenkins will tell me when he asked me whether I wanted to be on this amendment. I must have appeared on here, but I did not intend for it to.

Mr. Henry. Scratch Jenkins in the amendment.

Explanations, continued

Mr. Jenkins. Mr. Chairman, delegates, this amendment attempts to restore the language that I have here, and the same concept which we find in lines 23, 24, and 25 of the committee report yesterday and amendment was offered. I really don't believe that there was any contention expressed at it at the time.

Point of Order

Mrs. Warren. Mr. Chairman, just a few days ago, I had a amendment. I accepted the floor ruling. It was reworded. It was designed to do the same thing that I had originally wanted in the convention rule that it was out of order. Mr. Jenkins has said his amendment is designed to do the same thing that I think he's out of order.

Ruling of the Chair

Mr. Jenkins. Mr. Chairman, delegates, I think we can rule the amendment out of order, and that the amendment has been properly tabled, and the argument has been properly tabled.

[The reading of the section as ordered]

Further Discussion

Mr. Abraham. Mr. Chairman, fellow delegates, I want to thank the delegates very much for giving us the opportunity to put this amendment forward. I think it is in order because the language is different from what was considered yesterday. Yesterday we took a submission at the end of Section 11 which forbade the enactment of home rule charters in any new or unincorporated area. I think that passage is in any new or unincorporated area. I think that passage is in any new or unincorporated area. I think that passage is in any new or unincorporated area. I think that passage is in any new or unincorporated area. I think that passage is in any new or unincorporated area.
East Baton Rouge Parish could be included in the proposed incorporation which would extend as far south as almost to this State Capitol because virtually all of our industrial area, Gulf States Utilities, Exxon Chemical right on up, is not in the city limits, and it's in an industrial area for the most past. But it would be possible because there is no population in that area, for the Scottishville area to be incorporated beginning at Scottishville and for this additional area, all the way down almost to the State Capitol, to but also included, and there would be no one in that area to object or refuse to sign a petition or vote against it if it came to a vote, or whatever. The important point here is that the industrial manufacturers and other people have located in these areas have done so with the understanding that they would not be subject to inclusion in a municipality. The East Baton Rouge city-parish charter includes just such a prohibition. It forbids the inclusion of an industrial area in the municipality. Now, if we are going to keep faith with the industries that have located here, we have to continue that concept. The committee proposal, as originally introduced, did include that concept. It says that we're going to allow areas like Scottishville and home rule charter parishes to continue in existence or to be incorporated, but we're not going to allow industrial areas to be incorporated. So, this amendment simply puts back that concept. The fact is that these industrial areas provide their own city services, so really, they gain no benefit and have no desire to be included in a municipality and pay the additional taxes and come under the additional regulations that they are required to. Now, if there's anything that we need more of in this state, it's more investment, more industrial development, and thus more employment for our people, and I certainly wouldn't want us to do anything that would discourage future investment or cause a breach of faith with those that have invested here in the past, so I urge the adoption of this amendment.

Questions

Mr. Willis Mr. Jenkins, we have looked only at one side of the coin, I think, in this argument. Now, visualize this--an industrial area of about fifty acres may be incorporated separately--it takes forty people around that area and it names the town "Esso." Can it do that and shield itself from taxes? Can it do that, what's to prevent it if your amendment is not adopted?

Mr. Jenkins Well, it would take, I think, two hundred and fifty people, normally, I believe that's the requirement now.

Mr. Willis Normally it doesn't say that. The Constitution adumbrates any law enacted under it, and if that thing says "incorporated settlement," that can mean a settlement of five or ten people. There is no limit to no limit. Isn't that correct?

Mr. Jenkins Well, you may be right. We need to put some number in here.

Mr. Willis Well, sure. A factory on ten or fifteen acres can, in order to protect and shield itself, surround an area around it, and then they'll call it "Willisville" if you want. Isn't that correct? That's the other side of the coin.

Mr. Jenkins Yes, sir. So I think that's one reason we need the amendment.

Mr. Willis Precisely.

Mr. Roy Woody, this amendment does change or does modify the original committee proposal in that it deals with previously included industrial areas, right?

Mr. Jenkins That's correct. It has to be previously included.

Mr. Roy Which means that if in the future, if the Legislature, since we wouldn't be dealing with it at all except in previously included areas, future areas could be dealt with by this Legislature, and we would not be breaking faith with any particular area, industrial area, that has already come in and set up according to what is thought we would agree to. Is that right?

Mr. Jenkins I believe that's correct.

Mr. Rachal Mr. Jenkins, I don't know if I'm looking at these right. Could you tell me how your amendment improves or changes what is in the article?

Mr. Jenkins It changes in that, you'll remember yesterday we deleted lines 23, 24, 25, this restores that concept--not the same language because the language is different--but it restores that concept, thus, it gives some protection to our preexisting obligations that we had with regard to industries that have located in industrial areas or industrial districts.

Mr. Arnette Woody, I voted so that you could present your amendment because I wanted a couple of questions answered. I'm a little confused because I don't know what an industrial area is, because we don't have any, I don't think, in my area. Is it a legal determination or an ordinance passed, or what is it?

Mr. Jenkins As I understand it, we are talking about a legal special district, in effect, which has been created pursuant to the constitutional laws of the state.

Mr. Arnette Well, in other words, if there has not been a district set up for a particular industry, or something like this, then they could incorporate that industry in a town?

Mr. Jenkins Well normally, they could incorporate anything which would be contiguous within certain defined limitations that the courts have laid down. Now, if it's not contiguous and things like this, it couldn't; but, no, we don't have any other protection for it, I don't think. Perhaps we need some.

Mr. Arnette The reason I was wondering, Woody, because in some sections of the state they have an oil refinery, or something like this that's kind of out in the country, and they've got a few little houses around it like that, but they don't have an industrial district. They could take in that oil refinery is that little village if they wanted to, is that correct?

Mr. Jenkins Well, this wouldn't grant anymore authority than they have now to do that, Greg. They already have that authority if they meet certain statutory requirements. This doesn't change that at all except in home rule parishes; it really puts home rule parishes on par with all of the other parishes.

Mr. Alexander Delegate Jenkins, under the terms of this amendment, do you mean that an industrial installation may be immune from the regular rules regulations of a municipality that may be created under this section?

Mr. Jenkins Only to the extent that they are authorized to be immune, for example, under Section 21 of the committee's proposal, the legislature is given the authority to authorize parishes to create industrial areas. Now, if we're going to attract industry into the state, you see, we must, we've, at least we have in the past, offered them certain guarantees. One of which is that they would have to be included in municipalities such as this. We're simply trying to preserve that same protection such as what we've had in East Baton Rouge Parish.

Mr. J. Jackson Mr. Jenkins, under the state stat-
54th Days Proceedings—September 26, 1973

Despite for incorporations, are industrial districts— I'm just trying to get some information—are industrial districts exempt as your amendment is proposing? Maybe your response to that could clarify what is the current status of law about incorporations of industrial districts.

Mr. Jenkins: Johnny, frankly, I'm not sure about the existing statute on incorporation. I can only tell you about the existing constitution which, as I understand, it does not protect them. But, in numerous places, such as East Baton Rouge, these industrial areas are protected from extension of the municipality or incorporation, but I'm not sure about the statutes on incorporation themselves.

Further Discussion

Mr. Cannan: Thank you, ladies and gentlemen of the convention, it's not often I'll come to this microphone. But, I urge you strongly to support the Jenkins, DeBlieux amendment. In doing this, I think things have been brought out already which shows to you some preferred treatment for industry to get them to locate, to give local people jobs, and so make them pay certain taxes. Such as municipal taxation—give them a tax break to give our people jobs. The point that I would like to make is that I don't think people here fully realize. Think if you will of the closest heavy industry close to you. What if a municipality had to undertake the maintenance of those streets, the street lighting, the security, and the other municipal services which they would be entitled to were they in a municipality? Think very strongly on that. I think you would say, I know that the city of Baton Rouge, or any other municipality who might want to incorporate, Exxon, Kaiser, Ethyl corporation, what have you, the major heavy industries around here— if you can, you don't think that these municipalities would want to undertake these basic services to this industry just for this minor amount of taxes that they would get from areas. Again, I would like to urge you to support the Jenkins' amendment. One other thought: Parishes which create industrial districts, if they are authorized by the legislature to float certain tax free municipal bonds; now, what they're doing in this is removing— the public owns the land and leases it to a private enterprise. In doing so there is generally payments in lieu of taxes, or whatever the arrangement that is made. I think that this is certainly something that the states ought to know about the existence of an industry that has located in an area and provided jobs for people.

Question

Mr. Warren: Mr. Cannan, I've been hearing ever since I've been here that we don't want to freeze things into the constitution. Now, in the event that the parish decided that they wanted to change the exemptions for industries, then how would we have to do it by a constitutional amendment, the thing that we are trying to avoid? Why couldn't it be fixed so we could change it without a constitutional amendment if you wanted to change it?

Mr. Cannan: This has to do with existing, as I understand, a property previously included in an industrial area or district. This means that there have been certain unincorporated obligations entered into. I think these should be honored and should be definitely stated as such.

Mr. Warren: I understand that. But, I mean, indefinite forever and evermore. Isn't it true that you can't extend it and can't extend it even then?

Mr. Cannan: I'm far as a municipality annexing this unincorporated area into a municipality.

Mr. Warren: I mean these industries having to pay taxes, I don't know a dozen major industries.

Mr. Cannon: Well, we do. They are big taxpayers. But, what I'm saying is municipalities should not put themselves in an arrangement with an industry which will set itself up in an industrial area or district where public services and taxes will have to be paid. I think we should abolish anything like this. It is, and I think that we should do everything we can to protect those particular industries.

Further Discussion

Mr. J. Jackson: Mr. Hallman, ladies and gentlemen, to the convention, I know you're about to debate a dilemma in this particular issue: This suggests that I rise to support the Jenkins 'amendment. I think I need to know some more about it. I agree with Mr. Cannan, I don't want to allocate the traits that have already been made. At the same time I don't want to prohibit future unincorporated settlements that may want to incorporate an industry into a municipal unit. As you already have a statute which says that since we've basically settled the whole issue of whether areas like Scotlandville could be incorporated that things as it relates to the taxation of the industrial areas or districts, such areas should be considered under revenue and taxation of the proposal. I just throw these suggestions out. Because I think we are going to have some comments about it. I think we have to have that whatever is resolved by this convention and it seems that we not attempt to clutter up what is a serious matter that we h assed through very hard yesterday. And for those reasons I would ask delegates and delegates and opponents of the Jenkins amendment, please, not, please, don't take a firm position that is fixed and such is not then we do not allow with this because, let's say if it fails, then you have the revenue and taxation section of the local and Parishal Government Article. When you have a whole article on revenue and taxation where things could adequately be dealt with, and I feel those points out for your consideration here.

Further Discussion

Mr. Leane: Mr. Chairman, fellow delegates, I support the Jenkins amendment. I believe that those of you present in this body, many of you that voted yesterday to take that portion of the proposal and incorporate it into the constitution, that we did not believe that this proposal belonged in the constitution, and I have to share with you the issue that we find. This particular section, in my view, is being addressed to the incorporation of municipalities as new entities. Section 11 does not belong in the constitution because, if we're going to put non-representational tax in the constitution, we'll have a higher tax rate. I think that some of the legislation that would be affected by the constitution by the one that you're making is the following: 1. You take this section and it does not belong in the constitution. I believe there's a lot of discussion here on the basis that you would believe that those proposals belong in the constitution, to have to deal with you on that issue except first of all, this portion of the proposal and incorporation of municipalities. Now, I also believe that the incorporation of municipalities as new legal entities is a problem. I think we need to have a lot more discussion than even if I propose that we have few of the measures in the constitution. And I think that this is a problem that could be affected by the constitution by the one that you're making is the following: 1. You take this section and it does not belong in the constitution. I believe there's a lot of discussion here on the basis that you would believe that those proposals belong in the constitution, to have to deal with you on that issue.
you addressed yourself yesterday to fire protection, and certainly I'm sure that there are times that the fire protection paid for by the large city limits can't be duplicated in many parishes. Now, we can't address ourselves to that. I think that ninety percent of the time industry takes care of itself. If there is a fire, I think that all of the fire trucks around will answer, and I agree that they should. The only thing I can say to you is - just listen to me now - industry is paying their fair share of taxes in the ad valorem area. They're paying every bit of the taxes that are assessed on a parishwide basis, and as far as I know in East Baton Rouge for instance, there are eleven mills to run the school board, there's another eleven mills for maintenance and operation of the school board, five mills for building for capital improvement, there's thirteen mills for debt retirement. Now, this is just a school tax. Now, industry in this area is paying their millage if it's on a parishwide basis and anyone to that industry is not picking up their fair share of ad valorem taxes on a parishwide basis. I see no reason why any one industry, or any one business should be excluded. We are in a municipality when they get no benefits from that municipal government.

Questions

Mr. Slay Mr. Lowe, I believe we're confusing a little bit. We're paying the same taxes as you are in your statement, haven't we? Would you say then that industry should not pay municipal taxes and that they don't get any benefits for running their trucks up and down the streets of that town, and their employees using the library? Is that what you're trying to tell us?

Mr. Lowe Well, Mr. Slay, I doubt seriously if they get anymore benefits for running their trucks up and down the street then does the East Baton Rouge truck that would go to another parish. If we're talking about a West Baton Rouge industry we don't try to assess the trucks that come from outside the parish that run on those streets. It just doesn't make any sense to try to tax at the incident of that particular occurrence.

Mr. Slay We're not speaking about a tax on the truck, we're speaking about supporting the municipality. Go ahead.

Mr. Lowe We're talking about using the streets, and I think that...

Further Discussion

Mr. DeBlieux Mr. Chairman and ladies and gentlemen, I would like to reason with you for just a very few minutes on this particular amendment. I think that the vote that was indicated yesterday on the amendment by Mr. Hayes to reduce the requirements from two-thirds to a majority indicated that this convention was greatly in favor of the provision that areas such as Scotlandville and located in East Baton Rouge Parish, because I speak about this. Even though they would have some relief. We, most of us here in East Baton Rouge Parish, I believe, recognize that fact. Let me tell you this, the particular section, Section 11, applies only to parishes who have home rule charters. It does not apply to any other area. At the present time you have only the parishes of East Baton Rouge Parish, OR, Jefferson Parish, and St. Bernard, with home rule charter. So, therefore, you are confining at this particular time this area. In addition to that, the particular amendment applies only to parishes that have more than the home rule charter provisions. It does not apply to any area not included. Now so, therefore, I put this to you; if we're going to have this particular section so that we can give some relief to people that have been excluded from having proper municipal services and so forth because of being located outside of the city limits or outside of the incorporated areas. So, we must give standing to the industrial areas that have been excluded. Now, let me say this with reference to the question that was raised by Mr. Slay. The industrial areas in a parish pays the parish taxes, and they pay a pretty good hunk of parish taxes. I would say that the services as you well know of any municipality or any area, the general tax cost are for garbage collection, and fire protection. They maintain those services in those industrial areas and that is the reason when the home rule charter that those particular parishes are given that exception from municipal taxes. So, therefore, it's proper that we keep our contract with them as long as they provide those services that the parish and the city of Baton Rouge will not need to provide those services for them. I don't believe we can pass this particular section without this amendment, and therefore, I ask you in all good conscience of contract, morality, and everything, let's adopt this amendment.

Questions

Mr. E.J. Landry Mr. DeBlieux, I wish the members of this convention would listen to this answer. I need to know this answer because I'm faced with future problems having to do with Section 11, and members of this convention, you need to know this answer. Mr. DeBlieux, Mr. Landry, Section 11, as it is now written, does not only apply to the parish that we are talking about. If moving into an area, like the Avondale shipyards down in New Orleans, or any other area that might be in an industrial area. It could apply to Jefferson Parish, it could apply to St. Bernard Parish, it could apply to Orleans Parish, it could apply to East Baton Rouge Parish, and any other parish that would adopt a home rule charter.

Mr. E.J. Landry But haven't we made it sound as though it applied only to Baton Rouge? I mean, there are a lot of us who are looking forward to living under the provisions of this Section 11.

Mr. DeBlieux Well, that's what I say. For instance, it would apply to any area like the Avondale shipyards down in New Orleans, or any other area that might be in an industrial area. It could apply to Jefferson Parish, it could apply to St. Bernard Parish, it could apply to Orleans Parish, it could apply to East Baton Rouge Parish, and any other parish that would adopt a home rule charter.

Further Discussion

Mr. Roemer Mr. Chairman, and fellow delegates, I arise to oppose this amendment. I felt the amendment was made of order giving me a lot of relief directly contrary to this on the same idea, that is the rights and likes of a newly incorporated area as to what area it takes in, and to the taxing province therein. Now, we have dealt with this in revenue and taxation for sometime, that is the overall problem of industrial exemptions, industrial areas and districts. I am opposed to this particular amendment for several reasons. First of all, the amendment was offered under the guise of protecting the present existing industrial exemptions, industrial areas. Well, it says no municipality incorporated under this section shall include property previously included in an industrial area district to be in an industrial area now. Just so long it was
Mr. Newton: Mr. Chairman, I say that the last amendment that I supported gives anyone who says they say "Yes, you can get a tax break anywhere."

Mr. Chair: I also agree with you, Mr. Roemer read the section there in the section in this case, when a majority of the people in the city of the area is incorporated, there's no delay. That's not even a part of this proposal. Now in this amendment about a business that's really amazing. We're saying that big businesses don't have to pay their city tax. I hate to get off into side issues, but I think that I've seen show that in the state of New York, business and industry is really important in the tax paid than any other state. Now what's fair about taking in an industry that has to be incorporated in a municipality that is miles away from it, which Mr. Roemer read the section there and 

Mr. Roemer: You've extended your time, Mr. Roemer. Further discussion.

Mr. Newton: Mr. Chairman, I say that the last amendment that I supported gives anyone who says "you can get a tax break anywhere."

Mr. Chair: I also agree with you, Mr. Roemer read the section there in the section in this case, when a majority of the people in the area is incorporated, there's no delay. That's not even a part of this proposal. Now in this amendment about a business that's really amazing. We're saying that big businesses don't have to pay their city tax. I hate to get off into side issues, but I think that I've seen show that in the state of New York, business and industry is really important in the tax paid than any other state. Now what's fair about taking in an industry that has to be incorporated in a municipality that is miles away from it, which Mr. Roemer read the section there and
Mr. Poynter  Amendment No. 1 [by Mr. Chatelain], on page 6, delete lines 16 through 25, both inclusive, in their entirety, and delete all amendments adopted thereto, and insert in lieu thereof the following:

"Section II. Any unincorporated settlement having a thousand inhabitants, which is situated in a parish operating under a home rule charter or a home rule plan of government, may be incorporated when a majority of the electors of said settlement, as certified by the parish registrar of voters, sign and present to the governing body the petition and meet other necessary requirements as forthwith under the general laws providing for the incorporation of cities, towns, and villages. However, no such newly incorporated area shall include any property previously included in any industrial area or district."

Explanation

Mr. Chatelain  Mr. Chairman and fellow delegates, for two days now we have been discussing a problem that exists in one or two parishes that have home rule. There are only three parishes to my knowledge, that now enjoy the great privileges of home rule. One of them that has caused us many hours of agony, and many hours of problems, is East Baton Rouge Parish.

For eight months now, we have been wrestling on the committee with this problem. There is trouble, I know, in knowledge, that certain sections of people are out to themselves and have a complete... Right or wrong, I'm not here to discuss that, but there is a problem. My amendment simply does this. It requires that a minimum of five thousand people, in any one of the home rule parishes, that want to incorporate may do so, provided fifty percent of the electors in that minimum of five thousand people want to be incorporated. I think without this minimal number, you are going to have problems throughout this state. I think this will preclude a lot of little areas, little sections of this state, trying to incorporate around some industry or some area that could cause many problems. If you will read my amendment carefully, it states emphatically that only those sections, or those industries that were existing at a time of this attempted incorporation, may count, only those that exist at this time. I stated this morning, maybe five or ten or fifteen years earlier... only at the time of incorporation.

Let me say one thing about industry. That's the reason why it is important that it have a history of that. Last paragraph was as recommended by the committee. The governors of this state, the present and others, have gone throughout the world searching for industry. They have wooed the industries into our state. A lot of small communities have even gone so far as to float bond issues to bring these... to build buildings for these industries to come into the various parishes of this state. I think it would be a disservice to those industries to leave the doors open where you could come in with less than five thousand people and incorporate them into an area.

I think this is a fair amendment. I think it will solve the problems that exist here in this parish and other parishes for now and the future. I urge you to support this amendment, and I feel this is a fair way to compromise this problem.

Thank you.

Questions

Mr. Roemer  Mr. Chatelain, your provision in this amendment, the same one that we've discussed for a number of times now that is, in regard... industrial areas and districts. Are you trying to have that affect only industrial areas existing at the time of the incorporation? Is that right?

Mr. Chatelain  Right.

Mr. Roemer  Well, it doesn't say that. It just says 'any previously so endowed land.'

Mr. Chatelain  Well, that was, Mr. Roemer, very well debated when Mr. Woody Jenkins' amendment was discussed this morning.

Mr. Roemer  Well, what was the disposition of this convention toward that particular article when we debated it so long? Mr. Chatelain? Didn't we defeat it overwhelmingly?

Mr. Chatelain  Mr. Roemer, you have one of two options available at this moment: Either vote for or against it, sir.

Mr. Duval  Mr. Chatelain, I was wondering, are you familiar with the present statutes on the books which require a certain number of inhabitants?

Mr. Chatelain  Yes, sir.

Mr. Duval  And what do those statutes provide?

Mr. Chatelain  A village can be incorporated with an area as minimal as one hundred and fifty souls.

Mr. Duval  Is that what the present statute provides?

Mr. Chatelain  That's the present statute, yes, sir—one hundred and fifty minimal.

Mr. Duval  And is there any restrictions as to the amount of area required for incorporation?

Mr. Chatelain  No, sir. No area. That's one of the fears that I have.

Thank you. I urge the adaption of this amendment.

Mr. Stinson  Mr. Chatelain, you have used the number, five thousand, but you don't use any area. Don't you think you are really discriminating against those that might be compactly two thousand in a much smaller area than even five thousand would be under yours?

Mr. Chatelain  Well, again, Mr. Stinson, this is what we came up with...we started off with twenty thousand. We discussed the possibility of areas, but you are creating a lot of other problems. In many ways, there are many delegates who believe this don't even belong in the constitution, and what we are trying to do is make a compromise. You have an option to vote for or against it, sir.

Mr. Stinson  Thank you. I'll vote against it.

[Previous Question ordered. Amendment rejected, 37-57. Motion to reconsider tabled.]

Amendment

Mr. Poynter  Mr. Weiss sends up amendments. Amendment No. 1, on page 6, delete lines 14 through 25, both inclusive in their entirety, and delete all floor amendments thereto and insert in lieu thereof the following:

"Section II. Home Rule Parish: Incorporation of Cities, Towns and Villages; Alteration of Boundaries.

Section II. When one-half of the electors, as certified by the registrar of voters in any parish operating under a home rule charter or a home rule plan of government, sign and present to the governing body the petition and meet other necessary requirements as set forth under the general laws providing for the incorporation of cities, towns, and villages, an unincorporated settlement may be incorporated, and unincorporated cities, towns, and villages may alter their corporate boundaries."

Explanation

Mr. Weiss  Fellow delegates. We are speaking here of one particular item, namely, home rule parishes.
Mr. Weiss: Mrs. Warren, I think that this amendment has been before the committee at least two or three times, and I think that something has been done in the way of a substitute amendment introduced by Mr. Barlow.

Mr. Barlow: In order that that may be known, the substitute amendment was adopted by the committee, and it has been referred to the appropriate committee for further consideration.

Mr. Weiss: I think that the amendment is not entirely satisfactory, and I think that it is not entirely clear. It seems to me that it is necessary to have a statement of the purpose of the amendment, and I think that it is necessary to have a statement of the effect of the amendment, and I think that it is necessary to have a statement of the alternatives, and I think that it is necessary to have a statement of the consequences.

Mr. Barlow: I think that the amendment is entirely satisfactory, and I think that it is entirely clear. It seems to me that it is necessary to have a statement of the purpose of the amendment, and I think that it is necessary to have a statement of the effect of the amendment, and I think that it is necessary to have a statement of the alternatives, and I think that it is necessary to have a statement of the consequences.

Mr. Weiss: I think that the amendment is not entirely satisfactory, and I think that it is not entirely clear. It seems to me that it is necessary to have a statement of the purpose of the amendment, and I think that it is necessary to have a statement of the effect of the amendment, and I think that it is necessary to have a statement of the alternatives, and I think that it is necessary to have a statement of the consequences.

Mr. Barlow: I think that the amendment is entirely satisfactory, and I think that it is entirely clear. It seems to me that it is necessary to have a statement of the purpose of the amendment, and I think that it is necessary to have a statement of the effect of the amendment, and I think that it is necessary to have a statement of the alternatives, and I think that it is necessary to have a statement of the consequences.

Mr. Weiss: I think that the amendment is not entirely satisfactory, and I think that it is not entirely clear. It seems to me that it is necessary to have a statement of the purpose of the amendment, and I think that it is necessary to have a statement of the effect of the amendment, and I think that it is necessary to have a statement of the alternatives, and I think that it is necessary to have a statement of the consequences.

Mr. Barlow: I think that the amendment is entirely satisfactory, and I think that it is entirely clear. It seems to me that it is necessary to have a statement of the purpose of the amendment, and I think that it is necessary to have a statement of the effect of the amendment, and I think that it is necessary to have a statement of the alternatives, and I think that it is necessary to have a statement of the consequences.

Mr. Weiss: I think that the amendment is not entirely satisfactory, and I think that it is not entirely clear. It seems to me that it is necessary to have a statement of the purpose of the amendment, and I think that it is necessary to have a statement of the effect of the amendment, and I think that it is necessary to have a statement of the alternatives, and I think that it is necessary to have a statement of the consequences.

Mr. Barlow: I think that the amendment is entirely satisfactory, and I think that it is entirely clear. It seems to me that it is necessary to have a statement of the purpose of the amendment, and I think that it is necessary to have a statement of the effect of the amendment, and I think that it is necessary to have a statement of the alternatives, and I think that it is necessary to have a statement of the consequences.
about half of the electors of the parish. Under present state statutes, it only takes fifty percent plus one of the affected areas. That is the majority section between you and me. When I am not satisfied with this again about the constitution and this convention. We have constitutionalized certain charters. When we have that prerogative of constitutionalizing, we do have the right and responsibility for making whatever corrections are necessary. As been brought out in discussions on yesterday, this is one of the liabilities of the unincorporated rule. We are talking about an unincorporated settlement, and we are talking about only the people in that unincorporated settlement to determine whether they want to be incorporated or not. The same right, the same responsibility that's given to every parish throughout this state with the exception, as I understand it, of Baton Rouge and Plaquemines Parishes. I talked to Dr. Weiss this morning about his amendment and suggested that that wasn't a compromise, or compromise at all. In fact, what is basically happening is what some of the proponents of home rule are saying. You are having a whole parish decide, or even a half of a parish deciding on what people in the unincorporated area, whether they want to incorporate or not. That's the same argument about Lafayette voting on New Orleans and New Orleans voting on some place. Cameron. If we were institutionalizing some of these charters, I think we ought to provide a mechanism in this constitution that when charters become expired, we're going to offer citizens of unincorporated area, whether it be Scotlandville, Central, Brooks Creek up in Shreveport, that right to incorporate. Don't see where this amendment is any compromise. I think what it does, it just puts us back where we began. I think we've harassed this problem very heartily over the years, and I would sincerely ask that if you vote against this amendment because there is a distinction. The distinction is that everywhere throughout the state, it only takes the people in the affected area to be concerned to offer the petition...not the whole parish. If we adopt this, it means that we haven't really solved the situation as we have tried to express it to this convention. I would ask that you vote against this amendment and support what this convention, in its wisdom has, has gotten, you know as a result of the actions on yesterday.

Further Discussion

Mr. Hayes Mr. Chairman, ladies and gentlemen of the convention, I rise in opposition to the proposed amendment simply because it does something that must be done by the people that live in the State of Louisiana. There is no city in this State of Louisiana that requires a majority of the people voting in the entire parish to incorporate, to impose something different on the cities now than what we have had in all the statutes required in the State of Louisiana. You understand that a hundred and fifty people who wanted to incorporate, to present a petition to the governor and then incorporate? Dr. Weiss's amendment simply says that all the people in the entire parish--you take a parish like East Baton Rouge, for example, with about ten districts in it, with thirty-five thousand people; you say you are going to have nine districts going to decide what one district is going to decide. You say no to one district. They could never incorporate. Can't you see you almost have the entire state against you? The people in the sixty-third district--I have the record votes here with me today, voted to have a city. The people in Baton Rouge voted against it. They could say no, I less. The people in Baker here yesterday, who is in the city just above Scotlandville that you have mentioned here today, they vote against the people incorporated while he runs his city in Baker. Can you understand that? Mr. Kean opposes the people in Scotlandville while he lives in the city of Baton Rouge. Can you understand that? It's hard to understand these things, while they say, "Let everybody else stay in another city and vote whether the people are in the wrong street," or what have you. I rise in opposition to this amendment.

[Previous question ordered.]

Closing

Mr. Weiss Fellow delegates, in summary, I'd like to point out there are constitutionalized charters for home parish rule in three areas of this state: East Baton Rouge, Lafayette, and Jefferson. Apperently, one of these, East Baton Rouge, has a major problem of its own concern. Naturally, if there are any inequities, we would like to have constitution to provide to some means to adjust these inequities. I might point out, however, that these inequities were created by the people of East Baton Rouge and the state legislature, not by other people, except that we, throughout the state, had to accept one of the amendments, and I imagine the 1940-some-odd, that the people of the State of Louisiana voted on this as they did some other seven hundred amendments and accepted this. So the people of the state are ultimately saddled with the responsibility of the problems in East Baton Rouge. However, as legislators have said at this podium, they do not deny those people within an area anything reasonable. Obviously, someone or some group from East Baton Rouge Parish perpetually on the remaining people of East Baton Rouge Parish certain inequities, according to what has been presented to us here today. This problem, of course, we would like to adjust, I think the amendment, as proposed, does just that. In other words, this amendment allows the parish with a call vote of one-half of the electors, to have an election within the parish and do two things: Both incorporate or allow incorporation of unincorporated areas, and to adjust incorporated areas that need to be adjusted. It's a futuristic amendment. I recommend its acceptance, and I do not think that there are inequities in Baton Rouge Parish that are anyone's fault other than a legislative act, people within Baton Rouge themselves, and then forced it upon the people of Louisiana in the form of some seven hundred amendments, of which this was one, that we had to vote upon and know very little about. I suggest that this is a constitutional method of fairly creating home rule parishes...

Questions

Mr. Alexander Dr. Weiss, are you aware of the fact that your amendment addresses all of the facts of Section 11 altogether, the aim and the objects of the section? Are you aware of that fact?

Mr. Weiss Negate which section, sir?

Mr. Alexander Section 11.

Mr. Weiss It's an amendment to Section 7, Reverend Delegate Alexander.

Mr. Alexander Yes. But do you realize that it would be impossible ever, under any condition, for a new city or town to be formed out of a parish or some other incorporated subdivision?

Mr. Weiss No. This amendment allows clearly for that...for those unincorporated settlements may be incorporated according to the last two lines of this amendment.

Mr. Alexander Dr. Weiss, are you aware of the fact that if you are asking, if you had to obtain my permission to sue me, that you would never get that permission, and you would never sue me? Are you aware of that fact?

Mr. Weiss I think I have the right to sue as the present Bill of Rights calls for. But people do not have the right to create municipalities without
Mr. Alexander: Finally, are you aware of the fact that the borders of Virginia, at one time, extended to the Alleghenies? And as Virginians had their way, there wouldn't have been any other states?

[Amendment No. 1, page 6, delete lines 16 through 22, both inclusive in their entirety, and delete all floor amendments thereto, and insert in lieu thereof the following: Section 11. No parish plan of government or home rule charter shall prohibit the incorporation of cities, towns, or villages as provided by general law.]

Explanations

Mr. Guarisco: Mr. Chairman, ladies and gentlemen of the convention, I think I have what I feel is a solution to our dilemma so far as Scotlandville and East Baton Rouge Parish are concerned. I have you. I have been working on the home rule concept statewide and allowing for self-determination by each and every person and citizen of this state, a group of citizens as the case may be, by providing what points to a Bill of Rights for Incorporation in self-determination. Now, I don't think in this convention that we should attempt to particularize the way in which you get a home rule charter, or the way to incorporate, etc. We will leave that to general law. The law presently has the various ways that it takes to comply with a method to incorporate your village, your town, or your city. I took out the word 'settlement' because it leaves... nobody knows what it meant. This way, whatever your group may be, if you can comply with the present general legislative act, method of incorporation, then you are entitled to incorporation. In the case of a parish plan of government or a home rule charter, now, if you want to apply the Scotlandville case, I think it will be applied in this fashion. I suppose if they meet the requirements of the legislature in all respects, then irrespective of what East Baton Rouge Parish's plan of government may be, they can still incorporate because it would be inconsistent with the 1974 Constitution. But I'm not concerned just with Scotlandville. I'm concerned with each and every area of the state. We can't have a group of Biafrans in this state. There are different places that are small now, had no control of the vote at the time a plan of government may have been adopted. Yet, twenty, thirty, forty years from now, they may be in a position to want to incorporate, but they can't because the home rule charters that went into that thirty years before prevent them. But they don't quite have the vote or the ability to carry the entire parish in a Bill of Rights for everyone in general who meets with the statutory requirements as laid out by law.

MR. PEREZ: May I ask any questions?

Mr. Perez: Mr. Chairman, I have your attention. I think this report the entire amendment and ask you what it means.

No parish plan of government or home rule charter shall prohibit the incorporation of cities, towns, or villages as provided by general law.

Mr. Guarisco: Simply, the legislation says the general law as to incorporation, regardless of whether you have a corporation. Before law,
Further Discussion

Mr. J. Jackson I'll be very brief, ladies and gentlemen. We've talked it over with this segment of the East Baton Rouge delegation that has some problems with the industrial district. We believe that this amendment for those who are in favor of going to the industrial district and those who are against that. That would be a matter of decision by the legislature in terms of its enactment of an incorporation. We believe that this is the type of amendment that will satisfy a majority of the convention, and we ask your support of it.

Further Discussion

Mr. Perez Mr. Chairman, and ladies and gentlemen of the convention, one of the main and primary reasons for an area to go into a home rule form of government is to provide for more efficient home rule or local government. In most cases the aim is to attempt and try to consolidate all of these small areas, all of these various districts, sewerage districts, water districts, etc., and put all of that under one more efficient and effective local home rule form of government. We would be making a big mistake if we were to order through this constitutional provision all local home rule forms of government to put themselves in a position where the general home rule provisions have been adopted, the major objective of consolidation would be destroyed through the fracturing or cutting-up of the charter area into several smaller areas. So, I say to you again, this is basically a bad provision and that you should not require people in their own interest when they have a determination as to what they want to do in their own area...you should not require them to have such a provision which would make it possible for the fracturing or cutting-up of the charter area into several smaller areas. I would, also, call your attention again, please, read the amendment carefully. I'll read it to you one more time. No parish plan of government or home rule charter shall prohibit the incorporation of cities, towns or villages as provided by general law.” I really do not know what it means. I urge you to defeat the amendment.

Questions

Mr. J. Jackson Mr. Perez, under Section 5, I think we use the same language when we talk about incorporation, merger or consolidation. Now, how do you say that by general law we can do it under Section 5, but if a city or a similar city which has the same intent, we can't do it under 11?

Mr. Perez Section 5 strictly deals with legislative charters, that is the authorization for the legislature to create legislative charters and has nothing to do with constitutionally created home rule charters. They are different things altogether, and once the people of an area adopt a home rule charter under the constitution we should not tell them how they should run their businesses with respect to dividing that area into several smaller areas.

Mr. Winchester Mr. Perez, in the event that St. Mary Parish adopted a home rule charter and the five municipal towns in there...then later on, after five or ten years operating under home rule charter one of the localities wanted to incorporate what would be the disadvantages of allowing that?

Mr. Perez Well, I don't say there would be any disadvantages but the...what should be done is when the home rule charter is adopted and voted upon by the people if that is a possibility in the future that there is a process that would be put in order if the people wanted to provide that. In other words, there is nothing which would prohibit a home rule charter from having such a provision against it having the constitution prohibit the people on a local basis from doing what they would want to do, but if in St. Mary you want to provide for those municipalities at a later time, you've got the perfect right to do it if you adopt a home rule charter, through that home rule charter itself.

Further Discussion

Mr. Hayes Mr. Chairman and delegates to the convention, I rise in support of the amendment as a compromise. We've tried all day to try to make everybody as happy as we could on Section 11, and it looks like the home rule amendment...we'll come up with that looks like it cuts cross and helps everybody get the problems...it happens to be the one that Mr. Guarisco came up with and I will endorse it. One of the things that we want here in East Baton Rouge Parish and I have found it in my area meeting and I put a copy of it on everybody's desk is that we do see it as treaties...different from anybody else in the state. So, I fully endorse the amendment Mr. Guarisco has.

Further Discussion

Mr. Hayes Mr. Chairman and members of this delegation, I remember quite a few years ago Mr. Willkie went to brighton and gave this book the title One World. It was a few years after his passing that I heard his son, Philip Willkie, address the distinguished delegation here and to forget of his address, “One World or No World.” I can feel us working here in this constitution in order that we might have one state, and I would submit to you that if we're going to have one state, we shouldn't be having no state or no parish at all. I've seen Louisiana for a great many years and sometimes now, I think I've seen the dry bones of yesteryears enshrouding and walking around in this convention, and I resent any effort on the part of any delegate to this convention to stifle the efforts of any people that they might have life and that they might have liberty and that they might have the pursuit of happiness that are guarantees of this great nation of ours. We want this resolution passed and I will support the resolution because we want self-determination and we believe people are entitled to self-determination. I thought about a few years ago when we had a distinguished dignitary to come to Batou Rouge, the capital city of Louisiana, and when they had the meeting at the airport in Scotlandville we were embarrassed and the parade had to rush through in order that we might see the ills that the blemishes of discrimination of past years. I believe one of the main entrances...Highway 61...where Ole Miss comes here to get us when they have journeyed forth back to Ole Miss, we're going to be concerned about what the people coming into our city think about our city, and the first impression is going to be the last impression. Somebody has said that...somebody came here this morning and as I understand it with our distinguished mayor who has been getting us from 16 to 20 years, and said that we didn't have the tax base. We are taxed heavier than anybody else, and we're supporting things that we are not getting. I remember the people up in Lincoln Parish gave to Grambling. Louisiana home rule and incorporated Grambling. Now the people of Lincoln Parish and the people of north Louisiana are indeed proud of Grambling. Louisiana because it's a delightful city that has self-determination, that has home rule, that has all of the things that we talk about. Mr. Chairman and members of this delegation I would ask you to forget about those dry bones of yesteryears that might walk around in the walls of this convention and might try to persuade the people of today that we of this generation, writing a constitution for the 20th century would revert to 1921 and even back beyond that Cote, and that we might give to the people of this state, whether by black or white or people that are justly due those people. I ask you to pass this amendment.

[Previous Question ordered. Resolution adopted. 70-28. Motion to reconsider tabiled. Motion for Previous Question on entire subject matter adopted. 66-]
Mr. PAYTER: Amendment to Section 1, Local Governmental subdivisions, is as follows:

1. Incur debt payable from ad valorem tax receipts maturing more than 40 years from the time of its occurrence.

2. To fine and provide for the punishment of a felony or.

3. Enact private or civil ordinances governing civil relationships.

Explanations

Mr. PAYTER: Mr. Chairman, fellow delegates, we discussed some of these matters in the discussion on Sections 7, 6, and 9, which we've previously adopted. These are general limitations to be placed on local governmental subdivisions. The first one with the prohibition against the incurrence of debt payable from ad valorem tax receipts maturing more than 40 years is the prime constitutional prohibition against the enactment of private or civil ordinances governing civil relationships intended to preempt local government power to pass on such things as might be contained in the Civil Code, the workman's compensation law, the trust code, the corporation law and things of this type. This is a standard type of provision where you have a residual grant of authority and if there are any questions, I'll be happy to try and answer them.

Amendments

Mr. PAYTER: Amendment No. 1, by Mr. O'NEILL, on page 6, at the end of line 11 change the period to a semicolon and add the following: or.

2. Set rates of private good or services other than those of public utilities or common carriers subject to their regulations.

Amendment No. 2, on page 6, at the end of line 12 change the period to a semicolon and add the following: or.

3. Engage in wholesale or retail trade or manufacturing enterprises.

Explanations

Mr. O'NEILL: Ladies and gentlemen of the Assembly, I have not spoken on any section of this resolution before, but I have been at various times of different speakers. We have heard from Mr. PAYTER and Mr. O'NEILL, and we have heard from other speakers. We have heard different sections of the constitution, and we have heard different sections of this bill. Now, I don't think there is any provision that local government shall have all power not prohibited to it in the constitution or by the legislature. We're not going to make any additions to the local government power, so that it can do anything not prohibited to it. Now, I ask Mr. PAYTER if he'll deal with me if I understand what you're saying. I don't understand what you're saying. I don't know what you mean by the local government power, Mr. PAYTER.
54th Days Proceedings—September 26, 1973

Mr. De Blieux Whether they only give their local government the right to...to organize those industrial plants, sites and a...through bond issues, that's a...I'm just wondering in view of that if they...if it would be considered that the local governing body is engaged in manufacturing enterprises.

Mr. O'Neill No, Senator De Blieux I don't think so...and that's not what it's intended to do.

Mr. Dentery Delegate O'Neill, I'm referring now to your second amendment. Is it not correct that there are in Louisiana a number of private organizations...private corporations engaged in water supply business?

Mr. O'Neill I'm not familiar with them, Mr. Dentery.

Mr. Dentery Is it not a fact that there are a number of private corporations in Louisiana engaged in the disposal and sale of products from garbage?

Mr. O'Neill I'm not familiar with those either, Mr. Dentery.

Mr. Dentery Is it not a fact that there are a number of private corporations in Louisiana engaged in the sale of electrical power?

Mr. O'Neill Mr. Dentery I think all of these that you refer to are public utilities, to be perfectly honest with you.

Mr. Dentery As I understand it however, sir, on your second amendment you do not refer to "public utilities". You merely prohibit a "municipality or parish from engaging in wholesale or retail trade or manufacturing enterprises". Is that not correct, sir?

Mr. O'Neill Yes, sir and I purposely excluded "public utilities", which I...

Mr. Dentery But you did not exclude "public utilities" Mr. O'Neill, that's the question I asked you. It does not exclude them, does it?

Mr. O'Neill Where does it include them?

Mr. Dentery It prohibits a "municipality or parish" as I understand your amendment, "from engaging in wholesale or retail trade or manufacturing enterprises". I say absolutely "public utilities" and it seems to me you are thereby prohibiting...the operation of a water system by municipality or a parish; the operation of a garbage system and the resale of any...any resources recovered from that garbage by a municipality or a parish, the purchase and resale of electricity by a municipality or a parish". Now I don't know that you intended to do that, but do you not agree that your amendment would prohibit this?

Mr. O'Neill Mr. Dentery, it's not intended too, and I don't honestly think that it does.

Mr. Casey Mr. O'Neill, don't you think that we would be taking an awfully serious chance, and risk by including something like this in the constitution, that rightfully belongs and should be contained in statutes, because we don't know what the full effect of amendments of this type are going to be?

Mr. O'Neill Well, Mr. Casey we don't know what the full effect of the entire Local Government Article will be, and so I don't think that it matters that we're going to put absolute prohibitions against them like these. And, it's my intention to put an absolute prohibition and to allow no flexibility in these areas.

Mr. Casey But, do you not agree that Mr. Dentery makes some very valid points, and that these particularly paragraph...subparagraph 5 could be affecting "public utilities" because "public utilities" are not specifically excluded from paragraph 5?

Mr. O'Neill Would it satisfy you to exclude "public utilities"?

Mr. Casey I would be against the amendment under any circumstances, Mr. O'Neill. It would be better than it is now, if you excluded "public utilities", however.

Mr. Duval Mr. O'Neill, would this prevent a municipality like the City of Houma from selling gas?

Mr. O'Neill Is that a public utility, Mr. Duval?

Mr. Duval Is what a public utility, "the City of Houma"?

Mr. O'Neill Gas.

Mr. Duval Gas, is not a "public utility". No.

Mr. O'Neill Is that a product...

Mr. Duval It is a substance composed of...

Mr. O'Neill "public utility".

Mr. Duval No, sir. It's something that comes from an oil company, drilling under the ground. And they sell it. To private individuals. Now would this prevent this...

Further Discussion

Mr. Stovall Mr. Chairman, members of the delegation, it seems to me that in the Bill or Rights Article we had provision there dealing with Freedom of Commerce, that section was eliminated, and it seems to me this is an effort to bring back this issue before us, we have already dealt with it and, therefore, I move the previous question.

Motion for previous question rejected: 35-67.

Further Discussion

Mr. Casey Mr. Chairman, and delegates I'll be very, very brief. This doesn't belong in the constitution. It's as simple as that. Why tie our hands in the constitution when we don't want to, when the legislature by general law, at a later date can come back and say the very same thing, and possible do it in a very eloquent manner, whereby proper study may have been given to the subject matter, and whereby we do not know at this time if we adopt it what we're really locking into the constitution? We have to stay flexible. We have to give proper study to something like this and if the legislature wishes to take two years in deliberating on matters of this type, and then do it in a...in a...in a manner whereby we have given very much thought to it, and research, and then adopt something of this type, fine. But the legislature can do it, we don't have to do it in the constitution. I strenuously urge you to reject both amendments, or even the first amendment if that's the only one that we vote on. I might point out, also, under the second amendment that the City of New Orleans, for instance does its own street repairing on many occasions that I understand had its plant...for blacktopping and asphalt, and that would be prohibited under this constitutional amendment. Just reject both of them. This doesn't belong here.

Further Discussion

Mr. Cannon Again I rise in opposition because I've been on a committee studying ports, special districts
Mr. Poynter. Amendment No. 1...

Now, this is the Casey Amendment. The instructions have been changed so as to affect the playing of the language in a somewhat different spot. It should read: On page 6, line 10, immediately after the number and punctuation, insert the following: "except as may be provided by law.

Again that clause is to be added in front of the clause No. 3, instead of after it as the amendment was originally drawn.

Mr. Poynter. Amendment No. 2...

Mr. Casey. Mr. Chairman and delegates, upon speaking with some of the members of the local and Parochial Committee, my concern was aroused upon a careful reading of Subparagraph 3, or the paragraphs designated as 3, referring to the enactment of private and civil ordinances governing civil relationships. After discussing this with the committee, I'm really not convinced with a true definition of 'civil relationship' might be, and how encompassing these words affect many things that might be handled under local government. For instance, I know that the attorneys here might be familiar with the provision in the Civil Code which says that, by which the Civil Code gives to local government the right to pass local ordinance affecting the construction of boundary fences, extending between property owners. I know in the city of New Orleans we have an ordinance whereby a property owner wishes to construct the fence, he might obtain one half of the cost of construction of that fence. This an immediate example of party fence, but the city has not gone to that extent to try to get involved in the actual construction. We have given such leeway to the legislature in dealing with local government and homes.
Mr. Avant. Mr. Chairman and fellow delegates, I respectfully submit to you that there has been a provision corresponding to this in the Constitution of 1898, 1913, and 1921. There is a corresponding provision in the charter of the city of New Orleans which is at this present home rule charter. Now, first, I think I should make an explanation which would be obvious to most of you, I'm sure. But the police power...what is the police power? Well, the police power is that power of government which gives government the right by law to regulate the conduct of individuals in order to protect the health, safety, welfare and morals of the general public. Now that is what the police power is. Examples of the police power immediately pop into your mind, but every building code is an example of the police power. A law which would outlaw pornographic materials, or houses of prostitution is an exercise of the police power. A fixed limit is an exercise of the police power. Heretofore, as I've said there has been a provision in all of our preceding constitutions which specifically recognized the fact that we are a state, and that we are not a league of independent city-states. That the police power of the state, that is the power to legislate so as to ensure the protection of the health, and safety and welfare of all of the people of the state as the citizens of the state, is vested in the legislature of the state through the representatives of the people that legislature, to tell you that I am sorely afraid that under the articles that we have adopted so far in this...the sections that we have adopted so far in this article that the police power of the state has been abridged. It has been abdicated, I am afraid, to a large extent to local government. I am afraid that the legislature of this state, if a municipal corporation had exercised the police power in a certain way it could not come along and through the legislature exercise the police power in an inconsistent manner. I say that this is essential to make it clear, to make it abundantly clear that we are still a state, and that the representatives of the people through the legislature can exercise the police power of the state for the good of all of the citizens of the state irrespective of where they may live. This is nothing novel. It's nothing unique; it's nothing unusual. It's in the present constitution; it's been in all of our prior constitutions, at least back to 1898. It is presently in the charter of the city of New Orleans, and I can see no valid objection to the part of anyone to the adoption of this amendment.

Questions

Mr. Lanier. Mr. Avant, is it your opinion that under the police power and that the legislature could provide for the minimum wages in retirement benefits of public employees, notwithstanding the provisions of Section 8 as we have adopted?

Mr. Avant. Certain public employees if it was necessary in order to promote the safety and health of the people of the state as a whole.

Mr. Lanier. Well, would it be your intention by this law to abrogate the provisions of protecting organization and structure of home rule units as it might affect firemen and policemen specifically?

Mr. Avant. Mr. Lanier, I never subscribed to the theory and the judicial interpretation of that which said that the structure and the working conditions of firemen and policemen is a matter of structure and organization. I think that is an exception of the police power charter. I, as a citizen of the State of Louisiana no matter where I may travel in this state...if I stay in a hotel or a motel, or I drive my automobiles in a particular city...I can think of the municipalities, and other local governmental subdivisions of the state...
Mr. Avant. In your view, the amendment, which you have just cited by quoting the language "notwithstanding any provision of this article, a local government or any municipal corporation may enact a law rule or Charter or amend the provision of this article, since sections 1, 8, and 9 have subject to it and not inconsistent with any provision of this constitution, would this amendment in effect opt out from the residual grant of authority the right of the local units of government to exercise the police power in harmony with the state?

Mr. Avant. Would it opt it out? I don't understand your question.

Mr. Stagg. I'll answer it this way. I say that the legislature under my amendment will have the right, whether or not they choose to exercise it, to exercise the police power of this state, notwithstanding any provision of this constitution.

Mr. Avant. If the legislature was wise enough, to do that, perhaps they could, but it was to the reasonably exercise of the police power, Mr. Stagg, as you well know.

Mr. Stagg. Am you familiar with the content of the amendment on this same subject?

Mr. Avant. I am generally familiar with the language in Mr. Stagg's amendment, and I do not think Mr. Stagg. Line we have turned the world upside down to get at the true meaning of the language that Mr. Stagg has read into the 1917 constitution and the theory that was put into that constitution. I think the language has to be offensively worded like the one I gave in view of the radical change that we have made in the entire theory of local government.

Mr. Stagg. One more question, Mr. Avant. I take a very strict view of the exception in section 16 in firemen and policemen affairs.

Mr. Avant. I think Mr. Stagg makes the same point out. As a matter of fact, there is no provision of this amendment that speaks directly about the police power, but it certainly says that it will be a matter of local government and the local government will be the ones to decide whether or not they will exercise the police power.

Mr. Stagg. I'll tell you what I think. I think that the legislature, in effect, has given the local government the power to opt out of the police power, and I think that is what they want to do.
"a power inherent in every sovereignty to govern men and things and thereunder the legislature may within constitutional limits prescribe regulations for promotion of public health, safety, morals and general welfare." That is the power that you would be according to the state by the adoption of this amendment, and you would make it clear that, insofar as the general welfare is concerned, no limited, special provision can be enacted by way of ordinance or provision in the charter or plan of government that would be inimical to the welfare of the people of the state as a whole. Don't be misled by some of the diversionary approaches by those who would oppose this concept. It would not do, if we do not provide in the constitution as set forth in this amendment, then the entire power of state government will be subordinated to the proliferating activities of the municipal and local government throughout the state. That I know, no delegate to this convention really wants.

I urge you to adopt this amendment.

Questions

Mr. Jenkins Mr. Gravel, Mr. Burson said that his amendment that he's going to come with later is the same as in the present constitution.

Mr. Gravel Absolutely. That's precisely why this amendment is in this particular article and refers to the other provisions of this article. That's precisely why the amendment is here placed.

Mr. Duval Camille, do you agree with Mr. Avant's interpretation of the language here that it allows the state to legislate as to firemen and policemen under this language? Do you agree with Mr. Avant's interpretation?

Mr. Gravel I wasn't listening particularly to the interpretation that he placed on it. I heard the question, but I didn't remember exactly what he said.

Mr. Duval Well, I think he said, in fact I'm sure he said, that "this language would basically allow the state to legislate as to firemen and policemen under this language? Do you agree with Mr. Avant's interpretation?"

Mr. Gravel No necessarily, I think I agree with that provision was permitted I think in a case that when the Baton Rouge Board went under that law that was in the East Baton Rouge Parish charter. Let me make sure there's no misunderstanding about this I think that this provision could apply if the legislature wanted to pass a law applicable to all policemen and firemen throughout the entire state. I think that this provision could apply if the legislature did feel that it was necessary under the police power to legislate.

Mr. Duval So it's actually not diversionary to say that one of the issues raised in this amendment is certainly the issue presented in a portion of section 16 of the proposal. Isn't that true, sir?

Mr. Gravel It might be, yes.

Mr. Lanier Mr. Gravel, in the Judiciary Article I believe we have the authority to the police as law enforcement officer in the parish. This provision provides "notwithstanding any provision of any plan of government or any home rule charter," et cetera...

Mr. Gravel Wait, read the et cetera and I think you'll answer your own question.

Mr. Lanier "Or any other provision of this article. What effect would this have on the sheriffs?"

Mr. Gravel It wouldn't have any reference to the judiciary provisions of the constitution, because we've said "or any other provision of this article."

Further Discussion

Mr. Arnette After having heard the definition of "police power" as given by Webster's Dictionary, or wherever the definition was gotten, I really don't know but I'd say it's a pretty accurate definition, but a little more accurate definition is "that the state may do anything they want to unless it is prohibited. Anything! Because you can allow a class something under health, education, welfare, morals, safety. You can say anything is under one of these classifications. So unless you prevent the state from doing something, they've got the power to do it under the police power. Now what this amendment means is that they can do anything they want to in your local home rule area and classify it under one of these things, under a classification of say "Well, we'll just have this law apply to cities over four hundred thousand people, or over a quarter of a million. This is a reason to make this classification isn't it? Then they could have it apply to cities of less than ten thousand, or less than twenty thousand, or parishes or towns that fifty thousand. It would be very easy for people to have these classifications. They could completely destroy anything they wanted to in the way of home rule. The people of this convention I think fought long and hard for home rule.

They want home rule. We adopted seven, eight and nine of this article dealing with home rule. Good strong home rule provisions, and this one amendment to a section coming now could completely destroy all of those sections. This is the thing that really worries me. When you say "no home rule charter notwithstanding, or plan of government notwithstanding," this could completely destroy the theory of home rule as we have adopted it in Sections 7, 8, and 9. If you want the legislature to have the power to do just about anything they want to in your local municipality or your local parish, go ahead and pass this amendment. Mr. Dennery's got an amendment coming up later on that is precisely the same thing as the old constitution, as I understand it, which doesn't make this exception, or saying that "home rule charters notwithstanding" or plans of government notwithstanding," I think it's a much better provision. I think we ought to defeat this amendment and possibly go with Mr. Dennery's. Thank you very much.

Further Discussion

Mr. Stagg Mr. Chairman and fellow delegates, when I got up here Friday, we explained that cities and municipalities could have maximum home rule, or they could have only what the legislature gave them. By a narrow vote, you gave the cities and municipalities in the home rule unit maximum authority over their own business.

Tuesday afternoon, we came back and we fought over the same exercise, almost on the same questions, and by a narrow vote you voted again to give cities and home rule units maximum ability to operate their own business. Now, Mr. Avant, here at the microphone earlier, in, I think, a rare burst of candor, answered the question asked him by Mr. Lanier about the effect of his amendment on the pay scale of firemen and policemen. Mr. Avant very honestly answered that the effect of this amendment would permit the legislature to set the wages and working conditions of firemen and policemen, and the municipalities would have to come up with the money to pay for it. I don't believe this speaks very loudly of home rule. In my municipality, the city fathers and the citizens pay the firemen and their firemen, and their working conditions are excellent. But every now and then, the legislature passes an act and says all right, we don't want what your budget is, come up with the
54th Days Proceedings—September 26, 1973

Mr. Rayburn. Mr. Stagg, I'm only seeking information. I have seen several occasions on this issue where, in a small village, they had a tree in the center of the town, and everybody came out and shouted down the unwary passerby. The trees were broken, but nobody was hurt. This is a question of this nature, break up a few of those things. I wonder if we would get caught in those predicaments again? Of course, I hope we never do under these good government days we see. If we have any remedy to prevent something like that from happening in this state, because I know, and I think you know, it has happened.

Mr. Stagg. Senator Rayburn, the remedy does not lie in the Avant amendment. I promise you that.

Mr. Roy. Mr. Stagg, I'm a little confused about your allusion to playing bingo at a charity. Suppose a particular area was allowing real bad crime to take place, but the only legislation was to prevent anything about it. Is it your argument to this convention that violation of law, breaking of laws, is something that we should never address ourselves to?

Mr. Stagg. Mr. Roy, you and I fought this exact same question out when the debate occurred in the Executive Article on the powers of the attorney general and the powers of the district attorney when we were debating the judiciary article. You and I have not agreed on this. We've got it in this room. There is nothing you are going to say that's going to make me agree with you now.

Mr. Ray. I just asked you, do you advocate the breaking of laws?

Mr. Stagg. No, I don't.

Further Discussion

Mr. Ray. Mr. Chairman, ladies and gentlemen. It's been a long time since I've been up here, but I rise to oppose this Avant amendment. I'd like to remind the delegates here today of something that happened in New Orleans during the school strikes when the governor ordered us to strike the public schools in New Orleans and the schools were closed. At the time, some 500,000 children were school bound in New Orleans and helped the books of the school board, they closed the schools and they raised the bills of the Orleans Parish school board. I want to tell you that if that happened to a school board in New Orleans, it would be hanging with the police department if you will. And, they raised the bills of the Orleans Parish school board. I want to tell you that if that happened to a school board in New Orleans, it would be hanging with the police department if you will.

As a matter of fact, I think it would happen again if the Board of Education in the state is going to be paid. And I hope that you will vote against this amendment. Thank you.

Mr. Breckinridge. Mr. Breckinridge, did you know that in the same area that you are talking about, the state authorities tried to get the people involved in the strike, they were taken to a federal court in New Orleans and fined.

Mr. Ray. Mr. Chairman, we know that, but I don't know if it was a strike or an insurrection. I think it was 54th street and 14th and 15th street and people were talking of organizing a strike because the police were working the fire department. As a matter of fact, I was present at one time when the fire department in New Orleans was closed down and the firemen would not go to work. And there is no question in my mind that if the firemen were to organize a strike, the state authorities would close the city down if the police did not go to work. And I think it would be a very wise thing for the legislature to do something about it. And I think that the Public Service Commission is the body that should be doing it, not the legislature. Thank you.

Mr. Thad. Mr. Thaddeus. I've been up here, but I'm sure you remember the incident of the first week in September when we were dealing with the Avant amendment. The Governor's History and you were afraid to get out of your chair, but we want to know more of this.
54th Days Proceedings—September 26, 1973

[Rules Suspended to allow additional time.]

Further Discussion

Mr. Jack Let me tell you this. When you walk down like I did, rather on the elevator, and you came out into the lobby, it was all burned up, and you asked the clerk why you weren't notified, and he pointed to where the fire started over there at the telephone switchboard and the register on top of it. You ought to do Mister, instead of griping, you ought to be thanking the Lord they've got a good fire department out there about it.

Now, I don't want to trade good police and firemen. I say, and repeat, that this is not a question of home rule. It could make very little difference to me what and who the employees were in Baton Rouge have to do with collecting this or collecting that, and those local matters. But it makes a difference who the police are. We have police protection right here at this convention. I guess they still search people that come in. I'm glad they did. I know at the beginning they searched themselves, but they didn't and the way to live is with good firemen and police. Firemen saved my house in the depression when I didn't have any insurance on it. Now I say, in closing, that this has nothing to do with violating home rule. I voted for all of those home rule provisions. I say to go along with this amendment, to go with Section 16.

Further Discussion

Mr. Juneau Mr. Chairman and fellow delegates, you know, as I recollect, it wasn't but four days ago we voted on the section and the vote was relatively close for final passage, whether or not we wanted to make...or have home rule in this state. As I recall the vote, it was the will of this convention that we would have home rule in this state.

The next thing that I remember, in the newspapers and on the radio and on the television, that we're bogging down and we can't finish and nobody understands why. Well, what I'm telling you is, is what this amendment is going to do is, in essence, abolish what we did a mere four days ago. This is simply nothing but a frame around the same picture that we had four days ago. I don't think that anybody in this convention was fooled by the fact that we didn't know this was coming. It was just a question of what was going to be inserted.

I submit to you that the issue that's concerned with a lot of people is in Section 16, and I'm willing to face that issue when we get to it. But what there can't be here is a musing of police powers, and beyond what is contemplated in the issue of a fireman and policeman. I also submit to you that we've got to get this convention moving. I submit to you that have, during the course of this convention, abided by the decisions on final passage when it was adverse to what I had voted earlier on amendments. I submit to you that that's the same issue we face here. If you want to stand by the will of this convention and get this convention moving, and if you want to finish by January, let's defeat this amendment or any other amendment which will, in essence, defeat what we did a simple four days ago.

Thank you very much.

Further Discussion

Mr. Denney Mr. Chairman, delegates to the convention, Mr. Avant's amendment, which he has explained to you, contains a total of fifty-six words. That amendment is, and was, shortly before you, contains basically the same thing in a total of twelve words. But in addition to that, I would point out to you that the language in the Avant amendment is far beyond the language in the present constitution. I don't think anyone who is interested in home rule, and certainly I do not, believe that the exercise of the police power of the state should ever be abridged. As a matter of fact, at the time that the charter of the city of New Orleans was adopted, it was adopted under an amendment to the Constitution which says that "nothing in the amendment shall be construed to restrict the police power of the state."

Now it seems to me that that's all the language we really need in here. The language that Mr. Avant has put in eliminates the City of New Orleans going far beyond, in my opinion, what is necessary in order to protect what all of the previous speakers have talked about.

In Section 6, which we adopted in this article a few days ago, the legislature is given the authority to classify municipalities of this state on a reasonable basis. It's certainly unnecessary to say any more than "nothing in this article shall be...shall restrict instead of saying "notwithstanding any provision, etc.," as is set forth in the Avant amendment. It seems to me that there's been enough concern expressed by those who are...who voted for the home rule provisions in Sections 7, 8 and 9, to warrant careful consideration of not adopting the Avant amendment, but of adopting a short phrase which says that "the police power of the state is paramount." I believe everyone will agree that it should be paramount. But certainly, if the state does not exercise its police power, and it can only exercise it through statute, if it does not exercise the police power, then the local, the parishes and the municipalities should certainly have the right to exercise those police powers which by virtue of this constitution have been delegated to them, but can always be taken away by a general statute, then I should think you should vote against the Avant amendment, and I strongly recommend it.

I will be pleased to answer any questions.

Questions

Mr. Deshotels Delegate Moisie, in all candor...

Mr. Denney Moisie?

Mr. Deshotels We...we address people by their first name where I come from.

Mr. Denney Oui...

Mr. Deshotels In all candor, we've been told this would destroy the provisions that we have for local government and home rule that we adopted earlier. Now, you talk in general, broad terms and you say that this is duplicitious, that we already have this...what...there has been some indication of this being sinister and the back door approach. What does it do that you are afraid of?

Mr. Denney Mr. Deshotels, I don't know. I said "there is any doubt in your mind about it then you should vote against it." But it doesn't, it certainly...it certainly is no more comprehensive than stating, "nothing in this article shall restrict the police power of this state," which is the suggestion that I have made in my proposal.

Mr. Deshotels Well, then you are saying that you don't know whether there really is any difference from yours and this one, other than that it's got a lot of verbiage.

Mr. Denney That's right. It's got forty-four words more. I think it is too prolix to get into the constitution.

[1449]
Mr. Tapper: Moise, or the . . . have tu quest

Mr. Denney: I'm inclined to think that the pur-
pose of Mr. Avant's amendment is very similar to
the purpose of mine. We had discussed this sev-
eral days ago together.

Mr. Tapper: Yes, sir. Now the meaning of my ques-
tion is this. Assuming that the local governing
bodies decide to exercise the police power . . . the
state police power, could they not then say that
the state further grants its power because the con-
titution has given us the right to exercise it? We
are exercising it, therefore, the state legislature
does not have the right to exercise any more.

Mr. Denney: Not so long, Mr. Tapper, as you have
language such as I have suggested, which says "no-
thing in this article shall restrict the police
power of the state."

Further Discussion

Mr. Casey: The Chairman said I am only entitled
to brief remarks, so I'll say very briefly that
strongly I would vote against this amendment.
Mr. Juneau eloquently indicated that what we have
given to home rule three or four days ago, we are
now taking a great amount of that home rule away.
I must refer you to the first couple of
lines of this particular . . . Amendment No. 2.
the first couple of lines of Paragraph (B), "Not-
withstanding any provision of any plan of local
government or any home rule charter." I think that
amendment goes much farther than Mr. Denney's amend-
ment or Mr. Burson's amendment. I think there is
such much more retained power by the police
powers. However, we do not know what the overall
effect of this particular amendment is on existing
home rule charters. We know very well that many
home rule charters at this time do now exist.
We have previously recognized those home rule charters
in preceding sections.

We have talked very much about police power,
which is a rather difficult term to define, so
to say the least. But under the police power authorities,
under Mr. Avant's amendment, I understand it,
we are already arguing the merits or demerits
of Section 16 and I think those arguments should
be put off until we arrive at Section 16, so that
they can be argued in the light of the particular
section as drafted.

If we would carry Mr. Avant's explanation, as I
understood it in its fullest extent, we would do
what the legislature has done on many other occasions
for instance, in passing police and fire legisla-
tion affecting the city of New Orleans. That legis-
lation has been so detrimental that at this time
it is my . . . on the information which I have, the
city of New Orleans must appropriate as much as
three million, four hundred thousand dollars in order
to merely pay present retirement benefits for
fire and police. Those type of restriction of
responsibilities, financial responsibilities, have
been placed upon the people of the city of New
Orleans. If we had to take the retirement fund
actuarially sound at this time, it is my under-
standing that the people of the city of New
Orleans have contributed as much as one hundred million dollars to make
those retirement funds actuarially sound. I think
we should be awfully cautious and awfully careful
about what Mr. Avant is saying. I do not know the
full extent of Paragraph (B) in Amendment 1. . .
I must confess I don't fully understand the impli-
cations of it. I would suggest that any arguments
be brought up at Section 16. I don't think there are many delegation here that
in any way would want to impede the rightful ben-
cense of fire and fire are entitled to
my experience in the legislature, the legislature
is very anxious to grant those benefits to police
and fire because of the hazardous type of occupa-

The 45th joint session of the

Mr. Denney: Mr. Casey, wouldn't you favor me
with a complete legal definition of the term "police
power of the state?"

Mr. Casey: Mr. Leonier, I think I could give you a
complete definition of police power of the state,
but it is my understanding, as an attorney and as a
legislator and as a defendant in this convention,
that it is a pretty much of a general en masse
because police powers affect everything that you
could possibly think about almost everything that
could possibly think of in regulating the activity
of our citizens, whether it be the health, welfare,
more . . . we that text was found . . . what we have
found in the . . . cases In my prudence, it is a pretty
broad and affects everything.

Further Discussion

Mr. Angeline: Chairman and colleagues on mem-
bers of the convention. Now any time, now, I have
heard that we are here to write a clear, concise,
understandable by the electorate, now, we are going
to present it? I want to give you a little conversa-
tion that I had in March of 1973 within the . . .
several of my constituents and I. . . . Mr. Leonier,
I dare . . . you to sell you the new constitution.
They said, well, sir, what's there about
home rule? I said, well, I said, gave it is seven
and eight and nine, but eight have taken it
away from them in eleven or possibly twelve.
just be damned if I know what we did.
So then he walked along and he says, well, he
says, what do you all about the balance of
the firemen and the police?
Mayor Lennox to tell us one
Section 16. But I believe that there was a
invention in Section 1, rather, that I have
one interpretation as . . . the authority to do what it . . . that we want them to
do? For . . . us or our, I went then, I look at him and say, well, I don't know what
did, I don't know what I say. Now, I've really read a new construc-
tion to your Boy. I've given example, what it
to do November was a year ago, but you
clear, sentence, reasoning . . . the constitution. Now, that's explained it so
well you know what I mean, the you
You know what I mean so tell me
dammed it I will.

If we are going to talk about firemen and
men, let's not. I talk about finance and legislation. Section 16. Don't try to play it other
somewhere else that the civic failure that we have
seven, that possibility is the legislature the
of my . . . talk about how much it is going to make
it to. But you speak as over every time you think of
it because you just know what we did not know what you really need to do
what now that we have run this through
hundreds of years. We are not likely to see any
one next year. Now, all the time
You know what I mean. I don't know
well, I don't know what
well, I don't know what
well, I don't know what
well, I don't know what
well, I don't know what
well, I don't know what
so it's nice.
Mr. Leonier made about six thousand dollars at the

[1450]
Ladies and gentlemen, please understand. This is not a legislation. We're not trying here to play tricks on one another to see where we can hide it and where we can find another loophole to work out of. You've got to go back to the people with this thing. If they don't understand it, they're not going to vote for it or understand it. How in the world are we going to tell them what it is? You've got to reject amendments like this, not necessarily for the content but an attempt to not only to put something in here that maybe you don't want, but it's a deliberate attempt to hide something. We're not here to hide. That's why we didn't put a curtain on the machine in the first place.

Further Discussion

Mr. Willis: Mr. Chairman, fellow delegates, I know the deep pleasure of serving and of hearing and seeing with eyes and ears connected to the mind, and not disconnected from the heart, in search of the truth. I know the pain of enduring untruths. Lots of harsh words ring loud in my ears, trouble my mind and burden my heart when they are interwoven with untruths or half-truths. These, however, do not deter my endeavor to untie stubborn knots and unravel tangled schemes. I do not cut the roots all snarled up with either wounded pride or bold prejudice. In testimony whereof, I pray you bear with me while I unravel the untruth and lay bare and reveal the truth, the whole truth, and nothing but the truth by exposing and exploding this amendment, then carefully work at it with your heart.

This amendment contains one sentence. It is overloaded and it tumbles with its own weight. Here is a sentence stripped of its ruffles and flourishes: The legislature may throughout the state exercise the police power. The legislature does not exercise. It makes laws. Those laws are executed by the executives, locally, by sheriffs or chiefs of police, and statewide, by the state police.

Authority is the oldest means of persuasion known to man. When it is used wrongfully, it overcomes, but does not convince, and it overcomes only transitorily, which means uselessly. All it does is cause unrest and injustice. This amendment supplants the sheriffs, the chiefs of police, by the state police if the legislature does exercise. Maybe under this amendment the legislature could exercise the police power through its own members. Do you think...? did you think of that? That's what this amendment allows. It is in plain English. Would you have it...? would we have the Republic guaranteed to us by the United States Constitution in that case?

Mr. Donnelly's amendment takes care of what trouble this section. There is no trick to good faith. This amendment obliterates what we have done thus far and prevents what we are later to consider. I make bold to say it confuses to convince, it divorces to divide, it suffuses for suicide. Give it the resounding repudiation, rejection, refusal, and resentment it so richly deserves.

Thank you, Mr. Chairman.

Further Discussion

Mr. E.J. Landry: Mr. Chairman, ladies and gentlemen of this convention. Everybody is singing, so I'm going to sing. "I got a robe, you got a robe, all God's children got a robe. When they get to Heaven gonna put on the robe, gonna walk all over God's Heaven...Heaven...Heaven...everybody talk about Heaven, ain't going there...Heaven..." Now, the idea...the idea is to get your attention. Thank you and you should give it to me because anytime anybody will listen for the convention you should listen. Ladies and gentlemen, this convention, regardless of what you say in your pessimism, is a lovely and great experience to live and enjoy so much hearing my good friend, Delegate Will... If anyone ever had the command of the English language and the legal language and the beautiful language, he has, but I'm here at this moment to speak to you about a concept of government. Now, you have got to reason with me that this amendment really and truly is necessary. It protects local government against itself. That's exactly what it does. We need a broad concept of government. Most of you have been in management, in personnel, and you know as well as I do, ---and I have been in that area, that responsibility---state cannot delegate responsibility. It must never relinquish responsibility. It can delegate authority, but it cannot and must not delegate responsibility. Now, think well about this thing. You have had all kinds of side issues develop, bringing in things that are not even present. The title of this section is "Limitation of Local Government." Now, reread it. It's limitation and members of this convention, you need to limit local government. Like it or not---make no special provisions for any special part of this state. Vote independently, regardless of what has happened in the past. You are trying to write a simple paragraph that will just do what I've talked to you about. I'm not a lawyer; I can only give you an expression of opinion. I will not in...try in any manner, shape or form to answer any legal questions coming from the lawyers because I have listened too long to the words used by lawyers in this convention to try and cope with any of their language.

[Previous Question ordered. Quorum Call: 169 delegates present and a quorum.]

Closing

Mr. Avant: Mr. Chairman and fellow delegates, this is a moment of decision, a moment such as we haven't reached before. The issue is simple: Do you want to continue to live in a sovereign state---one of fifty in this Union---or do you want to live under your grandchildren and children and wear your cap to the confederation and alliance of independent, autonomous local governmental units? That's the question. Mr. Chairman, I ask for a record vote on this amendment.

[Record vote ordered. Amendments adopted: 61-48. Motion to reconsider tabled. Motion to take up other orders adopted without objection.]

Announcements

[1 Journal 322-332]

[Adjournment to 100 o'clock p.m., Thursday, September 27, 1973.]
Mr. Lennox May Almighty God show His blessings on the deliberations of this convention today. May we work with a pure intention, with detachment from one's self, having always before our eyes the hour of death and the accounting which we must render to God. I am glad to appear before you again to advise you that my prior oratory on the subject of cane sugar was apparently not heard or digested in the proper quarters. We continue to suffer at this convention, as we are forced to use beet sugar grown in the northwest and refined in Illinois to sweeten coffee on the convention floor, with a much superior product is available to us right here at home. Because I failed to succeed in bringing to each of you one of the better things of life available in Louisiana, I have arranged to place at the desk of each delegate a parcel containing quality products refined by Godchaux-Henderson Sugar Company division of Southern Industries Corporation, using Louisiana cane, capital, and labor, all of which contributes substantially to the general welfare of our state. This parcel is delivered to each delegate with the compliments of the employees of Southern Industries and Godchaux-Henderson Sugar Company. I am happy to report to you at this point that you no longer will find it necessary to sweeten your coffee with an inferior product, and that you now have available you an abundant supply of that delicacy known as Louisiana cane sugar. As it touches the lives of at least two of us, this convention floor won't smell at all, it's bread and butter. Now if you'll permit me for a few moments to speak to you on a more serious matter, I'd like to speak to you, however briefly, regarding the poor attendance of delegates at convention sessions. The glare of public scrutiny was brought to bear on the attendance records of some of my colleagues and myself, and most unwelcome, was the reaction of the convention following the publication of this documentary.
need more money, or we're just going to fail and we're going to be up there. So, Mr. Chairman, what I ask for is what the status of that resolution now, and if possible, that that resolution can be called from the calendar by this convention and considered at this time.

Mr. Henry Reverend Alexander, we'll find out what the posture of that is. I don't know, but we'll find out and I'll report back to you.

Mr. Alexander Tomorrow we'll...

Mr. Henry We can let you know by tomorrow. Certainly, we need to move as rapidly as we can, and I think that when we get the proposal, we'll adopt, find, well, and go out but I think if you just use some individual restraint on ourselves and don't talk when it's not necessary, and sort of discourage those who do like to talk so much, I think we'll speed up the progress of our work.

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Mr. Poynter Committee Proposals No. 17, introduced by Delegate Perez, Chairman on behalf of the Committee on Local and Parochial Government, and other delegates, members of that committee. A proposal making provision for general provisions for local and parochial government, levee districts, and ports, the financing thereof, and necessary provisions with respect thereto.

The status of the proposal, at this juncture, is that the convention has adopted, as amended. Sections 1 through 11 of the proposal, with the exceptions of the following sections which have been deleted, those being Sections 2, 4, and 10 respectively; presently has under consideration Section 12 of the proposal, which at this time has had two amendments adopted to it.

Reading of the Section as amended

Mr. Poynter "Section 12. Limitations of Local Governmental Subdivisions

Section 12. (A) Local governmental subdivisions shall not: (1) incur debt payable from ad valorem tax receipts maturing more than forty years from the time it is incurred; (2) define and provide for the punishment of a felony; or (3): "...insert the language "except as may be provided by law enacted private or civil ordinances governing civil relationships." Also added is a paragraph:

(8) Notwithstanding any provision of any law of local government or any home rule charter, or any other provision of this article, the legislature may by general law, applicable to the state or based upon any reasonable classification, exercise the power of the state in the parishes, municipalities, and other local governmental subdivisions of the state."

Amendments

Mr. Poynter Amendments sent up by Delegates Lowe, Roemer, and Miere.

Amendment No. 1. on page 6, line 27, immediately after the word and punctuate the remainder of the line and delete line 28 in its entirety and delete line 29 in its entirety and insert in lieu thereof the following: "(1) the debt."

It would reinsert as a (1) the-de so that it would pick up on line 30, "define and provide."

Amendment No. 2. on page 6, line 30, immediately after the word for and before throughout the state or based upon any reasonable classification, exercise the power of the state in the parishes, municipalities, and other local governmental subdivisions of the state."

Mr. Lowe Mr. Chairman and fellow delegates, the amendment was handed out yesterday. I believe if you look on page CP No. 54, you can understand the amendment without too much trouble. Under Section 12, there are three prohibitions and what this amendment does is merely to delete prohibition number one. Prohibition number one says that a subdivision shall not incur debt payable from ad valorem tax receipts maturing more than forty years from the time it is incurred. Now, according to the explanation that was given to us by Mr. Perez in this digest, there's no such provision in the 1921 Constitution. We talked about this some under revenue, finance, and taxation. Section 42 (A) of this same proposal places a limitation on bonded debt of ten percent of the total value of all property within such subdivision valued for assessment purposes, and this ten percent limitation seems adequate to control the debt of municipalities and local subdivisions. Often local government finds it necessary to refund bonds. You may have a bond running for thirty years and for some reason or another, the call features in the bond may make it have less cost, interest-wise, to refund those bonds and include it with another issue to run thirty years. I would doubt that that could be done under a proposal where there was a limit of an original debt of forty years. As you know, it's bad to put numbers in the constitution. When we were returning from the wars in 1946, it was not uncommon for a home...a residence to be purchased and paid off over a twenty year period, and that was the limit at which you would have a home in those days. Today it's not uncommon for young people to go out and buy a home that's payable over thirty and thirty-five years, so we don't have forty years from now, I don't know. But, the point is that this limitation, I don't believe, is required. The ten percent limitation in Section 42 (A) is adequate to control and place limits on local government."

Question

Mr. Roemer Mr. Lowe, isn't really all you're trying to do is just eliminate some unneeded language in this constitution, since we have the ten percent limitation that's the real protection, not the length of the bond?

Mr. Lowe That's exactly it, Mr. Roemer, and this amendment does nothing more, and as we huddled up here, I understood from Mr. Perez that he didn't have any serious objections, or maybe he has no objections. I ask that you adopt the amendment.

Further Discussion

Mr. Perez Mr. Chairman and delegates, the reason this provision was put in the Local Government Article is because of the fact that many times in Article 19, Section 14, "(A) Notwithstanding any provision of any law of local government or any home rule charter, or any other provision of this article, the legislature may by general law, applicable to the state or based upon any reasonable classification, exercise the power of the state in the parishes, municipalities, and other local governmental subdivisions of the state."

[Amendments adopted without objection.]

Amendments

Mr. Poynter Amendments sent up by Delegate Casey as follows:

Amendment No. 1. Delete in their entirety Amendment No. 1 and Amendment No. 2 proposed by Mr. Avant, et al, and adopted by this convention on September 26, 1973.

Amendment No. 2. On page 6, line 27, immediately after the numerical and punctuation "12. insert the letter "(A)"

Amendment No. 3. On page 6, between lines 31 and 32, insert the following: "(8) Notwithstanding any provision of this Constitution, the police power of the state shall never be abridged."
thinks we have been arguing about and going back to
first principles. I don't pretend that this amendment is
the complete solution to the problem. For one thing, after
the legislature, there is a possible compromise until they can
find the right words. Perhaps they can. Anyway, I shall
remain opposed to it. But I wish to point out, as I did
earlier, that some changes have been made in the amend-
ment, and I think it is interesting to note them. And by
the use of the police powers of the state, the
find the necessary power by using our existing law.

I believe that when the question of the constitutionality of the
Amendments or any other legislation. There are cases certain powers that will be re-
tioned by the state. The powers that will be taken
away from the state, or perhaps, the powers of the state,
are different. This is a matter of great importance, and
I would suggest to the voters that they study the
laws and regulations carefully before voting on the
Amendments. It is important that the voters know
what they are voting for, and that they are well
informed on the issues.

Mr. Newton, Mr. Casey, I know what you want to do. But I think
you want to do it in the right way. You want to do it in the
provision of the Constitution. Now, the Police
Rights is part of the Constitution. There are
certain restrictions against arbitrary uses of the police power which are written in
the Constitution. I think you can do it, but I believe it should be done
in the Constitution. As the right to vote is taken
away from the state, so the right to vote in the state
would be taken away. And this is a matter of
importance, and I believe the voters should study
the laws and regulations carefully before voting on the
Amendments. It is important that the voters know
what they are voting for, and that they are well
informed on the issues.
55th Days Proceedings—September 27, 1973

...tion of the police power, is it—rather an abrogation of sovereignty, isn't it?

Mr. Casey: Woody, I think that's a matter of interpretation. I think, personally, I think the state was still well protected under, I think, Section 8 of the Constitution. I think it's important to note that it is often noted for it. The issue should be discussed when we get to Section 16. That issue should be isolated and separated from the broader issues of home rule. It should not be part of the amendment that we've adopted, and that's why I'm suggesting we should adopt the Casey amendment. If what everybody is saying, it's really a recognition of police power, that's precisely what the Casey amendment says. It's very similar to the language in the '21 Constitution, and I think it's quite clear that everybody here now knows that the legislature can deny local government just about anything if it has a specific law denying it. But 7, 8, and 9 vests local government with certain powers, some of which would be police powers. Now we have given, and now we have taken away. It is totally ludicrous, and totally evasive, and devious to do what we have done: to, on the one hand give, and by a very good vote, give the home rule vested with certain powers and then to say they really don't have anything now. They really don't have anything—and that's what it says, if it's carefully read, it's not the fireman and policeman issue. It is a total emasculation of what we've done, what we spent a whole day doing, and that's what it is. Everybody is going to be candid about it, they can say that what it really does is to take it away—what we've given. It's a back door approach; it's not really what we promised. That's what it is, because it takes away what we previously enacted, and I'll tell you this: who do we represent, or what do we believe in? Is there an office of public trust? We're writing organic law. We're writing organic law for the people of Louisiana. We've all used the euphemisms of people, I'm wondering who the people are. The people of this state want home rule. The vested interests do not want home rule, and we're supposed to represent the people of this state, and what this amendment is, is to placate vested interests. The Casey amendment placates it, not the people, not the man on the street who elects you, who elects the governor. The Casey amendment does not reflect the people's voice. It is our voice that they ought to start thinking about that, and who elected you to come up here. Those people want home rule, and it's been taken away by this amendment. The Casey amendment preserves the police power and does not destroy what we have done. I suggest to you that this convention looks pretty ludicrous when it actually comes in, it looks like a Constitution and then by vague, ambiguous, devious, evasive, and obscurantist language takes away what we have already done. I ask you to adopt the Casey amendment—to really yield your own conscience. That's what I ask you to do.

Further Discussion

Mr. Burson: Mr. Chairman, fellow delegates to the convention, I know that very often in my manner of speaking to you, I have been in every sense of the word, an advocate of one polar position or political philosophy in this convention, and that is the philosophy that believes that our system of government is the best, and that the best way to protect liberty is to decentralize government power. That philosophy is not as concerned with the decentralization of power as it is with the dispersal of government power. That philosophy sees the concentration of government power as the greatest danger to liberty.

Now I recognize that certainly there is another philosophical position which looks upon the central government as the defender of the constitutional rights of the people, of the social and economic rights of the people. I do not say that this is an invalid position at all times and in all places, although in this convention, we have spoken always on the other side. But I'm asking you for a moment to divorce your thoughts, if you will, from whatever of these two political philosophies, or any philosophy in between, you might espouse. Look, if you will, to the practical effect of the amendment that we adopted yesterday in the large, and to the question of whether the legislature may by general law, applicable throughout the state, or based upon any reasonable classification, vest in the sheriff's department, the police power in the parishes, municipalities, and other local governmental subdivisions in the parishes, and in the municipalities, and it may exercise it. I submit to you that that language was sweeping, and so unlimited, that it clearly presents not only the possibilities raised by Mr. Casey, but the possibility that the state would not separate the firemen's and policemen's salaries, but the salaries of the garbage man and the janitor who cleans up in the city hall, and carried to its ultimate extreme, would permit the state legislature as I see it, if they so desired, to virtually take over local self-government.

Now you say the state legislature won't do that. Right now and the governor we have right now wouldn't do that. I would agree with you. But language that establishes power is a neutral thing and the power, once established, is there for all time to come, and it is not there just for the present governor, it is not there just for the present legislature, but for whoever will come in the future. If we look to the political history of our state, we would be naive, indeed, to deny the fact that there have been incumbents of the governor's office, and there have been some people in the state legislature in times past, who have used this power in exactly the way that we fear it could be used. I submit to you that that is too dangerous a possibility to leave in this constitution.

Mr. Casey's language is virtually the same language that was contained in my amendment which was taken verbatim from the present constitution. It has a well defined historical meaning. We know in the past in our political history which of the police powers have been delegated to the municipalities and to the parishes, and which have been reserved by the states. It seems to me that we ought to be very careful, indeed, before we adopt new language, undefined, that is so broad sweeping that it is easily bent to the interpretation of an all encompassing central power.

Further Discussion

Mr. Avant: Mr. Chairman, fellow delegates, particularly Mr. Casey. Mr. Casey, I don't take things personally and I know you well enough to know that you don't engage in personal debate. We're here to discuss principles. So have no fear. I don't think that the day will ever come when I will have to apologize for you on that point. I do want to say this. I think Mr. Casey made my point very eloquently. Mr. Casey concedes that he's the Committee Chairman and made one comment, a bit too far. Well, I'm going to put the interpretation on what the committee has done that I put it on yesterday. The committee has turned the world upside down insofar as this area is concerned. Now
Mr. Smith: Mr. Chairman, fellow delegates, I ask you to fix right down to its root cause the basic issue that is before us and that we have been debating. This provision as written by the committee and as the result of the convention, the words that I have introduced, literally does turn the world upside down in this area. Every municipal corporation in this state, under this proposal, in the absence of this amendment, has the power to pass any law, no matter what it is, that is put to a vote and carried. So I'll tell you why, because I am sitting here reading from the plan of government of the parish of East Baton Rouge, which is a home rule宪例 that I have never seen or heard of anywhere. Yet we have some limitations. I am not going to read this whole provision, but that the city of Baton Rouge, which is anything in the world they want to place that is fully in the law that says anything in the world, they want to pass an ordinance. This means that the provisions of said ordinances shall not directly conflict with the provisions of any state law. You don't even have that limitation in this article. You don't even have that limitation in this article, and I'll tell you why. Because this says that they can do anything not expressly denied by general state law. It means that they can pass laws that are directly in conflict with general state law unless the legislature affirmatively comes back and says, we are protecting this field and we don't legislate in this field. So it's much broader and goes further than anything ever conceived by the mind of man to this state.

Now I told you yesterday, and the issue is still here and it's still simple. Mr. Duval asked, say, 'We're going to talk about in the Preamble, 'We, the people.' Who are we talking about? We are talking about the people of the State of Louisiana. It's my understanding that's why we're here to write a constitution for the people of the State of Louisiana. That means the people in Terrebonne Parish, the people in Grant Parish, the people everywhere living together within this state as the citizens of a state of a constitution, not the League of Nations, or whatever you might want to call it, but of a recognized, political entity, one of fifty states in these United States. That's what we came here to do. Unless we stick with what we've done yesterday, we are not going to do it.

I just say one thing in closing, I'm a citizen of the State of Louisiana, and when I cross a river, I don't want to be a stranger in my own land.

Further Discussion

Mr. Abrahm: Mr. Chairman, fellow delegates, we are still trying to decide at what level do we draw the line on home rule. Now what does home rule mean? Does it mean in the parish? Does it mean in the state? Or does it mean in the country? And we understand how we can pass Section 9, which real firms or affirms or puts it, that we must reconcile these two things. You know, we're dealing with the Avant amendment which completely overlooks everything we had done previously. So, the answer is still in the air. We don't know what that amendment is, but from one parish to another, that's the Avant amendment which completely overlooks everything we had done previously. If there is a different law in a different state, if we follow the line of reasoning that we've been doing in the past years, and don't go a step further and say that all states have to be consistent and that we want to give the same to the Federal Congress to make all states write exactly in the same manner and in the same construction?

All these things are relative but here again, we're trying to give the people the right to decide this thing, the issue for the sake of this issue, in real home rule. This, to me, is allowing the people the real exercise of their rights. It means that the state has certain powers that it should not be abridged. But the state is going to retain them unless we these localities, or any one, or any local government, if it goes out of line, if it goes out of line with the state, then this state then will be able to pass a general law which will carry. I think this is but one of the issues that is handling it by using every sort of thing. At all times we've said, when we've got in the baby with the bath water, as it were, we are trying to reconsider what we all yesterday. I think that the Casey amendment will this far solve the problem, because that we have already adopted Section 9 while the adoption of this amendment will...
Further Discussion

Mr. Kilbourne  
Mr. Chairman, fellow delegates, I hesitate to come up here on this debate because I really don't feel that I know what I'm talking about. But after I've listened to everybody else talk, and I feel maybe they don't know any more than I do, so I have a little more confidence.

I feel a little bit like I did several years ago right in my own woods, near my own home, but it was on a cloudy, overcast day, I couldn't see the sun, and I got lost. I wandered and I wandered. Every time I'd think I was getting out, I'd find I'd go right back where I'd started. I was going in a circle. That's an easy thing to do. I feel like maybe that's what we are doing now. But I tell Mr. Avant yesterday I could support his amendment because I thought it was too broad.

Now I don't know what they talk about when they talk today. If they say, "reasonable, any reasonable classification, the exercise of police power in the state, in the parish, in the municipality is based on any reasonable classification." Well, I guess it's just what the people who happen to be holding the reins of power at a particular time think is reasonable. Or the judges who happen to be judges at a particular time rule is reasonable. That's the only thing I can make out of it. What is police power? I don't know what police power really means, and it's so broad... so, I just... I wish Will Rogers was here sometime, because he was a man that could take the complicated things and put them in simple language that I could understand.

What I think police power is, just to be real simplistic, is what the government, or the people who hold the reins of government, what do the people, who do that, do it for you, or for your own good, whether you like it or not. I think this, that what we adopted yesterday, I still think it went too far. I think it's far too broad. It's too vague, and nobody can foresee what the outcome, or how that kind of language could be interpreted in the future. For that reason, well, I don't know what the answer is. I don't like Mr. Casey's amendment and maybe, maybe, we can come up with something still better than that. But I really believe that Mr. Avant's amendment goes too far.

Anybody can ask me questions, but I've already told you I didn't know anything about what we are talking about, and I don't think I can answer them, but I'll try.

Question

Mr. Derbes  
Mr. Kilbourne, I agree with what you say, and I'd just like to ask you this question. Isn't it true that any legislative act, any act of the state legislature pursuant to the Avant amendment, under the established rule of law, would be presumed constitutional, and it would be up to anyone challenging that law to establish its lack of constitutionality? If that is not established by proper evidence, the presumption of constitutionality would carry.

Mr. Kilbourne  
Well, Mr. Derbes, that's a very simple rule, a Horn Book rule, of which even I know. Every legislative act is presumed to be constitutional. You are absolutely correct.

Further Discussion

Mr. Kean  
Mr. Chairman, fellow delegates, I rise in support of the Casey amendment, and I'd like to take a few minutes to tell you why. I know what the Avant amendment does to East Baton Rouge, and I know what it does to Jefferson Parish, and I know it goes to Orleans and the other home rule charters that exist in this state.

In the case of East Baton Rouge following the enactment of Section 11, it completes the emancipation of the charter of East Baton Rouge Parish. What I don't know is how far-reaching this particular section would be if enacted. Mr. Avant's amendment, it so far as other governmental offices and units are concerned. For example, and I think this is a matter which ought to be of the importance, for example, to you elected assessors, you other elected local public officials who are sitting in this convention. The Local Government Committee put in Section 13 a provision which, in my opinion, is inherent, is necessary, if local government is to have any viability in this state, and that is the electors of each governmental subdivision shall have the exclusive right to elect the members of their governing authority, and to further provide that such officials shall not be subject to removal by local government.

Now as I appreciate Mr. Avant's amendment, which says "anything in this constitution notwithstanding," anything in this constitution notwithstanding that the legislature could decide whatever is necessary in the exercise of the police power to classify all municipalities over two hundred and fifty thousand, and that vote the provision that the elected public officials of that particular... those particular municipalities shall be terminated. Is that what you want? Is that what this section means? Read Mr. Avant's amendment and then read Section 13 and decide for yourself if this particular provision by Mr. Avant wouldn't provide the means by which we could strike down that law, do away with local government in this state so that simple device of violating the election of local officials who have been elected by the people for whom they serve.

I can't believe that the delegates of this convention want that to be the law of this state. I know the people of this state don't want it to be the law of this state. Mr. Avant's amendment has been in the constitution for many years, put there for a very principal purpose, for a very precise purpose, that we don't want it. And Mr. Avant is an example, every single expanse from doing what was done back in the early forties, and that is to take away from local government its own elected local officials. I say to you, by all means take a look at the amendment as it exists, strike it out and say this is contrary to everything that Mr. Avant's amendment goes too far.

I prepared to fight that battle as it comes.

But I urge on you delegates who now, for the first time, have to decide what this amendment by Mr. Avant does to the rest of the rest of the local government; you'd better take a good, close look at it and vote in favor of Mr. Casey's amendment, which is more sensible and reasonable approach to this problem.

Further Discussion

Mr. Gravel  
Mr. Chairman and ladies and gentlemen of the convention, I'm utterly amazed that my good friend, Tom Casey, could suggest that the people who sat here yesterday and passed many hours of debate, who were politicked on the floor of this convention, hear him say that nobody knew what was happening. I think that can't be put, that there was presented to this convention on yesterday, there is being represented...
Mr. Roy. Mr. Chairman, ladies and gentlemen of the convention, I rise in opposition to the amendment. I want to say a word or two about what I think we have done in the last few weeks, and contrary to what some of my colleagues have said, I think I speak for the people of this state, and the proposition of allowing the police power of the entire state of Louisiana to be delegated to the people of the state through elected representatives of the people. There are those who say that is too great a power to give the people, if you will, and that it is not a way to assure that the police power will be used wisely. But I think it is a way to assure that the police power will be used wisely, and I believe that the people of the state, if they have the opportunity to elect representatives who are accountable to them, will exercise that power wisely.

Mr. Roy. Mr. Chairman, ladies and gentlemen of the convention, I rise in opposition to the amendment. I want to say a word or two about what I think we have done in the last few weeks, and contrary to what some of my colleagues have said, I think I speak for the people of this state, and the proposition of allowing the police power of the entire state of Louisiana to be delegated to the people of the state through elected representatives of the people. There are those who say that is too great a power to give the people, if you will, and that it is not a way to assure that the police power will be used wisely. But I think it is a way to assure that the police power will be used wisely, and I believe that the people of the state, if they have the opportunity to elect representatives who are accountable to them, will exercise that power wisely.
to retain the right for these general laws, and for the
general protection of people of this state.

Another thing, you talk about the health condi-
tion of the people of the state, that's not function-
ing properly, and they would create a health hazard to the people in another
local government. There has to be an overriding, and I believe that the state, the
health of the people of this state. That's all this is.

Now the thing is, we have a good amendment that we
vote for, and I believe that the state, the state, the state, the state, the state,
vote for, and I believe that the state, the state, the state, the state, the state,
vote for, and I believe that the state, the state, the state, the state, the state,
vote for, and I believe that the state, the state, the state, the state, the state,
vote for, and I believe that the state, the state, the state, the state, the state,
vote for, and I believe that the state, the state, the state, the state, the state,
vote for, and I believe that the state, the state, the state, the state, the state,
vote for, and I believe that the state, the state, the state, the state, the state,
vote for, and I believe that the state, the state, the state, the state, the state,
vote for, and I believe that the state, the state, the state, the state, the state,
vote for, and I believe that the state, the state, the state, the state, the state,
vote for, and I believe that the state, the state, the state, the state, the state,
vote for, and I believe that the state, the state, the state, the state, the state,
vote for, and I believe that the state, the state, the state, the state, the state,
vote for, and I believe that the state, the state, the state, the state, the state,
vote for, and I believe that the state, the state, the state, the state, the state,
vote for, and I believe that the state, the state, the state, the state, the state,
vote for, and I believe that the state, the state, the state, the state, the state,
vote for, and I believe that the state, the state, the state, the state, the state,
vote for, and I believe that the state, the state, the state, the state, the state,
vote for, and I believe that the state, the state, the state, the state, the state,
vote for, and I believe that the state, the state, the state, the state, the state,
vote for, and I believe that the state, the state, the state, the state, the state,
vote for, and I believe that the state, the state, the state, the state, the state,
vote for, and I believe that the state, the state, the state, the state, the state,
vote for, and I believe that the state, the state, the state, the state, the state,
vote for, and I believe that the state, the state, the state, the state, the state,
vote for, and I believe that the state, the state, the state, the state, the state,
vote for, and I believe that the state, the state, the state, the state, the state,
vote for, and I believe that the state, the state, the state, the state, the state,
vote for, and I believe that the state, the state, the state, the state, the state,
vote for, and I believe that the state, the state, the state, the state, the state,
vote for, and I believe that the state, the state, the state, the state, the state,
vote for, and I believe that the state, the state, the state, the state, the state,
vote for, and I believe that the state, the state, the state, the state, the state,
vote for, and I believe that the state, the state, the state, the state, the state,
vote for, and I believe that the state, the state, the state, the state, the state,
vote for, and I believe that the state, the state, the state, the state, the state,
vote for, and I believe that the state, the state, the state, the state, the state,
vote for, and I believe that the state, the state, the state, the state, the state,
vote for, and I believe that the state, the state, the state, the state, the state,
vote for, and I believe that the state, the state, the state, the state, the state,
vote for, and I believe that the state, the state, the state, the state, the state,
vote for, and I believe that the state, the state, the state, the state, the state,
vote for, and I believe that the state, the state, the state, the state, the state,
vote for, and I believe that the state, the state, the state, the state, the state,
vote for, and I believe that the state, the state, the state, the state, the state,
strongly that be use of the Avant amendment, we have gone farther, much farther, in diminishing harm rule than did the Avant amendment. We are worse off with the Avant amendment than we were under the 1921 Constitution, and certainly with the Avant amendment we would have been worse off than we were under the 1921 Constitution. We are worse off with the Avant amendment than we were under the 1921 Constitution, and certainly with the Avant amendment we would have been worse off than we were under the 1921 Constitution.

So we have three choices when you get down to it, this is what we really ought to seriously consider are these three choices. Do we want the committee proposal which is the one extreme, we want the Avant amendment which is the other extreme, or is it possible, perhaps, maybe, that during the debate in the consideration of these three offers we might hint to the state somehow that those things that are due rightfully for regulation by the state and give to municipalities those police powers which it rightfully should enjoy to conduct its own business? That's the whole issue. You can't do that with the existence of the Avant amendment.

Amendment
Mr. Poyneter Amendment No. 1 (by Mr. Jenkins). On page 6, line 31, at the end of the line change the period " '] and the following sentence "] to a semi-colon," and insert the following sentence "] after the sentence "] as limits by this constitution; or (4) levy or increase any tax", insert the words or increase. So, it would read "or (4) levy or increase any tax not specifically authorized by this constitution unless authorized by the legislature and by a majority of the electors voting thereon in the political subdivision affected." All right now. Mr. Jenkins has a further change. With respect to the amendment to item No. 4, the amendment as it is introduced would read: or "(4) levy or increase any tax", insert the words or increase. So, it would read "or (4) levy or increase any tax not specifically authorized by this constitution unless authorized by the legislature and by a majority of the electors voting thereon in the political subdivision affected." Explanation
Mr. Jenkins Mr. Chairman, delegates, the proposal of the Local Government Committee very carefully limited the taxing authority of local governmental units, and you will see in the later provisions on specific items, property tax limitations, sales taxes, etc. However, there is a loophole left in the whole taxation scheme, and that is the possibility that local governments could specifically mention in this article could be imposed by virtue of the fact that local governing authorities have the powers not denied to them by general law. (Examples) of this would be things like a value-added tax; there is no provision in this article or elsewhere that would prohibit a local governmental subdivision from imposing a value-added tax of, say, one percent all along the way on the...on the sale and resale of various goods. There's no prohibition for example against the imposition of an employment tax, it might happen in New Orleans where there would be a head tax on people employed in the city, which would have to be paid by people in Jefferson or elsewhere. You will notice in section 9 of the committee proposal there was the listing of certain things that local governments would do if you will look on page 12 in section 9, you will see that one of the things that local government would have done was on page 6, there to tax under the limitations provided in this constitution or by general law. However, we have deleted that with an amendment that the . . . the government; local government committee went along with you remember deleting that entire listing there. It is now somewhat width whether or not the local governmental units can increase taxes beyond the limits set in this constitution or could impose new taxes not authorized by this constitution. In this amendment, the state governmental section here. The committee provided that a vote of the people must be taken in order to increase taxes authorized in this constitution. So, the purpose of this amendment is to stay in line with that thought, to say that local governmental subdivisions shall not levy any tax beyond the limits of this constitution, or levy or increase any other tax which is not authorized by this constitution unless the legislature approves the imposition of that tax and unless the voters of the area go to the polls and vote for it. We have not become a real problem in this country and I think the people are not going to stand for for increased taxes unless they are given the opportunity to vote on those taxes. This is the amendment that I think makes sure that the legislature can pass a law imposing a tax on a locality without the approval of the people of that locality. So, I urge the adoption of this amendment.

Further Discussion
Mr. Perez Mr. Chairman and ladies and gentlemen of this convention, I would have hoped that Mr. Jenkins would have read Section 35 of our local government provision which goes into the authority for the taxing power. I suggest to you that this is not the time to consider the question of the limitations upon local government in tax. There are amendments that would be added, there should be offered to Section 35. Section 35 specifically provides, "a political subdivision may exercise the power of taxation subject to such limitations as may be elsewhere provided in the constitution, under authority granted to them by the legislature for parish, municipal, and local purposes, strictly public in their nature. Provisions of this section shall not apply to nor affect, similar grants to such political subdivisions under other sections of this constitution." I would hope that Mr. Jenkins would be agreeable to withdraw his amendment at this time, so that we may take up the question of taxation in an orderly fashion.

Question
Mr. Perez Mr. Perez, in Section 35, would you agree to go along with the idea of provision that...there must be a vote of the people before a tax could be imposed or increased on the local government level?

Mr. Perez Mr. Jenkins, every provision in the constitution with regard to taxation and tax levels the local government has a specific provision requiring a vote of the people. I cannot say at the time that the legislature in some jurisdiction want, under certain conditions, to give the authority to levy a tax without the vote of the people, but again, I'm not going to answer your questions directly because I believe that will address itself to when we get to Section 9, and I believe we would move a lot more lot quicker if we would have read the particular provisions that I would have considered it at that time. I urge now to defeat the amendment and then we will consider whatever further limitations on taxation that the body would like to do at the time we consider Section 9.

Further discussion
Mr. Rooster Mr. President and fellow delegates, it seems to me that if you read Section 35, it clearly says on line 2 and 3 subject to limitations of the people of the area. It clearly says that the local government is to consult the people of the area as to what is right or wrong, with all due respect. I think that's in the constitution and the section that were talking about now deals with limitations not in the local political subdivision, this thought that the local government is to consult the people of the area. I think they are subject to the subject of the limitations on local political subdivisions. Now, what are the important limitations of taxation? What is the requirement of a vote by the people before a
new tax can be imposed, and I think that's all Mr. Jenkins is trying to do. He does not tie the hands of the local political subdivisions in any way; he just says that if it's a new form of taxation, that they must have a vote of the people before they can be imposed. Now, it has been said to me that there are some house rule charters that allow for taxation without the vote of the people. That may or may not be the case. If there... if that is the case, it's the notion that’s abhorrent to me. It seems to me in a nation that's being taxed to death, the least we can expect is for our constitution to require a vote of the people. And that's all Mr. Jenkins is trying to do. I think the amendment is quite good, and I think it's certainly in order and apropos to the general concept of this constitution: that is, government for all, but with reasonable limitations.

Questions

Mr. Perez Mr. Jenkins [Mr. Roemer], did you say, but... don't you agree that if that is the pleasure of the convention, we can take care of that when we get to Section 35, instead of taking it up out of order now?

Mr. Roemer Well, perhaps we can, Mr. Perez, but I would submit to you that if you listened to my opening remarks, you seem to have given a nod in Section 35 to the need to be aware of other provisions in this constitution. You say just this: it seems, in addition, to me, to be relevant in limitations on local political subdivisions to put this basic limit on those local political subdivisions.

Mr. Lanier Mr. Roemer, aren't there certain types of taxes like social assessments, that are imposed not with a vote of the people?

Mr. Roemer Is that a question or a statement?

Mr. Lanier I'm... did you know?

Mr. Roemer No.

Further Discussion

Mr. Conroy On previous occasions when matters relating to finance and taxation have come before this convention, I have urged the convention not to act upon them at that time, but to postpone them until such time as they can be considered in proper context. This, again, is one of those occasions. I urge you to defeat the Jenkins amendment at this time so that the whole problem can be placed in proper context and studied in Section 35 with regard to taxation by local governmental units. It may well be that there are certain kinds of taxes that a local governmental subdivision should be able to increase or to levy without a vote of the people. I'm not sure what is meant here by taxes, whether it includes a special assessment or not. This point was brought out by Mr. Lanier's question. I think we again get into the question of home rule. We don't have a limitation of this kind on the legislature of the state; we don't require the state to submit all taxes to a vote of the people throughout the state; and where you have a home rule charter in which the people of a governmental subdivision have decided that they want their governmental unit to be able to exercise certain powers of taxation, I don't see any reason for this constitution to limit the possibility of such authority being exercised by the local governing unit. I yield to any questions.

Mr. Willis Mr. Conroy, I commend you for what you said and in the interest of time the most valuable... the most valuable points are about, isn't this the best way to drag anchor, is by proposing amendments to a section under the guise of amending it and then scrapping away at a section beforehand and then something that refers to taxation?

Mr. Conroy Yes, in addition to dragging anchor, it also confuses the issues and I think... makes them very difficult for the delegates here to comprehend, the significance of what's going on.

Mr. Willis Very good.

Mr. Arnette I was going to speak, Mr. Conroy, but I think I can ask you a question that might clear up my problem. Section 4 of Mr. Jenkins' amendment says that you need a vote of the legislatures and a majority of electors.

Mr. Conroy That's correct.

Mr. Arnette Now, even if the people of a locality want the tax, they vote it themselves, you still have to go to the legislature under this provision. Do you think that that's a good idea?

Mr. Conroy I certainly do not, Mr. Arnette, but as I said before, I hated to get into a discussion of too much of the merits here because I think it's subservient to too many localisms and minor changes. I think if this passed, we'd find a whole bunch of additional amendments then being proposed on the floor to properly define and place this in proper perspective. I urge you to reject this amendment and move the previous question.

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Dennis]. On page 6, between lines 31 and 32, delete Floor Amendment No. 2 proposed by Delegate Avant, et al. and adopted by the convention on September 26th and insert in lieu thereof the following: "This article shall not limit the power of the legislature to enact laws of statewide concern."

Mr. Conroy Yes, in addition to dragging anchor, it also confuses the issues and I think... makes them very difficult for the delegates here to comprehend, the significance of what's going on.

Mr. Willis Very good.

Mr. Arnette I was going to speak, Mr. Conroy, but I think I can ask you a question that might clear up my problem. Section 4 of Mr. Jenkins' amendment says that you need a vote of the legislatures and a majority of electors.

Mr. Conroy That's correct.

Mr. Arnette Now, even if the people of a locality want the tax, they vote it themselves, you still have to go to the legislature under this provision. Do you think that that's a good idea?

Mr. Conroy I certainly do not, Mr. Arnette, but as I said before, I hated to get into a discussion of too much of the merits here because I think it's subservient to too many localisms and minor changes. I think if this passed, we'd find a whole bunch of additional amendments then being proposed on the floor to properly define and place this in proper perspective. I urge you to reject this amendment and move the previous question.

[Previous Question ordered. Record vote ordered. Amendment rejected: 34-79. Motion to reconsider tabled.]

Explanation

Mr. Dennis Mr. Chairman and fellow delegates, I'm offering this amendment as a separate section—separate paragraph to this section. The amendment simply says that "this article shall not limit the power of the legislature to enact laws of statewide concern." The reason I'm offering this amendment is, ladies and gentlemen, we have not resolved the issues we've been grappling with. In Sections 8 and 9, which we have previously adopted, we have granted certain powers to local governments and Mr. Casey's amendment, which was just adopted, simply says that "the police power of the state shall not be abridged." Now, Mr. Casey's amendment either is meaningless, or it does away with the powers we granted under Sections 8 and 9. If you read it literally that "the police power of the state shall not be abridged," then 8 and 9 would be in conflict with this, because they do abridge the police power of the state. However, if you read it to override 8 and 9... if you don't read it to override 8 and 9, then it's meaningless; it doesn't limit the power of local government one whit. Now, I submit to you that there are some areas in our law which can, although they may affect local government powers, can
Mr. Conroy: Mr. Chairman, I sympathize with the problem which you mentioned about the confusion that might exist, but I am not sure that we don't have the same problems.

Mr. Conroy: Mr. Chairman, I sympathize with the problem which you mentioned about the confusion that might exist, but I am not sure that we don't have the same problems.
powers solely to local governments to take advantage of over which I'm saying that's fine and good, but if that gets in the way of the legislature dealing with a statewide concern, I think the overriding state interest must be paramount and the legislature must be given the right to enact a law. If we don't, I'll guarantee you we'll be amending this constitution to take care of such a problem.

Mr. Toony But you don't say in your amendment that these laws will be unified...applicable throughout the state.

Further Discussion

Mr. Pugh Mr. Chairman, fellow delegates, I share Judge Dennis' concern about this problem. I, however, wish to approach it a little different. As I appreciate it, he would propose, as an amendment to a section relating to the limitation insofar as local governments are concerned, a prohibitory type language insofar as those matters of statewide concern might address themselves. I look upon this as more an entire section as distinguished from an amendment to this section. I do believe as he does, that when we get through, if we ever do, with the article on Local Government, that something comparable to this will be necessary. I do believe in this section of the article it's inapplicable and premature. I would join Judge Dennis in the permission of a similar type amendment to provide for a section in more applicable place, perhaps the end, to contain language somewhat similar to this. I do not oppose the concept; I oppose its location and the manner in which it's currently being presented, and I would suggest, therefore, that we vote against this amendment in its present posture.

Vice Chairman Casey in the Chair

Questions

Mr. Lanier Mr. Pugh, would you agree with me that if we put this language in this particular section, that it could be construed to mean that the legislature could by general law impair the organization and structure of home rule units?

Mr. Pugh I think it's a possible construction. The use of the word "article" here concerns me greatly. If...if he wanted to say "this section," then perhaps we'd deal with it, but I worry about a phrase referring to an article that's contained within a subsection of a specific section.

Mr. Dennis Mr. Pugh, do you realize that Mr. Casey's amendment refers to the article also?

Mr. Pugh Yes, sir, and I voted against Mr. Casey's amendment.

Mr. Dennis Well, Mr. Pugh, don't you agree that if we adopt this amendment here or anywhere else, it's going to mean the same thing and if you disagree with the placement, that might be a matter that could be considered by Style and Drafting.

Mr. Pugh I don't disagree with the concept at all, Judge Dennis; I'm with you one hundred percent. I am concerned about whether or not it would properly flow in this particular place in the constitution, I am not in disagreement with the concept. I think it's one absolutely needed.

Mr. Willis Mr. Pugh, don't you think that the very fine independence that you lose by oversubstantiation and overspecificity? I don't think Judge Dennis wants to do and that there's no need for further words when it says "the legislative power of the state is vested in the legislature"?

Mr. Pugh Well, I don't think that resolves the issue that Judge Dennis has raised; however, unfortunately, I was not here at the time the Legislative Article was passed.

Mr. Willis Well, the legislative power is the power to legislate for statewide concern, isn't it?

Mr. Pugh Yes, it is, but we...we run into the problem of whether or not, in reference to these home rule charters, if it's concerned more with the entire field relative to these matters, I think Judge Dennis has got an excellent point. I just am concerned about sticking it right here. I think it's too important to be a subsection.

Mr. Willis Well...doesn't this first independent clause of the Local Government Article spare the entire Local Government Article for the reason that the local government can only operate within its own sphere, a meager poor privilege it has indeed, for the people which are concerned in that sphere.

Mr. Pugh No, sir. I think that matters relating to statewide concern necessarily would be within the ambit of a local subdivision.

Further Discussion

Ms. Zervigon Mr. Vice-Chairman and delegates, I rise in opposition to the amendment, not because I oppose the legislature passing general laws, but because I find the wording very fuzzy. In the research that we did in the preparation of our article, one of the local government sections that we read was the one that was passed in Colorado? The Colorado Constitution uses the words "statewide concern". The legislature may deal with those things of statewide concern. Local government may deal with those things of local concern. That constitution stayed in the courts for thirty-five years trying to decide...define and redefine what was of statewide concern as opposed to what was of local concern. I believe that the way we have it worded now is clear. The words "police power" in the case amendment are defined in the statutes and have been litigated over time. The words "not denied them," referring to the powers of local government, are as clear as they can be. The words "statewide concern" are unclear. If the state feels concerned about one particular local government problem, may they act upon it or not; is that of local concern as opposed to statewide concern? Let's leave the legislature the power to act, but let's put it in words that are clear and that we know what they mean.

Questions

Mr. Tobias Ms. Zervigon, do you think that women are more qualified to vote on this amendment because they know more about home rule?

Ms. Zervigon Mr. Tobias, I appreciate your warning me about that question five days ago, and that's why I haven't taken the mike much on this article.

Mr. Casey Ms. Zervigon, did you answer the question, though?

Ms. Zervigon Some women do and some women don't, but in Mr. Tobias' home, he's the king.

Further Discussion

Mr. Burson Mr. Chairman and fellow delegates, in the vein that Mrs. Zervigon spoke on, we did a lot of research into this question of what is and what is not a general law for preparing this Local Government Article. Now, I will readily concede that by far the most legitimate argument that has been raised is contained here by the opponents of the strong home rule provisions that we have proposed and which have thus far been successful is the argument about the effect on legitimate general statewide laws. But, I oppose this amendment for a very particular reason. I would ask you, please, if you would, to look
55th Days Proceedings—September 27, 1973

On page 4 of the committee proposal at the conclusion there of general law I was the one who wrote that up to abstain from voting on any and all aspects of this. I am one who was somewhat after [sic]. It was a general law mean a law of state-wide concern enacted by the legislature which is uniformly applicable to the entire state, or which is uniformly applicable to all persons or to all political subdivisions within the same class. Now, if you look at the Model State government Constitution, if this is the Constitution, you will see that this definition combines the two definitions, in greater part, that there is a very serious concern. If you just say a law of state-wide concern, you run into this problem. Let's put it in the context of Louisiana history. New Orleans, being one of the largest ports in the world and certainly in the United States, is certainly of state-wide concern. It is entirely arguable that a law which would affect only New Orleans would be of state-wide concern even though it were applied discriminatorily to the City of New Orleans and not to the entire state, or not to even to all political subdivisions within a political subdivision. If you will look at Section V, the Classification Article, that we have adopted, we say there that the classes have to be related to the purpose of the classification. The example that I have in mind in the context of Louisiana is, it would be reasonable to classify all coastal parishes, let's say, in a matter of ecology such as water pollution. I would say, about. But, if you just say a law of state-wide concern, I fear that you have not nearly defined your terms as thoroughly as you need to define them. Believe me, if I have been sincere about any argument that I have made, I share the concern of the people who are concerned about the general applicability of law, statewide. But, I submit to you that this language does not do the job and I agree with Mr. Pugh, although he and I have disagreed on many things, that this would be appropriate work for a separate section of this article or somewhere else in the constitution. Mr. Zervigon is absolutely correct in pointing out that in Colorado they litigated for thirty-five years in the courts over what was state-wide concern and what was local concern. Other states have had the same experience by trying to use a similar definition. You simply have got to get into the question more exactly the law. Now, I would also point out that you here encounter the whole problem of the fact that you need special laws or local laws. We would all recognize the fact that the legislature has to pass certain special or local laws to affect just one municipality, or just one parish. But, these are local or special laws by request. And, these involve a reasonable classification. These involve personal rights such as the right to sue that we have argued about in the sovereign immunity question.

Further Discussion

Mr. Arnette: I just have one very quick point to make, and that is that possibly the last part of this particular provision might be all right, allowing the legislature to make law of statewide concern. But, when you add the first part, it says, "This article shall not limit the power to enact any law of statewide concern against any rule charter, against any local government that is what it does, ladies and gentlemen. It totally destroys any home rule type of law that we have. All they merely need to say is if statewide concern is of statewide concern for us to have uniform local laws. All they have to do is pass a law saying that and that would take all home rule charters, all local plans of government and they would just enact all your local laws for you. I have his objective, and urge that the convention recognize that in its present posture, an attempt to bring before the convention issues which the convention has defeated previously I urge the defeat of the amendment.

Further Discussion

Mr. Arnette: I just have one very quick point to make, and that is that possibly the last part of this particular provision might be all right, allowing the legislature to make law of statewide concern. But, when you add the first part, it says, "This article shall not limit the power to enact any law of statewide concern against any rule charter, against any local government that is what it does, ladies and gentlemen. It totally destroys any home rule type of law that we have. All they merely need to say is if statewide concern is of statewide concern for us to have uniform local laws. All they have to do is pass a law saying that and that would take all home rule charters, all local plans of government and they would just enact all your local laws for you. I have his objective, and urge that the convention recognize that in its present posture, an attempt to bring before the convention issues which the convention has defeated previously I urge the defeat of the amendment.

Closing

Mr. Dennis: Mr. Chairman, fellow delegates, we've been vacillating to some extent because I think we're groping for a fair solution. Now, Mr. Casey admitted earlier that perhaps the committee as such was too strong in granting powers to local government. I think that was the reason yesterday we adopted Mr. Avant's amendment but then we got worried about the fact that we thought Mr. Casey had taken the police power away from the local governments. But, I submit to you Mr. Casey's amendment doesn't solve the problem involving the police power or involves, any one involving the police power. There shall be no abridgment of the police power. There shall be no abridgment of the police power. Now, that can mean but one thing—no abridgment beyond what you've already abridged it in Sections 1 and 9 in carve out an exclusive area of power to local governments. Now, if you've done in sections 1 and 9 carved out an exclusive area of power to local governments, what we have to do is look at the police power as the police power. It may be that you've already abridge it in Sections 1 and 9 and that is the case. This article shall not limit the power of the legislature to enact laws of state-wide concern. Someone complained that that was too strong, they'd still want it, and that's why Mr. Casey had to take the police power away from the local governments. Mr. Casey said he opens three hours away from the corpus juris and was trying to find out what police power means. And, he wasn't able to tell what he meant in the time he was up here. I think what we really want is for the legislature to enact upon state-wide problems. There are areas where you have the state legislature does, in fairly and clearly define the area of power of local government and statewide concern, we're asking that you adopt. We have also in many discussions to draw the line fairly in this very difficult area.

Questions

Mr. Vivas: Did you say that zoning was a
matters of statewide concern?

Mr. Dennis I would say that zoning is not a matter of statewide concern unless it interfered with an overriding statewide interest such as preserving a wholesome ecology.

Mr. Duval So you think...

Mr. Dennis I think that we could come to a time in this state in which ecological problems could become so severe that it would require the state legislature to enact laws to protect the ecology, and I believe that situation should arise, if it should become a matter of great statewide concern, that the legislature should not be thwarted in its ability to act in this area.

Mr. Duval Sir, do you think the legislature...in answer to my question, zoning, could be a matter of state concern. Is that right? In answer to...

Mr. Dennis No, not zoning itself would not be. The protection of the ecology would be a situation I could see that would arise to which the legislature would need to act in an area that you may have carved off and preserved exclusively to a local government if you don't have this amendment.

Mr. Duval Under this section as written, couldn't the legislature, by general law, prohibit or deny any type of that...any type of activity like that?

[Record vote ordered. Amendment rejected: 52-68. Motion to reconsider tabled. Previous Question ordered on the Section. Quorum Call: 113 delegates present and a quorum. Section passed: 113-7. Motion to reconsider tabled.]

Amendment

Mr. Poynter The amendment is being passed out at this time.

Amendment No. 1 [by Mr. Singletary]. On page 6, between lines 31 and 32, add the following section:

"Section 12.1. Codification of Ordinances

Section 12.1. The governing authority of each political subdivision shall within two years of the effective date of the adoption of this constitution cause a code to be prepared containing all of the ordinances of the political subdivision of general application which are appropriate for continuation as law. When the code shall have been prepared the governing authority of the political subdivision shall cause copies of the same to be prepared and made available for public distribution. All proposed ordinances of general application adopted after the approval of the code shall be adopted as amendments or additions to the code."

Explanation

Mr. Singletary Mr. Chairman, ladies and gentlemen, this section would require local government to put their ordinances into a code which would be readily available to the public. It is essentially saying that the people have a right to know. This section is intended to ease a gigantic problem—the problem of knowing what the local law is. It would require political subdivisions to put their ordinances of general application into a code. Let me illustrate. In my area, I must make a sixty mile round trip to the courthouse and look in the minute entries of the meetings of the police jury to find a police jury ordinance. If we are going to give local government more lawmaking power, then local government should also have additional obligation to put that law into a form that people can get their hands on and read so that they will know what law they are subject to. This section would not impose an unreasonable financial obligation. A fee could be charged to any individual who wanted a copy of this code. Also, if this code were merely xeroxed, pages of the ordinances held together by a staple, I believe this would be in compliance with the section.

This would be inexpensive, but still accomplish the purpose of making the law available to the public. I believe this matter is so basic and so important that because...and because we are giving such important new lawmaking authority to local government, that this section should be put into the constitution. Shreveport, Baton Rouge and New Orleans have already put their ordinances into a code, and so have many other bodies, so this would not affect them. We have put many safeguards and restraints in the constitution in the Legislative Article in order to insure that the people will be informed about what the...about the law that the legislature makes. We have not done this in the constitution with regard to local government. So, I think it is reasonable to put a provision in the constitution to provide that the people know what the law is. I urge the adoption of this section, and I request a record vote. I'll yield to any questions.

Questions

Mr. De Bieux Mr. Singletary, do you know anything in this constitution that we have approved so far that's coming up that would prevent local subdivisions from doing that without this section?

Mr. Singletary No, sir, but I think we need to impose the obligation to do it.

Mr. De Bieux Do you know anything that would prohibit the legislature from requiring them to do that?

Mr. Singletary No, sir, I don't. But, I want to make sure that we do it.

Mr. De Bieux Well, don't you think that would be something that we ought to leave out of this constitution and let the legislature take care of?

Mr. Singletary No, sir, I don't. In the Legislative Article we provide that local laws had to be advertised, we provided for style of law, passage of law, signing of bills, effective date of laws, general public hearings. We provided none of those with regard to local government, and I think that this is a basic safeguard that we have to provide. I think it is extremely important that we do this.

Mrs. Warren Mr. Singletary, did you know that I think that's the nicest thing that has happened in this convention and I would love to be a coauthor, if you don't get but two votes, mine and yours?

Mr. Singletary Thank you, Mrs. Warren.

Mr. Roy Mr. Singletary, do you know that I'm from a small town and that they don't do these things. I think this is great.

Mr. Singletary Thank you, Chris. It's a real problem to find the local law and this would make...

Mr. Henry Well, that's just real wonderful.

Mr. Jenkins Mr. Singletary, of course, the legislature must meet certain requirements when it enacts statutes. They have to be published so that the people can know about them. In this constitution, we are giving local governing authorities a great additional power. Unless they also publish and make known these ordinances and resolutions that they pass, isn't it true that the people would have no means to know what had been passed?

Mr. Singletary Absolutely. I think you are right.

Mr. Alexander Mr. Singletary, throughout this convention we've been, possibly, most likely, I've been opposing anyway, any move on the part of the legislature to impose anything on a local governing agency that would cost money. Now, we are saying
that the local governing unit must do this within two years. Won't this be rather expensive.

Mr. Singletary: No, sir, I don't think it will. Reverend, because, as I said, I think if they just merely put their ordinances into some type of form and xerox the pages and put a staple up in the corner and make these things available for purchase, I think if someone wanted a copy they could do it in a reasonable fee for it. Xerox copies with a staple in the corner, I don't think would be any problem. I wouldn't want to impose any unfair financial burden on local government. I don't intend that; I don't think it would happen.

Mr. Fontenot: Mr. Singletary, I, also, an in support of your amendment. At the present time in Ville Platte we are doing this exact thing, proposing a code and it's not costing that much. Do you know... is it your interpretation that whenever they do adopt such an ordinance with a code that it will be published as in the adoption of regular ordinances? It will be published in the newspapers as required by law?

Mr. Singletary: I left that up to local government. They can provide for those type of things. I just merely want them to put this thing into a form that's available that the people can get their hands on.

Further Discussion

Mr. Jackson: Mr. Chairman, ladies and gentlemen of the convention, I rise in support of Mr. Singletary's amendment. I think that particularly as we have provided and it has been stated about the extensive powers that we have given the local government that we now see more than right that the citizens of the affected areas have at least one location or at least in one volume, those ordinances that's going to pass. I would hope that you would support it. Can't see a good argument against imposing financial burdens. I think maybe you may have an ordinance supposing the financial burden on a particular taxpayer, then that taxpayer ought to have the right, if he so desires, to have the responsibility of letting the people know what the law is without having to be a research assistant to go through all kinds of volume of newspaper and various other sorts of methods of informing the public where he can, and then we do it in the city of New Orleans is that there is a volume that is in the public library. If you wanted one for personal use, you can purchase one from the city itself. So, I rise in support and ask that you favorably adopt Mr. Singletary's amendment.

Further Discussion

Mr. De Blieux: Mr. Chairman, ladies and gentlemen, this is a good concept but it shouldn't be in the constitution. This is legislation; this is not a constitutional provision. I think it ought to be that ought to be the law, but let the legislature require that of your local subdivisions or local bodies. It's not necessary to put this type of provision in the constitution if anything that I've heard proposed from the people of the state of Louisiana, those we talked to, they say they won't make it short. It seems if they're not near a interested in what we put it in as if we put it in language which they can understand and put a lot of legislation in the constitution, that's what's wrong with our constitution right now. It's overloaded with stuff that the legislature should take care of now. I would not ask you in a gold quartz, but I don't put this in the constitution. Let's let the legislature provide for that. I tell you if I'm a member of the legislature when I'm not here. Yet, I would not ask you in the constitution. I think that we ought to put this kind of assistance in the constitution because this is the saying how it should be done and needn't spend the rest of the year trying to see if it should be done a little bit differently now. Yet, I leave this up to the legislature and don't want all of this kind of extra legislation; I ask you to use your good judgment now, and vote against this amendment.

Mr. Avant: Senator De Blieux, don't you realize what we've been talking about here for two days, that under the article as written, the legislature can't pass such a statute?

Mr. De Blieux: Well, I'm just... I think we're just rushing into it now by putting this kind of stuff in it because after while, the legislature won't be able to do anything.

Mr. Avant: Would you believe that there is very little they can do now, and that this is one thing they can't do?

Mr. Fontenot: Do you realize that I disagree with Mr. Avant very much? Do you, also, Mr. De Blieux, let me ask you a question. Have you ever learned legislator to this effect or has anybody in the legislature in the past few years sponsored such legislation? If you say the legislature is willing to take care of it, why haven't they in the past?

Mr. De Blieux: Mr. Fontenot, there's lots of ideas that come up every once in a while that I don't think of that I don't have a previous thought of to put into an act... as an act of the legislature. It is a new one, and I think it's a good one. I think it's one the legislature should take care of. But, let's... I don't think it has its place in the constitution. We've got the situation now on this local government to where you won't need the legislature if we do all the things like this we won't need them at all.

Mr. Fontenot: Right. That's exactly the point. Now, if we don't need the legislature, Mr. Avant thinks you don't need them anymore, don't you think the people ought to be informed of what ordinances do affect the people?

Mr. De Blieux: Certainly. Any legislature should take care of that, it ought to.

Mr. Fontenot: Well, don't you think the local governments could take care of that business by the amendment?

Mr. De Blieux: Are you interested in abolishing the legislature? It seems to me, with ideas like this in the constitution...
55th Days Proceedings—September 27, 1973

at elections held in accordance with the election laws of the state. Such officials shall not be subject to removal by the legislature".

Explanations

Mr. Lanier Mr. Chairman and fellow delegates, I think that this section is pretty well self-explanatory. I would like to point out a couple of little things. As you will notice, it says that "the electors shall have the exclusive right to elect the members of their governing authority." It doesn't say anything about chief executive officer. This is because in commission form of city governments and in police juries, the unit itself designates the chief executive officer and that's why that particular distinction is made there. This particular provision was recommended by the Louisiana Law Institute, and it is, also, in the project of the new Louisiana Constitution. It is presently in existence in our 1921 Constitution in Article XIV, Section 40, in a slightly different form. It's my understanding there is an amendment here to delete the whole section by Mr. Pugh. I don't think that there is anything particularly controversial about this. The question for you to decide, of course, is whether or not this should be in the constitution, that we give this protection to local governmental officials. The committee felt as a matter of policy and judgment that this type of protection should be given to the local governmental officials in the constitution, and that's why we put it in. I'd be happy to yield to any questions at this time, Mr. Chairman.

Questions

Mr. Tobias Mr. Lanier, do you believe that any other group could elect a local official? What do you envisage by putting this in? I mean, to me it seems like an inherent right of a local governmental body to elect its...the electors...

Mr. Lanier We are constitutionally stating that these people have the right to elect their officials.

Mr. Tobias But, don't they have that right anyway?

Mr. Lanier I'm not so sure. I don't think in the Bill of Rights we had such of a right. Perhaps Chairman Jackson could enlighten me on that, but I don't recall us giving that right specifically in the Bill of Rights.

Mr. Tobias Your last sentence reads: "Such officials shall not be subject to removal by the legislature." I assume you are referring to addressing an individual out of office.

Mr. Lanier I think that's what we were primarily thinking about at that time.

Mr. Tobias Okay. Since we have, in effect, deleted the addressing out of office provision out of the legislative proposal, do you think this sentence is necessary here?

Mr. Lanier I would say that there is less of a reason.

Mr. Champagne This has partially been answered. but don't you think that if we...if some government...I don't know what it would be, maybe, the legislature says, "You cannot elect your officials any longer," don't you think that these people have a right under the constitution to question that?

Mr. Lanier Well, this is specifically designed to prohibit that type of conduct by the governor.

Mr. O'Neill Well, I generally like what you've done. I just have a question about it. Would this allow the people of the parish, say, to elect a city council and then for that city council to appoint executives to administer the council, for example?

Mr. Lanier Yes. One of the reasons we made the distinction on the chief executive officer was because, as you know, in the commission form of government the council designates the commissioner who is not an elected official but is the chief executive. In any police jury system each juror is individually elected and then the jury itself elects their officers.

Mr. O'Neill Do you know if any parish or local municipality in Louisiana has the form of government which you would provide here? I'm not sure about it.

Mr. Lanier This doesn't provide a form of government...

Mr. O'Neill Well, does any local government, you know, appoint administrators right now, that you know of?

Mr. Lanier I think New Orleans has an administrative officer of some type, but I don't know what they call him.

Mr. Munson Mr. Lanier, is a waterworks district a governing authority?

Mr. Lanier It is not a local governmental subdivision. If you look in the definitions, you'll see that a local...

Mr. Munson It says, "Each governmental subdivision shall have the...exclusive right to elect members of their governing authority." Now, is a waterworks district a governing authority?

Mr. Lanier If you will look in the definitions, Mr. Munson, you will see under Section 51, item No. 1, "local governmental subdivision" means any parish or municipality.

Mr. Munson Where is that?

Mr. Lanier That's on page 27.

Amendment

Mr. Poultney Amendment sent up by Delegate Pugh as follows: Amendment No. 1, on page 6, delete line 32 in its entirety and on page 7 delete lines 1 through 7, both inclusive, in their entirety.

Explanations

Mr. Pugh Mr. Chairman, fellow delegates, I feel this is one section that we can clearly do without. There's nothing in this section that good common sense doesn't dictate, anyway; as the question raised over here, who's going elect them if those people don't? As to the suggestion that commission forms of government provide that the elected officials elect the mayor, I assure you, nothing is further from the truth. A pure commission form of government provides that the people select the person who will be elected as their mayor. Now, one thing that disturbs me about: Section 13 in addition to the fact we obviously don't need it, is the fact that if you read Section 13, you cannot have single member elections in Louisiana. If you don't have single member elections in Louisiana, you don't have constitutional elections in Louisiana. This section provides that the electors, the electors, shall elect the members of their governing authority. A clear reading of that means that each one of them has to vote for all of them. Nothing is further from the constitution in truth. You have the election, but that it needs to be by single member district. I tell you that this provides otherwise; I tell you that it will not stand federal constitutional muster, and if there's anything we need
Mr. Flory  Mr. Pugh, as I read Section 13 on lines 3 and 4 particularly, this would allow for the appointment of the chief executive officer of the governing authority would it not?

Mr. Pugh  Not only does it provide for that. Mr. Lanier thinks that commission forms of government actually provide for such a method.

Mr. Willis  Mr. Pugh, if the election of rulers, local rulers, is an inalienable right, do you not think that it should be delineated with fastidious precision in this article that the people have that right?

Mr. Pugh  You mean the people have the right to vote in elections?

Mr. Willis  No, sir, to elect.

Mr. Pugh  To elect the people?

Mr. Willis  Yes, yes.

Mr. Pugh  Who else is going to elect then?

Mr. Willis  Thank you, my next question is, you say that common sense says we should have...using your own argument, isn't freedom of speech and freedom of press an inalienable right?

Mr. Pugh  I believe they be.

Mr. Willis  Then using your own argument, would you be willing to strike that out of the constitution because common good sense dictates that we have that right anyway?

Mr. Pugh  You mean the freedom of speech?

Mr. Willis  Yes, and press.

Mr. Pugh  Well...

Mr. Willis  Don't you see how your argument doesn't balance?

Mr. Pugh  We believe that were it not for the United States Constitution.

Mr. Willis  But we're writing a State Constitution.

Mr. Pugh  Well, we could in fact receive freedom of the speech and, for God's sake, don't think I'm suggesting that as a possibility.

Mr. Willis  I trust you're not.

My last question if we don't have this section, wouldn't it be possible for the local rulers to be appointed by the legislature.

Mr. Pugh  We've been sitting here and talking I think for most of the day about how these are going to create all of these forms of government, and now we've gone to tell the since you've got to have electors electing these people.

Mr. Lanier  Mr. Pugh, are you familiar with the commissioner form of government?
Mr. Henry. Mr. Perez has wanted to speak, Mr. Jackson.

Mr. A. Jackson. I withdraw my motion.

Further Discussion

Mr. Perez. Mr. Chairman and ladies and gentlemen of the convention, first let me clarify one point with respect to the last sentence which appears on lines 6 and 7. The reason that that sentence was put in that "such officials shall not be subject to removal by the legislature," was because of the fact that there was a proposal and also in the present constitution there is a provision which would authorize the direct action the legislature to address out of office a public official. We want to make it clear that they could not do so, but now that that provision has been knocked out of the proposed new constitution, I will have an amendment which will delete that last sentence so that we can set that particular situation at rest. The only purpose of Section 13 is to guarantee both with respect to any state action or local action that the electors of the local governmental subdivision shall have the exclusive right to elect the members of their governing authority. It seems to me that this is a basic constitutional right that we are putting in here to be sure that there is no question that that can be done, I'm a little bit amazed that the Chairman of the Committee on the Bill of Rights would be against this because this is an extension of the rights, to be sure that there would be no problem with respect to it. Now let me call your attention to the clause "if a plan or form of government or home rule charter so provides," their chief executive officer. The problem we have is in the police jury system, the police jury president is not elected by the people as such; he is elected as a member of the police jury, then the police jury members elect their president. That's the same with respect to certain charter forms of government, so that it's only if the plan or form of government or home rule charter provides that the people do not elect their chief executive officer, they elect the members of the body, like the police jury, then the police jury members, elected members, then elect the chief executive officer. It's a perfectly proper position, that provision. So I submit to you that this section was placed in here in order to be sure that there was no question that either the state or any plan or form of government or anything else would deprive the people of electing their local officials, and I propose to amend the subject section to be included within a constitution. I therefore, urge you to reject the Pugh amendment, and then I will offer an amendment which will take care of deleting lines 6 and 7, or most of line 6 and line 7.

[Previous Question ordered. Record vote ordered. Amendment rejected: 27-87. Motion to reconsider tabled.]

Amendment

Mr. Poynter. We have identical amendments sent up by Delegates as I appreciate them, identical amendments by Delegates Perez and Kelly, neither of which distribution copies are here. It would affect the deletion of the last sentence. On page 7, line 6, after the word and punctuation "state," delete the remainder of the line and delete line 7 in its entirety.

Explanation

Mr. Perez. The purpose of the amendment is to delete the sentence, such officials shall not be subject to removal by the legislature," that, as I explained a little earlier, that provision was placed in there when there was a provision with respect to the legislature directly addressing people out of the legislature. Now that we have not...you can't hear me? Well, I'll start again.

The purpose of deleting the sentence "such officials shall not be subject to removal by the legislature" is because of the fact that we have deleted the provision which would authorize the legislature to directly address an official out of office, and since that has been deleted, this sentence should also be deleted. I move the adoption of Mr. Kelly's amendment.

Question

Mr. Pugh. Mr. Perez, under this Section 13 where you say the electors have the exclusive right to elect the members of their governing authority, suppose something happens to one member of that governing authority, how is he going to be appointed?

Mr. Henry. Mr. Pugh. I don't think that has anything to do with the amendment.

Mr. Pugh. Oh, I'm sorry.

Mr. Perez. We have a provision on filling of vacancies two sections down.

Mr. Henry. I believe that your question doesn't pertain to the amendment.

[Amendment adopted without objection.]

Amendment

Mr. Poynter. This amendment is offered by Delegate Perez...Velazquez, excuse me.

There is a difference. On page 7, line 7, at the end of the line add the following: "Nothing herein shall be construed to prohibit the election of any official based on apportionment by population."

Mr. Velazquez, with your permission since that last sentence has now been deleted, I'm going to make this read, "On page 7, line 6, immediately after the word and punctuation 'state,' add the following:"

Explanation

Mr. Velazquez. This is a relatively simple amendment. It just prevents every member of every governing authority from being elected at large. The amendment allows those offices where the governing authority is elected by single member districts to retain those districts. It won't have any effect on any district where there are court approved multiple member districts. It merely states if the people in a local area want single member districts they may have single member districts. That's all it says. I don't think that anyone here wants to prevent anyone from having single member districts who wants to have single member districts. I urge its adoption.

Mr. Perez. I've just seen the amendment, just in the last half minute. If you don't mind, we can stand at ease for just a moment. I hope we can go along with it, but I want to be sure that I know what it says.

Recess

[Quorum call: 93 delegates present and a quorum. Amendment withdrawn. Motion to pass over Section 13 adopted without objection.]

Reading of the Section

Mr. Poynter. "Section 14. Local Officials; Compensation"

Section 14. The compensation or method of fixing the compensation of a local elected official of any local governmental subdivision which operates under a home rule charter or plan of government as provided in Sections 1 and 8 of this Article, shall be provided in its charter. The
compensation or method of fixing the compensation of local elected officials of any other local government subdivision shall be provided by law. Compensation of local officials shall not be reduced during the terms for which they are elected.

Explanation

Mr. Perez Mr. Chairman and ladies and gentlemen of the convention, this article was placed in the Local Government Article only because of the fact that there is a provision in the article on the executive branch which has already been amended which provides: "except as otherwise provided in this constitution, the compensation of each elected official shall be fixed by the legislature." So it became necessary then to include an article in the constitution which would give the home rule charters the authority to fix the compensation or the method of fixing the compensation in their charters. It would not affect any change in the present law today, and would just be to continue on what is now in existence.

Questions

Mr. Tobias Mr. Perez, suppose a government, a local government under a home rule charter, did not want to provide the compensation or method of fixing the compensation of local officials in their charter? You by your first sentence are requiring it. Why?

Mr. Perez Well, first it's inconceivable for me to believe that if they go to the trouble of developing a home rule charter they would not want to fix the compensation of their members, and I would say that this would be a requirement that they do it. I don't think it's unreasonable. In fact, it's something that I'm sure that if you have a home rule charter there's no question that the people would do it. The only purpose of this provision is to provide that where you have a home rule charter they have the right to fix their compensation, and it is inconceivable to me that they would not want to.

Mr. Nunez Mr. Perez, should not you have on line 12 where you have section 9 and 8 of this article, should not we also include Section 9 in the event that a police jury would operate, put a referendum to the people, and then they would also come under this particular article?

Mr. Perez If that's the pleasure of the convention, then that's the pleasure of the convention. But if we didn't have that particular situation it was to maintain the status quo. If an amendment is offered which would want to give the people the right to fix their own compensation or provide a method by which it would be fixed, I certainly have no objection, but the purpose of the article was to maintain the status quo.

Mr. Champagne On line 12, would you tell us what's the reason for saying: as provided in sections 7 and 8 of this article?

Mr. Perez Mr. Chairman, I provided the existing for the existing home rule charters.

Mr. Champagne I know what the existing provisions are, and it refers to those provisions that are chapter 5, page 2, section 6 provided for home rule charters.

Mr. Champagne I know what the existing provisions are, and it refers to those provisions that are chapter 5, page 2, section 6 provided for home rule charters.

Mr. Perez That's so. The proviso for that that is that if a local government was under a home rule charter or plan of government, then you have to say how it was provided and what section.

Mr. Perez That's so. The proviso for that that is that if a local government was under a home rule charter or plan of government, then you have to say how it was provided and what section.

Mr. Perez I would like to say, if the law, which that provision in paid.

Mr. Chairman Another subject, if you will, that the mayor is going to get to at some time in a home rule charter. Shall you have to submit it to the voter every time you want to change his salary?

Mr. Perez What is provided is that the compensation or method of fixing the compensation of a local elected official so that if the charter provides a method of fixing compensation, it would not have to go back to the people. It would be left to the people who adopted that plan of government.

Amendment

Mr. Paynter The amendment is sent up to delegate Pugh.

Amendment No. 1, on page 7, delete lines 7 through 17, both inclusive, in their entirety.

Explanation

Mr. Pugh Mr. Chairman, fellow delegates, I again arise hopefully with more persuasion to ask you to consider deleting a section. I personally believe that it is a far better thing, as Mr. Williams says, a far better thing, to put back and put the word 'statewide', which was changed in the first place, than put ten lines here where because we didn't put 'statewide' when we had reference to the fixing of salaries, we were determined to put it in as it was earlier determined by this convention that it should be done by the legislature. The amendment serves no other purpose than to delete the section here because admitted, the only purpose for which section here is because, by a lack of foresight, the word 'statewide' was not used in reference to the section about setting the salaries by the legislature of certain officials. I think it's better for us to rectify the earlier error than compound the felony by putting ten unnecessary lines in the constitution.

Further Tidings

Mr. Perez Mr. Chairman and ladies and gentlemen of the convention, I have you understand that reasonableness of the deletion of this particular section is one that we had in the original draft of our local government article. The only reason that it was taken in the local government article is because of what I've said to the delegates, adopted by the convention. The proposal, and that provision in the previous version, all says, 'except as otherwise provided in this constitution, the compensation of each elected official shall be fixed by the legislature.' That's what the word 'statewide' was for. When the word 'statewide' was not put there in reference to the section about setting the salaries by the legislature of certain officials. I think it's better for us to rectify the earlier error than compound the felony by putting ten unnecessary lines in the constitution.
Mr. Perez. Yes, that's correct, and that's the reason that this first, it was not included in our draft, but it was recommissioned to the committee in order to take care of the problem that this was taken care of, and I thought that we had a unanimous, or actually unanimous attitude on the part of the delegates that this provision should be in here.

Mrs. Zervigon. And we've received no criticism from the Committee on the Executive Department on this, have we?

Mr. Perez. Not that we know of.

Mrs. Zervigon. Thank you.

Mr. Burns. Mr. Perez, did I understand you, that if this section is not adopted that the legislature, we'll say, could fix the salary of the Mayor of Covington?

Mr. Perez. Well, it depends upon—I'm not familiar with how Covington operates, but if it's a legislative charter, then it would follow that particular legislative charter, but the problem is that where you have constitutionally created charters, forms of government, and because of the restriction which we have already placed which gives the legislature the right to establish salaries except as otherwise provided in the constitution, then it's necessary that we have an article to make an exception.

Mr. Pugh. Mr. Perez, isn't it a fact that we can go back to the earlier article and use one word, "statewide," and eliminate all ten of these lines, and do no harm to either a home rule charter or otherwise?

Mr. Perez. Mr. Pugh, it takes sixty-seven votes to open up the lines. There may be other reasons that they might not want to reopen the matter, and I don't believe that it is fair to say we can go back to something else. I would say that if we get around to Style and Drafting, if they want to try to make that change, it's all right, but I do not believe that you should subject all of these various charter forms of government to the possibility that the provisions in that charter would be set aside and that the legislature would fix the salaries of the various councilmen and elected officials from the various charter forms of government.

Mr. Pugh. If I can get back to my question, is it not a fact if the convention wants to, they can back and put the word "statewide" back there, and save ten lines out of this constitution?

Mr. Perez. Well, except that "statewide" you get into the question of districts, you get into the question of district officers and so forth, and I think we'd open up another can of worms there, and I believe at the time we discussed this provision that it was determined they wanted to make a blanket provision then come back with exceptions, and that's my recollection of the discussion at that time. So I think we might have a difficult time suspending the rules to go back to it.

Mr. Rayburn. Mr. Perez, certainly I think they should have that right, but I'm just wondering at the end of Section 13 where you took out the last paragraph, if we couldn't just say "such officials that are elected under this section shall also have the right to fix their compensation," and that would do about the same. I think that 13 tells who will elect them and all that, and I was just thinking if you'd just...where you did, just say, "such officials elected under this section shall have the right to fix their compensation." I mean I'm just getting a little curious about the long drawn out sections. I'm for your amendment, and I want it to pass, but I'm just wondering if we couldn't do it with a few smaller words.

Mr. Perez. Well, Senator, we have two sentences in here if you will look at it. The first sentence talks about the local home rule charter plans of government where they fix the compensation or method of fixing the compensation. The purpose of the second sentence is to maintain the status quo with regard to police juries and so forth, to make it clear that the legislature provides for their compensation, and the third sentence is that you can't be reduced during the term of office.

Mr. Rayburn. Mr. Perez, I don't read that. You refer to Section 7 and 8 shall provide in this charter, and then you say "compensations or methods of fixing compensation of local elected officials or any other local governmental subdivisions, shall be provided by law." Well, I think we've said that prior language, that same identical language. Maybe I'm wrong, but I just think it...

Mr. Perez. I don't recall anything on compensation. [Previous Question ordered. Amendment rejected: 19-62. Motion to reconsider tabled.]

Amendment

Mr. Poynter. Amendments [by Mr. Duval and Mr. Boltzinger] sent up as follows:

Amendment No. 1. On page 7, line 16, after the word "reduced," and before the partial word "dur-" insert the words "or increased".

Explanation

Mr. Duval. It's a quite simple amendment, merely says that people in office during their term...their salary or compensation cannot be raised until the next term. I think it's a simple amendment. A question of whether you think people, while in office serving a particular term, should be able to have their compensation raised while they are serving that specific term. I think it's a better measure to have the compensation come into effect after that term is served, that's all there is to it.

Questions

Mr. McReynolds. Suppose a man would run for an office, be elected, serve one term, choose not to run again and then a new man would run for that specific office, be elected; he chooses not to run again. How long would it go before the man could get an increase?

Mr. Duval. It merely provides—maybe I'm not making myself clear—it merely provides that in order for a compensation increase to go into effect, it could not be while...during the term that the specific official is in office, it would go into effect the next term, in other words, after that four year term.

Mr. McReynolds. No matter who's serving that particular next four years?

Mr. Duval. That's right, that's the attentive amendment.

Mr. McReynolds. I follow you then.

Mr. Velazquez. Don't you think it's unfair for somebody to run for election and then raise his own salary?

Mr. Duval. Yes.

Mr. Jenkins. Mr. Duval, under the section as written by the committee, isn't it true that a local police jury could have carte blanche to raise its own salary, if it were under some form of charter of 7 or 8—Section 7 or 8—and that...
Mr. Duval. Well, if it were a charter--a home rule charter--I don't know. I think that the compensation would be fixed by law, I really don't know. It would allow the to have that done by the legislature, yes.

Mr. Jenkins. But, what I'm saying is there would be circumstances under some of these home rule charters where some people would be setting their own salaries without any check on it. Isn't that true?

Mr. Duval. It's possible, yes.

Mr. Jenkins. Now, isn't it also true that no one else in state government can set his own salary--not even the legislature--because the governor can always veto the legislator's salary increases.

Mr. Duval. I think that's right, yes sir.

Mr. Slay. Mr. Duval, in the case of school board members who have overlapping terms--and they're six years--that could make a man wait six years while everybody else is getting a raise, and he would have to wait six years and then run again in order to get more pay. Is that not right?

Mr. Duval. I think that's...if they're serving overlapping terms, I think you're right, yes.

Mr. Slay. If legislature or the charter provides for somebody to get an increase, do you think that they should have to wait until their term is up before...

Mr. Duval. That's the purpose of this amendment, yes.

Mr. Slay. I think it's a bad one.

Mr. Duval. I have been told this amendment does not apply to school boards.

Mr. O'Neill. Mr. Duval, what exactly does the committee define or what do they think compensation entails, is that any compensation?

Mr. Duval. I don't know, Mr. O'Neill, I wasn't on the committee. I don't know what their intent was.

Mr. Stinson. Mr. Duval, you know you have a real good amendment don't you, and do you know this is the only thing that Senator De Blieux and I ever agree on is this one good amendment of yours.

Mr. Duval. It just be.

Mr. Slay. Mr. Duval, the purpose of that is, you've never known anyone run for office and his platform says 'when I get in, I'm going to increase my salary, have you?'

Mr. Duval. I've never heard that, no sir.

Mr. Stinson. Well, isn't it a fact that a great majority of them try to and think they are more important when they do get elected.

Mr. Duval. Not, sir.

Mr. Slay. Is it either worse, when he ran and and it did he was satisfied with it and your amendment says that he should serve for what he ran for, is that correct?

Mr. Duval. Yes, sir.

Mr. Slay. Now you define base officials they include like this under this terminology, because I'm saying at the definition of the section and it looks like this might include like yoursheriff and your assessor, is that right?

Mr. Duval. I don't think I know enough to apply to sheriffs and assessors, but you're right, the language is vague; I don't know what I really intends to apply.

Mr. Brown. So, you don't know what the amendment applies to?

Mr. Duval. No, sir, I don't know what the amendment applies to.

Mr. Poynter. Amendment No. 1 [in Mr. Slay and Mr. Anzalone]. On page 7, delete lines 1 through 6, both inclusive, in their entirety, and insert in lieu thereof the following:

"Section 13. The electors of each local governmental subdivision shall have the exclusive right to elect their governing authority, in accordance with the point made by Mr. Velazquez, that is the two women shall be construed to prohibit the election of any official thereof based on apportionment population."

Explanation.

Mr. Kean. Mr. Chairman, fellow delegates, this amendment was drafted after consideration of the points that were raised previously in this section. It provides that the electors of each governmental subdivision would have the exclusive right to elect their governing authority, in accordance with the point made by Mr. Velazquez. We have added the last sentence which would make it clear that this section would be construed to prohibit the election of any official thereof based on apportionment population.

[Amendment Ad-vertised for Adoption]

Mr. Poynter. Amendment No. 1 [Mr. Slay and Mr. Duval]. On page 7, delete lines 1 through 6, both inclusive, in their entirety, and insert in lieu thereof the following:

"Section 13. The electors of each local governmental subdivision shall have the exclusive right to elect their governing authority--in accordance with the point made by Mr. Velazquez, that is the two women shall be construed to prohibit the election of any official thereof based on apportionment population."

Explanation.

Mr. Venneker. This is basically the same thing as the amendment Mr. Duval and I put forward. I would like to know if you just drafted it or you just added the only difference I have seen, the role of that in the fact is that people can run in the various districts and if we allow two women districts, I'm not sure what the result in this it is not only different, it leaves the people different between the different municipalities, one being limited that is the other. I have been in some general district in my district where there is not necessarily is just as a fact one can only have two women all the time.
55th Days Proceedings—September 27, 1973

[Amendment adopted without objection. Section reread as amended. Previous question ordered on the section.]

Point of Information

Mr. Rayburn Mr. Chairman, I would like to ask that the section be read again. Did they delete the part where it says that if a plan... or rather to a home rule charter, is that... all of it out now? What if a charter don't make any mention of it, they just elect them anyway they want to?

[Section reread as amended.]

Mr. Rayburn I wonder how they would get them if they don't elect them?

[Section passed: 106-0. Motion to reconsider tabled. Motion to waive reading of Section is adopted without objection.]

Explanation

Mr. Kean Mr. Chairman, fellow delegates, this section deals with the filling of local governmental vacancies. It makes a slight change in the existing law, under the present law with respect to these vacancies the constitution provides that the local governmental agencies submit three names and from the three names the governor makes the appointment and provides other provisions in the case of a tie. This would simply provide that if there is a vacancy in any local office, that then under those circumstances it would be filled by the remaining members of the particular governing body on which that person is sitting; it excepts the sheriff, assessor, clerk of district court, and other officials and would provide that if more than a year remained in the term of the office, then under those circumstances a special election would have to be called. It provides that in the case of the home rule charters which have a different method of filling the vacancy, then under the circumstances, these provisions would not be applicable. We have proposed and would offer a much shorter version of this particular section, which I think would cover all of the salient points and at the same time reduce the verbiage considerably.

Questions

Mr. A. Jackson Mr. Kean, did you not say that this section makes a slight change, but isn't it true as I appreciate it and interpret the language that you are making a big change, because you are taking away from the governor the right to fill vacancies as it relates to local governmental units? Secondly, you are providing for the chairman of governing bodies to have two votes. Is that not true?

Mr. Kean We had... under the present law the vacancy is filled by the submission of three names to the governor...

Mr. A. Jackson That's right, but the vacancy is filled by the governor, isn't it?

Mr. Kean The vacancy is then filled by the designation of a successor by the governor from the three names who are submitted to him.

Mr. A. Jackson Yes, but under this provision you are stating and authorizing the local governmental unit to fill a vacancy itself.

Mr. Kean That's correct.

Mr. A. Jackson So, that's more than a slight change. Is it not?

Mr. Kean Well, as I view it, the local governmental authority is simply itself filling the vacancy rather than submitting a panel of three names that the governor can select from.

Mr. A. Jackson Yes, sir, but I was simply trying to point out that... did you know that this is more than a slight chance?

Mr. Kean Well, I guess it's a matter of how you look at it, Mr. Jackson.

Mr. Pugh Mr. Kean, I believe that there's a substantial number of cities in the State of Louisiana that are governed by three individuals, three elected individuals. Is that not true?

Mr. Kean There are several commission forms of government in Louisiana, I don't know how many, Mr. Pugh.

Mr. Pugh Well, I believe Monroe and some of the others, but let me ask you this basic question. Those that have three, in the event of one of those three dies, there is left two.

Mr. Kean That's correct.

Mr. Pugh Under the terms of this provision do I understand that the tie vote is broken by one person voting twice, so that one person can, in effect, place another person as an elected or in a capacity of an elected official of a city?

Mr. Kean We were trying to find a way, Mr. Pugh, to break the tie if that situation occurred and that was the manner in which we selected to do it.

Mr. Winchester Kean, how and who would determine that a vacancy existed?

Mr. Kean Well, the committee proposal provided that the vacancy occasioned by death, resignation or otherwise in the office.

Mr. Winchester Well, sometimes there's been questions when a person moves away and it's hard to determine whether it's a temporary removal to another part of the parish or another town or whether it's full-time moving away. We've had some problems in St. Mary Parish to determine whether a constable or a justice of the peace or someone of that sort was entitled to hold office and it was rather sticky as to who determined whether a vacancy existed.

Mr. Kean Well, I don't recall specific provisions, Mr. Winchester, but in many instances it provides that if they move out of a district in which they live, that under the circumstances, they vacate the office. Otherwise, it would simply be a question for the court to decide whether the vacancy did exist if there was some dispute concerning it— as for example, a temporary absence or a military absence. If my recollection in case of military absences, the court holds that is not a vacancy, but that would simply have to be a matter to be determined and otherwise as set forth in the section that was designed to relate to that kind of a vacancy occurring as distinguished from death or resignation.

Mr. Winchester Thank you.

Mr. Burson Mr. Kean, isn't it true that under the present constitutional provision for filling vacancies, the chairman votes twice with regard to the selection of the list of three names?

Mr. Kean That's correct. Under Article VII, Section 69, it provides "A tie vote on an appointment to be made by a municipal governing authority shall be broken by the mayor of the municipality..."
Mr. Ream. That's correct.

Mr. Foyter. There's one change in this, as you may want to follow with me, it's in the text of this amendment itself.

Amendment no. I. On page 7, delete lines 1 through 32, both inclusive, in their entirety and on page 8, delete lines 1 through 6 in their entirety and insert in lieu thereof the following:

Section 35. Except in the office of assessor, or as otherwise provided in this constitution, here's the change--or a hole rule charter,--invert or a rule charter--or is otherwise provided in this constitution or a hole rule charter, the legislature shall provide a uniform method by which local government shall fill vacancies created other then by expiration of ten of office.

Explanation

Mr. Champagne. Mr. Chairman, ladies and gentlemen, this says in five lines and as soon as we provide for the replacement of the assessor when it shall be necessary, style and drafting can eliminate that line and we will say in four lines what the committee originally tried to say in fifty-two lines, for instance, for the words, the rules there that were said in fifty-two lines. Now, I, would beg you to go to that if you are a sincere in your statements that people you made that you want a very careful method to be written in the words. Since my views are not as uniform as it is, I would like to consider this amendment. Now what this says, it says that a majority created other than by expiration of term of office, in other words, when the laws are properly drafted, it says this says that the legislature shall provide a uniform method throughout the state--by which local government shall fill vacancies created other then by expiration of tenure of office.

Mr. Champagne. I meant I have explained that the office of assessor has not yet been covered in the constitution, I would hope that the committee on which you and I are members would do so. As of the one who is responsible for the constitution, I've spoken with the assessor and the assessors and all the clerks of court and they had no objection to the amendment. But in the case of the assessor, he has not yet been provided for the replacement for it unless all others have been provided for the tax collector. Mr. Champagne, sir, they have already been provided for.

Mr. Dennis. Mr. Chairman, I really do not want your amendment to any extent we are providing a rule charter the vacancy will be filled as you would tell me why you made this exception for assessor and...
and not on a state level. I know that there is a
great deal of objection to the length of the par-
ticular article on the filling of vacancies and
the reason for that is not because of who fills
the vacancy, but because of the fact that the com-
mittee's amendments do not provide that we set out
the details as to when the elections should be
conducted and so forth. However, in deference to
the feeling of what appears to be the convention
that they do not want a lengthy provision,
Mr. Kean will soon have an amendment which will
provide for the filling of vacancies on a local
level by the governing authority, or, in the case of
school boards, by the school boards. If
there is any question, for instance, with regard
to Judge Dennis, the original provision which we
have provided that the provisions of this section
shall not apply to the office of judge of any
state, court of record, or district attorney--to
make that perfectly clear that the particular
office was not being affected and if the final
Kean provision does not adequately take care of
it, I'm sure that Mr. Kean and I will be glad to
offer a compromise which would be sure that it does
not attempt to affect either the district attorney
or any judgeship. I, therefore, urge that you
reject this amendment and adopt the Kean amendment
when it comes before you.

[Previous Question ordered. Record vote
Motion to reconsider tabled.]

Amendment

Mr. Poynter

All right. Now there have been two
versions of the Kean amendment passed out, and
I'll try to guide you to the right one; it's the
one in which Paragraph (A) simply has the two
words "by law." The other one has about five or
six words on the last line of Paragraph (A), but
the last word of this one--of Paragraph (A) or
this one--reads simply "by law.

Amendment No. 1. On page 7, delete lines 19
through 32, both inclusive, in their entirety and
on page 8, delete lines 1 through 32, both inclu-
sive, in their entirety and on page 9, delete lines
1--and note that correction--1 through 4, not 1
through 6. Never mind, we are going to make it
1 through 6.

Explanation

Mr. Kean

Mr. Chairman, fellow delegates, this
proposed amendment carries out the concept of the
committee proposal in that it provides for the
filling of vacancies by the governing au-
thority of the local governmental subdivision in-
volved, or the parish or city school district in
the case of the school board. It would provide
that the vacancy would be filled by the local
governing authority, or the governing authority of
the school district, until it is filled by an elec-
tion as provided by law, which would mean that the
vacancy would be filled by the local governmental
unit or the agency, but it would be filled by an
election which would have to be carried out in ac-
cordance with law adopted by the legislature.

The second part of it simply provides that this
would otherwise apply to all local governmental
subdivisions unless otherwise provided by the home
rule charter or home rule plan of government of
the affected local governmental subdivision.

There is a slight variation between the manner in
which you do this, generally, in the case of East
Baton Rouge, with respect to a plan of government.
For that reason, this particular Section (B) was
left in.

Under the circumstances, it's a much shorter
version of what was presented by the committee. I
think it still carries out the initial concept of the
committee. It, therefore, gives the governing auth-
ority the right to fill the vacancy, but leaving
the details so far as the election, etc., to the
legislature.

Questions

Mr. Avant Gordon, believe me, this is a friendly
question. I'm simply seeking information. But
under your amendment here, if there was a vacancy,
say, in the East Baton Rouge Parish School Board,
who would fill it--the parish council or the school
board?

Mr. Kean The school board.

Mr. Avant The school board would fill it.

Mr. Kean Right.

The original, Jack, the original one that was
drafted had an error in it in that it left out
"school districts," and I want to make it clear that
the school board did make that appointment.

Mr. Pugh What is the purpose for putting the
language in, "except for the office of assessor"?

Mr. Kean Because the assessor has not yet been
considered, so far as the filling of this vacancy
is concerned, and we wanted to leave it open for
different treatment than what's provided here.

Mr. Pugh Well, how are we leaving it open if we
say, "except as...except for the office of assessor"?
That's not leaving it open, is it?

Mr. Kean We are saying, "except as otherwise pro-
vided in this constitution, and except for the office
of assessor, a vacancy in any local office filled, etc.
Under those circumstances, as I read it, it means that we are going to have to
deal with the manner in which we filled the vac-
cy in the assessor's office at some point in
this constitution.

Mr. Pugh I wholeheartedly agree with that. But
we, excepting him here, why can't we just say
"except as otherwise provided in this constitution,
a vacancy in any local office," because if we
don't provide for him anywhere else, we sure ain't
providing for him here either.

Mr. Kean Well, this was done out of respect for
my dear friends, the assessors, who were not, up
to this point, otherwise provided for in the con-
stitution. I simply wanted to make it clear that
we were not endeavoring, in this section, to deal
with a vacancy in the office of the assessor.

Mr. Rayburn Mr. Kean, we plan in our committee
to provide for vacancies for assessors as the
boundary of Orleans Parish will tell us how
it should be provided. Do you think it is necessary
to leave the language in here for assessor?

Mr. Kean I would think under those circumstances,
Senator, that perhaps in Style and Drafting, we
could simply take out this additional language.
We were simply trying to do it out of an abundance
of precaution. We didn't want the assessors mad
at us.

Further Discussion

Mr. Tobias Mr. Chairman, fellow delegates, I
rise, basically, to point up that this particular
amendment fills a loophole in the Judiciary Com-
mittee Proposal. New Orleans has a specific
special problem. The boundaries of the city of
New Orleans are the same as the boundaries of the
parish of Orleans. If you will read Mr. Kean's
amendment, you will note that a vacancy in any
local office filled by an election wholly within the
boundaries of a local governmental subdivision,
shall be filled," in the way as provided in Mr.
Kean's amendment, would be filled by the governing
authority. Now, if Mr. Kean's proposal, we did not provide for a method of filling
the offices in Orleans Parish, such as the recorder
of mortgages, the recorder of conveyances, the
register of conveyances, those specific offices.
the clerk of First City Court, clerk of Second City Court, constables, etc. This provision would, in effect, take care of that one loophole, whether we want to do that or not, I don't know, but it would take care of that one specific situation.

Previous Question ordered. Amendment adopted 96-8. Motion to reconsider tabled. Previous Question ordered on the Section. Section passed 97-7. Notion to reconsider tabled. Motion to take up the Section without objection. Adjournment at 9:00 a.m., Friday, September 28, 1973.
PRAYER
Mr. DeBlieux Our Heavenly Father, we thank Thee once again for this day, for the privilege of gathering here to be about Thy service. We ask You to guide us in our thoughts this day, that what we do be pleasing in Your sight, and Your will. We ask that You imbue each one of us with a sense of charity and responsibility so that we may be charitable in our words and our actions, thoughtful in our deliberations that they may redound to Thy service. We ask all this in Jesus' name. Amen.

PLEADEX ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Reading of the Section
Mr. Paynter "Section 16. Legislation Increasing Financial Burden of Political Subdivisions; Local Approval"

Section 16. No law requiring an increase in expenditures or a deduction from the funds of a political subdivision for salaries of local public officials or for wages, hours, working conditions, pension and retirement benefits, vacation or sick leave benefits of political subdivision employees, or an increase and commissions of or for a political subdivision offices, except a law providing for retirement in minimum wages, and retirement benefits for retirement...for firemen and policemen, shall have effect until approved by ordinance enacted by the governing authority of the political subdivision affected thereby or until the legislature appropriates funds to the affected political subdivision for that purpose and only to the extent and amount that such funds are provided."

Explanation
Mr. D'Gerolamp Mr. Speaker, fellow delegates, this Section 16 was drafted by the committee with the intent of a better coordination between local and state officials whereby the legislature would be delegating and appropriating money to municipalities and to parishes for various services with regards to the expenditures and how this money is to be expended. The committee had quite a discussion, or discussions, I should say, on this particular section. I think the intent of Section 16 came up several times in this proposal so far.

We hope that the monies allocated to the various municipalities and parishes by the legislature, be given to them to spend the best way that they feel it should be spent with an exception. Now, we've had this exception, and we had testimony from the police jurors, from municipalities, from firemen, from policemen, and the exception says 'except firemen and policemen'.

Our committee, in fairness to all of the committee, after much debate on this particular section of it, voted, I should say was eight to seven in favor of exempting firemen and policemen from this section, the reason being, and I think this is where the crux of the matter is going to come from the objectors to this section, and we do have in all fairness to you, some members of our committee who strongly objected to the...not to the entire section, but to this exception. I, as a foster of this exception, believe as a former member of law enforcement, that the objectors are making a mountain out of a molehill and I'll tell you why. Now that we had a very many one unit rule for government here in the State of Louisiana, I represent the same people in my city as the mayor and board of aldermen do as a state Representative. I am a state Representative. And certainly, if the policemen or firemen, went to the mayor and board of aldermen in my city and said we need a raise, we want a raise, or we need better retirement, my mayor and council said "we just do not have the money and we cannot give it to you," and these men come to the legislature, my next duty to the city and to the people. But the firemen or the policemen, is to go back to the governing authority and say, "Gentlemen, what is the matter?" If they cannot, if they do show that they do not have enough money, certainly I, or no other legislator would vote to impose something on a municipality that would ruin it. I don't believe this legislature, the makeup of our current legislative body, would do this. I certainly do believe, though, that if our local governing authorities are spending this money and building monuments for themselves to perpetuate themselves in office, and getting these policemen and firemen a three hundred dollar a month salary to live on, then something should be done. Certainly we say a policeman and a fireman should not strike because they are the backbones of a community. As a former mayor, I can tell you this. They are the backbone of your community. Yet the people in a community is in trouble, whenever a city council is in trouble, they call out the police department and the fire department. These men are specialized men and certainly, these men do not discredit any other department of any city. They also should be equally recognized. But I'll tell you this, that in a city, in a parish, if your truck drivers, three or four of your truck drivers don't come out on your road department, you go to another department and get them. If your drainage department doesn't show up, you go to your department and get them. But let's let that fire department drivers not show up one day, or that police department don't show up one day, and see where you are. These men, would you believe, these men, some of them, are working risking their lives day and night for the people of the State of Louisiana and many of them are getting as low as three hundred and fifty and forty hundred dollars a month. This is why I have a passion for...compassion for policemen and firemen. These men are dedicated men. I venture to say there are not many parishes or cities in the State of Louisiana who could operate a fire department without an auxiliary. The volunteer fire departments throughout the State of Louisiana are carrying the burden of the State, assisting your paid drivers in many of the communities that cannot support a full paid fire department. These men volunteer their services, volunteer their lives, to danger and sometimes to death.

The policemen, likewise, we have police administrators throughout the state. I don't know of an auxiliary garbage department, or auxiliary road department, or auxiliary sewer department. I don't know of any of these in my sixteen years of public life. This is the reason why I, and some of the members of the committee, urge you to keep the proposal as the committee has it in our Section...in our Article 17. Ladies and gentlemen, this is very, very important to the men and women who take care of our community. Would you believe that there are parishes, and I know of one for sure, that has no retirement, no pension, nothing for their fire department?

I had a lady come to my office, her husband was a paid fireman for twelve years, on a paid fire department. He came out of work the night. The next morning he died of a heart attack. She has five children, pays a hundred and twenty dollars a month note on her house, and for twelve years, then there have been no plans for the retirement system or a pension plan, and they keep telling them. "We are working on it, we are working on it."

Nothing has happened. This man died, the lady called the department to find out how they could get some relief they can give her. In the policy they had, they had a two thousand dollar burial policy, period. She needs nothing for insurance. The State has put in this fire department for twelve years. No child support, no widow benefits. Nothing.
There are the things that I believe the legislature should have some say so to help these people. They cannot strike, you tell them, 'No, you cannot strike because it would completely wreck a community if they struck.' Grant it. But certainly if these men are turned down by their local governing authorities, where do they go? I urge you to vote for this, and I'll answer any questions. Mr. Chairman.

Mr. Rayburn. Eddie, in the event that the legislature saw fit to maybe raise someone's salary, could they, under this language, mandate the state legislature or this governing body of a parish was receiving revenue funds, revenue-sharing funds from the legislature, could or could not the legislature dictate these funds to take care of the added cost that they might have incurred by passing a certain law?

Mr. D'Gorolano. Certainly, Senator. This is what I'm afraid of, Senator. You'll have the legislature earmarking funds to the parishes.

Mr. Rayburn. Any of the funds that we now appropriate for municipalities in the future, say like cigarette funds, which do not get a share of, could we at least earmark that for some day when we made the appropriation and said the funds for this added cost will be deducted from the amount of cigarettes tax legislature is now providing for you?

Mr. D'Gorolano. I'm sure they could do that, Senator. Probably this is what would be done.

Is there any other question?

Amendment

Mr. Poynter. Amendment No. 1 [by Mr. Robinson and Mrs. Burns], on page 9 at the end of line 31, add the following: "Nothing in this section shall be construed as applying to parish and municipal school boards."

Mr. Robinson. Mr. Chairman and delegation, I've been informed that perhaps school boards are not considered in this particular section in any event. But if that's the case, I see that there... see no reason why there should be objection to my proposed amendment.

Now I know that on the surface it sounds immiently fair and just to put into the constitution a provision which requires the state to fund fully, under the state legislature's control, whether by a local government in the fields that are specified in this particular section

I think it is borne out because, obviously, it is foolish and self-defeating for public school employees, for example, assuming that the application for this is simply to school boards, to try to saddle a school board with costs that the board will pay. I am a teacher, a householder, and a lot of other good things, and I suppose I ought to be taken for what I say, and for what I believe to be very good reasons.

Public school finance in Louisiana is based on a system of shared cost whereby the ability of a local school system to pay for its schools is measured under a formula against a standard for a school system program in that particular parish, and it is understood that it is a formula that is adjusted annually. I understand this. Now, if this is not written down in statute books, we don't know what the legislature was thinking, anyway. In a final say or to whose benefit it will be appropriate, and on what basis.

Now most of the legislatures in public elementary and secondary education for current operations are for those purposes: college, in particular, male, female, local educational authorities and the like. Therefore, not only is it proper that the legislature control this; it also provides that there is no overreach, not only in the case of the legislature, but every legislative body in the state receive in that fifty-five percent of their general fund from the state. In that five percent, if this system is to be worked, the five percent is the amount of money that is left in the school systems in the state. This is the five percent that has not been applied, revenue-sharing funds. The state legislature might also consider this. Now I want to conclude that I'm much more in favor of the position than we thought. We have some of the specific language that is clear from the regulations of the state.
to be necessary in the minimum foundation program. The additional teachers are employed by the school systems, in most instances, out of their local funds. But these, too, must be paid a state minimum salary schedule. Any funding of teachers as to who is paid for by the state and who is not. Some school boards supplement these salaries from their local school funds such as local taxes. Now this is an area of shared state and local cost. Now let us suppose that the legislature should implement the cost-of-living salary law. What's now on the books, and that the governor signs this situation...signs this implementation...happy day. As I read this provision, the local school board would negate the effect of this appropriation, and fact all in his parish, because the law requires that all teachers be paid according to a minimum schedule and their costs are increased for the comparatively small number of teachers which the state does not pay for, and has no intention of paying for under the present plan for distributing aid to the schools.

Now take the question of retirement legislation. For many years the legislature has appropriated state funds to make up portions of the school retirement system, although the retirement law plainly stated that this is the responsibility of the local school boards. The school boards couldn't do it so the legislature, in 1964, authorized the school boards to levy sales taxes for salaries and other purposes. These sales taxes are not charged against the school board when the state computes the ability of that school system to pay for the minimum program. That's in the sales tax laws. Most of the school boards did levy the local school taxes and they used these funds to supplement teachers salaries locally. At the same time, this raised the obligations of the state on the extra salaries for retirement purposes. So the legislature, by a law saying the school boards would have to pay the cost of retirement on the salary compensation above the state minimum, which I think they were entirely justified in doing. But under this particular provision, I don't think that the legislature could have enforced such a law because it would have had to have the approval of the local school boards.

Sick leave and sabbatical leave are involved in this. When you raise salaries, you raise slightly the cost of the school boards for every day of the sick leave. Although the state above forty million dollars for unspecified other costs, the school board could say, 'Well, I didn't get any extra money get because of the increase in the sick leave costs that are involved in this new schedule. Therefore, we are going to cut this new state schedule down to where we can pay it.' Do we expect the school board to set aside a state minimum salary law on account of these incidental costs, quit the state plan of funding assignments to these school boards in the first place? The same kinds of problems are involved in all kinds of legislation. It's not certain, incidentally, in many cases, what the net cost will be of legislation that is proposed in certain of these fields. Now when the state puts up as much as ninety percent or more of the money for local schools, Section 16 of the Constitution calls for the same liberal interpretation. I think it could prevent the proper adjustment or perfection of the state minimum foundation school program. In my cost study of our school system, I think it could destroy the equitable application of welfare laws to school employees and effectively prevent the enactment of additional state laws to cost schools whatever, even as the state might be increasing its state support of the public school system in other areas. I hope you will adopt the amendment.

Questions

Mr. Roemer. Mr. Robinson, is it your interpretation that the committee in this Section 16, wanted to exclude the school boards from the obligation to differentiate that point? Or is it your feeling they wanted to exclude school boards, and you are trying to make that specific.

Mr. Robinson. Frankly, Mr. Roemer, I don't think the committee probably had school boards in mind at all. It's my feeling, however, that the designs that are provided in this particular proposal dealing with political subdivisions, may include school boards. If it does include school boards, I think the inclusion will have the effects which are outlined.

Mr. Roemer. All right. Do you know, could you tell us, is it your understanding that the committee is going to oppose or propose your amendment, or take no position on it?

Mr. Robinson. I have no idea. Mr. D'Gerolamo says he has no objection, in which case, unless the...it depends on the convention, then, whether they've got objections.

Mr. Pugh. Mr. Robinson, I've noticed that you've voted substantially, which is fine, for home rule as it has been adopted by this convention.

Mr. Pugh. Oh, you did not? I apologize to suggest you had. I was just looking at your record from yesterday. But I ask you, is this not a departure from home rule...your amendment?

Mr. Robinson. Well, no, sir, as I said, I think that if you fully comprehend the shared cost structure for school finance in Louisiana, what this does, far more than what is intended to be done, is to foul up any future changes in the state minimum foundation program, or the system of state school funding. That's what I think it does.

Mr. Stinson. Mr. Robinson, if you would follow through on home rule that Mr. Pugh seemed to be intimating, then it would be each school district. And the only period of time, the way this would operate, where all the decisions would be made in such a way as to inhibit the addition of the changing in the form there and all, it would all work out to where the only thing that would happen would be increasing...increasing...increasing...increasing...increasing...the percentage of state support in every parish.

Mr. Stinson. Now, Mr. Robinson, you didn't answer my question. When we talk about home rule, isn't it a fact that we can't have home rule in our parish school systems. Is it due to the fact that our retirement is statewide, and our pay schedule is statewide and everything. We can't have home rule as far as the
56th Days Proceedings—September 28, 1973

teachers, can we? ...the tenure and so forth.

Mr. Robinson: Well, so far as the funding of education, I would have to agree with you when as much as ninety-five percent of the money comes from the state, I don't see how home rule has that much to do with it.

Mr. Stinson: Not only the teachers, but all other employees and school bus operators.

Mr. Robinson: I agree with you.

Mr. Stinson: We've got to have it controlled by the state.

Further Discussion

Mrs. Corne: Mr. Chairman, I think that Mr. Robinson has clarified this point very, very well. I do believe that all of the delegates understand just exactly the position of the local school board and of the state in funding education and having equitable distribution of funds for public education. It would, therefore, at this time, move the question.

[Previous Question ordered: 5-16.]

Record vote ordered. Amendment adopted: 10-5. Motion to reconsider tabled.

Amendment

Mr. Peyster: Amendment proposed by Delegate Lennox.

Amendment No. 1, on page 9, line 14, immediately after the word "offices", delete the punctuation and partial word "x", and delete lines 15 and 16 of their entirety and at the beginning of line 17, delete the partial word and punctuation "men".

Explanantion

Mr. Lennox: Mr. Chairman, fellow delegates, first I'd like to address myself to the fact that there are a score or more coauthors to this particular amendment, and they are, briefly: Delegates Dennesty, Sandoz, Casey, Sutherland, Riecke, Thistlethwaite, Hernandez, Griller, Jasper Smith, Perkins, Heine, Drew, Zervigon, McDaniel, Ellkins, Schmitt, Kilbourne, Keen, Miller, Annette, Stagg, Bollinger, Juneau, Divul, Lanier, Wattigny, Burson, Gauthier and Chate-

[Continued]
Mr. Lennox  Mrs. Corne, I've heard very little of what you've said up to now. Let Reverend Stovall do what he does best—work on that microphone and we'll see...

Mrs. Corne  My question is how would this amendment affect the present equity that firemen and policemen have in their retirement system?

Mr. Lennox  It's my appreciation that it would have absolutely no effect on any benefits that accrue to firemen and policemen to this moment, and to the very moment that this constitution would be adopted by the voters of this state. My opinion on that is backed up by some of the better legal minds on the floor.

Mrs. Corne  Also, I have another question for you. Are firemen and policemen ever asked to go out of their own county or city or maybe another parish to help out in fires or in police protection?

Mr. Lennox  I am certain that that is the case...I know of instances in my own parish where it has occurred, where there has been cooperation between Jefferson and St. Bernard and Orleans on the one hand, or St. Bernard and Orleans on the other...and I think they work well together, or at least that's been my observation.

Mrs. Corne  Thank you, sir.

Mr. Weiss  Delegate Lennox, it's my understanding that the state legislators provide rural areas that have difficulty in supplementing the teachers' pay, with sufficient funds to make education quality, with in these areas, the strikers. Now, you had made the statement that urban areas cannot live with this amendment. Don't you think that our state legislators will recognize this, and if necessary, supplement any firemen and police funds or money that are necessary in these urban areas, if they are really required to maintain quality fire and police protection?

Mr. Lennox  Dr. Weiss, I can only answer that question based on what I know past performance to have been. The mayor of the city of New Orleans is not looking down the gun barrel of a bill placed before it on the part of its fire fighters for something that's estimated to be 9.2 million dollars, which resulted from an act of the legislature which mandated that the city of New Orleans give to fire personnel only, not the sanitation workers or police personnel, or to other civil servants, but to fire personnel only, to give to them a supplemental pay boost of two percent over and above all the raises the city gave its other employees, including fire personnel. Now, that's been the cost of that particular legislation. Incidentally, no funds were provided by the legislature to fund that increase. The cost is an estimated 3.7 million dollars that I've heard on the part of the proponents of this exception to as high as 9.2 million which happens to be the estimate of the city administration.

Mr. Weiss  Do you think we should look to the mistakes of the past, and therefore benefit by them, and pass this section since it is an improvement on that which has happened in the past?

Mr. Lennox  Dr. Weiss, I've got to tell you I love the section, but I'll never vote for it with lines 15 and 16 in there. It's fiscal irresponsibility of the worst kind.

Further Discussion

Mr. Smith  Mr. Chairman, fellow delegates,...Gentlemen, I'm one of the coauthors of this amendment. Of course, I'm in favor of it. I think it's a fine amendment. I hope that you will vote for it together. I hope that when the vote comes, it's in line with all the remarks that I have that it will; in some way influence you. The reason that I take the floor today, to speak briefly of the fact that I am a great believer in home rule...having had a deep feeling for this all during my political career for the last thirty years. I've served in the state legislature for four terms. During my time I've always voted for home rule for local and parochial government. My record will show that. It came up many times; so I am very familiar with the fact that at the time...I've been a town attorney for over thirty-nine years; I'm now in my fortieth year, in a small community. There's other lawyers there. I used to be the best lawyer in this town, but now we have several more. So I feel that I am very familiar with the phases of local government, and particularly home rule as far as the local government is concerned. During my terms in the legislature of sixteen years, I consistently voted for home rule for local and parochial government. I opposed and voted against bills that had for its purpose mandating cities and towns to raise wages of firemen and policemen without furnishing the funds to do so. I can assure you that this matter is that anything new, I've always been for home rule, and I hope today that you will be. I am for this amendment one hundred percent. If it is not passed, it will keep us from getting into the state constitution another section of allowing the legislature in the future to force local government to raise wages of one segment of its employees without appropriating the money for that purpose.

The proposal of the committee is not just nor is it equitable. The proposal of the committee in my opinion is not just nor equitable nor reasonable for several reasons. First of all, its cost is certainly not home rule by any stretch of the imagination. If only the firemen and policemen in a local subdivision are forced to be raised, how about the numerous other employees of the town? The average cities and towns have people working in capacities of water and sewerage maintenance, garbage haulage, street work, electrical maintenance when the towns have their own utilities, and many other capacities too numerous to mention. Some of these particular jobs are hazardous...just as hazardous for firemen and policemen. I sincerely feel that all employees of a local subdivision should have equal treatment in matters of wages and hours and one class should not be preferred over another. I have understood that I am for firemen and policemen. I have helped them on numerous occasions when I was in the legislature. I believe they are doing an excellent job. However, we have many other fine and dedicated city employees who are also deserving of help, but who may not be as well organized and unionized as firemen and policemen. However, I say to you most sincerely and conscientiously that if you truly believe in home rule as you say you do, you'll vote for this amendment today. We shouldn't put such things as this in our new constitution. ...It is not just; it is not equitable. I feel like if this is put in, that we're going to have a hard time passing this constitution. As I told you yesterday, or on many occasions, I am only interested in writing a good constitution. I'm not seeking political aspirations. I'm not trying to be popular, but I hope that you will write a constitution that will be fair and just and equitable in all respects. Gentlemen, let's keep real law in our law, and there the towns and the cities be free of their own business, and not have to come to the legislature with their hat in hand and beg them for things. You don't feel it would be fair to tell the towns and the cities to raise the firemen and policemen without furnishing the funds to do it. They never do that. In fact I don't think even if the funds should be done. I hope that you'll vote for this amendment.

Thank you.
56th Days Proceedings—September 28, 1973

[Quorum call: 94 delegates present and a quorum.]

Further Discussion

Mr. Derbes. Mr. Chairman and my fellow delegates.

I should like to say some of this amendment with a little story from my past. I am a good friend in high school who had the privilege of writing checks on a checking account provided by his family for which he never had to make any deposits. He could spend money as he pleased, and he was very popular. He could take his friends out to dinner; he could entertain his girl friends; he could do all the things we, all well-behaved, not necessarily having to be responsible for the source of the funds. I suggest to you that that is the essence of this amendment. It is not an amendment and not as far as I am concerned, an amendment which is opposed to adequate standards of living, adequate retirement benefits, and adequate pay for fire, police, and other public employees. But it is an amendment which says that if the state is going to require local governmental subdivisions to get the pay of their employees, then the state should also provide the funds. So I suggest to you that the essence of this amendment is fiscal integrity. It's something I think you all can relate to if you've ever been in business, if you ever have budgeted your money, either as persons responsible for the management of a household or any other enterprise which exists on a cash basis. You have to provide the money for the payment of the expenses, nothing more, nothing less. So I suggest to you that this is a sound amendment, and I urge your support of it.

Thank you.

Further Discussion

Mr. Jack. Mr. Chairman and members, I rise against this amendment. I will not repeat the matters I've already taken up in the debate yesterday when we had a proposal concerning the amendment as the firemen and police. Now, I am for home rule, but true home rule, not the kind of home rule that would be inflicted with this amendment of Mr. Lennox's. But what I want to remember, and remember well, that a fireman and a policeman is not just a city employee alone. He...take a policeman...enforces state laws and federal laws, he is not just like a person, a street cleaner, the clerks that collect city taxes and those things. Incidentally, the state pays up to $1,000 and fifty dollars a month on city police and city firemen's salaries. So this is not like, when Mr. Lennox and the others say, of interfering with home rule. We're entitled under police protection, police pay, to good firemen, good policemen in every parish where we may go.

I'm telling you if you want to have good fire protection, good police protection, you need to get rid of this amendment. Now! I'm like the rest of you. I'm down here to write a good constitution, to do my best and to come up with a good one.

I think if you pass the Lennox amendment, you're going to weaken your police department, your fire departments. You're going to create great hazards now. You're going to go on another floor, and it's in line with this. I want to say that I think the New Orleans paper that had that going that day. They've got the people that are seeing that the hundred and thirty-two people here are working hard. We're working down right here, and I'm glad that the New Orleans paper let the public know that they don't bind the governor or anybody else prodding us, but we need time to go over these things. It's like when you're in the country or maybe in the city, you get slowed up. If you don't slow up, you'll kill yourself. When you're on the other side, you can go fast. We all want to get a good constitution, get out of this dungeon down here, as we can before we all get dungeonstuff. Now, let's get along with it, and I ask you to defeat this amendment. Thank you.

Further discussion

Mr. Segura. Mr. Chairman, fellow delegates, I do not favor any such amendment, any such amendment, and our property without that there isn't much to live for. That's why I think this amendment, and this particular issue we're voting on right now, is so important. For instance, we have a sayin' amongst police that his career is hours and hours of boredom, with just a few minutes of sheer terror. I think that applies to firemen probably even more. They're a fireman is a man that every time we think of a fireman as a man that's sitting around a fire station doing nothing, but when you call him to the station, you have to be able to perform. You want to have firemen to represent you. To protect your property, who will be conscientious of their job and who will, when the chips are down and you get those sheer moments of terror, will stand up to the test. You have your policeman, and too many times we think of the policeman as the man who likes the power of wearing the badge and wearing the gun. But unless you've had your property, your home, or your loved ones threatened by fire and needed the fire department, you don't know what I'm saying. You've been hugged on the street, unless you have been endangered, your life, your family's life, or your property has been endangered from thieves, you don't know the value of good police. You want to give these people the money to encourage them to work in this profession. Industry is offering so much. In the United States, they're so much. You're going to have good men to be firemen and to be policemen. We need to pay them enough. There would be nothing better than the local governments themselves handling their problems. There would be nothing better. But too many times these local officials have other projects, other things that they so badly need that they tend to let the salary of the firemen and the policemen just slip. Too many times that happens the legislature would like nothing better than not to have to fool with this, because they're between two fires. They're between their firemen and policemen. They're always between their mayors and local officials. They would like not to fool with this, but too many times the municipalities have the pay scale or the privilege and the right of the firemen drop down below the standard. The legislature has to come in and say, well, in order to bring those firemen up, I don't think we'll ever. I don't think they ever will ever be treated fair unless we give them this safeguard. I charge you gentlemen, this is an amendment. It is the one exception to the house rule: I think that should keep the way the committee put it. The committee I think was wise in putting this amendment to it. I ask you to vote against this amendment.

Questions

Mr. Segura. Mr. Leura, all this deduction you're referring to, were referring specifically to minimum wages.

Mr. Leura. Not necessarily, Mr. Chairman, this amendment as an example.

Mr. Jack. Mr. Chairman, are you aware, Mr. Chairman, that this amendment excludes firemen and policemen from general civil service provisions?

Mr. Segura. I don't really understand what you mean.

Mr. Segura. As I read the amendment, it excludes a law providing for civil service for firemen and policemen. I'm not sure if there is a discussion on general civil service provisions. This provision would apparently exclude firemen and policemen from the civil service provisions.

Mr. Segura. I ask you are you aware of that, and do you want to change that?
Mr. Segura: There are many municipalities, unlike New Orleans, who probably are not covered by the civil service law, because that has not come before the constitution yet....

Further Discussion

Mr. Burson: Mr. Chairman, fellow delegates, we have heard a great deal of rhetoric today, and I am sure we will hear more about the value of fire and police protection. This has been a question that has been asked to many working for better police and fire protection on the local level. But all of the arguments made by the opponents of this amendment have come from one side, so let there be no mistake about that—all of the arguments of the opponents of this amendment rest on the assumption that local officials will not do their duty. That assumption is not borne out in fact. It rests upon the belief that the central government in Baton Rouge can do a better job of running the municipalities of Iota, Church Point, or any other municipalities in the state than the elected officials there. I don't know anything that will get an elected official beat any faster than the lack of care of the citizens, so let's put that issue aside. It comes down to a question of how are we going to provide this? The opponents of this amendment believe that the money will be used for waste purposes. I believe that this is a matter of local priority. The money, after all, must come from somewhere. Now, I'm going to tell you about an actual experience. We have a gas station in the city of Eunice the last time the legislature mandated this raise. We had to cut the summer recreation program from the budget. We have to raise the cost of running our city by one cent for one year in order to pay for that increase. We also had to raise the garbage and sewer rates for every homeowner in the city. This is a form of indirect taxation, a tax that was levied upon our city by the state legislature. I submit to you that every homeowner, every old lady who's getting a social security check and just getting by had a two or three percent increase in the cost of running their home per month to pay a salary increase mandated by the legislature. This is simply not the way to conduct business. Now, Mr. Jackson has an amendment to include sanitation workers in here, and I want to tell you if you're going to let the legislature set the salaries of firemen and policemen you will let the state of Louisiana run the garbage truck workers too. You can follow the same logic. I don't think that garbage collection is any more essential than the other city services. If we're going to let the state legislature set the salaries of the garbage workers, we let's just abolish the cities and create a Louisiana State Sanitation Commission to run garbage collection throughout the state. That is the ultimate, logical extension of this amendment, and it makes just about that much sense. Now, finally, I want to point out to you that the committee proposal, if you eliminate exceptions for firemen and policemen, will not prevent the legislature from providing a raise for workers; but what it will call for is that either the municipality will have to approve the raise or the legislature will have to appropriate money to pay it. I think if your money could be made easy to vote salary increases when you don't have to put up the money, but it's hard on the local level when you've got to go out in your garbage rates on every homeowner in the village or in the municipality, or when you have to cut out the summer recreation program to pay the raise. From what I've seen of the ability of the police and the firemen to lobby, and certainly they should be lobbying just as the mayors and the police jury people are around there from where they get their effectiveness I have no doubts that they will be able to convince the legislature to appropriate money for a salary increase, if that salary increase is necessary and provided locally. But it all boils down to the fact, doesn't it, that it's a lot easier to lobby a salary increase in one place here in Baton Rouge than it is to have to go out into all the municipalities across the state and bargain in each one. So let's boil it down to the real issue, and that's what it is....

Further Discussion

Mr. Stinson: Mr. Chairman, fellow members of the convention, this argument, as a number have said, has been going on for years and years and years and will continue as long as it is in the constitution. I am opposed to this amendment. When they get up here and say "Well, you're supposed to furnish money to help pay the salaries, and especially from New Orleans,"...I think it's better for our favor than we have in the past, then the legislature would give them the whole state. We've given them money for every purpose. We've given them ten million dollars to vote for a tax. Extra. But I don't want to get on New Orleans. I usually vote with them. But I want to tell you this is another feature that we cannot depend on home rule. We're in the city of Baton Rouge. Suppose you got robbed, and they say, "Well, you don't live in Baton Rouge," ...the police force, "We can't help you; we're only the police for the citizens of Baton Rouge. The only ones that pay the taxes." Suppose your car caught on fire and the firemen said, "You're from Crossier Parish, and so this is a matter of state. Let's boil it down to the real issue's come up time after time. I know one time in particular we had a local bill in a city in my district. The mayor says we can't add those eight personnel. If we do, we'll have to fire thirteen, cut down on the salaries. He convinced me that he was telling the truth. The bill was defeated in the legislature. Three weeks later the mayor gave them to them for free, and he said he couldn't do it, but he did it. He left me out on a limb and chopped the limb off. That's what's going to happen to you if you depend on home rule and say mayors are going to look out for 'em. Well, I've dealt with many a mayor through my lifetime, and they're not all as conscientious as you think they are. They think some other money is going to be there for the salary, but as it's been brought out by the others, these policemen and firemen do not work just in the municipalities. They have duties outside the city limits, emergencies, fires outside the city limits. They don't run up there and say "Oh, you're a block out of the city. We can't go out and help you. We can't do that." So, if it is going to go down to your city. We have got to have the best qualified. You might say, well, this doesn't assure the best qualified....at least the inducement pay will be, and you can then through your civil service requirements get better qualified people. Now more than ever, first is our life and our health and our liberty, and these three are concerned with that. You know you've got to have some assurance of security. It's worse now than ever before. But isn't it a fine feeling to be in a city, and you hear the fire alarm at night and say, "Well, that easy to vote salary increases when you don't have to put up the money, but it's hard on the local level when you've got to go out in gas rates on every homeowner in the village or in the municipality, or when you have to cut out the summer recreation program to pay the raise. From what I've seen of the ability of the police and the firemen to lobby, and certainly they should be lobbying just as the mayors and the police jury people are around there from where they get their effectiveness I have no doubts that they will be able to convince the legislature to appropriate money for a salary increase, if that salary increase is necessary and provided locally. But it all boils down to the fact, doesn't it, that it's a lot easier to lobby a salary increase in one place here in Baton Rouge than it is to have to go out into all the municipalities across the state and bargain in each one. So let's boil it down to the real issue, and that's what it is....
50th Days Proceedings—September 28, 1973

I have in every other city. There's not a little kingdom you have to get a passport to go into. We have one state and we're entitled, and should get there. Moreover, it's a very bad way to go about it. To be asked if this members of the legislature, etc., is ever going to do, is leave this as recommended by the committee. It's unjust, let's defeat this amendment and leave it like it is. I don't know what's going to happen to the people. It has been a long time since we have had a policy of police and firemen in the different cities. We don't know what's going to happen to it. So I hope these people are in the safety and security of our citizens are state and not in a home rule area.

Further Discussion

Mr. Stagg. Mr. Chairman and fellow delegates, I rise in support of the Lennox amendment. In my regret I cannot speak with the empathy and with the simple eloquence with the great dignity of Mr. Landry and Mr. Riecke, nor can I approach this podium with the elegant verbiage and mellifluous phrases of our esteemed Mr. Willis. But I can, in the time allotted to me, give you some expropriation of reasons good for the Lennox amendment. Mr. D'Gerolamo, when he was at the microphone explaining this section, said that he had appointed a fireman for the firemen. I want to go along with my duties to this city. When I was in the local Junior Chamber of Commerce twenty years ago, I found that the police officer of the city of Shreveport had to buy his own pistol, buy their own belts and holster, buy their own uniform, and their pork and training consisted of riding around in a police car with an older policeman and then he was considered to be trained. As a result of efforts to improve the lot of police and firemen, we took on the city council of the city of Shreveport as a project to improve those working conditions, and today, the city of Shreveport has a fire department and a police department second to none in this state. It was done by an aroused public opinion, which caused the city council to do what was just and proper. I have consistently supported stronger home rule in this Constitutional Convention, and I am in support of the police and fire officers, the city who are entitled for only help in two cases. One was in the expropriation article and one is the article, Section 16. There are quite a lot of those in the list of those we are to your mind what has happened to this convention in the last two—their considerable number of speeches, there have been press conferences, there have been statements in the media, both print and electronic, about the troubles of C.C. '73. Some of these troubles were contributed by, they say, a large amount of influence by special interest on the delegates to this convention. You can recognize a special interest when you see one. You don't have to be licked with the terms that are repeated again and again, that the unexpected, that look in the task of a delegate, when you see there is a pending or no delegation. You can make a list of these exceptions. I'll let that be done, it is the next step. To impose the Lennox amendment for the benefit of the public, and I trust with Mr. Chairman, and let us avoid the dodge of the speeches on this subject tonight better be resolved to the initiative, and given to the delegations to the teachers, to the police and firemen, to the city council and to the city council. In the city council, and you find the answer there. Where the answer line will go, I trust.
The mayor said "No, it looks like you can't pass it that way; just pass it and give us any little bit of it we can get."

That's a fact. It is just not right when they get in tight, don't you think they won't bargain a little, but they don't want nobody else to try to bargain. We've got some who think they can do that for themselves, but don't want nobody else to try to fix nothing--sure have--I'm not going to call their names; they're here, though. If you like it close, you will know I'm telling the truth. But I hope the day don't come in this state when the local officials create an image with the legislature that I'm going to have to do this because it's going to be bad on the people. When you have an office in the legislature, you represent all the people, whether he is a state employee, whether he is a city employee, whether he works for industry, or regardless of what he does. I've seen the time in this state, when Congress passed a forty hour week bill, your policeman and your firemen were working seventy hours a week. Do you think that's right? They couldn't correct it. Do you know who corrected it for them? I helped, and the legislature corrected it for them.

I hope you vote against this amendment.

Further Discussion

Mr. DeBlieux: Mr. Chairman, ladies and gentlemen, I'm going to be very brief in this, because Sena- tor Paydelbury made the remarks I had intended to make on this. I want to tell you, as a legislator--particularly, Mr. Stagg, I would like for you to pay attention to this--the first firemen's bill when voted for and in that legislature, was caused by a mayor of the city of Shreveport telling us in the Legislative Com- mittee that he absolutely refused to discuss wages with his firemen, or working conditions with his firemen. He said he always discussed those with the chief, not with the firemen, and absolutely there had no reason, anything, thought that was quite unfair. At least he should discuss it with them, whether he wanted to do any- thing about it or not; but he told us in that com- mittee, he refused to discuss it with them. I want to say something about the remarks that Mr. DeRubes made, and that's what makes up my mind in voting for this. I dislike having to tell a local governing authority to pay their firemen or their policemen, anybody else, any wages as much as I do of having to raise the money for these local sub- divisions to divide it to the employees. They come to the legislature and want us to do their dirty work for them by raising the money, and then they want a large share of it, please. That's not right. Whenever you quit ask- ing for revenue-sharing, when you quit asking for supplemental pay for your local employees, when you quit asking for extra cigarette tax, then possibly we won't need to have any control over any expendi- tures you make. But, as long as we are doling out the money from the legislature, I think we ought to have something to say about how you spend it.

Now one other point. I think that when it comes to firemen and policemen, there's a little bit more involved than just local government; that's when human rights, human lives and human property is involved. I don't know of any fireman or any policeman who has ever refused to go out and do his job, if you want to take that into consideration. I think the lives of the whole state, the property of the whole state is involved in this issue, and I think as a result of that, the legislature ought to have something to say about how they operate so that we can be sure that the lives and the property of all of our citi- zens are protected as much as possible.

Questions

Mr. Alexander: Senator DeBlieux, traditionally the problem has been in Louisiana--especially with the city of New Orleans and I'm sure other municipal- ities in the state--is that the legislature has passed laws directing the city to raise firemen or policemen or some other municipal employee's wages. Now, as you know, and as Mr. DeRubes did, it is sometimes a year, in advance. In addition, when that budget is increased, there are times when the city has to come to the legislature to get an increase in raise certain taxes in order to adjust that budget properly. Now, how can you correct that inequity? For example, to raise the firemen and/or the policemen in New Orleans, say $75 dollars per month, it may amount to about two million dollars or more. Now, that would throw a seventy-five or eighty million dollar budget out of skelter. How do you correct that kind of thing?

Mr. DeBlieux: Reverend Alexander, I don't know of one time that the legislature has followed by permit the city of New Orleans to raise its taxes. We have passed many a constitutional amendment, but sometimes the people have refused to acquiesce in those amendments. That's where the difference comes, because of the fact that our present constitution limited the operation of the city of New Orleans in its tax structure, and it's necessary to have a constitutional amendment to do that.

Mr. Alexander: Wait, you're not answering my ques- tion. I'm speaking here today about taxes. You may not...it may not be necessary to raise taxes. All the legislature does is say "Pay the firemen and our policemen more money and it automatically raises the budget of the city.") But if the budget maybe has already been set, they have all the money that's available; what happens, what do they do?

Mr. DeBlieux: I can't answer that question for you, but I don't think...
streets, the persons who live in the city halls and court houses throughout the state who sit there day in and day out and beat a type-writer, and all the other problems that are found in modern society and modern times. How about those people's rights? I say to you, my fellow delegates, let's not write a constitution that is discriminatory. I think we have reached the day and time when we do want to quit discriminating so let's give everyone the same rights. Let's not pick out a few employees. I know that they have problems, but I sure sympathize with them garbage collector and all the other people who work for political salaries. Let's give them all the same chance. Thank you.

Questions

Mrs. Warren Mr. Chatelain, I like one thing you said, but I want to ask you a question. Do you think that firemen and policemen should have the right to strike?

Mr. Chatelain I didn't hear you.

Mrs. Warren Mr. Chatelain do you think firemen and policemen should have the right to strike?

Mr. Chatelain Well, that's another area that I'm not well versed in.

Mrs. Warren Just answer, please. I just want you to answer the question, your belief, then I got one more question I would like to ask.

Mr. Henry Well wait, he hasn't answered that one. Mrs. Warren, let him answer this one, please.

Mrs. Warren I just had two questions. I want you to answer the other one then I got one more I want to ask you, just one more. Answer the first one for me.

Mr. Chatelain You asked the question. I think that whether or not I believe that firemen and policemen should have the right to strike.

Mrs. Warren Yes, you heard me.

Mr. Chatelain Since the Miranda decision I have oftentimes I've felt that perhaps that they should have.

Mrs. Warren All right, another question. Do you think firemen and policemen should have the right to participate fully in the political process?

Mr. Chatelain In the political process?

Mrs. Warren Right.

Mr. Chatelain I certainly do.

Mrs. Warren Thank you. But do they have it?

Mr. Chatelain Let me say this to you, Mrs. Warren, that I feel that I shall fight for this right for the firemen and policemen and all the city employees. I shall fight for their right at the local level, that is where the fight should be, in the local level, not state wide. I shall fight for these people.

Further discussion

Mr. Clay Mr. Chatelain, one delegate to the convention, I've been interested in some of the statements that have been made here this morning. I think, let me say, that the fire and police officers of this state enforce that law, state, county, and municipal laws, and are in every situation in every corner of this state, every community, everywhere. So the personal employee what we are talking about here, in the execution, we are talking about the legislature having the right to establish limits upon the daily, the weekly, the monthly, and the annual compensation of employees within the fire and police service. But let me say here, you all know this, whether you are with the fire department or the police department, if you are required to be paid by the state or the city or the county or special laws, you are required to be paid by the state or the city or the county or special laws. You never could have approval of the people to accept anything like that. It does affect the retirement system here. The statement has been made in the city of New Orleans, and it's been mentioned three to nine million dollars. Let me talk about that situation; that was a right in 1956, the municipality of this city; 56th with a population of more. The new present day of the city of New Orleans is not only paid for it, it would be passed if the legislature had to go to the nitty gritty of that and then enforce Louisiana law. That was a right in 1956, a right to be lived up to their obligation in 1968. They would be faced with that situation today if it were done. And I have been asked about that situation here today, if it's going to add any of the population of the state. I would say that's a special interest, the city or the county or the police department or the firemen, does something about the people of the state, then I plead with you, look at the author of this amendment and you have a special interest, I would urge something to you from the white paper. I have dated September 16, 1972 and pay attention to it. I quote, "The Louisiana city council, Saturday, November 16, 1972, met in the metropolitan area government base, state, county and city units. The thirty-seven city council committee also refused, by a decisive two-to-five vote, to write in a new constitution provision that any time the legislature enact any law that would affect a uniform service benefit, the legislature must enact the same law at revenue. We have come in this session to vote the status quo of the people of the state so we are in turn to the legislatures for reimbursement of future expenses," and a few others, I don't know, in order to bring the provisions in the fire and police union up to the level they should be up to you, if you lived up to the level of state, you would get the tax money, the state and the county would get the tax money and the people would have the benefits, as they have ever received under the current handle of 1956. If I were you, I would amend the amendment for the people of this state. I am for the people of this state, not a few hundreds of thousands of dollars of this state. If the state would spend millions of dollars, then, want to raise the revenue for the state, then we are in turn to the legislature for reimbursement for the future of this state.
time, or three weeks, and since I have a lot of figures here that deal with state appropriation, and before I announce which way I'm going to talk on this, I ask the convention to grant me an additional five minutes time.

Further Discussion

Mr. Womack Mr. Chairman, members of the convention, in the last election we had between a sixty-five and a hundred per cent vote for the Louisiana House of Representatives. Did it ever dawn on you why that large a percentage was? Voting for taxes to dole out to local government. If you don't believe it, go back, I know how much trouble it gave me, voting for taxes for local government. I'm going to talk in opposition to this amendment. It's great to be a part of this nonpolitical organization that we have here today. It's great to know that no one should lobby, but the president of the police jury in my parish was called the other night at one o'clock at night or at two o'clock in the morning, telling him to "get down here in a hurry and try to get on your delegate to the convention." He said, "For what?"

"Well, to straighten him out."

He said, "Hell, he's been straight. He is representing us and he is doing a good job."

Now, let me tell you about my local governing authorities. We'll start with the police jury. We'll start off, in excess revenue this current year, giving them a hundred and twenty, thirty, forty thousand in Franklin Parish, forty-four thousand under another act, thirty thousand under another one, twenty thousand under another one, and every time I turn around I'm getting a resolution asking for any salvage -- bridge, culvert material -- and if we are going to hard surface a road, go out there and scrape up the road, haul it off of there and put it on one of our roads. We are doing a very cripplng, damaging job to local government.

There is not a school in Franklin Parish, or Texas Parish, or anywhere I know of in northeast Louisiana, major school, that hasn't had highway construction work done around it, trying to improve the drives, trying to help local government. In short, we dole out more tax revenue to governments in Louisiana than all of the entire state appropriation of the State of Mississippi. How bad we are treating them, how bad we are treating them. Last year, of all the contacts I had, or year before last in the session of the legislature, I had more to raise a salary on the state than I had to do with the local school districts, attorneys, Mr. Burson, than every other contact I had in the House of Representatives all put together. We want local government; we want local home rule. I don't believe in these people striking; no, they can't strike. We can't tolerate policemen striking; there's no way. I want to talk to you a little about what we are doing out, just a little bit: the district courts, millions of dollars in the local district court; supplemental police pay -- this current year's appropriation, eleven million seven hundred thousand dollars, state money going back to the local municipalities to pay their policemen; supplemental pay to the firemen in excess of five million dollars. The town of New Orleans. We cannot vote for this because it's going to hurt my city. I want to tell you about my city. Our road gasoline tax, we had to pass a special act to give New Orleans six million dollars of the road tax, the gas tax. The Port of Lake Charles gets their slice of it. The Port of Baton Rouge, we supplement, pretty heavy, trying to keep those in operation. Our schools, local municipalities... cigarette tax, division of gasoline tax, road tax, royalty tax, everything else. We would like to know and check locally and see how many local taxes local government has been able to pass in recent months. The reason we had to put on state tax is because the city of New Orleans was about to close down. The mayor came up and said "We can't operate, no way for us to operate; please bow and scrape, give us."

The city and the municipalities are seeing that they have to bring in a little if you don't pass an extra tobacco tax. We are willing to give New Orleans six million, half of the entire state tax. I voted a tax onto the people to give to who? Municipal government, local government. "Leave us alone, let us run our own business." I'm going to agree with Gordon Flory and others that feel that the referendum system is the only system. We have a retirement system in East Baton Rouge Parish in tip-top shape-local municipal retirement systems, and we are paying for it. I'm paying for it annually, I'm paying for it biannually. I register in and out of the hotel; every time I buy anything, I'm paying that extra percent for it. By the same token, the city of Alexandria has no funded system; the firemen and the policemen have none. They've got a tax; they pay into it, and at the end of the year if anyone retires, the money is there provided the city council appropriates it, and the day they quit appropriating, they've got nothing. It's not even as solid as the government of France. We hear, all the way through, about what we are doing to this local government.

I'll be happy to answer any questions if someone has a question about... I've got all the figures here where they doled out the local government money of six hundred and forty-six million dollars. I would like to go into it if we just take about twenty minutes.

Vice Chairman Alexander in the Chair

Mr. Burson Mr. Womack, what else do you propose to do with all this tax money raised from the pockets of the people, other than sending it back home -- build some more monuments in Baton Rouge?

Mr. Womack Well, I think in answer to that, the best thing to do is to let local government go back on a local level and vote these taxes themselves. And to go a little further, you know why we are here today? Article XIV. If it wasn't for Article XIV, Mr. Burson, we wouldn't be here. What does Article XIV do? It proposes to give... that is, Article XIV deals with local government and this convention is here to try to give local government more room to operate. You know when we proposed the amendments and the last time, we had forty-some-odd amendments, the majority of those amendments affected the city of New Orleans. It gave the broader authority for taxes, for running local government, for expanding their authority. You know where it was killed? Not in my district. I campaigned for it and we passed it pretty heartily, you know where it was killed? By the local people in New Orleans, Mr. Burson, by the local people in New Orleans. Now, you talk about they don't trust the legislature; you go call an election on a local level and see how far they trust them. There's been more local taxes killed in the last three years than there has been in the history of the state, percentage wise in any other decade.

Further Discussion

Mr. Weiss Mr. Acting Chairman, fellow delegates, the flow of rhetoric from all around this morning has been outstanding. Why? Because the issue is vital. The heart and lungs of this article rest in this section. Why is it a viable part of the article? Because if this floor amendment... Mr. Chairman, could I have a little order, please, sir.

I realize most of your minds are made up. I won't confuse you with facts. I would like to place a label on this floor amendment that might be more understandable to those of us that are confused by the different labels and changes. I think that this article can be labeled "that neat of the whole home rule article" which concerns itself, as I said, as the heart and lungs of this article. This is the portion that depends upon
the policemen and the firemen, in any given home rule municipality, to see that it functions as an or other government. Any government must be maintained by the police and firemen. There has never been a question by any of the speakers here to that extent as to where and how they should function. That’s not a question. What would this home rule amendment be? I think that it can be labeled as a home rule suicide amendment. This is nothing more than creating suicide for the police and firemen. This is what has been done. You will have the body without the form and character and breathing viability that is necessary to make them function. The police and firemen have. The legislators have been to this podium, have told you the pressures that they have received. If our local home rule authorities want to grow up, let them face the problems at home. Turn it back to the home rule people. Allow them to face these problems with their local people as our legislators have with this issue. This is a terrible amendment. It emasculates the whole home rule article. It is time we recognized it for what it is. It is suicide for this article. I urge you to vote against this resolution and feel that this is a reason and it flowed here should make it clear to you why should.

Further Discussion

Mr. Heine: Thank you, Mr. Acting Chairman, and fellow delegates. You know we’ve all got problems. We heard Mayor Rayburn’s problems, the state, and Representative Womack with the problems of the state, but small local mayors have problems, and maybe it would be good if Senator Rayburn were here for mayor, and didn’t know what some of these problems really are. You know, he has to deal with the big budget of the state, and I respect him for this, and my sympathy goes out for him because I have met with them before and do understand the problems that he has, but he is afraid or is it, afraid or that’s right and the privilege, if you want to call it that, to levy taxes upon ourselves, our hands have been tied, and I hope under the new concept that we have adopted so far that local government will get their hands untied and if the people of different localities want to levy taxes to do certain things with, we will not have to come to the legislature and ask them to give all this money to local government that Representative Womack has talked about. It’s a difficult job being an elected official on any level, whether it be local or state or federal in the days that we are living in. It’s difficult for us to get here and to have this amendment, but I can, as some others have said, stand up and record when it comes to supporting my firemen and my policemen. I got a copy of the city of Baker’s pay scale, and you know I’ve been in office for many years, I’ve been mayor now going on nearly ten years, and I can go back and show you that when the state was so small, and I do want to refresh a few memories about the tobacco tax, that happened to be a part of a tax package, I was in the governor’s office with numbers from the labor, I think it was Mr. Gordon Florio was there, some of the state teachers representatives were there. It was a very small amount of money that was happened to be the tobacco tax, but everybody got a piece of that pie, and that was the deal that was made in the governor’s office. If all the terms passed, we all got our share. If one failed, we all lost. This was the deal. So let’s don’t paint the local governments too black in that deal when they were very, very little in the beginning, I can assure you, in the local level, we were trying to balance budgets and were having difficulties doing it, and need money to implement these salaries that were given to the police, firemen and other policemen. You know in these slimmer, leaner times, one is a very hazardous life when you have to get up in a lesser life to clean that thing out, with sewer cases and those many subject to repair. It’s a very hazardous, harrowing job, and it’s very difficult to tell these employees that we have given these monies to them and it’s very difficult, because we have been told by the legislators that we have got to live this amount to the employees. Ladies and gentlemen, this is a very difficult time. Senator, that a mayor has to face every day, and it’s very difficult; I am assured, too, that I can get up here, and say these things, because I have the few local governments that we have. The legislators have been to this podium, have told you the pressures that they have received. If our local home rule authorities want to grow up, let them face the problems at home. Turn it back to the home rule people. Allow them to face these problems with their local people as our legislators have with this issue. This is a terrible amendment. It emasculates the whole home rule article. It is time we recognized it for what it is. It is suicide for this article. I urge you to vote against this resolution and feel that this is a reason and it flowed here should make it clear to you why should.

Further Discussion

Mr. Tobia: Mr. Acting Chairman, I don’t believe there is any question at this moment that has not been said and in this discussion. We’ve debated it ad nauseum, and I have the previous question.

[Discussion continues]
replied, "Yes, their jobs are hazardous; they are different." Maybe the question was misleading by not asking her whether they should have constitutional status or not. I would like to see some body on the roll of those who go to this convention, and I suggest that I go with the hope that somebody will go with the hope of justice, but if nobody's got any feet in the door then I can expect seriously what will happen back home. For those reasons I rise in opposition to the Lennox motion.

Further Discussion

Mr. Roy Mr. Chairman, ladies and gentlemen of the convention, you've all heard all the facts and figures, but I want to tell you the history of the abuse of the working man. It started back in the Industrial Revolution and it went forward and went forward until finally through legislation and what have you, the people were able to say that no longer will we tolerate children working eighteen hours a day. No longer will women work in factories twenty hours a day, and it finally culminated in the people rising up and saying that we won't allow this, but therefore was one action, last action that they could never get to, and those were the local governmental subdivisions. It's strange to me that a local governmental subdivision inaugurated and authorized to protect the people, I abuse the people who should be protected first and foremost, all of its employees, but I'm for at least firemen and police being protected, and certainly against this amendment. I'd like to see them all protected, because I can't tolerate the idea that people can be made to work for the privilege of saying, "I work for a municipality," but not get the money to buy the bread to support their families. You've heard a lot of rhetoric, and you're hearing a little bit now, but that's the history behind this kind of thing. I am for the protection of these people, the people who have fought long and hard to acquire the kinds of justice, but if nobody's got any feet in the door then I can expect seriously what will happen back home. For those reasons I rise in opposition to the Lennox motion.

Further Discussion

Mr. Heine Representative Jackson, I don't know exactly how I'm going to put this into a question, but did I say when I was talking that I was on a blacklist?

Mr. J. Jackson You sho' did.

Mr. Heine I meant the unfavorable list, o.k.?

Mr. J. Jackson Thank you.
Mr. Casey: 

Mr. Chairman and delegates, unfortunately in discussions on local government, a lot is always said about New Orleans, one way or the other, and I'd like to initially say that the gentlemen who have mentioned New Orleans previously are to a large extent correct, that the legislature has been fair with New Orleans and good to New Orleans. People like 'Sixty' Rayburn and Mr. Womack and Monroe have been very helpful, and I know it's unpopular sometime to be with the city of New Orleans in legislating awards for some of all the problems, and I know 'Sixty' Rayburn makes a lot of noise sometime and says a lot of things, but sometime his bark is bigger than his bite, but you would think you had an alligator or a crocodile taking hold of you, and I particularly think, gentlemen such as those I named, and you can't name everybody who helps, I think it's important to straighten up and to clarify some of the facts and circumstances which have been mentioned this morning, particularly when we voted for taxes in 1970. New Orleans wasn't afraid to vote for taxes, for the cigarette tax, Mr. Rayburn. At that time the city of New Orleans was imposing upon itself a one percent sales tax, and in order to pay its civil service employees and its policemen and its firemen and to give them the benefits that were rightfully due these employees, but those state taxes which are imposed primarily on employees, to merit increases to state civil service employees, and we needed our share of the tobacco tax, and we agreed to pull down on that in order to get the necessary money from the tobacco tax to pay our employees locally, and that's why the deal was made. Mr. Rayburn, and Mr. Womack, and Mr. Monson, you all know that, but I think it's important to clarify that we were trying to help ourselves when we asked for that, and our past mayor has probably raised more taxes, has voted for more tax increases, than anybody else in the state, locally—approximately for police officers, to merit increases to civil service employees, and we needed our share of the tobacco tax, and we agreed to pull down on that in order to get the necessary money from the tobacco tax to pay our employees locally, and that's why the deal was made. Mr. Rayburn, and Mr. Womack, and Mr. Monson, you all know that, but I think it's important to clarify that we were trying to help ourselves when we asked for that, and our past mayor has probably raised more taxes, has voted for more tax increases, than anybody else in the state, locally—approximately for police officers, to merit increases to civil service employees, and we needed our share of the tobacco tax, and we agreed to pull down on that in order to get the necessary money from the tobacco tax to pay our employees locally, and that's why the deal was made.

Mr. Casey: 

Mr. Chairman, fellow delegates, let me be very brief. Let me be concise in time, but I wanted to state for the record that if this were a legislative bill and I were in the legislature, I'd vote for it, because when I was in the legislature I voted against bills that increased the pay of firemen without providing the money to the local cities, because my city father told me they didn't have any money to pay it, but we're not saying you can't pass those kind of bills in the future, we're saying here that you can't, that the legislature will never be able to ask any kind of an increase in wage law or any increase in condition law, no matter what the increases are in the future of this constitution. Now this is something that does belong in the constitution, in my opinion. This is a matter that should be dealt with as a statutory political matter and left to the discretion of the legislature, especially when you have the state's ability to pass any kind of minimum wage law, I'm not particularly happy with the language that's in here. I don't think it should just apply to firemen and policemen. I think it should apply to all employees. I don't think we should tell the legislature, you can't ever pass any law setting a minimum pay scale. I'm not for making localities pay wages lower than they don't have the money. That's the way I voted when I was in the legislature, but I'm not writing the constitution. In the time of the legislature, there never seems to be any situation under which you would be justified in enacting a minimum wage law. I believe the constitution, in my opinion, I believe the constitution, I believe you could make a better situation, I believe you should make a better situation, and I believe the constitution is not fair and applies to all employees, that would assume the power of the legislature, enact minimum wage laws for the state of New Orleans, and authorize $50 a month for the state of New Orleans to assume the power of the legislature, enact minimum wage laws, and pay teachers and policemen and firemen six and a half times as much as the teachers and policemen and firemen in the state of Texas or anywhere else in the state of Texas or anywhere else. I don't think this is correct.
56th Days Proceedings—September 28, 1973

a minimum wage law that every city could pay. I think that we should not tell the legislature, "You can't do this," in the next fifty or one hundred years, or as long as this constitution is going to last.

Furthér Discussion

Mr. Wall Mr. Chairman, fellow delegates, you know fate has taken care of me being here today. I had a chance of flying to a funeral, and the pilot called me a couple of times and the last time I was to leave here at eleven o'clock, so I wouldn't have been voting on this last amendment at 11:20 he said, "Mr. Wall, the tornado warnings are such that I'm not willing to fly up there to carry you, but if you want me to, I may be able to find a pilot that would carry you." Of course, I told him to forget it.

The Chairman...I've got to tell this for the benefit of the Chairman. The Chairman is getting to where he is a little warped in his thinking lately. He thought I was going up there just to miss this vote, and that's not the case. So, I'm not going, Mr. Chairman.

Fellow delegates, this issue is something really I had some reservations about, until I really studied and sat down about it myself. The fact of the business, I was asked yesterday how I was going to vote, and I said, "Well, I haven't completely made up my mind yet. This morning, I have two telephones and both of them were hopping off, and I wouldn't even answer them because I figured it may be somebody calling me, and whoever called was going to inform me myself, but I was going to make up my own mind. But first, I'd like to tell you I believe in minimum wages. I've just been in to the Federal Wage and Hour division twice in the last three months and I had to pay up to them. It wasn't that I wasn't paying minimum wages, but I got in a little trouble on some overtime of some employees. When I fired them, they came then and wanted on overtime. I paid them. I smiled but I firmly believe in minimum wages. I firmly believe that the legislature has the right, in fact the business of every state, to set a minimum wage for people in this state, whether they be firemen or whatnot. I think that they should set a minimum wage for everyone, and where the legislature has a right to set proper working conditions, too. I think they should have that right, it just boils down to this, it's not home rule. Do you believe that every individual in your com- community and the state itself, the legislature has a right, to say that if this person works, they are going to get a minimum wage? I believe that the legislature should have that right to protect all the people, no matter who they are. So this amendment of Mr. Lennox' is a bad amendment, and I hope you'll vote it down.

Further Discussion

Mrs. Warren Mr. Chairman and delegates, you are honorable men and women, and I don't come here to tell you what to do or to even try to help you to make up your mind. I think it's last, and usually I go to the microphone because I'm a little bit ignorant on things and I want to get some information before I vote on things. Each individual could be placed with a picture in your mind of each one of you would see it in a different light; one would see it that way and the other would see it another. One...some of you are going to vote for this amendment for one reason or another, and some of you are going to vote against it for one reason or another. I heard something up here about special interest groups and that was one of the things that I was really looking out for. When I came to the convention, it came into my mind that I heard when I was a little girl. It read like this: "Little drops of water and little grains of sand, make the mighty ocean in this pleasant land." It is many special interest groups and many little people who help to make up this great state of Louisiana. I have heard from this platform, people speak and say, and one young man was asked, how much money did the legislature apportion for his salary in a municipality? He said, "Ten thousand dollars." This is just one person. I'm wondering how much of that ten thousand dollars would be willing to say to the legislature, 'Provide this to pay for protection of firemen and policemen.' That's just one. When your city officials make up their charter, the first thing they do, they decide how much money that they are going to get all the way down the line. So, that leaves some money for plates and whatever's left, you can have it, boys. See how the privilege of doing this, they can set their salary, you just passed it, or time you couldn't set a salary when you were going in as a city councilman, and be paid that salary. Under our last provisions, you can do it, so you've got home rule. I'm thinking of something now where a person said to me one day, and I wondered what they were talking about. He said to me, he said, "You know, it's a poor rat ain't got but one hole to run in." It really is. I've heard many people at this podium say, I wondered when it came up, the Home Rule Article, "I want to be excepted.

So, I don't include me. Just take me out and took the teachers and things out with their amendment. It's alright for the home rule folks to have the hammer so long as that hammer ain't going to hit my head. Now, the real thing that bothers me was the question that I asked this morning, that really helps me to make up my mind. I believe that...every citizen should have the right to participate in...fully in the political process. And do you think the constitution does not provide for that? I don't have much time. If I did, I could go on and on and on, and after they died, and I'd tell you...but I knew I didn't have but one minute. So, they don't have the right to participate in the fuller process, political process, as others. You say exceptions; I'm against excepting anyone for any exceptions, why exclude me? Thank you.

Further Discussion

Mr. Willis Mr. Chairman and fellow delegates, I am heir to the definite disposition of supporting this amendment, and I am fortified more and more in the righteousness of my position by the arguments on both sides of the issue. I hope those opposing the amendment will tolerate my position, with the same respect and the same latitude that I claim for themselves. Perhaps I should heed the saying that "Silence is golden," and just vote because it has all been said. Much has been said but the present minister in the scene of the argument compels me to urge overshadowing constitutional principles which are so fundamental and so applicable, the exceptions of firemen and policemen and no other municipal or parochial employees does not have the popular currency, nor does it have sufficient constitutional fortification. The constitution is to play the disruptive equality of every citizen except exception. The local government which has duties imposed on it must be allowed the means to perform them with "unanimous justice and one law throughout the State Seal." To those of you who salute it, our firemen and policemen at this podium or in your thoughts, I say that my admiration for their honor, valor,
and dedication to duty is no less than yours. I lack admiration, however, for inequality and inexactness, regardless. That is why the argument on the amendment is by someone and me, but I have at times been certain of things that were not so. The expression of certainty with great magnitude of the great consequences of the amendment does not make it certain. The provisions of this constitution should be such that it applies to all, and applied to all whether they pinch or pinch back in that, my dear delegates, is what we said in our Bill of Rights—equal protection of the law. Do you now want equal protection? Do you want to discriminate in favor of two types of local employees? Do I not think they will always be for what is good for the goose is good for the gander? I do not believe that the exceptions sought to be struck can constitutionally survive in the shade of our Bill of Rights. Recall the arguments for equality when that bill was under discussion, and who raised the big hues and cries for equality for all, and contemplate their arguments and positions on equality now. I am for this amendment. I am proud to be because I am for equal protection of the law. I make an invariable forress this constitution with equal protection of the law. This amendment helps it out. Thank you, Mr. Chairman.

Question

Mr. J. Jackson. Mr. Willis, on that very point that you made about exceptions, do you not know that in the committee I did propose that all municipal employees be treated, and that was defeated by the proponents of the committee saying that no, no, that won't even work?

Mr. Willis. I didn't know it, but if you say it, that is to your glory, sir.

[Here Mr. Jackson interjected.]

Closing

Mr. Lennox. Mr. Chairman, fellow delegates, although I do not waive the right to close, I will attempt to be as brief as possible, but there are some points I find necessary to reply on. In the beginning, I'd like to suggest the absence of a quorum, however.

[Quorum will be taken presently and a quorum is declared.

Mr. Lennox. Mr. Chairman, fellow delegates, in my reply and in my suggestion I'd like to address myself, in some of the comments made by some of my colleagues who represent the other side of this particular controversy. Mr. Flory has made some mention of special interests. I have never accused Mr. Flory or anyone else here of representing any special interest, and I submit to you as I have told him in the past that there are 23 delegates here representing one special interest or another. I would further like to say to you that I ran for this office; I ran second out of a group of fifty-three candidates for the office. I was in a runoff when the governor appointed me to represent industry. Although I represent industry and I'm proud of it and I represent a special interest just as does Mr. Flory, I hardly see as though my representation of that special interest has any bearing on this particular controversy. Now, let me, for a question, tell you I have never, well, perhaps a better way to put it. Mayor Landrieu has not attained his success in politics as a result of any particular help from Edward Lennox and vice versa. I do not know why Mayor Landrieu did not discuss with me his position on this particular matter. My position was lifted here without any help from any of the New Orleans legislative people. I have supported the mayor when I thought he was right I have been equally vocal in his opposition when I thought he was wrong. On Mr. Flory's dormant about 646 million

Mr. Willis replied that he was not as a part of the committee, but later, he was on the committee and had been told by them that the proposal in its present form, as long as I was interested in the proposal, as a layman, I would not vote against it. It is fiscal responsibility. I was for it, for me, for a moment, mention lay, and some statistic I think you would be vitally interested in. New Orleans police patron will be at $35 a month while a Louisiana police patron will be at $59 a month less. Where I speak of A New Orleans firemen, we have at $35 a month beginning October 1, while a New Orleans firemen in the New Orleans police milk who and large are honest, reputable citizens of our community and people the police may be associated with, and the same men may retire in New Orleans after sixteen years of service at forty percent of his pay. After twenty years, fifty percent of his pay, and up to sixty percent of his pay...

The New Orleans fire pension benefits are substantially the same. So, Mr. Flory, while I think that I'm not only for making wages, I'm for overtime as well. I was not one of those who was ringing his phone this morning. I did, if you feel that you or your parish or municipality is immune from the effects of this section as it is now written, let me reflect, if I may, for a moment, on the words of John Green, written in verse in 1867—the iniquity of looking the face of the law in the eye and death diminishing. We because I am involved in mankind and therefor never send to know for who the bell tolls. It tolls for thee—each and everyone of you, give your support and adoption of this amendment, and I ask for a favorable vote.
56th Days Proceedings—September 28, 1973

violating our basic democratic procedures. We have made good progress, and I think the answer at this time is not in a specific rule change, but rather it is with you and with me. I congratulate you on your desire and the help you have received. But, may I respectfully suggest that we vote more often and as quickly as we can on the different sections and hopefully we will accomplish our purpose. Thank you.

Amendment

Mr. Poynter The amendment is sent up by Delegates Lowe and Pugh. All right, just Lowe.

Amendment No. 1. On page 9, delete lines 7 through 21, both inclusive, in their entirety.

Explanation

Mr. Lowe Mr. Chairman, fellow delegates, the first thing I want to make perfectly clear right from the beginning, that the outcome of the previous amendment that we discussed has had no relation at all to my amendment to delete this entire section. That's exactly what my amendment does. I want to make that perfectly clear. The amendment that we discussed before lunch and the opponents of that amendment before lunch, that regardless of the outcome that I opposed to Section 16. Now, I want to start from the beginning of the amendment with this particular article. I don't consider myself a strong home rule advocate and I don't consider myself a strong supporter of this amendment. I don't want to take all the power away from the local government. So, on all of the amendments that I've seen come before us, I've tried to maintain a middle of the road position to try to give municipalities as much power as I thought they needed to operate with. At the same time, maintaining in the legislature that degree of control that's necessary over these municipal titles. Now, you know what's going to happen and I know what's going to happen with this particular section. What's going to happen is going to prove to you that this section and what we did earlier today is not something that belongs in this constitution. If my amendment fails, you're going to get a flood of amendments that's going to exempt every municipal and parish council employee, that's going to exempt all of the elected officials. We already have one that exempts the school teachers and we've got some different answers. But the one that I want to say right now is that we're going to put the door on all other municipal employees to be dealt with in the same fashion that firemen and policemen can be dealt with. Not just for today, not just for the next week, but for all time, I don't believe you want to do that, and I don't believe that you want to go home and tell your parish council employees that that's what you've done. Now, I said from the beginning I knew that this was an issue. I informed everyone months ago that I was not going to take this constitution and fight the fight of the firemen and the police in the constitution. When I was in the legislature from '64 to '68, I voted continuously not to approve the raises of the firemen and policemen, and that we should furnish funds to local government. I was sensitive with their cause; I still am sensitive with their cause. But, when we go back home, there are many, many, many other employees that deserve recognition. We cannot, in this constitution, deny them that recognition. Now, we have a sophisticated, complicated form of government, and I don't think any of us are concerned. I'm not ready to sit here with Section 16 and say once and for all that I'm going to deny the legislature the right to deal with local municipal and parish council if they're concerned. We're entwined in a web that I don't know what would happen if we did that. We're the people where we are, I don't know. I have no idea what Section 16 would do. The only thing that I believe, and I've talked to attorneys, I believe that if we take out Section 16, we're going to be where we are today. I don't believe that where we are today is bad. It gives the legislature the right to look at individual situations. If the firemen and policemen say they should be dealt with individually, I say, let the legislature do it. I heard New Orleans complain about their dilemma with this particular situation of dealing with firemen and policemen. As I recall, there was in the legislature, legislators from New Orleans were lobbying me to vote to give firemen and policemen raises. I'm sure the record would show that as many New Orleans legislators voted for raises as those that voted against them. I don't come to this mike often feeling strongly about particular matters. I probably would not have offered this amendment myself because I'm not much of an amendment maker. I sit back and listen and vote on amendments, but when I see some ready to do something, that is completely ridiculous and unreasonable as far as this constitution is concerned, and I hasten to repeat, as far as this constitution is concerned. Because if I were in the legislature, I would talk night and day and stand up and vote on the particular issue, because I think it is an issue. I think it is an issue for this constitution, we're not to discriminate against all of the other employees. They work, they slave, they chop at the saw, they do the same things, they do many of the same things. Now, you can, if you wish to, shut the door on those people. I can tell you, I, for one, will have said that I tried to do the same thing and discrimination out of the Constitution of 1973. So, I appeal to you that you join me in taking out Section 16. I think that's what the interests of our people would want us to do. I think it's the rational thing to do, and I ask that you join me.

Questions

Mr. O'Neill Monday, I'm real troubled about what the exact effects would be if it were gone, and what exactly would happen. I'm sincerely asking you if you could explain a little more, what do you think would happen without this section?

Mr. Lowe Well, Gary, Mr. O'Neill, I doubt seriously if we're going to get an answer to that that's going to satisfy everyone. I spoke to a number of attorneys and got some different answers. But the ones that I spoke to that gave me the answers that I thought were right had said that if we take Section 16 out, we're right back where we were before 1973. This means that the legislature can deal with these matters independently, one by one with firemen; one by one with policemen, with sanitation workers, with maintenance people, with doo-dads and name it. Now, I'm not an attorney and the only thing I can tell you is that I've listened to our deliberations. I've tried to get out of our deliberations something concrete that I could hold on to, and here's what I've hung my hat on, Gary, is that the municipalities are limited by general law. The home rule charters that come into existence after this constitution is adopted will be limited by general law that's in existence at that time. Now, I can say that New Orleans, they told me, that New Orleans would not prohibit the constitution from dealing with the firemen, policemen problem.

Mr. Roy Monday, I know you're in good faith in what you believe, but do you know that the charter for the city of Baton Rouge, for Baton Rouge city government makes it that you cannot deal with firemen and policemen because of the Lafleur case?

Mr. Lowe Well, as I've mentioned before, Chris, if you tell me that...Lafleur, case, I'd have to believe it, and I'll also tell you that I'm extremely sincere about what I'm doing...

Mr. Roy I know that.

Mr. Lowe If we've locked the door and one home
Mr. Roy: Yes, but, Monday, do you realize that you realize through that you see on page 4 under Section 8, if, when we have adopted already the statement that shall not pass any law, the effect of which changes, codifies, or affects the structure and organization and for the particular distribution or redistribution of powers, don't you see through that in the future, all these city or home rule charters have to do is to set up firemen and policemen under structure and organization and thereby prevent forever the legislature ever dealing with it? That's why, even though you are in good faith, your amendment is going to permit home rule charters, even in the future to lock out the legislature constitutionally.

Mr. Lowe: Well, Chris, I know you are in good faith in asking your questions, but on page 4, I read, 'That a home rule charter adopted pursuant to the provisions of this section shall provide for the structure and organization, powers and functions of the government of the local governmental subdivision, which may include the exercise of any power and performance of any function necessary or proper for the management of its affairs that are not denied,' or I don't know whether it was amended, 'authorized by general law or by this constitution.' As I appreciate it, general law can take care of things.

Mr. Roy: We have the problem with the next sentence, though in your questions, when they reform under this other section, other section, rather.

Mr. Champagne: As I understand, Mr. Lowe, you are saying that these are legislative matters and this constitution is far too important to place it on the line at the discretion of this faction saying it doesn't do enough, or that one says it does too much, or this and that. In other words, this is far more important to get a basic document, rather than legislate and put the whole constitution on the line. Is that what you are saying, sir?

Mr. Lowe: That's exactly what I'm saying, and we're going to find out if that is true if this proposal fails, you'll see a flood of questions from the people that are concerned about the other parish employees that are being discriminated against don't care how this is or is not going to deal with those things. I appreciate your adoption of the deletion of this section

Further Discussion

Mr. Burson: Mr. Chairman, fellow delegates, I'm glad we took the lunch break right after the vote because that gave me time to ponder the fact that this body had concluded that municipal officials were not responsible enough to deal with life and personal matters, but that needed the legislature to see these matters. I'm sure glad that the city, with the help of those that we have seen in this audience, that they can help them. I'm not sure how it will work, but I do feel it will work. If we don't do it to our work, we won't. If the death in the winter and these will not work anymore, I think we have to do what we can. There are a lot of people in the legislature because they believe. That is why I'm supporting the Lowe amendment to delete this section.

Further Discussion

Mr. Landau: Mr. Chairman, fellow delegates, during the past three and a half weeks I've tried to remain in mind that we are here in this body to try to do something and not to try to show the world how well we can. While I'm not sure whether it was intended or not, I'm induced to put the words 

We do not know what this amendment means. If we are going to get a sound document, I think that we are going to have to try to do different things. I think that's why I'm not sure what this amendment means. If we are going to get a sound document, I think that we are going to have to try to do different things. I think that's why I'm not sure what this amendment means.

Further Discussion

Mr. Rosen.: Mr. Chairman, fellow delegates, I want to talk to you about the vote on page 4. I don't think it's very significant. If we vote for it, we can vote for it. If we vote against it, we can vote against it. But I think it's very significant that we have a chance to vote on it and that we have a chance to vote on it.
of the City Council of Crowley. That should be decided and the questions should be set on a local basis. I voted against the exception for fire and police, but we have it in here. So it was the will of the majority; let's go with it. But, let us not delay. Let us get on with this section out altogether, so that these mandates can be pressed upon local government in every classification. Let us employ the local government to set the local priorities out of local funds through the elected local representatives. Let's set the state government set state priorities from state funds. The real test of would be programs in each area. Let's say to our legislators, "decide... if you'd rather be on the city council, run for the city council, but don't try doing two jobs at once."

If we take this out, it would be as ridiculous as letting the Louisiana Municipal Association do the salaries of state policemen. Let us not give in to this folly. Thank you.

Further Discussion

Mr. Jackson Mr. Chairman, ladies and gentlemen of the convention, being on the Local and Parochial Committee, I understand what's going on at this point. I want to suggest to you that some of the amendments you are going to hear are some of the amendments, that I told you originally about the firemen and policemen, that I introduced, and some of the people who would like to see some of these amendments to be exclusive of everybody on that committee took staunch opposition. You will, there's no weight in the exception theory as being presented to you here because I know, I've been through this and I guess... we're going to go through it here for another hour, but I've... I've introduced that in the committee and what I hear—well, no, we can't do it for everybody. So... I would seriously suggest that everybody understand what we are going to do in that this is solely an attempt, and I don't believe in discrimination and never let it be said, because I don't believe in deceiving people. I know... I know that the attempt is to overload this article and that even if I passed an amendment saying... even if I pass or introduce and run with my amendment for sanitation workers it is going to have the same kind of fate that it had in our committee. You know we're going to move from the exception, then we're going to go back to good government practice. I'm saying that... I have to understand what's going on and be very conscious of who is coming up here introducing these amendments and what the prime effect of it is. I believe, as Ms. Flory and I've said before, there is one merit is one of the things that have been presented, but I know the limitation and the extent of what this convention will do on this. I don't go into that. But I'm not going too... I'm not sure... if the door is closed on everybody—I'm not sure... if the door is opened for one group, I'm quite sure as I said this morning somebody else is going to get in at some point, and maybe that may be a reservation on your part, but I just wanted you to recognize what's going on and ask that you vote against the amendment that's being proposed.

Further Discussion

Mr. Flory Mr. Chairman and delegates, I rise in opposition to this amendment. I have searched my conscience and my ability to try to understand the effect that this will do to this entire section, and I have come to the conclusion that if they were sincere in the proposal in itself, then certainly for the protection that they said they would do to the municipalities and other political subdivisions, then certainly that nothing has been done to this proposal to change the implications of these sections. I say to you, if in their wisdom they thought... they thought that they needed that protection from the very beginning, that to come back now and suggest to you that you think the right to amend this section, at least raises a doubt in my mind as to whether or not they were after spite to begin with. I would suggest to you that we reject this amendment and go forward with the discussion on the section.

Further Discussion

Mr. Duval Mr. Chairman, fellow delegates, I think sometimes we engage in harmonies and platitudes too much and don't realize what the issues and I'd like merely to put forth the issue as what will be the legal situation if this amendment is adopted and then you judge from that point of view. If the section is deleted, the legislature will have the right to set the wages for firemen and policemen, for all non-home rule parochial entities. It will also have the right to enact similar legislation for those home rule entities which do not have the Lafleur language in their charter. To my understanding, Baton Rouge and Jefferson both have a language which is contained in this in the committee proposal. So, therefore, the ultimate effect would be that other then Baton Rouge and Jefferson, the legislature could enact legislation affecting the wages of municipal employees, and that is, I think, correct. I'll yield to any questions that you have to put that I think is a legal situation before the group.

Questions

Mr. Flory Mr. Duval, that's not exactly correct, is it? When you read the definition of structure and organization in the committee's proposal, because what they did was take the language and apply to all home rule charters insofar as structure and organization is concerned?

Mr. Duval [s...Mr. Flory, if I may ask you a question. I think those... those home rule... you might be right... all those entities under home rule charters after... if this constitution is adopted may well... legislation may well not be able to apply to it. You might be right.

Mr. Flory That's both now and in the future those that are adopted, isn't that correct?

Mr. Duval Yes, sir.

Further Discussion

Mr. Pugh Mr. Chairman, fellow delegates, sometime ago, I suggested to you that we could delete Section 16, at that time it was early or... it was many sections that than through 39... and not do any violence to home rule charters of the lack of them; that I thought that the committee had prepared and submitted to you a substantial amount of legislative material. I attempted yesterday, to eliminate two of such sections unsuccessfully. Insofar as this section is concerned, I joined with Mr. Lowe in preparing an amendment to delete it. I did so until I found the other amendments laying on the table in reference to the other city employees. I share the enthusiasm of the other delegations that the bringing in of the district attorneys, in connection with local government. They are called upon to exercise on behalf of you, and I, all of the various criminal laws of the state, their responsibility in my opinion is greater than the average city employee. In Shreveport, we don't have structure and organization in our city charters, and I tell you, some punitive measures we do have: In Shreveport, if a policeman is hired, he must put six percent of his wages each month into a retirement program. If his services are terminated rather voluntarily, incidentally, he loses all of that money. That doesn't happen to [1495]
any other city employee, but the policeman I think the firemen also, but none of these other city employees. If a policeman is called upon as has been the case to work twelve hours a day, it is only the privilege of the policeman that allowed him to be paid time and half for those additional four hours that he worked. He was not to be paid that--I distinguished the Lafleur case by the Bradford case for the purpose of taking care of that situation. Additionally, if a policeman in Shreveport has his wages garnished or if he files bankruptcy, his immediate family will lose home, he can't go anywhere else that's a city employee. I tell you these things so that you will recognize there is a distinction between the benefits of other city employees and those of the policeman. A policeman does his job. He does it eight, or sometimes in Shreveport, to twelve hours a day, and I rise for the purpose of advising you as to those distinctions insofar as employees are concerned. I regret, that there's a feeling among at least one of you that the amendments that were submitted in connection with this issue are comparable to those that I have submitted to the convention so far. Thank you.

Further Discussion

Mr. Chatelain Mr. Chairman, and fellow delegates, I feel that this is a good amendment. I feel that originally a good number of the delegates, particularly from the committee which I serve, the local and parochial government, felt that it would be better not to have any amendment in the... in this article... in this section, but now that the tide has turned the other way, I feel that this will eliminate the problem that we have for the immediate future. I feel that this amendment will bring all cities in this state and all employees to the same level. Those cities that now enjoy homerule will enjoy homerule in the future will certainly, most of them, have civil service and unions involved in their employees which in itself will be a big protection to those employees. I feel that this amendment will do the job that needs to be done. I think it puts everybody in the same position: the firemen, the policemen, and all the city employees who are so vital to the health and welfare of our various communities. I urge that you support this amendment.

[Previous questions ordered.]

Closing

Mr. Lowe This will be so quick you will think that I have waived. First of all in the Bill of Rights we said that no person shall be denied the equal protection of law, and it seems to me that in this basic document we're doing something other than giving equal protection to everyone. Now, I want it well understood that I am in favor of a forum for parochial employees and I feel that parochial employees should be able to go before the legislature to present their grievances and for that legislature to act as a forum to hear those grievances. We're not just dealing with cities of 500,000 we're dealing with cities of 1,000, 5,000 and we need the legislature involved and I believe that the elimination of section 16 will keep the legislature involved for everyone and I ask your adoption of the amendment.

[Previous questions ordered.]

Amendment

Mr. Hayter Next set of amendments is uttered by a group of authors—lead author is Delegate Mire. The name on the tug is Delegate Edwards. It's the first name you see at the top. Amendment No. 2 on page 9, delete line 1 in its entirety.

Amendment No. 3 on page 4, at the beginning of line 1, delete the following: "the head of all public officials or..."

Amendment No. 4. On page 9, at the end of line 13, delete the following: or for an increase.

Amendment No. 5. On page 9, at the beginning of line 14, delete the following: "in re... of or for..." and the following: "Amendment... your..."

Explanation

Mr. Mire Mr. Chairman, fellow delegates, all this does is: except the sheriff, the sheriffs, the assessors, the clerks of courts, possibly some of the other constitutional officers who must. In some case get some of their compensation or all of their compensation from the local governing authority. We have been excepted all along in all of the local and parochial sections, and because our powers, functions and also our compensation are authorized through the legislature, we would like to, of course, be excepted here too. We find here that we would have to get an ordinance passed by the local governing authority responsible for allowing us to receive our compensation, and we find that this would be quite cumbersome on the state-wide basis. I think the people that are opposed to this amendment from the committee, and I would like for you to favorably vote for the amendment. If there are any questions, I'd be happy to answer.

Questions

Mr. Weiss Suppose these offices would request a raise of some type, how would they go about getting that increased remuneration? Mr. Mire We present... we presently request our increase in raise in salary or in compensation...

Mr. Weiss Through the legislature? Mr. Mire Through the legislature, yes, sir.

Mr. Weiss But suppose the local government has to put up some of those funds? Mr. Mire It is actually not the local government per se. It's all of the tax recipients in the particular parish or districts from which these taxes are collected.

Mr. Weiss Would... would this be narrowed down to certain exclusive parishes, or would it be a general law? Mr. Mire No, this would be a general law.

Mr. Weiss At the present time it's not general law, however, isn't it--... applies to... Mr. Mire Yes, it is.

Mr. Weiss Specific parishes? Mr. Mire No, it's the general law as far the sheriffs, assessors, and clerks, etc., are concerned.

Mr. Dennis Mr. Mire, I'd like to direct your attention specifically to the first amendment; I'd like to ask you what you think it necessary to delete that in order to accomplish what you have just stated.

Mr. Mire Judge, if you would go with the sections where they go to definitions, they define political subdivisions, and they say that it means parishes, which, of course, we are officials of a parish and we're just afraid that it could possibly include us. It may not, but it may well—and this is why we want to delete that portion.

Mr. Dennis So you're really you're asking at getting out of there the words political subdiv...
56th Days Proceedings—September 28, 1973

sion and public...local public officials," which you might include assessors, and clerks, etc.? Mr. Wire Correct.

Mr. Dennis I see, thank you.

Amendment

Mr. Poynett The corrected amendment first of all adds two coauthors, in addition to Mr. Rachal, Mr. Chatelain and Mr. Johnny Jackson.

Amendment No. 1. On page 9, line 15, after the word "service" and before the comma add the following: "and when not included under—" and this is the change "city or parish civil service" instead of "local civil service". Should read "city or parish civil service".

Explanations

Mr. Rachal Mr. Chairman, ladies and gentlemen of the convention, this morning they...you defeated the Lennox amendment. I think it is important for me to explain the impact of my proposed amendment. This morning's amendment covered the entire state. It did not allow for exception for the smaller cities and the municipalities which chose to be covered as the Lennox addressed. The Lennox amendment mandated that municipalities exceeding a minimum number will have a, what I recall, a general civil service which civil service includes both fire and police. It excludes...the present constitution also excludes from the state municipal fire and police those cities and towns under 13,000 and over 250,000 people. Now, we voted against the Lennox amendment this morning. I did not want to attempt to deny those smaller cities and any other cities which obviously had a desire that they be covered as the section now contains by the Committee on Local Government. Now, I am asking you to support a provision to allow communities which are large enough, able and are desirous to...of providing its own comprehensive governmental services, the right to do so under the principle of self government. The committee's proposal states: "except a law providing for civil service" under these conditions that those communities over 250,000 must have a civil service and there are provisions which govern the supervision thereof. However, to...the committee's section goes on to say "minimum wages, working conditions and so forth" and I say that this should not apply to those communities with their own comprehensive civil service program. Now day before yesterday when the convention voted in the Avant amendment, the headlines screamed "Police Power Voted to State." It was alleged that strong home rule had been undermined. The language that I'm trying to insert in Section 16-or without inserting it in 16—does what is tantamount to the same things in regards to regulating pay, working conditions and so forth for firemen and policemen. While I do not wish to force communities which desire the provisions of this section, as it is now written, to be denied their wish. I more strongly do not desire to force those communities which do not want that condition to be forced to live under it. The most disruptive kind of personnel practice is one in which employees have two bosses: one which pays, or has the power to say how they are to be paid, while they work for the other one who supervises. The effect of my amendment then, is to permit those municipalities with what I call comprehensive civil service programs not to be placed under the mandate of the Section 16 as it is now required. I urge you to support this amendment. Mr. Chairman, I'll yield to any questions.

Questions

Mr. Duval Mr. Rachal, to make sure I understand your amendment, let me ask you, in the event a city's firemen and policemen were under a comprehensive civil service plan, under your amendment does that mean that the legislature would not be able to pass laws affecting the salaries and compensation of these people?

Mr. Rachal That's right, it would exist the same as the legislature does not now pass laws affecting state of city civil service employees.

Mr. Duval Thank you, I understand it completely.

Mr. Avant I just want to make sure that we understand each other, sir. You realize that the present constitution provides for a fire and police civil service system, mandates one for every city from 13,000 to 250,000 population, and that the legislature has mandated it down to 7,500. So you have a fire and police civil service system in every city from 7,500 to 250,000 population. Are you aware of that, sir?

Mr. Rachal Right.

Mr. Avant You are then aware of what adoption of your amendment would do to this section?

Mr. Rachal Well, I don't know how to answer your question except to say that my amendment does not have anything to do with the persons now covered solely under state fire and municipal civil service. My amendment is concerned only with comprehensive civil service programs which include fire and police, of which there is only one.

Mr. Lanier Mr. Rachal, I don't know too much about civil service, but my municipality of Thibodaux has just started civil service. What effect would your amendment have on the other municipalities in Thibodaux; we're a little bit over 15,000 people?

Mr. Rachal If your community voted to establish a civil service...I mean a civil service,...what I call comprehensive is one that includes all of the employees included under a local civil service; is that the kind that it is establishing?

Mr. Lanier My understanding of it,—Mr. Landry might know a little better, but I think we've got an act of the legislature that authorized us to adopt civil service and the three commissioners all agreed for the employees of all three, the commissioners under the commission form of government that we presently have, to put all of their city employees under civil service.

Mr. Rachal A civil service which includes all city employees, including fire and police, would then fit under the amendment as I have it described here, that they would...they would govern themselves through their local civil service arrangement.

Mr. Lanier That means that if I were to vote for your amendment, that in the city of Thibodaux the civil service board, or whatever it is, would fix the salaries, etc., for the employees of the city of Thibodaux and would not be subject to legislative interference?

Mr. Rachal It would not be subject to legislative interference; they would be—it would be subject to the approval of the governor, however, before it would be instituted, but it would be the will of the Thibodaux civil service.

Mr. Stovall Mr. Rachal, might not we better deal with this issue under the civil service provision which will be presented later to this convention. Could not we deal with it in a more comprehensive and objective way at that time?

Mr. Rachal Well, I'm afraid, Mr. Stovall, if we wait until that time we may have gotten ourselves locked into something under this section in this article and my...I'm not certain what will remain
56th Days Proceedings—September 28, 1973

by the time we finish it. It could well be that this amendment, as I understand it, does not affect, but I do not see that the...1, and those who support my concept, can wait until that time if we be...if what I am trying to get done is precluded by this section 9 between all the protection at this point. I urge your support of the amendment.

Further Discussion

Mr. Flory The municipal employee not including firemen or policemen.

Mr. Lanier Yes.

Mr. Flory I think that it would have no effect on them if you retain the first paragraph of Section 16. I...what he is adding in his amendment is to the exception so that the first part of the sentence refers to the municipal employees in Thibodaux and we do not disturb that by the amendment. I might add in closing, Mr. Chairman, to give you a real answer, Mr. Lanier, depends upon what this Constitutional Convention finally did with civil service as a constitutional matter. That is the great fear that I have in the amendment because as to how they may eventually define city, parish or state civil service, municipal and fire service versus the two.

[Editors' note: ommitted]

Closing

Mr. Rachal Ladies and gentlemen, as someone suggested, maybe there's more the necessity for more discussion, but I do not see that the amendment that I proposed as having the effect of reversing everything in the city of Thibodaux that I did this morning that is not the intent that I have with it, certainly and may possibly will become clear as the all of civil service is given over to you that the intent of this amendment is to allow the municipalities which have a civil service system to cover all of its employees including fire and police, that they shall have the principle of home rule and be able to make rules regard for all of their employees and not have some of the employees within those communities, as few as they are, to have different classes of employees treated separately...That all that when a civil service system in a community has all governmental employees, including fire and police, that there will not be general laws passed setting their wages, working conditions, etc., urge your support of the amendment.

Amendment

Mr. Poyneter Amendments offered by delegate Rachal, amendment No. 5, insert the following. No local government in this division shall discriminate in the provision of civil service, uniform wages, working conditions and retirement benefit against any of its employees individually or as a class, the provisions of this constitution or any general law notwithstanding.

Explanation

Mr. Poyneter Mr. Chairman, and fellow delegates, this important subject is offered as a clarification of the acceptance of all of section 9, as the chairman has proposed it, and prohibits any local government from discriminatory practices affecting civil service, uniform wages, working conditions and retirement benefits against any of its employees individually or as a class. Now, I don't believe that I would think the amendment great for itself and would certainly as a part of it might have at this time.

Question

Mr. Poyneter Mr. Lanier, would you feel that, now, if I were to raise you would have to give it to everybody?
Mr. Lennox: That's correct. Proportionately.

Mr. Pugh: Under the terms of this amendment, does this mean that everybody has to ride around in police cars since they have to working conditions...

Mr. Lennox: I don't believe it does, Mr. Pugh, and I don't believe you think it means that either...

Mr. Pugh: I wouldn't ask the question if I didn't think so; I told the same man here that...

Mr. Lennox: Well, I don't believe it means that, if that answers your question.

Mr. Goldman: I'm getting a little confused about this. Would this...Mr. Lennox, would this amend-ment make it mandatory to pay the mayor and the city councilmen overtime if they worked more than eight hours a day?

Mr. Lennox: I do not believe it would.

Mr. Goldman: I've been told it would; now, I don't know who to believe.

Mr. Lennox: Well, believe me and you'll be in good shape. I urge the adoption of the amendment and I ask for a record vote.

[Previous Question ordered. Amendment rejected: 36-76. Motion to reconsider tabled.]

Amendments

Mr. Poynter: Amendments sent up by Delegate Casey as follows:

Amendment No. 1. On page 9, line 15, after the word "a" and before the word "law" Insert the word "general"

Amendment No. 2. On page 9, line 16, after the word "benefits" and before the word "firemen" strike out the word "for" and insert "in lieu thereof the following: "which uniformly applies, both in terms and effect, to all."

Explanation

Mr. Casey: Mr. Chairman, and delegates, I think a lot of the discussion brought out...has brought out...some very good points and information about problems in local government. I certainly know that some of the problems that local government has experienced in some areas has been either the incapability, or the lack of responsibility, to properly accept its responsibilities in dealing with its employees and paying to them the proper compensation to which they might be rightfully due. I can certainly understand why the firemen and police have inserted the exception contained in Section 16. But my point is that...we should treat everybody equally: what is good for the goose is also good for the gander. I know you have heard that overused phrase many times. So, my recommendation in my amendment is that...if you are going to have an exception for a law, as shown on lines 15, 16, and 17, the exception should be for a general law having uniform effect as applied to everybody. To every munici-pality, to every form or plan of government in the State of Louisiana. So, I would submit to you, if we are going to establish minimum wages and minimum benefits in the city of New Orleans, East Baton Rouge Parish, Caddo Parish, Mr. Chairman, Jonesboro, let's do it and have uniform application throughout the state. There is no reason to have one pay scale in New Orleans and a much lower pay scale in Jonesboro...and maybe Jonesboro has a higher pay scale than in Covington, Senator Rayburn. Let's treat everybody equally.

Mr. Henry: Just talk about the amendment and let's leave the smaller municipalities alone, Mr. Casey, please.

Mr. Casey: I beg your pardon.

Mr. Henry: Just go ahead and discuss your amendment and leave the smaller northern Louisiana munici-palities alone.

Mr. Casey: Thank you, Mr. Chairman, I appreciate your encouragement and assistance on this amendment. My only point is: let's treat everybody the same. If we're going to have great retirement benefits in the city of New Orleans, let's give the same bene-fits to Alexandria, to Caddo, Lafayette, Lake Charles, Jonesboro. I'll yield to any questions.

Questions

Mr. Rayburn: Mr. Casey, are the requirements the same statewide to secure employment?

Mr. Casey: Senator, I would assume they are not, but I would think the responsibilities are the same, and possibly we might address ourselves to those problems also.

Mr. Rayburn: For all municipal employees, the re-sponsibility is the same...

Mr. Casey: We're talking about police and firemen only, on lines 15, 16 and 17, and this exception would require a general law for minimum wages, working conditions, retirement benefits, uniformly applied in terms and effect to all firemen and police. We're not talking about other employees, we're talking about fire and police.

Mr. Rayburn: Mr. Casey, do you think their duties would be equal or are they the same throughout the state? I've been to Orleans when one fellow had to take a little whistle and foot-foo for eight hours--go or stop. Another one might be...drink coffee every thirty minutes or ride around and patrol. Do you really believe that their duties are equal in all municipalities or all villages in this state?

Mr. Casey: Senator Rayburn, I can't imagine that the knowledge and experience of an attorney in New Orleans should be any less than the knowledge or experience of an attorney in any other town or city in Louisiana. The responsibilities of a policeman or a fireman or just as great as any attorney. A fireman in Lafayette has to know as much about putting out a fire as in New Orleans, and a policeman must know as much about law enforcement in Union Parish or Webster Parish as in New Orleans.

Mr. Rayburn: Mr. Casey, don't you agree that they have got sergeants, they have got chiefs, they have got assistant chiefs, and as far as attorneys, they've got attorneys to pick up the wrongs in criminal law, they've got attorneys that practice all kinds of law, and they've got other attorneys who are just known as "fixers"?

Mr. Casey: That's certainly correct. What point are you making, though?

Mr. Rayburn: Excuse me, I'm making the point that it is not at all equal.

Mr. Casey: But the requirements to get a law li-ence certainly is; you have to pass the same bar exam, no matter where you are from.

Mr. Tate: Mr. Casey, under the present statutory scheme, do they classify the municipalities according to size: for instance, from 0 to 13,000, they don't provide for any salary regulations, from 13,000 to 250,000, they provide a certain scale, and above 250,000, another scale? Is that how it works? Or could you inform us how the present scheme works that this would change?

Mr. Casey: I would...first of all I'm not sure what the present scheme is, I would assume the pay scale is...is pretty much up to the local governing authorities. However, if we are going to let police and firemen come in with special
56th Days Proceedings—September 28, 1973

... legislation that might affect Pointe Coupée or some other city. I think if the lobby is strong, see the problem is, we have had police and firemen, maybe come in from Lafayette and they may be successful in getting to Hr. Casey to obtain his assistance on passing some legislation which may affect only Lafayette or Lafayette Parish. Certainly, I’m very general, we are, with the state and with the money belonging to Lafayette, so, it is very easy for me to say, “yes, I’ll certainly help you,” but with a matter of general application then it is going to be when a legislator is asked to vote for benefits of this type which affects everybody.

Mr. Tate well, I had a general idea that the legislature regulated smaller municipalities which have, naturally, a smaller tax space etc., differences than larger municipalities. How do they presently classify them and would you abolish that classification?

Mr. Casey I don’t have that information available. I don’t know, and I don’t think attorneys in small towns get paid less than an attorney in a city between 25,000 and 100,000. I just don’t think it’s right.

Further Discussion

Mr. Avant Mr. Chairman, fellow delegates, I’m not going to take but just a moment or two of your time. This amendment is another amendment which either by design or by accident, would undo what we’ve been doing here this morning. Now, uniformly, and treat everybody alike… that sounds good, but the facts of the matter is, and are, that there are numerous differences and distinctions that prohibit in the first place, the retirement systems, as now established, differ in certain particulars. You can see the chaos that would result immediately if Mr. Casey’s amendment was adopted. Another thing, the benefits may not be needed by both classes of employees at the same time. In other words, the legislature may, at a given period of time, feel and find that certain things are to be done in the area of police protection where they are not required at that particular moment of time in the area of fire protection. Within the same class, that is, firemen, the problems of a firefighter within the city of New Orleans with its numerous, extremely high-rise buildings is certainly different from that of the problems of a firefighter where you don’t have that type of building and construction. To carry it to its ultimate, I think, absurdity, would be if the legislature, in its wisdom, decided that the way the municipalities should purchase for, and supply to all police officers the weapons that they must carry in the discharge of their duties and a certain number of rounds of ammunition, and require them to expend that ammunition on a firing range. Now, are you going to say that you have got to apply that to firemen, and buy every firearm in the state a 38 police special, and tell him to go out on the firing range every week? That’s the kind of thing that you get into it, as I said, either by design or unwittingly and I don’t know and don’t particularly care what undoes what we have been trying to do. It presents innumerable practical problems. I strongly urge you to reject Mr. Casey’s amendment.

Further Discussion

Mr. Wall Mr. Chairman, fellow delegates, you know it’s impossible for us to draft a perfect version of a perfect instrument. I guess it’s impossible to have to do a perfect instrument. I guess it’s unattainable to do a perfect manuscript. I’ve always been asked, Tom, don’t you get along with him, as always being there at everything he’s ever done. But I just think that he just that he fails to that this amendment in and gave you that issue he gave you, et al. He’s always at the legislature talking about how New Orleans is different, New Orleans is different here. New Orleans is different here, we have the problems of all the people from all over the state we’ve got to treat New Orleans different, we’ve got to give Mr. Casey what he wants, and sure if that money. I agree with him. I, one of the proponents of that says we, that’s what good for New Orleans, really, in most instances at least, speaking New Orleans and the state. But when he comes here and tells you like he did, “when uniformly applies both in terms and effect,” now we know oh, I would be willing, I would be willing for us to be able to accept all employees. But that’s not what he’s trying to do here. He’s trying to put a straitjacket uniformly applies both in terms and effect. It is an absolute impossibility for the legislature to properly legislate and use discretion in this instance. This is not doing what Mr. Casey would have you where you could treat everybody alike. It makes it impossible to properly treat the people in this state with legislation. So, I’m going to ask you to vote against this amendment. Now if there was an amendment there to have everyone, then I would be for it, but not to this extent, uniformly applies in effect and terms. It makes it impossible.

I’m going to ask you to vote down this amendment.

Questions

Mrs. Zervigon Mr. Wall, I was very interested by your questions. Does that mean that you have committed yourself to vote with New Orleans when New Orleans tries to keep our peculiar Civil Service System, which is different from anyone else’s throughout the state?

Mr. Wall Pardon me, ask that again.

Mrs. Zervigon I say I appreciate your remarks about the lack of uniformity across the state. That means that you have committed yourself to vote with New Orleans when New Orleans tries to keep our peculiar Civil Service System, which is different from anybody else’s across the state.

Mr. Wall That’s not the question at issue, Mrs. Zervigon. I will face that issue when it comes up.

Mrs. Zervigon The question at issue is uniformity. I was just wondering where uniformity applies in your mind and what it seems to apply.

Mr. Wall It doesn’t apply here in this amendment. Mrs. Zervigon. If you have no other question that that, well, I move the previous question.

O.K. I yield.

Mr. Landrum Mr. Wall, the previous speaker wrote about chaos should this amendment pass. He wrote about chaos should this amendment pass. Do you fear that at it stands now, that we would have chaos in New Orleans?

Mr. Wall I don’t believe there was chaos. There was ample, and if you have a question, I’d be glad for you to ask it.

Mr. Landrum I said the previous speaker.

Mr. Wall If you want to make a speech, I’ll yield the floor to you.

Mr. Landrum No, the previous speaker entitled him to speak about chaos.

Mr. Wall I didn’t use the word "chaos."

Mr. Landrum Well, tell me. Mr. Wall, if you think that there is a problem, we can’t have the French quarter, for instance, where you have a lot of buildings over it, where the state renews a lot of money.

Mr. Wall If you want to take a floor, I’ll yield the floor to you. I yield in the meantime.

[1500]
Mr. Landrum 56th Days Proceedings—September 28, 1973
Mr. Wall.
Mr. Wall  All right. Well, come on with the ques-
tion; I've...
Mr. Landrum  If you'll just be quiet, or if you just don't want to answer my question and talk
your time out...
Mr. Wall  I want to answer your question, if you'll ask questions...
Mr. Landrum  All I'm asking you, Mr. Wall, is that the
City of New Orleans, we get a lot of money from revenue... from the French Quarter. The state re-
ceives a lot of money from taxes...

[Previous Question ordered.]

Closing

Mr. Casey  Thank you, Mr. Chairman.
Mr. Chairman and delegates, I wish to inform
Shady Wall, who is my very good friend—we've
served a long time in the legislature together; I
hope he hasn't think I'm starting to grow horns at
this time—But, Shady, I'm quite sincere in this
amendment. I certainly do appreciate your assist-
ance on New Orleans and municipal; you certainly
are one of our supporters, no question about

But, here, we are talking about minimum wages,
minimum working conditions, pension, retirement
benefits; and I can't, for the life of me, under-
stand why we have to have one rule in Lafayette
and a different rule in Caddo Parish, Mr. Roemer.
It doesn't make good sense to me.

When the federal government passes minimum wage
laws, Mr. Roy, they don't say it's different in
Louisiana than from Michigan, or from Maine, or
California. I can't understand why, for the life of
me, when the federal government, and I know we
have some strong supporters of the federal govern-
ment in here, and certainly believe in minimum wages,
and I do myself. I think we have to establish
minimum working conditions, and wages for our em-
ployees. There is no reason under the sun why it
should be different in New Orleans than it is in
any other part of the state.

I urge you, if we are going to adopt laws which
affect police and firemen, which should have the
very same qualifications in New Orleans—just be-
because we have a few high-rise buildings in New Or-
leans does not mean we are any different. If you
are going to practice law in another parish of the
state, I don't care where it is, Beauvoir Parish, you
ought to know something about admiralty law.
If you are going to go to law school, you learn
something about admiralty law and administrative
law and successions. I don't care where you prac-
tice law. By golly, if you're going to practice,
or if you're going to become educated to be a fire-
man or policeman, you ought to possess all of the
qualifications.

Thank you.
[Record vote ordered. Amendments re-
jected: 51-64. Motion to reconsider
tabled.]

Amendment

Mr. Poynter  Amendment No. 1 [by Mr. Edwards, et
al.]. On page 9, line 16, after the word "and",
and before the word "police", insert the word
"municipal".

Explanation

Mr. Martin  Mr. Chairman and delegates, I think
this is more in the nature of a technical amendment.
I'm just wondering if they may classify one of my
deputy sheriffs as a policeman? That is the reason
why I put this in there.

I have no further explanation. If there are
any questions, I will be glad to try to answer them.

Questions

Mr. Champagne  Sheriff, I was just wondering, would
you say this is a special interest amendment?
Mr. Martin  Yes, I do.

[Previous Question ordered. Amendment
adopted: 89-22. Motion to reconsider
tabled. Previous Question ordered
out the entire subject matter. Section
passed: 85-30. Motion to reconsider
tabled. Motion to waive reading of
Section 17 adopted without objection.]

Explanation

Mr. Lanier  Mr. Chairman and fellow delegates,
Section 17 deals with the authority of local gov-
ernmental subdivisions over the subordinate dis-
tricts that are created or exist under these dis-
tricts. What we have done here is to provide
the same authority to control subordinate districts as
presently exists in Article XIV, Section 46, of our
present Constitution. This provision was added in
1966 in what is called the "Sam Jones Amendment." The
problem here is that what was happening in
many of our parishes, and the people feel the parish
is authority by general law to create many different
types of districts, drainage districts, road dis-
tricts, lighting districts, hospital service dis-
tricts. You are familiar, this year, with the
different types of districts that were created.
Very often, after these districts were created,
they were really considered an integral part of the
municipal subdivision, but they had a certain degree of
independence. The people on the boards of these dis-
tricts are appointed. They are not elected, and
they are not directly responsible to the people. As such,
sometimes situations would exist where these dis-
tricts did not function as they should, and yet
the governing authority of the municipality in
parish was restricted in its ability to cure this
type of a situation.

In order to make these districts more respon-
sible, and, of course, to give the elected officials
on the local level direct responsibility for the
action of these districts which they are supposed to
have, this constitutional amendment was passed.
It is, of course, necessary to allow for the vari-
ous types of controls described therein over these
districts, so that if one of these districts does not
function properly, and you as a citizen have a
complaint, you can go to your duly elected offi-
cial and he can't tell you that he doesn't have
authority to do something about it, because under
this amendment, he does. This is designed to make
the duly elected people more responsive because
they have the tools available to them to do this.
It is also designed to provide for consolidation
of districts where necessary. In other words—
and I'll give you an example; my parish has a classic
example of it—we have many, many, many drainage
districts that are not necessarily coordinated in
their efforts. The drainage districts on the upper
end of the parish dump their water on the drainage
districts in the lower end of the parish, and they
do not coordinate their efforts. It may well be, in
years in the future, we may wish to combine all of
these drainage districts into a department of drain-
age under our police jury; some parishes are doing
this in this direction right now. This provision
facilitates this type of action and brings about
more efficiency in the operation of your government.

So, if you will study and you will note that in item 1 on line 27, it provides that
the members of the governing body of the agency
will be appointed or reaffirm at the pleasure of
the governing... the local governmental subdivision.
This is in addition to the present law, although
many of the laws authorizing these districts have
such a provision. These provisions are the present Sam Jones Amendment in Article
XIV, Section 46; in other words, the authority to

[1501]
exercise budgetary and fiscal control over the agency with authority to do so for all its operating budget line items, so that the governing authority and absorb its powers and functions. Of course, this can only be done with the local governing authority to absorb obligations or indebtednesses of the agency. Of course, you couldn't impair a vested right, in any event, under the Federal Constitution.

In the (C) part, we have the supervision of the fiscal affairs which is presently in the present constitution. This is to provide for the local governmental authority to exercise a uniform fiscal control over the entire system so that it can be administered in the best way for all of the people within the district.

The (C) part provides that, if the district is created by two or more governmental subdistricts, that the concurrence of all of the subdivisions who joined in the forming of this proposal would have to concur in the action taken. A little later on, we'll be getting into intergovernmental cooperation, and this is a part of the intergovernmental cooperation say two or three parishes may wish to join together to provide some kind of a juvenile detention facility. This is an upcoming concept that we have in Louisiana regional planning, in handling matters on a regional basis, where you bring about efficiency in the particular function involved. This provision is necessary because many of these districts are mostly provided for by general law, and, this constitutional authority is needed in order to consolidate and coordinate these activities.

I'd be glad to yield to any questions at this time, Mr. Chairman.

Questions

Mr. Jenkins Mr. Lanier, you kept talking about special districts, but districts, as such, are not mentioned in here, only agencies. What is the meaning of the word "agency" in this context? I don't see it defined in the back.

Mr. Lanier The term "agency," or district, as used here, are the special districts that are created under, say, like a police jury; you'd have drainage districts and lighting districts and road districts, any numbers of hospital service districts, all of these types of single purpose agencies or districts that are used to carry out a specific function that would ordinarily re-ide in the local governmental subdivision.

Mr. Jenkins What I'm trying to understand I can understand that a, say a community redevelopment agency is an agency, or a community action agency is an agency, or a planning and zoning commission is an agency, but I'm having a hard time understanding that a special district is an agency under your definition here.

You don't mention special districts anywhere in this section, and then in the next section, you distinguish between special districts and local governmental agencies.

Mr. Lanier Right.

The next section deals with districts that are recognized by the local governmental authority. This provision is intended to those that are recognized under, and by virtue of, the authority of the local governmental unit. Most of your general laws dealing with this are defined in the constitution authorizing the creation of all of those multi-type districts under the general umbrella of the local governmental authority.

The other thing you are referring to are districts that are not created under the umbrella of the local governmental authority, and are in some way created by the state.

Mr. Lanier I have two more questions.

Mr. Lanier and one other thing, if I might, Mr. Jenkins.
both inclusive in their entirety. Delete the whole section.

Explanation

Mr. Gravel] Madam Chairman and ladies and gentlemen of the convention, I do not think there is too much question, that the principal concepts relating to home rule, relating to local government, have been acted upon by the convention. I think there is particular attention to the provisions, not only of the section 17, but of all of the remaining sections that are encompassed...

[quorum Call: 99 delegates present and a quorum.]

Explanation continued

Mr. Gravel] I request respectfully that we give very, very careful attention, specifically to Section 17, and generally to the other sections of this article as we proceed with our deliberations. As a matter of fact, I think that we can fairly agree that whether we've been on the winning side or on the losing side, that there has been an accommodation of views to the extent that almost a practical consensus, together with ninety percent of what should be put together in an article dealing with local and parochial government.

I think it would be well for us to realize that insofar as we are able to do so, we should distill every single section from now on out, where such distillation can be accomplished, and eliminate those provisions that are unnecessary to a new constitution.

We're on page 9 of an article that runs a total of twenty-six pages, and if we are going to give consideration, which I suggest to you that we are going to do, to purely statutory material from now on out, we are going to be on the Local and Parochial Article well through the month of October, because we are going to go through the same painful process of changing sentence by sentence, part by part, and eventually getting nowhere.

Section 17, ladies and gentlemen of the convention, begins by saying "in addition to any other powers granted by the legislature" and then proceeds to delineate additional discretionary authority that local government shall possess. That, I suggest to you, is not what belongs in the document that we are preparing. Oh, I know that it could be said that kind of language somewhere and sometime in order to achieve the objects and purposes suggested by the language. But I recommend to you that that be left to the charter, or to the ordinance, or to the statutes that may necessarily be involved, passed, enacted for that particular purpose. The time has come when we must come to a halt and reexamine this work and make sure that we are not engaging in proliferating considerations that really are not of constitutional stature.

I said to a number of delegates today that we have come this far without there being-and this is amazing to me-a single situation that anybody can point to where any two delegates in this body are angry with each other, where there have been any, there has been any flaring up of tempers, where dislike or distrust has persisted any degree. I think that the people of this state are going to realize, when they talk more and more to the delegates who represent a cross section, fairly, of Louisiana as is represented in this particular body of the definable segments of the State of Louisiana represented in this body, that there is agreement that at this point we have a document that all support actively and enthusiastically, even though it may contain provisions that we especially may not particularly like. I think we've got the right atmosphere, and...
50th Days Proceedings—September 28, 1973

Under 9, the existing units of government that are not home rule will only have the residual grant of authority if their people vote to have it. What happens to a local government like the parishes? A statute that authorizes the creation of a city. Most of these districts are set up by statute of equal dignity and magnitude. The legislature, by creating all of these districts, can completely shatter the powers and functions of that unit of local government. The people who are elected to control this district will not have these controls unless they are constitutionally granted. You have this same problem with police juries. Police juries exist by statute right now. In the areas where that is the case, if they don't opt to have a residual grant of authority, you're going to have a terrible situation just like we have in my parish right now. Under this amendment, as it presently exists, we can make this thing work. But, if this authority is not in our constitutional law, I don't know how many drainage districts we have. We've got all sorts of other districts. Each one is a single purpose power and function of existing government. If the unit of local government that has control over all of this area does not have the residual authority, how do you over to them what kind of a situation have we got? Well, right now we are trying to emerge in this state from the way local governments are set up on the parish basis. If you will notice, the more urban parishes that we are going to the parish form of government. It started here in Baton Rouge in 1948. Johnson has gone to that. If we go to that, would like to go to it. This is a concept where you don't have a district for every little single purpose. We like roads, and lighting, and garbage, and sewerage, and drainage if every ward. You combine these districts for greater efficiency. Why should you have ten drainage districts for ten different wards in a parish? This is not in the best interest of the people. The drainage district on the upper end of the parish is going to dump the water on the drainage district at the lower end of the parish, and so on down the line. The coming thought in local government, as I see it in Louisiana, is to try to consolidate these powers and functions so that you will have efficiency and an overall game plan in the parish. Now, this is something that is an absolute necessity, ladies and gentlemen. It's needed for us to progress in our local governments in the local government. It's the distillation of this language in some other way that would satisfy you; well, fine. But to meet all of these problems and to have an efficient system, in my opinion, we definitely need a proposal of this type. This is because we're going to have many situations in our parish—home rule. If we're going to have a home rule unit, we're going to have non-home rule units, we're going to have. Please, fellow delegates, defeat this amendment.

Amendment

Mr. Pfyffer. Amendment sent by Delegate Gravel, Kean and Pugh. Amendment No. 1. On page 9, delete lines 74 through 84 in their entirety and on page 11, delete lines 1 through 16 in their entirety, and insert the following:

"Section 17. The governing authority of a local government subdivision shall have general power over any agency heretofore or hereafter created by it, including, without limitation, the power to abolish any such agency and to require prior approval of any change or tax levied, or bond issued by such agency.

Explanatory

Mr. Kean. Madam Acting Chairman, fellow delegates, when Mr. Gravel first discussed the definition of this utility with me, I was inclined to agree with the approach that he suggested in his amendment. However, if you will recall that in Section 9, that there are a number of police juries and small municipalities. The section that is in the law until such time as they might vote to take the additional powers that are granted by Section 9, under those circumstances, you could have many municipalities and the authority that is granted to them in the present constitution to deal with agencies which are created by them, particularly in regard to the matter of budget and in conjunction with the issuance of bonds and the levy of taxes and charges by agencies governed by persons who are not elected. To that extent, I think the same provision of this kind is needed in order to carry forward the same authority that is in the present constitution, enjoyed by these police juries and municipalities which might not want to take advantage of the additional powers under Section 9. We do agree that this section can be greatly shortened and still provide the basic provisions that are contained in Section 17 of the committee proposal. In my opinion, Section 17 as presented in the amendment covers all of the acts that are covered here. So, I think in Section 17, the proposal, and would be adequate to protect the governing authority of these particular municipalities and parishes that are going to be created by them. Under the circumstances, I submit to you that the proposed amendment should be adopted and would greatly shorten the language of this section and the same time achieve the same thing that the original proposal had indicated.

Questions

Mr. Thompson. Gordon, on the last line, says, 'prior approval of any charge or tax levied.' Do you mean by this, the people vote on this, or are the bonds levied? Is this what your intentions are?

Mr. Kean. Well, in connection with whatever charge or tax would be levied, there would be either institutional or statutory authorization for that charge or levy. The reason we used the word because a service charge, for example, is not considered to be a tax. So, we're not taking the governing authority, the elected body, to have the right to give prior approval to that charge or revenue proposal, and would be adequate to protect the governing authority of these particular municipalities and parishes that are going to be created by them. Under the circumstances, I submit to you that the proposed amendment should be adopted and would greatly shorten the language of this section and the same time achieve the same thing that the original proposal had indicated.

Mr. Thompson. This prior approval, was that what mean the governing body or does it mean the people?

Mr. Kean. Well, whatever would be required by the constitution and statute for the levy of the charge or the tax would have to be done in the parish for a village, for example, as we'll get into when we get to the financial section of this particular proposal, you'll find that it has to be voted. It would require both the vote of the people and prior approval of the governing authority.

Mr. Hernandez. Mr. Kean, do you think that we need in there the right to give to this governing authority the right to remove certain of any board that it creates?

Mr. Kean. Mr. Hernandez, it was our view that by using the broad language, general power without limitation, in lieu of without limitation the fact that included the lesser power, to remove lesser.

Mr. Hernandez. Do you think that would include the right to remove individual persons for any reason that they think necessary?

Mr. Kean. Yes, sir. That's correct.
Mr. Kean. I agree, and it was our view that the broad power would include the right to have budgetary control if they desired to exercise it.

Mr. Hernandez. No doubt in your mind about that?

Mr. Kean. No, sir. It was our view that by the use of the language we’ve used that we have covered the right to appoint and remove members, to exercise budgetary control, and to substitute a different budget and so forth, as is now presently contained in the proposal by the committee.

Mr. Hernandez. Thank you, sir.

Mr. Champagne. Mr. Kean, do you know that I think this is a beautiful amendment, and that it is with pleasure that I join with you folks in your venture with a shorter version ‘cause I knew you all could do it all the time?

Mr. Kean. Thank you very much, Mr. Champagne.

Mr. Berry. Mr. Kean, I certainly am in accord with this amendment, but was it the thinking of the committee that the right necessarily carry with it the right to abolish, and therefore, you want to mandate this power in the constitution? The right to a cui wouldn’t necessarily entail...

Mr. Kean. Heretofore, the jurisprudence has been in instances where the legislature, for example, authorized the establishment of a hospital district and a board or commission. The question then arising is to whether or not the governing authority which created that district had a right to remove those particular members of the authority; as a result of that, the language which now appears in the committee proposal, was inserted in the 1921 Constitution by amendment in 1966. I think it was. We simply wanted to avoid any possibility that they did not have this power by including it in this constitution.

Mr. Dennery. Mr. Kean, am I correct in assuming then if the ordinance creating an agency provides for overlapping terms, that the right to remove could be restricted in that ordinance?

Mr. Kean. Well, I would...it would be a question in my mind that if you have a right to abolish the agency that, of course, that would include the right to remove members of that agency. Whether or not they would...it would have to be within the framework of the ordinance, I really don’t know, Moise.

Mr. Dennery. Well, no, I was speaking...assuming the agency continues, you stated previously that it would include the right to remove since they had the right to abolish.

Mr. Kean. That’s correct.

Mr. Dennery. But, if in creating the agency, overlapping terms were provided for the purpose of a continuing proper governing of the agency, do you agree that the governing authority would not have the right to arbitrarily remove during the term for which an individual was appointed? The reason I ask that, Mr. Kean, is that we do have such a provision in the executive section, which we have previously adopted, that states that the governor has the right to remove all except those who are appointed for a term under the constitution or under the creating statute. I should think the same rule would apply here.

Mr. Kean. I think that if you wanted to have that rule made clear, Moise, we ought to have an amendment to this provision.
with it. — Wouldn't that be the effect of your amendment?

Mr. Jenkins: No, not anymore than it is at present. Mr. Avant: I think it is true, and virtually every agency has the right to have an appeal to the local governing authority, but that hasn't presented a problem in the past.

Mr. Avant: Not to just set aside contracts on a political basis which is what I think your amendment does.

Mr. Jenkins: Well, this isn't going to change the present system in that regard.

Mr. Flory: Mr. Jenkins, your amendment disturbs me to the extent ... take the example of an auditorium commission or a civic center commission who is charged with the responsibilities of operating that commission under a governing authority like we have here, the home rule charter. Let's suppose, for the sake of argument, we contract with Ringling Brothers to come in and hold a circus. We guarantee them three hundred thousand dollar gate on certain dates. All right, so the commission sets that up, then the city council comes back because they want to hold some sort of function there and then changes the dates that we've guaranteed. Then we've broken a contract with Ringling Brothers and hung with a three hundred thousand dollar debt, under your amendment, as I understand it. Is that not correct?

Mr. Jenkins: No, I don't think that's correct, Mr. Flory, I certainly don't. This only makes the decisions of an administrative agency appealable to the governing authority, just as the decisions of officers of departments and agencies right now are finally determined by the governing authority of that agency on the state level.

Mr. Flory: But, don't you say "to reverse," and if we're contracted with those dates, then they have the right to reverse that decision of the commission?

Mr. Jenkins: Well, of course, they could reverse decisions of the agency, but in the first place, I don't think that a decision to ... I mean that a contract made by an agency is a decision of the agency anyway. We're talking here about rulings, administrative rulings, decision making, like the decision by a zoning or planning commission to rezone a certain area. This should be, it is, in virtually every place that I am aware of, and certainly should be appealable to the governing authority of that jurisdiction. That's what we're talking about here.

Further Discussion

Mr. Perez: Delegates, the reason that the amendment was offered by Mr. Kavan was to try to shorten this section as much as possible. If the Jenkins amendment passed, we're going to have to add all of these other specific items. In the first place, I would urge you to reject the amendment in order to comply with the wishes of the delegate to shorten the section.

Mr. Brown: Mr. Chairman and delegates, I was very well to point up to you the distinction between this section and the previous section that was just adopted. The previous section had to do with central, but not central, in the case of a governing authority section, applies to agencies not created by a local governing authority but war a local governing authority that is within its border, if it were not created by them. This is mostly to take care of the problems which reside primarily in Jefferson and St. Charles, constitutional and statutory problems of that sort. They will be able to be reversed only upon a favorable vote of a majority of the electors voting on the question. We figured that an agency not created by the authority there ought to be one additional safeguard before any merger or consolidation would take place. I yield to any questions.

Reading of the Section

Mr. Poynor: Section 19: Historical Preservation Districts

Section 19. (1) In order to promote the educational, cultural, economic, and general welfare...

Explanatory

Mr. Reeves: Historical preservation districts; this is a section of compromise. I will admit, first of all, that I had a tremendous amount to do with this section being passed as it exists. We have a tremendous problem within the state of Louisiana that is virtually within the city of New Orleans. That problem is with the Vieux Carre Commission. The original proposal was that the Vieux Carre Commission as it exists, in the 1921 Constitution, as it was written at that time, I would have a Vieux Carre Commission. This is not necessarily a preservation district, as far as I can tell. There is a small area, that which is a part of the Vieux Carre and the other historical preservation districts. We were able to take the Vieux Carre Commission and make it tremendously better than what we have today. The Vieux Carre Commission would have to make a decision that this is the case, and in the process would have to make it a historical district. It is in the history of our government that we did feel that local governments had to be particular in the setting of the rules of the historical preservation district. We felt that it was a good idea to say that you would have to have a decision that this is the case, and that the decision would be made that it was in fact a historical district. I believe some have mentioned that it is a historical district. And I believe that the history of the Vieux Carre and the other historical preservation districts is that the Vieux Carre Commission and the other historical preservation districts are not within the city of New Orleans. It is not an accidental occurrence to name the Vieux Carre Commission, but to have it actually put into the city of New Orleans. It does have a historical significance to name the Vieux Carre Commission, and put it into the city of New Orleans.
Mr. Roy. Terry, I have about three questions. First of all, on line 17, when you say that this body, "acting through a commission or otherwise," I take it it could act through one person designated to go around determining what has interest or importance of a local nature that they would like to, or this person thinks should be preserved. Is that right?

Mr. Reeves. Chris, it wasn't maintain...we didn't intend it that way, but you could, if the local government set that individual up as the individual in charge of historical preservation, and it's different need a commission. Yes, in answer to your question.

Mr. Roy. Now, the other thing that really bothers me is that in line 18, it then says that apparently this person or this commission would have "the power and authority to establish, operate and maintain" these historic areas and districts "by the adoption of ordinances and laws which is declared to be a public purpose." So, it appears to me that we are taking somewhere that if they decide that I have a big oak tree in my pasture that somebody once threw a bowie knife into, that one could go around and not even expropriate my tree or my pasture, but by ordinance, they could establish, operate and maintain it and let people on it and not even have to buy it from me or expropriate it. Isn't that what it does?

Mr. Reeves. I don't agree with that at all, Chris.

Mr. Roy. Well, where does it provide for the expropriation of one's property if they are going to...if they can maintain, operate and establish your property, that certainly takes into consideration that they control it. Where have they paid you for that right, or where do they have to pay you?

Mr. Reeves. I think back in the Bill of Rights we've taken care of the expropriation and the payment of property by local governmental officials or local government. I think that's taken care of; I don't think that's a problem.

Mr. Jenkins. Does this mean, Terry, that if someone had an old antebellum home, that one of these commissions could declare that home part of a historic district and then could operate and maintain that home contrary to that person's will?

Mr. Reeves. No.

Mr. Jenkins. Well, what does it mean, if it doesn't mean that? I don't understand.

Mr. Reeves. Still back in...what you are doing, and I agree with...I mean, what you are saying is the same thing basically as Chris was saying. But, again, you are protected in the Bill of Rights from having your property seized, so you are covered, Woody.

Mr. Jenkins. Well, let me ask you another question. You say on line 21, that such...the establishment and operation of such districts and areas is "declared a public purpose. How can you here, in this constitution, declare an area or district to be a public purpose? Isn't that a question of fact to be determined in the particular case as to whether a particular sight, under particular circumstances constitutes a public purpose?"

Mr. Reeves. I feel not. I think that a state...that your commission, your historical preservation commission should have that authority to determine if it was a...

Mr. Jenkins. In other words, anytime any such commission declares anything to be a historic sight, then it's a public purpose. Is that correct?

Mr. Reeves. Still, Woody, what you are...you're still going to be able to protect your own personal property, though.
56th Days Proceedings—September 28, 1973

adoption of appropriate ordinances and laws. To establish such districts could well mean to expropriate property.

Mr. Casey I think Section 4 of the Bill of Rights provision, and it's certainly quite clear, that if you're going to expropriate that there must be just compensation. And that something of historical value is certainly going to be more valuable than something of ordinary use on the open market, so I can't envision the state expropriating anything, that's usually the hard way of doing it, just under emotional situations, but if it does have historical value, they are going to pay a lot more for it. I can't imagine the state doing that, can you?

Mr. O'Neill Mr. Casey, I can imagine that a commissioner established by an ordinance to protect one historical site would do that, and I think you'll agree with that.

I would like to say that in the legal opinion of many of the lawyers that I've talked with at this convention that this section is paramount to the section adopted on 'right to property' in the Bill of Rights.

Further Discussion

Mr. Alexander To the Chairperson, delegates, ladies and gentlemen, I have the distinct privilege of coming to this microphone at this time to talk about something that does not altogether involve the city of New Orleans. No, it does not involve New Orleans exclusively. I think we are talking about historical sites, and only time is the factor here. I'm not correcting anybody, but I would like to disagree with someone who said that outside of New Orleans, Natchitoches is the oldest city. On the contrary, Natchitoches is the oldest city within the state of Louisiana. Biloxi was the first capital, but Biloxi is now a part of the state of Mississippi, so under the terms of this section historical sites, and in fact the whole city of Natchitoches should be a historical site, and that's why we have forts there. That's why Natchitoches gets tourists. The second city in Louisiana still is not New Orleans, but was Little Rapids--Little Rapides, not even Alexandria--Pineville now. Both of these trading posts, Natchitoches was a trading post between French Louisiana and Spanish Texas and Mexico. Now, why say it is peculiar to New Orleans? I would say here in Baton Rouge where the Old State Capitol stands is a big oak tree known as the Red Stick, which was the boundary between the Bayou Goula Indians, and the Tunica Indians from East and West Feliciana Parish. That's a historical site to me, not just the French Quarter. What about the old bell beam houses. Oak Alley in St. James? Up here in East and West Feliciana many tours from New Orleans come there daily at least on buses so I say to you ladies and gentlemen that you're trying to destroy something that is not exclusively New Orleans, but Louisiana. When a tourist comes to Bourbon Street in the French Quarter and spends his money, only three pennies remain in New Orleans. The other three pennies come to Baton Rouge, and only two of those pennies go to the government of the city of New Orleans, because once you go to the school board so I say to you, ladies and gentlemen, please defeat this destructive amendment and then let us adopt this section. I'll yield to questions, if I have time.

Further Discussion

Mr. Burson I'm not muted for restraint as a speaker. Madam Chairperson, but I simply wanted to state, fellow delegates, that I was the only member of the committee that opposed final passage of this section, because simply and purely, I think it doesn't belong in the Constitution. I think that the legislative body, or the local governmental unit, or the state legislature can act to create historic preservation districts within the boundaries of existing zoning laws, and whenever they need to. This is my only position, as far as I know, that you would not find in any state constitution in the United States. We're all for historic preservation districts, but you don't need to put that in the constitution. The only argument that I've ever heard why we ought to have it in the constitution is people say, well, if you have a conflict between the views of the historic preservation commission and some other institutional body, then the constitutional body has to prevail. Now that argument simply, as a legal matter, just doesn't make any sense to me, and maybe somebody else can make sense out of it. I would express you that if we're going to cut this Local Government Act down, and it does need to be cut down and I think that the delegates have acted wisely in doing surgery on it up until now, this is an ideal place to eliminate about half a page.

Question

Mr. Roy Jack, doesn't Section 88, which is three sections past that, do exactly what you're trying to say? It allows the legislature, if it thinks necessary, to create whatever commissions throughout the state is necessary, and can have uniform standards and everything else.

Mr. Burson I think that is true.

Further Discussion

Mr. Stovall Ladies and gentlemen of the convention, I urge you to reject the amendment which is presently before us, in order that we might immediately adopt the Derbes amendment. Certainly we want to take whatever steps are necessary to this constitution to preserve our historic sites, and I encourage you to reject this amendment, and then let's proceed to this section that is presented by Jim.
57th Days Proceedings—September 29, 1973

Saturday, September 29, 1973

Vice Chairman Miller in the Chair

ROLL CALL
[89 delegates present and a quorum.]

PRAYER

Mr. Landrum Our Father, in the name of Jesus, we thank Thee this morning for all Thy blessings. We thank Thee that Thou has permitted us, once again, to be able to be here in this hall, to try to do the things that are pleasing in Thy sight. Gracious Master, we pray that Thou will give us the will and the courage to do those things which are pleasing in Thy sight. Bless each delegate here, our newborns, bless our leaders, bless the young people, bless the officers...everyone connected with this Convention. Our Father, look upon our families and keep our homes safe. These blessings we pray and ask in the name of Thy Son, Jesus, and for His sake. Amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Mr. Poynter Regular Order No. 1. Unfinished Business:

Committee Proposal No. 17, introduced by Delegate Perez, Chairman on behalf of the Committee on Local and Parochial Government and other delegates, members of that committee.

A proposal making general provisions for local and parochial government, levee districts and ports, the financing thereof, and necessary provisions with respect thereto.

The status of the proposal this date is that the convention has adopted the first eighteen sections of the proposal as amended with the following exceptions being Sections 2, 4, and 10, which were deleted. Presently, it has under consideration "Section 19. Historic Preservation Districts."

Madam Chairman, the other amendments still pend to this section at this time.

[Motion to pass over Sections 19 and 20 adopted without objection.]

Reading of the Section

Mr. Poynter "Section 21. Industrial Areas"

Section 21. The legislature may authorize parishes to create industrial areas within their boundaries. In accordance with such procedures and subject to such regulations as the legislature shall determine, industrial areas shall not be subdivisions of the state.

Explanation

Mr. Kean Madam Acting Chairman and fellow delegates, this particular section is presently in the Louisiana Constitution and was placed in the constitution, as I recall, in 1966 as part of Governor McKeithen's "right to profit law" designed to attract industry to this state. It simply provides that the legislature may authorize parishes to create industrial areas within their boundaries in accordance with such procedures, and subject to such regulations as the legislature may prescribe. As a matter of fact, the legislature has adopted a general law, which is Title 33, under which industrial areas are authorized to be created by the police juries of this state, outlines the requirements that an industry must meet in order to establish an industrial area, and provides a procedure by which the police jury may, at...in the event that there is any violation of the agreement between the industry and the police jury, may then terminate the status.

The statute, in my opinion, has worked well and to the best interest of the state. It is...section is necessary as I view it, because on of the purposes of the industrial area is to provide that if the industry provides its own, what you might call, municipal services...the street lights, street repair, garbage and sanitation...that then, under those circumstances, that industry cannot be included in a special district which might be created to provide the same service.

The obvious purpose of the legislation and the original constitutional provision was to prevent a situation where a rather small corporation might be created for purpose of street lights, for example, and include in that district an industry, and in effect the industry pays the whole cost of services that it does not, itself, need, and provides for itself. In my opinion, the section is necessary because of that phase of the operation of industrial areas. Under the circumstances, and in light of the fact that there are many such industrial areas created throughout the state in which industry is now located, with the understanding that the industry is being given some provisions, it seems to me that the proposed section's not only needed, but ought to be included in this constitution.

Questions

Mr. Gravel Mr. Kean, at first blush, as you know, I thought that this section was unnecessary. Do you consider Section 21, however, as being something of a limitation on a plan, or a zone rule charter that might contain some provisions that would be contrary to Section 21?...some spill-off or spin-off provisions?

Mr. Kean I don't...let me put it this way, Mr. Gravel. Perhaps we can generate your thought. In East Baton Rouge Parish, in their plan of government, they have had industrial areas ever since the plan was developed. As a matter of fact, this section added in the present Constitution in 1966, and the legislation which followed was taken from the East Baton Rouge Parish concept. Now, I would not consider that this section would permit the legislature, for example, to pass legislation which would take away from East Baton Rouge Parish that provision which is contained in its charter.

Mr. Gravel My second question, and I think, perhaps, my most important question is, "Does not this cause some real serious problems when we really don't have any constitutional definition, which I don't think we should have. Incidentally, about what we're talking about when we say "industrial areas."

Mr. Kean Well, I think that's been defined in the Title 33 statutory provisions, Mr. Gravel.

Mr. Gravel I agree with you, and that's why I would continue to believe that in all likelihood, it might be better to delete this and leave the entire matter up to the legislature, because the legislature could change the definition of industrial areas which would be, in effect, change the constitution. Would it not?

Mr. Kean Well, I don't think it would have that effect because of the language that's used here that the boundaries be in accordance with such procedures and subject to such regulations as the legislature shall determine. As I view it, the only reason for the inclusion of this section in the constitution is that when you say that if you create an industrial area it cannot be included in any special districts established for the purpose of providing services that the industry provides. Under those circumstances, that industry would be treated as an exemption. Therefore, if we are going to continue with the constitutional concept of exemptions being a constitutional matter, then this section is necessary.
Mr. HUGHES. Mr. KeAN, I wasn't here, understand, however, that the Legislative Article intended and did provide its authority in the legislature relating to owners and the granting of power except as may be restricted by this Constitution.

Mr. KEAN. That is generally the context of the article, yes, sir.

Mr. HUGHES. Well, now, assuming that is in the Legislative Article, why would you need this section here, if you've already said in the Legislative Article that they could do these kinds of things?

Mr. KEAN. Well, as I appreciate it, we have not gotten in revenue and finance dealing with taxation. The general concept of that dealing with exceptions from taxation in this state, up to this point, has been that you get that exception only from the constitution. We would like to have just the provisions of the law relating to the supposed political bodies that you refer to, and then did nothing about exceptions over in revenue and taxation, that the jurisprudence would bring back to where we are now, and, therefore, no authority for the industrial areas.

Mr. HUGHES. Thank you.

Mr. CHAPAGNE. Mr. KeAN, this is not another industrial exemption, but on a local level.

Mr. KEAN. It is a local level exemption from certain types of taxes for the purpose of providing services that the industry itself provides.

Mr. CHAPAGNE. Yes, sir, are you aware that we have proposed in revenue and finance, that industrial exemptions be granted, but subject to local review, in other words, by the governing body.

Mr. KEAN. This is the same type of approach. Mr. Chapagne, it requires a resolution of the police jury, requires approval of the planning commission. If you have one in the parish, it requires an agreement from the industrial area. The police jury is the industry; and provides a means by which the area can be terminated if the industry violated the agreement. It's purely a local arrangement between the industry and the police jury.

Mr. FLORY. Mr. KeAN, could you tell me why you leave the language out of the present constitution which was put there in 1964 by referendum? All industrial areas so created hereafter shall include provisions for strictly by public road, to and from and all entrances to the premises. Would you agree with that, or do you have any objection to putting it back in, if you would feel more comfortable with the present one?

Mr. KEAN. Well, I think it is under you could be taken out of the convention and inserted, in the future or any other public road. If you put a public road in, then, they shut the whole thing down rather than requiring the amount to each individual industry.

Mr. KEAN. Yes. In the point Mr. Flory asks if that in it's current constitutional provision dealing with industrial areas, there is a provision that there has to be access to a public road. The obvious purpose of that was to enable, in a later day, to have access to a public road.

Mr. FLORY. Well, I think it was not included in that section because the idea was that the industrial areas were supposed to be self-sustaining, and anything of the kind was eliminated. As I described it, it's 1964, and the industrial areas had no authority with heavy reference that are not harmonious with this constitution.

Mr. KEAN. I would suggest that we do that. It is an agreement. I think you refer to the time during the early part of this session, that the Senate had a constitutional recommittal.

Mr. KEAN. I have no objection, Mr. Speaker, and I assure you it was not effective, with any ill intent.

Mr. DE LAUGS. Mr. KeAN, I notice in the very beginning of this particular section, you say, the legislature may authorize. Now, do you hold, that if you can't tell the legislature they can't do it, they can do it at times that they choose?

Mr. KEAN. Well, the reason is that, Mr. Speaker, is that, as time went on, I went through a lot. Mr. Pugh, the only reason that I objected to this section that can cite any, other than that the industrial area is to be established under the charter, if the Senate's changes or treatment of the exemptions in this situation. It came from the constitution in 1964. This was in the act, article, was the whole reason for that purpose. The legislators, under the circumstances, could grant it on this basis. So it's not but the reason for putting it up in a way that the authority, if the legislature put down to do with the authority, it's an act of the legislature, just related to the question whether an exception was involved and required constitutional sanction.

Mr. Flory. Well, Mr. KeAN, it seems to me that this would be subject to approval of referendum, those exceptions would be, that it concerns the industry. I was having difficulty development, if the constitution that the legislature had those authorities.

Mr. KEAN. Well, we have been developing authorities and included in the past of the present constitution, I was at thesis.

Mr. Flory. Well, I was speaking about the point to put them there, as in this situation, where you have the same provision in the articles rather than this.

Mr. KEAN. Well, it was in fortunate the present time, and if it forward to the local government, the Articles that we were promulgating.

Governor.

Mr. FLORY. Mr. Speaker, as against the amendment as agreed to on their motion.
constitution.

Now I heard Mr. Keen's reference to why they put this in here. But if you want to extend the exemptions insofar as that’s concerned, you ought to put that where you place the exemptions, not here in this particular place. It’s strictly out of any possibility of any injury that this might do to any section of the State of Louisiana? Do you see of any possibility of any injury that this might do to any section?

Mr. De Blieux Mr. Hernandez, no injury--no good, either.

Mr. Hernandez Well, if....if the areas that need these industrial areas, feel that this is....you might say a foundation from which to make a plea to the legislature to create an industrial district.....create an industrial district....do you see why that would hurt anybody?

Mr. De Blieux I don't see where it would do any good, either.

Mr. Hernandez You can't blame us for feeling like it would help, though, could you?

Mr. De Blieux No, I don't blame you for that.

Further Discussion

Mr. Lennox Madam Acting Chairman, fellow delegates, I rise in opposition to the De Blieux amendment. We've just passed over two sections of this particular proposal dealing with the preservation of historic buildings, monuments, structures and so forth.

I submit to you, we should be thinking about preserving meaningful employment and creating prosperity in the State of Louisiana. This particular proposal does no violence to that. I would ask that you defeat this amendment.

Questions

Mr. Abraham But Ed, couldn't this one paragraph we are trying to rework dealing with the historical areas and everything, could also include industrial areas? Handle it all in one section?

Mr. Lennox I would assume that would be....that could be the case. But let me submit to you that in 1966, or whenever this was made a constitutional matter, that there had been industries brought into the state based on some understanding that there was going to be a reasonably good climate for the development of that industry in the state. If you go to making severe changes, however innocuous they might seem, and as Senator De Blieux may have indicated to you, you may be doing some violence to the industrial development of the state in the years to come.

Mr. Champagne Mr. Lennox, assume we do leave it in here. Do you see any need for the sentence, "industrial areas shall not be subdivisions of the state"? Do you....do you see by any stretch of the imagination that anyone would assume they would be when they are in a parish?

Mr. Lennox I'm....to be entirely candid, I don't see any reason why that sentence should be in there. But I am sure that the committee must have had some reason for it.

Mr. Lanier Mr. Lennox, if that sentence were not in here, would it not be possible for the legislature to make these areas subdivisions of the state?

Mr. Lennox It would, indeed, and I yield to your good judgment on the subject matter.

Mr. Lanier Have you noticed that in the course of our debates that, generally, when our delegates are for something, they feel it's constitutional, and when they are against something, they feel it's statutory?

Mr. Lennox That is correct.

If there're no further questions, I ask you to defeat this amendment.

Further Discussion

[1511]
Mr. Pugh. Madam Chairman, fellow delegates, I rise in favor of this amendment. During the night, I wrote what I've now had distributed to each of you conscientiously went through each one of these sections, satisfied myself as to those that were legislative in nature, and advised you in a two-page memorandum of why I thought so by citing the page and the line where such language appeared. Since this is one of the areas where people have come up to me with suggestion warmly welcome any suggestion relative to any suggestion might make to you as a group. My reason is that we can move forward in an orderly fashion and complete the work that's been assigned to us within the reasonable period of time allotted to us.

Now, a question was asked of the last man: 'Couldn't the legislature provide that those would be districts?' Well, all you've got to do is read it and the committee proposal says that they can do it in the way the legislature shall determine. By the committee proposal, you can do what he says, that eliminating it can do. There's no difference. We have now, suddenly, come into an area that's purely legislative in fashion, regardless of whether you are for or against home rule, that's all behind us. Fortunately, all of that's been resolved. None of this will have to do with the section of this related to the state. We have a governor consisting of three parts; we have an executive, we have a legislative, and we have a judicial. At that point, we must recognize that the legislature are men of responsibility, ladies or responsibility. We've already said in the legislative section, it's nothing but basic law that they can pass anything not prohibited by the constitution insofar as these powers are concerned. I wasn't here when you drafted the Legislative Article. But I don't even have to read it, I know it's in there. It's inconceivable to me that the article would have been passed otherwise. Therefore, they had the authority to this point, as they did in the other sections. What worries me is, we keep coming to the microphone and we say, well, we're going to put this in because taxation may not have done it. Gentlemen, I looked at who's on taxation, and they are responsible people. They've got a part to play. Let them play their own part. Let's don't get into each one of these articles and try to do what somebody else has the primary responsibility of doing. That's just what these sections relate to that are coming up now, matters that can and properly should be passed either in the legislative or to a different article other than these. I have no motive, whatsoever, other than getting the job done, and doing so with the least amount of language necessary and applicable to establish the point that should be in the constitution.

I'd be happy to yield to any question.

Questions

Mr. Willis. Mr. Pugh, I think that you and I can agree on this much of the premise to my next question, that a constitution is a plain and printed plan for government.

Mr. Pugh. I certainly do.

Mr. Willis. Now, isn't it also true that where the legislature, which we follow upon in this section, need to be harnessed or to be given a pattern of that plan, and the permission necessary that that should be printed, so that there is no deviation as such.

Mr. Pugh. Yes, Mr. Willis, and this section says, the.

Mr. Willis. I know what it says. Your answer yes suffices.

My next question is, why is it that you continually want to write every word in with an answer. Mr. Pugh. Because, unfortunately, this in legislation and of it all it's trying to try to destroy somebody else's work. Any one person can go through here and make change. The difficulty is that these things have been drawn by about nineteen people.

Mr. Willis. Is that the person you talk about the other that Mr. Willis says, he has a constitution in his hip pocket.

Mr. Pugh. No. sir, I assure you that the governor of this state very, not said word to me about this constitution.

Mr. Willis. Didn't mention the governor. Mr. Pugh, we'll still you said the hip pocket, we can all read the paper.

Further Discussion

Mr. Kean. Madam Chairman, as I attempted to indicate in my opening remarks, this section was included in the proposal because we did not know what would be the treatment of tax exemption by this constitution, under the present constitution, and the jurisprudence of this state, there is no exemption except those which are placed in the constitution. Since these particular areas may not be included in the tax rates under the present constitution, if there was no law going to provide that they could not be included in certain special taxing districts. For that reason, we carried it over. No, if there is, if the revenue and taxation section comes up with some kind of different treatment of the exemption that has then traditionally followed in this state, it may be that this section will not be needed. If we reach that point then it can be taken out. But it seems to me, without knowing what will be done with respect to the matter of different treatments in the taxation, if it would be preferable to leave this in at this time. It doesn't cause any difficulty. It's the constitution now. There are areas which have been created pursuant to the legislation adopted in furtherance of it. It seems to me that to take it out now and then have something happen with the tax exemption question later on down the road, it leaves those particular areas hanging in the wind.

Under the circumstances, I propose Mr. le Blanc's amendment that I think we should leave it in here. If we find a different treatment of tax exemptions further down the road, which makes it necessary, then we take it out. For that reason, I was included.

I urge you to reject Senator de Blanc's amendment so that we can prove this and get on with our business.

Questions

Mr. Roy. Mr. Kean, would you please explain to me how saying merely that, the legislature is prohibited from doing what the legislature may do, when we've got that every municipality and every police jury has power, that everyone has power. Are you talking about this particular provision granting a tax exemption. It says nothing about it.

Mr. Kean. Mean what this, what the legislature that was enacted in furtherance of this section due. Mr. Roy, is to say that if the police jury and an industry enter into an agreement under which an industrial area or any area is prohibited by the industry says, we are going to provide garbage service and sanitation and street lights and street paving, etc., the tax exemption provision, that industrial area would not be included in a street-lighting district, it will not be included in a road improvement district, it would be included in a school district. It is considered by those who authored and prepared this in 64 that that could be construed as an exemption into these circumstances. They felt it had to be in the constitution because the traditional treatment of tax exemptions in Louisiana has been that
there is no...are no exemptions, unless they are from the constitution.

Mr. Roy Well, why don't you spell it out, then. Instead of...I don't...I don't agree with you. I don't know how this indirect language is what you are referring to. But how can you, why can't you spell it out, if that's what you all want to do, and say that industrial areas shall be exempt from taxation.

Mr. Kean It's because they are not exempt from all taxes. They are only exempt from those which the legislature has prescribed in the legislation enacted in pursuant to this section.

Mr. Willis Mr. Kean, the...reason...is not the reason for this to be in the constitution so that it will be irrepealable law with the view of assuring and underwriting the bonds that are necessary for this subdivision to be created.

Mr. Kean No, sir. Mr. Willis, this doesn't have anything to do with bonds. This industrial area does not have any taxing authority; it can't issue any bonds. It's simply to insure an industry...

Mr. Willis I'm talking about the bonds, these of either police jury borrowing the money to...that's what I'm talking about.

Mr. Kean Oh, yes.

Mr. Willis So that it will give substance and irrepealable law with respect to bonds, so that the violations of those contracts may not be impaired, and the bonds are readily sold.

Mr. Kean I would think that's good.

Further Discussion

Mr. Roy Madam Chairman, ladies and gentlemen of the convention, I rise in support of the amendment. I think we are getting a little paranoid or some people are making comments all the time that any time you seek to dress up something a little better, or to eliminate language that is just verbiage, that some committee proposal has been attacked. At the same time, Mr. Kean says this in needed—which I don't see; I don't see how in the world, authorizing the legislature to do something it may do, that we are creating an irrepealable law. From all the areas...he turns right around and says that if we handle it down the road like it should be, then we can come back and eliminate it, which means to me that it's not needed at this particular time. But, I want to call your attention to one other feature in here that I don't think anybody has addressed himself to and that's the last sentence: "Industrial areas shall be not subdivisions of the state." Now, we have gone along and we are saying that we are not clairvoyant, we are not sure about everything that happens in the future, what will be...what this state will be like twenty years from now with respect to different types of subdivisions, different types of agencies, different types of units and suddenly we constitutionalize—right here in this constitution—that you shall never make an industrial area a subdivision of the state. It may be fifteen years from now that some industrial area, some self-contained city within itself, will want to be a subdivision of this particular state, and will be able to petition the legislature for it, to incorporate and do what it wants. Yet, we are constitutionalizing that this is impossible unless you get a constitutional amendment. Now to say that we are not supposed to draw up a constitution that is innocuous because it was in the past constitution, I think is redundant. To think that we have already challenged the present constitution by some eighty percent and to have someone argue, "Let's leave this in here because, well, it doesn't do any good and it doesn't do any bad, and it's in the present constitution, so we may not get hurt by it," I just don't follow that logic. I'm for the amendment.

Mr. Lanier Mr. Roy, am I correct that when we were on the Bill of Rights, you also said we were paranoid about law and order?

Mr. Roy Yes, I certainly did, Mr. Lanier. It hasn't changed except for those people who were against a Code of Ethics for local officials, but that's not the issue. A Bill of Rights is to protect the individual from the state, and we didn't put anything in there that said that the legislature may do certain things; it was..."you cannot"; there is a different.

Mr. Abraham Chris, isn't it true that if this section were deleted, and we would get to the Revenue and Taxation Article, and if we need some language in there, it could be added, then?

Mr. Roy Well, if it's needed that's the place to add it, not to put a bunch of words here that we later say we will come back and take out because we don't really need it.

Mr. Goldman Mr. Roy, in this language that is in there now, exempting an industrial area from being a subdivision of the state or the parish, wouldn't it be possible for an industry to come into the...the parish establish an industrial area, the industry build homes for its employees, and all the homes in that area then would be exempted and everything else?

Mr. Roy That's exactly right. If you look at the future of this country you are going to see that in many cases industry will build separate cities. If you say they may never be a political subdivision, that's absurd to put that in this constitution.

Mr. Stovall Mr. Roy, have you seen Mr. Flory's amendment?

Mr. Roy Yes, I saw it and I think that if we can get rid of this, we certainly don't need that.

Mr. Stovall Yes. In other words, if we do not delete this section, then we have to come in with a great deal of additional material to make it acceptable, and certainly Mr. Flory's amendment is legislative material.

Mr. Roy There is no question about that. Reverend.

Further Discussion

Mr. Womack Madam Chairman and members of the convention, in 1966 I was on the Judiciary Committee in the House that handled this legislation. I remember very distinctly, at that time, industry, the attorneys, the legal counsel for industry, the Department of Commerce and Industry officials came before that committee...

Mr. Miller Mr. Womack, just a minute. Let's get a little order, it's awfully noisy in the back.

Mr. Womack Madam Chairman, I guess I'm as guilty as anybody else of carrying on a lot of conversation and a lot of times, a lot of useless conversation—but we are dealing now with the possible industrial growth of the State of Louisiana and nothing could be more serious. I'll go back and start over. In 1966, when we started out with this legislation, I was on the Judiciary Committee that handled this in the House. The testimony before that committee I remember very, very well. It was by the industrial attorneys that was there and by the Department of Commerce and Industry officials. Their testimony was that this was needed and its beneficial to industry now. I take the position today that I'm against the De Blieux amendment. I'm against it because if
there is one drop of good in this to help create a feeling of confidence and satisfaction to industry to come to the State of Louisiana, then it's worth being in here. I'm not going to take the chance on some industrial organization saying that we feel that maybe the one thousandth faith has broken. Now go back and look at some of the past where some of the same people have said, "well, it doesn't make any difference about the shortness, we've got to have all this verbage and all this garbage in here, because we think it's necessary to protect the individual rights. But, then you get a little further down the line, and that same individual says "Oh, we have got to shorten the constitution." It just depends on what side you are on. Those who have been here opposing the position that I take, and saying that we should pass this amendment, now want to shorten the constitution. They say, "I can't see that it does any good." I don't know yet, and I don't believe a single one of the legal brains that's been up here saying we should pass this has ever appeared before a House committee that I know of, representing industry, and the world, and industry, or representing any of the industrial growth of the State of Louisiana. Now, if it's in the wrong place, the process and the inability of Senate Drafting to take this and the article on Revenue and Taxation and put them in the proper place and in the proper perspective. So I submit to you this law, as it really is not hurting industry and know that we are not breaking faith with industry somewhere down the line, we shouldn't be any steps in the move that would be detrimental to the future development of this state. Go back and check, after the passage of this and some other package of goods dealing with bonding and sale of bonds and so forth, we had probably the greatest stretch of industrial growth this state has ever had and one that, I hope, we will be able to meet again. Thank you.

Questions

Mr. Weiss: Delegate Womack, we understand little about these intricacies of constitutional law are concerned about making a decision, yes or no, on this section and future sections. I'm concerned that we have to placate the industrial attorneys. By what authority do they have to say that we must constitutionalize certain issues? Aren't they more concerned about the financial obligations that the state must meet rather than whether it's constitutionalized?

Mr. Weiss: Well, I would say, Doctor, that probably the only authority that that industrial attorney would have, that he is on the payroll of the corporation that expects to expend the funds of developing a plant in Louisiana. If he is on their payroll, he is there to advise them and his advice may be a factor in whether they expend the funds or not; other than that, I really don't think it makes any difference.

Mr. Weiss: Have our state attorneys made any recommendations to the industrial attorneys, or were you listening to only one side of the story?

Mr. Womack: Well, I would say this, the attorneys that have come up here supporting this resolution have said we don't find that it's going to do any harm or any good either.

Mr. Weiss: That's the problem with these attorneys, they don't seem to come up with any one answer. I do, however, think we should work through the industrial concerns, 'who shall we believe?' is the question that I presented to you.

Mr. Womack: You would have to keep in mind, Doctor, that in all cases half the attorneys are wrong.

Further Discussion

Mr. Plunkard: Madam Chairmen, fellow delegates,

In the first place, I am against the 24th Amendment. I can only reiterate the same things that other people have said, but here we are talking about five lines here it's the rest of this whole article which is of great concern to the State of Louisiana, as far as industry is concerned and as far as the laboring people are concerned, to just pass over it and just say we are going to take out the shortness the definite purpose and the purpose was very plain because under the present constitution other exemptions could be granted except those that were specifically prohibited for in the constitution. An agreement was made between industry and labor and they decided that this was a necessary provision. Now what we are saying, in effect, right at this very moment, without going into the Revenue and Taxation section, we are saying that the approach that we are going to take is not going to be the same as the present constitution. The posture in the Committee on Revenue and Taxation right now is that we are not going to say that these tax exemptions and no other shall be granted. That being the case, I find if we have taken this provision out, we either be able to and with the years and go to the people and say, we've got to put this provision in the constitution, just as they did in 1966. Let's don't fool ourselves, ladies and gentlemen. To just take this out without real study would be a sad mistake, and I'll be against this amendment.

Further Discussion

Mr. Cannon: Thank you, Madam Chairman, member of the Convention, I think there is one point that has not been clarified, that is, beginning when Mr. Willis raised this question somewhat there is a difference between an industrial area which he says to do with tax exemptions, because no governmental services are rendered to that particular area, versus an industrial district or an industrial development district in which is government financing. This has to do and is yielding in Section 24 and this is one point. My last year in the House in Baton Rouge I sold fifty million dollars worth of industrial waste, the pollution facilities for an corporation here in Baton Rouge we sold nine million dollars worth of industrial revenue bonds to the Georgia Pacific Corporation. This is the way it involves the fact of treating that waste for the entire industrial area. Now, the difference here in Section 24 deals with method of financing this has to do and this is in Section 24 and in Section 21 deals with tax exemptions, because no governmental services are rendered to that particular area, I think this point needs to be clarified.
the executive what they can do or they can't do and have an orderly organized judiciary. As this partic-
ular section is worded, the only thing it says is that "The legislature may authorize industrial
districts"; other than that, it has nothing to do
with industrial districts. There is no tax exemp-
tion provided in this section, regardless of what
has been argued here. This doesn't have a thing
in the world to do with tax exemption; it just says
that "The local government may be authorized by
the legislature to create industrial districts."
Now they can do that. You don't have to tell the
legislature they may do it; they can do it. I tell
you they can do it. So, why do you have to put it
in the constitution? It's just plain and simple as
that. I'm just asking you so...if we are going
to leave everything, as stated, to Style and Draft-
ing Style and Drafting will have to completely
draft us a constitution because that is what we are
saying, every time we come to one of these provi-
sions that we want to make some change that we think
is unnecessary or shouldn't be in the constitution
or should be someplace else, they say "Let Style
and Drafting take care of it." If it belongs in
the Exemption Article, when we get to exemptions
let's take care of it. It hasn't any place in the
constitution in this particular spot, this
particular proposal. So, I ask you to let's exempt
it and get it out and proceed orderly like we
should.

Question

Mr. Womack Senator DeBlieux, isn't the responsi-
bility of Style and Drafting's job to place these
things where they belong, and if this is the wrong
place--which you said earlier it was in the wrong
place, if we were going to pass it--isn't Style
and Drafting's responsibility to put it over in the
place it belongs and to tie it in with the rest of
it?

Mr. DeBlieux Well, why not...when we get to the
particular exemptions, Mr. Womack, we should take
it up there; it shouldn't be taken up here. This
is not the place for it, whether Style and Drafting
can shift it or not; it makes no difference. We
are putting too much burden upon Style and Drafting
to correct all of our errors and mistakes.

[Record vote ordered. Amendment rejected: 25-86. Motion to reconsider tabled.]

Amendment

Mr. Poynter Next set of amendments sent up by
Delegate Gravel:
Amendment No. 1. On page 12, line 6, after the
word "create" and before the word "industrial" in-
sert the words "and define"

Explanation

Mr. Gravel Madam Chairman, ladies and gentlemen
of the convention, I simply had one concern in the
event that this particular section would remain in
the constitution and that is that there was no
definition of what constituted an industrial area.
Mr. Kean tells me he has no objection to our adding
into the committee language, the committee proposal,
not only the concept that the legislature can create
the industrial area, but that the legislature may
define it. It's really in the nature of a technical
amendment and to make sure that there's no question
but that we will have a legislative definition of
what constitutes an industrial area. Mr. Kean
tells me he has no objection to it, and I would urge
the adoption of the amendment unless there is ob-
jection by someone else.

[Amendment adopted without objection.]

Amendment

Mr. Poynter Amendments sent up at this time by
Delegate Flory:

Amendment No. 1. On page 12, line 8, after the
word and punctuation "determine," and before the
word "industrial" insert the following: "All indus-
trial areas so created shall include provisions for access by public road to any and all
entrances to the premises of each and every plant
in such area, which entrances are provided for use
by employees of such company, or for use by em-
ployees of independent contractors working on such
premises, or for delivery of materials or supplies,
other than by rail or motor transportation, to such
premises. Where individual plants provide police
protection this protection shall be confined to the
premises of each individual plant located in the
area."

Explanation

Mr. Flory Madam Chairman, and delegates to the
convention, this is precisely the language in the
existing constitution providing for the creation of
industrial districts. This was a part of the
constitutional amendment adopted in 1964 in the
creation of these districts, sponsored at that time
by both labor and management. It was to put
the legislature working out the details as now
before you in the existing constitution. I suggest
that it is this matter of constitutional auth-
or over industrial districts, which is the heart of the
issue, and will be in the future, disputes between
management and their employees. I have...my under-
standing is there is no objection to it. Lennox, I believe, and both agree on this, that it
ought to be and remain in the constitution. I
would ask for the adoption of the amendment.
stition, that it was desirable and perhaps even necessary to have a general provision which would spell out, without any doubt or ambiguity, the right of the legislature---general, local, or special——under which boards, commissions, agencies and districts could be created and established and to give to those boards, commissions and so forth, the right to incur debt, the right to issue bonds, the right to incur debt and, thus, through this method avoid, hopefully, any further amendments to the constitution which would limit the creation of such special boards, districts and so forth. We believe that this is necessary in order to make certain that there is absolutely no doubt in the mind of any person that the legislature has the authority and that it can be accomplished by a simple legislative act, and under the circumstances, I urge the adoption of Section 22 designed, as I say, to make certain that we eliminate the necessity for anyone putting any special districts, boards, or commissions in the constitution in the future.

I'll yield for any questions.

Questions

Mr. Duval Mr. Kean, if there were one statement in the constitution saying that, "The legislature shall have all powers not specifically limited in the constitution," would that take care of this problem?

Mr. Kean Mr. Duval, in my opinion, it probably would. But, we are taking out of the constitution by this action of the committee twenty-eight special districts, boards and agencies. We were concerned that there must have been some specific language that related to boards and commissions, someone was going to take the position that we needed a constitutional provision to authorize some district in the future. We were simply trying to provide the frosting on the cake to avoid that possibility.

Mr. Rauburn Mr. Kean, on line 19 where you say, "I mean 'line 20,' after the power to issue or to incur debt and issue bonds, then you say 'and the power to reclaim property from the beds of lakes and streams.' Would you explain the reason for that being in there for me, please, sir?

Mr. Kean Yes, I will be glad to, Senator. There were several instances in the past——and I'm certain you are aware of them—whereas in the case of Calcasieu and Lake Charles they wanted to reclaim some part of the Lake Charles over there for that civic center development. In order to accomplish that, they had to have a constitutional amendment. I think in the case of some of the districts in Jefferson Parish that particular situation was also dealt with by constitutional amendment. We were simply trying to cover areas to avoid further possible constitutional amendments. Frankly, I have no objection to the deletion of that language from this section, if it causes any problem, and leave it to be dealt with by Senator Lambert's Committee on Natural Resources.

Mr. Lambert Mr. Kean, then you would not object to Mr. Avant's amendment which would delete that section?

Mr. Kean No, sir. I told Mr. Avant I would not.

Mr. Lambert The reason for that is because we have had extensive hearings on this area, and we are going to cover that.

Mr. Kean The only reason it was included was to take care of the possible situation where you would have additional constitutional amendments and by way of an amendment to your committee is dealing with the problem, why it's perfectly agreeable with me to take it out.

Mr. Avant Mr. Kean, I understand that bund at turnery are interested in this particular section, because it is their opinion and think that the base authority might be necessary in the creation of these districts.

Mr. Kean That's not necessary. In their appearance before the committee, they urged the committee to have such a broad general section out of an abundance of precaution. We were trying to avoid a situation where we get ourselves involved in a mass of additional amendments, and if this would accomplish it, we felt it was desirable to do it.

Mr. Lenox Mr. Kean, what effect, if any, does this have on levee districts that now exist?

Mr. Kean None.

Mr. Lambert Mr. Kean, on line 4, "the power to incur debt and issue bonds," and this power, according to the language prior to that section, would be conferred by the legislature. I would be left up to the legislature then to decide whether or not a special district could issue bonds, as to whether or not the people would have to vote on it. In other words, they could do it without a vote of the people if the legislature so desired, this would strictly be left up to the legislature.

Mr. Lambert Mr. Kean, in your article or is it necessary to recognize the continued existence of districts that are now in existence at the present time?

Mr. Kean We anticipated that would be taken care of in the transitional material.

Mr. Lambert That there would be some provision in recognizing and maintaining existing districts?

Mr. Kean We've got a list of twenty-eight of the and it was our view that these would be taken care of in the transitional material.

Mr. Lenox O.K.

Amendment

Mr. Pointer Amendment No 1 by Mr. Avant, on page 17. The words "and change the comma to a period and delete the remainder of the line, and delete line 48 in its entirety.

Explanation

Mr. Avant Made chairman and fellow delegates, as the individual who was appointed delegate to this convention to represent the interests of wildlife and conservation, I am compelled to offer this amendment.

This section would permit, by simple legislative act, the creation of a local board, or an agency, and permit the giving in that board the power and authority to fill in and reclaim the bottom of our public waterways and navigable waterways in this state. It is in a very significant sense, in view of the fact that the beds of all navigable streams and bodies of water within the state belong to all of the people of the state. It is also a matter which should not be considered at this particular time, and in this particular manner, because it has been under serious consideration in the Committee on Natural Resources, and they have adopted certain provisions which will control the manner and method by which this power shall be exercised.

Now, I don't want anyone to take what I am saying I am not saying that there should never be an occasion when the bed of a navigable stream...
a lake, or a portion of it, should not be reclaimed. I am not saying that. I'm just saying that it is a matter of great importance and significance to the people of the state and that this is not the proper method or time or place to consider it. But that it should be considered in connection with the article on natural resources. It should be considered in considerable detail. Perhaps, I suggest to you at this time, at that time we can come up with some reasonable and proper safeguards and protection for all of the people of the state, when we consider the exercise of this power which, I say, is a very significant power and definitely should not be dispensed on just a "blank check" basis by a simple act of the legislature to some local agency.

Questions

Mr. Lambert Mr. Avant, is it not true that Mr. Perez and Mr. Kean have no objection to your amendment?

Mr. Avant This is correct. I am informed by Mr. Kean and Mr. Perez that they do not object to this amendment.

Mr. Lennox Mr. Avant, if your amendment passes and you delete line 21 and that portion of line 20 that you suggest, and you do not deal with specific prohibitions elsewhere in the reclamation of property from beds or streams, would not the legislature then have that authority?

Mr. Avant I think they would, Mr. Lennox, but let me tell you something, we are going to deal with some specific prohibitions. Have no fear of that.

Mr. Lennox I just wanted to suggest that maybe that's what you did want to do.

Mr. Avant That is exactly what we're going to do. Thank you for your attention.

Mr. Perez We have no objection to the adoption of the amendment.

[Amendment adopted without objection. Motion to reconsider tabled.]

Amendment

Mr. Poynter The next set of amendments sent up by Delegate Gravel.

On page 12, line 12, after the word "to" and before the word "this", delete the words "the limitations imposed in" and insert in lieu thereof, "and not inconsistent with the provisions of".

This one deletes the words on line 12, "the limitations imposed in", and inserts in lieu thereof, "and not inconsistent with the provisions of".

Explanation

Mr. Gravel Madam Chairman, ladies and gentlemen of the convention, this amendment is consistent with similar amendments that have been adopted by this convention to make sure that we are talking here, in Section 22, about provisions that are not inconsistent with other provisions of this constitution, rather than with provisions that are specifically referred to, and that constitute limitations in the constitution.

Mr. Perez and Mr. Kean both agree that there is no...should be no objection to this amendment and are willing to accept it. Therefore, Madam Chairman, I move the adoption of the amendment.

Mr. Perez No objection to the adoption of the amendment.

[Previous question ordered. Amendment adopted: 99-4. Motion to reconsider tabled.]

Amendment

Mr. Poynter Sends up amendments as follows:

Amendment No. 1 [by Mr. De Blieux], on page 12, delete lines 10 through 21, both inclusive in their entirety. I suppose for clarity, Senator De Blieux, it would be well to add, "including all floor amendments thereto."

Explanation

Mr. De Blieux Madam Chairman and ladies and gentlemen of the convention, I am not going to labor the point, because the amendment on this is the same as on the other amendment that I previously proposed to the preceding section. I might say this: I know that there's been some statements with reference to the requirements of the bonding attorneys on this particular provision in the constitution. Be that as it may, I don't believe there is a single lawyer who is a member of this delegation, or any place else, would say that the legislature would not have the authority to do anything that's provided in this particular section, whether this...we adopted this section or not. It's just as simple as that. To me, I think it's just excess verbiage that we don't need. But that's the argument that I made on a previous section. I just think it's entirely unnecessary, so it's up to you. I hope you won't vote against the amendment just because I proposed it.

Further Discussion

Mr. Perez Delegates, as was stated earlier by Mr. Kean, we've taken twenty-seven different agencies out of the constitution. We want to make it perfectly clear, so we will not have to have an abundance of amendments in the future, that these special districts of the legislature could grant this authority. I, therefore, oppose the De Blieux amendment and ask you to adopt the section at the proper time.

Question

Mr. Womack Mr. Perez, doesn't this get back to where we were while ago, that the bond attorneys say that we've got to have this in order to get the best rate on our bonds and in order to sell them?

Mr. Perez Yes, sir, that's correct.

[Previous question ordered. Amendment rejected: 14-91. Motion to reconsider tabled.]

Amendment

Mr. Poynter Delegate Champagne sends up the following amendment....Champagne.

Amendment No. 1, page 12, line 19, immediately after the word "proper", change the comma to a period and delete the remainder of the line and delete lines 20 and 21 in their entirety.

Explanation

Mr. Champagne This amendment simply stops and would say, "powers and authorities as it deems proper." The rest of the sentence simply says, "such as" but not necessarily so. I would assume that most of the delegates in this convention have...have been married. The first one I did get married, for instance. You went through the procedure; it was rather a short thing, and you weren't...you were in a hurry to get it over with. They didn't tell you in that explanation that part of the marriage ceremony was that you might have children, that you might have to cook, that you might have to change diapers and a lot of other things. Both men and women. They didn't go through all these things, and probably it's a good thing they didn't, because when I changed a few diapers, I might add, you know, at that time, I might have re-
considered. But it simply was a general statement, and that's what we need in this constitution.

For one brief moment yesterday I thought this convention, C.C. '73, might be referred to as a grandpa once described, "greased lightning." I think it's time for us to be recognized somewhat in those terms as "greased lightning." I would suggest, and I hope you may not wish in order to prove that none of my amendments might pass, but I would ask you that this says, and I would ask that you give the Revenue, Finance, and Taxation Committee the same courtesy you just afforded Natural Resources in taking out that provision. I can assure you that when the time comes that this committee shall include the bond provisions as some of you fear, we, I think are, and I would hope, capable of taking care of all of those instances. I would ask that we say, such as, but not including. I ask you to remember the time you did or might get married, and that's all this does. I ask once and for all...I don't know if Mr. Perez will or will not agree that maybe his committee might agree to this statement, this amendment, but I hope he would.

Mr. Anzalone: Mr. Champagne, are you aware, because of that short, short ceremony that you were talking about a few minutes ago, that the law books of this state are filled with divorce laws?

Mr. Champagne: Yes, sir, but I bet they wouldn't have been married so much if they had a long one to go through.

Mr. Anzalone: Now, Mr. Champagne, do you further realize that what we're talking about here is not getting married, but trying to make it a little bit easier for some people back home to entice some into marriage? What Mr. Lennox can represent them, and Mr. Flory can fight them?

Mr. Champagne: Mr. Anzalone, I think what we're trying to do is give the lawyers something to do. This may help.

Mr. Anzalone: Do you realize that if we give them something to do and make it a little bit easier, it might not cost as much?

Mr. Champagne: Yes, sir. Anything you say, Mr. Anzalone.

Further Discussion

Mr. Keen: Madam Chairman, fellow delegates, I hate to throw cold water on the hopes of my friend, Walter Champagne, but I rise in opposition to his amendment.

This particular section was carefully thought out by the committee in cooperation with a group of bonding attorneys, in an effort to get into the constitution a provision covering the authority of the legislature with respect to these special districts in all of its aspects, and particularly with respect in the question of taxation and the right to incur debt and issue bond. I am convinced that if we delete this language from the constitution, that we are taking away the power of the legislature with respect to the authority of the legislature to tax, to borrow, and to appropriate taxation in the matter of taxation in the matter of matters that are only incidental and falling within the jurisdiction of the legislative branch of the government.

Mr. Keen: That's rather narrow.

Mr. Anzalone: But I don't think it is, Mr. Keen.

Mr. Keen: We haven't had it from very long.

Mr. Keen: I didn't see that.

Mr. Champagne: I don't see that.

Mr. Keen: I don't see that.

Mr. Keen: I don't see that.
Mr. Roy That's to protect a few bond attorneys who don't want to risk saying that the legislature may have been wrong. And you constitutionalize it so that, even if it's wrong, it's O.K. Isn't that true?

Mr. Kean Mr. Roy, I could care less about what the bond attorneys want. We've got political subdivisions that have to issue bonds. We've got from time to time districts that have to be created to take care of specific problems. I'm simply trying to get something in here that would avoid the necessity of additional constitutional amendments. That's the whole purpose of the...

Further Discussion

Mr. Gravel Madam Chairman, ladies and gentlemen of the convention, I'm...I'm really surprised at Mr. Champagne with his proposed amendment. Here we are dealing with some banker's language, and he wants to delete it. Now, all of the lawyers here throughout the entire course of this convention have been listening to Mr. Champagne. He has rated our prime interest, and we think that his prime interest rates consideration, not only by him but all bankers, for the necessity of including in this constitution, a provision that's going to satisfy the bankers, who honestly believe that these provisions are essential and necessary. I think that it is important that we do maintain the concept in Section 22, so that under no circumstances can there be any questions as to our bonding procedures, or our taxation procedures for the benefit of local government and local subdivisions, can be adversely affected.

I urge you to reject the Champagne amendment. That we adopt Section 22, and that we continue to grease this lightning and move on.

[Previous Question ordered.]

Motion

Mr. Champagne In fear that we may have to go to a lengthy discussion of how and why you got married, I would like at this time, if at all possible in view of Mr. Gravel's grievances, to withdraw my amendment.

[Motion to suspend the rules to withdraw the amendment adopted without objection. Previous Question ordered on the Section. Section passed: 106-8. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter "Section 23. Intergovernmental Cooperation..."

Section 23, Paragraph [A] Any political subdivision may exercise and perform any of its authorized powers and functions...

[Motion to waive reading of the Section adopted without objection.]

Explanation

Mr. Reeves Section 23 is a new section, basically, from the 1921 Constitution for this simple reason. We've had a tremendous amount of federal and state assistance to the local and parochial governments throughout the last fifty years. Of course, any of you that are aware of the problems that local and parochial government have, will realize that it is absolutely a necessity for the local governments to have the assistance of the federal as well as the state government.

The particular provision authorizes intergovernmental cooperation between political subdivisions, and between political subdivisions and the federal government. This section simply prohibits the legislature from requiring intergovernmental cooperation between political subdivisions, but it does allow the legislature to authorize intergovernmental cooperation between political subdivisions subject to voter approval. This is not, I emphasize this very strongly, it is not regional government... absolutely, unequivocally, no contest, it is not regional government.

So, for those individuals that are afraid of a new concept that is coming out in the planning field throughout this nation, and as regionalism, in which local governments are basically delineated to substandard organizations, and that regional governments or quasi-governmental organizations are established over these local governmental subdivisions, do not be afraid. This is not regionalism. It is not regional autonomous government, and it does not replace the local and parochial governments. All we are trying to do in this particular section is to authorize the local governmental subdivisions to cooperate and to have intergovernmental cooperation between themselves.

First of all, we realized, and we are realizing, that throughout the State of Louisiana we do have a number of organizations known as the Economic Development Districts in which we have cooperation between a number of parishes. In my particular area, we do belong to the Kisatchie Delta Economic Development District, and it is an eight parish regional organization. It is not the regional government concept. It only authorizes, in this particular sense, cooperation between consenting governments. This particular provision also prohibits the Louisiana legislature from mandating that these governmental subdivisions will cooperate with each other. In other words, if they will...it requires, it does not require intergovernmental cooperation, but it simply allows the legislature to authorize intergovernmental cooperation between the political subdivisions. If you have amendments to this section to delete some of the wordage out, and cut it down somewhat, I think we can all, including the Local Government Committee can possibly live with this. But it is necessary in the 1973 Constitution, or '74 Constitution, that this particular provision, or at least the concept, remain.

Questions

Mr. Roemer Mr. Reeves, you said some seven times in your four minute remark that this is not regional government. Perhaps you protest too loudly and angrily. It raises some suspicions as far as I'm concerned, when I read it, that it's exactly that. My question is if it's not regional government, what's it? What does this language mean? Any political subdivision may exercise and perform any of its authorized powers and functions, including financing, jointly or in cooperation with one or more political subdivisions, either within or without the state. Well, if that's not an authorization for regional government, what is it Terry?

Mr. Reeves All we're trying to do, Buddy, is to...what I'm saying is it's not the concept of necessary regional government, in other words, when you've mandated regional government. If you want to have cooperation between political subdivision, within or without the state, then this particular provision is permissive. In other words, when we are saying to the people that they cannot handle their own particular problems as well as a combination of local governments.

For instance, in our parishes in North Louisiana, possibly, for instance on the garbage collection, we found it...as a planner, we found that two or three, or maybe four parishes can get together and have a sanitary landfill. Of course, we do not have any of these as of yet, and more economically than we would if we could do it by just one parish.

Mr. Roemer Well...would you not agree that all Paragraph (B) does is prohibit the legislature from requiring regional government? But (A) gives them a framework they need to enact regional government provisions.

Mr. Reeves Correct, and again in (B), we just
simply do not want to mandate.

Mr. O'Neil Mr. Reeves, why in the world would any local governmental subdivision want to join, cooperate with one or more political subdivisions in another state, the United States or the agencies thereof? Does that mean that a local governmental subdivision could get into cooperation with some foreign nation on something?

Mr. Reeves Absolutely not. Gary, you know better than that.

Mr. O'Neil All right. But I think Mr. Roemer's points are well taken that this does look like the blackest of real estate. I really think that you know, you have protested too loudly and too longly that it's not.

Mr. Reeves All we're trying to do, Gary, is to make it permissible. For instance, the parish of Caddo, which is in the northern section of this state, it is close, very close to the great state of Texas. If a county, I believe it is adjoining Shelby County, if it wanted to cooperate in a venture with Shelby County—or whatever county that is that is adjoining Caddo Parish in Texas—then this would permit it to do so. This is all that we're saying.

Mr. Lanier Mr. Reeves, isn't it true under the present law of the State of Louisiana that in many instances, say if the school board needed some blacktop or shells on the driveways of the schools, that the police jury does not have authority, under the law, to do that?

Mr. Reeves Correct.

Mr. Lanier Also, is it not true that in getting together, say, in an area to handle drainage or roads or other matters, that there are great inhibitions in our present law to prohibit this type of activity, even though it would be in the best interest of the people?

Mr. Reeves Yes, this is correct.

Mr. Lanier Is it not true that a similar provision to this has been suggested in the model state constitution?

Mr. Reeves It is. Absolutely.

Mr. Lanier Is it not true that a provision similar to this was recommended by the Louisiana Constitutional Revision Commission?

Mr. Reeves Yes.

Mr. Casey Mr. Reeves, is it not correct that this would permit, for instance, that parish of Orleans and T. Tammany Parish to enter into a joint operation for municipal control, to mutually use each other's equipment by contract, and in the interest of economy and saving manpower that this might be the most efficient way of accomplishing that? Isn't that the very purpose of this section?

Mr. Reeves Absolutely.

Mr. Casey Did you know that I handled legislation in the legislature in past years, in order to specifically permit this, and that if it were enacted, would have been unconstitutional and it might be prohibited by the present constitution?

Mr. Reeves I didn't realize you handling that legislation but I do realize that the laws to that effect

Mr. O'Neil Mr. Reeves, Mr. Lanier asked you if we didn't know that this one from the model state you were adopting is going to ask you if you know that I don't know where it came from that think it's just a.

Mr. Reeves I would have probably have that idea. Gary, we differ in a lot of things.

Mr. Roemer Mr. Reeves, wouldn't you agree that this provision was made about the model constitution wouldn't you agree that that's somewhat like a median area? Is something you play with and you but you can't want to fly in?

Mr. Reeves Not necessarily. Mr. Roemer.

Mr. Hernandez Mr. Reeves, I am sure that you realize that we are making a concerted effort to make Sabine River, which is the line between Louisiana and Texas navigable up to Toledo Bend. I want to know that this will cover this situation to permit us to cooperate between the parishes and between the states of Texas and Louisiana is that correct, sir?

Mr. Reeves Absolutely, yes, sir I do insist that this is an important issue as Mr. Casey said, under the present constitution many areas do not have the authority to cooperate, virtually, with one another. This is not a plot against the citizens of the state of Louisiana. It is a simplistic idea to help local governments in the particular provisions. I think it's good.

Amendment

Mr. Poynter Amendments are offered by Delegate Burson. Amendment No. 1, on page 12, line 26, after the word "subdivision" and before the word "lay" insert the following: or school board.

You've got the identical amendment then on page 12, line 26, page 12, line 34, and page 13, line 32, in each case inserting after the words "political subdivisions inserting or school boards."

Explanation

Mr. Burson Madam chairman, fellow delegates, the rationale behind this amendment to our definition of "political subdivisions specifically includes parishes or municipalities, and does not include school boards. I will offer a number of amendments to insert "school boards" in appropriate provisions, because there are some provisions, such as the present one, where this is required. The reason why it is required in this particular section is there are some school districts throughout this state where there are cooperative ventures between parishes. The school district that I went to high school in in Bastille, in La.—is one of them, where Acadia Parish and Evangeline Parish are together and formed a separate school district where they are both controlled to the same extent by one parish with the consent of the other. There are other instances, where this will need to be done in the future, probably with more regularity, for example, for educational renovation purposes. In addition, in the future, right now, we have a regional education center for high school students at the junction of three parishes. It is entirely likely that eventually that center will enter the then governing parish other than the center's ability to permit the maximum flexibility in this area. In this words, "the board here must allow all subdivisions, if anyone had any arguments."

Question

Mr. Venable Mr. Burson, in presenting any of the phrase that is in this particular section, to the definition of "political subdivisions specifically includes parishes or municipalities, and does not include school boards. I understand that law to perform governmental functions and so where the referendum is safe was really the effect of federalism, the resistance of federalism to perform governmental functions. More than those of a certain, I think that the addition of the word boards is necessary.
Mr. Burson Yes, Mr. Dennery, for this reason. There are too many instances where we use the general term that did not apply to school boards, so we'd either have to do one of two things, either exclude school boards or we don't want them to have the power, or include them where we want to make it plain they should have the power, and we're taking the latter tack because it seems to me to be a better way to approach it. Just to include school boards specifically where we want them to share in a particular power.

Mr. Pugh The thrust of my was somewhat the same as his as to whether or not, as a matter of fact, school boards were or weren't a political subdivision. If we start distinguishing all the way through this constitution between political subdivisions or school boards, we're going to have to go back and amend something we've already done, much less these. I think it's a danger trying to assume that a school board is not a political subdivision, when in fact, it is.

Mr. Burson Mr. Pugh, there are cases on the books in Louisiana, with which I happen to be familiar, that has said school boards are not subdivisions. For instance, immunity of political subdivisions of the state that have said that school boards were not immune from prescription. You will note in the Prescription Article in the government, I specifically included school boards there. The reason behind that is that I knew there were lawsuits ----that there's been an immunity from prescription of the state and its political subdivisions did not extend to school boards.

Mr. Pugh I am aware of the fact that there has been some watering down. I say, is it not a fact that a school board is a political subdivision? Either it is or it isn't!

Mr. Burson Mr. Pugh, I just don't want to leave any possible ambiguity. With the cases on the books saying that it's not, I don't want to leave any doubt, in the area where we want them to have the power, that they are included. Now, if we come up with a definition of local governmental subdivision that would include them, then fine. But, I think if we do that, then we're going to have to turn around and exclude school boards from a lot of the power that shall be given to local subdivisions. For instance, in Articles 7, 8, and 9, I don't think we want school boards to be exercising that broad scope of power. They are a limited purpose operation, just for public education.

Mr. Pugh Well, what was the thinking of the committee when they put the section in like it is without any school boards in there?

Mr. Burson I don't know.

Mr. Sandoz Jack, wouldn't it be more simple instead of inserting these amendments at different places in this proposal to merely make an amendment to 512 to define a political subdivision as including school boards?

Mr. Burson The problem we get into there is there are many, many articles that give powers or define the powers of local governmental subdivisions that have nothing to do with school boards, and that we would not want school boards to be involved in it.

Mr. Sandoz But, the definition section as being a part of this article wouldn't that specifically clear that up?

Mr. Burson I'm afraid then we'd have to go back and exclude school boards from those areas where we didn't want them to exercise the power such as Sections 7, 8, and 9...or in order of the finance provision, for instance, where we say that local governmental subdivisions have certain powers to tax, and so on.

Mr. Perez There is no objection to the adoption of the amendment, and I'd like to just clarify the fact that there are certain areas where political subdivisions ----school boards should be included as political subdivisions, and there are others where they should not; and it is the intention of the committee at a later time, when we get to the definition section, to exclude school boards under the definition of a political subdivision, and then include them in each case where the specific authority should be given to school boards to do certain things. This amendment would make it consistent with the overall plan of the article, therefore, I urge you to adopt the amendment.

[Previous Question ordered. Amendments adopted: 92-13. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1. On page 12...this is offered by Delegate Pugh. On page 12, delete lines 23 through 32, both inclusive, in their entirety and on page 13 delete lines 1 through 8, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 23. Except as otherwise provided by law, any political subdivision may, but shall not be required to, exercise any of its authorized powers and functions, including financing, jointly or in cooperation with one or more political subdivisions, either with the state, the United States, or agencies thereof."

Explaination

Mr. Pugh Mr. Chairman, fellow delegates, I think this expresses the intentions of the committee. It does delete the objection that was raised as to whether or not one of the political subdivisions could do business with Cuba or Russia or some other country, and it limits their rights to do business with other political subdivisions, either within this state or within the United States, or any agencies either within this state or within the United States. Other than that it does not change any of what the committee was attempting to accomplish in its many lines of language. I yield to questions.

Questions

Ms. Zervigon Mr. Pugh, I understand your intention, but I'm worried about the words that are being used. You say "any political subdivision may, but may not be required to" -- but we're talking about authorized powers or functions." Required by whom?

Mr. Pugh Well, by the legislature. There was your section in the committee--perhaps you're not on the committee, I don't know--but the committee wanted that language in that you couldn't make them do it. You wanted to allow them to do it but you couldn't make them do it, and that's the purpose of the language "but shall not be required to."

Ms. Zervigon Mr. Pugh, isn't it a fact that sometimes the federal government requires regional cooperation before federal funds can be applied for?

Mr. Pugh Lady, if they don't want to cooperate to the extent of getting the funds, then that's perfectly all right.

Ms. Zervigon But they may...you're saying that they may not be required to by the federal government.

Mr. Pugh No, ma'am. There's nothing we could put in this constitution that can in any way bind the United States government through its own constitution.

Ms. Zervigon Well, my problem with it is--it seems to me that in order to be allowed that regional co-
57th Days Proceedings—September 29, 1973

operation, especially if one parish dissents, you would have to go to the legislature and get a law providing otherwise. I wouldn't think that that requires waiting a year in order to receive those funds.

Mr. Pugh. Quite frankly, I do not think it does.

Mr. Toohey. Mr. Pugh, wouldn't you think that the committee proposal makes it clearer, as Mr. Zeligman suggested, that we were just saying that the legislature shall not require this cooperation? I think in your amendment, it leaves it open that even the governing authority of a parish could not require the political subdivisions within the parish to cooperate.

Mr. Pugh. I don't find a distinction or difference between the two. I'm merely saying we're saying the same thing in about six lines, that's all, instead of what amounts to a half a page.

Mr. Toohey. Well, it's your intention that they shall not be required by the legislature?

Mr. Pugh. That is correct.

Mr. Reger. Mr. Pugh, would you agree with my previous observation that we were purely legislative, if that's what you're trying to say, and not do without the whole section, be apparently no one, or not enough people, feel that way about it.

Mr. De Blieue. Mr. Pugh, there is only one question that I have with reference to your amendment. I think it is much, much better than the proposal, but that word 'require'—as you well know, there are very many judicial districts that overlap parishes, and in which the legislature has required the parishes to contribute to the extra salary that's paid the judges, and paid the district attorneys, and assistance district attorneys, in those respective districts. Would that particular provision in your amendment here nullify those laws insofar as the local political parishes are concerned in making those contributions, because it says 'it shall not require the to? I'm just wondering, it just put those in jeopardy.

Mr. Pugh. If you're concerned about the word 'require', you can use the word 'obligated' if you want, and I think the sense and the essence is the same.

Mr. De Blieue. That's the only thing that I find that might be questionable in your amendment as you have it proposed.

Mr. Pugh. I have no objection to the word 'obligated' instead of 'required'. I think in this instance both have the same meaning.

Mr. Ayler. Mr. Pugh, I know what you're trying to do here, but I'm not sure you've done it. Would you agree that this would read, if we took out one of the clauses here, that this would say 'for any assessment law, any political subdivision shall not be required to exercise any of its authorized power, etc.'

Mr. Pugh. You don't have the permissive you don't have the 'may' in there.

Mr. Ayler. Well, what I'm getting at, I think the word 'may' otherwise provided by law, modifies the 'shall' as well as the 'shall not', and if that is the word 'shall' as otherwise provided by law means that the legislature would pass an act to require it below that would be an exception to the shall not. If that is correct.

Mr. Pugh. I think the whole section is dependent on the will of the legislature. That's the reason I think the whole section is legislative in nature, that if the legislature doesn't want you to do anything, all it's got to do is say so, but we seem to have to want these articles to be here, and this, I think, expresses what you want.

Further Discussion

Mr. Perez. Ladies and gentlemen of the convention, I would like to suggest to you that this is probably one of the best articles appearing in the local government Article because of the fact that it provides voluntary cooperation between political subdivisions, but does not require it except under certain conditions. I provide in an amendment that believe that you can see from the question that have arisen to Mr. Pugh with his amendment, that by trying to consolidate into a few words that which must be said in a few more words, we have managed to raise many, many questions as to what this really means. I have a question even that says 'but shall not be required to', that the voters might even vote that something should be done and the local government could come along and say, no, we're not going to do it. You can't require us to do it, even in the face of an amendment, and if passed, thereby the section as you wrote it, suffers from the same statutory concept as the section is previously written here.

Mr. Pugh. There is no doubt I and that this is purely legislative, if that's what you're trying to say, and I rather do without the whole section, be apparently no one, or not enough people, feel that way about it.

Mr. De Blieue. Mr. Pugh, there is only one question that I have with reference to your amendment. I think it is much, much better than the proposal, but that word 'require'—as you well know, there are very many judicial districts that overlap parishes, and in which the legislature has required the parishes to contribute to the extra salary that's paid the judges, and paid the district attorneys, and assistance district attorneys, in those respective districts. Would that particular provision in your amendment here nullify those laws insofar as the local political parishes are concerned in making those contributions, because it says 'it shall not require the to? I'm just wondering, it just put those in jeopardy.

Mr. Pugh. If you're concerned about the word 'require', you can use the word 'obligated' if you want, and I think the sense and the essence is the same.

Mr. De Blieue. That's the only thing that I find that might be questionable in your amendment as you have it proposed.

Mr. Pugh. I have no objection to the word 'obligated' instead of 'required'. I think in this instance both have the same meaning.

Mr. Ayler. Mr. Pugh, I know what you're trying to do here, but I'm not sure you've done it. Would you agree that this would read, if we took out one of the clauses here, that this would say 'for any assessment law, any political subdivision shall not be required to exercise any of its authorized power, etc.'

Mr. Pugh. You don't have the permissive you don't have the 'may' in there.

Mr. Ayler. Well, what I'm getting at, I think the word 'may' otherwise provided by law, modifies the 'shall' as well as the 'shall not', and if that is the word 'shall' as otherwise provided by law means that the legislature would pass an act to require it below that would be an exception to the shall not. If that is correct.

Mr. Pugh. I think the whole section is dependent on the will of the legislature. That's the reason I think the whole section is legislative in nature, that if the legislature doesn't want you to do anything, all it's got to do is say so, but we seem to have to want these articles to be here, and this, I think, expresses what you want.

Further Discussion

Mr. Perez. Ladies and gentlemen of the convention, I would like to suggest to you that this is probably one of the best articles appearing in the local government Article because of the fact that it provides voluntary cooperation between political subdivisions, but does not require it except under certain conditions. I provide in an amendment that believe that you can see from the question that have arisen to Mr. Pugh with his amendment, that by trying to consolidate into a few words that which must be said in a few more words, we have managed to raise many, many questions as to what this really means. I have a question even that says 'but shall not be required to', that the voters might even vote that something should be done and the local government could come along and say, no, we're not going to do it. You can't require us to do it, even in the face of an amendment, and if passed, thereby the section as you wrote it, suffers from the same statutory concept as the section is previously written here.

Mr. Perez. Yes, that's correct.

Mr. Perez. Mr. Perez, as an amendment, he would delete entirely, Section 22, which would be not.

Mr. Perez. Yes, he would, and that is what I am trying to explain because of the fact that the section prohibits the legislature from by a majority vote, remove a provision written in the constitution in which require the two-thirds of the vote of each of the parishes in order to change parish lines, that if we pass this, it might be in a position where through the back door they could come in and consolidate parishes by a mere act of the legislature.

Mr. Pugh. Mr. Perez, in answer to Mr. Perez, as I read the legislature could be affected, and he said, did you hold what was your answer?

Mr. Perez. My answer? In that way we would see if of the fact that the section prohibits the legislature from by a majority vote, remove a provision written in the constitution in which require the two-thirds of the vote of each of the parishes in order to change parish lines, that if we pass this, it might be in a position where through the back door they could come in and consolidate parishes by a mere act of the legislature.

Mr. Pugh. Mr. Perez, in answer to Mr. Perez, as I read the legislature could be affected, and he said, did you hold what was your answer?

Mr. Perez. My answer? In that way we would see if of the fact that the section prohibits the legislature from by a majority vote, remove a provision written in the constitution in which require the two-thirds of the vote of each of the parishes in order to change parish lines, that if we pass this, it might be in a position where through the back door they could come in and consolidate parishes by a mere act of the legislature.

Mr. Pugh. I have a question for Mr. Perez, as I read the legislature could be affected, and he said, did you hold what was your answer?
al subdivision may exercise, and so forth, except as the legislature shall provide otherwise by law, which means that they've got to come and take it away from them.

Mr. Pugh: That's right. In other words, there's no difference insofar as the legislature is concerned, between my amendment and the original proposal by the committee.

Mr. Perez: Except that it would have to be a prohibitory situation under the way the committee prepared them.

[Previous Question ordered.]

Closing

Mr. Pugh: I don't wish to labor the issue. I merely wish to add the words "or school board," at the request of the gentleman to my left, after the words "political subdivision." I withdraw the amendment for that purpose, and I move the amendment with "or school board" added to it.

Mr. Poynter: The previous question has already been ordered, Mr. Pugh. I'm happy to see that Mr. Burson's got some amendments prepared that are up here that would have that effect...just let it go as it is.

[Amendment rejected: 22-77. Motion to reconsider tabled.]

Amendment

Mr. Poynter: Amendment No. 1 (by Mr. Flory). On page 12, Line 26, after the word "within" and before the word "the" delete the words "or without".

Explanation

Mr. Flory: Madam Chairman, and delegates to the convention, what the amendment does, as read, was on line twenty-six, delete the words "or without.

Now, the reason for the amendment, of course, is to prohibit a political subdivision, or one or more, not necessarily from forming joint agreements with either the other states, but particularly, I don't believe that we ought to allow a political subdivision, or the state or anybody else, to contract or enter into an agreement with any foreign power or a foreign agency. That's what this amendment does, is to take out that possibility that one of our political subdivisions might form some agreement with a foreign power or a subdivision or agency thereof.

Questions

Mr. Denney: Mr. Flory, as I understand your amendment, it would prohibit an agency of this state from entering into a contract with an agency of another state within the United States. Now, I don't think you intended that, did you?

Mr. Flory: It would do that, Mr. Denney, as I said. My objections don't necessarily lie in that direction, but in the way that the section is worded, it allows interstate compacts which the legislature has rejected on repeated occasions—the state, with other states, in forming compacts. It also applies to foreign powers. My main objection is to the foreign power, while I am still opposed to the regional government concept.

Mr. Denney: Well, I agree with the second part of your reasoning, but what bothers me is that, for example, the Mississippi Educational Television Authority might well want to contract with the Mississippi Educational Television Authority to get some programs from it, or to sell some programs to it, and would this prevent that?

Mr. Flory: Possibly it could, yes. I'll be honest with you.

Mr. Perez: Gordon, there was no intention, of course, that this amendment would apply to any foreign power, and so forth, and I'm sure if anybody...but the thing that I'm concerned about is I know, for instance, that we have levee districts which extend beyond the State of Louisiana into an adjoining state, and I was hoping that we do have a provision on levee districts which would allow that possibility...I was hoping we could knock it out of the levee district section if we had it in here, and I'm afraid that we may be getting into a problem with respect to some of the border parishes not being able to cooperate with adjoining counties or parts of counties or levee districts in an adjoining state.

Mr. Flory: Madam Chairman, could we have about a one minute recess? I think we could resolve it then, if that's the issue, without any problem whatsoever.

Mrs. Miller: We'll stand at ease for about three minutes.

Recess

[Quorum Call: 86 delegates present and a quorum.]

Motion

Mr. Flory: Madam Chairman, and delegates, I would like to now withdraw the amendment, and suggest to the convention that we go over this section because...we have, in our discussion here which I thought was extremely fruitful, brought up some very valid problems that I think place this section insofar as the ports of this state and all are concerned with international trade. Nothing we want to do here, of course, do we want to interfere with that. So I would suggest, and the belief that a compromise can be reached on this issue, and ask that you would pass it over to give us an opportunity to do that, so that we will not do violence to the international trade aspect of our state's economy.

[Motion to pass over Section 23 adopted without objection.]

Reading of the Section

Mr. Poynter: "Section 24. Assistance to Local Industry by Political Subdivisions."

Section 24. (A). Subject...

[Motion to waive reading of the section adopted without objection.]

Explanation

Mr. Cannon: Ladies and gentlemen of the convention, the committee worked long and hard on this, and I think it bears your serious consideration. What we have tried to do is distinguish the difference between industrial areas and industrial inducement districts, or as commonly known, industrial districts which are primarily methods of financing. This gives the legislature the power to authorize this is not any takeoff from what presently exists—to authorize political subdivisions to induce industry to come into our state and locate by providing a financing vehicle with it. The departure is to extend the authority to deep-water port commissions, deep-water port, harbor, and terminal districts. In doing this, they are all subject to approval of any bonds they issue by the State Bond Commission. I think that there are several things we need to look at. Whenever the Superport is built, and wherever it is built, it will have serious economic effects on our deep-water ports, particularly those which handle bulk liquid cargo. I think that we should provide them additional revenue raising powers and functions. Again, this is simply what it is today with the exception: Deep-water port commissions all over the State of Louisiana have the power of industrial districts, with the
Mr. Alexander: I notice one section here which has reference to agreements between, or by the parish, either with the state or any other political subdivision, and the language here could mean even outside of the United States.

Mr. Cannon: Reverend Alexander, we are now on Section 23, which was withdrawn because a serious problem... a serious concern that Mr. Flory had raised, and I think the committee and several other members of this committee will be longing to see it been passed. That was Section 23; we are now on Section 24, which is industrial inducement districts—the power of the legislature to authorize them to their various political subdivisions.

Mr. O'Neill: Harvey, you gave us an example. I think, here in Baton Rouge, that you were talking to us about earlier, where I understand the local governmental subdivision passed something like a fifty million dollar bond issue to install pollution equipment in industrial industries here. Could you give us that example?

Mr. Cannon: Yes, sir. This was part of Environmental Protection Agency's requisites. Mr. Keen was the attorney handling the bond sale, I believe, for Exxon—where they were mandated by the federal government to clean up all the rain water and all of their waste. I hope the people in Jefferson and Orleans appreciate us doing this for Exxon, but industries that are used, and we have an obligation upon taxpayers of this state. These bonds were used through the public industrial bond vehicle based on the financial statement of Exxon, which is probably an obligation on the taxpayers of East Baton Rouge Parish. I think in the... who is the better inducer of industry? I think ports, because they are right there with their hand on the pulse of industry.

Mr. Pugh: Sir, does not the second line of this section provide, the legislature may authorize... it not true, we've already, in the legislative section, authorized them to do what you all contemplated doing here?

Mr. Cannon: Yes, sir. It does, and I think that that's a good point because it's also, in saying 'the legislature may authorize,' it implies a prohibition for every political subdivision of this state, without the legislature's authority, from going off selling bonds and planning the financial integrity of this state in jeopardy. I think that the language is such that it implies that they can't do it without this authority.

Mr. Pugh: I understand that the point I was making is whether or not this wasn't purely legislative in nature.

Mr. Cannon: I say it appears to me to be a prohibition against political subdivisions from doing this, on their own, a limitation on the power of political subdivisions.
Mr. Poynter Amendment No. 1 [by Mr. Jenkins], on page 13, line 22, after the word "acquire" and before the word "and" insert the following: "by purchase, donation, or exchange.

Amendment No. 3, on page 13, line 24, after the word "acquire" delete the remainder of the line and at the beginning of line 25 delete the words and punctuation "or otherwise," and insert in lieu thereof the following: "by purchase, donation, or exchange"

Amendment No. 3, on page 13, lines 29 through 32, both inclusive, as in their entirety and on page 14, delete line 1 in its entirety.

Explanation

Mr. Jenkins Mr. Chairman, delegates, let me call your attention to Section 27, which is entitled "Acquisition of Property." You'll notice in there that acquisition of property is granted to any political subdivision and defined as "acquisition by purchase, donation, expropriation, or exchange." So, when you grant to a political subdivision the authority to acquire property, you are giving it the power to expropriate property. Now, the effect of the first two amendments is to make these industrial districts can acquire property by expropriation to give industrial plant sites to people or industrial plant buildings. If you'll look at Amendment No. 1. It says, "when industrial plant sites are acquired, they can be acquired by purchase, donation or exchange. But, you shouldn't allow private companies to have the authority via the state to go out and seize people's sites and then build industrial plants on them. That doesn't make sense; these is talk of such industrial plant sites; shall that authority. The second amendment is on line 24 where it says, "to acquire through purchase or otherwise." The amendment says, "to acquire by purchase, donation or exchange." Now here we're talking about the acquisition of industrial plant buildings or industrial plant equipment. Surely we don't want these districts to be able to acquire industrial plant buildings or industrial plant equipment, machinery or furnishing, by expropriation. That would favor one aspect or one group of our population at the expense of another. The third amendment takes out Section (B). Now, Section (B) has no place in this constitution. Here's what it says; it says, "It is hereby found and declared that the purposes to be accomplished herein are public and proper legal purposes, and will be of public benefit to the political subdivision, Deep River," or so forth. It seems impossible for us to say here that any given deep-water port or industrial district or political subdivision will do things that are of a public benefit in the future. That is a question of fact to be determined under the circumstances at that time. The question of public purpose, of course, plays into this expropriation question because if you say it's a public purpose, then they can expropriate under it, but it just doesn't make sense. It's a legal fiction to say that in every circumstance any acquisition of property by an industrial district or a deep-water port, or whatever, is a public purpose. That depends on what they're taking. It depends on why they're taking it, and it just doesn't make sense to say that here in the constitution. So, I urge the adoption of these three amendments: to limit acquisition of industrial plant sites to purchase, donation or exchange; to acquisition of industrial plant buildings and machinery and equipment to purchase, donation, and exchange, not expropriation; the acquisition of industrial plant buildings and machinery and equipment to purchase, donation, and exchange, not expropriation; to acquisition of industrial plant sites to purchase, donation or exchange; to acquisition of industrial plant buildings and machinery and equipment to purchase, donation, and exchange, not expropriation; to acquisition of industrial plant sites to purchase, donation or exchange, not expropriation; to acquisition of industrial plant buildings and machinery and equipment to purchase, donation, and exchange, not expropriation; to acquire industrial plant sites in the manner described in the adoption of these three amendments; to limit the use of the use of this section in Section (B), to determine whether or not it is a public purpose, in a given circumstance, as to what an industrial district does. So, I urge the adoption of these amendments. It doesn't really in any way affect the merit or the vitality of this section.

Questions

Mr. Zervigon Mr. Keen, I'm looking for some clarification on this point of declaration of a public purpose if you declare that industrial inducement in general, is a public purpose, do you necessarily ratify every fact that anyone may take claiming that he is acting under that general authorization?

Mr. Keen The design of the second part would just simply be a recognition that this type of financing constituted a public purpose. It would obviously be a question for the courts to resolve, in light of the language that was used in the prior section, as to whether or not it, in fact, was a public purpose.

Mr. Zervigon The question would be if it were indeed implementing the public purpose of industrial inducement.

Mr. Keen That's correct.

Mr. Zervigon Thank you.

Mr. Roy Mr. Keen, I appreciate your candor, and you do admit that this whole section, then, implies
that industrial agencies created by the state will be able to expropriate people's property, do you not.

Mr. Keen. 1...

Mr. Roy. That's the clue to it, isn't it?

Mr. Keen. The authority, in the purpose of it is to provide means by which you could constitutionally carry out industrial development programs through financing.

Mr. Roy. No, but you do admit that Mr. Jenkins' amendments, insofar as if people want to pay attention and listen to what's going on about it, do prevent expropriation of private property for industrial site developments by industrialists who come in is that right?

Mr. Keen. This relates to action by any political subdivision or by the deep-water ports. It's got nothing to do with any individual who comes in.

Mr. Roy. Whatever they do, if the industrial port decides that it... it thinks that it ought to expropriate property, under you all's provision, it may do so. Is that right?

Mr. Keen. If you had a situation where the Port of New Orleans wanted to bring in a particular industry which it thought was desirable for port purposes, and was going to do it through revenue financing, it would have the right under this to acquire a site by expropriation, if necessary, in order to do it.

Mr. Roy. All right. Then it, also, means that subject to only the restrictions that the legislature places on it, that expropriation would take place and if the legislature said you only be paid for your assessed value of your land, that's all you'd have to be paid for. Isn't that right?

Mr. Keen. I think you've covered that over in the Bill of Rights, Mr. Roy.

Mr. Roy. No, no, because you see this says, subject to such restrictions as may... it may impose. This legislation may authorize and since the legislation with a specific thing, I think that the legislature could simply say, we don't give you a jury trial in this matter either.

Mr. Keen. Well, I don't think that gives the broad authority of the legislature to take it for nothing. No.

Further Discussion

Mr. Roemer. I just want to take a moment, Mr. Chairman, and fellow delegates, to support Mr. Jenkins's amendment, and I know it's somewhat confusing, given the day of the day given the hour of the day and given the nature of the hour we spent on this section and given the complexity of this section, but I think it's important, and I think it's important in a few moments ago, we stand up in this Constitution, clearly again, the matter of expropriation is a matter of a woman's property or an individual's property. This is a section, Section 2,4, written in, I mean, I think, in writing in section 2,4, as written, when it says, "...and the funds derived from the sale thereof, to ensure its acquisition and improve industrial and industrial development on said site, to fund development of said site,..." if you go over to section 7, which would define specifically what the nature of such acquisition is or what the nature of such acquisition in this case, was, would be, you would want to see what restrictions the legislature put on this industrial agency. Here's a general law, positive subdivisions may acquire property for any public purpose and it is involved in a question of, by purchase, donation, expropriation or exchange. Now, Mr. Jenkins is doing a saying, if we've given constitutional status to the public purpose of deep-water ports land, and yet given then the right to acquire such property, we cannot, in the expropriation, we cannot allow purchase, donation, or exchange, but we would allow the deep-water part of them, for their unique value. Therefore, the value of the property. Now, that's all that I have here. I say that's all... I assert, I think it would be enough money to use private individuals, as to allow the port agency to allow the purchase and acquisition. But it would not allow expropriation in this matter, this, that's what the Jenkins amendment says, and I urge you to support them that way. It quite clearly gives us this one limitation in regard to expropriation that we need, I wish you to study it closely and let's vote wisely, a favorite quote of mine because I think he's doing us all a favor without doing injustice to the deep-water ports.

Mr. O'Neill. Mr. Roemer, doesn't this new confinement to the right to property, which this convention adopted in previous sections, and which protected private property?

Mr. Roemer. Well, there is no question of that, and I think you have kept us... History in this convention of your news for your property, is a vital right to the people of the world. Mr. O'Neill, he looked out for our rights in this area without harming the deep-water ports, I think.

Mr. O'Neill. Well, another question, and quite a facetious. Would you say that the particular vision is the clear, concise language that we all told the people we were going to write in the constitution?

Mr. Roemer. Well, of course, I think not.

Mr. Roy. Buddy, you're our border, you know, and all the right we had in the contest with respect to municipalities expropriating utilities for the benefit of the public? Do you remember that?

Mr. Roemer. Yes, I do. Only.

Mr. Roy. And we had to show they have the fair market value... they identify as fair market with all that discussion. Doesn't it?

Mr. Roemer. I agree. I just see so far, and didn't think the committee intended for it, that far, frankly if they didn't, I think they wouldn't have taken it. Certainly women's language clears it up.

Mr. Velasquez. The way till the written, legally, wouldn't be possible to have them to expropriate somebody land, cut the benefit, and the representation of the site to anybody else, because they weren't improved the property.

Mr. Roemer. Absolutely. If I'm clear, well, as you know, we all stand up, and the representation of the site to anybody else, because they were not improved the property.

Mr. Roy. Absolutely. If it's on, we don't have the market value here. And we don't have the market value here.

Mr. Roemer. I think you have to ask a limit to a property, is normal, what we refer to as an industrial area. And to what little does a girl have if she can go somewhere. I mean, you can't cut off your arm, well, well, well, what do you have, and what is there? Now, you think you have a good reason to have it?

Mr. Roemer. I don't think, and that is why this is so important. You see the world, the rest of the world, mountainous, water, money is not like this. This is an expropriation, and I think that clearly, the battle here...
Mr. Roy Thank you, Madam Chairman. Ladies and gentlemen of the convention, I know the hour is late and we will want to get back here, but we're just really getting into a problem here. We fought for three or four days on Section 4. We went over the idea of property rights. There are very few people in here, I think, who are as liberal as I am about the rights of government to do what it can for the people, and I'm really concerned about this, and I was concerned in Section 4, and I thought we had fought that battle, and here, all of a sudden we have coming right back at us the right of a legislatively created body of some sort of another to come in and take people's property for what they think may be a good purpose. I'm not against that thought at all, about good purpose and helping us, helping industry, but if this thing goes too far, we've just denuded everything we have done in Section 4, and I'm really concerned that the people aren't really paying attention to what's happening here. Then we go to Section 8 and irrespective of what the other gentlemen feel, when you constitutionalize and say, "it is hereby found and declared that the purposes designed to be accomplished are public and proper legal purposes and will be of public benefit to the political subdivision," it's hard for me to see some district court saying that "I'm going to take that, that this is not for a public purpose." Now, when the same committee tried to say that the provisions of this local governmental article would be liberally construed in favor of the political subdivision, you remember what a hassle that raised. Everybody knew better than that, and we took that out, and here we're going right back again and we're constitutionalizing, saying that as long as the legislature says that under 24(A), for these one, two, three, four, five, whatever it is, reasons we're doing this, I don't think a court will be able to determine this issue, and it should be done clear that it can't, and at best you have here something that is ambiguous and is in support of the Jenkins amendments. I think that you and I ought to vote for that. I'll yield to questions.

Questions

Mr. Cannon Mr. Roy, did you know that every deep-water port in the State of Louisiana right now has power of expropriation?

Mr. Roy I know that, and I wouldn't mind you spelling it out, but not saying "subject to such restrictions as it may impose," the legislature may say that all they have to pay is the assessed value of the property front henceforth.

Mr. Cannon Did you also know that the only deep-water port in the State of Louisiana which does not have industrial indenpendent district authority in the existing constitution is the Greater Baton Rouge Port Commission? This was an inequity; we tried to take the language and make it broad and general to apply to all deep-water ports. Did you know that?

Mr. Roy As a matter of fact, I wasn't aware of that, but that doesn't change my opinion about what trouble we are getting into on this particular section.

Mr. Derbes Mr. Roy, isn't the committee proposal subject to Section 4 of the Bill of Rights Article?

Mr. Roy I don't think it is.

Mr. Derbes You don't think it is?

Mr. Roy I don't think it is because it says, "only subject to the restrictions imposed by the legislature," if you read the first sentence. This is a special section dealing with a special problem, and I would think that they could argue they are not subject to the provisions of the court.

Mr. Roy No, what I'm suggesting to you is it would seem that anything other than a purchase, donation, or ordinary acquisition would have to be an expropriation, and that would ipso facto make it subject to the provisions of Article IV of the Bill of Rights, wouldn't it?

Mr. Roy Well, it could, but to the extent that would... when you talk about the right to the jury to determine the compensation, the legislature could say, "You're not going to expropriate under 24. Read the first sentence.

Mr. Derbes All right. Let me take it a step further. You don't think that the legislature's authority in this area could be trusted? Is that essentially what you're saying?

Mr. Roy Well, we're talking about... I'm not talking about trusting individuals; I'm talking about a principle. Presently, the idea of taking land for levees, I don't agree with, that you shouldn't be paid what you're owed, but you can. No, my answer to that is, "No, I would not trust the legislature here with respect to that issue.

Mr. Derbes I wouldn't mind spelling out the provisions of expropriation in this area, or changing the language of the clause in question, like "subject to the provisions of Article IV of the section," but to completely delete the right of expropriation, when it's subject to legislative authorization, seems to me to be a real hamstringing.

Mr. Roy Well, that's the difference in our philosophy. Mr. Derbes, I just don't believe that people can go around expropriating other people's property without real good reason.

Further Discussion

Mr. O'Neill Ladies and gentlemen, I really wish we hadn't gotten lost this morning. I think we're all tired and we're about ready to go home, and we're tired of going back and forth from home rule to property rights. It's a shame that such factionalism has gotten into this convention that it's the same people arguing against the same people, and some of them don't even care what they're arguing about. I think that that's a bad thing to do. It's a bad thing to start, it's a bad thing to foster, and I think that maybe we should forget that right now, and think back to the time when we did decide to protect property rights in the 57th Days. It was a constitutional, and you remember that. The people arguing against this amendment right now are the same people who didn't want to protect property rights. They didn't want to limit the state in its right to expropriate. I think this is a very carefully drawn amendment, and I know very well thought out, and I would, also, submit, to you that the average ordinary citizen picking up this constitution and reading this section couldn't make heads or tails, or anything, out of what the section means and what it actually says, and what it actually does. I hope that you all pay attention to the debate very carefully. I know you're tired, and I want to go to the football game tonight and everything, but let's be real careful about what we do on the right to expropriate people's property. I really don't even think the people who are against this amendment actually realize the extent to which the right to property would be violated by the adoption of this section as it is.

Questions

Mr. Pugh Quite frankly, I'm perhaps more concerned about the authorization to the power of the state than I am the deep-water ports. Insofar as expropriations are concerned. Is it not a principle of condemnation law that the person's property as condemned, just compensation must be paid based upon the uses of the land then occurring and not its potential uses?

Mr. O'Neill Yes, sir. Exactly.

[1527]
Mr. Pugh: Then, is it not a matter of fact that an industrial subdivision could expropriate a man's raw land, turn right around and create an industrial subdivision and sell that poor fellow's land as industrial property and pocket the difference?

Mr. O'Neill: Mr. Pugh, I'm thinking the exact same thing you are, that the sugar cane land down real good to the river, the local political subdivision could come in, expropriate that, pay its price as agricultural land, and then turn around and resell it as industrial land, and I think that's the point you're attempting to make.

Mr. Pugh: That's right.

Mr. Burson: Mr. O'Neill, do you know that it is so well established as to be beyond question that the standard of compensation in expropriation cases is the highest and best use of the land?

Mr. O'Neill: Well, under this, Mr. Burson, the

The court...the question that I'm directing to you is, do you know that the courts have consistently held, as far as I know, in the many cases that I've handled in that area, Mr. Willis and others who've handled cases in this area, I don't know of any case where a court has not held that a landowner in an expropriation case was entitled to anything other than the highest and best use of the land, whether it be...

Mr. O'Neill: Well, Mr. Burson, you know that if the legislature provides otherwise, that it's going to be otherwise, and that's how the courts are going to interpret it.

Mr. Burson: I disagree.

Mr. Stagg: Mr. O'Neill, I don't know whether you're familiar with the case of City of Shreveport v. The Meyer Corporation which, in 1953, established as precedent in this state that the judge must receive testimony on the value of a piece of ground as its highest and best use would indicate and that that evidence would be available to anybody in any expropriation case in Louisiana and has been so for the last twenty years.

Mr. O'Neill: Well, Mr. Stagg, don't you agree that if we provide otherwise in this constitution and by law that that's what the courts are going to say?

Mr. Stagg: I don't believe so. The precedent is already established about what a man's land value must be based on when you take it.

Mr. O'Neill: Well, then, if it's based on agricultural use, that's what he'll get for it.

Mr. Willis: Mr. O'Neill, put a question mark to this. Property shall not be taken or damaged by the state or its political subdivisions except for public purposes and with just compensation paid to the owner or into court for his benefit, and so on, entitling a private property owner to a trial by jury which is far beyond what we have in yesteryear as proposed in this constitution.

Mr. O'Neill: Well, Mr. Willis, the author of this section have already admitted that this probably won't apply to Section 4, the property article in the Bill of Rights.

Mr. Willis: Well, we as individuals have differences of opinions and we as lawyers have more differences of opinion. This Bill of Rights, put a question mark to this. This bill of right adumbrates this entire constitution and the legislature cannot be made to say private property or any political subdivision without this Bill of Rights having a
Tuesday, October 2, 1973

ROLL CALL

[8] delegates present and a quorum.

PRAYER

Mr. Abraham Our Heavenly Father, we thank Thee for this day. We ask that You watch over us in our deliberations. We ask that You give us the wisdom and the courage to do what is good for the people of this state. Direct us in all our efforts and may our lives be for Thee alone. Amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Mr. Poynter Committee Proposal No. 17, introduced by Delegate Perez, Chairman on behalf of the Committee on Local and Parochial Government, and other delegates of the Committee:

A proposal making general provisions for local and parochial government, to be read once, and necessary provisions with respect thereto.

The status of the proposal is the committee has adopted as amended, Sections 1 through 23 of the Committee proposal with the following exceptions: Sections 2, 4 and 10 have been deleted by action of the convention floor. Also, the convention floor has passed over and has not considered completion of Sections 19, 20, and 23. The convention further has presented under consideration Sections 24, Assistance to Local Industry by Political Subdivisions, and in particular, Haded under section election, at the time of adjournment on Saturday, proposed amendments by Delegate Jenkins to said Section 24, which have been previously read. To make sure that copies are available, new copies of these amendments are being distributed at the present time.

Amendments

Mr. Poynter Amendment No. 1 [by Mr. Jenkins]. On page 13, line 22, after the word "acquire" and before the word "and" insert the following: "by purchase, donation or exchange.

Amendment No. 2. On page 13, line 24, after the word "acquire" delete the remainder of the line. At the beginning of line 25, delete these words and punctuation "or otherwise" and insert in lieu thereof the following: "by purchase, donation, or exchange.

Amendment No. 3. On page 13, delete lines 29 through 32, both inclusive, in their entirety and on page 14, delete line 1 in its entirety.

Further Discussion

Mr. Cannon Ladies and gentlemen of the convention, myself and other members of the committee have prepared an amendment which will alter the committee proposal somewhat, and, I think, clean it up to the satisfaction of a majority of the people here. Basically, we are deleting the Paragraph (b) and we're coming...and we are asking to insert, somewhere around line 6, "the necessary public purpose." You will have it shortly. Then we are going to take the...Mr. Jenkins' language...let's see on page...13, line (b) where there seemed to be some question about acquiring property through purchase or otherwise, we've inserted the words "to acquire through purchase, donation and exchange" as Mr. Jenkins would prefer, and "subject to Article 1, Section 4, Expropriation, and to improve industrial plants, buildings, and industrial plant equipment," things such as this. I think this should satisfy anyone who has any concerns in my section would not be applicable to...under the Bill of Rights. I think it certainly would. I think we found one other flaw.

Then, we also found something else that we felt needed to be cleaned up. If you will, notice on line 27 of page 13, right behind (c), it says "to lease, sell or other," which clearly mean that you could possibly give the property away. We have added the words "to sell, lease, lease-purchase or demolish," which, in some cases, you may need to demolish or tear down a portion of the improvements on the property to make the property more valuable. We have added those words "lease-purchase," which is not used in New Orleans, I think. It is done in...I know it is done in Lake Charles; they use lease purchase arrangements, and then I tried to think of all kinds of possibilities where a port or an industrial district might be accommodated under the "otherwise dispose of" clause in there and have the words "or demolish." This amendment is being prepared at present and I would urge you...I feel like that this accommodates the people who had amendments. It's broad enough to do the job, yet restrictive enough that we are not going to have...what is going to...what can't...it can't happen in Louisiana, what happened in our neighboring State of Mississippi, where every little county, political subdivision, went out with their bank backed industry...in the form of an industry program and sold general obligation bonds and brought in little, you know, small industries, basically in the garment field...I just think that...and then they were...of course the company moves...either goes broke or moves out overnight. I think we've got the safe restrictions in that the legislature can impose restrictions in...that they may authorize and that local...that political subdivisions and port, harbor, and terminal districts, which shall grant this authority to, would not go running off with some fly-by-night operation. I think we have cleaned the language up sufficiently in our amendment, which is forthcoming, and I'd hope that you would defeat this amendment and consider the amendment which is coming.

Questions

Mr. O'Neill Harvey, I haven't been able to read your whole amendment yet, but what is the basic difference between adopting these amendments and the new section that you are coming back with?

Mr. Cannon Well, I think what I'm saying is that in this language I have included the entire substance of what you are saying, of what Mr. Jenkins' proposal was, as well as allowing expropriation subject to the Bill of Rights. I think we have done this. I've also...we have cleaned up some language which would require the necessity of the section to deal exclusively, I think you will read under (2): "and cultural products..." we've removed that where it would be broad and general enough that it would apply to anything which would have economic impact upon the area and thereby the state. These words we have added, we've tracked the language of...

Further Discussion

Mr. Tobias Mr. Chairman, fellow delegates, this amendment has been passed upon by this convention after somewhat heated debate and has been passed upon the issue in Section 4 of the Bill of Rights proposal. It is an attempt to, in effect, destroy free enterprise in the state. It is an attempt to reopen all of the issues which were closed by the prior amendment. I must admit that my concepts of what I proposed, my amendment, failed. I consider it a moot point before this convention but I say this compromise that this convention eventually wound up with is far superior to what this amendment would try to do. This amendment would, in effect, destroy all of those provisions contained in Section 4. It is an attempt, purely and simply, at anarchy.

[Previous Question ordered.]

[1529]
Mr. Jenkins Mr. Chairman, delegates, let me refer to some things that were said last Saturday to try to put our whole discussion and jurisdiction in review, which, to my mind, tend toward an extension of assistance to local industry by political subdivisions. It says that port commissions, or any other local governmental subdivision, can establish industrial districts in order to improve things not dealing in this section with the authority of port commissions to expropriate property to expand their own facilities; that was said yesterday.

That's not the issue. We are dealing here with the subject raised by Amendment No. 2. I raised the question of whether or not there are expropriations or any kind of expropriation could be expropriated property to give to an industry to build their own industrial plants. Now, if local political subdivisions are going to have industrial districts, they should not be able to expropriate the land for those districts. They should certainly not be able to expropriate industrial plants, industrial equipment or industrial machinery in order to have it in those districts. The first amendment that I propose, Amendment No. 1, says that industrial districts can acquire property for industrial sites by any means except expropriation. The amendment also says that industrial districts can acquire industrial plants, industrial equipment and machinery by any means except expropriation. Therefore the second amendment that is deleted Section B. Section B of the committee proposal says that, these industrial districts in the purposes for which this section is established, for industrial districts—that is a public purpose. The point of saying that's a public purpose is to allow expropriation. Do you see the point is, and the reason B is needed, is because this is not a public purpose in most cases. In most cases, it would be taken from one private individual to give to another private individual, and the courts, in many instances, will not hold that to be a public purpose. The point of Section B, though, is to get around facts and to get around law and say that it is a public purpose, whether or not a particular taking is a public purpose is a question of fact, to be decided by a court in the circumstances in question. It is not a decision for a constitution to make in advance. It would be illogical, for example, to say that highways are a public purpose in every case. If we have thoroughfares connecting two cities, and the government were to build a fifth right between two of them, and it were completely unnecessary, the courts would probably say it's not a public purpose. So I do not think it's not a public purpose in every case, and certainly expropriation for industrial districts are not, in every case, a public purpose. That is something that be continued with that thought in mind. The three amendments then the first one prohibits expropriation for industrial site, by industrial districts, the second one prohibits expropriation for industrial plant equipment, industrial plants, by any means or things along that line. The one takes out Section B, declaring that in every case there are public purposes, that point is that third amendment is particularly significant. It would be a real travesty I wish you would read Section B. I say, that in every case there are public purposes. In other words, if a district is going out and to take one man's property to give to another, it's a public purpose. That's a question of fact, we can't say a constitution, and, that in every instance it's a public purpose. That's a question of fact. That's a question of fact, you could argue a constitution. That's a question of fact, you could argue a constitution, and then the third amendment would be, in the final analysis, a several amendments, and then in the final analysis, that's what it will be. That's the amendment that would be.
was taken from Hebert v. The West Baton Rouge Parish Police Jury. I think it should satisfy the object-  tion of anyone who has any question as to what public purpose was... or that whether or not this was a questionable public purpose. About five lines from the bottom, it reads behind the word "property":

"to acquire, through purchase, donation, exchange," and then, specifically, "subject to Article I, Section 4, the power to expropriate. I don't see how this is so. If people are going to exercise the right of expropriation, then it is subject to the Bill of Rights Section on Right of Property. We did find some language out of the old Constitution which was included here, that we felt needed to be cleaned up and that is, behind (c) you notice the former language said: "to sell, lease or otherwise dispose of, all or any part of the foregoing," talking about the property. Well, this would allow the state to give away, if you're thinking that... it was our thinking that this was possibly unwise to leave it in here and add the words "lease-purchase, or demolish"—to improve this industry. It was at some time. The Port of Lake Charles uses lease-purchase agreements so that, ultimately, there will be... the land and its improvements will revert to the state rather than remaining in public ownership. Of course, I think this... this is more flexible—the declaring of this public purpose, for the economic impact on the area. This deletes the necessity of raw farm or agricultural products, which is rather specific. I think this takes care of Mr. Burns' proposed amendment which would specifically state the inclusion of the timber industry and forest products. You can also think of the shrimp fishing industry and all this, and I don't believe we want to sever our constitution... our new constitution, our new document, to include all of these specific types of wage earning endeavors. Like I said Saturday, I think we should consider this whole matter as follows: in having the ability to satisfy the needs of political subdivisions and deep-water ports and our state as a whole for years to come, as well as having enough safeguards in it, through the restrictions which the legislature may impose, as well as the control of the State Bond Commission over the sale of bonds. Are there any questions, Mr. Chairman?

Questions

Mr. Tobias Mr. Cannon, are you aware that this amendment again opens the question that we passed on in Section 4 of the Bill of Rights proposal, because it opens up the question of expropriation, taking without necessary and for a public purpose. Go back and read Section 4 of the Bill of Rights proposal.

Mr. Cannon I'm reading right here, Mr. Tobias, where it says "to acquire, through purchase, donation, exchange and subject to Article I, Section 4, Expropriation."

Mr. Tobias Right. As you read Article I, Section 4, it makes two classifications of expropriation: those done by the public for public purposes which are not... you do not have to establish necessity and those that would be acquired by private. Now, your amendment, as it is presently drafted, would in effect make it a... it would being it out of the public sector and would make it... you have to establish necessity.

Mr. Cannon Again, that's an attorney; I'm not an attorney I have consulted with attorneys, particularly how to word certain things and they say that this language is satisfactory and is not... and I think we have tried, or we have done our best to satisfy this one particular thing which you're talking about that the acquisition of property for industrial site purposes would fall under the expropriation category. If those of you who are attorneys know, there are certain tax advantages to the person who property is taken. He has a longer period of time for which to reinvest the expropriated land. It may be... he may be very well satisfied with the price willing to be paid, but would prefer the expropriation route because of its advantage to him, tax-wise. Any other questions?

Mr. Lennox Mr. Lennox, is it possible that there could be some amendments to that would require that there be no reasonable alternative. If the legislature is going to exercise the right of expropriation, then it is subject to Paragraph or Subparagraph (b) and (c) would be invoked? I think what's concerned some people, that, and local government would not be anybody and tear down existing plants simply to recover the land and use the land for other purposes. Now, if there is some way that you could write into that... those two sections or those two sentences, a provision which would require that no reasonable alternatives exist, I think you might eliminate some opposition.

Mr. Cannon I would have no personal objection to it. If you wish to draw the amendment, I'm... like I say, we have shrunken the language considerably and, I don't know, I feel that it satisfies these objections and these fears that people have. But, again, to spell it out from here, if you wish to add an amendment to this, should this pass, then I think that's a reasonable...

Mr. Lennox In any case, you would have no objection to such an amendment?

Mr. Cannon I personally wouldn't. No.

Further Discussion

Mr. LeBlanc Mr. Chairman and fellow delegates, I just want to invite your attention to the portion of this amendment that has to do with expropriation. In the past, I created two port districts in Cameron Parish. The bill authorized expropriation under the state laws. At the time that I passed the bills, I thought it was a good proposition. However, if you stop and consider that when a lot of the land, especially along the Mississippi River here, was surveyed originally, it was surveyed with the aspect in mind of giving each landowner a certain amount of river frontage. At that time, that was certainly important because much of the commerce in those days was carried on through river traffic. Another thing to consider is if a person has a strip of land that, say, that has a hundred foot frontage on a river that might be a quarter of a mile deep, 1,320 feet deep, but if, say, some dock board comes along and wants to expropriate that entire frontage, it can expropriate his frontage, which possibly could be the most valuable portion of that property, and leave that landowner with less valuable property to the back for which he would have no use. It would also take away the landowner's privilege of negotiating with some industry for that river frontage. This is a real serious problem to me, especially in our area where we have a lot of waterways, etc., and also port districts. But, I urge you that you consider what Mr. Lennox suggested and see if we could work something out that would be satisfactory to everyone.

Questions

Mr. Roy Roy, Conway, I...of course, I've been concerned about this whole section, but don't you agree that even though Mr. Cannon's proposal has some bugs in it, it's better than the committee proposal which, on line 25...24, simply says "to acquire through purchase or otherwise?" That... I take it, I'm interested in what you did, and I am interested in what you did, and I am right, that you are for the amendment, perhaps, over the section proposed by the committee but would like to see the amendment dressed up better?

Mr. LeBlanc That's correct, Mr. Roy. The only objection I have to it is that portion of it that deals with expropriation.
Mr. Roy. Of course, you realize that under June 25 of the committee proposal that "or otherwise" certainly means by expropriation. The only thing is, we don't talk in Mr. Cannon's Section 4, Provision of the Bill of Rights. That's why I'm for Mr. Cannon's amendment, but I'd like to see it dressed up like Mr. Lennox suggested.

Mr. LeBleu. Well, I feel the same way, Mr. Roy.


Amendment

Mr. Lanier. All right, the first set of amendments offered by Delegate Avant. The amendment reader as follows:

Page 14, between lines 1 and 2, add the following:

No property expropriated under the authority of this article shall ever directly or indirectly be transferred to or leased to any foreign alien, or any corporation in which the majority of the stock is controlled by any foreign power, alien corporation, or alien.

Mr. Avant. I've had...abundance of clarity to the Enrolling Room. If it's all right with you, make it read:

On page 14, between lines 1 and 2, and following the language added by the Cannon amendment...

Mr. Avant. That's satisfactory.

Explanatory

Mr. Avant. This...Mr. Chairman and fellow delegates, I think this is a very obvious amendment...what I'm driving at: Under this section, as it's been adopted so far, property may be expropriated for the purpose of resale to another private entity. All my amendment does is make sure that that private entity or person is not a foreign power, an alien, or a corporation that is controlled by aliens. In other words, if you are going to expropriate the property of a citizen of this country or this state, turn around and sell it to somebody else for private use, I think the least that we can ask is that we sell it to someone else who is a resident of this state and this country and its people at heart.

Questions

Mr. Lanier. Mr. Avant, I don't know too much about ports, but I was wondering, do any of the ports in Louisiana presently lease any property to foreign shippers or foreign persons to use port facilities?

Mr. Avant. I understand that some of them may. Mr. Lanier, I don't know. But, I do know this, from what I read in the paper, that there is a tremendous movement on on the last several months, on the part of foreign capital, to invest in our industry in this state and in this nation. Now, I didn't put any strings on land that was acquired by voluntary means. I didn't put any strings on that, but I say if you are going to use the power of government to expropriate private property, for the purpose of reselling it, then we should eliminate the possibility that it might be resold to a foreign power, an alien, or an alien corporation that's very simple, as far as I'm concerned.

Mr. Lanier. Well. If we wish to prohibit the people from using this property, why would it make any difference if the property was expropriated or a jailed by voluntary means?

Mr. Avant. It might not make a bit of difference to you, Mr. Lanier, but it makes a hell of a bit of difference to me.

Mr. Lanier. Why?
you if you don’t think it might prohibit some of the foreign products coming through. They’d just be passing through our port?

Mr. Avant Mr. De Blieux, if it prohibits a foreign corporation from leasing property that has been expropriated by that corporation, then that’s exactly what I want it to do.

Mr. Flory Are you aware, Mr. Avant, in the question that Mr. De Blieux poses to you on the local port, that deal was between the port authority and R.N. Gonzales Company, which is a Louisiana based corporation?

Mr. Avant If you say so, Mr. Flory, I’m sure it’s correct. I personally don’t know.

Further Discussion

Mr. De Blieux Mr. Chairman and ladies and gentlemen, I don’t want to do anything here which is going to probably defeat our having some jobs for some of our people, just because a foreign government might want to lease a little property that had previously been expropriated for the building of warehouses or storing of goods or something like that. We’ve got three very important ports in this state that deal in, you might say, foreign goods that come into this state: the Port of New Orleans, the Port of Baton Rouge, and the Port of Lake Charles. I just think having a provision in here that this property could not be leased to a foreign government is bad. I agree, we shouldn’t transfer any of the land. I’m not opposed to that, but to say that it cannot be leased to them, I think, is just stretching it a little bit too far. For that particular reason, I think this is a bad amendment on that particular angle. If they could take out the word “lease.” I might be able to go with it, but not with the word “lease” in it. I just think it’s bad.

Questions

Mr. Lanier Senator De Blieux, would you agree with me that the way this thing is written, it says, “No property expropriated under the authority of this article shall ever directly or indirectly be transferred to or leased,” that you couldn’t even sublease to a foreign outfit that needed a warehouse or something like that?

Mr. De Blieux No way, under the provision of this amendment, there’s no way you could do that.

Mr. Lanier In your opinion, what effect do you think that would have on future foreign trade with ports domiciled in the State of Louisiana?

Mr. De Blieux I think it would have a very serious effect upon our ports, Mr. Lanier; that’s the reason I oppose that word “lease” in here.

Mr. Jenkins Senator De Blieux, the property across the river in West Baton Rouge where the Datsuns used to be, was it expropriated?

Mr. De Blieux I do not know, but I know that it was... in my opinion, there was a lot of foreign goods stored on it. That’s the only thing I say. Now, as Mr. Flory said, it was leased by Mr. Gonzales, who is a local resident. Now... but I can understand the situation where it could be leased to somebody that’s importing goods like that, and I think that could also be very serious to our port.

Mr. Jenkins But, isn’t it true that this amendment doesn’t in any way discourage foreign investment or foreign use of property here unless that property has been seized from some American citizens? Isn’t that the only instance where it could ever encumber any foreign trade, if land is first taken from an American and then given to a foreigner?
Mr. Jenkins: Mr. Chairman, you know every day when you pick up the newspaper, you read about another country that has expropriated American business interests in those countries. Do you really think there's another country of the fact of the globe that, in its own country, would expropriate its own people's property and then turn around and sell it or lease it to American interests who would be down there?

Mr. Casey: Woody, I don't... I don't... I don't know what other powers would do, and I'm not too sure. I can't say I don't care; I certainly care, but the point is, we're dealing with Louisiana property. Louisiana industry. Louisiana potential. Expropriation sometime may be the only way of accomplishing anything.

Mr. Avant: Mr. Chairman, I request permission to withdraw the amendment and to resubmit it so that it will read: "No property expropriated under the authority of a line will ever directly or indirectly be sold or donated to..." would simply withdraw the word "lease."

Closing

Mr. SHAW: I suggest that you might get your consideration of Mr. and read Article XII, V. Mention all therein. I'm not going to read it to you. I also suggest to those who may be concerned about emotion, who we are old enough to remember, to reflect on the years 1941 to 1946. Mr. Casey.

Amendment

Mr. Jenkins: All right, the Burson amendment read at line 20.

Amendment No. 11, page 34, line 17, in favor of Amendment No. 2, proposed by Delegate Cannon, and adopted by the Convention on October 8, 1941, below line 4, this with your permission, Mr. Burson and the floor language added by Amendment No. 2, proposed by Mr. Avant and just adopted, of an amendment, and the following paragraph of this section shall not apply to school boards.

Explanation

Mr. Avant: Mr. Chairman, fellow delegates, Mr. Burson's amendment which would have added an article to the state's expropriation industrial site laws, the Convention adopted an amendment which the original amendment would have added an article to the state's expropriation industrial site laws, and the amendment was specifically aimed at expropriation, in this amendment word. Although political subdivisions would have paid for any industrial site, but would not apply to school boards. That purpose of the amendment.

Mr. Perez: I see no objection to the amendment.

Mr. De Blieux: Mr. Chairman, I agree with Senator De Blieux. If you look at Mr. Cannon's amendment, on page 3, it says the legislature may authorize any political subdivision, and then it goes on.

Mr. De Blieux: That's as simple. Mr. Jenkins, that is the closest you can possibly get to a school board. In my opinion, that means a particular section of that sort that wants to develop an industrial site, because this pertains to industrial site, school site, or anything else like that, the property.

Mr. Jenkins: When it says any political subdivision has all these powers, did it mean every county, every city council, every village, every special district, thinking heard.

Mr. De Blieux: It means, if there are any political subdivisions, political entities, want to develop an industrial site, well, the legislature would authorize them. But, there may be in the future a political subdivision wanting to develop a school site or an industrial site or anything else like that, they wouldn't be able to do it.

[1544]
58th Days Proceedings—October 2, 1973

[Amendment adopted: 11-20. Notice to reconsider tabled.]

Amendment

Mr. Poynter. Mr. O'Neil, indeed, offers them. The instructions have got to be changed to make it work into the Burson amendment... I mean, into the Cannon amendment. It would now read as follows: (this is the O'Neill amendment)

In Convention Floor Amendment proposed by Mr. Cannon and adopted by the Convention on today, on line 1 of the language added thereby, immediately after the word Subject to the word "may" delete the words "such restrictions as its" and insert in lieu thereof the following: "Article 1, Section 4, and such restrictions as the legislature".

Mr. O'Neill. Ladies and gentlemen of the convention, I wish you would listen to this very closely because there's a very subtle difference in what is being done in this committee proposal as I read to you. If you have the copy of Mr. Cannon's amendment as adopted by the Convention, it would read: "Subject to Article 1, Section 4, and such restrictions as the legislature may impose," and it goes on. Now, let me tell you why we are trying to make it applicable to Article 1, Section 4, at this point. Read down to the (b). It says, "to acquire, through purchase, donation, exchange, and subject to Article 1, Section 4, expropriation, to improve industrial plant buildings and industrial plant equipment." Now, look back up at (a), and read (a): "to issue bonds, subject to the approval of the State Bond Commission, or any successor thereto, and to use the funds derived from the sale thereof to acquire and to improve industrial plant sites." Only Section (b) is subject to Article 1, Section 4, the way this is drawn. It's plant improvements and plant buildings. Under the Cannon amendment, as adopted, it does not apply to industrial plant sites. There is a very subtle difference—very subtle. I think you must be very careful and read it in. We simply want to make the entire proposal subject to Article 1, Section 4, which is the right to property. I think this is more in line of a technical amendment, and I really hope that there won't be too many objections to it.

Questions

Mr. Zervigon. Mr. O'Neil, what you are doing disturbs me greatly. Are you trying to imply that none of the things that we are writing at this moment, nor have written in the past about legislative, executive and judiciary, are subject to the Bill of Rights unless we specifically say so?

Mr. O'Neill. Mrs. Zervigon, your committee proposal had many things that would not have been subject to the Bill of Rights had we not straightened it up. I'm simply trying to make absolutely sure that Section (b), as it applies, will do the same thing and have Section (a) apply in the same way the language which qualifies Section (b) should be the same way in Section (a). My amendment simply does that.

Mrs. Zervigon. Is the executive branch of the government of Louisiana subject to the Bill of Rights?

Mr. O'Neill. I would expect so, Mrs. Zervigon.

Mrs. Zervigon. We didn't say so.

Mr. O'Neill. Well, Mrs. Zervigon, your committee report said that the home rule charters as provided in the old constitution would be the same as they are. They didn't even imply to the new constitution, period.

Mrs. Zervigon. Mr. O'Neill, are we talking about Section 7, 8, and 9 at the present moment?

Mr. O'Neill. No, ma'am, we're talking about this section, and I think you should have no objection to this proposal.

Mrs. Zervigon. Mr. O'Neill, isn't it the fact that if you don't say that some portion of the constitution, which we are rewriting or have written, is not subject to the Bill of Rights, then it is subject to the Bill of Rights because the powers reserved to the people are paramount?

Mr. O'Neill. Mrs. Zervigon, simply read Section (b). It says that Section (b) is as to Article 1, Section 4. Section (a) doesn't say a word about it.

Mr. Tobias. Mr. O'Neill, are you aware that your amendment, in effect—the subtle distinction that you claim to have arrived at—in effect, you are arguing against your own philosophy?

Mr. O'Neill. Mr. Tobias, you wouldn't know what my philosophy is, sir.

Mr. Arnette. Well, Gary, the question I have is that since Section (b) is specifically subject to Article 1, Section 4, do you think the courts might interpret that since Section (b) is specifically made subject to it that Section (a) would be assumed not to be subject to it?

Mr. O'Neill. That's exactly why I'm offering my amendment, Mr. Arnette. That's the way I think most people in here would interpret it. I think you grasp the point very well.

Further Discussion

Mr. Perez. Mr. Chairman and ladies and gentlemen of the convention, I think we are amending and amending and attempting to amend this section to the point of almost trying to kill it. The provision making this article subject to Article 1, Section 4 is in the proper place where you talk about the acquisition of property. I submit to you, that it is not germane to the remainder of this section. I ask that we move along and let's reject this amendment, so we can try to get something accomplished.

[Previous question ordered.]

Closing

Mr. O'Neill. I very strongly disagree with the distinguished Committee Chairman. I think if you will simply read Section (a) and then read Section (b), then you will see that there is a difference. In Section (a) provides "to acquire and to improve industrial plant sites," to me that means lands, to me that means property. Under Section (b) which is subject to Article 1, Section 4, it says "To improve industrial plant buildings and industrial plant equipment." I think that anybody would know the difference between land and equipment. I think the intent of the committee was very subtle. I think this amendment will help straighten it up and will help make it subject to the Bill of Rights. In effect, what is said is that the industrial buildings and equipment will be subject to the Bill of Rights on the right to property, but, industrial property will not be. I think it is up to us to clear up this distinction and not be swayed by arguments that it is not germane.

[Amendments rejected: 11-61. Notice to reconsider tabled.]

Further Discussion

Mr. Jenkins. Mr. Chairman, delegates, I wish you would take one more look at this section before you vote on whether or not to improve it... approve it.
58th Days Proceedings—October 2, 1973

Mr. Derbes: Ladies and gentlemen, I would respectfully request the indulgence of the committee, and explain this amendment and hopefully satisfy any questions that you may have regarding it. It is the intention of this amendment to consolidate and to clarify what I regard as the rather repetitious and unnecessarily redundant verbiage found in the present Section 19 and 20 of the present committee proposal. I have taken great pains here and in addition to the coauthors who are mentioned on the amendment which is on your desk, the following individuals have given me their personal support and input. We have Brown, Representative John Jackson, and Leo Giarusso. The purpose of this amendment is to announce the clear public policy with which we are promoting, and that is to control and use, zoning and historical preservation. I think it gives us an opportunity, acting through our State Constitution, to have from time to time make, develop areas which will redound to the benefit of all citizens, and to preserve the culture and heritage of this great State of Louisiana. There is nothing in this amendment nor in the existing committee proposal, I might add, which does not presuppose the Bill of Rights as we have already adopted it. All provisions of this section, if this amendment carries, would be subject to any provisions that have been discussed in Articles IV and V of the Bill of Rights. What this amendment does further, is if it confirms the ability, or at least the historic and legal right, for regulation of the architectural heritage and integrity of those areas, that are subject to constitutional restriction and limitation, right add to the version already part of a permanent part of the permanent part of the State Constitution this section. I have not included the following or other provisions that may be read in conjunction with respect to these purposes. I think what we have to agree more is that we are all in this thing together, that the public policy of the State and his preservation, and the public policy of the State and historic preservation are obviously a very important and necessary part of that area. And I would tend to believe all of the whole in this area and would not permit any one particular individual or visual to make use of his private property for his own personal use. I would agree that we have the regulations that we have lived under for the past thirty years and, if we were not living under the Bill of Rights, that Bill would have not preserved the integrity of that area and have, in fact, retained that area as it was and under those regulations it was left for those regulations were left to the ability of the historic district to be an area to promote the welfare of that area and to a reasonable degree. And it is here that we are not in conflict but that it exists today would and would not exist as what we as here, is to avoid that area in this amendment, which has been clarified to that extent that we are clear and making it easier for the people who will reside in there and important it is to charge your favorable consideration of this amendment.
Mr. Abraham Jim, please explain the intent and the purpose of the words "which authority is declared to be a public purpose."

Mr. Derbes Mr. Abraham, until a decision of the Supreme Court in 1954, zoning was not necessarily considered a public purpose. The area of zoning and the area of historic preservation, they are acting in the public interest, they are acting to promote the general safety, health and welfare of all the people. That's all we are doing. We are not necessarily creating any superior authority which would not be subject to the Bill of Rights, nor are we subordinating to local government this authority, nor are we subordinating this authority of local government.

Mr. Roemer Jim, I, too, am impressed with the Section; I think I can support it. I just have a friendly question about that last sentence--question of information--"Existing constitutional authority for historic preservation districts is retained." Will you hit that a lick?

Mr. Derbes There is only one historic preservation district in this state. Mr. Roemer: It exists in my district and it is the district known to all of you, I hope, as the French Quarter or the Vieux Carre. All we are doing is confirming the authority of the Vieux Carre Subdivision. In this manner we continue that regulation, which they have had for the last thirty-six years.

Mr. Roemer In other words, this language "Existing constitutional authority" refers to the old constitution, not the one we are writing now?

Mr. Derbes That's correct.

Mr. Lanier My concern is the same as Mr. Roemer's about this last sentence. Does this mean that the existing constitutional authority would go to newly created districts under the new constitution?

Mr. Derbes No, sir, it does not mean that at all.

Mr. Lanier The only purpose of this is to ratify the existing one district in the state?

Mr. Derbes Absolutely; it has all the authority for new districts that would be created would be subject to the first sentence of the amendment. It might add and direct your attention to paragraph 3, which reserves to local governmental subdivisions the right of review. So that any regulations, any districts, any historic preservation or land use or zoning regulations created pursuant to this authority would be always and permanently subject to review by that local governing authority. So, no such regulations could be created which would not, thereafter, be amended for the benefit of all people.

Mr. Lanier One further question. To your knowledge would there be any difference between the present powers and the authority of the existing district and those that are set forth in this section?

Mr. Derbes No, except it would preserve the right of review.

Mr. O'Neill Mr. Derbes, I have two questions. Is the power for local governments to zone and to provide for land use and zoning in the present constitution?

Mr. Derbes I don't believe it is, Mr. O'Neill. I think it should be and that's why I saw fit to incorporate these continuations to this paragraph which is also provided for in the committee proposal, I might add.

Mr. O'Neill Would you distinguish in your mind in the mind of the committee the difference between land use regulations and zoning? I've asked several people that question, and I haven't gotten very good answers.

Mr. Derbes They are really essentially the same thing. "Land use" as I understand, is essentially a new term of art which is a further expiation on the old term "zoning."

Mr. De Blieux Mr. Derbes, I'm always so concerned about that last sentence. What provisions exist in the present constitution right now?

Mr. Derbes All that exists...the present constitutional provisions, Senator De Blieux, provide that there is a Vieux Carre Commission which is appointed by the mayor of the city of New Orleans, which has the authority to regulate the architecture and character of historic buildings and sites—the exteriors of historic buildings and sites in the French Quarter of New Orleans.

Mr. De Blieux Now, don't you realize....

Mr. Henry The gentleman has exceeded his time, Senator. I'm sorry.

Further Discussion

Mr. Chehardy Mr. Chairman, fellow delegates, in all seriousness, I cannot understand anyone hesitating to help preserve the French Quarter, whether or not they are the Vieux Carre, really, whether or not it would be located in New Orleans, in Lafourche Parish, or in St. Charles Parish. This is definitely an asset to the whole State of Louisiana; it is definitely something that is drawing visitors yearly, bringing millions of dollars into our state; and next to the Port of New Orleans, is probably the main attraction and the main source of income that we have in the whole metropolitan area.

So, I just wanted to go on record as wholeheartedly favoring this amendment. I believe we should take a little more interest in the historic values of our state. There is an area I pass and see an old plantation going into decay or something that should be preserved. Last Sunday, we happened to be in Lake Borne, and I saw this old...what is today referred to as a castle, Martello's castle, sort of going down into decay. At that moment, I turned to the group that was with me and asked them, "Why isn't something done to really preserve something like this?" I don't even know--I have a chance here to do something that is right and do it fast. If there are no other speakers, I would like to call for the question, Mr. Speaker.

Question

Mr. Chehardy Try not to be prejudiced now, Mr. Conroy.

Mr. Conroy Mr. Chehardy, did you know that I fully agree with everything you said about this...

Mr. Chehardy I was sure of that, Mr. Conroy.

Further Discussion

Mr. Arnette Ladies and gentlemen of the convention, I would like to point out one thing in this particular amendment that disturbs me, it is that part of the sentence which says "which authority is declared to be a public purpose." The reason it greatly disturbs me is because we are automatically declaring that any time a police jury or a city council or any other subdivision says, "This is a historic district," we have precluded the courts from saying that it is a public purpose or a public district, or something of this sort. We are precluding the courts from ever passing on this issue. This is very, very important because it brings up several issues—the main one being if any police jury would decide that this is a historic district, it is a historic district and nobody ever has a
58th Days Proceedings—October 2, 1973

Mr. GARY: I'm worried, Mr. Chairman, that you are about to decide that the preservation of the Vieux Carre, the French Quarter, or whatever you want to call it, is for a public purpose. It's very obvious. It's a tourist attract-...
Further Discussion

Mr. J. Jackson Mr. Chairman, ladies and gentlemen of the convention, as Chairman of the Subcommithe on Affairs of the city of New Orleans, the problem of trying to provide constitutional language to preserve the present status of the French Quarter was so drafted as presented by our committee. I would like to suggest to you that the Derbes amendment provides, in my estimation, provides better language in attempting to condense the lengthy wordage that we have and attempt to clarify it. The amendment says contrary to what Mr. Lennox says, that the governing authority does have the right to review the decisions of the commission, rather than just having the sole right to review the creation of the commission. If you look at line 1, they say "to review the decisions of any such committee." We think that by vesting this power as existing in New Orleans, it does provide us with the protection. Most of the delegates from New Orleans know that on several occasions I have gotten up back home and raised some concerns about how we attempt to use zoning and historic preservation to offset the growth or stifle the growth of particular minority communities. In fact, I have used the phrases that there are two kinds of preservation going on in New Orleans-historic preservation and preservation of the slum. However, I do not believe that the Derbes amendment is being presented that it offers the possibility of communities and property being expropriated on the whim of the local governing authority. It does provide, in my estimation, the protection-and at the same time, I recognize that what we adopted Section 4 of the Bill of Rights, and I do not see this in conflict with that. It does provide property owners who have certain vested and inherent interest in their property to be protected under Section 4 of the Bill of Rights. So, Mr. Chairman, if there are no more speakers, I move the previous question on the amendment.

Mr. Lennox Mr. Chairman, fellow delegates, Mr. Pugh, being unavoidably detained from the convention, has asked that this particular amendment be brought to the attention of the convention. It simply adds to the Derbes amendment, just passed, which consolidated Sections 19 and 20. The sentence "private property, however, may not be expropriated for such public purposes as herein declared," and I hardly see as though I can explain that any better.

Mr. Tobias Mr. Lennox, do you not believe that what we say, in Mr. Derbes' amendment, "land use," that your amendment would in effect prohibit expropriation for the purpose of constructing streets.

Mr. Lennox Mr. Pugh's amendment may well do that. I have no amendment before you, Mr. Tobias.

Mr. Conroy Mr. Lennox, are you aware that Article XIV, Section 23 of the constitution presently says that "the preservation of buildings in the Vieux Carre section of New Orleans having architectural and historical values, is hereby declared to be a public purpose, and the city of New Orleans hereby authorized to acquire by purchase, or expropriation or otherwise. Such buildings and structures in that section of the city as the Vieux Carre Commission may recommend to the commission council."

Mr. Lennox I wasn't aware that that language existed in the present constitution, but if you say it's so, I'll certainly accept your...

Mr. Conroy Well, is your amendment intended to...

Mr. Lennox Again, I tell you if Mr. Pugh's amendment is adopted, that I would assume it would reverse that particular provision.

Further Discussion

Mr. Perez Mr. Chairman, ladies and gentlemen of the convention, I'm sorry Mr. Pugh is not here to explain his amendment, but I fail to see where it has any bearing whatsoever with respect to zoning, with respect to land use regulations, and really not in connection with the preservation districts.

Mr. Conroy Mr. Chairman, I wish you to place this amendment in connection with the local charter, local amendment, and if there are no other speakers, I move the previous question.

[Previous question ordered. Amendment rejected: 57-9. Motion to reconsider tabled.]

Amendments

Mr. Poynter The next set is sent up by Delegate Jenkins.

Amendment No. 1. On page 11, line 11, in Floor Amendment No. 1 proposed by Delegate Derbes, et al., and adopted by the convention on the above, on line 2, immediately after the number and punctuation "19," and before the word government, insert the word "local" and insert in lieu thereof the following: "subject to and in accordance with this constitution, general law or the local charter, local."

Amendment No. 2. On page 11, line 11, in Floor Amendment No. 1 proposed by Delegate Derbes, et al., on line 3 of the amendment, immediately after the word "adopt" and before the word "regulations" insert the word "reasonable."

Amendment No. 3. On page 11, in the Derbes amendment, on line 4 of the amendment, immediately after the word and punctuation "preservation," delete the words "which authority" and on line 5, immediately before the numeral "(2)" delete the words and punctuation "is declared to be a public purpose, and insert in lieu thereof the following: "any public purpose within the scope of their authority,"

Amendment No. 4. On page 11, etc., in the Derbes
amendment, at the end of the amendment add the following, replacing the ordinance relating in a taking of property, just compensation shall be paid in accord with other provisions of this Constitution.

Explanations

Mr. Jenkins Mr. Chairman, delegates, Mr. Derbes amendment, I think, is an improvement over the committee proposal, but it does not have some refine-nts, and some modification in some ways. So I am prop-osing for the amendment each of these subparagraphs with a different aspect, each of which stands on its own [own]. The first amendment says that the revised amendment as to the subdivisions to this Constitution, to general law, and to a local charter. You see, up until the present time, many localities, many parishes—their police juries [juries] have not had zoning authority. Zoning is something new in many areas of our state, and in some such areas zoning may not be desired by the people, but by the terms of Mr. Derbes amendment, all local government subdivisions, both cities and parishes, will have land use zoning and historic preservation authority. The purpose of the first amendment that they say that the local charters can provide or restrict that authority or deny it completely if the people in those localities so choose in their local charters. Also, that this authority can be limited by general law, and that this provision should not conflict with the other provisions of this Constitution. The second amendment is really a technical amendment, I say, insert the word ‘reasonable’ on line three of Mr. Derbes amendment. It would read then as follows: To adopt reasonable regulations for land use, zoning, and historic preservation. In fact, in his description of what this section would do, he inserted the word reason-able’ in there. I think everyone wants these regula-tions to be reasonable. At present, aggrieved parties cannot go to court and challenge zoning decisions when they are not reasonable, and so it’s reason-able then that we include the word ‘reasonable’ in this place. The third amendment would delete the language in the Derbes amendment which says which authority is declared to be a public purpose. That clause really doesn’t make sense. An authority is not a public purpose. The fact that local governmental subdivisions have an authority says nothing about the public nature of the purpose for which they exercise this authority. Clearly, some cases of zoning or land use may be in the public interest. Such an authority may have a public benefit, may have some attribute of public policy involved, others would not. That is reasonable to assume that they do have land use, zoning, and historic preserva-tion authority for any public purpose within the scope of the authority of that local governmental subdivision. The fourth amendment conforms with case law also. It would include at the end of the Derbes amendment, the provision that when any regulation or ordinance results in a taking of property, just compensation shall be paid in accord with other provisions of this Constitution. Here’s an example of what that means. Suppose an airport zoning ordinance was created near a city airport, and in that zone it was said that there should be no construction whatsoever. No subdivision that was planned in that area could be built, no business, no industrial plant could be built, etc. Such a zone zoning ordinance would amount to a taking of property, and the courts have so held in the past. In fact, we had an example here in Baton Rouge when just compensation was granted to an owner when a zoning ordinance in effect, told him that he could do nothing with his property. The purpose of the regulation was to regulate, not to deny a property right. It’s to tell the means, in which right can be employed but then they have gone. After state, this decision, that if there is a really severe impair-ment, a true taking of property rights, then just compensation will be paid. And the purpose of this fourth amendment is to constitutionalize that time if the provision in that it would reverse the re-verse, just compensation will be paid. I urge you to review again, these are four amendments, for res-pective amendment, I urge you to adopt all four amendments, and I urge the adoption of these amendments.

Questions

Mr. Lanier Mr. Jenkins, I am concerned about the language subject to, and except as may be in-consistent with this constitution. Am I correct, but haven’t this amendment been put into law or any or four other provisions in the Local Government Article?

Mr. Jenkins Yes, it has, Mr. Lanier. Whenever delegates have thought that somehow a provi-sion here might override other sections of the constitu-tion. The purpose of course, is to provide that this section on land use, zoning, and historic preservation would not be held superior to other provisions of the constitution, but would be read in conjunction with and in connection with other provisions.

Mr. Lanier Well, this also means that we’re going to have to be watching every other provision that comes up now until the end of the convention to make sure that there is not something that takes away that which was given in these provisions.

Mr. Jenkins I think we do have to be careful be-cause of many case decisions which have said that if there is an apparent conflict between two parts of a constitution, the more specific provision would govern. Also, we should notice that the first amendment which allows the legislature to provide uniform standards, statewide, and also allows, contrary to the verbe amendment, for local charters to limit the authority of local governmental subdivisions. In this way, I urge the adoption of the amendment.

Further Discussion

Mr. Derbes Ladies and gentlemen, I thank you for your favorable consideration of my original amend-ment, and I would urge you to consider the amend-ment presented by Mr. Jenkins, and I summarily reject the. I can name the revisions of the section that I have just adopted by adopting my amendment are subject to the overall pol-per power of the state of Louisiana, and we have clearly enunciated that principle that we said that the legislature has the right to decide one at is clarify any-thing provisions are also subject to any relation-ship in the past, but the extent that the effect of the provisions granted to the governmental subdivisions belongs to the state of Louisiana, and we will enforce the jurisprudence of Louisiana and the justice and the individuals would raise questions by the spirit of this amendment, I think that what we are doing in this section is enunciation of a clear policy, that a governmental subdivision has adopted regulations for public safety, and we take care inhere in the story the state in the police power of the state of Louisiana. I urge the adoption of this Amendment, I submit that the text of this Amendment was received in this form and I submit that the text of this Amendment is constitutional and just compensation would be paid. I urge you to adopt the various amendments which have been made, I call your attention to the fact that these amendments were in connection with the Derbes amendment that was activated, merely provide additional purposes and
escape valves whereby the authority of local governmental subdivisions could continue to be questioned. So I urge you to carefully rule over these amendments. The powers that we have provided...the rights that we have provided under the 58th Amendment to the...Bill of Rights, the rights that we have provided for the state legislature to supercede local governmental subdivisions, seemed to me to be preserved in...of these amendments do anything but further obfuscate and confuse the issue, and detract from the authority of local governmental subdivisions, as we have so clearly enunciated that authority by getting the amendment that you just favorably considered.

Further Discussion

Mr. Perez Mr. Chairman, and ladies and gentlemen of the convention, I have to rise, unfortunately to object to these amendments. If you will read...particularly the way Amendment No. 3 reads, it would add to the following words "to adopt regulations for land use, zoning, and historic preservation, for any public purpose within the scope of their authority." Well, the very purpose of this particular section is to give the authority for land use, zoning, and historic preservation without...would be giving the authority in one hand and taking it away with the other. Therefore, the wording here, the way by which you are allowing these local governmental subdivisions to go into zoning, so I submit to you the words "for any public purpose within the scope of their authority" would, in fact, take away that authority if it's not already in that charter. I'd like also to call your attention to the fact that when we adopted these provisions which give to local government all authority not prohibited by state law, it's strictly for the management of governmental functions and unless you put...have been the wordings that is not one of those authorities included in the general powers granted to local government otherwise. I'd also like to call your attention to Amendment No. 6 which says "when any regulation or ordinance results in a taking of property, just compensation shall be paid." Well, again when you go into the question of zoning, and you tell a person if he owns a lot in the middle of a subdivision and he cannot put up a barroom in the middle of a subdivision, it could be considered to be a partial taking of his property from a standpoint that he might have been able to get ten thousand dollars for that lot if he were to sell it for barroom purposes, but if he had to use it for rezoning, or he had to use it without his own charter, he may never get a thousand dollars for the sale of the lot. So I say to you that the wording in Amendment No. 4 is...very, very cautious wording and, in fact, actually kills all zoning because whenever you regulate the use of a piece of property and tell a man that he can't put up a barroom in the middle of a residential area, there is to a certain extent a taking of the property that is a limitation on the use of that property, so therefore, I urge you to reject the amendments.

Questions

Mr. Roy Mr. Perez, if the legislature in its wisdom saw fit to preclude local subdivisions from engaging in certain types of regulatory conduct, under your argument there is nothing to stop it because Mr. Derbes' amendment allows the local subdivision constitutional powers that can never be modified by the legislature, is that right?

Mr. Perez I don't understand it that way, and I didn't quite understand your question.

Mr. Roy Well, Mr. Derbes amendment--doesn't it give, by way of the constitution, to local governmental subdivisions certain authority and powers which may never be modified by the legislature, as well as the legislature passing a general law prohibiting the local subdivision from engaging in that conduct?

Mr. Perez Well, anytime you have the authority to do something, you have the authority to amend or modify it, so I don't think that--the legislation why it could not amend anything that it did.

Mr. Roy My point is, aren't we stopping the legislation by Mr. Derbes' amendment, without some other statement of this that all this will be subject to general state law? Am I not stopping, or is the legislature from ever telling local governmental subdivisions how they may regulate land use?

Mr. Perez I did not object to the general law provision if...my remarks were directed against amendments number three and four.

Mr. Roy Dh, O.K. Well, you do admit...

Mr. Henry You've exceeded your time.

[Previous Question ordered. Division of the Question ordered. Record vote ordered. Amendment No. 1 reread and rejected: 44-66. Motion to reconsider tabled. Amendment No. 2 reread and rejected: 43-62. Motion to reconsider tabled. Amendment No. 3 reread and rejected: 35-70. Motion to reconsider tabled. Amendment No. 4 reread and rejected: 45-62. Motion to reconsider tabled.]

Amendment

Mr. Paynter Amendments sent up by Delegate Arnette as follows, and there has been in the text of the amendment, a charge. On page 11, in Amendment No. 1 proposed by Delegate Derbes and others and adopted by the convention on today, on line 3, after the word and punctuation "preservation," delete the remainder of the line and on line 4 at the beginning of the line delete the words and punctuation "is declared to be a public purpose;" and insert in lieu thereof the following: "If for a public purpose," and here's the change, put a comma", and subject to due process of law." Explanation

Mr. Arnette Ladies and gentlemen of the convention, this just clears up the language that was in the proposed amendment. The main thing that it does is change, and solve a problem. However, it makes sure that this zoning, this regulation of land use, and its historic preservation district is made for a public purpose. It's not automatically a public purpose. It's subject to tests in the courts whether it was a public purpose. I don't want somebody telling me that your land, or this land you've got over here, you've got to farm sugar cane on it, you've got to farm rice on it, you've got to have a barroom on it. If they regulate my land use that way, I want to make sure that it's subject to review in the courts plus that there are hearings that is subject to due process of law, and this is all it does. Before they tell you what you can do with your land, it is subject to due process of law, which means notice and hearing, very simply. It doesn't tell the municipality they may not do it, doesn't tell them they cannot do it. All it says is if you do do it, you've got to have a reason for it, and it has to be with notice and hearing to the persons affected--very simple. It all does is keep it in line with these amendments the people of this Constitutional Convention want in their constitution, somebody not having their property rights taken away from them without a notice or a hearing, and that's all this amendment does, and I urge the adoption of it. Thank you.

Questions

Mr. Roemer Mr. Arnette, as I understand it, all
you're trying to say to me is that this is a case of fact subjects to review by the courts, or whether we're dealing with a question of interpretation and other matters in the Constitution, is that correct?

Mr. Arnette: That is correct. I just want to make sure before I go on to the next, it is made clear that land use regulation that it is subject to review by the courts.

Mr. Anzalone: Mr. Arnette, you're saying that the Supreme Court has said that before a district or land use regulation may be reviewed, you must have a hearing, that hearing must be before a regulatory body that has the power to regulate.

Mr. Arnette: Yes, that's what I'm saying. And I want to make sure that before a court may review a district or land use regulation, that the court has the power to regulate.

Mr. Anzalone: Mr. Arnette, you're talking about a hearing. That's what I'm saying, you're talking about a process of law that does not exist.

Mr. Arnette: Just a second, I want to answer your question first. I think what you're saying is that a court has the power to regulate.

Mr. Anzalone: Mr. Arnette, just a second, I want to answer your question. I think you're saying that a court has the power to regulate.

Mr. Arnette: Yes, that's what I'm saying. And I want to make sure that before a court may review a district or land use regulation, that the court has the power to regulate.

Mr. Anzalone: Mr. Arnette, you're just making it from an absolute right on the part of the municipality.

Mr. Arnette: That's not what I'm saying. I'm saying that a court has the power to regulate.

Mr. Anzalone: Mr. Arnette, you just passed the bar, you understand.

Mr. Arnette: That's right. I understand.

Mr. Anzalone: Thank you.

Mr. Arnette:Congratulations.

Mr. Anzalone: Thank you.

Mr. Arnette: You know, in your examination on the Constitution, you have a questioner who asked you this question: "What does it mean to have a hearing in the land use regulations?"

Mr. Anzalone: That's right. I understand.

Mr. Arnette: And you said, "This is a hearing in the land use regulations." That's what I'm saying, you're talking about a hearing in the land use regulations.

Mr. Anzalone: Mr. Arnette, you're talking about a hearing in the land use regulations.

Mr. Arnette: That's right. I understand.

[1542]
a commission or a committee, or somebody, came up with that word 'certain zoning ordinances,' and this is the type of thing that disturbs me. Under the provisions of that ordinance, if it was adopted—it's still in the mill—for a farmer to be able to change his land from pasture land to row crop land, he would have had to go and get a permit from the local building inspector, who was given charge of the administration of this ordinance. Before he could change his land from one agricultural use to another agricultural use, I'm afraid that if this section is adopted as it's amended, the ones that I think will be the main validity and you won't have anything that you can do about it; you'll just have to live with it. And, for the life of me, I cannot understand, how, if a man had land in pasture and he decided he wanted to grow corn on it that it's in the public interest to compel him to go down thirty or forty miles to the parish seat and get a permit from some inspector saying it's alright, you can quit grazing cattle on that land, you can plant it in soybeans, you've got our blessings. So I ask you, and inspire you to please adopt this amendment to put an end to that type of operation.

Further Discussion

Mr. Derbes
I guess I'm wearing out my welcome, but I just want to say a couple of things in urging you to reject the amendment proposed by Delegate Arnette. What we are doing here is, we are declaring that the concepts of zoning and land use regulation and historic preservation are a public purpose. Whenever the local governmental subdivision exercises its authority pursuant to this grant, whenever such authority constitutes a taking, the authority is still subject to the provisions of the Bill of Rights as we have adopted them. I think that it is implicit that any zoning regulations have to accord due process of law to any persons adversely affected. It's implicit! If we adopt a philosophical premise of this amendment... then we are going to have to... then it seems to me that we are going to have to come back on every section of this Local and Parcheil Government Article, or any other section of this constitution which may, in one way or another, affect a person's right to use his private property, and apply the same type of restrictive language to each and every section. I see no reason for the inclusion of this language in this section. The language is indeed implicit in the law, it's implicit in the constitutional law of the United States of America, and of the State of Louisiana. We have announced the principle clearly elsewhere in this constitution. It's superfluous in this section, and I urge your rejection of these amendments.

Questions

Mr. Duval
Jim, I'm just trying to get some clarification. I thought one of the purposes of the Arnette amendment was to clarify language in your amendment, that language being "which authority is declared to be a public purpose," that specific clause. My question is: I read to you Section 1 of your amendment, "to adopt regulations for land use, zoning, and historic preservation, which authority is declared to be a public purpose." Now, if the authority's a public purpose, that doesn't necessarily mean does it, that the use of the authority is a public purpose?

Mr. Derbes
No. I think that's a very important consideration, Mr. Duval. In challenging the right of local governmental subdivisions to use this authority, the same principles that the rights of individuals can be advanced in order to challenge that authority.

Mr. Duval
Alright. I'm just trying to get the intent of your amendment so I can decide on the Arnette amendment. Now, let me ask you, what is the intent of that clause where authority is declared to be a public purpose? What is your specific intent for inserting that clause?

Mr. Derbes
My specific intent is simply to say when local governmental subdivisions enact such ordinances or regulations, whether they are in fact directed to promote health, safety, and welfare of the people. That's the intent of my amendment as it's drawn.

Mr. Duval
You don't mean by that then, that the public purpose could not be attacked in court?

Mr. Derbes
No, I definitely do not mean that.

Mr. De Blieux
Mr. Derbes, wouldn't the Arnette amendment have the effect of requiring you might say, a judicial decision every time a zoning ordinance is passed to determine whether or not it is for a public purpose?

Mr. Derbes
Yes, sir, and that's what I'm afraid of.

Further Discussion

Mr. Tapper
Mr. Chairman, and fellow delegates, I've tried to stay away from the microphones as long as I could, but I just don't understand the opposition to this amendment, and I rise in support of it. I think we're putting your head in the sand like an ostrich. We are writing a state constitution, and the safeguards to the people of this state should be here in this constitution. We should not rely on the United States Constitution because that can be amended by someone else other than the United States. I'm still for preserving the Vieux Carre, but not to the expense of the general public and the well being and welfare of business in the metropolitan area of the city of New Orleans. Ladies and gentlemen, I urge that you adopt this amendment. If it does exactly what is done in other sections of this constitution, then we do no harm. On the other hand, if we don't have this safeguard in the other sections of this constitution, we will do harm for a long, long, long time to come.

Questions

Mrs. Zervigon
Mr. Tapper, you were talking about property being taken?

Mr. Tapper
Or zoned for a particular purpose. Yes.

Mrs. Zervigon
Do you... do you consider that property being taken?

Mr. Tapper
Yes. I think you are taking the right of the people to use that property as they see fit when you zoned it and tell them that they cannot use it for a particular purpose. Yes. I think they should have the right to due process. If it takes a court action, if they do not agree with the decision of the commission that they should have the right to take that decision to court. Yes.

Mrs. Zervignon
Haven't they got that right under Mr. Derbes' amendment, "if the power is reasonably used"?

Mr. Tapper
No, ma'am. I don't think so.

Mrs. Zervignon
Haven't you always got the right to challenge the power of government if that power is unreasonably used?

Mr. Tapper
We are writing a constitution, Mrs. Zervignon, and we are placing in here what rights we have as citizens. I think that this should be here
58th Days Proceedings—October 2, 1973

to spell out that we do have that right to challenge that authority.

Mrs. Zervigon: Don't we have due process in the Bill of Rights already in this constitution?

Mr. Tapper: Yes. But I believe the Bill of Rights will have to be read in, as we call it part matter, with this particular section, Mrs. Zervigon.

Mrs. Zervigon: Are you trying to terrify me with these long words because I'm not an attorney?

Mr. Tapper: Well, I think we have to give this section equal billing with the Bill of Rights.

Mrs. Zervigon: So you are going to introduce this amendment to every section we consider hence forward?

Mr. Tapper: If it is required, I think it should be there. Yes.

Mrs. Zervigon: How are you going to tell?

Mr. Tapper: Either that or a general amendment providing, or rather, affecting all sections of this constitution.

Mrs. Zervigon: Well, the first section of the Bill of Rights, where it says these rights are inalienable and shall be held inviolate doesn't do that.

Mr. Tapper: I'm not going to be the judge sitting on it. I don't think, Mrs. Zervigon. But I'm afraid it might not. I can't see any harm in adopting this amendment because it does no injustice to this constitution or to any commission. I urge the adoption of the amendment.

Further Discussion

Mr. Kean: Mr. Chairman, fellow delegates, I rise in opposition to the amendment because it seems to me that if we adopt it, we have simply gutted zoning and land use authority in this state. I don't have any objection at all to providing, either by a further amendment or otherwise, that in the exercise of this authority that there would be an opportunity for a hearing. Such opportunities could be provided by general law as far as I'm concerned. But when we start off by saying that you can exercise this authority if for a public purpose, it would simply mean that in any exercise of zoning or land use authority, that you'd have to have a lawsuit in order to do it. In the mind of the court, whether it was for a public purpose, and we're really not talking about public purpose and the use of zoning and land use regulations in the first place. Zoning and land use regulation is an exercise of the police power. The question which is raised in connection with the exercise of the police power is whether it is reasonably used. If that exercise, either generally or specifically, results in unreasonable or arbitrary action, under those circumstances, it's void. We talk about public purpose primarily in the sense of the taking of property and a determination being made as to whether or not a public purpose existed which required that taking. In this instance, where we say we can do it if for a public purpose, and as I read the amendment, you would never have zoning or land use regulation authority, until after it had been determined in each and every use of that authority, that it was for a public purpose. Now, I don't know what happens in other places, but in the parish of St. Tammany, for example, we have a zoning ordinance. We guess in the course of a year's time we have a hundred applications to that ordinance. As I read this, you would have to test it by this if for public purpose criterion. You would simply have no zoning until after that test had been gone through. And I think that there better way to get at the public use of due process which talk about notice and hearing, through the

Mr. Avant: Mr. Kean, you stated that zoning and land use regulations had nothing to do with the public purpose but instead were an exercise of the police power

Mr. Kean: That's correct.

Mr. Avant: It is an exercise of that power that allows government to legislate in order to promote the health, welfare, morals and safety of the general public isn't that right?

Mr. Kean: That's correct.

Mr. Avant: OK. So it is for a public purpose, is it not?

Mr. Kean: My point is the very one that Mr. Lawson was making a while ago. You go about zoning being an exercise of the police power. It is a public purpose. There's no further discussion to be had on it. What you are now talking about is whether or not the specific use of that authority is reasonable or unreasonable.

Mr. Avant: Now, if it is used and it is not for a public purpose, you say putting public purpose in there, and due process of law is there, guts the amendment of Mr. Derbes. Well, if you can use it for other than a public purpose, or use it without due process of law, as I'm afraid you might be able to do as it's now written, don't you think that's best gutted?

Mr. Kean: No, my point, Mr. Avant, is that if you leave in the language if for a public purpose, it has the result of making this particular provision unworkable.

Mr. Roy: I would like to have gone further with Mr. Avant, but, in any event, how can you justify that public purpose ... that you could allow the zoning of property without it being for a public purpose? Zoning this for a private purpose.

Mr. Avant: Zoning, Mr. Roy, being an exercise of police power is for a public purpose. The question in a zoning situation is whether or not the specific use of that authority is reasonable or unreasonable.

Mr. Roy: Isn't it only for a public purpose if it is for the public purpose and not to help some individual out?

Mr. Avant: Zoning is an exercise of the police power. Mr. Roy, and it starts off being a public purpose.

Mr. Roy: But that doesn't take the result of the zoning for a public purpose, does it, Mr. Kean?

Mr. Kean: I think the test thereafter is whether or not the specific use of the zoning authority is reasonable or unreasonable.

Mr. Roy: That's right. It is supposed that it is reasonable unless a citizen takes it to court and shows that it was for a bunch of private individuals that it was trying to be zoned to help them. Isn't that true?

Mr. Kean: Well, I don't think I agree with that. I think it being viewed

Mr. Roy: Well, I would argue with putting that it had to be for a public purpose.
Mr. Kean  For the simple reason, Mr. Roy, that you'd have to make a specific determination on every specific use of the authority before it became valid.

[Previous Question ordered.]

Closing

Mr. Arnette  I just have a very few short things to say, the first one being if due process is implicit in this amendment, then why are opponents of it fighting it so hard? That's the first question.

The second thing I'd like to point out, I don't know if Mr. Vick is aware of it, the Supreme Court of the United States has pointed out that regulation is not taking, in certain instances, it is not taking when it...unless it is actually taking the property, when it prevents the profitable use of the land so as to greatly decrease its worthfulness, or when affects a very small number of people. Now, this is when regulation is a taking; in no other case is it a taking. Regulation is not subject to the due process clause of the Fourteenth Amendment of the United States. It simply is not, unless one of these three requirements are met.

Now the next thing, Mr. Derbes said the public purpose of this zoning, or historical preservation districts may be attacked if you attacked under his amendment, then let's make it very clear that it may be attacked because this is what my language does. It makes it very clear that this ordinance may be attacked as to whether it is a public purpose or not.

The next thing, a judicial interpretation is only required when a citizen who is affected files a suit attacking the ordinance. You don't have to go to court and say, "Court, may I pass this ordinance?" That isn't the way it works. The way it works is, you pass the ordinance and somebody who doesn't like it files suit. I want every person who is affected to have that right to file suit.

The next thing that Mr. Derbes' amendments overlooks, just a slight omission, it permits people who have prohibitions in a home rule charter from zoning or from creating historical districts, or things like this, it automatically permits their people, or their governing authority to do these things, which is against their own home rule charter that they have adopted. I'd like to close with a very short statement, that I don't want any property of mine ever regulated or taken unless one, I have notice that it's taken; two, that I have had an opportunity for a hearing before the authority who is taking or regulating my property; third, judicial review that what the people who are in the governing authority, what they are doing is right and for a public purpose and not just to hurt me. I think every citizen who owns any property in this state should have those three simple protections; notice, hearing and judicial review. That's all I'm asking for in my amendment.

Questions

Mr. Lennox  Mr. Arnette, there is one matter that troubles me deeply. I am wondering that had you given the bar examination to Mr. Vick, if you'd care to speculate on the outcome?

Mr. O'Neill  Mr. Arnette, have you yet found out what the term "land use" means? Don't you think that perhaps we should provide some protection under here for such comprehensive zoning as land use might entail?

Mr. Arnette  You are perhaps right, Mr. O'Neill. Land use is kind of a vague term. But I think the main thing is that we need this...we need the...the three things that anybody needs before their property is taken, is notice, hearing and judicial review. That's all my amendment asks for.

I ask you to vote for my amendment. Thank you, very much.

Mr. Lanier  Mr. Arnette, is it not true that primarily your objection is to the procedures in which this is done rather than the basic law? Isn't it also true that if your amendment passes, it will do substantial violence to the concept of zoning as we know it today?

Mr. Arnette  Well, Mr. Lanier, you asked me two questions. First of all, is my objection merely procedural? No, not actually because my one primary objection is that this gives an absolute right to the political subdivision who is enacting these particular ordinances; it gives them an absolute right to do that....

[Record vote ordered. Amendment rejected.]

Amendment

Mr. Poynter  Amendment No. 1 [by Mr. De Blieux]. On page 11, line 11 in Floor Amendment No. 1, proposed by Delegate Derbes and others, and adopted by the convention on today, on line 9, immediately after the word and punctuation "structures.", delete the remainder of the line and delete line 10 in its entirety.

Explanation

Mr. De Blieux  Mr. Chairman and ladies and gentlemen, I think each one of you have a copy of the constitution as it presently exists on your desk. I'd like for you to turn to page 406. If you do not have it available, if you'll pick up the amendment, floor amendment which Mr. O'Neill had, it contains practically the same identical language.

Now my purpose in this amendment is that we are adopting. What I mean is, we are just transferring that language into our present constitution. I don't know of anything, anything that the city of New Orleans, in which I am very much interested, and I hope...I know we are not doing any violence to it, could not do with reference to the Vieux Carré Commission without that sentence. But what you are doing is putting into the constitution the Vieux Carré Commission as it's presently in the constitution because you are adopting all of that. Is not that entirely every bit of it just as much a part of this constitution as if you had written it in. I say, if you want it to be a part of this constitution, you should write it in. Don't adopt it by reference. I ask you to strike from that particular amendment of Mr. Derbes the last sentence and let it go, so that they'd still be able to do everything that they are doing except that we will not have all of this language. Just look at it...all of this language and two pages in the new constitution because that's what you are doing.

Questions

Mr. Roemer  Senator, I understand that by the deletion of that sentence which is what your amendment purports to do, we don't reference the old constitution. Is that correct?

Mr. De Blieux  That's correct.

Mr. Roemer  Then what effect does that have on the Vieux Carré Commission?

Mr. De Blieux  Not a bit because they still have the same authority, they still establish any districts or any commission or anything they want to do.
58th Days Proceedings—October 2, 1973

Mr. Roemer But is such authority and delegation constitutional from this point of view or a result of the elimination of the last sentence?

Mr. De Blieux What you mean is, to the present constitution present commission?

Mr. Roemer Well, if we don't refer to the old constitution which has the language, and we don't put the language in the new constitution, then in the new constitution, is the authority for the Vieux Carré constitutional law?

Mr. De Blieux Yes, sir, if the city council readopts that particular provision. That's all they'd have to do. They have the authority to adopt it and to set up districts. That's the main purpose of this provision in the constitution, to give them the authority to set up special districts, and they would have that authority.

Mr. Casey Senator De Blieux, I think Mr. Roemer asked a very pertinent question. I really don't think it was invited. I'm not sure what it was. If you delete that sentence, then it is...after the adoption of the new constitution with the deletion of that sentence, is the authority of the Vieux Carré Commission seized?

Mr. De Blieux That's correct, Mr. Casey. It would not be. They have...they would have the constitutional authority to create the Vieux Carré Commission, and that would not be in the constitution if we delete that sentence.

Mr. Casey So then, what you are doing in effect, is completely eliminating the constitutional authority of the Vieux Carré Commission.

Mr. De Blieux That's correct. In eliminating this particular language which we want...we should either put in this constitution or leave out that sentence, because that's what you are doing. You are adopting by reference all of this language. I say you should not do that.

Mr. Velazquez Senator, are you familiar with the...with the differences of opinion between the state fire marshal's office and the Vieux Carré Commission through the years?

Mr. De Blieux No, I don't know what you have reference, Co. Mr. Velazquez.

Mr. Velazquez Well, it's been a long struggle between the state fire marshal's office and the Vieux Carré Commission over who has jurisdiction over various issues. The courts have repeatedly stated that the Vieux Carré Commission has authority over the fire marshal's office in the Vieux Carré itself because the Vieux Carré Commission has constitutional status.

Now, wouldn't support of voting for your amendment depicting the constitutional status of the Vieux Carré Commission, which is the only thing that is allowing the Vieux Carré Commission to continue to do the good job it's done in the past?

Mr. De Blieux Well, Mr. Velazquez, what I say, if you want it in the constitution, you should put this language in the constitution. Don't do it by reference. That's what I'm talking about. We are adopting this language by reference, and I think you should spell it out in the constitution rather than spelling it by reference, because, when you get through, if you adopt all of these provisions, particular provisions by reference, you are going to have just as long a constitution furthermore, you will really have two constitutions. You will have to go back to the 1974 Constitution to find out what you've got in the 1974 Constitution.

Mr. O'Neill Senator De Blieux, do you remember when the committee to adopt the whole idea didn't they ask Mr. Vieux a question? Isn't this the same situation? Didn't we take that reference about house rule number, earlier?

Mr. De Blieux I believe we did, Mr. O'Neill.

Further Discussion

Mr. Derbes I hope for your sakes this is the last time I'll speak to you today. I just want to mention a couple of things to you that are very important.

We are dealing with an area of the State of Louisiana which is emblematic and classic in its significance to the state as a whole; the reputation of the state and the prestige of the state throughout the world. There is no district or area in this state which has gained such recognition worldwide as the Vieux Carré, or the French Quarter of the city of New Orleans. I say that all due respect to my fellow delegates from elsewhere in the state.

The ability of the Vieux Carré Commission to regulate the modification and demolition and construction of buildings in that area has been the only, and I repeat, only device available to the people of New Orleans and, therefore, to the people of this state. For preserving the historical and cultural heritage of that great section. By adopting the amendment as I have originally drafted it, you merely confirm in the Vieux Carré Commission, its authority to regulate this area. We have entertained the notion of incorporation by reference in other parts of this document, mainly the judiciary section. We could have, just as easily, Senator DeBlieux, spelled out all of the judicial districts in this state. But instead, we merely said that the judicial districts in existence at the time of the adoption of this constitution are retained. In order to exceptionally preserve the Vieux Carré, we need all of the constitutional authority that we can muster when you sacrifice that protection by removing it from the constitution, jeopardize the future of the Vieux Carré as we all know it.

So I urge you to reject this amendment.

Thank you.

Questions

Mr. Grassel Mr. Derbes, as you know, we discussed this proposed proposal with you. We had the huddle a few moments ago. Would you state the opinion, in view of the 1921 constitution, now, that last sentence, that it is a Vieux Carré Commission, that that last sentence could be relegated to the schedule, any element of our proposed constitution?

Mr. DeBlieux I would have a problem in its relegation to the special schedule, Mr. Grassel.

Mr. O'Neill Well, Mr. Derbes, if it's relegated to the statutes, wouldn't it go out of the right now?

Mr. DeBlieux Well, what I am suggesting to you, Mr. O'Neill, is that we do not ordain any kind of statutes, but that at that time, that this could be relegated to a schedule of statutes, whatever this statute in its due to be there.

Mr. Willis Mr. Derbes, don't you think that, if l'd have already left, right now, that it would have to be relegated to a schedule of statutes. Whatever this statute in due to be done, this statute, was something of universality.

Mr. Derbes Well, what I am suggesting to you, Mr. O'Neill, is that we do not ordain any kind of statute. whatever this statute is due to be done, this statute, was something of universality.
58th Days Proceedings—October 2, 1973

Mr. De Blieux Mr. Chairman and ladies and gentlemen, my only purpose in offering this amendment is to have an orderly procedure to the constitution which we are amending. We are going to need, if we use this technique of adopting a section of the 1921 Constitution by reference, you are going to need two constitutions to know what the law is. In the Constitution of 1924 and the Constitution of 1921. You are going to make this '74 Constitution maybe even longer than the '21 because you will have to contain all the 1921 in the '74 Constitution. What I say to you now, is let's eliminate this and let the city council of New Orleans, they have authority, this is constitutional authority in the De Blieux amendment, try for that sentence to have the constitutional authority for a Vieux Carré district. That's all they need. You don't need to put the very language in as to who's going to be on the commission, how it's going to be appointed, when a vacancy occurs, who's going to fill it, and all of that business. That's what's contained in this language. That's what you have in the language...the...amendment right now. That will be a part of the constitution if you don't take that one sentence out. Now, I'm asking today to let's get a good constitution and don't clutter it up with a lot of statutory language. I ask you to approve the amendment.

Question

Mr. Nunez Senator De Blieux, wouldn't you say it was true if the mad man of World War II, Adolph Hitler, and his generals thought enough to preserve the great cultural and historical monuments of France and London and England, and several northern...western European towns that we, in Louisiana, should think enough of our cultural history to put one line in the constitution?

Mr. De Blieux Senator Nunez, you're not putting one line. You are putting all of this language in the constitution is what I'm trying to tell you. That's what I'm talking about. Not one line I wish it was all in one line. I certainly would not object to one line in the constitution. I'm for it. I want to preserve those historical places, but let's don't clutter up the constitution with who's going to be on the commission, when there's a vacancy occurs, who's going to fill it, how they are going to go about their business, and all of that kind of stuff. I just don't think that belongs in the constitution.

[Record vote ordered. Amendment rejected: 25-77. Motion to reconsider tabled.]

Amendment

Mr. Poyerter Amendment No. 1 [by Mr. Dehotels]. Page 11, line 11, in Floor Amendment No. 1, proposed by Delegate Derbes and others and adopted today, on line 2, immediately after the number and punctuation "1", and before the word "governmental", delete the word "local" and insert in lieu thereof the following "subject to uniform, legislatively established procedures local".

Explanation

Mr. Dehotels Mr. Chairman, ladies and gentlemen of the convention, this goes to the issue that we spoke of earlier concerning notice and hearing. I think that if you think about it a little bit, that you will want to know how each parish, each municipality goes about zoning. This doesn't have anything to do with the historical preservation that J.B. Dehotels. He got us involved in that. I think, without meaning to. But this is simply so the legislature can pass a statute saying that you have to have so many hearings, you have to have so many advertisements, and these things have to be public before you can zone, or before you can restrict land use.

It's a simple amendment. I think that we would be derelict in our duties and in an orderly...in the search of an orderly government, not to have some uniformity in our zoning and land use restrictions.

I respectfully request that you adopt the amendment.

Any question?

Mrs. Zervigon Mr. Deshotels, in the event that the legislature doesn't pass the general law outlining these procedures, we could continue to operate under the procedures we now have. Isn't that the case?

Mr. Deshotels Yes, because you've just voted to retain that last sentence on your Vieux Carré, so I assume that you would continue to operate that way. Mrs. Zervigon, without getting into the issue, I think it would be inconceivable that the legislature of the State of Louisiana, assuming that the answer was in the negative, would refuse to establish procedures and thereby, restrict and curtail the bill of the charters which restrict or prohibit all the...of all the subdivisions of the State of Louisiana.

Mrs. Zervigon It's not your intention to bar the city of New Orleans, for example, should we want to establish even more restrictive and detailed provisions. It's only your intention to set up minimum procedures to say, for people's rights. Is that correct?

Mr. Deshotels Other than going to New Orleans and having a meal now and then, I don't want to do anything in New Orleans.

Mrs. Zervigon Thank you.

Mr. Roemer Mr. Deshotels, don't you think we have the obligation in this constitutional convention to protect the citizens of New Orleans as we do the citizens of any other part of this state?

Mr. Deshotels Mr. Roemer, I assume that you want a serious answer to, maybe, a frivolous question. Of course we do.

Further Discussion

Mr. Perez Mr. Chairman and ladies and gentlemen of the convention, I see no objection to the adoption of this amendment. I believe that it takes case of some of the problems with respect to the method by which zoning and land use regulations would be adopted. This affords the legislature the opportunity to set up those procedures.

Questions

Mr. Jenkins Mr. Perez, would you offer to language which would insert after the word "procedures" in Mr. Deshotel's amendment, the words "of the local government charters?" and the local charters because, you know, we may have provisions in some local government charters. That's what I would suggest. I don't have an amendment to that effect.

Mr. Perez Do you have such language? I'd be glad to...can you suggest the language at this time?

Mr. Jenkins Yes, sir. I would say after the word "procedures and the local charters?" That's what I would suggest. I don't have an amendment to that effect.

[Previous Question ordered. Record vote ordered. Amendment adopted: 96-4. Motion to reconsider tabled. Motion for the Previous Question on the entire
5th Days Proceedings—October 2, 1973

Amendment

Mr. Poynter The next amendment sent up by Delegate Arnette reads as follows:

"Amendment No. 1. Page 11, line 11 in the floor amendment proposed by Delegate Derbes and adopted today:

On line 3, after the word and punctuation "preservation," delete the remainder of the line. On line 4, at the beginning of the line, delete the words and punctuation "is declared to be a public purpose;" and insert in lieu thereof the following, "subject to due process of law."

Mr. Poynter The next amendment sent up by Delegate Arnette reads as follows:

"Amendment No. 1. Page 11, line 11 in the floor amendment proposed by Delegate Derbes and adopted today:

On line 3, after the word and punctuation "preservation," delete the remainder of the line. On line 4, at the beginning of the line, delete the words and punctuation "is declared to be a public purpose;" and insert in lieu thereof the following, "subject to due process of law."

Ruling of the Chair

[chair declined to rule. Question put to the Convention. Amendment declared out of order: 46-50.]

Amendment

Mr. Poynter The next amendment sent up by Delegate Jenkins.

On page 11, line 11...and this one’s a little different...in Floor Amendment No. 1 proposed by Delegate Deshotels, to the Floor Amendment proposed by Delegate Derbes and adopted by the Convention on today, at the end of line 1 of the Deshotels amendment, after the word "procedures", and before the comma", I insert the following: "and the local charter".

Explanation

Mr. Jenkins Mr. Chairman, delegates, again this is in response to the objection raised by Mr. Arnette who said that even though a local home rule charter might forbid the local governing authority from engaging in zoning or land use regulations, this constitutional provision would give them that authority, despite that charter. This amendment simply says that subject to uniform legislatively established procedures and the local charter, local governmental subdivisions shall have authority, and so forth. It just makes it clear that the local charter can restrict the authority of the local governing authority. Of course, because of this language, the authority of the local governing authority to engage in land use, planning, and zoning would not be dependent on their charter. Their charter would only restrict it. So, I urge the adoption of this amendment.

Further Discussion

Mr. Jenkins I ask a ruling of the chair as to whether or not this is not the same proposed amendment which was just debated and voted down a few moments ago?

Mr. Kean Mr. Kean, looking at the amendments, I’m going to use the same procedure that we’ve used on a couple of sets lately when it...the Chair cannot be absolutely certain.

Ruling of the Chair

[chair declined to rule. Question put to the Convention. Amendment declared out of order: 46-50.]

Amendment

Mr. Poynter The next amendment sent up by Delegate Jenkins.

On page 11, line 11...and this one’s a little different...in Floor Amendment No. 1 proposed by Delegate Deshotels, to the Floor Amendment proposed by Delegate Derbes and adopted by the Convention on today, at the end of line 1 of the Deshotels amendment, after the word "procedures", and before the comma", I insert the following: "and the local charter".

Explanation

Mr. Jenkins Mr. Chairman, delegates, again this is in response to the objection raised by Mr. Arnette who said that even though a local home rule charter might forbid the local governing authority from engaging in zoning or land use regulations, this constitutional provision would give them that authority, despite that charter. This amendment simply says that subject to uniform legislatively established procedures and the local charter, local governmental subdivisions shall have authority, and so forth. It just makes it clear that the local charter can restrict the authority of the local governing authority. Of course, because of this language, the authority of the local governing authority to engage in land use, planning, and zoning would not be dependent on their charter. Their charter would only restrict it. So, I urge the adoption of this amendment.

Questions

Mr. Tagger Would, when you say general law and the local charter, don’t you mean to that that if there is no local charter, that there can be no zoning?

Mr. Jenkins No. It simply says that subject to these things, the local governmental subdivisions have the authority. This is no way takes it dependent on it. It only says if you have these things, then it’s subject to them, but if you don’t have them, obviously, it’s a matter done by it. It would say, subject to uniform legislatively established procedures and the local charter, local governmental subdivisions. There is no local charter, they have no representatives, and they have all the authority provided herein.
Reading of the Section

Mr. Poynter  "Section 20. Zoning."

Section 20. Local governmental subdivisions may enact land use regulations and zoning ordinances and create and classify therein residential, commercial, industrial, and other districts, and may regulate the preservation of the character of buildings, monuments, etc.

[Motion to waive reading of the Section adopted without objection.]

Explanation

Mr. Perez  I just wanted to call to the attention of the delegates, we have taken care of zoning and land use measures in Section 19, and that we should delete Section 20.

Mr. Henry  We have an amendment for that purpose.

Amendment

Mr. Poynter  Mr. Derbes offers the amendment. On page 10, delete lines 26 through 32, both inclusive, in their entirety and on page 12, delete lines 1 through 3, both inclusive, in their entirety.

Mr. Henry  Mr. Derbes, do you want to speak on your amendment?

Mr. Derbes  Absolutely not. Thank you.

[Previous question ordered. Record vote ordered. Amendment adopted: 102-1. Motion to reconsider tabled. Motion to consider Section 23 previously passed over adopted without objection.]

Reading of the Section as amended

Mr. Poynter  "Section 23. Intergovernmental Cooperation."

Section 23. (A) Any political subdivision and the language for "or school board" was amended in that same amendment comes in four different places--"may exercise and perform any of its authorized powers and functions, including financing, jointly or in cooperation with one or more political subdivisions or school boards, either within or without the state, the United States or agencies thereof, except as the legislature shall otherwise provide by law.

(B) Except as otherwise provided in this constitution, the legislature shall not require political subdivisions or school boards, nor shall the legislature require consolidation of governmental functions of local governmental subdivisions. However, the legislature may enact laws authorizing the consolidation of political subdivisions or the joint exercise of powers and performance of functions by political subdivisions, but no such law shall become effective until submitted to and approved by two-thirds of the electors in each of the political subdivisions affected thereby, who vote in an election called for that purpose."

Amendment

Mr. Poynter  Amendment No. 1 [by Mr. Flory]. On page 12--this is the Flory amendment--line 27, at the beginning of the line, before the words "the United" add the word "with".

Explanation

Mr. Flory  Mr. Chairman and delegates, if you recall a discussion that we had Saturday as it relates to political subdivisions entering into agreements with the United States, agencies thereof, or with political subdivisions within or without this state, there was a problem that possibly reading it, it could be determined that a political subdivision in Louisiana could enter into an agreement with a foreigner. After adding the word "with" on line 27 before "the United States," I think, clarifies it to the extent that there cannot be any agreement entered into between a political subdivision, the state, or agency thereof, with any foreign power, and I know of no objection to the amendment.

Questions

Mr. Casey  Mr. Flory, I admit that the amendment has been on the desk for a while, and I'm concerned about the extent and effect of it. My concern is, for instance, with the Port of New Orleans or any deep-water port in any contract that may be executed with a foreign government; would this now be prohibited; if, depending on if a port authority is considered a governmental unit? I don't know that it is. Is it, first of all?

Mr. Flory  Well, all I know is under the existing constitution--and I don't know what's going to happen when we get into some of the other areas as far as the Port of New Orleans--I know at the present time the Port of New Orleans is considered an agency of the State of Louisiana. It has been discussed with some of the authorities of the Port of Baton Rouge, and they suggested that with the word "with" here would not interfere with any operation of the Port of Baton Rouge, and, consequently, I'm of the opinion it would not interfere with any of the functions of the Port of New Orleans. Their contracts, etc., here deal with lessees, etc., with corporations in Louisiana; they do not have any contracts or dealing with a foreign power as such.

Mr. Casey  Now, the other question I have is: in the case, for instance, of the city of New Orleans, it is my understanding that at this time the city of New Orleans is negotiating with the Spanish government for the construction of a Spanish plaza, or maybe it's the French government for the construction of a French plaza; would something of that type then be prohibited under Section 23--for the construction by a foreign government for and on behalf of the city of New Orleans for the construction of plazas?

Mr. Flory  Not to my knowledge and understanding, Mr. Casey, particularly based upon actions of the past. If I'm correct, I believe that those are acts of donation by foreign countries to the city of New Orleans that you referred to in the past.

Mr. Casey  Well, what concerns me is that we, in effect, are talking about the exercise and performance of authorized powers and functions including financing, jointly or in cooperation. My understanding is that one of the functions or authorities of any political subdivision is to accept a donation. It is my understanding, under the interpretation that we are giving this section right now, that any political subdivision would not even be able to accept a donation.

Mr. Flory  I don't agree, Mr. Casey. If you'll read the first sentence, it said, "Any political subdivision may exercise," etc.

Mr. Casey  Well, that's correct. I agree with you that it reads that way.

Mr. Flory  But the word...inserting the word "with" before "the United States" does not prohibit what you're talking about, in my judgment.

Mr. Casey  Well, you are limiting this to the action of any political subdivision in Louisiana.

Mr. Flory  I'm not granting specific authority, but at the same time, it's not prohibiting it, if you read the whole Section 23, the first paragraph between lines 23 and 20.

[1549]
Mr. CASEY. Well, then, I guess I'd have to ask that question are you familiar with any case that we need Section 30 at all?

Mr. FLORY. I don't believe that there are any cases covered under Section 30 at all because it is a provision in nature. But if there were such cases, I think we could meet to discuss the question. And I think that the question of the committee itself, and I talked to a number of them based upon that sale question because I personally do not see any need for the whole section. I think there are a number of persons that need it in order to enter into an agreement, one will assemble another, for example. In the state of Miss. [Mr. Dennery] pointed out the other day. And it is not difficult to enter into an agreement with Mississippi, for educational television, this is what they gave as a basis of authority for need I don't personally agree because you are a member of the legislature and ought to consider that on a number of occasions this has been before the legislature to grant authority for various public institutions, or done state to state enter into regional compacts. So I presume based upon the past history of matters that have been done before the legislature, they had the authority then, and suggestion, as my understanding was silent on the issue.

Mr. CASEY. I'm not sure, Mr. FLORY, that we do need it or don't need it, if I had my druthers, my preference would be that we have it, but the concern is that possibly with your amendment we are limiting a number of features without any legal authority. And I think that this division may have at this time, if we enact your amendment, and do you know also that really this is regulated by the U.S. Constitution, rather than by any state constitution, because the U.S. Constitution indicates that no state shall enter into any agreement or compact with another state or with a foreign power without being authorized by Congress. Are you aware of that?

Mr. FLORY. Yes, sir, and that all this amendment does is to keep with the Federal Constitution.

Mr. CASEY. Mr. Chairman and delegates, it's difficult to explain any provision of the Constitution of this type when you're not really sure of the full extent of the effect of it, and I really don't know what I'm talking about. I have some reservations about the effect of this amendment. I think all of it, as I understand it, is intended to constitute in Article 1, section 8, of the Constitution, any duty of State or Federal, any duty of tenure, any tenure of any kind, over into the educational television, which would prevent any subdivision of the country by educational television, do you know that there are exchange programs, but I feel as well as a free exchange with Canada, France and so forth. Would this prohibit that?

Mr. FLORY. Not in my judgment, no.

Further discussion

Mr. CASEY. Mr. Chairman and delegates, it's difficult to explain any provision of the Constitution of this type when you're not really sure of the full extent of the effect of it, and I really don't know what I'm talking about. I have some reservations about the effect of this amendment. I think all of it, as I understand it, is intended to constitute in Article 1, section 8, of the Constitution, any duty of State or Federal, any duty of tenure, any tenure of any kind, over into the educational television, which would prevent any subdivision of the country by educational television, do you know that there are exchange programs, but I feel as well as a free exchange with Canada, France and so forth. Would this prohibit that?
that school boards be able to consolidate with a majority vote. Now, I don’t know whether this convention will want to go that route or not, but not wishing to in any way preclude a decision on that topic until we get to the Education Committee report, it seemed wise to put in here “except as otherwise provided in this constitution” to the two-thirds requirement for consolidation of functions.

Questions

Mr. Dennis: Mr. Burson, as I understand this section, as it has been amended by your amendments and others and also with this one you are proposing, although you’ve added “or school board” in some places, the total effect will be that consolidation of school boards will not be governed by this section, but will be governed by something else in the constitution or somewhere else. Is that right?

Mr. Burson: Yes, sir, by the appropriate section, Judge Dennis. I think you were one of them that brought to my attention that probably the Education Committee, not the present law, would require two-thirds vote to consolidate school districts. I don’t think that was the intent.

Mr. Dennis: So, even if we pass this section, it will not mean you have to get a two-thirds vote to consolidate school systems.

Mr. Burson: That’s the purpose of the Second Amendment, is to make this plain.

Mr. Singletary: Jack, is it your intent to, when we get to the definitions at the end of the committee proposal, to redefine “political subdivisions” to exclude school boards?

Mr. Burson: No, to include school boards in it, but only to exclude them in sections where the sections are not applicable in the article. You’ve got to do it one way or the other.

Mr. Singletary: Do you have some suggested language to accomplish that purpose?

Mr. Burson: Well, I think just including “school boards” in the definition of “political subdivisions” if we’ve excepted them everywhere they should be excepted, should present no problem.

Mr. O’Neill: Mr. Burson, I was on the Committee on Legislative Powers and Functions, and I thought that we had put all the limitations we were going to put on the legislature in that article, but Section (B) of this proposal is a very strict prohibition against the legislature. I wish you’d address yourself somewhat to that, since you’re the first member of the committee that has been up speaking on this.

Mr. Burson: Mr. O’Neill, I think quite clearly that that Section (B) emanates from a great fear that certain political subdivisions have, or people from certain political subdivisions have, about forced consolidation at some future date. That’s the only explanation that I have, but I think if you’ll just think of Jefferson and Orleans, right off the bat you get the message.

Recess

Mr. Henry: Read the Burson amendments, Mr. Clerk.

Mr. Clerk: Give the Clerk your attention, please, so this can be properly read. You’re going to have to make a correction ‘cause it’s still not drawn right. Read it, Mr. Clerk.

Amendments

Mr. Poynter: Now, you wanted all four of those previous amendments out, right, Mr. Burson?

Mr. Burson: All right. On page 12, delete Floor Amendments No. 1 through No. 4 to Section 23 proposed by Delegate Burson and adopted Saturday. Amendments No. 2. On page 13, between lines 8 and 9, insert the following:

"The provisions of this paragraph shall not apply to school boards."

Explanation

Mr. Burson: The explanation is still the same.

You want paragraph (A) to apply to school boards because you want them to have the power to consolidate or exercise functions jointly. You do not want paragraph (B) to, because the Education Committee has got a different set-up. It’s as simple as that. We’re deleting the amendments because we want to include school boards as they traditionally have been, as a political subdivision except where it doesn’t fit.

Mr. Perez: I see no objection to the amendment.

[Previous Question ordered.]

Questions

Mr. Gravel: Mr. Burson, I notice that the new amendment, as prepared, doesn’t have the provision in line 4, on page 13, for the sentence “...except as otherwise provided in this constitution”. Was there some reason why that is not needed now?

Mr. Burson: Yes, sir, the reason is that the intent I had with the notion was simply to say that it shall not apply to school boards, and they said, “Why don’t you just go ahead and say it that way because it really fouled up the language of the other sentence?” It didn’t come out very well, to say the least.

Mr. Gravel: Do you think that the provision on line 39, page 12 is applicable then to the entire Section (B) and modify that section as otherwise provided in this constitution?

Mr. Burson: Yes, sir, that was the...that’s what was Mr. Keen’s point. He said if you don’t want paragraph (B) to apply to school boards, just say that, and that’s why we added the sentence.

Mr. Gravel: Well, would you have any objection to leaving in that particular part of the amendment that provided to make it clear, on line 39, page 13, after the word “but”: “...except as otherwise provided in this constitution?”

Mr. Burson: No, I really don’t have any objection or desire one way or the other on it. The opinion of most people was the...saying “except” one time probably should be sufficient. But, the only thing I want to do is just to make sure that school boards would not be infringed upon with the education article provision of a majority rather than a two-thirds vote.

Mr. Nuñez: Mr. Burson, rather to insert school board in every paragraph or sentence that you think this should apply to, would you find any objections to putting it in the back under political subdivisions, the definitions you have here? ‘Use parishes, municipalities and any other unit of local government including special districts or provided
Mr. Burson. The problem is, Senator Nunez, there are some articles in here where you give powers to political subdivisions that you would not want to go to school boards. That's where you have to put the exceptions in.

Mr. Newton. Mr. Burson, I don't know if this question is necessarily pertinent to your amendment, but reading Section 23, paragraph (A) about these political subdivisions exercising these powers jointly, on what authority would they do this? Just a vote of the police jury, the two police juries, or would the people have anything to say about that?

Mr. Burson. Well, of course, I think there you would get into Section (B) that the consolidation or joint exercise of powers would not become effective until two-thirds of the electors had approved it.

Mr. Newton. I don't read it that way.

Mr. De Bileux. Mr. Burson, as I read this particular provision, without your previous amendment or this one, there would be no consolidation of the city and parish school boards in the parish of Ouachita or the parish of Washington except by vote of the people. Now, if we insert your particular amendment here, could the legislature consolidate those school boards without a vote of the people?

Mr. Burson. No, sir, not... Mr. De Bileux. Why?

Mr. Burson. Not since the Education Committee has got a specific article on that point. See, the problem that you're raising in your question is the exact reason why I offered the second amendment because somebody else pointed out that to me Saturday. I know that the Education Committee has an article on that point, so, it's no use to encounter that problem at this time. We'd really be...

Mr. De Bileux. Well, wouldn't there be a conflict between these two articles? Now, look at the words and the language very carefully, now, and then insert that language there and see if that wouldn't exempt school boards from the particular legislative authority.

Mr. Burson. Well, again, Senator, it might if we didn't know that the Education Committee has got something going on it. Just like a lot of questions in revenue and taxation we don't ever hear because we know the Revenue and Taxation Committee has covered.

Further discussion

Mr. De Bileux. Mr. Farmer and fellow delegate, I'm only asking why you would have suchsessionIditstrisch an article that is in here... I mean, the limitation on the legislature... and to the extent you give the legislature... it would only limit them to a great deal of question and a great deal of debate... I've just raised the question. If there are no amendments and if there are no questions, I would have that when we vote on this. I'm thinking that we're this entitled to ask a division between A and B, how do I do that? Amendment to delete...

Mr. De Bileux. Mr. O'Neill. Thank you.

Mr. Burson. Judge Tate, I'm wondering, with the language I'm reading here, what effect would the language have on presently created districts that are now in operation?

Mr. Tate. It would not change, under the definition of a governing body, that's page 21, it means any governmental bodies including school districts and political subdivisions, what are they just for any governmental body, that's page 21, it's not going to change, they are all the same. It's just this, that's what it means, that's perhaps, that's what I mean.

Mr. De Bileux. Well, after all, we can have a district that I'm thinking of, that I'm thinking of that we're... or, the members of the legislative body that I charged...

Mr. Tate. It... I hate to say it... I don't know, perhaps, jury, you, if you were a leg...

Mr. De Bileux. Mr. O'Neill. Thank you.

Mr. Tate. We can prove a... in a district, you, and other...
is it? Wouldn’t this permit arrangements whereby out of state law officers could come into our state or into a city and take over and exercise the functions of law enforcement within this state?

Mr. Tate I suppose I’m supposed to answer yes, Mr. Avant, but...

Mr. Avant I want to know.

Mr. Tate Well, ask me the question one more time, I lost you.

Mr. Avant I want to know if this would not permit, if local government decided to make such a deal, out of state law enforcement officers, say, from Mississippi, Arkansas, Texas, or you name it, to come in this state and exercise law enforcement powers in an area in this state just on the say-so of the local governing authority?

Mr. Tate Well...if I understand your question, then, it does not contemplate the setting up of any local governmental unit to operate any governmental cooperation venture, it prohibits two local subdivisions cooperating together unless two-thirds of the vote...of the electors in each subdivision...

Mr. Avant Well, I’m talking about (A). I’m looking at (A).

Mr. Tate Oh, Mr. Avant, I’m not rising to do more than raise questions as to (B)...all right, let’s see what (A) says. I’m not on the committee.

Mr. Avant Well, you’ve read it...

Mr. Tate Yes, yes, I would agree with you, Mr. Avant, it does. I would agree with you it does.

Further Discussion

Mr. Toony Mr. Chairman, fellow delegates, I rise in support of this section as it stands right now.

I’d like to bring to your attention that Subsection (A) merely authorizes the parishes, and cities, and political subdivisions, whatever they might be, to perform any governmental functions at their will. It authorizes them that they may do these if they so please. Subsection (B) only applies in the case where the legislature requires political subdivisions against the will of the political subdivisions, to cooperate into any governmental cooperation venture. Let me bring to your attention that it was the feeling of the committee, that should the political subdivision be opposed to such cooperation, that it would be left to a vote of the people. If the people wished to join into such a venture, that the political subdivision would do so.

Let me further bring to your attention, a number of people have questioned the two-thirds provision. On page 13, line 3, we are talking about the legislature may enact laws authorizing the consolidation of political subdivisions or the joint exercise of powers and performance of functions by political subdivisions. This, in essence, is consolidation and mergers of political subdivisions. Let me further bring to your attention that with any definition of political subdivisions are parishes and municipalities. In Section 1 of the Local Government Article, we have already provided that the “dissolution, merger, or consolidation of parishes would take place only by a two-thirds vote of the electors in the parish,” so that the committee, in this Section 23, is only following the lines of what the Convention has already adopted. Let me reiterate again that Subsection (B) only applies when the legislature wants the political subdivisions to cooperate against their will, that there’s still a door open for cooperation that the people. We thought that the vote of the people would be appropriate means by which this cooperation would take place. I’ll yield to any questions, Mr. Chairman.

Mr. O’Neill Well, Mr. Toony, I can appreciate your explanation, but it seems to me that Section (A) says that they can do any of these things jointly or together. The people have no say-so, then, on what’s done. Yet, if the legislature authorizes it and, say, the people require their legislative approval and two-thirds the vote of the electors....you know, this seems preposterous to me. Two-thirds of the electors never even vote in election. The percentage is somewhere around sixty percent.

Mr. Toony To answer your second question first, if you will read lines 7 and 8 on page 13, it says, “two-thirds of the electors in each of the political subdivisions affected thereby, who vote, who vote in an election called for that purpose.” Not two-thirds of the total electorate on the rolls, but only two-thirds of the people who vote in the election. The first question...I answer, it’s been the feeling throughout of the Local Government Committee, that the local governing authority had a better pulse of the people within the area, and that if the governing authority mandated such cooperation and it...two-thirds of the auxiliary governing authority, then we would allow it to a vote of the people.

Amendments

Mr. Poynter Amendment No. 1 [by Mr. Tate]. On page 12, delete lines 29 through 32, both inclusive, in their entirety including all floor amendments thereto (and there are none) and on page 13, delete lines 1 through 6, both inclusive, in their entirety including all floor amendments.

Now Amendment No. 2. On page 13, between lines 8 and 9, delete Floor amendment No. 2 proposed by Delegate Burson and adopted by the Convention on October 2, 1973, (as a separate second amendment).

Explanation

Mr. Tate All right, Mr. Chairman, and fellow delegates, I don’t rise with a great deal of confidence because it has not yet been explained to me what the purpose of (B) was. Nevertheless, looking at (B), the concept that “the legislature shall not require political subdivisions to exercise powers or perform functions by political subdivisions unless it’s approved by a two-thirds vote of the electors in each of the subdivisions.” Until it’s been explained to me why we should freeze in all subdivisions, we are not defined to such cooperation, that it would be left to a vote of the people. If the people wished to join into such a venture, that the political subdivision would do so.

I rise particularly, however, in opposition to the second sentence of the section which prohibits the consolidation of political subdivisions which...or the joint exercise, even the joint exercise of powers of functions by political subdivisions unless it’s approved by a two-thirds vote of the electors in each of the subdivisions.

Until it’s been explained to me why we should freeze in all subdivisions, we are not defined to such cooperation, that it would be left to a vote of the people. If the people wished to join into such a venture, that the political subdivision would do so.

Questions

Mr. Lanier Judge Tate, if we delete Subsection (B), then, am I correct in saying that there would be no prohibition against the legislature of the State of Louisiana, say, consolidating the powers and functions of the parish of Jefferson in the parish of Orleans, to require that for all future
Mr. Tate. I read your...the provision...it is...that the legislature may not require political subdivisions to exercise powers or perform functions jointly or in cooperation with any other political subdivisions unless it also...the legislative...play a role in a...two mosquito control districts...those of you who can explain it...the Jefferson Mosquito Control District and the New Orleans Mosquito Control District, the legislature...and Jefferson does the same...that means...Mr. Lanier. That's correct under 81. Mr. Tate. Unless it's submitted to a vote of...two-thirds of the people of Orleans Parish, in a special election called for the purpose...you said our mosquito district...cooperate with Jefferson, and Jefferson does the same...is that what it means? Mr. Lanier. But, would you agree that the evil inherent in not having this provision is that the legislature could change the power and functions of Jefferson and Jefferson? Mr. Tate. I do not agree, Mr. Lanier. As a matter of fact, I think we've gotten along without any sort of a provision like this...This is completely new, I...understand it, it's dreamed up out of political theory...It sounds good, but until I know what it does...it seems to be we should narrowly draw the power of...Mr. Tennyson. Judge, you understand that subdivision II is only where it would be involuntary cooperation, locally, and that what Mr. Lanier was asking was only in the case of involuntary cooperation, and I don't think that's...in subdivision II, we're talking about more important things as far as the power and functions of local governmental subdivisions. Mr. Tate. Mr. Tennyson, that's why I vote in the first place to question it...I don't understand it to mean an important thing...like the variance of Jefferson and the parish of Orleans...I understand it's an act of political subdivisions, and I just do not understand it, and that's why I want to ask the question and receive an answer...used to debated the amendment. Mr. Tennyson. Judge, did you read in our...in our definition of governmental subdivision, what the Convention has been using as far, I understand, the lines and subdivision in the definition of governmental subdivision. Mr. Tate. I am not...there is another unit of local government, including special districts such as mosquito control districts, as well as any other governmental subdivision. Mr. Tate. As read that...on page 3054, the...this subdivision, I vote against it...for the same reasons, I...Mr. Tate. I vote against third vote of the legislature...I vote to keep the section...Mr. Tate. No question at...we...if we delete that section...it would not...we're...is that you were...I vote for the amendment.
Mr. Perez Yes, sir, and I would again suggest that we ought to limit this paragraph to the parishes and municipalities, and not all these various districts. I'd be glad to support an amendment which would limit it to the local governmental subdivisions in order that the functions of the parishes and of the municipalities could not be merged without their consent.

Mr. Tate Mr. Perez, did I understand that you would accept an amendment to Section (b) that would limit it, "shall not require local governmental subdivisions which are defined as parishes or municipalities?"

Mr. Perez Yes, sir, I would.

Mr. Tate In the first and second sentence?

Mr. Perez Yes, sir, I would. If you'd be... If you will withdraw your amendment, I'd be glad to offer such an amendment.

Mr. Tate I'd be glad to withdraw my amendment if you'll do that.

Mr. Perez Fine.

[Amendments withdrawn.]

Amendments

Mr. Poynter Amendment No. 1 [by Mr. O'Neill, et al.]. Page 12, line 30, immediately after the word "require", and before the word "to", delete the word... words "political subdivisions" and insert in lieu thereof "local governmental subdivisions".

Amendment No. 2. On page 12, line 32, immediately after the word "other", and before the word "nor", delete the word "political subdivision" and insert in lieu thereof the words "local governmental subdivision".

Amendment No. 3. This one was drafted with expediency in mind. On page 13, line 3, line 5, and line 7, knock out "political subdivisions" and insert in lieu thereof "local governmental subdivisions".

So, in effect, you are changing "political subdivisions" to local governmental subdivisions in five different places: page 12, line 30; page 12, line 32; on page 13, lines 3, 5, and 7.

Explanations

Mr. O'Neill Ladies and gentlemen of the convention, this takes care of the problems that Judge Tate has mentioned. I want you to just refer back quickly-- I won't take very much time--to page 27, part 5, under definitions. You will see there is a difference between the way local governmental subdivision "and political subdivision". There is a distinction made between these two. Rather than leave the words "political subdivision" in the committee proposal, we are attempting to change it to "local governmental subdivision" which means any parish or municipality. So it won't include hospital districts, mosquito abatement districts, or all these other little nit-picky things. This is a beginning in clearing up many of the other problems that have arisen over Part (B) of this section.

There is no objection on the part of the committee, as you can see by the coauthors on the amendment. I'd ask for your favorable adoption.

Questions

Mr. Conroy I don't know whether this should be directed to you or to the Chair, or what. But, does this also delete the Burson amendment which I would assume would no longer be necessary, would it?

Mr. O'Neill No, sir.

Mr. Conroy It doesn't delete it? Is it necessary anymore?

[Amendment adopted without opposition.]

Mr. Poynter Amendment No. 1 [by Dr. S. C. Crow]. On page 13, line 6, immediately after the word... after the words "approved by", and before the words "of", delete the word "two-thirds", insert in lieu thereof the words "a majority".

Explanations

Mr. Gravel Mr. Chairman, ladies and gentlemen of the convention, this is a very simple amendment that certainly is self-explanatory. This means that there, after the legislation, of course, has enacted laws authorizing the consolidation of political subdivisions or the joint exercise of powers, that that law shall become effective when it is approved by a majority of the voters and not by a two-thirds vote. I think this is ample protection. This doesn't mean necessarily that I support the section, however. I don't want to mislead anybody, but I believe that it's fairer to say majority than two-thirds.

Questions

Mr. Lanier Mr. Gravel, would this mean, then that if the legislature so authorized that the powers and functions of the parishes of Orleans and Jefferson could be joined by a majority vote in both places?

Mr. Gravel Well, they could by a majority vote, but they could do it by a two-thirds vote here. But I don't believe that's the intent of this at all.

Mr. Nunez Mr. Gravel, your amendment, would you say it would be compatible with Section 2 which takes two-thirds vote for consolidating parishes, dissolving parishes, creating new areas, or changing parish boundaries which, evidently, under (B), very possibly was the powers and functions intermingled could mean the same thing. In it, you are getting away from the compatibility of Section 2, which is the same now in (B) of this section.

Mr. Gravel Well, perhaps so, but let me make sure that I make this clear.

First of all, the legislature is acting in connection with this particular provision. Once the legislature has acted then a majority of the voters, as I understand it, should be the ones to decide whether or not that provision would go into effect. Otherwise, you would have a relatively small minority that could prevent the legislature's actions from taking effect.

Mr. Nunez Well, it might be wise to have a small majority preventing the action, if that action was so directed as to direct an urgent request, what have you, that they merge, consolidate their powers and functions. It might be wise to have two-thirds in there.

Mr. Gravel I don't agree that it would, Mr. Nunez, I think, first of all, that we keep in mind that we are predicated this on action by the legislature, which, I assume in most instances would be wise action that would be taken. Therefore, if you are going to have a veto by the people within the affected areas, it should be by a majority of those and not by two-thirds. It's just that simple. Imagine that some of you have a different view, but this is my view.

Mr. Nunez Well, would you... another question?

Mr. Gravel Yes, sir.

Mr. Nunez Would you recommend we go back and change Section 2?
Mr. Gravel: Section 2, where... I mean...

Mr. Nunez: Section 1 in the local government article, Section 2, paragraph... may consolidate parishes, dissolve parishes, etc., that is, with two-thirds vote of the voters or electors in both parishes concur.

Mr. Gravel: well, I would think that Section 2 would be specific with respect to the thing mentioned in Section 2, and probably are, of a higher degree than... the provisions we are talking about now.

Mr. Nunez: well, wouldn't you say my main concern is that Section 2, that this section would apply to a similar type of mergers in Section 2 and we should prohibit that. That's my main concern, wouldn't you agree?

Mr. Gravel: I think there is a distinction on it.

Further Discussion

Mr. Toomy: Mr. Chairman, fellow delegates, and particularly Mr. Gravel. I don't believe you read Section 1 as the convention adopted it. It reads, "the legislature... the legislature may establish and organize new parishes or merge parishes after a two-thirds vote. We have the legislature involved in Section 1 just as we do in Section 23. I see no reason why we should change the vote. We already have the legislature authorization in Section 1. Your amendment would simply create a conflict between what we have already adopted and the way you are proposing to change this section.

I further submit, if you remember the last time I was up someone questioned me about the few people who vote at elections compared to the people on the rolls. Why I am using that up from my point of view. If you're going to consolidate parishes or consolidate governmental subdivisions, think of the number of people that might be involved in one election. This affects people more than any thing you can imagine in the state, to change the parish lines, to consolidate parishes, change... consolidate powers and functions. I do not think that a two-thirds vote in each area is unreasonable. I feel that this is the heart of the home rule provision that you should establish parish lines, operate within cities and parishes. I see no reason why we should change the provision. I can only see problems arising from changing this from a two-thirds to a majority.

Question

Mr. Tobias: Mr. Toomy, are you aware that Section 1, as far as changing parish boundary lines, etc., would control over this section of adopted in other words, they are not in conflict with one another.

Mr. Toomy: As I read it, they are in direct conflict. One says the legislature may establish only after a two-thirds vote, and the other says, if you will read it, the consolidation of local governmental subdivisions, as Mr. Gravel proposal, by only a majority vote. If you further understand what this section says, by consolidating the powers and functions of local governmental subdivisions, you are, in essence, consolidating the governmental subdivisions.

Further Discussion

Mr. Nunez: Mr. Chairman and fellow delegates, I still trying to understand Section 18 of Section 2. We are dealing with right now, I think, don't think that by making a majority is the answer to the problem that they now have two thirds to... I think if you don't understand it, you don't like it. I let you just eliminate it, but let's see if we can change the two-thirds vote to a majority vote. I think it's in conflict with Section 1, our Section 18, or whatever we have changed it to. Because...
5th Days Proceedings—October 3, 1973

Wednesday, October 3, 1973

ROLL CALL
[75 delegates present and a quorum.]

PRAYER
Mr. Burns  Our Heavenly Father, we thank Thee for bringing us back to this convention for a new day. Thou, who has taught us to fly through the air like birds and travel under water like fish, we would ask that You would guide us down the straight road to January 4, not letting us turn to the right or left, but deliver on that day a constitution to the governor of the State of Louisiana that will not only meet with Thy approval, but with the approval of the people of the State of Louisiana. We ask all these things in Jesus' name. Amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

Reconsideration
Mr. Poynter  Reconsideration, Committee Proposal No. 17, by Delegate Perez, Chairman on behalf of the Committee on Local and Parochial Government, Section 23, concerning a section that dealt with the question of the reconsideration of said section, which failed to pass on yesterday.

Motion to reconsider Section 23 adopted without objection.

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Mr. Poynter  Committee Proposal No. 17, introduced by Delegate Perez, Chairman on behalf of the Committee on Local and Parochial Government, and other delegates, members of that committee.

A proposal making for general provisions for local and parochial government and the levee districts and ports, the financing thereof and necessary provisions with respect thereto.

The status of the proposal is the convention has adopted the first 24 sections of the proposal, with the following exceptions being Sections 2, 4, 10, and 20, for which provisions by amendment have been deleted, and also Section 23, just reconsidered.

Mr. Henry  Mr. Perez, do you want to go ahead and work on Section 23 again, or move on to 25?

Twenty-five? Read Section 25, Mr. Clerk.

Reading of the Section

Mr. Poynter  "Section 25. Appropriation to Political Subdivisions"

Section 25. When the legislature appropriates funds to one or more political subdivisions and the legislature does not specify the purposes for which such funds shall be expended, or the amounts to be expended therefor, the expenditure of such funds shall be determined solely by the governing authority of the political subdivision to which the funds are appropriated. The legislature may require a report concerning the allocation and expenditure of such funds.

Explanation

Mr. Burson  Mr. Chairman, fellow delegates, this is a new section. There is no section like it in the present constitution. What it is designed to do quite simply is to prevent a situation such as has occurred with revenue-sharing, where the legislature made blanket allocations of funds to local governmental subdivisions, cities, or parishes, and in many cases, the legislature delegation reserved the right to approve particular expenditures of those funds. What this section says is that if the legislature does not specify in the act of appropriation, the purpose for which money is to be spent, that is, if the legislature does not specify that the money is to be spent for roads or for some other purpose, then the specific expenditures of such funds shall be a matter to be determined solely by the governing authority of the political subdivision, or political subdivisions to which the funds have been appropriated. Of course, it goes without saying that the legislature, through the legislative auditor or any other means, should always be able to require reports concerning the expenditure of such funds, but the question met squarely by this section is whether or not an individual legislator, any parish, or municipality should be able to go back into the police jury meeting and say, "I want X amount of dollars out of the revenue-sharing funds to be spent for five miles of blacktop road in Ward 6 of St. Landry Parish," which under the revenue sharing setup in many of the parishes, a legislator could do. It is an issue, really, as far as the local governmental subdivisions are concerned, of an intrusion of local industry by political subdivisions, deep-water port commissions or deep-water port, harbor, and terminal districts. The question before the convention is the question of the reconsideration of said section, which failed to pass on yesterday.

[Motion to reconsider Section 23 adopted without objection.]
section is adopted then the legislature would be
obliged to dedicate every fund to legal govern-
ment. I would have a rather than to give the
carte blanche, or did you all discuss that?

Mr. Burson That was discussed, yes, sir

Mr. Duval What was the reason you did it this
way? What did you decide?

Mr. Burson well, as I mentioned in the original
presentation, this is a provision which has really
been put especially in focus by the revenue-sharing
controversy, and this is what this is designed to
deal with, primarily.

Mrs. Warren Mr. Burson, would this mean then that
the legislature would not be able to specify what
it was for?

Mr. Burson No, ma'am. All this section...

Mrs. Warren I mean taking out for the amount to
be expended therefor.

Mr. Burson No, ma'am. Taking these words out
simply would eliminate the requirement of specifying
what amount was to be expended for a particular
purpose. Since in many cases, for instance, if
you're going to build a road, you have no idea
what the road's going to cost until after you've
gone through the process of taking bids on it, and
that's why I agreed and the committee has agreed
to take these words out of there, since it's not a
requirement that could be practically dealt with.

[Amendment adopted without discussion.]

Amendment

Mr. Poynter Amendments sent up by Delegate Gravel
Amendment No. 1

On page 14, delete lines 2 through 11, both inclusive, in their entirety.

Explanation

Mr. Gravel Mr. Chairman, ladies and gentlemen of
the Convention, this amendment seeks, as indicated,
to delete this entire section. There is no reason
that I can possibly conceive of why this kind of
act or form of prohibition or restraint on discretion,
whether you want to call it, on the legislature
should be contained in the constitution. The lan-
guage is bad; the purpose may very well be laudable
that is included in this section. When this was drafted,
I was under the impression that it was going to be practically impossible in my judgment
for the legislature to comply with the directive
here. For example, the section says that unless
the legislature appropriates funds for specific
purposes shall be expended. Now, there are very
many, many instances where it would be difficult for the legislature to specify
in detail or in the manner, I think suggested by
this language, the exact purpose for which the
funds are to be expended. It is going to require
a whole lot of additional, technical work done
to be done by the legislature that it is presently
done when appropriations are made in addition to
the purposes that the legislature has in mind, say,
supervision, way, street, the department of health and
the department of welfare or whatever. I think, in addition to
the purposes that the legislature has in mind, say,
supervision, way, street, the department of health and
the department of welfare, the department of health and
the department of welfare should not be required to
specify in detail or in the manner, I think suggested
by this language, the exact purpose for which the
funds are to be expended. I think it is a
requirement that is going to cause unnecessary
burden on the legislature to be able to do this.
Mr. Gravel  Revenue-sharing funds, which are just a two year old concept, are generally allocated by the legislature to the local governing subdivisions, and in some instances, there have been a list of some thirteen or fourteen different areas in which these funds could be spent. But I don't even think that would be contemplated, Mrs. Warren, by this section, because I don't think there that the kind of specifics contemplated by this section are really spelled out in the revenue-sharing acts that have been passed by the legislature.

Mrs. Warren  So, in this, if you don't delete this, it would mean that you would never be able to allocate funds for specifics?

Mr. Gravel  Yes...

Mrs. Warren  ...That you wanted to fund something specifically, you couldn't do it? This is what I'm trying to find out.

Mr. Gravel  Well, now, I think this could be done under this section. Under the revenue-sharing bid, the legislature has said that there have been two, or there may have been more, two bids in the last two instances that the excess funds in revenue-sharing buildings could only be spent for certain purposes, but they weren't specific purposes. They were a list of some eighteen or more purposes, as I recall it for which such funds could be used. I don't think...

Mrs. Warren  Thank you, but I would like for you to give me a list of those eighteen things—not right now, but I'd like to see them.

Mr. Roy  Mr. Gravel, can you tell me, as a practical matter, from line 7 on, how the expenditure of these monies, determined solely by governing political subdivisions, could be accomplished, that is, I understand the definition of "political subdivision" you can have two mosquito districts from two areas, or two water shed districts, and how would what's the mechanics for them agreeing? Would it take two-thrids on each side? Would fifty percent of them have to agree? Just how would it work?

Mr. Gravel  Well, I think under this section, just the allocation to the various local governing subdivisions, and there are no criteria or guidelines or safeguards with respect to the expenditures by the local governing subdivisions.

Further Discussion

Mr. DeBilious  Mr. Chairman and ladies and gentlemen of the convention, I want to support this amendment, and make my remarks very brief on it. What I think that this amendment was supposed to correct, was individual legislators being able to dictate to their local governing bodies how to spend revenue-sharing funds or similar funds. This particular amendment is not going to correct that situation, what it's going to do: it's going to result in the legislature taking on a lot of these functions, centralize the government, and you will have a whole lot less funds going to your local governing bodies as result of this amendment, rather than an increase upon and more liberality in the spending of those funds. I think this is a good amendment, and I certainly think we ought to take this particular provision out of the constitution because it's going to hamper our local government, rather than help them as they are intended to do, on this particular amendment. I ask you to support the amendment.

Further Discussion

Mr. Florie  Mr. Chairman and delegates, I rise in support of the amendment, and briefly, to tell you my reasons for that, the other day Mr. Womack stated, and I have no reason to disagree with his figures, to say that the state gave to the local government monies to the figure of $648,000,000.00 a year. Now, this is what we are talking about in dollars, raised by the state. I suggest to you that if you read this section carefully, what you're saying in this amendment is: any funds appropriated by the legislature to the local political subdivisions of this state could be taken out from under the public bidding statutes of the state. Now, you are talking about $648,000,000.00 which are now subject to Title 38, Section 22.11, under the public bidding statutes of Louisiana. Adopt this amendment of this section, and you take those funds from a public bidding statute now on the statute books in Louisiana. For example, Act 10 says—and it appropriates $10,000,000.00 a year to the various municipalities and police jury for the construction of roads—there is a further stipulation in that act: it says that those contracts...those projects have to be let by contract. I suggest to you under this they would not have to be let by contract. Further than that, each year the legislature appropriates some $30,000.00 to each parish for off-system roads. Now, you imagine with this provision in the constitution, what would happen in those police juries that have the ward system in effect. Without having to go on the public bidding route in the purchase of materials or the construction of off-system roads. I support the amendment, and ask that you adopt Mr. Gravel's amendment to delete this entire section as being unnecessary, as would really complicate the work of the legislature and require them to deal far more in specifics than they ever have in the past. When you get down to it, really, the $648,000,000, very little of it is earmarked by the legislature for use by local governments. I'd be happy to answer any questions, Mr. Chairman.

Questions

Mr. Stagg  Gordon, would you further explain...i think I heard you say that this money that was sent back to the cities and/or the parish governing authorities, would not be subject to the Public Bidding Act. I thought any expenditures for repairs up to a thousand dollars or purchases...under twenty-five hundred dollars were not subject to the Public Bidding Act, but everything over that was, even on the local level.

Mr. Florie  That is the law today, but if you enact this in the constitution it gives it discretion to the local governing authority to use it as they see fit, then I think that repeals the public bidding statute insofar as these monies are concerned.

Mr. Stagg  How can an allocation of funds to a local government agency override the public bidding law?

Mr. Florie  I think this is constitutional and that's statutory.

Mr. Stagg  Would you say in here the language, the line or the words in here that you say does away with the public bidding statute as to these monies?

Mr. Florie  As to these monies, that's correct.

Mr. Stagg  Where in here? What line?

Mr. Florie  Well, beginning on line 6, "the expenditure of such funds shall be determined solely by the governing authority of the political subdivision, or political subdivisions to which the funds are appropriated."

Mr. Stagg  Well, Mr. Florie, doesn't that mean that the use of the funds is determined solely by them, not the method by which they go through the process of spending it?

Mr. Florie  As I read it, it means both the purpose
Mr. Rayburn. Mr. Chairman and fellow deputee, here we are at it again. I hate to think that the taxpayers in our great state and those officials cannot trust each other, or do not have confidence in each other. In my opinion this is a power grab. It is something that does not need to be. We have at least, I think, a problem here. I am concerned about the language in this particular section, and I want to say here and now, I was in the legislature when the act passed. I simply ask that they would permit you to tell me what brought that about. I will not at this time. I am wondering if this legislation would eliminate some of the present language that we now have that says that you are going to use state funds, that the road has to meet certain specifications, and be approved by a highway engineer before you can expend those funds. We were asked recently to delete that from the bill, personally, I don't think it needs to be deleted. I think it is a good safeguard to protect the taxpayers that served on the police jury when we built bridge out of oak lumber. Two fogy mornings and you had to rebuild them, because the oak lumber rotted and deteriorated. One of the ways you spend the money to a local parish, they are going to have to lumber and build that bridge according to specifications. Is anything wrong with that? I think it is a good idea, and I think that it is good to have a little double check on how state funds are expended. And I do not think, personally, I do not think it needs to be deleted. I think it is a good safeguard to protect the taxpayers.
Mr. Asseff: Mr. Chairman, delegates, I wouldn't speak if it were not necessary, because I am ill and hardly able to be here. I regret to disagree with the distinguished Senator. But I feel I've been in the legislature, if you may, many years—I'm afraid he has misinterpreted Section 25. Section 25 is an excellent section, very excellent, one of the most important that we can adopt. I agree that it needs strengthening; it needs clarification. But it does not place the limitations upon the power of the legislator that the Senator states. It simply tries to prevent one thing and one thing alone. I wish it would do it more specifically. It attempts to keep the legislators, in their individual capacities, from dictating too much to the local governing bodies. That is its purpose. The purpose is a good one as long as the legislature acts as a legislature, which is the way it should act. Then it can impose whatever it thinks it may care to impose upon the local governing bodies.

I urge you to reject the amendment and to adopt Section 25. I hope the committee will clarify its purpose. Thank you.

Mr. Lowe: Mr. Chairman, fellow delegates, I arose to agree with Mr. Gravel to delete this section. But, I understand from the Chairman that they have agreed to withdraw the section and agree with Mr. Gravel. So, in that case, I have nothing further to say to you.

Mr. Perez: Mr. Chairman and ladies and gentlemen of the convention, first I want to briefly explain to you the purpose, the reason that the committee had included this provision. It has been raised in some areas of the state where legislators cannot get together and agree, particularly on revenue-sharing, and as a result, in some cases the funds are not ever expended which is allocated to local governments. It did appear to the committee to be a problem and that is the reason the provision was included.

But it is important to keep in mind that we might have a long and extended discussion over this matter, and that it does affect only certain areas of the state and is not universal in the problems involved, I've canvassed a majority of the members of this committee. They have agreed to go along with the Gravel amendment and to delete the provision.

[Previous Question ordered. Record vote ordered. Amendment adopted: 8.42.]

Mr. Poynter: "Section 26. Uniform Procedure for Calling, Conducting, and canvassing the Returns of Certain Special Elections to Section 26. When an election is required to be held in any political subdivision pursuant to the provisions of this constitution which require submission to the voters or any class of voters, and to the legislature, of any question, such as the change of parish lines, change of location of parish seat, levying taxes, issuance of bonds or incurring of other debt obligations, the assumption of debt, referendum, recall, or the adoption of a home rule charter, the election shall be called, conducted, and the returns thereof canvassed in accordance with the law pertaining to the election... pertaining to elections for incurring bonded indebtedness and special taxes relative to local finance, as the same now exist or may hereafter be amended, or may be otherwise provided by the legislature."

Mr. Perez: Mr. Chairman and ladies and gentlemen of the convention, the purpose of this section is to provide the means whereby the various elections which are called for in both the part of the Local Government Article which we have already covered, plus the provisions on finance, can be carried out by election.

Chapter 4 of Title 39 is the provision dealing with bonded indebtedness and special taxes and all of the mechanics needed for the calling of elections for propositions. Yes or no. Therefore, the committee felt that in order to be able to carry out all of the various provisions, such as elections to change the location of a parish seat, the levying of a tax, the change of parish lines, the issuance of bonds, incurring of debt, assumption of debt, referendum, recall, and adoption of a home rule charter, that the provision provided for in this particular part of the revised statutes would be applicable and should be used for the calling of the elections.

The last part of the sentence, rather the last part of the section, says also, "as the same now exists or may hereafter be amended or may be otherwise provided by the legislature" for the purpose, for that particular language, that if the legislature, in its wisdom, decides at a later time that it wants to make special provisions for any of these purposes, they would be able to pass whatever laws were necessary. But the main purpose of this section is to give an automatic means whereby the vehicle through which all of these various elections could be called and the elections held and the results canvassed. I yield to any questions.

Questions

Mr. Bergeron: Mr. Perez, I'm seeking some information. I'm looking at line 17, such as you just partly explained. It says "such as the change of parish lines, change of location of parish seat, levy of taxes," etc. If you don't specifically name these in the constitution, can the legislature call...can an election be called anyway?

Mr. Perez: Yes, there is an amendment coming which will shorten the section. If you would read it without those words, which would say, "when an election is required to be held in any political subdivision pursuant to the provisions of this constitution which requires submission to the voters of any propositional question, the election..."
Mr. Bergeron. It won't hurt the intent.

Mr. Perez. Yes.

Mr. Bergeron. Thank you.

Mr. Grave. Mr. Perez, I want to direct your attention to page 14, lines 12 and 13, particularly that part of those two lines that says: "In accordance with the law pertaining to elections for incurring bonded indebtedness, etc."

Would you have any objection to inserting, at the beginning of line 23, the words "procedures established by" so as to make that read: "In accordance with the procedures established by law."

Mr. Perez. I have no objection to that whatsoever.

Mr. Roemer. I, Chalin, let me see if I understand what you are trying to do here. As I read it, the rules of procedure for these elections would be either the laws as they are presently existing, or that might be amended, that have to do with... incurring of bonded indebtedness and special taxes, or perhaps be provided by the legislature.

Is that right? In other words, the legislature can set up a special category of procedures just for these kinds of elections?

Mr. Perez. If the legislature so decided. You see, again in Title 39, Chapter 4 of the Subtitle (2), the procedure for the calling of elections for bonded indebtedness and special taxes is set forth; that procedure fits well with all of the various elections which we have because there are propositions either for or against, for or against the adoption of a home rule charter, for or against the issuing of debt, for or against the assumption of debt. So that we found that chapter of the revised statutes which most clearly, most nearly, fit the needs of local government, referred to it, and then said if the legislature decided at a later time it wants to write specific laws with respect to how these elections should be conducted, then, of course, it may do so.

But in the meantime, we have to have a vehicle through which...the method by which elections can be called, canvassed and conducted until such time as the legislature might adopt such a law.

Mr. Roemer. So I see. What you're saying is that until the legislature provide otherwise, then Title 39, Section 6, as related to the procedure of incurring bonded indebtedness, is going to prevail. Is that right?

Mr. Perez. Yes. The reason again is that you tell people, you can adopt a home rule charter, but if you don't have the method of conducting the election, then the home rule charter provision is meaningless.

Mr. Burn. Mr. Perez, as I understand this section, there is no specific danger, or no change in the law that we have currently adopted with reference to changes in the parish line or change in parish lines, this just provides for the method of holding elections affecting those lines.

Mr. Perez. This is just the procedure by which these elections will be called and conducted.

Amendment

Mr. Burn. Amendment No. 1 has been offered by Mr. Champagne and Mr. Velazquez as their amendment. It was offered for the following purposes:

On page 14, line 14, after the word and punctuation question, delete the remainder of the line and delete lines 14 through 17, both inclusive, in their entirety, and on line 18 at the beginning...

Mr. Champagne. Mr. Chairman, ladies and gentlemen, I will make the following amendment to this article 2 of the charter, and with the sentence or the statement a couple of days ago, who talked about a home rule charter and its limitations, etc., I think it would be wise to understand the reason why I didn't say that personally, and individually I have two reasons. The first, the gentleman said not to do it, etc., but the next thing is I didn't believe this amendment particularly earthshaking. In addition to that, in fact, I might describe it as about nine lines, four or five extra horns on your hat that's just been declared a total wreck, I really don't sound like I'm heeding or pushing far the little old amendment, but the truth is, after my experience with trying to get amendments through in the last few days, I just feel like the cat with nine lives on the eighth floor around. I will promise you that if you pass this little old amendment, I'll fold it, really I will, put it under my pillow tonight. I'm not going to tell them, you know, what I would do up, and then I'm glad to tell them.

Mr. Grave. Mr. Champagne, I am for your amendment. I'd like for you to explain to the audience, if you would, just a bit, why you feel that this amendment is a bad deal, and the appearance of a bond issue, etc., and we don't want to have or appear in the convention.

Mr. Champagne. Well, the girls whom they let me further.

Mr. Perez. We are in objection to the proposal of this amendment: under that, Mr. Champagne wanted a recorded vote.

Mr. Burn. We are asking for the proposal of...
59th Days Proceedings—October 3, 1973

qualifications to vote in such elections, and that we are talking here about a uniform procedure to be followed and not substantive rights. I move the adoption of the amendment.

Question

Mr. Bergeron Mr. Gravel, if your amendment was adopted, looking at line 24, "as the same now exists or may be amended or as may otherwise provided by the legislature," would this line be needed, as you see?

Mr. Gravel Well, I think this simply says, as Mr. Perez has indicated, that the present law and the present procedures are being maintained unless and until, either by an election code or by some legislative act, other procedures are adopted. I think...transitionally I think it might be needed. I don't think until it would be needed. Further Discussion

Mr. Perez No objection to the adoption of the amendment.

[Previous Question ordered. Amendment adopted without objection. Previous Question ordered on the Section. Section passed: 105-1. Motion to reconsider tabled. Motion to waive reading of Section 27 adopted without objection.]

Explanation

Mr. Keen Mr. Chairman and fellow delegates, Section 27 is a general provision dealing with the acquisition of property by political subdivisions for any public purpose. The language as presently reads provides that it is subject to such restrictions as the legislature may provide by general law. Mr. Gravel has inquired as to whether or not I would have any objection to making that read "subject to and not inconsistent with this constitution, political subdivisions may acquire property for any public purpose, including, but not limited to," etc.

As I am personally concerned, I would have no objection to an amendment which would provide that language. The purpose of the section is merely to make it clear that the political subdivisions have the right to acquire property for their purposes, either by purchase, donation, expropriation, or exchange. It merely clarifies their right to do so and, with the amendment suggested by Mr. Gravel, it seems to me, would permit them to do it without going violence to other provisions of the constitution. I will yield to any questions.

Questions

Mr. Gravel You may have misunderstood the request that I made of you. I didn't mean that the amendment that I would propose would delete "subject to such restrictions as the legislature may provide by general law." That would be retained, but we would add the other language to it.

Mr. Keen Yes, that's perfectly all right with me. I have no objection to it.

Mr. Jenkins Mr. Keen, political subdivisions as defined by the committee, the municipalities and special districts, including fire protection districts, water districts, lighting districts, sewerage districts, etc., this would give to those districts, wouldn't it, expropriation authority for any public purpose, not just their public purposes, but for any public purpose...

Mr. Keen Well, I think the law would mean...would interpret that to mean, Mr. Jenkins, that the public purpose for which the district was created, you couldn't have a mosquito control district which would seek to acquire property for a fire station, or a fire station which would seek to acquire property for mosquito control purposes. The only authority they would have would be to acquire property for the purpose for which that particular district was created. I don't think would give them no greater authority than that.

Mr. Jenkins So, the intent, really, then, is to allow them to expropriate for public purposes within the scope of their authority. Is that the intent?

Mr. Keen I would say that the intent is to acquire it for any public purpose for which that particular agency has been created.

Amendment

Mr. Poynter [Amendment by Mr. Gravel.] On page 14, line 28, after "Section 27," and before the words "to such," delete the word "Subject" and insert in lieu thereof the following:

"Subject to and not inconsistent with any provision of this constitution and subject."

Explanation

Mr. Gravel All that this amendment would do, would be to make sure that no political subdivision could exercise the right of expropriation in conflict with any provision of this constitution that was already adopted. That's all it does. It adds that concept to the section as recommended by the committee. I yield to a question.

Questions

Mr. Lanier Mr. Gravel, would this amendment really be necessary in view of the fact that in the first section of the Bill of Rights we say that "all of the rights granted herein shall be maintained inviolate by the state and shall be preserved inviolate by the state"?

Mr. Gravel I think since this is a specific grant under rather general language, that I believe the amendment is necessary. Now it may very well be that that amendment, which is similar to an amendment that appears in Section 21, can be accommodated in some other way without repeating it in every section. But I think that's something we'd have to determine later on, and through the Style and Drafting Committee. But I do think at this point, as I see it, since you are granting to political subdivisions the right to expropriate for any public purpose, specifically, and only subject to the restriction that "the legislature may provide otherwise by general law," I think it is essential that we put this in now.

Mr. Lanier If we follow your approach to this section and other sections, would it not be true that every time we have some type of grant of authority to anything, say like in Education and Welfare, or Revenue, Finance and Taxation, or Natural Resources, that we'd have to tack this language onto everything?

Mr. Gravel Not necessarily, but in some instances I think, where we have clearly spelled out our position already, that it may be unnecessary. I think that that's one of the problems that we...we're going to be confronted with because of the fact that different committees are working on different articles. I would agree, Mr. Lanier, that the whole concept can be, perhaps, accommodated in some other
Mr. Gauthier. I was interested when you said that you didn't think the amendment was necessary. I am not interested in preventing or permitting building highways. I just want to prevent the creation of a large district so far as the school is concerned. What I want to do is to prevent the school board from using the land that it purchases for the purpose of building the highway. Let me explain this. The school board don't want to have to buy the land in the first place. Mr. Roy said that the school board should be able to acquire the land for building the highway. I don't think that that is necessary. I don't think that the school board should be going around acquiring land for purposes of highways. That was the answer that I was using, really.

Mr. Roy. Well, if you cut out a sentence or two, presumably.

Mr. Gauthier. Go, either way the issue is up to judicial interpretation, whether we'll have it or not.

Mr. Roy. No, no. I don't think so. If we leave this out, within the scope of their authority, it would still be in judicial interpretation. It is not correct.

Mr. Roy. Well, if we have the amendment in the constitution, there would be coming at a very high price for any acquisition of property, within the scope of their authority, that they may acquire property, that they really don't need for purposes and without their existence.

Mr. Gauthier. But in the federal way, we are going to determine whether it will be within the scope of their authority.

Mr. Roy. Well, I say, if we have the amendment in the constitution, that there would be coming at a very high price for any acquisition within the scope of their authority, that they may exist, that they really don't need for purposes and without their existence.

Mr. Gauthier. The amendment, if I understand the spirit of the amendment, is a very good thing.

Mr. Roy. Yes, Mr. Gauthier. In all respects, this proposed amendment, I am not sure if you have fully understood what it would do. It is just another additional subdivision of the land. I don't think that it would be the project for and by itself, but I think it is a very good thing. A review of all the previous times, in a sense, was the rule under the general custom. It is not necessary, I think, if I understand the spirit of the amendment, as I understand it.
were related to the authority granted to that agency. When we come to try to implement the constitution some such restriction as this, it simply raises another question in my mind, as to what you would have to show in order to expropriate or require property for a particular purpose by a particular agency. I think the section as it is now drafted, adequately protects all of the rights of individuals involved, and that we ought to reject this amendment and go ahead and adopt the section without further delay.

Questions
Mr. Jenkins Gordon, I certainly would agree that up till now school boards could only expropriate for school purposes, for example. But up till now, we haven't had Section 27, have we, which says "political subdivisions may acquire property for any public purpose?" Any public purpose.

Mr. Kean I would take that to mean any public purpose related to the operation of that particular agency.

Mrs. Zervigon Mr. Kean, let me help clear this up in my mind. Aren't there cases where three or more districts get together and cooperate on a project, a street lighting district, a paving district and the sewerage district may get together on the construction of a roadway?

Mr. Kean Yes.

Mrs. Zervigon Do you see that this would cause problems in who acquired the property in order to further that project?

Mr. Kean Well, that's the point I tried to make a moment ago with respect to the sanitary sewerage facility, we would have authority to build a line and to require rights-of-way for that line. On the other hand, you can create special districts for that purpose, and the question then coming up, as to who had within what authority to acquire the rights-of-way. You would simply delay the project in the process.

Mrs. Zervigon How would that be defined under this amendment, do you have any idea?

Mr. Kean Well, I would have no objection to saying "require property for their public purposes," if that would clarify the thing in the minds of all the delegates.

Mr. Avant Mr. Kean, you just said something that disturbs me and something came to my mind. Let's suppose the school board acquired a tract of land in the middle of a bog hole, and they decided they wanted to build a school there. Now, as the situation now stands, if they wanted to drain that land and they had to get a right-of-way for drainage, the council would have to cooperate with them and say, "Well, we think that you've got to build a school in the bog hole, so we will go along with you. We will expropriate a drainage right-of-way, so you can build it." You don't want that situation to prevail, as I understand it. You want the school board to be able to buy this bog hole and then expropriate other property to drain it, so that they can build a school there—without having to get the cooperation of the people who have those powers. Is that correct?

Mr. Kean I would assume that at the present time, Mr. Avant, if the school board felt, based upon their studies and the needs of the community, that they needed a school in this particular site and they had to have some off-site drainage for it, that they would have a right to acquire the off-site drainage.

Mr. Avant Well, I misinterpreted your remarks then.
Further Discussion

Mr. Higginson: Mr. Chairmen and Honorable Members of the Committee: I refer to Mr. Ranger's opinion, to that particular section of the Bill which grants the privilege to the Minister to designate political subdivisions, and I would like the Committee to consider the question of its constitutionality and its legal effect, and to consider whether such a designation is consistent with the intent of the Legislature. The Minister, as you know, would have the power to divide the Imperial Province into certain political subdivisions, and such divisions would have a legal existence. The question is, what would be the effect of the designation of such a political subdivision upon the rights of the people, and what would be the effect of the designation upon the rights of the people of the Imperial Province.

Mr. Ranger: Mr. Chairmen and Honorable Members of the Committee: I refer to Mr. Ranger's opinion, to that particular section of the Bill which grants the privilege to the Minister to designate political subdivisions, and I would like the Committee to consider the question of its constitutionality and its legal effect, and to consider whether such a designation is consistent with the intent of the Legislature. The Minister, as you know, would have the power to divide the Imperial Province into certain political subdivisions, and such divisions would have a legal existence. The question is, what would be the effect of the designation of such a political subdivision upon the rights of the people, and what would be the effect of the designation upon the rights of the people of the Imperial Province.

Further Discussion

Mr. Higginson: Mr. Chairmen and Honorable Members of the Committee: I refer to Mr. Ranger's opinion, to that particular section of the Bill which grants the privilege to the Minister to designate political subdivisions, and I would like the Committee to consider the question of its constitutionality and its legal effect, and to consider whether such a designation is consistent with the intent of the Legislature. The Minister, as you know, would have the power to divide the Imperial Province into certain political subdivisions, and such divisions would have a legal existence. The question is, what would be the effect of the designation of such a political subdivision upon the rights of the people, and what would be the effect of the designation upon the rights of the people of the Imperial Province.
insofar as the state or its political subdivisions are concerned. For example, suppose there was a right-of-way acquired by a political subdivision and someone encroached upon that right-of-way for a certain period of time. If the state had acquired the right-of-way, that individual couldn't acquire any rights with respect to it because of the prohibition in Article XIX, Section 16.

If the local governmental or political subdivision had acquired the right-of-way, that individual could—under the present status of the law—prescribe against that political subdivision, insofar, as encroachment is concerned. This would simply put both the state and the political subdivisions in the same posture.

Mr. Arnette: Mr. Kean, this is just a quick question. I realize this section is just about like the old constitution. But under this section, say the state had a contract action against someone for a contract they made, say in 1900. They could sue today on that contract action under this provision?

Mr. Kean: I don't think they could, no. Not if the contract had been completed and accepted by the party to that contract.

Mr. Arnette: In other words, what I want to know is, what is "prescription shall not run against the state" mean? Does that mean a contract action would prescribe or it would not prescribe, or a tort action would prescribe or would not prescribe?

Mr. Kean: The normal...the jurisprudence under this section—and we kind of get Mr. Pugh in the middle here—as related to questions where land was involved, for example, or the right-of-way...

Mr. Arnette: In other words, you really meant to say, "acquisitive prescription shall not run against the state."

Mr. Kean: That's correct. We are talking about acquisitive prescription, that's what we are talking about, or a prescription acquiende, or whatever you call it.

Mr. Arnette: Do you intend for...

Mr. Henry: The gentleman has exceeded his time, Mr. Arnette.

Mr. Arnette: Mr. Kean, so in other words you don't intend for you do intend for liberty of [[acquisitive] prescription to run against the state? Is that not true, or was the committee's intent, that's what I'm trying to find out?

Mr. Kean: We were talking about, based on the jurisprudence that dealt with this article before, Mr. Arnette, prescription acquiende causam—liberated prescription, acquisitive prescription.

Thank you.

Mr. Arnette: Acquisitive prescription. Don't you think maybe we better clarify that with a little technical amendment and put liberative in there?

Mr. Kean: I would have no objection to it.

Mr. Pugh: Mr. Kean, are you now familiar with such other committee proposals as they might otherwise provide? Do you know how effective this may be to those?

Mr. Kean: I do not, Mr. Pugh; this language was taken from the present constitutional provision.

Mr. Pugh: May I ask you one other thing, please, sir? Did you all intend to protect the party against whom an action may be brought by the state, growing out of the same set of facts in which prescription would not run, so that in compensation, that party, also, wouldn't have his rights...relative to prescription having run on him. That is to say, that if the state sues John Smith for ten thousand dollars and John Smith has a clear offset against the state for five thousand dollars, except that prescription as run against him—but not against the state—what if anything, do you propose to do for that man in this section?

Mr. Kean: Well, as I understand the interpretation of this section, as it was interpreted by jurisprudence heretofore, Mr. Pugh, it was talking about the interruption of prescription acquiende causam—or the other way around—prescription liberum de causam and it was not involved with the question of contract rights, or the other prescription that might be involved with individual rights.

Mr. Pugh: If the technical amendment about "acquisitive prescription" is placed there, to limit it to that, I would wholeheartedly agree with you.

Mr. Kean: I have no objection to that technical amendment.

Mr. Pugh: Thank you.

Mr. Vesich: Mr. Kean, it's your impression of that particular section, that it does not apply to tort actions or to workmen's compensation actions?

Mr. Kean: That's correct, yes, sir.

Mr. Vesich: But, it doesn't say that; you admit that?

Mr. Kean: Well, that's been the interpretation of it under the existing constitution. As I pointed out before, I have no objection to a technical amendment which would place the present interpretative language into the constitution.

Mr. Flory: Mr. Kean, by the terminology in that last portion "unless otherwise provided in this constitution or expressly by general law," are you prohibiting the legislature there from waiving prescription in particular cases with extenuating circumstances?

Mr. Kean: Yes, sir, I would say they did it where they can expressly do it by general law; you're recognizing their right to do so. I think you would, also be governed by the—I don't recall what we did with respect to governmental immunity—but I think there is some provision or was that had to do with the right of the legislature to waive prescription under those circumstances.

Mr. Flory: Well, as I appreciate the waiving of prescription is done generally where you authorize suit against a state, you waive prescription and that's by special act; it wouldn't be general law, that's the reason I pose the question.

Mr. Kean: Heretofore, it had been provided in the constitution that the legislature could waive prescription. Insofar as the tort actions were concerned, I don't recall at the moment how we treated with that question in the legislative section, when we dealt with governmental immunity.

Mr. Flory: I don't believe we dealt with it at all, if my memory serves me correct, either in the Judicial or the Legislative Article.

Amendment

Mr. Poynter Amendment No. 1 [as Mr. Arnette]. On Page 15, line 8, immediately after the number and punctuation "29," and before the word "shall" delete the word "Prescription" and insert—with initial cap—in lieu the words "Acquisitive prescription".

Explanation

Mr. Arnette: Ladies and gentlemen, this is just a technical amendment. I just talked to Mr. Kean, and he said this is what the committee's intent was.
58th Days Proceedings—October 3, 1973

Mr. Arnette. Well, what this means is there are two different kinds of prescription—acquisitive and liberative. Acquisitive prescription is when somebody gets the right through the lapse of time. In other words, say if somebody is sitting on the state lands in thirty years without a title, they get that land, and well, this would prevent that. Liberative prescription would run against a state. In other words, lose a right through the lapse of time—say you have a contract with the state and you default on that contract, well, they would have ten years to sue you. Under this provision, after that ten years is over, they wouldn't have the right to sue you anymore. That is all this means, that the state cannot lose any of its lands to anything like this, but it would lose its right to sue certain instances. I don't know if I can explain it any better than that.

Mr. Conroy. At this point, I'm not in a position to disagree with what Mr. Arnette said, I simply don't know. I'm trying to find out right now, several of us are scrambling around trying to find what the present state of the law is on prescription. I have some hesitancy about limiting this. I had thought that the way the committee had worded this section with the provision in there that the legislature could affect this whole proposition by whatever general laws were appropriate was the best way to handle it. I am concerned about running into this any prohibitions against the running of prescription, because I think there are certain areas in which prescription wouldn't run and not run against the state. My present position is in one concern about fooling what the committee has done here. I would recommend rejection of this amendment. There may be others that will oppose along that will clarify laws of this, but I would reject this one at this time.

Mr. Arnette. I don't see any point in opposing this. I think I made my point. I would just like to say, I don't know if any one that liberative prescription is a very good idea. The only one I'm against that is under the present law. I know we ought to make it very clear that the state does not have a constitute section for three hundred years, or I think. I'm in favor of this amendment. I think it's a good amendment. The state only need practice against itself. I would vote any way. Whether this is it isn't the present law. It's the way it ought to be.

Mr. Conroy. I don't see any point in opposing. I think I made my point. I would just like to say, I don't know if any one that liberative prescription is a very good idea. The only one I'm against that is under the present law. I know we ought to make it very clear that the state does not have a constitute section for three hundred years, or I think. I'm in favor of this amendment. I think it's a good amendment. The state only need practice against itself. I would vote any way. Whether this is it isn't the present law. It's the way it ought to be.

Mr. Conroy. I don't see any point in opposing this. I think I made my point. I would just like to say, I don't know if any one that liberative prescription is a very good idea. The only one I'm against that is under the present law. I know we ought to make it very clear that the state does not have a constitute section for three hundred years, or I think. I'm in favor of this amendment. I think it's a good amendment. The state only need practice against itself. I would vote any way. Whether this is it isn't the present law. It's the way it ought to be.

Mr. Arnette. I would move Mr. Arnette's amendment be called out for a vote on the adoption of the amendment.

Examination

Mr. Newton. Mr. Arnette, this is the language of the constitution, which we have been living with for quite some time and I don't know that we have legisla
tible problems with it. This in an attempt to do away with the Arnette amendment and it is an attempt to clarify the situation that Mr. Florio was concerned with requiring general law in order to waive prescription against the state in working out a situation to require suits. Now, it's a little upset when the words acquisitive prescription was added here because I didn't know what that did. In the law, and I'm still not sure what that means to the law, but let's try to get back to a situation where I think it does and I think it creates serious problems in our law a tendency to pre
dactible if it is not used ten years, the right to search for minerals. Now, the state reserves mineral in taxable assessed and things like that, I think it did, that the state could lose some of these minerals or some exercise of the servitude taken within ten years. I think probably that the state should have some rights-of-ways and thing. This kind of the... if this is restricted to a specified time limitation. Now, I know there are some problems with it, but the legislature can prescribe general law or otherwise how prescription is to run against the state, and if it is to, and the legislature has done this, and in what instances are certain both liberative and acquisitive, I think it will clear up the... In other words, which the legislature has done with the adoption of the amendment and I'll try to answer any questions.

Mr. Arnette. I don't see any point in opposing this. I think I made my point. I would just like to say, I don't know if any one that liberative prescription is a very good idea. The only one I'm against that is under the present law. I know we ought to make it very clear that the state does not have a constitute section for three hundred years, or I think. I'm in favor of this amendment. I think it's a good amendment. The state only need practice against itself. I would vote any way. Whether this is it isn't the present law. It's the way it ought to be.
59th Days Proceedings—October 3, 1973

Mr. Lanier: The thing that bothers me is...say school boards are not covered by your proposal, did you know that in my parish a lot of the sixteenth sections of the school boards are way out in the marshes, and what is wrong for someone to acquire this land by prescription by setting on it?

Mr. Newton: I did not know that about your parish. I know that is a problem in some of the parishes of the state. My understanding is that is the way the law has been interpreted, that it does run against the school boards, and drainage districts, too. I'd like to...to address myself to that problem at a later time.

Vice Chairman Casey in the Chair

Mr. Avant: Mr. Newton, I want you to know that I think this is a good idea and I ask you, isn't this the exact language of the present constitution?

Mr. Newton: This is the exact language of the present constitution. I believe this state has been living real well with it...since 1921.

Mr. Avant: Aren't there many, many decisions which have passed on the question as to whether the levee board is at the state, the school board is at the state, is this the state, or that the state—what would be easy for someone to write something that is going to cover all of these contingencies, could we?

Mr. Newton: I'd rather not try to, right now, Jack.

Mr. Avant: This is the best thing we can do under the circumstances?

Mr. Newton: That's my opinion.

Mr. Avant: If there is anything, any particular inequity anywhere in the law, they can go to the legislature and get it straight, can't they?

Mr. Newton: Under this amendment, I believe so.

Further Discussion

Mr. Connolly: I strongly urge you to support the Newton and Planchor amendment. We're in an area right now as I indicated earlier that does involve property rights. Newton...it was brought out by further questioning, but this is the kind of area that the Constitutional Convention should be very careful in tampering with. The Newton and Planchor amendment puts into the new constitution exactly the language that's in the present constitution, which has been pointed out, had been interpreted by the courts, adjustments have been made, the legislature has acted on the basis of that in many areas. It has provided appropriate periods of limitation where it needs it. For example, in the taxation field, the state has provided periods of limitation within which the state must act in order to bring tax claims against individuals and where these things are appropriate, the state can, and shall, act to limit its own authority. But, I'm not sure, that the Arnette amendment as adopted, does what he intended it to do by failing to refer the liberal prescription at all. I'm not sure whether he might not have in some way limited the legislature's authority to deal with liberal prescription. I think the only safe thing we can do in this particular area is to reinstitute in this constitution the language which has been in it, has been interpreted for over fifty years, and been soundly interpreted. We should keep it, and not run the risk of the state losing rather substantial amounts of property and claims to lands and mineral rights and other things of that kind. I urge your support of the amendment.

Amendments

Mr. Foynter: Now, Mr. Pugh, we're going to need a third amendment added to your amendments to delete the Planchor-Newton amendment...Newton-Planchor amendment.

Amendment No. 1. [by Mr. Pugh and Mr. Lennox].

Now a third amendment will have to be added to the district, which will delete the Newton-Planchor amendment.

Amendment No. 1. On page 15, line 11, after the partial word "situation" and before the word "by" delete the words "expressly" and insert in lieu thereof a comma ",".

Amendment No. 2. On page 15, line 11, after the word "law" change the period ".", to comma ",", and add the following: "or by contract with the state."

An Amendment No. 3, as indicated has to be added deleting the Newton-Planchor amendment just adopted.

Explanations

Mr. Pugh: Mr. Chairman, fellow delegates, I appreciate your not calling for the question so that I might submit this amendment to you. As you know when it relates to prescription...prescription cannot be waived unless and until it runs. You cannot validly under the existing jurisprudence in this state waive prescription in advance. Bearing that factor in mind it is conceivable that as was asked of the last speaker, or the one before him, how can you protect yourself in a contract relative to that prescription? By this amendment, if the state wishes to do so, I reiterate, if the state wishes to do so,...by contract it can set the limits of the prescriptive period. If, by contract, the state is so vitally interested in a project, and if the question is raised by bonding attorneys or others relating to prescription, the state may specifically and expressly provide that after five years, or three years, as it may choose to do under the language of the specific contract, prescription will run. The thought came from a question from some other member on the floor. Mr. Lennox and I took his thought, placed it in this amendment and I think it's an excellent one as it relates to the question of prescription. It, also, deleted "or expressly" from a pure construction standpoint because as the last amendment provided it says "by law or expressly by law." I don't know how you can be more expressly than by an act of the legislature. All this does is allows the state, if it wants to, to provide in a vital contract that after a certain period of time the question is forever barring prescription as run.

Questions

Mr. Bollinger: Mr. Pugh, does not your amendment, or would not it affect the Newton amendment as it would the committee proposal, that is, are you offering a second amendment which would delete the Newton-Planchor amendment? Why are you doing this?

Mr. Pugh: Because David told me I had to. No other reason...

Mr. Bollinger: Do you agree with him...that it is necessary to add the language in that we deleted with the Newton amendment?

Mr. Pugh: Well, as my record will show I voted for that other amendment....I'm not quarrelling with David about how he vote what he voted on but I just believe him to be honest in telling me the truth that's all. I just do what he tells me. Sometime, not very well.

Mr. Avant: Mr. Pugh, would not your amendment mean that on a contract basis the rights of laborers, material men, and people who have certain lend privileges on building contracts would never know where they stood, that it would vary from contract to
Mr. Pugh: Absolutely not. Quite the contrary.

Mr. Avant: I wish you would explain to me how it would be?

Mr. Pugh: Because you just adopted an amendment to provide that it won't run against the state. The contract that you enter into with the state can specifically spell out the terms in which it will run against the state; has nothing to do with the running against the prescription on the other individuals.

Mr. Avant: Well, for what purpose did you make a reference to a bonding company awhile ago?

Mr. Pugh: I didn't say bonding company. If I did, I apologize. I meant to say a bonding attorney. I say we have always said company. If I said company, then I express that through the lawyer. I am just saying if a bonding lawyer raises a question about we won't bond this because if there's any problem, prescription doesn't run against the state. I think that the state in all of its wisdom can contractually provide that after three years or five years that question is forever barred or settled, and that's all.

Mr. Burson: Mr. Pugh, of course, under the general law of the state a mineral servitude prescribes in ten years. Was it not your argument to the state that the state could by contract provide for prescription in less than ten years for mineral?

Mr. Pugh: Yes, I think so. The state could get it back quicker that way perhaps.

Mr. Burson: You want us to be able to waive prescription to what I was thinking of was in terms where the state might make a running stipulation on a particular tract. Would you want the state to be able to contract to make that reservation for less than ten years?

Mr. Pugh: Yes, or more than ten. I think it swings both ways. I have no objection to that.

Mr. Speaker: Mr. Pugh would consider letting the clerk craft your amendment so that it applies to Mr. Newman's amendment instead of the one little provision because he said it wouldn't be much trouble.

Mr. Pugh: That would be good. By the way, I had a forget full day. I think I'd like to do it the way you want to do it. Now, if you want me, whichever way you give me, I think it takes some difference to some people whether your amendment affect the lower amend or whether you would be allowed to affect to delete the lower amendment or whether you would be allowed to affect I think this would be good to have the amendment that we had to the Newman amendment not to bring the one little provision down, not up.

Mr. Pugh: Mr. Speaker, I think that under some circumstances.

Mr. Speaker: Mr. Pugh, the reason I asked the above question is because we limited upon the time at the outset you explained if Mr. Newman amendment made a good amendment if you mean that and that it's amended to the one little provision and delete the one line.

Mr. Pugh: Mr. Speaker, if you like to withdraw your amendment, then I hope the appropriate.
59th Days Proceedings—October 3, 1973

herein shall prohibit the leasing of lands. I'll be glad to answer questions.

Questions

Mr. Newton Mrs. Miller, isn't this presently for the most part statutory?

Mrs. Miller No. Some of this is constitutional matters now. Of course, the imprescriptibility of mineral rights as far as the state I believe should be constitutional. If you don't make these things constitutional, you may be in the same predicament we are right today. In 1972 both Houses of the Legislature passed an act that just gave a state agency complete authority to contract away the state's minerals. So, unless you have some constitutional provision we might be in this type of situation again. I don't believe that's what the people of Louisiana want.

Mr. Newton Now, don't you think that possibly your last sentence might restrict how the state could develop its minerals in the future?

Mrs. Miller Well, this last sentence is the law as it is today except it's phrased in the positive instead of in the negative.

Mr. Newton Well... I know, but that means in effect that they could do anything with it... and to lease it, also. Now, here this might be getting reversed where they couldn't do anything with it, but lease it. I have another question: these mineral rights, would that... that would include things besides oil and gas, wouldn't it? It would include sulphur, gypsum, iron?

Mrs. Miller Yes, and that's why we said mineral and other purposes. There are a great many type of state leases now in state lands that the land office and other agencies deal with.

Mr. Hernandez Mrs. Miller, I think your amendment is certainly worthy of consideration and I like it very much, and I think it's all very clear except one little thing here. The second sentence says the mineral rights on all property transferred or sold by the state, its agencies, school districts and political subdivisions shall be reserved except. Now, this is where, Mr. Clerk, "except what the owner or other person having the right to redeem may buy or redeem the property sold or adjudicated in the state for taxes." Now, when the owner or another person having the right to redeem property and they do redeem the property, I want to get this clear, do they get the mineral rights back on this land?

Mrs. Miller Yes, they can get the mineral rights back. Now, they may have to be... this may be something the state will have to take care of by law... to provide for the prov... to provide how the method will be that they will be given when you purchase a...

Mr. Hernandez Yes, ma'am, but this definitely will give them the right to redeem the mineral rights on this property that was adjudicated to the state for taxes?

Mrs. Miller That's correct.

Mr. Hernandez Thank you so much.

Mr. Leigh Mrs. Miller, in that question that Mr. Hernandez asked you about, are you using the words "buy or redeem," or are you using those as being synonymous? I understand there's a provision for the sale by the state of lands adjudicated to the state and not redeemed, they can be sold.

Mrs. Miller That is the present practice now... Other than...

Mr. Leigh But, when they are sold, the mineral rights are reserved.

Mrs. Miller Ordinarily, unless they buy them back.

Mr. Leigh Now, what I'm asking you is the words "buy or." In other words if he redeems, he would get his mineral rights back, but that shouldn't apply, do you think to the purchase of lands? Would you agree to delete the words "buy or" so that the person entitled to redeem might redeem it, but not buy it, is the point I'm making?

Mrs. Miller I'll be happy to make that deletion, and just leave the words "redeemed for taxes."

Mr. Leigh I'll have to ask the Clerk. Mr. Clerk, in this amendment on the second sentence, could the words "buy or" be deleted as a technical amendment right now without...

[Amendment withdrawn and resubmitted with correction.]

Mr. Duval Mrs. Miller, does the Natural Resources Committee have provision which would encompass this idea?

Mrs. Miller Some of this may be included. At this state it does not encompass—it's a whole idea and I'm not a believer in waiting and saying, I do believe a bird in the hand. I believe too, we've opened up a very important question on the Section 6... that we just mustn't leave it to chance that it might get taken care of later.

Mr. Duval But, your intent is for this amendment is to apply to the basic management of state lands, is it not... not merely it doesn't... merely deals... the problem of thrust is not local and parochial is it?

Mrs. Miller That's correct. So, if we come in with a natural provision that will encompass this, it might be that when we get to Style and Drafting we can delete any surplus language here.

Mr. Duval Now, let me ask you a substantive question... Right now if... the law is... I'm going to ask you... if you purchase land from a police jury, is the... are the minerals automatically reserved?

Mrs. Miller They're supposed to be. Of course, there has been a lot of problems in conjunction with these lands where they have dealt with local political subdivisions. This is one reason I think it's important to go on and include it here because you do not have the good management sometime of the leases when it comes to your local subdivisions. They don't always know how to manage and lease the lands, and what they should reserve and what they shouldn't.

Mr. Duval What I'm asking you, as a matter of law, then it's not... if the minerals are not reserved in an alienation from a local political subdivision to an individual, the minerals go to the individual?

Mrs. Miller That would be a question although, I think that it would. I think... and it's usually been interpreted that way many times, I understand.

Mr. Duval So, this would represent a change in the law where a private individual could never purchase minerals from any type of political subdivision, is that what it does?

Mrs. Miller I think it would make that very clear.

Mr. Duval What's the purpose of that? Why do you want to change the law? What is your primary purpose in doing that?
Mrs. Miller: Well, now, it is not every time, Mr. Burns. I believe now most of your political subdivisions have enough knowledge about the value of their mineral rights. They'll reserve these things and then they believe imperceptible as a state agency... you know in a state political subdivision. This takes care of those few situations where the minerals are not included, they are reserved by the state. Would that make any change in your amendment?

Mr. Burns: Mrs. Miller, you know we have a procedure now, and have had even since I remember, where property that has been adjudicated previously for state subdivision can come in and make application to have that particular piece of property advertised, and, I believe, put a deposit, and it's sold at not less than the appraised value, but the minerals are not included; they are reserved by the state. Would that make any change in your amendment?

Mrs. Miller: No, basically, because I believe now, Mr. Burns, they do have a provision where the person who is buying back the property... redeeming his property.

Mr. Burns: Mrs. Miller, I am not talking about redeeming it. I just think the citizen can come in and file application for the state to advertise for sale, property that has been previous--I don't know how many years--been adjudicated to the state and has never been redeemed.

Mrs. Miller: I think now, since we deleted the word buyer, Mr. Chelten's suggestion, you would take care of that situation, and leave it only where the person is redeeming the property adjudicated.

Mr. Burns: I see, but outside of buying it in, wouldn't get the minerals?

Mrs. Miller: That right. It would limit it to those redeeming.

Mr. Chatelain: Delegate Miller, I wish you would follow with me in your second sentence over here. I'm having a little trouble understanding since you deleted the word "buy" or "or" it seems that the person who has a right to buy this land then looks like the language is a little bit confusing to me. It looks like you had it better written at first. It's a third party has a right to buy this lease, or whatever it may be, it seems like your language was best at first... Can you clear me on that, please?

Mrs. Miller: Well, let me here's what happens.

Mr. Chatelain: A great many people make a practice to go around this state buying in property at tax sales, and so forth. I think Mr. Beilch's amendment was very good. I mean his suggestion that we delete the "buy" or "or" really does bring this into focus because it limits only to the person who has the right to redeem that property, and kind of takes it out of commerce as far as just a lot of speculators, and maybe gives the state a chance to keep that person sold and live elsewhere than the person with the right to redeem it, who lost it.

Mr. Chatelain: We are just thinking, perhaps, we couldstructure your second sentence it seems to me like it a little bit confusing, but I guess you knew what you meant at.

Mr. Lennox: Mrs. Miller, to what extent would your amendment affect the operation of the water districts, the wildlife and fisheries commissions? The legislation now is governed by the leasing of water rights, for the production of gasoline, cement, and gravel, or for material.

Mrs. Miller: This does not affect the leasing of tanks, the minerals and other purpouses after the

Mr. Lennox: In that case, the amendment makes a great deal of sense. In this instance, the amendment will limit the provisions in the subdivision to the leasing of state water rights for the production of various minerals while the individual arrangement between the state and whatever party might be doing that work.

Mrs. Miller: Subject to the provisions of whatever law the legislature provides, as it is now.

Mr. Lennox: Ten, four.

Mr. Hay: Mrs. Miller, if I understand this amendment, you think the state would reserve these rights but could not transfer them.

Mrs. Miller: Yes.

Mr. Hay: Is that what I understand of the second paragraph?

Mrs. Miller: Yes, and this is in keeping with the spirit of the law and as it is today. But that mineral rights, only acquired by the state, would be imperceivable and stay with the state, and only what we're trying to preserve is that the state does not lose the right or acquire the transfer of them through some state agency, having power...

Mr. Hay: This is for only by present it any you concerned? It's only by prescription that this can happen?

Mrs. Miller: Yes, this is the prescription place of that.

Mr. Velazquez: Mrs. Miller, this is that you've presented, isn't this basically the same thing as the existing law that we have today in Louisiana?

Mrs. Miller: Yes, that is basically the law as it is today, and I think it is an excellent with the spirit of the law as we know it today.

Mr. Velazquez: There is no drastic change from the existing law as expounded in the constitution of the state of Louisiana.

Mrs. Miller: No. I wouldn't want to alter it and say absolutely not. I don't think it will change any of the existing laws, but it will firm up some of the law to make it very clear that...

Mr. Roy: Mr. Miller, you've described such thing...
Mr. Thompson: This is dealing with the whole constitution that we may adopt. I think it’s out of order in this section. It should be somewhere later on when we get through writing the constitution.

Mr. Roy: It’s in the proposal, Mr. Thompson. It can’t possibly be out of order at this time.

Mr. Thompson: Well, I don’t think it’s in the right place, at least.

Mr. Roy: Well, but it’s here and we have to consider it unless you, if you don’t like it, then, you know, you may try to delete it, but it’s here and we’ve got to consider it.

Mr. Thompson: Can I ask Mr. Burson a question?

Mr. Roy: He hasn’t explained it yet. As soon as he explains it, you may.

Explanation

Mr. Burson: Mr. Chairman, fellow delegates, let me begin by saying Mr. Thompson is undoubtedly correct in that the provision would probably be better placed by Style and Drafting in another section of the constitution. However, the reason why the committee proposed it in this section, I think, is rather obvious; if you will recall the vociferous debate we had on Sections 7, 8, and 9, where there was a lot of discussion as to whether the home rule charter would or would not predominate over the constitution, and where there have been continuous amendments offered, particularly to this proposal, saying “subject to the provisions of this constitution or not inconsistent with the provisions of this constitution.” I think that a provision of this type is a boiler plate provision in most constitutions. You would want to set out in unequivocal terms that the provisions of this constitution are paramount, and that neither the legislature nor any political subdivision of any description, whether it be a parish, municipality, or other political subdivision, shall enact any law or any ordinance that’s in conflict with the provisions of this constitution, whether they are provisions contained in this article or in any of the other articles we’ve adopted, or any article we will adopt. I think that, really, it’s largely self-explanatory.

Questions

Mr. Tate: Mr. Burson, would you accept an amendment that says “subject to and not inconsistent with any other provisions of this constitution”? This constitution is supreme.

Mr. Pugh: Can you tell me, if we don’t adopt this section, how anything other than the results of this section could conceivably, possibly, flow? How can this constitution be anything but paramount to those things?

Mr. Burson: Mr. Pugh, I would agree with you that that should be Horn Book Constitutional Law. However, this is one of the things that if you don’t say it, apparently disturbs some people. Again, I think we need only look at the numerous amendments we’ve had offered to particular sections saving “subject to this constitution,” or “not inconsistent with this constitution,” or “subject to the provisions of another article of the constitution,” and so on. The United States Constitution says it, and I say it doesn’t do any harm to say it here.

Mr. Pugh: Well, don’t you think then, at least, we ought to make this all-embracing language in an area other than in this particular article? Shouldn’t it be somewhere later on in the constitution, so at least we’re talking about the whole constitution and not just this article.

Mr. Burson: Well, Mr. Pugh, we are definitely talking about the whole constitution in this particular phraseology. Now, I will agree with you, just as Mr. Thompson pointed out, that you probably ought to move it to another article, but we haven’t had anybody offer it up until now in either the Legislative Article, Executive, Judiciary, or the Bill of Rights.

Mr. Pugh: I suggest the reason it wasn’t offered is because it is so patently clear.

Mr. Roemer: Jack, don’t you...doesn’t this section remind you of President Nixon when he gets up to give a speech he says “I can assure you, I am the President?”

Mr. A. Jackson: Mr. Burson, if you believe that this section is necessary, would the committee agree to delete it at this time with the understanding that it will be placed in the General Government Article where I think it appropriately belongs, if it belongs at all?

Mr. Burson: Mr. Jackson, I would certainly not have any objections to placing it there because that’s where it belongs, but I think the debate that we’ve had—particularly when we were talking about the home rule charter question—indicates that we should have it in here somewhere, and that’s the reason why the committee proposed it.

Mr. A. Jackson: As chairman of Bill of Rights and Elections, I would offer to place it in there, if that meets with the committee’s approval.

Mr. Burson: Well, if nobody else on the committee objects, I certainly won’t.

Mr. Keen: Mr. Burson, now that we’ve got this matter on the floor, and it provides that the constitution is supreme, and so forth, even though it ought to be obvious that it is, if we now withdraw it or if it doesn’t now or otherwise appear in the constitution, would that be construed as some indication of intent that the ordinances and legislation would be...could be inconsistent with the constitution?

Mr. Burson: Well, I would certainly hope not, and since Mr. Jackson has indicated that his committee would put it in the general provisions...I would like to ask for about a two minute recess here where we could discuss this with the members of the committee and see if we will not voluntarily withdraw it at this stage.

Recess

[Cuorum Call: 95 delegates present and a quorum.

Further Discussion

Mr. Burson: In this new convention by consensus that we’re conducting here, we’ve agreed that the committee will go along with Senator De Blieux’s amendment to delete this provision with the understanding, as Mr. Jackson has already said, that it will be introduced at the proper time with general provisions.

[Amendment withdrawn.]

Amendment

Mr. Paynter: Amendment sent up by Delegate De Blieux as follows: Amendment No. 1. On page 15, delete lines 12 through 16, both inclusive in their entirety.

Mr. Roy: Mr. De Blieux, naturally you don’t need to explain this, do you?

[Previous question ordered. Record vote ordered.]
Mr. Douglas. I think everybody will agree that it is not the place or the time to discuss the amendment on the merits.

Mr. Ray. Right.

Mr. Roemer. Thank you.

Point of order.

Mr. Willis. A point of order. Mr. Chairman, has it been explained.

Mr. Ray. No, he waived the explanation of it. It merely deletes the entire section.

Mr. Willis. Well, for the life of me.

Mr. Ray. Well, he didn't think it needed an explanation. Do you want me to explain it to you?

The question has been called and Mr. Roemer has a right to close if you choose.

Mr. Willis. I'd like to ask a question.

Mr. Ray. If you don't want to close, Mr. Willis, I'll close.

Mr. Willis. He refuses to close. Mr. Willis. This is unique.

Mr. Willis. Very well. I withdraw my point of order.

Amendment.

Mr. Chairman. Amendments sent up by my Delegate.

Chairman. The amendments which are not yet distributed momentarily as Amendments 1, 2, and 3, the section before and after the word, and delete all amendments thereto.

Amendments 4, 5, 6, delete lines 1 through 10, both inclusive, in their entirety, and delete all amendments thereto.

Amendments 7, 8, delete lines 1 through 10, both inclusive, in their entirety, and delete all amendment thereto.

Explanatory.

Mr. Chairman. Mr. Emery, and fellow delegates, the amendment came out of a great deal of deliberation that occurred after we were told to reconsider this proposal the other night. We worked hard and reviewed thoroughly the section as it stands and found that as written we had already adopted by this convention in the past, and as proposed in the tariff of this problem of government by the people of the states in the Constitution.

We found that the section as written we had already adopted by this convention in the past, and as proposed in the tariff of this problem of government by the people of the states in the Constitution.

We found that the section as written we had already adopted by this convention in the past, and as proposed in the tariff of this problem of government by the people of the states in the Constitution.

We found that the section as written we had already adopted by this convention in the past, and as proposed in the tariff of this problem of government by the people of the states in the Constitution.
Mr. Avant: That's not correct?

Mr. Lanier: The legislature may not legislate with reference to the organization and structure.

Mr. Avant: Or the particular distribution or redistribution of powers and functions, correct?

Mr. Lanier: That relates to who exercises the particular power, but I think the legislature still has the right to act with reference to the powers and functions themselves although they are prohibited from acting with reference to the organization and structure, and the distribution and redistribution of the powers and functions within the organization and structure. That's the way I understand it.

Mr. Avant: Alright. Now, my next question is this: Even though the legislature may not act with respect to the particular distribution and redistribution of the powers and functions, that in order for them to accomplish that in joint relationship with each other that each would have to amend their home rule charter to so provide.

Mr. Lanier: That's not necessarily so. It depends on how their charter is set up. It may be set up so that they can exercise jointly powers and functions with no amendment whatsoever.

Mr. Avant: Alright. If they put that in there, then all of them that do that can make all kind of deals with respect to the particular distribution and redistribution of the powers and functions, but the legislature wouldn't be able to control it.

Mr. Lanier: If a local governmental unit felt that it was to its advantage to modify its organization and structure, etc. in order to cooperate with its neighbors in the best interest of the people of the area, it certainly could do so by way of an amendment.

Mr. Avant: Now this is not limited to neighbors, is it? This would apply, say, to Baton Rouge, the city of Baton Rouge or the parish of East Baton Rouge, making some sort of agreement with the parish of Caddo, wouldn't it? They don't have to be neighbors.

Mr. Lanier: That's correct.

Mr. Avant: That's correct. [Previous question ordered. Record vote ordered. Previous question ordered and a gag rule, amendment adopted 97-9. Motion to reconsider tabled. Motion for the Previous Question on the Section.

Mr. Avant: Point of Information?

Mr. Avant: Point of Information, Mr. Chairman. We have the facts, there is no debate, separate and apart from any amendments, do we not?

Mr. Roy: That's right.

Mr. Avant: Now, if the previous question on the entire subject matter is called, will that not cut off debate on the entire section as such?

Mr. Roy: That's correct, except for the closing argument.

Mr. Denmer: Point of order, Mr. Acting Chairman. I'm not certain whether the last amendment deleted the previous amendment so that "any school board" is no longer in this section. Could you please read the section as it now reads?

Mr. Paynter: Mr. Vice-Chairman, a couple of people have inquired whether the words "or school board" are still in there. They are not by the effect of, I believe it was the set of two amendments first proposed by Delegate Burson yesterday that struck "or school board," then added in paragraph (b), "the provisions of this paragraph shall not apply to school boards." That language being finally deleted itself by a subsequent amendment. So, the phrase "or school board" does not appear in what remains of the section at this time.

Further Discussion

Mr. Avant: Mr. Acting Chairman and fellow delegates, I rise to urge that you reject this section because I think that as it now stands, in the context of the rest of this article as we have adopted it up to this point, it is a very unwise section. Now, let me tell you what my objection to this section is, and then I think you will agree that what I tell you the facts and truths here in that you think that you want to vote for it in that way, then that's certainly your prerogative. But, first, look at Section 9. Now, this, under the language of Section 9 as we have adopted it, this would apply to any municipality. It would certainly apply to any home rule charter municipality. Now, you look at this section. Any political subdivision—it applies, also, not to just local governmental subdivisions, but any of these special agencies or governmental bodies that we have provided the authority to have them created by local government. Now, let me tell you, I respectfully submit that this gets back again to the basic philosophical question that I have asked from this podium several times. That is simply this: Are we going to write a constitution for the State of Louisiana? Are we going to recognize that there is a State of Louisiana, or are we going to write a constitution and operate as some sort of a confederacy, or some sort of league of cities, or whatever you might want to call it? But, under this section as it is proposed, any number of local governmental units, anywhere in the state, any combination of them, as to whether they may be parishes and cities and levee boards, any combination of them over any geographical area you pick—it could go from the mouth of the Mississippi River to Caddo Lake, or may get together and make any kind of agreement, with respect to their powers and functions of the particular manner in which their powers and functions are going to be exercised that suits their fancy. The legislature has nothing to say about it. The rest of the people in the state, other than the governing authorities of those particular units, have nothing to say about it. Now, if you think that that's a good sound thing, that that's the way the government of this state should be operated, then I just can't argue with you. But, as somebody pointed out from this podium yesterday, the Constitution of the United States provides that states may not be making agreements with other states or with foreign powers except in those instances where they have been authorized by the Congress to do so. Has anyone authorized agreements in certain particular in-
Mr. Toomy. Mr. Chairman, fellow delegates, I rise to present a positive or constructive view. If you will permit me, I cannot understand the objections that have been raised. If you read the section, it only allows for joint cooperation of powers and functions that are authorized to the political subdivisions, and I don't see how the joint co-nvention of such powers and functions would be a big and bad influence on the state of Louisiana. We're only talking about the location and functions that the legislature could individually exercise. I don't see how the joint exercise would be a big bad influence on the state. I'm not saying I would not individually perform, and function in which they should individually do otherwise.

Mr. Langer. Mr. Toomy, isn't it a fact that the fact that the law should provide otherwise by law, so that the legislature would regulate the exercise of this power if it wanted to do so?

Mr. Toomy. Mr. Langer, I read that same as you do. I don't see any big bad problem here at all.

Mr. Langer. Mr. Toomy, isn't it true that this year, the Senate has shown us in the legislation that the legislature has the power to establish intergovernmental coordination on the collection and disposal of solid waste because there is no national authority or any such authority to do this in the state?

Mr. Toomy. That's true. Mr. Langer, and I like to bring up the point that this is one of the reasons why the committee thought it was necessary to put a provision in there. They felt that the Constitution was a provision that allows the intergovernmental coordination. I think it was silent in this regard, the legislature and grant the same authority.

Mr. Langer. And I understand it, Mr. Toomy. I'm not at all, but I understand it is the fact, that hasn't been the case as with the function.
59th Days Proceedings—October 3, 1973

Texas holding that constitutionally sound. No state has ever provided that you could take someone's property for an industrial subdivision by expropriation. Additionally, yesterday, we provided, if you recall, that family property—that is to say, if Aunt Millie's home was the first home in a parish, then you could take that home from her and pay her a consideration therefor. Now, pretermitting all of the rights to take, pretermitting all of these questions, the only thing that I humbly beg you now to consider is that under your law, the owner who would decide whether or not this taking was proper would be the district court. Thereafter, the sole question relegates itself to proceed. It has nothing to do with whether or not my children might be able to have Aunt Millie's house. From the moment that case is decided in the district court, to all due respect, the judges there are subject, obviously, to a lot of political local thought about how nicely it would be to have Aunt Millie's house. You can take that property, and all they can talk about later on is money. I'm not asking you to withdraw what you did to allow us to do what nobody else in this country can do. I do ask you to consider that if you do this except on the streets and highways, except as to levees and even ports, that an appellate court can review whether or not you should have been able to take it. All that does is allow an appellate court to review not only the money involved, but whether or not you had the right to take it. Now, gentlemen, before somebody asks me whether that's going to delay us, I filed a suit in the State of Louisiana on October 9, and the United States Supreme Court is going to decide that case on October 9, less than a year later. I tell you if Aunt Millie's house has been sitting there since 1812, then Aunt Millie or her heirs ought to have that year. If you can go all the way to the United States Supreme Court and resolve a question in a one year period of time, then, by golly, let's at least let somebody else look at whether or not this political subdivision and the district judge was right. Without that, you have no suspensive appeal. No court looks at whether or not it really was the best thing to take this property for an industrial subdivision. Now, in Caddo Parish, we've got one of these industrial subdivisions that wasn't taken, but was created out of an old farm. It was a...we call it C.C.I.; it was a penal farm. Today, in Caddo Parish, if you want to buy a tract in that industrial subdivision and you have a business already there, you can't buy it because they want only people from the outside to buy in that industrial subdivision. And you can't buy here in this United States—laid a case for you yesterday that held it to be unconstitutional to do that—nowhere in this United States can you do what we've done yesterday, to stop the States. I say, do you, therefore, let's let some other court other than the district court decide whether or not it's right or wrong. It has nothing to do with the quick-taking statute—build your highways, build your streets. It has nothing to do with the ports—build your ports. It has nothing to do with the levees and the flood—build your levees. It merely applies to other things. I beg you to seriously consider the question of expropriation. You know, you take something that belongs to somebody else. Sure, you're paying for it, but suppose we don't want to get money. Suppose he wants to keep his property. Under what you old yesterday, you can take it, and I'm not going to quarrel with that. I would have yesterday, but I'm not now. All I'm now saying, at least give the poor devil the right to have that matter reviewed. Thank you.

Questions

Mr. Lanier

Mr. Pugh, aren't the matters of suspensive appeals and devalutive appeals covered in the Louisiana Code of Civil Procedure?

Mr. Pugh

Say are they covered there?

Mr. Lanier

Aren't they covered there?

Mr. Pugh

Yes, they are covered there.

Mr. Lanier

Isn't that a statute?

Mr. Pugh

I'm saying that unless you spell it out here as a right to an appeal, these statutes may not apply to give him a suspensive right. Now, I'll tell you this, in the statutes, he doesn't have a suspensive appeal today. However, the statutes don't provide that you can take his property for an industrial subdivision, and they don't provide that you can take his grandmother's home from him. That's the same statutes.

Mr. Lanier

Well, my point is, Mr. Pugh, couldn't the legislature amend the Code of Civil Procedure to provide what you wish here?

Mr. Pugh

Article I, Section 4 of this constitution provides that the political subdivision can take it. Now, it also says that a private property can...private corporation can only take it with judicial review. There's nothing about a judicial review in Article I, Section 4, when it relates to the taking of property. For that reason, I say he does not have the right to a review, regardless of what the legislature says. That's what's in the section, and read it.

Mr. Lanier

I already have.

Mr. Keen

That case you referred to that got from the district court to the United States Supreme Court in a year, that was because you had a little cooperation from other counsel in getting it up there, wasn't it?

Mr. Pugh

Another lawyer and I filed the case and took it direct to the Louisiana Supreme Court. After that, there was no help.

Mr. Keen

Let me ask you this, Mr. Pugh. If I understand your amendment...your proposal correctly, if you had a courthouse that you wanted to build and you needed a site for that courthouse, then you'd...you'd be entitled to a suspensive appeal in connection with that taking?

Mr. Pugh

Yes, sir, you would have it, and I'm not satisfied that you can't decide whether or not you want a courthouse to be built and where you want to build it in less than a year. I know of no courthouse in the State of Louisiana that they didn't deliberate for a lot longer than that before they decided: (1) whether they were going to build it, and (2) where they were going to build it.

Mr. Keen

Well, we're talking now, though, after they have made the decision where they are going to build it. Then, that's when the suspensive appeal comes into play, doesn't it?

Mr. Pugh

Mr. Chairman, I'd like to withdraw the amendment, add the word "courthouses," and return the amendment.

Mr. Rosen

Mr. Chairman moves to withdraw the amendment.

Mr. Keen

I don't have any objection, Mr. Chairman, but I've got a list of about ten other projects here that would be affected by this amendment, and I want to get them all in there.

Mr. Pugh

Well, so far, let's put the courthouses in.

[Motion to withdraw the amendment adopted: 2-23.]

Amendment

Mr. Poynter [Amendment by Mr. Pugh] "Section 27.1.
Mr. Pugh: Mr. Jenkins, I'm trying to get some information. That is the reason for my question. Would one be entitled to a suspensive appeal under your amendment if one was merely appealing quantur and not the necessity of the taking? Could they hold up the whole thing merely on quantum?

Mr. Pugh: They could, but I would be happy to withdraw an appeal, and my client would put his quantum in there if you want it.

Mr. Dwyer: I'm just trying to find out the intent of the amendment, Mr. Pugh. That's all.

Mr. Jenkins: Mr. Pugh, doesn't your amendment really accomplish one thing, the fact that before people's property could be taken, it could be finally determined whether or not the taking was legal? Isn't that correct?

Mr. Pugh: That's the whole purpose.

Mr. Jenkins: If a governmental subdivision can go into court immediately take property, and then a year later the courts say the taking was illegal, doesn't it really do no good whatsoever for the property owner--his property taken illegally?

Mr. Pugh: Except for the possibility of some damage that may have occurred, that's absolutely correct.

Mr. Jenkins: But, for instance, if it is for a courthouse, they could have already destroyed his home, put the courthouse there, and then the courts find that it's illegal. Isn't that correct?

Mr. Pugh: I'd run my risk on the courthouse.

Mr. Jenkins: Right, but this is to protect the property owner in that regard, isn't it?

Mr. Pugh: Yes, it was, but if they want courthouses, let's have courthouses.

Mr. Avant: To clear up the record, Mr. Pugh, to take a suspensive appeal you have to put up a bond, don't you?

Mr. Pugh: Absolutely, and you.

Mr. Avant: Can you imagine what the cost of that would be? If you took a suspensive appeal from an expropriation for a courthouse when you were wrong, and they kept it, and you had held the courthouse for a year, how many people do you think would put up that kind of a bond?

Mr. Pugh: All I said, the courthouse, they can have them. I worried about Aunt Millie, if she can put the money up, let her put it up.

Mr. Pugh: I'm sorry. Mr. Pugh, the only difference between my explanation of this amendment and the last one is that we have added the word "courthouses." Thank you.

Mr. Pugh: The only difference between my explanation of this amendment and the last one is that we have added the word "courthouses." Thank you.

Questions

Mr. Jenkins: Mr. Pugh, that's really accomplishing one thing, the fact that before people's property could be taken, it could be finally determined whether or not the taking was legal? Isn't that correct?

Mr. Pugh: That's the whole purpose.

Mr. Jenkins: If a governmental subdivision can go into court immediately take property, and then a year later the courts say the taking was illegal, doesn't it really do no good whatsoever for the property owner--his property taken illegally?

Mr. Pugh: Except for the possibility of some damage that may have occurred, that's absolutely correct.

Mr. Jenkins: But, for instance, if it is for a courthouse, they could have already destroyed his home, put the courthouse there, and then the courts find that it's illegal. Isn't that correct?

Mr. Pugh: I'd run my risk on the courthouse.

Mr. Jenkins: Right, but this is to protect the property owner in that regard, isn't it?

Mr. Pugh: Yes, it was, but if they want courthouses, let's have courthouses.

Mr. Avant: To clarify the record, Mr. Pugh, to take a suspensive appeal you have to put up a bond, don't you?

Mr. Pugh: Absolutely, and you.

Mr. Avant: Can you imagine what the cost of that would be? If you took a suspensive appeal from an expropriation for a courthouse when you were wrong, and they kept it, and you had held the courthouse for a year, how many people do you think would put up that kind of a bond?

Mr. Pugh: All I said, the courthouse, they can have them. I worried about Aunt Millie, if she can put the money up, let her put it up.
-but, the committee reached the following conclusions, in case that you have forgotten what the weeks. (1) Adequate provisions should be made in the constitution for the continuation of levee districts or flood control districts. (2) The legislature should be given the authority to consolidate small and noncontiguous levee districts in order to provide for more efficient management and operation of these districts, and to provide for fewer levee boards. (3) The legislature should be granted the authority to divide levee districts which are located in one or more parishes in order to provide the possibility of merging levee districts into the governing authority of those parishes.

As a result of this study, there were two bills introduced into the legislature last year which passed. Those bills dealt with the internal organization, you might say, of the levee districts. The per diem to members of these districts varied from ten dollars to forty dollars per meeting. The legislation that was passed at the last session made this uniform throughout the state. It provided for each member of these districts a per diem of twenty-four dollars per day with a maximum of twenty-four days per year per diem unless an emergency arose, which has to be declared by the governor of this state. In that case, why, they are able to meet as often as necessary.

Another bill provided for fiscal control which was sometimes, according to the newspapers, has been abused. It now is to be required, the fiscal control is vested in your division of administration here in Baton Rouge. It's just the same as all other government agencies. We have, as a Committee on Local and Parish Council Government, we think that we have a good article. We have shortened, if to some degrees, we only have six articles included in this now. Under the old constitution, it required many pages pertaining to the levee districts.

Amendments

Mr. Poynter Mr. Poynter, First amendment sent up by Delegate Mr. Ginn as follows:

Amendment No. 1. On page 23, line 26, after the word "of" and before the word "shall", delete the words "such districts" and insert in lieu thereof the words "each district".

Amendment No. 2. On page 23, line 27, after the word "district," change the semicolon to a comma and add the following: "as provided by law".

Explanation

Mr. Poynter Mr. Poynter, I'd like to get into the specifics or the mechanics of the election. I would want to see that be determined by the legislature as provided by law. I think they need that right.

We're talking about my opinion, about local government, not representative or executive government. Oftentimes these appointments by the governor, or...come from recommendations by Representatives and Senators, which is O.K., that's the process. But we are talking about local government. That's why I'd like to see these board members elected by the people at home...your local people...and, therefore, your local government. The appointments can become, in my opinion, a pain in the neck for the governor. They can embarrass the governor and the...embarrass the political atmosphere of this state and the posture. I'd like to, in my little way, help this new constitution improve the political atmosphere of the state.

One of my main reasons for pushing this amendment is, if you look over on page 24, Section 45, of the committee proposal, you'll see that in Section 45 there, you...the levee boards may levy a tax on the people not to exceed 5 mills, five mills on the dollar. In other words, the board members could tax these folks annually. I'd like to see these people have a voice in electing these people to this board that might be taxing these people. I just think it's only right.

If you read a little bit further, you'll see in regards to raising additional funds. Well, the levee boards can raise additional funds, but it does say here it must be submitted to the electorate. That is good. But my main reason is...not only am I fearful of this levee boards levying this tax on the people when the levee boards are appointive, not elected, I have another reason. I just think that the responsibility is in the hands of the people. I think the levee board should be elected as prescribed by the legislature, the method, but the responsibility should be in the hands of the people. I would like to see that. If you have a bad man on the board, there's misuse of funds or equipment, the man can be removed through the process of an election. I would ask for your favorable support of this amendment.

Questions

Mr. Stinson You think by your amendment, election on that would take politics out of the levee board then, won't it?

Mr. Ginn Well, it would put the politics in the hands of the people during the campaign to elect the men on these boards.

Mr. Stinson But isn't...

Mr. Ginn The politics would be the campaign.

Mr. Stinson Isn't it a fact, though, that most
59th Days Proceedings—October 3, 1973

of them— an unnecessary appointment and they would not.

Mr. Ginn. I think I have that. I have never been

about thirty-five dollars for a meeting. I have never

seen what a patronage job. It is a necessary

job. I just favor the election.

Mr. Stinson. I can't foresee what they would do

the elected, then they are going to increase their

expenses and get up retirement, and all such as

that, and really put it in business that it is

not intended for?

Mr. Ginn. That would have to be determined by

the legislature. The responsibility there is in those

regards, and your concern would be in the hands of

the legislature. It could occur. But it would have

to the legislature's responsibility as provided by

law.

Mr. Burns. Mr. Ginn, how are the commissioners

selected now?

Mr. Ginn. If there are some elected, I am unaware

of it. It was my thought that they were appointed.

Mr. Burns. Appointed by... the governor.

Mr. Ginn. Appointed by the governor, and it's my

also knowledge that sometimes recommendations of

the area-legislators which is understandable. But

the governor makes the appointments, to my knowledge.

Mr. Toofy. Mr. Ginn, wouldn't you think that it

would be better to allow the legislature to provide

whether they would be appointed or elected in the

future rather than to locking into the constitution

that it would be one or the other?

Mr. Ginn. No, no, I was just my personal

opinion that... put some responsibility in the people.

I want them elected. I wouldn't want to see the

legislature determine their future.

Mr. Toofy. As I understood the position of our

commitee, we didn't want to have the determination,

or lock it, in whether it would be elected or ap-

pointed. We were more concerned that it would be

residents of the districts, whether they were elected

or appointed and not to negate the legislature from

allowing appointment. You understand.

Mr. Ginn. Yes, I understand the option there.

The committee proposal has that option, but I

just the option is good. If a change, it is a

better change, but it is still for the election.

Mr. Champagne. Mr. Ginn, as provided by law,

the law could say we are going to give you two

names and then they will be elected from those two,

would it not.

Mr. Ginn. Sure, I would think that you would

have to have two names available and you'd have to

have a campaign that would be my opinion.

Mr. Toofy. I was very happy for your amendment. I

am concerned, however, about the committee language

in this section. It is that since the last election

we made for the constitution, of course, and the

committee is not authorized to determine the

sections, which the legislature is not authorized to

determine, it is determined by the people of the

state. I thought the two names would be optional.

Mr. Ginn. I am not sure what I had, but I think

there was a motion to determine what option

would be available to election.

Mr. Champagne. We did not make that amendment.

Mr. Toofy. We'll see what the amendment on the

floor is. I am happy with whatever amendment is

wanted by the people. I think that is the

procedure we want to follow.

Mr. Champagne. I will support the amendment to

determine what the option is. I think the word is

redundant in there.
Mr. Ginn  No, no, I did not. I would certainly favor board members being residents of the area.

Mr. Juneau  The only point I wanted to make, if you adopt your amendment, that could conceivably happen.

Mr. Ginn  Well, draft an amendment right over there.

Mr. Juneau  No, I quit about three months ago, thank you.

Mr. Ginn  I understand that, and I agree with you there.

Further Discussion

Mr. Brown  Mr. Chairman, ladies and gentlemen of the convention, I rise to very strongly oppose Mr. Ginn's amendment to elect levee board members. I wish, if you are uncertain about this, that you would go to any delegates in this convention who live in areas that have been heaviest hit by flooding. I'll tell you, I think I can speak from some authority because I represented that area that was probably as hard hit as any area in the entire United States during this most recent flood. Talk to Mr. Perez from the area he comes from and talk about the importance of these particular levee boards and what they do in times of flood. I don't think this is an area where we could afford to politicize the process, let someone run for office--the fellow that's got the money, or the fellows who can hustle the most votes--to get out and be on these levee boards. If you look at levee boards, and I have to speak from my own experience, up throughout all of north Louisiana, from the entire Monroe area--all of northeast Louisiana--you will find that most of our levee board members have served for years and years. These are gentlemen who are in... if you'll... what the speakers have said before, I think they up until this year, made ten dollars a meeting. I think now they make twenty-five or thirty dollars a meeting. They are limited to meeting twice a month. Up until this year, they could only meet once a month. Now, who's going to run for an office like that and expend great sums of money for a position that meets once a month or twice a month? What are we getting into?

Let me tell you, I stood by my house and looked at the Mississippi River come up foot by foot each day during this recent flood, and it scared the devil out of me. I'd hate to see us politicize the process till we start making everyone run for these particular positions. I think we've got in the committee proposal the option to elect or to appoint. If someone to a position, that's fine, in your particular levee district, if you think that's the way it should be. But there's lots of levee districts that have outstanding personnel who have served for years, who have a great deal of experience, who want to leave the thing the way they are. I think we'd be making a very serious mistake to start electing levee board members throughout the entire state.

In the proposal it talks about consolidation. I think one of the questions was raised: What happens if we consolidate a bunch of these levee boards: are we going to have people running statewide to control the levee boards? I think it's just too important to start electing people to. I'd like to see us leave it the way it is.

Questions

Mr. Mire  Senator, in your experience in the recent flood, didn't you find, though, that the most meaningful decisions that were arrived at during this time were really decided by the Corps of Engineers and by the Department of Public Works, when it was really meaningful?

Mr. Brown  I don't know what you mean by meaningful, Mr. Mire. When the levee's about to break, when the main line levee is about to break, it wasn't the Corps of Engineers or someone from the Department of Public Works who were out there day in and day out. You mentioned the Department of Public Works, and I think what you are getting at is: should we possibly consolidate all levees and let the Department of Public Works take over? I think that's what you're trying to get at.

Mr. Mire  No, I...

Mr. Brown  Let me finish commenting. I'm Chairman of the Joint Legislative Committee on Public Works. The Department of Public Works has a very small budget. They have a good budget, however, of those levee board members who day in, day out, take care of the caretaking procedures that keeps these levees in operation.

Mr. Mire  Yes, it's not. It's the levee board members out there on this job who, up in my area, that kept our flood area from breaking.

Mr. Brown  Well, as I remember in my area, particularly along the Atchafalaya Floodway area, that the decisions made as to how high the levee would be and what work would be performed, this was done by the Corps of Engineers in just about all cases. You mentioned they serve at hardly no pay. Did you know that, in my area, this is one of the sought after political plums?

Mr. Mire  Well, that's been one of the problems with your levee boards, Mr. Mire, because some members have been abusing this thing. Possibly in your area there has been some abuses. There's never been the slightest hint of any kind of abuse up in my two levee districts in the area that I represent. If you've got a wart on your nose, you don't cut off your head, you take care of the wart. You know what I mean? So...what I'm saying is, do we abolish the whole thing just because there are some abuses down in your area? There have been no abuses up my way. None whatsoever.

Mr. Mire  Well, I agree that we shouldn't elect them. However, I agree that it should be in an area where there could be...administered to properly.

Mr. Brown  All right. Your point's well taken. I think this particular provision allows for consolidation. It allows for that. If later on down the line we want to consolidate, abolish, and fund the Department of Public Works to take the thing over, fine. But let's don't get into big election right now for all these members and get completely out of hand.

Mr. Roemer  Senator Brown, did you say that levee boards were too important to be elected?

Mr. Brown  No, I didn't. Those are your terms, Mr. Roemer. I said that levee boards are too important to be politicized in terms of letting someone hustle for the job, in consideration...such as that, not too important to be elected, no, not whatsoever.

Further Discussion

Mr. Stinson  Mr. Chairman and fellow delegates, I wish to urge you to oppose this amendment. I've had experience with...there are two in our parish, north and south Bossier Levee Boards. I am concerned about the way, even in consolidation, it says that "the members will be appointed from the district." If you create a new district by consolidation, it can end up that the north levee board district in our parish wouldn't have to have any.

But, still, from the election standpoint, all of those could be elected from one portion. As you know, the election laws in this constitution and the interpretation by the federal courts, a person from New Orleans, if they wanted to try to get a job in some of the districts that have getting at money, all they'd have to do is go there and register. In thirty days they could be elected and...
Mr. Chairmen, members of the convention, I want to rise in opposition to this, and I will join Senator Brown in the statement that he said that we have two levee boards in our district. We have never had any issues. When you look at the election, don't you know that you are going to elect each four years, or each eight years, when you have a change in the governmental office? You can have a new board member, or they will still remain substantial property owners who have a vested interest in seeing that that levee is maintained.

This year, when we put out high water troubles, it looked like we were really in trouble——our levee board is gone. We have no one taking care of that. This year, when we put out high water troubles, it looked like we were really in trouble——our levee board is gone. We have no one taking care of that.
59th Days Proceedings—October 3, 1973

Muneration that you can get in this. Most boards do not have the personnel where you can do any payroll padding, and that's been taken care of by legislation to stop that. Now there are some twenty levee boards in this state, three or four of these boards have been criticized in the past. That criticism has been taken care of through the last legislation that we passed to correct that situation. I don't see, if the sake of me, how you could get people to go out and run for something like this over a large area. Now some of this would be parish-wide in most of your parishes—a parish-wide deal. Up in our area we wouldn't care too much about the levee district does not embrace the whole parish, and there would just be a portion of the parish. I can't see it, the sake of me. And the committee debated this at length, and we thought about it, both on the Levee Board Study Committee, of which I served, and also this Committee on Local and Parochial Government. It was our opinion that it be best to let the legislature adopt the laws that would govern the appointments. Under the present law, levee board members' appointments are locked into the constitution. A governor appointing a levee board member cannot get rid of that levee board member during the time of his office. If this be the case, how they can be addressed out of office by the legislature. Now, what we are endeavoring to do here is put the right in the legislature and keep it appointive. Let the governor appoint them, but let the governor have the right to remove that levee board member if he does not do his job. I don't believe that you can get a plum out of this. I know...I'm not asking for it, not to be elected because I'm a legislator...I am a legislator and I am interested in levee boards because I know what they do. I know that most of the boards in this state operate efficiently, and they are honest, hard-working people. Most of them are qualified people. That is our reason for naming them. The idea of letting the legislature dictate how they shall be selected, and give the governor the power to appoint these people. If they do not perform, then he can eliminate those people without having them addressed out of office.

Questions

Mr. Roemer Mr. Representative Shannon do you realize that the legislative auditor's report, no less than seven times last year, pointed out dollar abuses among levee boards and levee districts in this state amounting to thousands of dollars, not seventy dollars a month. Do you realize that?

Mr. Shannon But we have had legislation to correct that situation, Mr. Roemer.

Mr. Brown Mr. Shannon, do you realize that those abuses are only in a couple of boards in south Louisiana and that the boards up in north Louisiana did not have one iota of scandal in the whole history they've been operating. Are you aware of that?

Mr. Shannon I'm not. I'm not going to say where there were, but there was only two or three boards out of twenty.

Mr. Stinson Mr. Shannon, don't you know investigations also showed that a lot of illegal stuff was going on in the capitol out of the office of the Director of Administration, and he tried to fire those people that were crooks? You realize that, don't you?

Mr. Shannon I read that in the paper, yes, sir.

Mr. Stinson I'm sure it's so, and Mr. Roemer, or... was quoted, wasn't he? That had been going on for some years, hadn't it?

Mr. Shannon Apparently so, Mr. Stinson.

Mrs. Warren I'm not speaking for or against, but who pays back all that money when it's messed up?

Mr. Shannon We have due process of law that they can go through and be prosecuted, and the money can be recovered in that manner, Mrs. Warren.

Mrs. Warren I hope so. I really do.

Further Discussion

Mr. Lowe I urge your defeat of this amendment. Mr. Chairman and fellow delegates, I merely rise to make one point, and then rise and to oppose Delegate Glenn's amendment. I doubt seriously if you can really appreciate the problems of the levee districts unless you've been there, these people have a levee, unless you've seen a farmer go out and borrow a half a million dollars to invest in a crop, or fifty thousand dollars. If that's large to him, or ten thousand or five thousand. When you ride right over that bridge and see the levee rising...the river rising to the top of the levee, I don't get up here to get emotional, but I tell you, it does something to you. All of you people that have sat in this convention for the last weeks and were worried about property rights and the right to own property and worried about property, I think the time for you to get serious and start listening and not try to chop up the business of protecting levees too much. There's not too much I can tell you about the way the system works. I've heard from this microphone discussed that the engineers, the U.S. Engineers, take care of everything. Well, I submit to you that they have a lot of expertise, but they are not there everyday. The people on the levee board know that the engineers have expertise and they are there everyday. They stay in touch with the engineers and they try to carry out the wishes of those engineers. I submit to you that we are going to deliberate this levee district thing a great deal. The thing of it is to let the people have a voice, to let it be serious, those of you that are worried about property, to help protect what we have today. We know that that works. If there are some inequalities, what's proposed in this constitution gives a framework where those inequalities can be straightened out.

So, I hope all of you who don't live behind a levee, and have the threat of being washed out every year, will sit and try to put yourself in the position of those that are in that position. I ask that you vote this amendment down and try to leave the levee districts in the position that they are in today.

Questions

Mr. Fulco Mr. Monday, could the police jury or The Public Works Department assume these responsibilities and perform just as well as levee boards?

Mr. Lowe Well, Delegate Fulco, I can tell you that the police jury can take over the responsibility, but I don't see any possible way that they could perform the duties as well. This is a specialized duty and it doesn't fit into the general framework of what police jurors are normally used to taking care of. I have people on my levee board, in the Atchafalaya Levee Board, that's been there thirty-four years. These people have been exposed to the dangers of what can happen. I'm happy that they are there.

Mr. Newton "Monday" do you think that this Constitutional Convention can cure all of the ills in the levee boards?

Mr. Lowe Mr. Newton, there is no way in the world. I agree with you that what we have in...I hope you and I agree that what's in this article, gives a framework where they can be cured.

Mr. Newton You know, I do agree with you. Don't you think that only one way to solve this kind of problems can be solved through the legislature?
Mr. Lowe Yes, sir, because we are supposing the legislature the authority to call elections, if in their wisdom, this is what they feel should be done.

Mr. Champagne Mr. Lowe, I suppose you got the same letter of communications that I did that the levee boards said they were happy with the proposal as submitted. Did you get that?

Mr. Lowe I don't recall getting it, Mr. Champagne, but I'm sure that I did and if they weren't happy, I'm sure I would have heard from them, that's for sure. I ask that you defeat this amendment.

Further Discussion

Mr. Arnette I would like to ask the ladies and gentlemen of this convention a couple questions. The first one is, isn't it about time that we take levee boards and all of that politics out of the back room and put it out in public. Let's get it out there where the people can see what's going on. The second question is, I would like to know who does a better job—somebody that's appointed by the governor, or somebody else, or somebody who has to face reelection next time. Who does better by the people—that's got to face reelection or reorganization? I think the answer is obvious. I think we ought to adopt Mr. Ginn's amendment. If there are no other speakers, I move the previous question. [Preliminaryuestion referred.]

Closing

Mr. Ginn Very, very quickly. I'm an advocate of speedy legislation in the process. If it passes, I am going to come back with making the board members a resident of the area as Mr. Jueno pointed out. I just want to point out that just let the people elect the board members who just might could pass a tax on them. Let's have the responsibility in the hands of the people.

Amendment

Mr. Poyster Amendment No. 1 [p. 465, line 221.

On page 23, line 23, after the words 'the' and 'but' they write the word and punctuation abolition.'

Explanation

Mr. de Blieux Mr. Chairman, ladies and gentlemen of the convention, under the provisions of legislation, if the legislature was written to appoint a levee district, the legislature could not do that. There would be a way in the world to abolish a levee district, it would not have any work, but in the event, fifteen to twenty years from now, if anyone should want to abolish a levee district, the legislature could not do that. There would be a way in the world to abolish a levee district, it would not have any work, but in the event, fifteen to twenty years from now, if anyone should want to abolish a levee district, the legislature could not do that. There would be a way in the world to abolish a levee district, it would not have any work, but in the event, fifteen to twenty years from now, if anyone should want to abolish a levee district, the legislature could not do that.
Mr. Lennox Mr. Perez, how else would rights-of-way be provided for the U.S. Corps of Engineers if a local levee board or similar organization was not constitutionally authorized to do such projects?

Mr. Perez Well, I know in our area the problems that we have even having the local contact with the people. I would assume that the Corps of Engineers could hire people to take care of these problems. It would be a problem as General Noble pointed out in his remarks, which I have before me, which would almost be impossible for them to take care of.

[Previous Question ordered.]

Closing

Mr. De Blieux Mr. Chairman, ladies and gentlemen, let me point out something to you. Amendment 40-64 does not abolish only a single levee district. Let's get that clear and straight. I'm not advocating the abolishing of any levee district. The only thing I say, I say that some future need be and ought to be putting together a document for future years, not for just now, but in the future--and if it ever becomes desirable that the legislature abolish a district, a levee district, they could not do it. You might have one that may become obsolete. It might have property and money. Are you going to let it just sit there because the legislature cannot abolish it, if it costs too much to pass a constitutional amendment to change this? I think now is the time that we ought to just put this little one word into this particular provision to eliminate any possibility that the legislature does not have that authority. That's all I'm asking, that we have a well organized constitution to take care of our future needs. I see no harm in the world done by adding this one word into that particular provision. I ask you to approve the amendment.

[Amendment rejected: 40-64. Motion to reconsider tabled.]

Amendment

Mr. Poynter This is the De Blieux amendment. Amendment No. 1. On page 23, line 28, after the number and punctuation "(2)", delete the word "any" and insert in lieu thereof the following: "Subject to the provisions of Paragraph (1), any"

Explanation

Mr. De Blieux Mr. Chairman, ladies and gentlemen of the convention, in this particular paragraph there is a provision that if any levee district is located solely within one parish, that it can be consolidated in the local government. In that particular provision, in my opinion, it could never be consolidated, dissolved, or merged with another levee district regardless of the needs. I just wanted to add in the words in the beginning of this paragraph to allow that if the need should happen to occur at some future time. It's just "Subject to the provisions of Paragraph (1)" which gives the right to the legislature to consolidate, divide or merge a levee district. I don't think you can do that if you leave the paragraph as it is right now. I ask your approval of the amendment. I believe there is only two levee districts in the whole state that fall within that category.

Further Discussion

[1585]
Mr. Perez: Mr. Chairman, ladies and gentlemen of the Committee, Paragraph 1 and Paragraph 2 are virtually unrelated to the subject of the amendment. Paragraph 1 talks about the legislature providing for the incorporation of districts for levee districts. The second paragraph was designed in order to provide more specific operation in a local basis. If you have a levee district situated entirely within the boundaries of one parish or if it is a part of one parish and in the vote of the people, or if there are districts within the district, in favor of it, that the levee district could be merged or consolidated into that particular parish. I just don’t understand what the words “subject” to the provisions of the ordinance, mean, because once once once, once one’s consolidated into the parish, then it would not apply. I just don’t understand its meaning. I don’t think we need the amendment. I just don’t understand what it means. I, therefore, urge you to reject the amendment.

Amendment

Mr. Cusar: Amendment No. 1 [Read]. En force Paragraphs 1, 2 and 3. If you are going to follow, there are two Leuen amendments, this is the first and the second, the third paragraph. The authority of levee districts to expend its revenue shall be limited to drainage, flood control, hurricane flood protection and administrative expenses, other powers and functions of levee districts now or hereafter authorized may be exercised by the levee districts themselves. The authority to exercise any of the foregoing powers and functions of levee districts by the levee districts own boundaries. The power for the revenue, the levee district shall not be violated and it is to exercise all of the rights, it is to exercise all of its functions, authority and powers of levee districts as provided for the exercise thereof.

Explanations

Mr. Perez: Mr. Chairman, I am afraid that this will not be a very important amendment. It is simply a change in the district boundaries. Now, our levee districts are the镜, the levee districts in Orleans and Jefferson Parish. The proposed amendment would change the boundaries of the levee district in Orleans Parish to include the land between the levee and the river, and the levee district in Jefferson Parish to include the land between the levee and the river.

New Orleans levee board is under the jurisdiction of a levee engineer, who is responsible for the construction and maintenance of levees. The amendment seeks to clarify the boundaries of the levee districts and ensure their proper functioning. The amendment is simple in nature and does not require further explanation. It is simply a change in the district boundaries.
selves; it travels at a speed of thirty-two knots and that's moving along on the water. It is lavishly appointed. Although I have never been on the rescue, I have been close enough to it to know that it has quite a piece of equipment. I do not see how that has anything to do with hurricane protection. Now, the late governor Huey Long, for whatever reason, had at different times a constitutional amendment the Levee Board to engage itself in the police business within the police authority of the city of New Orleans. When I joined the Levee Board, in February of 1969, it had a police arm of some sixty-six human beings—only one of which had ever received one day's professional training as a police officer. Now, let you own imagination as to what those people were used for theretofore. The Orleans Levee Board owns and operates at a substantial deficit, without giving any consideration to amortization of invested capital, the New Orleans Lakefront Airport. Now, let me stop there for a moment. New Orleans Lakefront Airport is an absolute necessity to the growth of the city of New Orleans. It is the principle general aviation airport in the area. New Orleans is differentiated between air carrier and the use of the airport by the operations that most of you are familiar with; those are the commercial airlines. Now, the general airport handles corporate and private airplanes and handles the people who wish to learn to be aircraft pilots and the like. I submit to you that the New Orleans Lakefront Airport is an absolute necessity. But I do not see how you can, in good conscience, say that you ought to be taking dollars that should be invested in the protection of the citizens, and the property of Orleans Parish taxpayers, and putting it into an airport when the city of New Orleans has a bureau, or a board, called the New Orleans Aviation Board fully competent to do just that. Now, I made and admit that these together during my three and a third years, but to turn around what has happened since 1927 when the Orleans Levee Board, I submit to you, just couldn't be done in three and a third years. Public relations, display advertising—these things have been openly criticized by the legislature in recent years. The absolute waste of taxpayers' funds in developing thirty-four page color brochures simply telling you what good guys the men behind the Levee Board are. The Orleans Levee Board, in addition, owns and leases, by public bid, the Pontchartrain Beach Amusement Park and several concession stands along Lakeshore Drive. It leases and operates a lease shopping center known as the West Lakeshore Shopping Center. It owns and leases at a substantial annual loss the Lake Vista Community Center, located in the 16th Ward of Lake Vista. To my amazement, it now owns and/or leases and/or operates a variety of airplanes and helicopters, for what reason I simply do not know, when the coast guard is close at hand. If helicopters or rescue vessels are needed, it seems a simple call to the coast guard would produce the desired result. What I am submitting to you, gentlemen, is this particular amendment mandates the Orleans Levee Board to use its tax revenues for the purpose of protecting the city and property of the citizens who pay the taxes. It further authorizes the city of New Orleans to govern local governing authority to assure or to accept those other non-Levee Board operations in most cases, at substantial losses. I don't want anyone here to construe anything I am saying as criticism of any prior president, or present president, or future member of the Orleans Levee Board; it's certainly not intended to be that. But, a recent inquiry—an inquiry since I have been involved in May of 1972—indicates to me that the Orleans Levee Board has, since May of 1972, not dedicated or committed one single new dollar to any hurricane flood protection project, that's eight million dollars later and two years later. We are still in the airport business; we are still in the amusement park business, but we are yet to get ourselves dedicated to the protection of the citizens of our city. I submit to you that this amendment is in the best interest of the citizens of the city of New Orleans. I urge your adoption.

Questions

Mr. Jenkins. Mr. Lennox, I just want to thank you for bringing this information to our attention. I think it's truly amazing. I think you have a great amendment, do you know?

Mr. Lennox. Thank you, sir.

Mr. Lowe. Mr. Lennox, I just wonder if you could comment briefly on what the legislative auditor has said about the irregularities that you have mentioned and what has been done about them as a result of his recommendations, if any?

Mr. Lennox. Well, unfortunately, all of the legislative auditor audits usually follow an indictment of a president or a resignation of a president under pressure. I think the last criticism brought by the legislative auditor was a similar case, where he criticized very strongly the use of public funds to simply run whole page ads in the local newspapers to say what the members of the Board of Levee Commissioners were. He criticized that use of public funds as being an illegal use and an improper use and I agree with that.

Mr. Lowe. Well, the point is, has he criticized any of these other irregularities that you have mentioned?

Mr. Lennox. Some of them continue at this date, Mr. Lowe, as nearly as I... this particular brochure, I think, has been produced within the last two years.

Mr. Lowe. No, but all of the other irregularities. Has the legislative auditor commented on those irregularities?

Mr. Lennox. Well, I don't know specifically what you have in mind. I would like to...

Mr. Lowe. Well, the operation of the businesses at a loss, the building of the marina, the... where the boats are being rented for three hundred dollars a year, and these which seem clearly irregularities that would have been brought out by the legislative auditor.

Mr. Lennox. They are, indeed, Mr. Lowe. But, what we are trying to do, and the legislative auditor could not render any criticism there for the simple reason that the Orleans Levee Board, under its present constitutional structure, has the authority to do all of that, to give it away. Now, what I'm saying is you have an opportunity now to correct all of the ills that have been created since 1927.

Mr. Lowe. Well, the thing that confuses me, Mr. Lennox, is that you say we can give away public funds; I don't get your point answered. But, I sure you believe that it's difficult for me to believe that you can give away public funds, or misappropriate public funds, without coming under some criticism or some scrutiny from the person that is set up to police the financial affairs of the State of Louisiana.

Mr. Lennox. Well, I was criticized by some of the people who were the holders of the lease because I was demanding that they pay a reasonable rent. To answer your question, Mr. Jenkins, to know the legislative auditor has brought no criticism to bear on the levee board for that practice.

Mr. Shannon. Mr. Lennox, isn't the meat of your proposal in sentence (3), which you have not mentioned—if you did, I didn't get it—where the
59th Days Proceedings—October 3, 1973

City of New Orleans by a simple ordinance to take over the Orleans Levee District?

Mr. Lennox: Mr. Shannon, I think I answered your question. I did mention it, perhaps you did not read it. But, there seems to be some confusion--the city of New Orleans may not, under any circumstances, under this amendment, take over the Board of Levee Commissioners of the Orleans Levee District as it now exists. I read that carefully. It gives the city of New Orleans by vote of the elected representatives, the right to assume these non-hurricane protection functions, which are not self-sustained.

Mr. Shannon: Under the present constitution, the Orleans Levee District is under the present constitution. In our proposal, it would be eliminated from the constitution and relegated to legislative action. Here, if I read this right--and I can read it no other way--that you are only providing that the city of New Orleans by simple ordinance, can absorb the Orleans Levee District.

Mr. Lennox: Well, that's not right, Mr. Shannon. I suggest you have to read it again. Read carefully the words, exercise such other powers and functions which seem to appear on the sixth line from the bottom.

Mr. Henry: You have exceeded your time, Mr. Lennox. Now, we are going to have to sort of slow this thing down, it looks like, because it's five o'clock.

Personal Privilege

Mr. Burson: Mr. Chairman, fellow delegates, I asked for personal privilege today because I know you all have all read this editorial that has been passed out here. I wanted to say that it was with heavy heart that I realized that our complicated legislative procedures in this body were beyond the understanding of some of the people who had been assigned to cover this convention, who apparently have never heard of the old legislative technique of loading the wagon to kill a bill that you are against, although Mr. Morer, in the Morning Advocate, did a good job of explaining that the day after we had the debate on the firemen and the policemen. In order to perhaps help some of the reporters here whose personal viewpoints of the issues may be clouding their understanding of the process, I would like to take, at this time, the opportunity of awarding to a particular reporter a copy of the Times-Picayune, the Shreveport Journal and the Advocate, so he can look at a good newspaper and learn what's going on in the convention.

Announcement

[1588]
Thursday, October 4, 1973

ROLL CALL

[91 delegates present and a quorum.]

PRAYER

Mr. Stovall: Let us pray.

Eternal God, who dost--well, that's--you know, who in the beginning, when the earth was without form, a void and darkness covered the earth, said, "Let there be light," and there was light, and there was order to our houses; and Who, when Your ancient people were in bondage, You opened up for them a way into the Promised Land, into a new day and a new future, we pray that You will open up for us, as a state, a new possibility, a new future. Increase our faith in You, in one another, and in ourselves, and enable us to make the decision to be Your people and to move forward. 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

Mr. Poynter: Committee Proposal No. 17, introduced by Delegate Perez, Chairman, on behalf of the Committee on Local and Parochial Government, and other delegates, members of that committee: A proposal making general provisions for local and parochial levee districts, levee districts, and other, the financing thereof, and necessary provisions with respect thereto.

The status of the proposal is that the convention has adopted, as amended, the following sections, being Sections 1 through 30, with these exceptions: Sections 2, 4, 10, 20, 25, and 30, which the convention has voted to delete from the proposal. In addition, by motion of Delegate Perez and adopted yesterday, the convention has passed over at the present time, consideration of Sections 31 through 43 in the proposal; as a consequence, presently has under its consideration Section 44, dealing with levee districts, some amendments to, and the proposal as presently amended, and, in particular, at the present time, under discussion on the floor is the Lennox proposed amendment, adding a proposed Subparagraph 3 between lines 1 and 2 on page 24.

Mr. Henry: All right. We're in the midst of the debate on the Lennox amendment.

Further Discussion

Mrs. Warren: Mr. Chairman, and delegates, I don't have the expertise to stand here and talk to you as Mr. Lennox spoke yesterday. But, I do support his amendment which is defeated. It only takes one who has gone through a flood, and walked out of his house with water almost up to his neck, to know what it means to have a real good levee board, and one that would do its job instead of trying to take on so many other functions. It was stated from the audience yesterday: Was Mr. Lennox trying to turn the Orleans Parish Levee Board over to the city of New Orleans? This is not what I'm trying to do, but I would like to make it perfectly clear that I'm opposed to the way that they have been conducting their business. I'm not so interested in "sacred cows" because when a cow gets to the place that she doesn't produce milk, she's only good for beef, and beef, you only eat it once in the people of the city of New Orleans being safe from floods. I'm interested in them carrying out their duties as they should be. I'm going to ask you all to think and remember back when I stood here and I said a prayer, as I looked over this state, for many people who had lost their homes and their cattle and other things, I alone--not I alone--but someone could be in sympathy with them because many in our areas in 1965 were placed in the same situation. I got home at around 3:00 in the morning with my slippers on, and they were floating like a boat, and I didn't have anywhere to go but in my attic. So, I'm saying to you, if you think this is a problem that is only unique to the city of New Orleans--and I don't ask for any exceptions across the state--but a drowning man doesn't care who throws him a rope, so will you please think about us, when you decide to vote on this amendment, that these people would like to have their lives preferable to a levee board that does not want to do its job and a new amendment is not going to hurt it one bit. I'll yield to any questions if I'm able to answer them. If I don't, I'll yield to Mr. Lennox.

Further Discussion

Mrs. Zervigon: Mr. Chairman and delegates, I rise to speak in opposition to the Lennox amend- ment. While the concept may be good, of restricting levee districts to levee and flood control activ- ities, that could be accomplished under this commit- tee proposal where it says that, "the legis- lature may reorganize or provide for the reorga- nization of levee districts." But, the Lennox amendment, as it is drawn, would leave rather a hiatus in that the levee board in New Orleans Parish would be forbidden from operating various services--and it is not too clear how sweeping that is--including bookkeeping and grass cutting and that sort of thing. The city of New Orleans would therefore, I assume, be mandated to pick them up, and it is not at all clear to me that the funds generated by some of these services would be sufficient to allow the city to pick them up. If the city couldn't pick them up, or didn't want to, what would become of some of these services? I know that we've had some unfortunate flooding in New Orleans in the past. The levee board is at present trying to correct that. It's very difficult to provide a levee system that will keep every drop of water off of all the people, under every circum- stance. But, let me point out to you that in the constitutional amendments that have been defeated at the polls, would be the millage that would allow these extra levees to be built--these hurricane protection levees to be built. I'm not going to blame the levee board, when they are only able to levy two and a half mills and all other levee districts may levy five mills, for activities that they are not able to perform because they have not been defeated at the polls with constitutional amend- ments that would allow them this extra millage. So, I urge you, read this carefully. Do not amend the constitution hurriedly. Give it your full considera- tion, and in the end, I hope you will reject this amendment.

Questions

Mrs. Warren: Mrs. Zervigon, I'm not trying to force anything, but I want to know this: you mentioned the millage, and it would be preferable vote for it, but under the circumstances, with all the big business that the levee board has gone into, couldn't they have made enough money to have built those levees? All of this that Mr. Lennox gave us yesterday--he says it is true and he can prove it--this is not going on. With all the money that they could have made through their business dealings, I think they should have had enough money to build some levee board. I'm kind of green at this, and I'm trying to really get to the bottom of it.

Mrs. Zervigon: Well, Mrs. Warren, the last time the Orleans Parish Levee Board branched out, so to speak, I believe, was when they reclaimed land in 1954. The airport was built, they leveled the thirties. This is not something I've expert
at, and the expansion train began as just as a similar period. Subject from the beginning, by a certain point, it is very difficult to explain to the average man. And so for not having a record that must be kept up by the levee board, and a levee board chairman. There the levee board must be in the city to get the services of the levee board. But let's not cut the levee board off from immediately, immediately, in the passage of this constitution. Let's provide for an orderly transition as we have in the judiciary, for example, and as we have in all the other articles. The committee proposal, as prepared, provides for this orderly transition on the action of the legislature. It doesn't cut them all off immediately, right now, and shove them over to the city, and give the city, for example, another airport to operate.

Mrs. Warren This amendment wasn't saying to abolish the levee board. It was saying what they were supposed to do; this was my understanding.

Mrs. Cervignon It says that the levee board may operate other services. So, our argument there is a flood protection, and the administrative thing, and aside from that, they may do nothing. I'm saying, let's get them operate these services. For a while, until we can provide for the orderly transition. I believe that there is a fairly general agreement that a lot of these services should be done, this we believe, in the way of the amendment. Perhaps, there ought to be a state transportation authority that operate all airports in the state. But let's not cut the levee board off from immediately, right now, without some deration of one as opposed to another. It ought to operate what it does sensibly over a longer period of time so that we can plan for it. I am saying, the levee amendment does not all for that, it is not.

Mrs. Warren Well, I didn't understand; I didn't think it was going to be done tomorrow, but it was also thinking about a lot more, than this just back on the rental of things that we would have gotten money from that.

Mrs. Jessee Well, Mr. Warren, those village levees, the levee board has been in there, there is a constitutional amendment, of course, in the Ninth Ward as well as a part of the Ninth Ward. It is just that we get some very prominent little cities, it's nationally organized. I believe, it is what I'm saying.

Mr. Ferguson Mary. I have an agreement with you. I do feel that the levee board provides services and is doing those things which other agencies are we feel are important.

Mr. Towers They operate on franchises, and a constant part. They make regulations and this, and these that go on because we don't have control of them. And when you make laws you make them very general, but you also make laws that shall the city have control of those things, take it your while.

Mr. Towers I am also one of the people that the Ninth Ward action is. Mr. Tower

Mr. Ferguson What's the Chincoteague? What's the Chincoteague?

Mr. Ferguson Mr. Warren I have read the appearance of the people who are involved with the city, and I think we need to hear from the people who would have to give us the two main positions on this.
must be spent only on levee improvements,' and that's what this amendment is all about. Now, if this amendment is adopted, contrary to what you've heard, I attempted to get the advice of the counsel representing the city of New Orleans in drafting this amendment, in order that the amendment, if passed, would be acceptable to the administration of the city. I conceded to counsel for the city of New Orleans certain points in the drafting of this amendment, and I assumed, until an hour ago, that this particular amendment was acceptable to the administration in every manner, shape and form. I have been surprised that that seems not to be the case at this late moment. Now, let me say one thing: the Orleans Levee Board, if this amendment is adopted, would still be a viable agency of the State of Louisiana. Its members would still be appointed in exactly the same fashion they are appointed today: by the governor, resulting from recommendations made by legislators of Orleans Parish. Now, those who oppose this amendment simply do not want to confine levee boards to the critical business of protecting life and property of citizens taxpayers from abnormal tides. They would have you believe that it is proper to continue to use tax revenues raised for flood protection to construct and maintain fish traps, and to operate pleasure boats and yachts for the use of a privileged few. This, I submit to you, since 1927, in Orleans Parish, has been a tool to promote the political ambitions of those and contrary to the public interest. If you want to retain the status quo, if you want your levee boards in the airport, cocktail bar, marine business, then vote against my amendment. If, on the other hand, you want flood protection for flood protection taxes, you have an alternative in alternation to vote for the amendment. Thank you for your time. I move the adoption of the amendment. I ask for a record vote.

[Record vote ordered. Amendment rejected: 46-64. Motion to reconsider tabled.]

Amendments

Mr. Poynter This one is distributed with just the name 'Nunez' on it. Do you want to be a coauthor on this, Mr. Pugh? All right. Mr. Pugh does want to be a coauthor. Amendment No. 1. On page 23, line 26, immediately after the words 'commissioners of,' and before 'shall' delete the words 'such districts' and insert in lieu thereof the following: 'districts hereinafter created.' Amendment No. 2. On page 23, line 27, delete the semicolon '; ' after the word 'districts' and insert in lieu thereof 'as provided by law.'

Explanation

Mr. Nunez Mr. Chairman and fellow delegates, this is in line with the amendments that we had... we passed yesterday that the committee agreed to, and after careful study of them, and talking to some of the staff, it was determined that possibly it did not do what we wanted to do—that was to create, to allow the legislature to make... to provide laws, to make the appointments to the various levee boards that are hereafter created or hereafter constituted, rather than those that will be consolidated. This, we believe, does what many of the amendments did, to provide a procedure whereby we can establish by law the manner in which these levee board members shall be appointed. It's similar to... it's exactly what we did before, but we weren't sure that what we did before did do what we want to do now.

Further Discussion

Mr. Perez We see no objection to the amendment; it just makes it clear that it applies to existing levee districts, any levee district that might hereafter be created. If there are no...

Mr. De Blieux Mr. Chairman, as I read this amendment--it's a kind of point of order to this--it looked like to me this is a duplicate of the very amendment which we adopted yesterday.

Mr. Perez Well, the problem, Senator, is that if the language some people are not totally satisfied with, they wanted to take it sure that it applies, that this reference applied, not only to the districts which would be consolidated, divided, or reorganized, but would also apply to all levee districts. That's the purpose for the change in the wording, and the wording is different from that which was submitted yesterday.

Mr. De Blieux It looks like to me--I just say that—that you're doing identically the same thing that you did yesterday. Maybe I'm wrong.

Mr. Perez It just further clarifies the language, Senator.

Point of Information

Mr. Jenkins Mr. Chairman, we're still having some confusion as to what amendment it is. Could the Clerk help us?

Mr. Henry Read it again, then, Mr. Clerk, if you will.

[Amendment reread.]

Mr. Perez I'm advised by Senator De Blieux now that he had the wrong amendment before him, and I don't believe he has any question about it now.

Questions

Mr. Goldman On this amendment... these two amendments we're talking about now, Amendment No. 2 is already in there. Amendment No. 1 would change a little bit, but we could do away with Amendment No. 2, I think, because that's already there. That was done by amendment yesterday. So, all that's necessary, isn't it true, is Amendment No. 1 to do the change?

Mr. Perez Well, I would then ask for a division of the question, and if the Chair will advise me that Amendment No. 2 was adopted on yesterday, then, of course, I'd urge the adoption of Amendment No. 1 and the defeat of Amendment No. 2.

Mr. Poynter Mr. Perez, if it's all right with you and the author of this amendment, I think, perhaps, an easier thing would be to withdraw this set of amendments, strike out Amendment No. 2, and then make it clear in Amendment No. 1 that it effects the deletion of the prior Nunez amendment. On page 23, line 26, delete Amendment No. 1 by Mr. Nunez yesterday.

[Amendment withdrawn.]

Amendment

Mr. Poynter It would read as follows:

Amendment No. 1 [by Mr. Nunez]. On page 23, line 26, strike out Amendment No. 1 proposed by Mr. Nunez and adopted by the Convention on October 3, 1972, and immediately after the words 'commissioners of' and before 'shall' delete the words 'such districts' and insert in lieu thereof: 'districts hereinafter created.'

[Amendment adopted without objection.]
Mr. Kelly, Chairman, I would like to start with a question on the levee districts. Mr. Roy said that if we decided in the future to consolidate levee districts, they would have to be reorganized. Is that correct, Mr. Roy?

Mr. Roy: It is correct, Mr. Chairman. If we decide in the future to consolidate levee districts, the levee districts would still exist, but the levee board would be reorganized.

Mr. Kelly: Is it not true, Mr. Roy, that you have already had one type of levee board organization?

Mr. Roy: Yes, Mr. Chairman. We have had several types of levee board organizations in the past.

Mr. Kelly: Then, in your opinion, would it be possible to reorganize the existing levee districts into a single levee board?

Mr. Roy: It is possible, but it would require a constitutional amendment, Mr. Chairman.

Mr. Kelly: That's my understanding, and yet, at the same time, you have said that levee districts should be consolided, modified, or anything else with respect to levee boards, don't we?

Mr. Roy: In general, yes, Mr. Chairman. However, it would require a constitutional amendment to consolidate levee districts.

Mr. Kelly: That's my understanding of it, Mr. Roy. And just simply says, the legislature may provide for the consolidation of levee districts, and that levee districts may be reorganized into single levee boards.

Mr. Roy: Yes, Mr. Chairman. However, it would require a constitutional amendment to do so.

Mr. Kelly: That's correct, Mr. Roy. It's pretty easy for an individual that can do it. Mr. Roy, do you envision great confusion if we decide in the future to consolidate levee boards into a single levee board?

Mr. Roy: It is possible, but it would require a constitutional amendment, Mr. Chairman.

Mr. Kelly: I did not say that we would be changing the levee board structure. I would say that we would be reorganizing the levee districts into a single levee board. It would be a much simpler process than a constitutional amendment.

Mr. Roy: That's right, Mr. Chairman. However, it would still require a constitutional amendment.

Mr. Kelly: Wouldn't you reorganize into the statewide levee district if you wanted to?
the investment of everybody in your district being jeopardized, you take a little bit different view. Now, this section, as presently written, gives you the authority. It sets up in the constitution the provision that these levee districts that are in effect, stay there. I don't anticipate that the Mississippi River is going to flow north; I think it's going to continue going like it is. I think they are going to continue keeping the Atchafalaya up like it is going to run down hill. It's been doing it a good many years, and you're not going to push it any other direction because it is going to be any major need or any need for any major change in the system of levees. There will have to be some corrective measures made; there will have to be some bypasses made, maybe some shortening of channels, those kind of things. There is a provision in this proposal, like it is now, whereby the legislature can consolidate. That leaves room enough for growth factors; it leaves room for the changes that you may need as time goes on. I personally feel it is in the best interest that we leave the constitutional levee boards like they are levee districts like they are—with this provision in there where those changes can be made as years go on, and I see absolutely no reason to delete them. So, I urge the defeat of this amendment.

Questions

Mr. Goldman Representative Womack, do you know that I agree with you, and I'd like to ask this question so that the delegates can hear your answer to it? In view of the fact that we have to get this...number one, we have to get this new constitution passed by the general...by the citizens of the State of Louisiana, and if levee districts are taken out of the constitution, the way the press may handle this the people are going to get so confused with what if they have a flood between now and the time the legislature might act again, what will happen, they might get in their minds that they are not going to be provided for as far as flood protection is concerned. Don't you agree that that might be an element in whether or not this constitution is passed or not?

Mr. Womack Mr. Goldman, this...I agree with you. This is just another one of the items that it would do absolutely no good to delete it, but it would certainly give opposition to this final document a good prey to fall on. I think they could really make hay over it.

Mr. Chatelain Delegate Womack, do you realize that I support your position on this? I think this is...we spent a great deal of time, Delegate Womack, to provide that these various levee boards and commissions could be appointed or elected. After all this time, I think there's a great need to remain in the constitution. Don't you, sir?

Mr. Womack Thank you, Mr. Chatelain.

Mr. Lanier Delegate Womack, did you know that if we didn't have proper levees in many places in Lafourche Parish, we'd be in bad, bad trouble?

Mr. Womack I think you'd be in the same trouble all of us are in. In fact, I can show you some half a million, million dollar losses up in my area, now, even with everything we have. It could be a lot worse than that.

Mr. Lanier Aren't you familiar with the fact that the United States Corps of Engineers, in testimony before the Local Government Committee, said that one of the most efficient State of Louisiana is one of the most efficient in the Mississippi River and Tributaries Project?

Mr. Womack The reports that I have had all the way through is that the levee system in Louisiana has been the best maintained, the best look after, the best supervised of any place in the entire Mississippi Basin. That's the information I have.

Further Discussion

Mr. De Blieux Mr. Chairman and ladies and gentleman, it wasn't too long ago that Representative Womack stood before this room and made a very good speech, in my opinion, with reference to the responsibility of legislators, and the fact that they were not going to do all the things you could not respect them or depend on them. Now, to have him get up here and say that just by the mere fact that the levee boards are not going to be in the constitution and that it will be tended to by legislators seemed to be a contradiction of his previous attitude. I want to say this: I support this amendment because it doesn't make any difference whether we have constitutional levee boards or legislative levee boards. The fact that they are in the constitution or not in the constitution is this: will they get the flood or cause one. That is done by the flood waters, and we are going to handle the situation with floods as best we can. I'd like to see this, having served in the legislature for a little while, the legislature is made up of individuals just like you and I. If this is a responsible body, they are responsible. If you can't trust the legislature, you can't trust this body. If you have any respect for this particular body, you should have it for your legislature. I just think that this is one of the things that we don't need to clutter up our constitution with. Therefore, I ask you to delete the amendment. You are not abolishing a single levee board, just the mere fact that it's not in the constitution. I ask you to approve of the amendment.

Further Discussion

Mr. Nunez Mr. Chairman and fellow delegates, you know, there's a lot been said about levee boards. The legislature has been dealing with this problem. There was a study committee, and they issued a very lengthy report after a very lengthy hearing. I guess you can say there were bad levee boards in this state. I guess you can say there are presently bad levee boards in this state. I guess you can say there will be bad levee boards in the future. I guess you can say there are bad legislators in this state, or there have been and there will be in the future. Or, there have been bad governors, and there are...I'm not going to say there's a bad governor now. But, there are bad presidents. You could take it right down the line. But, let me tell you, let me tell you what I've experienced in the past. In five years, my particular parishes have been hit by Camille and Betsy and completely wiped out. I mean Plaquemines Parish, the lower end of it, was devastated to the point that where there was a home, there was a set of stairs left or there might have been a bathroom fixture. St. Bernard was the same way. That's twice in the past five years. The Corps of Engineers calls these one hundred year hurricanes, but we have had two in five years, two in five years. In the past fifteen years, we have had about four of them. The area that I represent has been totally wiped out at least three times and inundated at least five times. When you get people without any water, they do not come back. The United States Corps of Engineers cannot do it. They admit they cannot do it. Certainly, the Corps of Engineers, the first claim, the second claim, the third claim, the levees located there after your levees are destroyed. They will help you repair them, but the water is there;
the damage there, the hurricane there, and they are repairing your levees. I'll never forget Betsy. Mr. More asked a question about the levee defense, and these other people can do it well. I'll never forget the noise that Betsy was making, down, down the delta gap between St. Bernard and Plaquemines and they tried desperately to get some of the levee defense officials and the national guard officials, and we just couldn't get them. So what happened? Ninety-five percent of all the equipment that they use will be under water two hours after the levees are flooded, two hours after we had not one piece of equipment. My whole point of this, if you do not allow, if you do not allow the people, that is the only people that I have ever seen out there, not after the disaster, but during the disaster and before the disaster. That is what this means, if you don't constitutionalize levee districts, I think that what the amendment is all about to delete the provision or constitutionalize levee districts. If you allow the emotionalists at the moment because a levee board member gets involved in some scandal, and the legislature, by an act, can abolish all of the board, then they are under the Department of Public Works. I believe we are making a serious mistake. I believe we are making a serious error. I believe that the only place for these levee districts to get the complete protection in this state is in the constitution. If you read the report that the legislature themselves made, they recommend there that: there are a few other things that we're not going to do. All we are trying to do is put them in the constitution. You know, there's been a lot of remark from some people that I'm sure that have never been flooded, that don't know what the levee is all about, and that certainly wouldn't know how to handle it if there was a levee district. I'll yield to a question. Judge, you keep raising hands and ask all that. Do you want to ask me a question?

Mr. Henry: Well, we've got several that go when you get through with your remarks, Senator.

Mr. Nunez: My whole point, ladies and gentlemen of the convention, I think it's absolutely necessary that these levee boards remain in the constitution. I think it's vital, it's essential for the continued growth and the continued prosperity of our state. There is off the coast of Louisiana where you have a lot of growth oil wealth and a lot of fish vault, a lot of natural resources are completely protected by these levee systems. The reason why we have to have the ability to have new levee systems, at the request of the people, that down in Lafourche Parish, two years ago we just created another levee district. They flooded again, all over there like they flooded annually throughout all of the natural systems of Louisiana. I think it's vital that we keep these levee systems in the constitution. Mr. Chairman, I'll be glad to yield to any question.

Q. M. Blythe: Senator, Senator Nunez, how many hurricanes are there in the state of Louisiana, in the past few years?

Mr. Nunez: Senator, Senator Henry, do you think having this in the constitution would prevent?

Mr. Nunez: Mr. Blythe, do you think there is a point in the whole thing?

Mr. Blythe: I was listening to you and I heard all your objection to the hurricanes. I just wonder Nunez if you think you would prevent by having this in the constitution.

Mr. Nunez: Well, naturally, mine of the would be prevented by having this in the constitution.
speakers who said, "The authors of this amendment don't know what it is to be in a flood. They don't know what it is to live along a levee."

Well, that's bull, and they know it. They must not know where Don Kelly and I live. We live along the banks of the Red River. My livelihood as farmer is dependent upon the protection of that levee. No later than this last year we lost fifteen hundred acres under fifteen foot of water for the whole year. That is a difference. It is untrue, patently untrue, to say that by putting them in the constitution we've done anything. Read the section. All it says is 'the legislature may.' What Don Kelly and I are trying to do is let the legislature do its will. They represent us. They are going to protect us. They are going to make sure these levee districts buck up and shape up and give the kind of performance we need. Now, what we're asking here is to take verbiage out and give the right to the legislature to protect these levees and to meet the needs of the day, not to freeze it in the constitution, one way or another. It amazes me in the months I've spent in this Constitutional Convention to see how we can come up with such obvious and so clear and so vital and have so many of us sit on our seats and use those same seats to do our thinking for us. It is time to stand up--perhaps too late, but better now than never--to stand up, and let's write us a constitution. Not one chocked full of this kind of stuff, but one which shows faith in the legislature, one that shows a need of the legislature to have the flexibility to meet the needs as they come. Now, by saying we're not trying to destroy the levees, we're trying to maintain their integrity by giving them the real strength that we have in the law. That is, when there's a problem, it can be changed. The levee district in New Orleans won't have to spend six hundred thousand dollars, or whatever the figure was, to try to get a constitutional amendment through last time so they would have the right to do what the legislature should have been able to grant them. I beg of you, I ask you to think on it and think about it. Let's use us. Let's take this legislative matter out of our basic law and give it to the people that represent me and you, our legislature.

Questions

Mr. Ginn. Mr. Roemer, in your opinion, would it... if we took this statutory material out of the constitution, would it in any way affect the existing levees and the levee boards by taking it out and putting it in the statutes?

Mr. Roemer. It would only affect them, Mr. Ginn, if some future state legislature saw an obvious need and met it. We're giving them the right to do that. You know, yesterday, we had a chance to really strike a blow to make these levee districts shape up. We had a chance to make them go to the people. We missed that chance yesterday; let's don't miss it today.

Mr. Stoval. Mr. Roemer, are you aware that Senator Lauricella from Jefferson Parish and the study committee from the legislature on the levees recommend the same type of constitution? This is the legislative recommendation. Were you aware of that, Mr. Roemer?

Mr. Roemer. No, I was not, and I can only answer that by saying I'm glad to see the legislature studying the problem. I'd like to give them the right to do it every year.

Mr. Stoval. Well, this is their recommendation. Furthermore, Mr. Roemer, you're rather emotional about this, aren't you?

Mr. Roemer. Oh, no more so than I am about most things I care for.

Mr. Stoval. Are you aware that about two million people in south Louisiana are emotional about it and feel the opposite way the way you feel about it, Mr. Roemer?

Mr. Roemer. Well, I didn't know you spoke for two million people, Reverend; I'm impressed. I'd only say about those two million people that if they think that we've given them anything by putting it in the constitution, that's a little bit like pabulum. I think they're bigger than that.

Mr. Womack. Mr. Roemer, do I remember you right to say that you was offered the opportunity of naming the levee board members?

Mr. Roemer. Yes.

Mr. Womack. Do you realize that as strong as an in my position is that that made me weaken just a little bit, and it looked like it more justified another system?

Mr. Roemer. Yes, I would realize that. I might say in the offering of those positions, Mr. Womack...

Mr. Henry. You have exceeded your time, Mr. Roemer.

[Record vote ordered. Amendment rejected: 39-80. Motion to reconsider tabled.]

Amendment

Mr. Poynter. Amendments sent up by Delegate Lennox as follows:

Amendment No. 1. On page 24, between lines 1 and 2, insert the following paragraph:

'"(3) The authority of levee districts to expend its revenues shall be limited to drainage, flood control, hurricane flood protection and administrative expenses. The legislature shall provide for the orderly transfer of all powers and functions of any levee district not directly related to the purposes of drainage, flood control, hurricane flood protection and administrative expenses. In such case the legislature shall further provide that the local governmental subdivision remain so and be vested with all the rights, income, resources, jurisdiction, authority and powers of such levee districts required for the exercise thereof.'"

Explanation

Mr. Lennox. Mr. Chairman, fellow delegates, the first sentence is precisely word-for-word similar to the first sentence of the prior amendment which you rejected by a vote of sixty-odd to forty-six. However, the second sentence very clearly states that the legislature shall inherit this problem and do something with it and provide for an orderly transfer of all powers and functions of any levee district which are not directly related to hurricane or abnormal tide protection functions. Now, it's just one more effort to get the levee boards of this state and, particularly, one I have some knowledge of, back in the levee business irrevocably and get them out of the cocktail bar business and the marina business, and the airport business, and give the taxpayer what he pays for--protection of his life and property from hurricane tides. Now, I submit to any questions.

Questions

Mr. Vesich. Mr. Lennox, what do you propose to
Mr. Lennox: I wouldn't propose to do anything with them, but I would suggest that the legislature, if this amendment were adopted, would provide for that.

Mr. Vesich: I mean, would you have a new law?

Mr. Lennox: Oh, no; there would be no... Mr. Vesich, you know better than that. Now, let me give you one example in answering your question. If the city of New Orleans absorbed the New Orleans Lakefront Airport into its city government and placed it under the jurisdiction of the New Orleans Aviation Board, which is a bureau of the city government, that agency operates the air carrier airport located in Kenner. If you combine the two, the rate compensatory aspects of the conflict between the city, through its aviation board, and fifteen airlines who operate in and out of Moisant would require that those airlines pick up the deficit of operation at New Orleans Lakefront Airport. It would be no burden on the city government of the city of New Orleans. As a matter of fact, it would be an asset because you would have the management of those two airports under the New Orleans Aviation Board, where it would have been since 1931 had the Governorney of the Act given this to Abe Shushan as his thing, at the time.

Mr. Vesich: What would you propose for the marina, then? How would you salvage that?

Mr. Lennox: The marina could be very easily merged into the New Orleans Yacht Harbor which is continuous, as you know, to the Orleans marina. You would have one administration, one set of telephones. You wouldn't have all that double overhead and double management.

Mr. Vesich: Who would maintain the lakefront?

Mr. Lennox: The lakefront would be maintained as a function of levee districts involving hurricane, flood control, hurricane flood protection, and administrative expenses.

Mr. Vesich: I'm talking about the grass cutting, and the maintenance of it, and the beautification of it.

Mr. Lennox: I'm talking about the grass cutting too. The area of cutting of the levee and the maintenance of that park would remain the responsibility of the levee board and the Dredge Commission.

Mr. Vesich: Your amendment says that.

Mr. Lennox: Yes, sir, it surely does.

Point of Information

Mr. Venable: Is this the only amendment that was adopted a few moments ago?

Mr. Venable: Looking at the Amendment, it seems that while this amendment, however, is not exactly the same as the last Mr. Venable questioned.

Questions

Mr. Venable: Mr. Lennox, I would like to ask you the question your explanation of this amendment to the lakefront, was really based in the operation of your own amendment, and would you tell me in any way what you think of the apparatus and the amendments?

Mr. Lennox: Well, my information, Mr. Venable, is very limited. In the last memorandum, it was stated that, at least the governing authority, of the Orleans Parish, for instance, all of the

venture were no more there preserved in the levee district, that it would be absorbed into that. I would like to point out that it must be done by an act of the legislature.

Mr. Shannon: Under the committee's present proposal, can the legislature take a vote of the people?

Mr. Lennox: Not as I understand it, it would take a vote of the election, or in my case, Orleans Parish, to amend it under the terms of your proposal.

Mr. Shannon: Well, would you want it taken without a vote of the people?

Mr. Lennox: Oh, I'm one of those guys that feel the greatest confidence in the legislature. Mr. Shannon, I think they are fully capable and competent to do the right kind of job.

Mr. Shannon: You don't think your people in New Orleans know what they want?

Mr. Lennox: I think the people know what they want. The best way to be aware of what they want is to send to Baton Rouge to govern them.

Further Discussion

Mr. Perez: Mr. Chairmain and ladies and gentlemen of the convention, I think it's perfectly clear that this is the same amendment in all of its essentials as was offered before. All you have to reject this amendment as was the previous one, and rejected. If there are no further speakers, I'll call the question.

Mr. LaBlue: Mr. Perez, do you know anything about the thing that levee boards could exchange for other than what's set out here and what's already in the amendment?

Mr. Perez: All levee districts are entities, like any other political entities, and they have a limited amount of recreational facilities. This was an attempt on the part of one of the people in Baton Rouge to strip me of my legislative powers to do the things that I do now. This amendment will do so. It will remove that I can do it. That law authorized it. See in any way why we should be able to do it. But, the explanation of this is an essential aspect of the development of the airport and to put it under the state's jurisdiction so that, in the future, that will not be a part of the function of the Levee Board, and what this amendment that the legislature should do is to eliminate that the levee board to do it. The state's jurisdiction there will be able to deal with those problems. It is a matter which would effectively be handled in the legislature with much more solid safety.
success for three and a third years?

Mr. Perez Well, sometime...Rome wasn't built in a day, Mr. Lennox. But, your amendment would do a great deal of violence to what now exists.

Mr. Lennox Well, this thought has been going on for thirty-two years, and I think it's high time we do something about it.

[Previous question ordered. Record vote ordered.]

Closing

Mr. Lennox The same question exists now as it has existed since we started talking about this at one o'clock. Do you want taxes imposed on your property for the purpose of hurricane or tidal protection used for purposes other than that? Your answer should be yes or no. Make it clear that it would be a record vote. Thank you.

Questions

Mr. Vesich Mr. Lennox, isn't the purpose of the entire levee board set out in the constitution? Doesn't it say for recreational purposes?

Mr. Lennox The Orleans Levee Board does indeed, and it was...the constitution was amended, as I recall in reading the history, something like four times in three years to create new enterprises for the Orleans Levee Board during 1932-36.

Mr. Vesich All right, now, when you are imposing that millage, you are imposing it for all of the purposes of the levee board: recreation, beautification, the airport, etc. Am I correct?

Mr. Lennox Mr. Vesich, I guess...

Mr. Vesich It's not only for hurricane protection.

Mr. Lennox I guess in the case of Orleans Parish you are right. I would like to give the people of Orleans Parish what they think they have been paying for since 1927.

[Amendment rejected: 35-75. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. [by Mr. Brown]. On page 23, line 21, after the word "district", change the semicolon to a comma and insert the following prior to the language added by Convention Floor Amendment No. 2, proposed by Delegate Nunez and adopted on yesterday:

"and at least one member of said board shall reside in each parish within such district," so that it would read as follows: or, e.g. Line 27 would read "or elected from residents of such district, and at least one member of said board shall reside in each parish within such district, as provided by law." If I said 21...that's the way Line 27 would read.

Explanation

Mr. Perez This is Senator Brown's amendment which I see no objection to. What it provides is that where you have a multi-parish district, at least one member of the board shall reside in each parish within the district. It would just guarantee each parish one member of the board. I see no objection to the amendment.

That's the present system.

Questions

Mr. Gravel Mr. Perez, under the provisions that appear about to be adopted by the convention, it's possible that the, all the levee districts, levee boards, could be merged and consolidated into one statewide district; isn't that correct? If this amendment is adopted, then you've have to have sixty-four people on the levee board, would you not...commissioners...commissioners in the districts?

Mr. Perez Yes, sir, that would be correct. All I am saying, and this is Senator Brown's amendment; I agreed to handle it. Unfortunately, Senator Brown is not here. I just--I was not thinking of it from that context. I was thinking of it primarily from how levee districts now are organized and you have some levee districts which are multi-parish districts. The purpose of Senator Brown's amendment was just to be sure that there would be one...at least one member from each district.

Mr. Gravel But don't you agree that this presents a rather serious problem if the legislature, under the authority that it would have under this constitution, were to merge and consolidate all levee districts into one statewide district, which they could do.

Mr. Perez Well, I'd have to agree with that if that were the case, yes, sir.

Mr. Lambert No, I want to ask you a question, Mr. Perez. Let me ask you this. However, if the legislature did not consolidate into one statewide board as Mr. Gravel mentioned—which was attempted, I believe, in the '72 Session and which was not successful—would not, as it's written now, could it not be interpreted, for example, that if you have eight parishes within a levee district, they could all come from one parish. Is that not possible?

Mr. Perez That's the fear of it.

Mr. Lambert And the taxes are paid by each...by all the citizens that live within each parish.

Mr. Perez And that's the fear that Senator Brown had and that's why he wanted to try to get the amendment in.

Mr. Tapper Mr. Perez, my concern is in the event there's a levee district that takes in four parishes and it's a three-member commission. We'd have a similar problem, wouldn't we?

Mr. Perez Well, I don't...and under the present situation there are at least enough people to provide at least one from each of the various parishes.

Mr. Goldman Mr. Perez, what would be the harm, in case the legislature decides to merge all levee districts into one state district, of having 66 parish each represented on that levee board?

Mr. Perez Well, of course, I would think that Senator Gravel would say that would be too large and unwieldy.

Mr. Goldman But each parish ought to be represented, don't you think?

Mr. Nunez Mr. Perez, the reason for the previous amendment that we adopted, by myself and Mr. Pugh, was to allow the legislature to determine these sort of problems. I think if we lock it in the constitution, we might be developing a problem that we can't handle.

For instance, Lafourche district that comes from the Atchafalaya Basin all the way down to Plaquemines. You might develop a problem there where Lafourche distributes...or contributes half the revenues and some parishes don't contribute any at all. If we can spell those things out in the constitution and the law, I think we'd be

[1597]
Mr. Perez. I am just trying to explain the reasoning that I have come to. I am saying that we are trying to get this amendment accepted. I think that the amendment is written in such a way that it means what it says. I am trying to explain, Mr. Perez, against the amendment...
ceilings are being imposed by the governing authorities involved. So that when a solution comes, if it's on a statewide basis for the imposition of... or rather for either a rollback or in vesting the tax to between rolling back, or providing for an increase in millage for, for instance, a levee district tax, because you are going to have to be dealing with all the various taxes which it's either statutory in nature or set up otherwise than in either the Local Government or the Revenue and Finance bills. I don't believe that we'd be doing any violence to the position of Revenue and Finance. I believe it would be consistent with an overall solution to the subject matter.

Now as far as the question of the district tax itself, Section 45 (A) retains what is in the present constitution except that it consolidates the right of all levee districts to impose five mills. Unfortunately, we had to make an exception for the Orleans Levee District because of the fact that the present constitution only authorizes them to impose two-and-a-half mills. If we were to include the Orleans Levee District in this provision, it would be administratively, through a new constitution, give... or rather impose an additional tax on the people of the city of New Orleans. That was the reason the committee felt it had to make this exception in for the Orleans Levee District because it was the committee's position that we did not want, through the medium of writing a new constitution, to increase taxes.

The Section (B) provides that in the event there is a necessity for an additional tax, there would be a vote of the people and of the district, and if the people so voted, their tax would be increased. It does not have any particular ceiling so that there would be no need in the future for any amendment.

Now I might touch just a little bit upon the question of the automatic five mill... up to five mill tax. The problem which you have is similar to the one which we had with regard to parishes and municipalities. We have a provision in our Local Government Article which would give to parishes the same authority they now have basically, four mills for a parishwide tax and seven mills for a parish tax, without a vote of the people, with the provision under the new constitution and new proposal that with a vote of the people it could be increased. So that it was the committee's position that these various agencies which are performing various functions... must have some automatic tax, that is some base, bottom tax and then from there, if they want more and if they need more, then they have to go to the people for an election.

I yield to questions at this time.

Questions

Mr. O'Neill Mr. Perez, what's a for instance of how much millage is paid in taxes for different levee boards right now? You have a ceiling of five percent in here. I'm just wondering what's paid right now.

Mr. Perez This is what is in the present constitution, what you see here, except that it's a consolidation.

I might say, by the way, for Mr. Lennox's information that in the present constitution there was additional authority for the New Orleans levee District to be some of the old millage for land reclamation and we have taken that out. So that for the... way it reads now "for the purpose of constructing, maintaining levees, levee drainage, flood protection, hurricane, flood protection, and for all purposes incidental thereto", they may impose this tax. This is the tax which is in the present constitution and I really think helps take care of Mr. Lennox's problem.

Mr. Jenkins Mr. Perez, you touched on this in your opening statement, but isn't it true that as of yet, we have no idea what assessment ratios are going to be in the new constitution, if there will be. We don't know whether the burden of taxation is going to be levied on business, or on homes or industry. We don't know all sorts of things about taxation. So when we say five mills in an article like this, we really don't know what we are saying, do we?

Mr. Perez Well, I tried to explain that. Mr. Jenkins, a little bit earlier and explained it in this fashion. This five mill tax is only a very small part of the overall taxes generally paid by people in any area. And then when the solution... when we come to the solution as to what is to be done, whether it be a rollback or an increase, etc... there would be the same uniform application say, to a levee district tax as there would be to sewerage tax. You're in the same position where all of these other taxes have either a specified amount of millage, or a ceiling which most of these people are imposing at this time; for instance, ten mills for sewerage, and five mills for garbage, etc., etc.

Mr. Jenkins Let me ask you a substantive question about it. Under Section (B) there is really no limitation whatsoever on the taxing authority other than vote of the people.

Mr. Perez That's correct.

Mr. Jenkins But formerly, people, just property owners could vote, and they could vote their assessment. Now, it's up to a popular vote. Isn't it more important now than ever that we have fixed limitations in the constitution in order to protect the property owner?

Mr. Perez I would say that we have a similar provision in the present constitution which does not have a ceiling. Of course, I recognize the problem that you pose.

Mr. Champagne Mr. Perez, why do you want the "not to exceed five mills on the dollar"? You want it in the constitution because they will actually have a right to that much? Is that right?

Mr. Perez Yes, sir. You see, again, it's just like the alimony tax for municipalities and for parishes. The committee felt that we should continue the same position that certain agencies should have the right to... right to... automatic authorization for the imposition of taxes.

Mr. Champagne Now, the legislature could grant you that right, if they chose to.

Mr. Perez Yes, sir. Maybe they wouldn't, and that's the problem.

Mr. Champagne That's correct. O.K.

Mr. Lennox Mr. Perez, do you know that your concern for the city of New Orleans and its citizens is deeply gratifying?

Mr. Perez Thank you, Mr. Lennox.

Mr. Kean Mr. Perez, isn't it a fact that we indicated to the Revenue and Finance Committee, that on these sections which had millage provisions in them, that we would only move to reconsider, and not put them on the table so they could be changed or if there were drastic changes in the assessment picture later?

Mr. Perez Yes, Mr. Kean, I'm glad you brought that up. When we met this morning with the Finance Committee, we made the suggestion that we would not lay any of these tax provisions on the table so that they could be reconsidered just with a majority vote. It was my feeling, anyhow— and I can't speak for the committee because we
60th Days Proceedings—October 4, 1973

haven't had a meeting—hit that we should try to dispose of as much of this local Government Article as we can before we get off of it, because the Lord knows when we will ever get back on it again.

Mr. Lambert: Mr. Perez, on page 14 where it says on all taxable property situated within the alluvial portions of said district subject to overflow; does that change the present constitution?

Mr. Perez: No, sir, that's exactly as it reads in the present constitution.

Mr. Lambert: Well let me ask you this, just for my own information. Would that include, for example, backup water, or what? For example, could this conceivably extend the boundaries of a district in...parishes subject to the tax?

Mr. Perez: This will not extend anything, because these are the exact provisions which are in the constitution now and...I'm really, of course, I'm really not sufficiently familiar with the subject matter because all of the land on which we live is totally flat and all subjected to overflow.

Mr. Lambert: Yes, but you are talking about all the districts, not just the nearest in your area.

Mr. Perez: I understand that. I say I am not sufficiently familiar because the present provisions except that it was in the present constitution and I assume, it's possible in some areas in North Louisiana where you may have valleys and hills, that the hills may not be subjected to the tax whereas the valley is. But whatever, whatever the present situation is today that's what we tried to maintain. We did not make any change.

Mr. Lambert: Let me ask you one other question. Is it in the present constitution that a levee district can levy from one to five mills without a vote of the people? This is just a general alimony type provision?

Mr. Perez: Yes, sir. This is an alimony type tax. It's exactly the same thing which is in the present constitution except that we consolidated the special provision on the Orleans Levee District with the general five mill provision.

Mr. Lambert: But the people don't vote on the one to five mills.

Mr. Perez: No, sir, they do not vote for either two-and-a-half or five mills.

Amendment

Mr. Gravel: the first set of amendments offered by delegate Gravel.

Amendment No. 1. On page 24, delete lines 5 through 6, both inclusive in their entirety.

Explanation

Mr. Gravel: Mr. Chairman and gentlemen and gentlemen of the Convention, I have a matter of discussions with other delegates about the fear that I have regarding war taxation action on section 45 amplitude of the alimony. Total alimony of what we are going to be doing. I have other amendments that would delete section 49, and also section 48 for the same reason. Now, let me point out to you what I think is exactly the situation.

Mr. Gravel: Civil War provisions are not to be stretched out any longer. It's all taxable property that is required, and it is all taxable property that is required within the district.

Mr. Lemoner: Mr. Gravel doesn't like section 40,27 up what's called an alimony tax in the district.

Mr. Lemoner: That's correct, yes, sir.

Mr. Gravel: That's correct, yes, sir.

Mr. Lemoner: Isn't that similar to any statute maintained anywhere local or State or Federal law?

Mr. Lemoner: Yes, Mr. Lemoner, as an amendment to the idea that we have to have some control for the local government to be able to do an individual tax, such as the alimony tax, or to be the one tax that the local government cannot do. I assume that what you mean is this would be the disadvantage of the State.

Mr. Lemoner: Well, if we read in 45, we're talking about alimony, and it's all taxable property that is taxed within the district.

Mr. Lemoner: Yes, we say charge that the alimony by an amend to say assessed valuation. We use the word alimony is a word. I don't think we ought to consider now, and I thought it'd be deleted. Particularly, it's on page 49 where the word assessed value are really one of the most important things. We are only do at this convention, and one of the things we can only do intelligently and sensibly, to define assessed valuation. There are no ways, ladles and gentlemen of the convention, that we can do that unless we are very careful of the concepts and the positions that are going to be asserted and placed before us by the Committee on Revenue, Finance and Taxation. If we don't wise, or at least, absent the presence of particular provisions, we are going to be operating in the dark or, worse still, we are going to be writing in the Local and Parishial Government Article, definitions or implications that may not have any effect or any validity on the entire revenue provisions of this constitution as a whole. It's not make the mistake of proceeding here under false premises. By that I mean we cannot move forward intelligently unless and until we have the standards that we are entitled to have considered by this convention after Revenue and Taxation takes its recommendation and reports to us.

Frankly, my own personal view is that in fairness to state government, and in fairness to parish and parochial government, we should consider taxation and revenue matters integrally, at least side by side, so that we don't take the piecemeal, or so that we couldn't ourselves down somewhat generally in areas where we are going to really work substantively later on when we get to Revenue and Finance. I think that our Committee on Revenue and Finance and Taxation and Taxation is a serious point, one that I urge you consider very carefully. This is not to say that we are opposed in principle to the kind that emanates from section 45 or 46: it is only to say let's put our house in order and consider these things properly and in the proper place. Therefore, I urge that you accept this amendment to delete section 45 at the time so that we can consider this or this bill, and the other later, either as a proposal in the local and parochial government Committee with Revenue and Taxation, or as a recommendation that will come from that committee when finally, in the committee, that's going to take it to us in this area.

Vice Chair on Aye of the Day

Amendments

Mr. Lemoner: Mr. Gravel, doesn't like section 40,27 up what's called an alimony tax in the district.

Mr. Lemoner: That's correct, yes, sir.

Mr. Gravel: That's correct, yes, sir.

Mr. Lemoner: Isn't that similar to any statute maintained anywhere local or State or Federal law?
Isn't it true, Mr. Gravel, that this is a permissive assessment, not to exceed five mills and that the district would not have to assess the whole five mills?

Mr. Gravel That's true, Mr. Lanier, but I think you just completely miss my point.

Mr. Lanier One other thing, Mr. Gravel, won't we have this same problem with all of the statutory maintenance millages? Couldn't we provide a rollback provision to take care of this?

Mr. Gravel The rollback provision, or the adjusted millage concept, is something that we are going to have to consider. But that has nothing to do with the contention that I'm making, and the contention that I strongly make now is that we have not yet put down the foundation upon which we can approach revenue and taxing provisions. We are not going to be able to determine what we mean by 'assessed valuation.' This is not the place to make that determination.

Mr. Nunez Mr. Gravel, I don't quite understand why you are attacking the provision "on the dollar." Regardless of what Revenue and Finance and Taxation come up with, the dollar will not be changed by it. The value of the dollar will be there. It is just used as a unit to say "five mills on the dollar." Regardless if, in the event it comes up with a five percent or a ten percent of assessed value, it still would not change the "X" number of dollars that will be available for taxation.

Mr. Gravel But it's very clear, Mr. Nunez, that if that concept is true, we have to have developed the adjusted millage concept in order to know how much revenue we are talking about, or exactly what we are giving...what authority we are giving.

Mr. Nunez Well, in the revenue...isn't it true, in the Revenue, Finance and Taxation Article, if we do come up with a high assessment figure and the five mills is too much, we automatically have, a rollback provision whereby they would raise less or more money depending upon what they needed to do.

Mr. Gravel We haven't adopted any such provision yet. We haven't considered any such provision yet. That's my point.

Mr. Nunez But we have. Haven't we considered...we just adopted Levee Boards and from my knowledge of levee boards, the only funds that they have to operate on, isn't it true, would be this millage that you're going to allow them to use.

Mr. Gravel That's correct, sir. That would be correct according to what we've done. But we still have not poured the concrete and laid the foundation for the adoption of this section until we know to what that millage is going to attach.

Mr. Nunez Really, I don't see where it makes that much difference.

Mr. Gravel Well, I didn't expect, you know, some of you to see it.

Mrs. Warren Mr. Gravel, in the light of what has just happened this morning concerning Orleans district, would you say that the tax was the only dollar...on thing that they had to consider to operate on?

Mr. Gravel Well, I believe that the only revenues that the levee district...

Mrs. Warren I mean, listening at what happened this afternoon and yesterday, would you say the only revenue coming into Orleans Levee Board was the tax dollar, to operate on?

Mr. Gravel No, I think they have other...other revenues.

Mrs. Warren Thank you.

Mr. O'Neill Mr. Gravel, under the committee proposal, I want to ask you a couple of questions about it we didn't get a chance to ask Mr. Perez. Right...the old law as I understand it says that property owners would be able to vote on these millages, but the federal courts have since said that everyone will vote on them. Is that correct?

Under the committee proposal, in the second part of it, there is no ceiling on the millages. So, in effect, you would have just the total electorate possibly voting, you know, as much as fifty mills onto the property owners of a parish. That's one of my concerns about the section. That's why I would be for your amendment.

Mr. Gravel I don't...Thank you for saying that. I don't have as much concern about that additional permissive possibility by a majority vote, but I'm still concerned about our constitution--the starting point we should have in order to consider this section.

Mr. Nunez Mr. Gravel, your amendment would delete the entire section, as I read it.

Mr. Gravel That's correct. At this point it would.

Mr. Nunez At this point. Well, where would you attempt to put back into the constitution the provision that these people can levy the millage. Shouldn't we be...now my question is: should we not defer an action if it's as serious as you say it is?...I mean deleting it?

Mr. Gravel If...Mr. Perez and the committee had been willing to do that, I would not have proposed this amendment. I had asked that that be done. It was my understanding that the committee was not willing for it to be done.

Mr. Shannon Mr. Gravel, we've already established the levee districts now. Now, you are not wanting to provide the necessary funds for them to operate on.

Mr. Gravel Mr. Shannon, that is not correct. I am saying we shouldn't try to provide "cheer in a vacuum." What we should do is wait...when we consider all matters relating to revenue, finance and taxation, and make this part of that consideration. Then the basic criteria can be determined and approved by this convention. Principally the one...one of them is the question of what do we mean by assessed valuation to which millages attach?

Mr. Shannon Mr. Gravel, did you know that this is practically the same thing that's in the present constitution?

Mr. Gravel Yes, and when it was adopted the...view of the framers of the constitution--the voters, if it came by way of amendment--had before it all other provisions of the constitution which would make it possible for an intelligent determination of this particular language.

Mr. Shannon You do know that because they are authorized to levy this five mills that they do not have to levy the entire millage. In my district that I work with, we were authorized five mills, but at present, the millage is one mill.

Further Discussion

Mr. Champagne Mr. Chairman, ladies and gentlemen, I would hope to make myself abundantly clear to each and every one of you. We had a series of
Mr. Champage. That is correct.

Mr. Burson. I am an advocate of the plan that was adopted by the committee and the legislature. I think it is a fair and reasonable plan.

Mr. Champage. For what reason did you vote for the amendment?

Mr. Burson. I voted for the amendment because I think it is a fair and reasonable plan.

Mr. Champage. Will you tell me the reason for your vote?

Mr. Burson. I voted for the amendment because I think it is a fair and reasonable plan.
find that out now. The only way to do it is to face up to the fact that the problem that has been raised by Mr. Gravel and those of the Finance Committee, who in all sincerity are troubled by the problem, is that if we only seven mills or four mills or five mills will bring in more money than it does at the present time, and perhaps more than we would yield it to be brought in, then it's more concerned with the possibility that we may end up with an assessment base that is lower than it is now, and in which case, four, seven and five may not be enough. So, what we're really arguing about is not the concept, but how many mills we're going to put in these particular sections. My suggestion would be in order to get...go forward with the concept, to decide whether or not we want to give local governmental agencies the right to levy a millage without a vote, and a millage over that with a vote, that then we simply blank out all the references to the actual number of mills in these sections. Under the circumstances, once they are adopted, we would then move to reconsider without laying it on the table and then when we come back another six or nine months after we have determined the assessment base, we then put in the amount of millage that would be required. Now, with that, it seems to me that we could move forward in an orderly fashion. We could go ahead and make a decision on our property...on local government's right to utilize the property tax as its primary taxing base, and at a later date come up with the actual millages we want to put in both as to the allowable millages and as to any limitation if we want to put a limitation upon the amount of property tax millage that could be levied for operating purposes. With that, I don't see how we can approach this any other way. We might be waiting, as Mr. Burson has indicated, until the last day to conclude our revenue and taxation recommendations with respect to assessment, and then what will we do? It seems to me that this would enable us to go ahead and complete this section, leave blank the millages and then under the circumstances, come back and cover that after we have done...after we have decided in finality with respect to property tax assessments. I yield to any questions.

Questions

Mr. Mire Mr. Kean, isn't it a fact that though we'd have to come back to the section even if we'd leave the mills blank now? So, if we've got to come back any at all, don't we again open it up for any amendments at the time?

Mr. Kean Well, my point, Mr. Mire, is that we need to decide whether or not we're going to follow this concept with respect to local governmental financing. If we're not, then the committee has got to go back and take a look at how we're going to do it, and that has nothing to do with the amount of millage that we would be authorized, or the limit on millage that you might want to set.

Mr. Mire All right. Well, don't you also agree that the concept as far as the people will be concerned...as far as ad valorem taxing will be concerned, will be whatever plan this convention does in fact accept. That will really set the stage as to how local taxes are going to be collected?

Mr. Kean I think this convention needs to make a decision now whether we're going to have continued local governmental taxation based upon property taxation. If you decide not, then under those circumstances, we get to start looking for other sources of local governmental revenue.

Mr. O'Neill Mr. Kean, would you agree that a good analogy of what you're asking us to do is to sign a blank check and to come back and fill in the figures a little later?

Mr. Kean No sir. I don't agree with that at all.

Mr. Pugh Mr. Kean, is it not conceivable that we could leave the blanks that you suggest, and then come back and find out there's a disagreement as to what should go in those blanks, and then we can't garner enough votes one way or the other to fill in the blanks to a constitution and be obligated to leave it like it was?

Mr. Kean Well, at that point, Mr. Pugh, we just all pack up and go home. That might not be a bad idea, any way.

Point of Information

Mr. Chatelain I realize that you have amendment... I mean, a motion before the house at this time, is that right?

Mr. Roy That's correct.

Mr. Chatelain All right, would it be in order that we ask for a five minute recess? I think we will get some things resolved that will keep a great deal of debate down. Would it be in order to have a three or five minute recess here?

Mr. Roy Mr. Chatelain, unless you are speaking for somebody that...you know...you know you're going to get it, I just think that...

Mr. Chatelain I think we can, sir.

Point of Information

Mr. Perez Can I ask all of the members of the Local and Parochial Government Committee to meet over in the corner on the whichever side...

Mr. Roy Mr. Perez has requested that all of the members on the Local Governmental Committee meet over here on the left, in the corner.

Chairman Henry in the Chair

[Quorum Call: 2022 delegates present and a quorum.]

Mr. A. Jackson Mr. chairman, I'll withdraw my motion if...if it's based on the knowledge and understanding that the Chairman is going to make a similar motion to pass over the sections that deal with taxation. Is that the motion...

Mr. Henry I believe that's what's forthcoming, Mr. Jackson.

[Motion to defer action on the Section withdrawn.]

Further Discussion

Mr. Perez Mr. Chairman and ladies and gentlemen of the convention, at our little huddle which we had with most of the members on the Local Government Committee and also a goodly percentage of the Finance Committee, we are attempting to work out this procedure. We would, in Local Government, temporarily pass over sections...those sections which deal with finance, such as Section 45 on district taxes and 46 on bond issues. It is my understanding that Revenue and Finance will meet tomorrow, and will hopefully report out their provisions. We would then, next take up the property tax problem before this committee. We would then defer any of the Local Government provisions until the property tax issue was settled, then we would revert back to the Local Government provisions. With that understanding in mind, and if these things all work out that way, I now move that we pass over at this time, Sections 45 and 46...to determine whether or not...and then by tomorrow,
Motion

Mr. Perez with respect to Section 47, inasmuch as we have adopted the Intergovernmental Cooperation Section earlier in the article, we believe that the Intergovernmental Cooperation Article in Section 23—now believe that it will be unnecessary to have this particular section. An amendment is being drawn at this time to delete that particular section, so I ask that we pass over it for the time being, so that when the amendment is ready we can go forward with it.

Mr. Henry Now, why do you rise, Mr. Schmitt? Questions

Mr. Schmitt I wanted to ask him a question. I don't think...I thought that we had amended it such that the Interstate Department would be...interstate type interests. In other words, this is concerned with two states' cooperation. I thought that Mr. Flory's amendment had eliminated that.

Mr. Perez No, sir.

Mr. Schmitt Never?

Mr. Perez I therefore move that we pass over...

Mr. Henry No. We need to take up...don't you want to delete it?

Mr. Perez Yes, sir. We do have the amendment ready now so it's not necessary to pass it over.

Amendment

Mr. Poynter [Amendment by Mr. Pain and Mr.

Mr. Schmitt]: Distribution copes haven't arrived, but it simply reads, On page 25, delete lines 7 through 12, both inclusive, in their entirety." [Amendment adopted without division.]

Reading of the Section

Mr. Poynter "Section 48. Cooperation with Federal Government"

Section 48. All governing authorities of levee districts which have been, or may be created, are authorized to cooperate with the federal government in the construction and maintenance of the levees in this state, on such terms and conditions as may be provided by the federal authorities and accepted by the levee districts"

Explanations

Mr. Perez Mr. Chairman, and ladies and gentlemen of the convention, we looked at this Section 48 rather carefully with the hope that we might also be able to delete it. The only thing that bothers me very much is the fact that the federal government, as you know, is very deeply involved in the construction of Mississippi River levees. I would not want us to do anything on a quick decision and have the Corps of Engineers question whether or not we should have the authority to cooperate with them in the construction of levees in the future. It's just several lines in the constitution, but it could mean hundreds of millions of dollars to the State of Louisiana. If, by any chance, we made a mistake by deleting something which might be objected to by the federal authorities and if they questioned the right of the state to the levee districts to cooperate, then we would really be in trouble. To that reason, even though you feel that this may not be needed in an abundance of precaution, I would ask that we include this article, which is the same as it is in the constitution.

Mr. Lantier Mr. Chairman and fellow delegates, Section 49 deals with a subject which has been brought to your attention on several other occasions, although not in great detail. It is the riparian servitude which exists in the State of Louisiana, on the banks of navigable streams for the construction of levees and for levee drainage purposes. It also deals with the compensation to be provided for the exercise of this servitude. Now, as a little historical background, the concept of public servitudes or easements of public necessity on navigable streams for various purposes, actually has its roots in the old Roman law. It is found in the works of Justinian and in Ulpian. It was carried forward in the Napoleonic Code and also existed in the Sixte Partidas, the law of Spain under which we existed as a Spanish colony. This servitude provides that on land which exists on the banks of navigable stream there is a public servitude for levees and roads. In particular, the servitude is codified in Article 665 of the Louisiana Revised Civil Code which comes from Article 65 of the Code Napoleon. If you will look at Section 49, you will see that lands and improvements thereon, after actually used for levee or drainage purposes shall be paid for at a price not to exceed the assessed value for the preceding year. As previously indicated in your arguments on other sections, the exercise of this servitude is not an appropriation. It is what is called an appropriation, and as you will recall in our discussion of Article 1, Section 4, dealing with the Right to property, we had deferred taking any action in appropriation. It is such time as we reached this article that the Committee have held one session in France to the United States Supreme Court as well as the Louisiana Supreme Court, that the exercise of this servitude is not an appropriation under the exercise of a right that the government had when it granted the lands to the people who now own them originally, the landowner at his own expense, had to build the levees, and maintain them. This is the front of his property in navigable streams. In the latter part of the eighteen hundreds, the levees were taken over by the Federal board of levee control. In 1908, the first provision for the soil levees were provided until that time any time the servitude was exercised you do not get any compensation for the exercise of the servitude. We were granted with the New Deal, more specifically the New Deal, to give compensation for taking there the Constitution of 1921, and especially Article 4. Article 4, Section 4, states that land and improvements that were taken shall be paid for at a price not to exceed the assessment value for the preceding year. Now, the proposal that we have here basically takes the presently existing law of Article 491, or the 491 4th, but, however, leave out the language dealing with the non-navigable streams and all of this which were taken within the limits of the navigation, the administrative agency, under Article 491 4th, was paid for at a price not to exceed the assessment value for the preceding year. It was paid for at a price not to exceed the assessment value for the preceding year. This is the way the servitude and its compensation was all that we needed, now, the present proposal here is that in the cases where the property is not damaged and the property owner don't have to maintain or pay the value of the property in its entirety, then all of the
compensation will be to the full value of that which is taken. This is a change from the present law which merely provided for the assessed valuation for the last preceding year. This provision also says that with reference to batture property and property thus vesting in the state, there shall be no compensation. Batture is the portion of land between the high water and the low water. In some places in south Louisiana they call it the property that falls on the bayou, but in the legal terminology, the batture is between the high water and the low water. Property that is vested in the state or any political subdivision thereof for purposes of commerce would be property on which the state is already operating in a commercial type enterprise and no compensation is paid for that. Now, the (B) part of this section that if the district takes it and has to pay for it, then it is authorized to levy a tax on all of the taxable property situated within the district to pay for the property so used with the riparian servitude. This is the present law...this is the method for compensation; this distributes the loss throughout the entire district which is receiving the benefit of the public work involved and we felt that this was a valid provision to continue on in our law. The (C) part says, "Nothing contained in this section shall impair the appropriation of said property before payment." This issue has been litigated, this is our present law and this is the (C) part. In the situation where the levee is caving in you don't have to go through any type of a formal procedure, you just go in and start rebuilding your levee and then you pay the compensation as is required by law. Under the law, at the present time there is no requirement that you go through any formal courtroom procedure to acquire this servitude. Generally what's done is a resolution of the agency involved is passed and they send it by certified mail to the person whose property is going to be used. That is the general explanation of the riparian servitude and the compensation to be paid therefor. I'll be glad to yield to questions at this time, Mr. Chairman.

Questions

Mr. Newton Mr. Lanier, this...when this compensation is to be paid at fair market value, now...this says when one-third of the property—total ownership of the property is taken, is that right?

Mr. Lanier It says, "when it shall exceed more than one-third of the value of the property or improvements."

Mr. Newton Now, is it intended that this is to be...cumulative or...in other words, if they start out and they take a tenth and then they take another tenth and then they take another tenth...when they get that fourth tenth, they have gone over a third. Then would he be entitled to fair market value?

Mr. Lanier Quite frankly, I don't recall that we considered that type of a situation in our deliberations on this. As it is written, it applies in each taking. In other words, it would not be cumulative. I don't...as a matter of fact, I don't even recall us discussing the cumulative effective problem...and we were thinking in terms of a single taking at the time that we drafted this.

Mr. Newton Did you discuss the...with respect to this one-third, the time within which takings could take place?

Mr. Lanier No, I think this was...we were thinking in terms of a taking. In other words, if we have to go rebuild a levee or any new improvement and the property was needed, then you would build it and that would be the taking.

Mr. Newton Right.

Mr. Lanier Now, it may take you a while to build that out, but I mean I think what you're talking about is several stages of doing something, which we did not contemplate.

Mr. Duval Mr. Lanier, I certainly appreciated your fine explanation of this article, but one thing I don't quite understand. Why is it that one-fourth...if one-fourth of your property is taken, you get ten percent; but if by some chance one-third of the value is taken, you get a hundred percent. How did you arrive at this distinction?

Mr. Lanier This was sort of a value judgment that the committee came to. We felt that under certain circumstances more than the assessed valuation for the last preceding year should be given, and this was a value judgment that was made on this particular point. You could make it two-fifths or you could make it one-half. This is just a question of where you would draw the line. Part of the problem is the ability of these levee boards to pay. We had our work prepared for us by Roy Aquillard, who is the Director of the Department of Public Works, and the Chief Engineer, Mr. D. B. Cresap, concerning the ability of these people in the Mississippi River and Tributaries Project, which is basically the Mississippi River, the Atchafalaya and part of the Red River the federal government pays for the taking, except for the relocation of the property and things like that. Outside of the Mississippi River and Tributaries Project, the districts themselves have to pay and there they are very limited in many of the districts in their ability to pay. In fact, specifically, in this report it said that most levee districts in Louisiana are not financially able to acquire rights-of-way for enlargements and setbacks at other than the assessed value, where reimbursements cannot be received from the U.S. Army Corps of Engineers. So, here we have the problem of...the compensation for the exercise of the servitude versus the ability of the levee districts to pay. A further complicating factor here, is as you know, with a servitude the person who owns the property still retains the title. This is merely the exercise of a servitude so if the levee is for some reason taken down, then the property is returned to the person and he can use it for whatever he wants.

Mr. Duval Mr. Lanier, how would this be...how would you arrive at the valuation? How would it be determined when it's one-third rather than...an infinite amount less than one-third?

Mr. Lanier Well, value here, as used, would be the actual market value, or actual cash value as would be set by an appraiser.

Mr. Duval In other words, it would require a court proceeding to determine whether one-third of the property has been taken or not, each time?

Mr. Lanier If...there could not be an agreement between the parties.

Mr. Tappner I understand what you are trying to do, but my question pertains to Paragraph (B) which, as I read it, authorizes levee districts to levy an additional tax on property within the district with no limitations.

Mr. Lanier Well, the levy shall be to pay for the property so used or destroyed, and is used solely in the district where collected. That, as I understand it, is intended to mean that you can only collect out of the value which the value, as provided for in (B), of that which was used or destroyed. Now, by taxing throughout the district, of causing the burden of the loss amongst all of the taxpayers in the district, who are the people that get the advantage of the improvement. This is the present law and we could think of no better way to do it, quite frankly.
Mr. Japer: I understand, but this is really the authority to tax over and above the five.

Mr. Lanier: Mr. Chairman, would you please inform this gentleman as to what it means to take a servitude? I see the gentleman from the road there.

Mr. Japer: I don't think this has anything to do with servitudes. The title of the property remains with the property owner, even though the servitude is exercised. This is just like a servitude for any other type of person.

Mr. Japer: This is nothing but a servitude?

Mr. Lanier: Yes.

Mr. Japer: Okay.

Mr. Lanier: If you look at, and I've got it here, you say you want to look at it just for your own interest, but it's based on Article 665 dealing with legal...I don't think you need...

Mr. Henry: Mr. Lanier, you have exceeded your time.

Point of Information

Mr. Conroy: Mr. Chairman, again, I think it might help if we could have a very brief recital for those who don't have amendments. There are a number of people who have discussed this proposal with me. I would like an opportunity at the front this evening to tell those people who are particularly interested in this proposed amendment that the problem with whether or not something else should be recommended here.

Mr. Henry: Well, normally what we have been doing in circumstances like this will be to explain what we are saying to e. I want Mr. Conroy to know we can talk about it.

Point of Information

Mr. Japer: Mr. Chairman, ladies and gentlemen of the convention, I thought and hopefully I got your undivided attention because this is a matter which is a little bit complicated and not well known by everybody. I would like to explain to you the situation as to why we are talking to you about this. I want Mr. Conroy to know we can talk about it.

Mr. Henry: Now, wait, just before you start, I think it might be fair to Mr. Conroy, because she was just talking to you about a servitude, which is a little bit complicated and not well known by everybody. I would like to explain to you the situation as to why we are talking to you about this. I want Mr. Conroy to know we can talk about it.

Mr. Japer: At least before, I think there were several people who expressed interest in this amendment, although there were not many people who expressed interest in it. We have a brief opportunity to start with the problem of servitude. But, it is not going to be the main discussion of the amendment, and we will just sit down and work with the servitude and discuss it in the future.

Mr. Perez: I would like to say a few words on the amendment. This is something that we should explore in more detail. In the situation, it is possible that the amendment could be made. In going forward, let me say that the amendment is not treaty law, but it has a purpose that, if passed, would take the rate of the levee at the levee of the Mississippi River.

Explanations

Mr. Perez: Thank you, Mr. Chairman. I would like to explain how the situation works under this particular bill.

The article which we have been talking about is substantially the same as the article which is in the present Constitution with a slight exception, except that there is where the amendment is. The idea is meant that the river levees will be moved by the Army Corps of Engineers, which gives great benefit to the property taken, and that is the levee enlargement--the fair market value for the property taken in addition to that, you have the levee enlargement in the Mississippi, and the fair market value for all property taken in addition to that, you have the levee enlargement. That is, the levee enlargement--the levee enlargement only is not moved. That is the levee enlargement. The levee enlargement is not moved. There has been a lot of talk about this levee enlargement, and the levee enlargement of the Mississippi, and the levee enlargement.

The levee enlargement, which is a benefit to the property taken, is the levee enlargement, and the levee enlargement of the Mississippi, and the levee enlargement.

There are people who have expressed interest in the levee enlargement, although there were not many people who expressed interest in it. We have a brief opportunity to start with the levee enlargement, and discuss it in the future.
cannot pay. What we wanted to do is to say "Let's don't leave these levee districts and you have a lot of levee districts who are awful short of money. If they have got to go tax everybody else to pay one or two large landowners, it just isn't fair and isn't right." We tried to hit the fair balance here by providing that if a substantial portion—we said one-third, if the convention feels maybe it should be twenty-five percent, or twenty percent, I have no quarrel with that—but the main concept we are trying to get across is that the man who owns that large tract of land, that land would be worth more if it were not for the fact that he had the levees to protect him. On the other hand, if we are substantially destroying a person's property, we want to pay for it. Again, it's only in that limited situation with the levee enlargement.

Yes, I'll yield.

Questions

Mr. Newton Mr. Perez, I've got a couple of questions. I have heard of instances where there have been taking for levee purposes which amounted to taking a barrow pit which was some distance from the levee and hauling the dirt and building a levee somewhere, I wonder what would be the situation there? Would there be an assessed value be paid in that case?

Mr. Perez You are talking about a barrow pit on the river side or the land side?

Mr. Newton The land side.

Mr. Perez Well, I can tell you what we have done in our parish. We have adopted ordinances prohibiting the taking of land unless it's refilled. As a result, in our parish, they cannot dig out on the land side. We prohibit it. So, we don't have that problem. I understood someone else had this problem in another area. I really don't understand it, because I just don't feel that they have a right to do it that way. I would like to look into the problem and maybe see if I can help to get it straightened out. I just had never heard of it before.

Mr. Newton Now, I have another problem here in... exceed more than one-third of the value of the landowners property. Is that his total property holdings, or...?

Mr. Perez We intended to say the house and the land or whatever it was, the total value of what's there.

Mr. Newton Well, I think that needs to be cleared up.

Recess

[quorum call: 105 delegates present and a quorum.]

Amendment

Mr. Poynter As follows:

Amendment No. 1 [by Mr. Conroy]. On page 25, at the end of line 24, delete the word "a price not to" and delete lines 25 through 31, both inclusive, in their entirety and insert in lieu thereof the following: "fair market value; provided, nothing contained in this"

Explanation

Mr. Conroy The amendment essentially changes the committee proposal to provide that "lands and improvements thereon actually or destined for levees or levee drainage purposes shall be paid for at fair market value." I had hoped, in the recess, to either reach some middle ground or settlement, or possibly pass over the section because the section, as written, uses the phrase "assessed value." We have pointed out previously that at this late in time, this convention really doesn't know what assessed value is. But, I do call your attention to the fact, that at the present moment, the committee proposal of the Revenue, Finance and Taxation Committee is to place land on the assessment rolls at five percent of actual fair market value. That would mean that a man's land who was taken for levees or levee drainage purposes, would be paid five percent of the value of his land, unless more than one-third of his property was actually taken. Now, this seems to me to be unreasonable. I understand the committee's arguments in this area about the levee servitude. I must confess that when I first heard about it, it was quite a few years ago now, in law school. I thought, even at that time, that it was a remarkably unfair system—that a man's property could be taken, under certain circumstances, and he would only be compensated at the assessed valuation, when everybody knew the practice was to assess property at far less than its fair market value. I think that the courts could properly take into consideration the points that are urged by the committee as to the existence of the servitude and the commitment of the property to an unreasonable diminution in its value. I think that the area, as I said, is one that while in many cases through the help of the United States government, gross unfairnesses have been avoided because the United States government puts up the money to compensate some of the people. There still are parts and occasions within this state where I feel that very gross injustices occur, because of the taking of property for these purposes. The people are given just a token payment for, in many cases, valuable land that's been taken. I urge the adoption of the amendment to provide for compensation at fair market value in such cases.

I yield to any questions.

Questions

Mr. Lanier Mr. Conroy, is it not true that when the riparian servitude is exercised, that the title to the property upon which it is exercised remains in the owner?

Mr. Conroy Not if it goes into the navigable stream, Mr. Lanier, and it might under certain circumstances go to the state, depending on how the levee is constructed and where it winds up. But, if it winds up in the bed of a navigable stream, no, it's no longer owned by the...

Mr. Lanier Well, of course, that's true with all the property...

Mr. Conroy ...Mr. Lanier, this description here applying to levees and levee drainage purposes extends well beyond riparian owners. It applies to land that is quite a distance away from any sort of navigable stream.

Mr. Lanier Oh, now. First, let's clear up this first point. Is it not true that if the stream doesn't eat into the bank, that the owner of the property retains title even though the servitude is exercised to put a levee there or a levee drainage?

Mr. Conroy Yes, and he should be compensated only for the fair market value of what was taken.

Mr. Lanier If that levee was abandoned in the future, or if the drainage was abandoned, would not the complete use of it be returned to the property owner?

[1607]
Mr. Conroy. In its then condition, Mr. Lanier, whatever might have happened to it in the meantime, if he had used it for a building and there was now a levee there, it wouldn't quite be the same piece of property he had before. But, the ownership would be returned, provided it hadn't eroded into a navigable stream.

Mr. Lanier. Now, with reference to the extent of the application of the riparian servitude, is it not true that the riparian servitude only applies to lands bordering on navigable streams, which were such at the time that the land was separated from the sovereign?

Mr. Conroy. Well, by definition, that is what a riparian servitude is, yes.

Mr. Lanier. So, if the land did not front on a navigable stream at the time it was separated from the sovereign, it would not be subject to the servitude, is that correct?

Mr. Conroy. That's correct.

Mr. Lanier. And, in which case, the only way you could get it for these purposes would be to exercise the servitude?

Mr. Conroy. That's not what this says.

Mr. Conroy. I'm not. I don't think that's the application of this at the present time in this state.

Mr. Lanier. Are you familiar with the jurisprudence interpreting the present Article XVI, Section 6, and Article 665 of the Civil Code?

Mr. Conroy. Not all of it, no. You can address yourself to...

Vice Chairman Casey in the Chair.

Mr. Duval. David, I think conceptually certainly you have a good amendment. But, the question I'm going to ask you is as follows: I'm asking for the answer, but I'm asking for the answer in your very own law rather than in this body's law.

I disagree with the committee proposal. I don't know precisely what effect your amendment will have either.

Mr. Conroy. Well, Mr. Duval, as you know in the discussions that took place in the recess, we were trying to find some appropriate area, but the committee--there seemed to be confusion as to what the proper area was. My feeling is that the provision should be established in the constitution and be paid fair market value. But, I would certainly find something as you suggested, far less objectionable than the committee proposal, it would be paid for at assessed value. I think that's an undesirable provision I have looked in the constitution.

Mr. Avant. Mr. Conroy, I'm asking information. You have just in the ordinary exempriation case, you got two things you consider, you take land for a highway, for instance, you consider two things. A man is entitled to the value of the property that was taken, plus whatever damage he sustained. In the remainder of his tract of land, if there is more than it was before the taking, you still don't offset that against what they took. Right?

Mr. Conroy. Under Louisiana law, that has been the rule. That is not under the federal jurisprudence.

Mr. Avant. But, this is a horse of another color. In my mind, this levee business when you build a road through the land, you take something before you put the road there. But, some of this land, that we are talking about, without the levee, it isn't worth nothing property. Now, I know there is this: What inequities or wrong for unfairness could take place if you simply put a value on the land, on the fact that something made, and I think that it is this. I think that your amendment will accomplish, frankly.

Further Discussion.

Mr. McGoldie. Mr. Chairman, I would like to address those of you that are not familiar with levees and those of you who have by them as I do, about some of the practical problems involved. I think you know that the Corps of Engineers tell us--about an enlargement of the levee system from the mouth of the Red River northward to some point in Arkansas, raising and enlarging the levee from four to six feet to bring it up to grade. Here you were talking about increasing the price or the size of an existing levee. Just last night, one of my neighbors called me and told me that he had just gotten this information for two and a fraction acres of land on the land side of the levee, where dirt was taken to build a berme to protect land in an area. This he was paid at the assessed evaluation of this land, which was five dollars an acre in our area for woodland. This is beginning to show part of the problem. (Continued.)

Mr. Conroy. If you agree to the servitude, you don't need any more. The Corps of Engineers tell us--about an enlargement of the levee system from the mouth of the Red River northward to some point in Arkansas, raising and enlarging the levee from four to six feet. Here you were talking about increasing the price or the size of an existing levee. Just last night, one of my neighbors called me and told me that he had just gotten this information for two and a fraction acres of land on the land side of the levee, where dirt was taken to build a berme to protect land in an area. This he was paid at the assessed evaluation of this land, which was five dollars an acre in our area for woodland. This is beginning to show part of the problem. (Continued.)

Mr. McGoldie. Mr. Chairman, I would like to address those of you that are not familiar with levees and those of you who have by them as I do, about some of the practical problems involved. I think you know that the Corps of Engineers tell us--about an enlargement of the levee system from the mouth of the Red River northward to some point in Arkansas, raising and enlarging the levee from four to six feet. Here you were talking about increasing the price or the size of an existing levee. Just last night, one of my neighbors called me and told me that he had just gotten this information for two and a fraction acres of land on the land side of the levee, where dirt was taken to build a berme to protect land in an area. This he was paid at the assessed evaluation of this land, which was five dollars an acre in our area for woodland. This is beginning to show part of the problem. (Continued.)

Mr. McGoldie. Mr. Chairman, I would like to address those of you that are not familiar with levees and those of you who have by them as I do, about some of the practical problems involved. I think you know that the Corps of Engineers tell us--about an enlargement of the levee system from the mouth of the Red River northward to some point in Arkansas, raising and enlarging the levee from four to six feet. Here you were talking about increasing the price or the size of an existing levee. Just last night, one of my neighbors called me and told me that he had just gotten this information for two and a fraction acres of land on the land side of the levee, where dirt was taken to build a berme to protect land in an area. This he was paid at the assessed evaluation of this land, which was five dollars an acre in our area for woodland. This is beginning to show part of the problem. (Continued.)

Mr. McGoldie. Mr. Chairman, I would like to address those of you that are not familiar with levees and those of you who have by them as I do, about some of the practical problems involved. I think you know that the Corps of Engineers tell us--about an enlargement of the levee system from the mouth of the Red River northward to some point in Arkansas, raising and enlarging the levee from four to six feet. Here you were talking about increasing the price or the size of an existing levee. Just last night, one of my neighbors called me and told me that he had just gotten this information for two and a fraction acres of land on the land side of the levee, where dirt was taken to build a berme to protect land in an area. This he was paid at the assessed evaluation of this land, which was five dollars an acre in our area for woodland. This is beginning to show part of the problem. (Continued.)

Mr. McGoldie. Mr. Chairman, I would like to address those of you that are not familiar with levees and those of you who have by them as I do, about some of the practical problems involved. I think you know that the Corps of Engineers tell us--about an enlargement of the levee system from the mouth of the Red River northward to some point in Arkansas, raising and enlarging the levee from four to six feet. Here you were talking about increasing the price or the size of an existing levee. Just last night, one of my neighbors called me and told me that he had just gotten this information for two and a fraction acres of land on the land side of the levee, where dirt was taken to build a berme to protect land in an area. This he was paid at the assessed evaluation of this land, which was five dollars an acre in our area for woodland. This is beginning to show part of the problem. (Continued.)
Mr. Perez: I didn't realize that this matter would become as controversial as it is. We have agreed to pass over some finance...the finance provisions of local government. Due to the fact that this does have a bearing on finance with regard to the taxation to pay for the land taken and because of the fact that it provides for the payment of the assessed valuation, I do believe it would be proper if we would pass over this subject until such time. Therefore, I move that we temporarily pass over this section and take it up with the finance provisions.

Mr. Casey: Why do you rise, Mr. Newton?

Mr. Newton: I rise to object.

Mr. Casey: Well, just a minute. First of all, Mr. Perez is requesting that we pass over the section. The motion is not in order, unless Mr. Conroy withdraws his amendment, in order to permit him to do that. So, we have...We want to find out, first of all, if that's even possible that Mr. Conroy is going to withdraw the amendment, which you really have to object to is the withdrawal of the amendment.

Mr. Conroy: What is your pleasure? You're in the driver's seat on the amendment.

Mr. Conroy: I would be happy to withdraw the amendment, provided it would be understood that when the matter comes back again, that if the matter hasn't been resolved that the amendment can be considered at that time.

Mr. Casey: Well, you have a right to submit the amendment, at any time, Mr. Conroy, that's no problem.

Mr. Conroy: All right, fine. I'll do that to permit the thing to be passed over, because that is what I had originally suggested should be done with this section.

[Amendment withdrawn. Motion to pass over Section 49 adopted without objection.]

Reading of the Section

Mr. Poynter: "Section 50. Ports

Section 50. All deep-water commissions and all deep-water port, harbor, and terminal districts within whose territorial jurisdiction exist facilities capable of accommodating vessels of at least twenty-five feet of draft and engaging in foreign commerce." We were advised by these port people, that this would include those various ports along the river from Baton Rouge down river and also Lake Charles.

Mr. Brown: Well, you don't read this as prohibiting...in other words, if a port was developed along the Mississippi River in the future this is...I don't read it that way; is not your intention there would be any pro...

Mr. Perez: If it fit into this category, it would be a deep-water port. The legislature could create them, but it would take two-thirds of the legislature thereafter to affect that function. Again, it's by amendment...to give the protection to those important ports, which feel that they are the important ports, which feel that they need more than just statutory positions.

Mr. Brown: Why ask the question...the Concordia Parish Port Commission is in the present constitution, at the present time, and it's on the Mississippi River, and is capable of a ship tying up there, to take a twenty-five foot draft...

Mr. Perez: If it does, then it would be one of those included in the two-thirds category.

Mr. Jenkins: Mr. Perez, how many ports do we now have in the State of Louisiana?

Mr. Perez: Oh, we have many, many ports and that was the reason we tried to distinguish between the deep-water ports and any ports. We have maybe hundreds of...or many, many, I wouldn't know the number.

Mr. Jenkins: Are all of them given constitutional status or some of them created by statute?

Mr. Perez: There are some created in the constitution and some in the statutes—a greater majority of them are in the statutes.
Mr. Jenkins: So, really, we are constitutionalizing the powers and functions granted those by statute. Is that correct?

Mr. Perez: You would, in a limited number of cases, such as the super port, which was created by legislative act. You would be giving it this two-thirds position, not a constitutional position, but a two-thirds position to require more a so-called super majority to affect.

Mr. Jenkins: But, I see in here 'no authority for the legislature to abolish these ports.' Is that correct? Whereas, they could normally abolish them by statute, but under this, they can only 'diminish, reduce, withdraw their powers' but they can't actually abolish or consolidate them. Is that true?

Mr. Perez: Well, I suggest to you, sir, that they could so affect their powers and so forth, that there would be nothing left to them. I don't think that would preclude them from being abolished as a practice; that under these, that they can affect their structure and organization and so forth, and withdraw from it anything they want to.

Mr. Brown: Mr. Perez, you might have answered this. I apologize if I wasn't listening. Why did you again say that you felt that this a two-thirds vote was necessary?

Mr. Perez: Because of the facts that we had extensive testimony, for instance, from the New Orleans Dock Board people and the Baton Rouge Port Authority, and Lake Charles Port Authority—all of whom were very adamant over the fact that they felt that because of the type of operation they conducted, that they were really in a type of situation where they had to make long-range agreements with the handling of commerce and so forth. They felt that they should have constitutional status and they wanted the specifics to be in the constitution. What we did, is a compromise situation, was to come up with this particular article.

Mr. Brown: Do you think that would cause some problems in the future as the Port of Baton Rouge and the Port of New Orleans grow toward one another, and it might be in the best interest of the state to be consolidated? I know where you live down your way, you are kind of locked in the Port of New Orleans... you might want to develop your own situation down there. Do you think that just might be too stringent, the two-thirds requirement?

Mr. Perez: Well, I can only say to you, sir, that from the testimony we heard, that we... the majority of the members of the committee were convinced that they deserved a position more than just a regular statutory position. They gave many, many reasons as to why they felt they should be in that position.

Mr. Roemer: Mr. Perez, are you familiar with those provisions in Revenue and Finance proposed proposal, that deals with ports in the sense that it makes, and like all other state agencies or political bodies?

Mr. Perez: That was called to my attention at one of the meetings. I told you that I didn't see any objection to a provision which would say... except as otherwise provided in the constitution...

Mr. Roemer: That was my question, thank you.

Mr. Florio: Mr. Perez, in reading the proposal where you really and completely the existing authority, the structure, the organization, the powers and functions of all these ports... in reading the constitution they confirmed that I'll and the IHR and all the acts that have been passed in between by this proposal aren't we then confirming all of that? How do you find out just what they can and they cannot do?

Mr. Perez: There is no question about that, sir. That's a problem, and any lawyer will tell you that whenever he looks up any question, he has to research the matter. No matter what you put in in the constitution, for instance, when you go to interpret the constitution, if you want to know what the constitution of the United States means, I don't know of any lawyer that even reads the constitution in this state, that reads all the books as to what to constitution means. So, there is no question about reference, this has been done. But, we know of no other way to handle the matter.

Amendment

Mr. Pointer: Amendment No. 1, [a] wp. 176-180. On page 26, delete lines 12 through 32, both inclusive, in their entirety and on page 27, delete lines through 24, and insert in lieu thereof the following:

"Section 50. (A) The legislature may, by vote of the two-thirds vote of the members of each house, repeal and create new districts..."

Explanations

Mr. Denney: The amendment followed the committee report to a great extent, but in the first paragraph, it is limited to the legislature's ability to consolidate districts for the Port of New Orleans, and it is limited to districts for the Port of New Orleans. It is limited to districts and it is limited to a two-thirds vote. In line 15, the amendment eliminates all provisions for consolidation and for the Port of New Orleans. It is limited to districts, and the amendment, as a whole, would have been limited to districts. It has been limited to districts, and it has been limited to a two-thirds vote of the legislature. It is limited to districts, and it is limited to a two-thirds vote of the legislature. It is limited to districts, and it is limited to a two-thirds vote of the legislature.
which called for two-thirds vote, two sections of the Executive Article which require two-thirds votes, and at least one section in the Judiciary which requires a two-thirds vote of the legislature. The port commissions of this state are all business organizations, and it is quite important that they retain their powers and functions and that these powers, functions and territorial jurisdictions be only changed as a result of a so-called “super majority” of the legislature rather than by simple majority of the legislature. The amendment, as proposed, shortens the committee report considerably. An exception for the one specific deletion of Section (C), it’s practically the same as the committee proposal. I urge its adoption, and I’ll be pleased to answer any questions, Mr. Chairman.

Questions

Mr. Singleton Mr. Denbery, are there any ports or harbors or terminal districts that are not in the constitution?

Mr. Denbery Yes, I believe the... as Mr. Perez mentioned, the “Superport” is by an act of the legislature. I believe all of the others are in the constitution.

Mr. Flory Mr. Denbery, could you explain to me the reasoning behind the requirement for the two-thirds vote to change the powers, functions, structure, organization of a port, and yet, if the legislature wants to give them some additional power, it only takes a majority vote?

Mr. Denbery Well, the only way I can explain that is that it’s the way the committee drafted it, and I adopted the committee’s language. I would have no serious objection to changing the second to a two-thirds majority, if you feel that’s proper.

Mr. Flory Wouldn’t it be better to change the first part to a majority?

Mr. Denbery No, I don’t think so...

Mr. Flory You’re not being consistent, then?

Mr. Denbery No, I don’t believe it’s inconsistent, Mr. Flory. As I say, I would have no objection to changing the second to a two-thirds, but I go along with the committee in this feeling that a port, in the business function that it operates under, should require a two-thirds vote to change its powers and functions.

Mr. Ullio Mr. Denbery, did you know that I support your amendment, and that we will follow this up, if your amendment is accepted by this convention, with a Section (C) which will give each parish and each port authority a definite representative?

Mr. Denbery Yes, sir. Thank you.

Mr. Abraham Mr. Denbery, following up on the line of questioning that Mr. Flory had, in Paragraph (B), where you say, “subject to compliance with Paragraph (A) of this section,” doesn’t that require the two-thirds vote?

Mr. Denbery No. The purpose of that was that in the event of an addition to the powers or territorial jurisdiction of a neighboring port, we would require then a two-thirds vote to diminish, and therefore, it had to be made subject to that. Some of those ports conceivably could conflict.

Mr. Toomy Mr. Denbery, in your amendment in Subsection (A), where it says that “the structure and organization might be affected by a two-thirds vote,” is that your understanding that, for instance, the Board of Commissioners of the Port of New Orleans could be changed by a two-thirds vote of the legislature?

Mr. Denbery Yes, sir.

Mr. Toomy That’s a change from what the committee proposes, that by a majority vote, that board could be changed.

Mr. Denbery Well, the committee report, as you recall, provided that for a ten-year period, or until the legislature acted, if it did act within the ten-year period, a majority vote would suffice. Thereafter, it would require a two-thirds vote.

Mr. Toomy It’s your understanding that that would just be a single change. The legislature would act at one time to change the board, and thereafter, would require two-thirds vote for further change.

Mr. Denbery That’s my understanding of how the committee report was written. Yes, sir.

Mr. Jenkins Mr. Denbery, doesn’t your amendment do the same thing that the committee proposal does from the standpoint that it constitutionalizes the Superport, and I refer except for the one specific deletion of Section (C), it’s practically the same as the committee proposal. I say it because it would currently as well as under the committee proposal, could abolish any port by two-thirds vote. I do not believe it would require a constitutional amendment.

Mr. Jenkins Well, it doesn’t say that. It says it can diminish its powers, but it doesn’t say it can...

Mr. Denbery Well, if it can diminish its powers to zero, that would, in effect, be abolishing the port. I cannot conceive that any port would be ultimately, completely abolished, anyway.

Mr. Jenkins Well, if, for instance, L.O.O.P is built, it may preclude the building of the superport, might it not?

Mr. Denbery It’s conceivable, yes.

Mr. Jenkins So, it might want to be abolished, mightn’t it not?

Mr. Denbery Yes, but I think you can abolish it effectively by a two-thirds vote.

[Previous Question ordered. Amendment adopted: 90-8. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Ullio and Mr. Conroy]. On page 26, line 12, in Floor Amendment No. 1 proposed by Delegate Denbery and just adopted, below the language added by said amendment add the following paragraph: “And this is a little bit different than that Paragraph (C) reads on the long version of their amendment. “(C) The membership of a deep-water port commission or deep-water port, harbor, and terminal district exercising territorial jurisdiction in more than one parish shall include at least one elector of each such parish.”

Explanation

Mr. Ullio Mr. Vice-Chairman, members of this convention, my amendment is very, very simple. It just guarantees definite representation to each parish that participates in any port authority throughout the state. I think it would be only proper right now that I would give you a brief...
History of the Port of New Orleans. The Port of New Orleans was created by an act of the general assembly in 1896. This was done at a time, because of the divided authority of three parishes and a multiplicity of officials with their various functions, and the development of contiguous river ports would act injuriously to the traffic of the port. The board shall consist, at that particular time, of five members, and all shall reside within the port limits of New Orleans, Jefferson, and St. Bernard. This said board shall have the power to regulate the commerce and traffic of the harbor of New Orleans. As you can plainly see, from the inception, this board was given broad powers, with a lot of ambiguity as far as structure, organization, and jurisdiction was concerned. The governor was given the supreme right to appoint all members to this state agency until 1950, when Governor Sam Jones changed the nominating process to civic organizations which is basically the same today. To say the least, since 1896, when this state agency was created, Jefferson, St. Bernard and Orleans have never been able to get together as far as the bond and jurisdiction is concerned. This has led to a complete domination of this state agency by New Orleans over the years. Do you know that this domination has produced not a single wharf or docking facility in St. Bernard Parish for over fifty years, nor has St. Bernard been represented on this select board for forty years? As far as concerned me, I had an occasional man because of a constitutional provision that one member should come from the west bank of the river. Jefferson has had to divide this member with Algiers, which is the west bank sector of New Orleans. As far as Jefferson is concerned, we have had one wharf in over fifty years, and that is Perry Street, which was sparsely used for years, until the time of this convention. We in Jefferson have even asked the same amount of river frontage as New Orleans, but underdeveloped. I only wish every member could ride down this river and see the tremendous inequity that exists there, which has been fostered by the administrative control of New Orleans. Can you realize the tremendous revenue this has cost the State of Louisiana? These are just some of the things, fellow delegates, that have brought to you. I feel a little brief history is very, very important to enlighten each and every one of you of some of the reasons why I'm in this convention. I have tried to get some information from the parish of Jefferson, not completely satisfied with this one man provision, as this amendment suggests, but I will say this: as long as we keep in the right direction, and possibly in future years, the legislature can renew this, and give us more representation. I ask you to support this amendment.

Mr. Cannon: Yes, sir, Mr. Chairman, I think that this is condensing into shorter language what we basically did on the subcommittee—ports felt along.

Mr. Denney. Mr. Cannon, I wanted to ask this question of Mr. Villo, but just to keep the records straight line, are you aware, sir, that the present president of the Board of Commissioners of the Port of Orleans is a resident of Jefferson Parish, and that at least one of the past three presidents? In addition, has also been a resident of Jefferson Parish?

Mr. Cannon. Yes, sir. We are aware of that, and we know that... what is the man's name? Eads Poitevent recently moved from Orleans to Jefferson Parish, so he is now a Jefferson Parish resident, yes, sir. We were aware of that.

Further Discussion

Mr. Nunez. Mr. Chairman and gentlemen of the Convention, I thought that the problem probably would have been solved with the other, with the Denney amendment. I still think it is necessary to say that no ports have been built in St. Bernard over the past fifty years. It is very simply because the territorial jurisdiction of the New Orleans Dock Board has not been clearly defined in that area, and what he is doing with this amendment is something that we'd like to do by legislative act, as provided by law, what he's doing is tying up the game. The dock board, not only in New Orleans, in various other places, the reasons for the big trouble down in New Orleans because it's in the constitution. It is needed very clearly, you nominate and you appoint, and that's the problem right now because you have people like the Cotton Exchange, and various other people that are no longer being seen taking those appointments. Now, they want to come in with another section and say that there shall be membership from these various parishes. Suppose they change that. Suppose that has to be changed. I think since good examples were given about the growth of the port of the river, and down the river, or Baton Rouge, what we just did, and adopt an amendment that would say, "as shall be defined by law," in the event that we have to change it again, that the legislature can change it. A law is a law, and it's prepotent over the period of years. I don't think we'd be in the situation that we are in St. Bernard because there is a dispute over territorial limits in that area, and we feel that this amendment that there is some question of whether the Southern Port of Orleans has a claim on the river all over the entire parish. We thought we had set it up in a committee, and the little members agreed because they were making people that were arguing about that. But I agreed before then in several cases, and took them as I went ahead with the proposal. That Mr. Denney and I had, that we shall provide for the use of deep water ports as defined under law, I think it isn't a reasonable thing to do. We just did with the other amendment, a little law in here, I think it was an amendment that we have at your disposal. I think the chairman and his associates are involved in it because the very people who have to change, the legislature, and change it.
provide that the membership of the deep-water ports shall be as provided by law, just like we did with the levee districts.

Mrs. Warren. A question came up that the representative from Orleans Parish had moved into Jefferson, so I'm wondering now when we have a member that moves from one parish to the other on it, it leaves that parish representation. So, how are we going to really provide for adequate representation from each parish?

Mr. Nunez. Well, Mrs. Warren, I think that if we adopt the amendment that says, "it shall be provided by law," we can take care of all those various situations that you are mentioning that arise. I think Jefferson has had membership on the dock board over the years, either from the west bank representative, or some other. But, they have had some representation.

Mrs. Warren. Well, I don't have any...I mean I'd like to see representation and I'm not just really against the amendment for that reason, but I would like to see where...if one leaves, he could be replaced.

Mr. Champagne. Senator, you don't have a representative now, right?

Mr. Nunez. No, sir.

Mr. Champagne. Wouldn't this allow you to have at least one, sir?

Mr. Nunez. They don't want one; that's the problem. You see, if I'm trying to correct the problem by law, rather than free something in the constitution. It's a problem...where territorial jurisdiction lies. You're freeing in territorial jurisdiction that hasn't clearly defined, really, in essence, it's not clearly defined.

Mr. Champagne. Wouldn't you have a right to define it by the legislature having the vote?

Mr. Nunez. Not after what you've just adopted.

Mr. De Blieux. Senator Nunez, I notice in the amendment that we just previously adopted that the legislature would have the right to change the organization of a port commission by two-thirds vote. Now, if we adopt this amendment and look in the membership, one from each parish, the legislature wouldn't be able to change that, would they?...this amendment would be inconsistent with what we just previously adopted, isn't this correct?

Mr. Nunez. That's why I'm trying to get you to not adopt this amendment, and adopt the amendment that will say, "as provided by law," and I think we'd have some consistency in the deep-water port structures of this state, as to the amendment we just adopted, or the section we just adopted...

Mr. De Blieux. I'm going to ask you this question: couldn't we accomplish what they are trying to do by this amendment, by legislative act as provided in Paragraph [A] that we've just adopted?

Mr. Nunez. Well, I imagine you can, but you've adopted that, and we're talking about a new amendment that provides for memberships, and I just don't believe we ought to start talking about memberships again, putting them in the constitution, and quarreling over when it should be loose: it should not be as clear-cut as we want to freeze it in the constitution.

Further Discussion

Mr. Tapp. Mr. Acting Chairman and fellow delegates, I also rise in opposition to this amendment for the same reasons that Senator Nunez set forth, and also for the additional reason that, in the case, let's say, suppose it was for the best interest of the Port of New Orleans to expand—and of course, we're willing to expand, into St. Bernard, well, let's say they do—well, then, go into St. Charles, St. John, the Baptist, Plaquemines; you lock the number of members in the constitution and you require that each parish shall have a representative, and what are we doing? We don't have enough people to go around, enough members to go around. Like Senator De Blieux pointed out, this is a legal question. Isn't it that it would be perfect for the convention to adopt the amendment, and I want to make it perfectly clear, I hope that the convention does, that by no stretch of the imagination, that anything we adopt here can imply or have any effect or decide what we've done or what the people have done, after the adoption of this constitution, is to include St. Bernard Parish under the New Orleans Port because, as was so ably pointed out by Mr. Ulo or Mr. Conroy, one, that this, reckon the last fifty years, the New Orleans Dock Board has done little or nothing in the parish of St. Bernard. You can readily understand why the people of St. Bernard Parish don't want to be included in the New Orleans Dock Board. They've set up something that should last for the next hundred years and longer. In the Centro Port in the city of New Orleans, they stop at the parish line on the Mississippi River Gulf Outlet and don't come into, even with their plans for the next hundred years, they don't come into the parish of St. Bernard. Now, can you understand—and I hope you can—why the people of St. Bernard don't want to be included in this dock board? I understand also the argument of the dock board and the city of New Orleans, and I represent...half of the district. The Centro Port in New Orleans. But, most of my district is excluded from the Centro Port. I know you can understand why the people of St. Bernard don't want to be included. For fifty years, they haven't done anything in St. Bernard Parish. For fifty years we haven't had any industry put in St. Bernard. We've had this Mississippi River Gulf Outlet. I speak to you this morning about having six feet of water in my house; some people lost their homes, lost everything they had. At least one-third of the people of the parish of St. Bernard lost everything they had as a result of this ditch that was dug by authority of the New Orleans Dock Board, and it was dug to the detriment of the people of St. Bernard Parish. And I hope you will get any part of the New Orleans Dock Board, and I hope that you reject this amendment.

Previous question ordered.

Closing

Mr. Conroy. I'd like just briefly to give you a little history of what has transpired. The amendment, as adopted by this convention, as proposed by Mr. Quennery and others, at one time, when it was drafted, had essentially the language of this Paragraph [C]. This was discussed with the members of the port commissions. I mean, the delegates here who have ports that are affected, to be certain that there were no problems in it. It was my understanding, my thought, that it was what would call just a fair amendment and a fair proposal to insure membership on a board, wherever there was multi-parish jurisdiction of a board. Later, it was brought to our attention, the objections that have been mentioned here on the floor, by the delegates from St. Bernard Parish. I listened to the arguments today; I've listened to the arguments before, and I still don't understand the arguments of the delegates from St. Bernard Parish. The amendment, as adopted, provides for territorial jurisdiction of the ports is not affected by what has been adopted. It is ratified and confirmed. If their position is that the Port of New Orleans does not have any territorial jurisdiction in St. Bernard, then this amendment, which we have proposed, would not affect their membership on the...dock
Mr. Poynter: Delegates Nunez and Tapper send up the following amendment:

Amendment

Mr. Poynter. Delegates Nunez and Tapper send up the following amendment:

Amendment No. 1. On page 26, line 12, add this language "Strike out Convention Floor Amendment No. 1 proposed by Delegate Uillo, et al., and just adopted, and substitute the following, proposed by Delegate Denney, et al., adopted by the convention on October 4, below the language added by the amendment add the following paragraph: 

The (C) (D) (E) (F) deep-water port, harbor, and terminal district shall be provided for by law."

Chairman Henry in the Chair.

Explanation

Mr. Nunez. Mr. Chairman and fellow delegates, an amendment to the amendment...the amendment is very simple. It does, in effect, what we were talking about before. It allows the legislature, where I think it should now, to let the membership in these deep-water ports, the reason for the many controversies that have evolved in deep-water port, the fact that they have been set in the constitution. We did not need to prohibit anyone from entering certain people from serving on or to say certain people should serve. The legislature can clearly define based on the experience of some deep-water ports. We are trying to work with these ports. I don't think we have worked as far as we should have worked. I think we're doing this, we have to take into consideration the legislature, to let the legislature decide what shall serve. And the experience of those deep-water ports is such that we are a little bit further along than anybody else. Mr. Chairman.

Chairman Henry: May the record show that Delegate Nunez explained the amendment?

Mr. Nunez. That's right.

Chairman Henry: May the record show that Delegate Nunez explained the amendment?

Mr. Nunez. That's right.

Chairman Henry: May the record show that Delegate Nunez explained the amendment?

Mr. Nunez. That's right.

Chairman Henry: May the record show that Delegate Nunez explained the amendment?

Mr. Nunez. That's right.

Chairman Henry: May the record show that Delegate Nunez explained the amendment?

Mr. Nunez. That's right.

Chairman Henry: May the record show that Delegate Nunez explained the amendment?

Mr. Nunez. That's right.

Chairman Henry: May the record show that Delegate Nunez explained the amendment?

Mr. Nunez. That's right.

Chairman Henry: May the record show that Delegate Nunez explained the amendment?

Mr. Nunez. That's right.

Chairman Henry: May the record show that Delegate Nunez explained the amendment?

Mr. Nunez. That's right.

Chairman Henry: May the record show that Delegate Nunez explained the amendment?

Mr. Nunez. That's right.

Chairman Henry: May the record show that Delegate Nunez explained the amendment?

Mr. Nunez. That's right.

Chairman Henry: May the record show that Delegate Nunez explained the amendment?

Mr. Nunez. That's right.
in this state. You are speaking of only one.

Mr. Nunez Well, I'm...I think this amendment applies basically to one.

Mr. Weiss No, it applies to all.

Mr. Nunez It applies to all, but it deals with—

Mr. Henry Now, gentlemen, if you have a question, ask it and let's get on with it.

Mr. Flory Senator Nunez, isn't it true that in response to Mr. Riecke's question to you, that there is a provision in the existing constitution, and the others that we've already ratified by Mr. Dennery's agreement, that the people that work for the Port of New Orleans have to be under civil service?

Mr. Nunez Absolutely. You ratified the organization, their form, their powers, their structure, their jurisdictional...their territorial jurisdiction, etc. All we are doing now is the identical thing we did for levee board members. We are providing that they be appointed by law. You know the mess we have had in appointing levee board members and you've got the same mess in appointing dock board members. So, what's so wrong in saying they shall be..."members shall be provided for as by law"? I don't know why this is so obnoxious to a lot of people or why it should be so horrendous or why...what's wrong with it. I think it's the proper way to handle it.

Mr. Dennery Senator Nunez, as I understood...as I understand your amendment, it would seemingly conflict with Section 50 (A), which provides that the legislature may affect the structure and organization of such a port commission by a two-thirds vote. Your amendment would permit them then to affect this by a majority vote. Is that correct?

Mr. Nunez It would affect the members by a majority vote, yes, sir.

Mr. Dennery I'm sorry, that's not what I understood you originally to have suggested, sir.

Mr. Nunez Well, that's what...that's what I originally suggested. I suggested that we appoint the members by law, and that doesn't affect your structure when...

Mr. Henry You have exceeded your time there, Senator.

Further Discussion

Mr. Brown Mr. Chairman, fellow delegates, I'd like to briefly support what Senator Nunez has said. I think a point we ought to think about is this: we're talking about deep-water ports here. Mammoth things that I think are really difficult for any of us to understand. We don't have a deep-water port in the entire United States, at the present time. A deep-water port, as I've seen plans as to how it may be conceived, could stretch from one end of this state to the other—all along the coast of this state, all the way up to Baton Rouge. This thing has got mammoth proportions. If any of you have ever been up to New York, up in New York, the largest port in the entire world, they have a five or six member port commission that runs the whole show. These guys are professionals; they are paid thirty or forty thousand dollars a year. They run the whole gamut—the airport, the shipping, the trains, everything. We're in the position that one day, we might be in the very same circumstance. A deep-water port affects us up in north Louisiana. Very much so. In terms of the trade and commerce that could come about. So, I think that Senator Nunez has the right idea to give us this flexibility to allow us, in years to come, to structure a membership on a port authority that could take care of a mammoth operation to which this is conceived. I think he's got a good idea to leave it up to the legislature, and I would urge you to strongly support it.

Questions

Mr. Willis Senator Brown, this is a friendly question because I commend what you say and ditto Senator Nunez. If it is too much to expect loyalty against self-interests by a legislator, don't you think that in the efficient administration, and fairness that the legislators who are of no interest will equalize, and so, make a just arrangement in the matter of appointments?

Mr. Brown Well, I think very much so. Like I say, this is something that transcends a small parish boundary. It's something that affects the entire state; it's of the utmost importance to us up in north Louisiana because it affects the vital economy of the entire state and that matter, the entire South. Now, I think we've got to look at a little wider range view. Your point is well taken.

Mr. Willis Precisely. Now, my next question is, that as it must, this provision applies equally all over Louisiana so that were the same on the other foot, the same principle would apply, wouldn't it?

Mr. Brown Very much so, very much so.

Further Discussion

Mr. Cannon Mr. Chairman, ladies and gentlemen of the convention, I would hope that you could appreciate the deliberations that we have had in your committees and subcommittees, which we had in our committee and subcommittee concerning this unique type of business where our competition is not with each other, and cut with other businesses; our competition is with the Port of Houston, and the Port of Mobile, and other ports along the Gulf. What I would like to say in answer to Senator Nunez's proposal, is that I am strongly, strongly against it. Let's take a look right now. What does it take right now to change membership on a port commission? There are about ten of them in the constitution. There are thirty-seven, I think, active port commissions right now in the State of Louisiana. Well, of these that are in the present constitution, and all the deep-water ports are in the constitution, it takes a constitutional amendment to change their membership, to change their structure, organization, or anything. The other extreme is a simple majority of the legislature. It was the feeling of the committee and the subcommittee that the two-thirds vote, this super majority, was a good thing. This would be a compromise. How do you compromise a compromise? You don't. You settle one way or the other in I'd like to say this, particularly about the Port of New Orleans and the Port of Lake Charles. They have nominating groups familiar with international trade and port operations. The Port of Lake Charles, I think, even includes one member of the AFL-CIO from that area. The Port of New Orleans does not. Baton Rouge and the south...the Greater Baton Rouge Port Commission and the South Louisiana Port Commission are appointed by the governing authorities of the city of Baton Rouge, of the parish of East Baton Rouge, of the city of New Orleans, the parish of West Baton Rouge, the parish of Iberville, and the parish of Ascension. The governor has one appointment. The South Louisiana Port Commission is done similarly; they also have power to put three members to the governor, and the governor chooses one. The South Louisiana Port Commission, the majority of these members are appointed by the three police jurors of the three
Mr. Tapper, Mr. Chairman, Mr. Anzalone, and other members of the... delegates, I rise in support of this amendment for several reasons. I stated some of the reasons before, but an additional reason is this: the amendment that was adopted, the Denney amendment, makes no provision whatsoever, no provision whatsoever for the membership. If you will read it, you will find it. It makes no provision for the membership or for the change in the membership.

In addition to that, in due respects for Mr. Cannon, the legislature appropriates, directs the expenditure of two billion dollars a year with your analysis. In addition to that, the legislature, every year, passes legislation which affects your daily lives and the lives of all of the people of this state, legislation that affects the lives much more than port authorities and the levee boards and other commissions.

We had one in the last session of the legislature on capital punishment. If you take a man's life, there is nothing left for him; he has nothing left. Yet, the legislature passed that by a majority vote. The argument for two-thirds does not belong here or in any other legislative body in these United States. We are a democracy where we should be governed by a majority, ladies and gentlemen. I hope that you will vote for this amendment. There is no setup; there is no ruling in the amendment as adopted, the Denney amendment, for the membership, for the appointment of the membership of these boards, or these port authorities. I hope you will vote for it.

Further Discussion

Mr. Tapper. Mr. Chairman, fellow delegates, if we adopt this amendment in the Denney amendment, which, in effect, allows a change of port in the city of New Orleans and other places, but gives to the other cities little or nothing, then the bylaw, the change in the port authority, would not be known. No one would know it.

I think that this amendment is simply one to reduce the weight of the legislature from two-thirds to one. The majority in changing the membership of the port boards throughout the state.

Mr. Tapper. No, Doctor, that is not the only purpose for it, but that is one of the purposes.

Mr. Weiss. That is not the only purpose, but that is a major purpose.

Mr. Tapper. Yes, definitely. I explained that before. I think it should be by majority vote. The legislature by a majority vote actually took the lives of all the people in this state, and I can't see why they couldn't in the case of the port authority.

Mr. Ray. Mr. Tapper, aren't you aware that even though Mr. Denney's amendment is an amendment of the existing language, that section, the two-thirds vote is nothing more than a stabilizing vote in the rest of the state, and all of these little port commissions to stabilize the state in the future.

Mr. Tapper. Yes, I agree with that.

Further Discussion

Mr. Tapper. Mr. Chairman, fellow delegates, if we adopt this amendment in the Denney amendment, which, in effect, allows a change of port in the city of New Orleans and other places, but gives to the other cities little or nothing, then the bylaw, the change in the port authority, would not be known. No one would know it.

I think that this amendment is simply one to reduce the weight of the legislature from two-thirds to one. The majority in changing the membership of the port boards throughout the state.

Mr. Tapper. No, Doctor, that is not the only purpose for it, but that is one of the purposes.

Mr. Weiss. That is not the only purpose, but that is a major purpose.

Mr. Tapper. Yes, definitely. I explained that before. I think it should be by majority vote. The legislature by a majority vote actually took the lives of all the people in this state, and I can't see why they couldn't in the case of the port authority.

Mr. Ray. Mr. Tapper, aren't you aware that even though Mr. Denney's amendment is an amendment of the existing language, that section, the two-thirds vote is nothing more than a stabilizing vote in the rest of the state, and all of these little port commissions to stabilize the state in the future.

Mr. Tapper. Yes, I agree with that.
amended, guarantees membership to each parish in that district on that board. If you adopt this amendment, we're in bad shape.

Questions

Mr. Reeves Mr. Tobias, you mentioned the city of New Orleans port. Are you aware the city of New Orleans has no port?

Mr. Tobias I am... you are correct.

Mr. Reeves That the great State of Louisiana whose taxpayers throughout this state, are you aware that they are the ones that support this port? Are you aware of the amount of money that the State of Louisiana, the folks in Winn Parish, put in to the Port of New Orleans?

Mr. Tobias They put in money, you are correct. But, let me say that the benefits are derived throughout, and that to protect it guarantees it throughout the state.

Mr. Brown Mr. Tobias, this is what concerns me, and let me ask you if this concerns you. Do you think there may be a problem if you have a deep-water port authority that maybe has twenty-five parishes in it? I want to emphasize how big those deep-water ports are. Do you think it will be in the best interest of the Port of New Orleans, if it is made a deep-water port, to have twenty-five different representatives trying to tell you your business, someone from Ascension and St. James and all of those parishes down there all serving on your board telling you what to do? Because that's what's going to happen under the amendment of someone from every parish. Do you think that's in the best interest of the Port of New Orleans to have someone from every single parish trying to tell you your business?

Mr. Tobias That's precisely why I favor the two-thirds provision.

Mr. Brown well, this has got nothing to do with two-thirds. This is giving everyone representation.

Mr. Tobias I realize that. That's why I want... As a practical matter, nothing like that is going to happen for a long time to come. It can be corrected by constitutional amendment. A port is a business. It's got to be protected.

Mr. Tapper Mr. Tobias, I know you said that. Existing ports is operating very efficiently, and I don't doubt that. Are you aware of the fact that two years ago the legislature had to come up with some thirty million dollars to bail the Port of New Orleans out, because they were in so much debt? Did you know that?

Mr. Tobias Yes.

Mr. Tapper The people of the state are paying the bonds.

Mr. Tobias Mr. Tapper, let me, also, say that I recognize the political problem that St. Bernard Parish has in this matter, and that I understand why that you are opposed... are in favor of this amendment.

Mr. Henry Mr. Tobias, on a point of information, someone just pointed out if you would talk a little faster, you could have said what you said in ninety seconds.

Further Discussion

Mr. Chatelain Mr. Chairman and fellow delegates, you haven't heard this French voice in several days now, but I must rise, as much as it hurts me to ever oppose a good friend like Nunez and Tapper, good friends. I know they appeared before our committee on many occasions fighting for their rights in the St. Bernard area. I sat on this committee for eight months, and there is no other action greater than the action involving the Port of Orleans. We've heard input from many, many people in that area. I'd like to impress on you that I feel very strongly on this amendment, and I'm going to oppose this amendment for these reasons: that I feel that the Port of Orleans belongs to all of Louisiana. I am deeply concerned in Lafayette Parish, as I am sure the people in north Louisiana are, about the good that has come from this port. This is the reason why we are enjoying Louisiana today, as you well know. We sent a man to buy the Port of Orleans from France, way back yonder, and he came up with the whole... of the Louisiana Purchase. It's been a great, important part of the lives of all people in the Mississippi Valley for many years. I can tell you in simple, few words that all the problems involved in the Port of New Orleans in the last two years has been involved in a somewhat of a jealousy because of the membership of the commission that runs this port. My committee, my subcommittee, took no action on this amendment. We spent two days down there analyzing, to try and analyze the problems that existed because we were vitally concerned. It now operates with a five man commission, over a hundred and fifty million dollars a year annual operating budget. One hundred and fifty million dollars annual operating budget is a very, very serious business in Louisiana. I feel that we ought to look at this amendment real, real hard. What it does is reduce the appointment of this commission from two-thirds to one-half, and as a matter of fact, we don't need the amendment at all. I think the way we are operating now, has been brought out, is very, very good. We had discussed going as much as a seven man commission to operate it. After long, many hours of debate, felt that it would be better to leave it at a five man committee. I submit to you, fellow delegates, this is a very, very serious business. I suggest that you vote against this amendment. Thank you.

Further Discussion

Mr. Gautheir Mr. Chairman and members of the delegation, it's fourth down and time to punt. Some four months ago the Port of Orleans, parish officials from the city of Orleans, and city officials from the city of Orleans, and parish officials from our parish contacted myself and other delegates in regards to the port problem, its makeup, and its jurisdiction, which has been a problem for some time. They said at this time, "We know working on this a long time, but we will work it out." They took one month and we were a little bit closer, we had made a few yards. It was about second and eight. They took another month and we got a little bit closer. We might have picked up three yards. It was then, third and five. Then, in that last month, on third down, the Port of Orleans came up with its members. We met with Jefferson Parish officials, and we met with city officials. In fact, on this occasion, I managed to get invited to two lunches because my office is in Orleans, and I live in Jefferson. I had dinner with Orleans, and I had lunch with Jefferson with the court. We discussed those problems. I guarantee you, after getting treated to both lunches, I thought we were right at making that first down. It looked real good for a while. They all fell apart. We lost yardage. Now, we are fourth and a long ways to go. That's why I have reached the conclusion that this is a continuous problem; it's a problem you're going to be faced with year after year. This port belongs in the legislature because we cannot cope with it, we cannot handle it. It is a legislative problem, and I suggest to you that we can do justice to the port, by staying, and leaving them where they belong—in the legislature. Thank you.

Question
Mr. Duval: ... you know, I really enjoyed your remarks, and don't you know that I think that the constitution and the state is not going to rise and fall on this amendment. I sure wish that you would move the previous question so we can get on with the business, soon?

Further Discussion

Mr. Casey: Mr. Chairman and delegates, this is an extremely important amendment, and we feel insofar as our deep-water ports are concerned, it's certainly vitally important to the stability of our ports. The most important thing that we can talk about is not just structure and organization and distribution and redistribution of power, but it's the membership of the board. The very members that are going to exercise those powers and functions and assist in establishing the structure and organization. That's the heart and soul of the conduct of the business of the port. How much more important can it be?

Here, we are attempting to delete the very heart and soul of the operation of the port from the protection of a two-thirds vote of the legislature and put it in a separate, isolated area. Now, I just wonder what really motivates the intention behind a strong move to delete this amendment. I don't question the immediate authors of those amendments, Mr. Tapper and Mr. Nunez. I know they are well trained and well informed in what they are attempting to do. Do you know, delegates, just some of the information about the port is astounding? The cost of a vessel entering the port, the large vessel, it costs them between ten and twelve thousand dollars a day just to stay in the port—the cost of their operation, the cost of their wages for the seamen. Do you know what happens because of the instability of the Port of San Francisco which was the queen of the Pacific ports? It went from first down to eleventh place, and they are struggling. They are trying to get back on their feet. Every ton of merchandise that goes through the port, any port, leaves behind twenty-five dollars in the form of wages and benefits for our laborers. Gentleman, this is vitally important to the Port of New Orleans. I feel, also, I would hope to the Port of Cape Charles and to the Port of East Baton Rouge. There is nothing more important than the membership of the board that conducts the business and activities of any port. We must give it stability. We must avoid any loud that could come upon the port which would diminish the effectiveness of the business of that port up to the refection of that amendment.

Question

Mr. Simmer: I have only one thing to say: you want to leave the impression with this convention that it was the passage of an amendment like this that put the Port of San Francisco down from first to eleventh?

Mr. Casey: Mr. Simmer, you know I'm not premeditated or anything. I just know that bird song is not important, of course. I think that your committee is handling, and that is the anniversary the budget of the particular Port of San Francisco. Also, I understand, if I'm not mistaken, and I may be wrong, that the question to the membership of the board of commissioners in the Port of San Francisco were political.

Mr. Simmer: They things that lead to the downfall of the Port of San Francisco. We must give it stability.

Mr. Tapper: Just a few words. Mr. Chairman and fellow delegates, I couldn't understand the amount of enthusiasm that we have heard today so to politicalize the New Orleans Dock board. Certainly, nobody is trying to do that, especially we are trying to improve, too. Just please pay attention to us. when you and your group worked out the compromise on the port, I told you I would support it, and I did. I told you I don't think we would have any amendment, is any opposition, or any prohibition against a member, or any inclusion of any member. I voted for you, and I voted against Mr. Nunez. So it is up to gets to you when speaker after speaker gets up here and says we are trying to politicalize the dock board, we are trying to politicalize the New Orleans Dock Board. I think we have about thirty or forty million dollar bond issue for the New Orleans Dock Board. I think we have about thirty or forty million dollars to give for. I think they produce some levies, and everybody that's involved in them—this is a state port, I don't think it's possible to be politicalized the port, because it looks like everything we get involved in it, if you say something against the aristocracy, you are against the port. But, I believe that what's it's coming down to. That's exactly what's it's boiling down to, I mean. If you try to change one iota the way they are presently appointed, then you are against the system. You are against what's been going on. Well, maybe somebody ought to be adjusted, and that certainly wasn't my intention in saying the legislature should provide by law now those who are appointed. Mr. Denney told me he was going to be for that, by the way. I still don't believe that I'm tampering with the constitution at all. I'm just saying by law now those who are appointed. Mr. Denney told me he was going to be for that, by the way. I still don't believe that I'm tampering with the constitution at all. I'm just saying by law now those who are appointed. Mr. Denney told me he was going to be for that, by the way. I still don't believe that I'm tampering with the constitution at all. I'm just saying by law now those who are appointed.
tainsly, I respect and admire...and certainly, the New Orleans Dock Board is a vital function of this state. I would never do anything to harm it.

I don't believe, in any stretch of the imagination, to let speakers come up here one behind the other and say "This is going to politicalize the port." No way. This is what they want, really. I don't want to join hands with Jefferson; that was a...

Look at the original amendment; look at the original proposal; we were spelled out in it because there was a move on to control the New Orleans Dock Board, to tell you the truth. Let's tell the truth if we want to tell the truth about it. I had said I don't want no part of it—they wanted to appoint two from Jefferson, one from St. Bernard, and two from Orleans. So, that gives three to two. I don't want that. I'm sure you members from Orleans know I didn't want that. Never have I advocated that. That's not why I came up with this amendment. I would not have come up with it, had not you adopted (C), because I agreed with Mr. Dennery and his whole proposition. So, I ask you to adopt this amendment. It doesn't do violence to the port; it doesn't do violence to the dock board; it doesn't do violence; it doesn't politicalize it; it just allows us to provide by law how those members shall be appointed. Thank you.

[Record vote ordered. Amendment rejected: 46-58. Motion to reconsider tabled. Motion to revert to other orders adopted without objection. Motion to take up Reports of Committees adopted without objection.]

Reports of Committees
[1 Journal 588]

Announcements
[1 Journal 588-599]

[Adjournment to 1:00 o'clock, p.m., Friday, October 5, 1973.]
PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

REPORTS OF COMMITTEES LIVING OVER

Personal Privilege

Mr. Willis. Mr. Chairman and fellow delegates, the
is not a new expression, is this to say: I have no
waste. Indeed, it is in an expression of happiness.
By virtue of the authority vested in me as spokesman
of the silent and suffering majority, I present
this resolute--so hang on!
It takes great courage to take the hard knocks
like a man.
Even the weak are mighty when their hearts are
combined with honor and love of discharging duty.
The winner is always he who gives himself to
his work.

You are in the silent majority--so hang on.
The eternal stars shine as soon as it is dark
enough, and God will splash our horizon with light
tomorrow--so hang on:
Complete your climb with care, confidence, and
courage.
Nothing is too high to a resolute mind--so hang on!

Stay in the front rank of battle.
The financial loss is much; the family loss is
more, the loss of courage is all--so hang on!
Every worthy work looks at first impossible.
A great deal of talent would be removed from our
midst if you quit--so hang on!
Now you are in this jam, and it seems you can't
hang on a little longer, there is the time and place
the tide will turn--so hang on!
Courage respects courage, and courage is con-
tagious--so hang on!
Finally, hang on so we can all hang on!
It is better to wear out than rust out so--
hang it in there, baby.

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Mr. Lanzer. Consideration of Committee Proposal No. 9
introduced by Delegate Perez, Chairman on behalf of the
Committee on Local and Parish Government, and other
delegetes, members of that committee.
A proposal making provisions for local and parish
government, levee districts, and ports, the
financing thereof, and necessary provisions with
respect thereto.
The invention adopted the status of the proposal--the invention adopted the first thirty
sections of the proposal amended, with the follow-
ing exceptions being two, four, ten, twenty,
Twentv five, and thirty, which were deleted.
It then voted to pass over the financial institu-
tions constituting part two, being sections 31 through 4
subsequently adopted provisions with respect to the
levee districts. Section 43, passed over sections 44
and 45, adopted section 46, passed over section 47,
and section 48, adopted section 49, passed over section 50,
and presently has under consideration section 51, dealing with ports.

Mr. Conroy. Amendment尤至, I will say the word from
the floor. I have an amendment to yesterday's
amendment to delegate Perez, and other, are
adopted by the convention yesterday, and one of
the language added to it.
I vote out the word all, which is the word and
after section 1, and insert thereof the following:
I know of the following subject and act, in accordance with
any provision of the Constitution, all deep-water ports,
and are now organized and constituted, including their
powers and functions, structure and organization,
and territorial jurisdiction, are confirmed and shall continue to exist.

Examination

Mr. Conroy. As the proposals present themselves, there
is an inconsistency between the general dock
board and committee report of the
Revenue, Finance, and Taxation Committee, which
contains in it certain concepts and ideas with regard
to income public finance, and in particular the
state treasury and tenant centers, and I think that this problem has an
levy and has effect on a lot of different agencies in the
state. Near the Committee on Revenue and Radiant Light:
I think it requires some study as to its overall
effect, not only on the dock board or any port
mission, but on other agencies as well, which the
Revenue, Finance, and Taxation Committee has studied.
But, the only purpose of this amendment is to defer the discussion and controversy that
exist over that concept and propose to the
proposal of the Committee on Revenue, Finance, and Taxation.
It makes the concepts here subject to whatever
decision is made there, ultimately, I have given
some of the people or some political text in behalf of
the port commissions, and had understood that
there wasn't any provision in defense of
commission and controversy to that point. More needs to
be some uncertainty now so whether it's true or
not, but if, at any event, I was in that situation
that this amendment was prepared for
omitted, was to try to defer that discussion to
a point where the general concept of state finance
could be discussed and resolved by the
wholly, and the matter resolved then yield to any questions.

Mr. Lanzer. Mr. Conroy, this proposal deals with
departmentalize, to deep-water ports, and I haven't read your Article 4,
but would it apply to deep-water ports, as well as
other ports?

Mr. Conroy. It applies to all state

Mr. Lanzer. For example, does the
the Greater Louisiana Port Commission, which has
nine elected commissioners as new, and they handle all of
their own affairs, and there is not in any
that all of the money in the Greater Louisiana Port Commission would have to come to
us, but only to the Parisian.

Mr. Conroy. Mr. Lanzer, that is exactly what I
earlier about the Committee.
Mr. Lanzer. Yes, that is the same
about state aid and revenue
It is within that area, rather than taking the
in all deep-water ports, and I think this
is proposed to be that whole problem of navigation
be discussed at that time, but, yes, that
the effect of Committee Proposal No.

Mr. Lanzer. Well, let me ask you one other thing.
Wouldn't the effect of your language be to make
this proposal have independent and in that
provision, but any other state lot of the

[1620]
tion? Is that correct?

Mr. Conroy Well, the language used here is, I think, somewhat familiar. I'm not the original author of those particular phrases, but my intention in using the same phrase was that there might be any misunderstanding about what these different phrases meant, so we could discuss them as we go along. At some time or another, I would have chosen different wording initially, but I did want to parallel the language that is used in other parts of this article.

Mr. Lanier Well, I'm getting at is those who were here that wanted to consider the interest of deep-water ports would actually have to watch every provision that got proposed from now on out to make sure that it didn't affect this provision.

Mr. Conroy This is true of the Local Government Article generally, Mr. Lanier. On many sections, as you know, that same phrase appears, and I think the same concern applies to all the places where it appears.

Mr. Zervigon Mr. Conroy, to follow up on Mr. Lanier's "Time of questioning," can you tell me why you didn't phrase it "subject to the budgetary controls specified elsewhere in this constitution," or something like that? I have no objection to phrasing it in that light, but this is really rather "buying a pig in a poke," and it's rather like not laying something on the table, don't you agree?

Mr. Conroy Mrs. Zervigon, as I explained before, I used the phrase simply because that is the phrase that's used in, I think, at least four other sections in this article at this point; and I didn't feel it appropriate to suggest, at this point, a difference in language and attribute some other meaning to the other four times that this convention has seen fit to use that same phrase.

Ms. Zervigon Well, isn't it correct that the other four times that the convention used those phrases, they really meant the entire constitution as it is or will be drafted, and you really have reference to one particular section?

Mr. Conroy I'm not sure that that's so. In any event, insofar as this might involve expropriation authority, or other things, the same arguments could be raised here about the effect of the Bill of Rights and all of that. None of which arguments entirely appeal to me, but nevertheless, this convention has used it four or five different occasions seen fit to use that language.

Ms. Zervigon Did you know that I voted for those things earlier, but now I've begun to be a little afraid of them because I don't know what they include. You haven't the same feelings?

Mr. Conroy Well, I have the same feelings, but that's why I'd prefer to continue to use the same phrase, and if possible, at some point when we understand what we've done, change them all because I don't think they were that well designed from the outset. I probably should have had Mr. Gravel present this amendment anyway.

Ms. Zervigon Are you hoping that each time you open that poke, you're going to find a better-looking pig in it?

Mr. Willis Mr. Conroy, if I can play a little bit on words, the talk about "pigs." I'm going to talk about "hogs," is this amendment... It seems to me from a grammatical standpoint, if something is "subject to," it is "not inconsistent with." So it is "not inconsistent with," it is therefore "consistent with." Now, if it is "subject to," and "consistent with," then there is some redundancy, don't you suppose?

Mr. Conroy Yes.

Mr. Willis Now, assuming that's so, you are on the same committee that I am that's working Sunday after... Style and Drafting. Do you think that we can make that phrase or this subjection clause, turn a square corner in Style and Drafting? I think we have the power.

Mr. Conroy Yes, I do, and I think that by the time we get it there that it will be clear as to what it's meaning. That's what I meant earlier, though, when I said I'd prefer to use the same phrase here so that there couldn't be a suggestion made that at different points, a different phrase having been used, that different significance had to be attributed to the phrase in the different places it's used. I was only trying to be consistent with the phrase used elsewhere, and hopefully change it everywhere it appears.

Mr. Willis I understand you to say that we will... in Style and Drafting, define with fastidious precision what each phrase means, and if it has a double meaning, we will clip half.

Mr. Conroy I would hope so.

Mr. Willis There is a record now.

Mr. Jenkins Mr. Conroy, the way this section reads without your amendment, what authority vested in any of these commissions by statute will be ratified and included in this constitution. Aren't we really buying a pig in a poke, if we can't adopt your amendment? Isn't that really the fact, because we don't know what's been in these statutes in the past, have we... do we?

Mr. Conroy I don't.

Further Discussion

Mr. Casey Mr. Chairman and delegates, I certainly understand what Mr. Conroy's intentions are, and I know he's quite sincere with his amendment in suggesting that we delay any argument on handling of funds—port authority funds—until we arrive at the revenue and taxation area of the constitution. I know there is some merit to what his suggestions are, but he's using some extremely broad and general language here which connects this, not only to the revenue and taxation section of our new constitution, but to every other proposal. Now, I know his main concern is the handling of state funds—the central management of state funds—and that the recommendation of this commission is that all the agencies will have their funds run through the state treasury, and maybe, perhaps, that might be the best thing to do. I don't know, but I've already indicated to you that I don't suggest that that's not even the type of thing that we should constitutionalize, because what may be good today for handling of state funds, two years from now may be the worst thing for certain of our agencies. I would like to inform the convention of this: that we presently have a central cash management law which the legislature put into effect a couple of years ago and which I authored. I certainly concur in that concept, but in that particular statute, the legislature unanimously, to my knowledge—and I need to say that even our legislator in this convention—specifically accepted port authority. Because of the peculiar duties of the ports and because of the peculiar makeup of those ports, who were involved in international trade, need immediate availability of funds and cannot afford to go through the delays in the process of obtaining these funds from the state treasury. As I mentioned to you yesterday, the Queen Port of the Pacific, San Francisco, once was one of the first on the Pacific coast, and one of the contributing factors to their loss of prestige was the fact that they lost budgetary control. They lost budgetary autonomy. I know that his intention here is to tie that into central cash management, but I would suggest to you, we're treading on very dangerous ground. Not only here,
Mr. Jenkins: "Now, doesn't the only thing this amendment does is say that subject to and not inconsistent with the provisions of this constitution, and so forth? Isn't that all it does?"

Mr. Casey: That is what it does, and I think Mr. Conroy was expressing his intention that we tie this particular proposal into the requirement under the constitution that there be a central cash management of all state funds, and all funds will go through the state treasury. Mr. Jenkins, maybe that's the best thing, but..."

Mr. Jenkins: Well, even though he has said that, that really is just one tiny part of what this section would be subject to under that language, wouldn't it?

Mr. Casey: You're absolutely correct and that's precisely one of my other concerns, which I've indicated.

Mr. Jenkins: My primary question is, if we're going to go through and ratify and conform, as this section does, all existing statutes and other constitutional authority granting to ports certain powers and functions, shouldn't all of those statutes, all of those powers, all of those functions, be subject to and not inconsistent with this constitution?

Mr. Casey: I don't know necessarily. I don't think that agencies such as the port authority should have their powers and functions reduced, diminished, and lessened by virtue of language of that type, i.e., than what they have today to operate.

Further Discussion

Mr. Rueter: I've got two questions you want to go with the questions first, i.e., or I support the Conroy amendment. I think it's a very, very important idea. The idea that state agencies, regardless of their vested powers and interests, regardless of where they lie in our state, to the good of all of our water for irrigation, regardless of their size, and regardless of their particularities and peculiarities, I would like to try to correct that management in this state. I think that's the issue of the here and that's what we're talking about. I'm not trying to {}

Mr. Anzalone: I'm sorry, I have another question about the central cash management and all the functions that are going to have to be done. I think that's a local issue.

Mr. Rueter: Well, I don't know. I think Mr. Jenkins is onto something with respect to that amendment. It gives the legislature the authority to make a certain request, does not say how much. It is a budgetary request that other agencies, Port of New Orleans, should get in the picture of the parish of Orleans. It affects all of our state, and monies derived from that. But without, all of our concern to all. Mr. Rueter is trying to do is leave the option open when we get to revenue, finance, and taxation, to consider the matter of central cash management without the aspect of all, at all, in revenue, finance, and taxation, and it must not prevail. I think the request that I have the request to leave our port option. I'm not going to leave it. I'm not going to leave it. I'm not going to leave it. It's a fact, and about how much money involved in the Port of New Orleans and the other ports, how much can derive from the legislature. For the convenience of the whole state, I'm not going to try to get into that. The point is going to be made, and ask you to support Mr. Rueter's amendment that it certainly leaves the matter for you, government--a bad a bad model I don't see to us. I think that when we get to revenue, finance, and taxation, we're next week or whenever, you be amazed at some of the accounting and budgeting and accounting and budgeting and the whole of the Port of Orleans, and the other ports in this state, with a close to the door now, what you're missing the other--in this constitution, it is, a management of central cash management for one of the biggest of our state agencies. That is why I support it as a whole, and that's why I urge you to do so. It is not designed to go to the Port of New Orleans, all that it design to close to the Port. It is designed to go to the Port, the importance of the Port to our state, it is close to go on record that the Port of Orleans, apart from the State of Louisiana, and is not the Port of a few people on a board in Orleans, or the Port of Orleans. I urge you to support it and a moment, I think I leave the matter to my best in the very much. I think I leave the matter to the legislature, that we leave our port option, at least we see what we can do in revenue, finance, and taxation as to what the yield in taxation as to what the yield.
61st Days Proceedings—October 5, 1973

Mr. Roemer: Well, it says the same thing that we've done some six or seven times so far in this same proceeding. It leaves the option open.

Further Discussion

Mr. Avant: Mr. Chairman, and fellow delegates, I get up here in favor of Mr. Conroy's amendment, and I'll tell you why. In the first place, all day yesterday we listened to the Port of New Orleans, the Port of New Orleans, and the Port of New Orleans, like that's all that's on the state and that's all we've been talking about.

That's not so.

Mr. Chairman, and fellow delegates, I believe I'll start over. I said I get up here to speak in favor of Mr. Conroy's amendment, and I'll tell you why. I sat in here all yesterday afternoon and we listened to the Port of New Orleans, the Port of New Orleans, like that's all that this subject matter deals with. Well, that's not all it deals with. It deals with all of the deep-water ports in the state, of which the Greater Baton Rouge Port Commission happens to be one. So when we're dealing with this section, we're not just but the one deal.

You're talking about something that is very important to the people of the parish of East Baton Rouge. Now, the specific matter before us is whether or not we're going to make a language that we have inserted in a number of other sections of this constitution where we have ratified, and continued, and confirmed certain preexisting body. That is language which makes it clear that while those bodies are ratified and confirmed, and continued, they are continued insofar as they are... they are continued, but they will be subject to, and their powers shall be exercised in a manner not inconsistent with the provisions of this constitution.

Now, let me tell you why I got up here. Every one of these port commissions has got the right to expropriate property. Every single one of them has got the right to expropriate property. Now, we have, in certain sections, when we have continued preexisting bodies, we haven't used this language "subject to and not inconsistent with," perhaps, or maybe we have, but I know we've used it in some places. Well, if we don't use it here, and we don't put it here, in view of what we have done in other sections, we have it in this section for the courts to hold that the expropriation powers of these port authorities will be governed by the Constitution of 1921, and the statutes under which they operated prior to the adoption of the Constitution of 1921, and will just completely nullify what we spent the better part of, I think, two days here arguing about, and that is the expropriation provision in the Bill of Rights. Now this is just one thing that we're talking about. Of course, they've already alluded to this other thing about revenue and finance and taxation, of which I know very little, but I do know this: that there are gasoline taxes that are dedicated to the Port of New Orleans, and there are gasoline taxes that are dedicated to the Port of Lake Charles. Now, I understand that we are going to be asked to do away with all dedicated taxes. I don't know what we're going to do on that, but I'm sure what we certainly ought to nail it down that we're really doing it and that the port is not some special creature that's going to be separate and apart from what everybody else is going to be under. So for the sake of uniformity and the sake of making sure that what we have done before, and may do in the future, will be undone, I think it is absolutely necessary for us to adopt this, particularly in view of the fact that we have inserted that language in other sections; so I ask that you support and adopt this amendment.

We put this phrase in before. Don't you think it's just consistent to put it here just to make sure that these things will conform from here on out?

Mr. Avant: Well, I feel even stronger than that. Mr. O'Neill. I feel that it's mandatory that we put it here, since we have done it in other places, and if we don't do it here, we're saying "Well, it doesn't have to be subject to and not inconsistent with the provisions of this constitution."

Mr. Lanier: Mr. Avant, with all of these "subject to and not inconsistent withs" that we've been talking on, suppose two of these provisions that have that on it become inconsistent with each other. What would we do?

Mr. Avant: Mr. Lanier, that's a problem we get into not with the idea of saying "subject to this constitution"... it's an idea that you get into by constitutionalizing... it's a problem you get into by constitutionalizing a whole bunch of other statutes, which is what you're asking us to do.

You're asking us to put into this constitution a "pig in a poke," as somebody said, and that is all of these statutes that are made by the New Orleans, or the Baton Rouge, or the Greater Baton Rouge Port Commission. If we don't know what we're doing because we couldn't possibly know what all those statutes provide. Yet, that's exactly what we're being asked to do, just put them in this constitution, make them constitutional material, and if they're inconsistent, it's going to be inconsistent because they've been inconsistent since the day one, not because we made them inconsistent.

Further Discussion

Mr. Denney: I speak in opposition to this amendment, and I particularly speak to the point that Mr. Roemer made, namely, that we should keep our options open. I agree that we should keep our options open. I think we close our options when we adopt this amendment at this time. I had hoped to be able to ask Mr. Roemer a question, but fortunately time ran out. It is equally as good to provide in the finance section with regard to cash management, if we choose to do so at that time.

The language "notwithstanding the provisions of Section 50," which is the port provision, nevertheless such and such shall be the case... It seems to me that we leave our options much wider open by not freezing it in at this point in time, until we discuss the financial section. For that reason I urge you to reject the amendment at this time.

Chairman Henry in the Chair

Questions

Mrs. Warren: Mr. Denney, Mr. Avant made a statement when he was up there, and I didn't want to ask Mr. Avant this question. I wanted to ask somebody else that was in opposition to his amendment. I just want to know, you know, for my information. Mr. Avant said if we're going to put Mr. Conroy's amendment in, that with the situation that we're in now... giving industry and ports the right for expropriation of property... that they would be in the same situation as they were in the 1921 Constitution. They would be governed by the 1921 Constitution. This is what I gathered. Is that true?

Mr. Denney: I don't agree with Mr. Avant on that point. It seems to me that we now... if this constitution is adopted, we will have a constitution that provides for methods of expropriation and that's the law.

Mrs. Warren: I'm wondering if Mr. Hargrave is in here, one of our... this is very important to me. I'm wondering if one of our staff, Mr. Hargrave or somebody, can interpret this, to tell me if this is
61st Days Proceedings—October 5, 1973

going to be—this is or it is not. I don't want no halfway time. I want to know if it is or if it's most probably that it would be.

Mr. Denney. I don't know whether Mr. Hargrave is here. I can't answer that question. I can only give you my opinion that if this constitution is adopted, the provisions regarding expropriation of property contained in the 1974 Constitution will prevail, despite what the 1921 Constitution or any statutes may have said previously.

Mrs. Warren well, you see I don't understand "not being Inconsistent." That seems to me that somebody is very upset about the constitution....things not being Inconsistent with what I'm just saying, and I'm kind of green, and I want to know because to me that sounds like it should be. But with all the racket that I've heard seems like it's something that shouldn't be, or somebody's got some good reason for it not being.

Mr. Denney. Well, Mrs. Warren, the only answer I can give to that question is the one that Mr. Casey gave when he spoke up here. That was that the amendment that is presently before the convention it has been adopted, rather. My original amendment provides that the legislature may diminish or reduce the powers that any court presently has by two-thirds vote. If we put this provision in, I think it is intended to be one other provision of the constitution permit a majority vote, that that will wipe out the two-thirds provision in this section. That's why I'm opposed to it.

Mrs. Warren. Thank you.

Further Discussion

Mr. Jenkins. Mr. Chairman, delegates, when I look at this section like this Part III on Ports and Harbors, I ask myself what does it accomplish? what does it do? What does it add to this constitution that we're writing? If we said nothing about ports, what would the legal situation be after the adoption of this constitution? Would all our ports be abolished or would they continue to exist, or what would be the situation? Surely if we said nothing here about ports, all our ports would continue to exist, would have all their current powers and functions, except as those powers and functions and authorities might be changed under the provisions of the 1974 Constitution. So, what is the purpose of this Section? The only purpose that I can see for this section is to give to our ports certain powers, certain functions, and authorities which will not be subject to the other provisions of this Constitution. Read what it says. All deep-water port commission districts, that they are now organized and constituted, including their powers and functions, structure and organization and jurisdiction, are ratified and confirmed and shall continue to exist, except that the legislature may change them by two-thirds vote. In other words all the statutes, all the constitutional authority in previous years, is incorporated by reference here in and is valid. That's the same trap that the drafters of the 1921 Constitution fell into. They were incorporating by reference pages and pages and pages of statutes, prior constitutions, prior laws, and sometimes even court decisions. Is that what we're going to do here? Without the Conroy amendment saying that this section is subject to and shall not be held to be in conflict with other provisions of this constitution, we will be doing just that. That's the only legal effect this section can have. Our ports are not going to change in any way inconsistent with this Constitution. Now what are the powers and functions of our ports? One thing they're granted substantial expropriation authority, that is, appropriation authority which will remain consistent with the Bill of Rights. If we were to say that they have all their previous powers and functions, as well as all their other provisions herein. Now, that doesn't make sense. If we're going to have this section and it's substantially different, we should put it in the first place, but we certainly have to make it subject to this constitution. Now, I have a feeling of regret when even the provisions of that that isn't the issue here. The question is whether or not the powers and functions of our port commissions are going to be interfered with by this constitution or not. If there is any management it is just one small part of it. Expropriation powers are just one small part of it. The other provisions of this constitution will be interfered with, if necessary, constitutional authority which may be adopted in this state. So, I urge you. Let's adopt Mr. Conroy's amendment. Let's make it clear that these powers and functions are going to be held in consistent with what we've already done or what we might do in other sections of this constitution.

Questions

Mr. J. Jackson. Woody, the point has been raised that the question has been raised to me that this allow the amendment as exists, the section as exists, allows our port authority to, let's say, establish warehouses that, let's say, in location of the waterfront or something like that.

Mr. Jenkins. Johnny, you see, it is making a general reference to ports, the state and functions that ports might have. Frankly, I can't tell you all the powers and functions of the port commissions because they would be found in countless constitutional provisions and countless statutes that we are hereby ratifying. That's the absurdity of the section as written. We can't be expected here to ratify things which we don't have before us. We don't know what they say. We don't know whether they're inconsistent with other provisions of this constitution.

Mr. Weiss. Delegate Jenkins, are you familiar with the aspect of the financial...of the Committee on Finance as to what they will propose? In other words, it seems to me that we are preparing to sign a blank check, so to speak, for the people who have ports in allowing this segment or this section to go into our constitution without knowing what the Finance Committee has in mind. For example, if funds that come to the port may ultimately go to the state treasury, and if essential deposits are made for port necessary expenses or to pay workers, that port to obtain funds from a state treasury.

Mr. Jenkins. Well, Doctor, the thing we're going to have to do is put a question to ourselves. That question is analyze it and consider whether or not ports should be under uniform management. But that should be decided then.

Further Discussion

Mr. Tobias. Mr. Chairman, fellow delegates, I regret that I have to rise again today to attack another amendment. I firmly believe that this is a very bad amendment. I will try to limit my remarks to ninety seconds in line with what the Chairman has commented yesterday. If we adopt this amendment, what will we have in effect? It will be very similar to having you cannot analyze to the Viet Nam war. It would be the same as having the military in Washington and fighting it over in Viet Nam. It doesn't work this well that way. A business has to run. It has to have control of its own finances. It's essential for the operation and normal operation we would be buying a pig in a poke if we adopt this amendment at this time. Let me suggest that the tax and finance committee, the Judiciary committee, and the Finance Committee, the Finance and Taxation Committee would apply this. They have to read them together. It is essential, absolutely essential, that we keep New Orleans, through which passes $2,000,000,000 worth of goods a year, we've got to keep that managed by the port itself.
Mr. Poynter Amendments sent up as follows: Amendments by Nunez, Tapper and Gauthier.

Amendment No. 1. On page 26, line 12, strike out Floor Amendment No. 1 proposed by Delegates Ullo and Cheek and adopted on yesterday and in Amendment No. 1 proposed by Delegate Denney, et al, and adopted by the Convention on yesterday. Below the language added by said amendment add the following:

"(C) The legislature shall make provisions with respect to the membership of the herein provided committee shall, if the membership is established it may be changed only upon a two-thirds vote of the elected members of each House of the Legislature."

Explanations

Mr. Nunez. Mr. Chairman and fellow delegates, this amendment will do essentially what we had spoken about yesterday: that is to provide for the membership in our deep-water port commissions, which by itself we would be providing for a lot, and I can't stress that enough. We are not making provisions for the membership of the deep-water ports. Now, what this amendment does is very simply it provides for the legislature to establish a procedure to appoint, and let me assure you that's not the intention of having the legislature appoint these members. It provides the provisions. Just like they are provided for now in various statutes, provides the method by which they shall be appointed. Let me assure you, these port people are very influential and very effective in working in the legislature. Once this provision has been established in the law and once the members have been appointed, it would take a two-thirds vote. A two-thirds vote of the legislature to change it. Now, I think this is as equitable and fair and a good compromise that I can possibly reach because it does similar to what the present provision does—changing the territorial limits and the jurisdiction etc., by two-thirds. But this only touches on the memberships. It only touches on the memberships, and it cannot be changed. A lot of you have told me, and I realize rightfully so, that the legislature could change it each year if it saw fit by simply mayoría... by a simple majority of the votes. If the legislature changed, they could change the membership. So, we decided to go with two-thirds which, by the way, is essentially what Section 2, Paragraph A, of the jurisdiction, the territorial limits, the powers, and functions, and etc., by two-thirds can be changed. So, we would establish a procedure, a provision for selecting the members, and I am sure it will be similar to what you have now. You know the port people in this state, and you know the legislators that are representatives of those various districts. They practically comprise a majority of the members of the House and the Senate. I, as an individual, or myself and several others could not do nothing that they don't want to do. I think this is the way to do it. It's that simple. I think that this is the way we should do it. I see nothing wrong with doing it in this manner, and certainly locking in the provision that they could change it, except by two-thirds, or by years. That's exactly... you're doing almost the same thing now with your provision by taking it out of the constitution, your member, your parliamentary error? Shouldn't it have two-thirds to establish, if it's going to go two-thirds to change? wasn't that a typographical error?

Mr. Nunez. No, sir. That wasn't a typographical error.

Mr. Stinson. Mr. Poynter, isn't it a parliamentary error? Shouldn't it have two-thirds to establish, if it's going to go two-thirds to change? wasn't that a typographical error?

Mr. Nunez. No, sir. That wasn't a typographical error.

Mr. Stinson. You mean it intended a majority can establish it, but it takes two-thirds to change it?

Mr. Nunez. That's exactly... you're doing almost the same thing now with your provision by taking it out of the constitution, your member, your parliamentary error? Shouldn't it have two-thirds to establish, if it's going to go two-thirds to change? wasn't that a typographical error?

Mr. Nunez. No, sir. You're the first one I heard that. Those who told me said if I would do it this way that they would accept it, that if they found it to be acceptable because it tracks....

Mr. Stinson. In other words, this is just like locking the barn door and throwing the key away. Isn't it?

Mr. Nunez. Well, I thought that's what the ports wanted to do. Lock the barn door to what they have now, and throw the key away. It just does exactly what they want to do but the initial step shall be by two-thirds of the legislature. To set up the provision, Mr. Stinson, to set up the method by which they shall be appointed, and then you can't change that except by two-thirds vote of the legislature. I see nothing at all that should...

Mr. Fulco. Sammy, what's the term of office for these members? For how long do they serve?

Mr. Nunez. They presently serve a term as provided by the constitution. I think it's five years, but that would be provided by the said legislature, Mr. Fulco. If they want them to serve ten years, five years, twenty years, it wouldn't make no difference to me. If the legislature provided so, that's the way it would be. They're presently serving, to my understanding, I think... they're different. I'm not sure how... I think the dock board in New Orleans serves for five years.

Mr. Fulco. Well, that's what I wanted to know. I didn't know whether it was staggered term or four years serve at the pleasure of the governor or what.

Mr. Nunez. Well, they are staggered. I don't know if you were here yesterday when we ran down how they are appointed. The method of appointment of that particular body is an archaic method, and that has been the problem. If you want a change, and you have to change, you can't change it except by a
constitutional amendment, you're taking the port, and put them under the two-thirds provision of the legislature for changing their jurisdictions, their functions, or their picture except it doing the same thing with this amendment once the membership is established.

Further Discussion

Mr. Tapper Mr. Chairman and fellow delegates, we were discussing this basic point, I don't think the opponents to this amendment, and the proponents of the structure of the Dock Board as it is today, that is not nearer to the Port of New Orleans. It is a Port of the State of Louisiana. I agree with that. I think Louisiana depends very basically on the Port of New Orleans. For the life of me I cannot understand why the opposition to the State of Louisiana deciding the makeup of this Dock Board which is so vitally important to the entire State, to every parish, to every citizen in the State of Louisiana. All we're asking for is that the State of Louisiana decide the makeup of the Port of Louisiana, call it what you will. Is this the Port of Louisiana? We're making quite an exception to the State of Louisiana by a majority vote of the legislature. Why not this? This amendment goes a little further, once we've voted the members of the legislature, we can't by the mere whim of the legislature every year by majority vote, go back and change it. I don't agree with that. But it does, it does prohibit the changing of it by a majority of the legislature every year. It takes a two-thirds. For the life of me I cannot understand the opposition to allowing the people throughout the state to determine the makeup of the Port of Louisiana. I urge your support of this amendment.

Further Discussion

Mr. Casey Mr. Chairman and delegates, we, I thought, had fought this battle on yesterday already. I would have hoped that at this point it might have been a moot issue, but it's amazing how many lives things of this type have. I hope it only has two lives and not nine. It's curious to me why we adopted on yesterday the provisions that we did, calling for a two-thirds vote of the legislature when, except for one little curious instance, we're making a very curious exception. We're saying that the legislature on occasion shall make provisions with respect to the membership of the boards, of which we are now aware that it's a two-thirds vote. Now, why not two-thirds on everything that may affect the board commission, and why just on one small instance or occasion we're going to be so simple a voting of the majority of the legislature. I'm very curious why this type of amendment is so important and why this one little exception would be made to the general rule that we now have that I would hope would be adopted by this convention. As I said on yesterday, the membership of the boards, or rather the commissions, for the port, are fixed and set at this time in law, and in some instances in the constitution. We're taking that away, we're giving it to the prerogative of the legislature by a two-thirds vote. It will not entail constitutional provisions in the future. It does today. We asked yesterday that you retain that two-thirds vote because the membership of the board, in particular, of the Port of New Orleans, is what has greatly added to the stability of that board. As I said yesterday, it is the heart and soul of the stability of the port, but in, because they've been, twenty or thirty years ago, I was so politicalized and it was in such danger of falling completely that it was found necessary to give it the Port of New Orleans protection that was no clear, to develop full-fledged protection for the Port of New Orleans, or the full potential possible. I urge you to retain that stability, at least some, I think, of the stability in the Port of New Orleans, which even then in the manner. I think the constitution exists today, which governs and which determines the policy of the board, as what one fact in the activity of those ports will be this business that is brought into the economy of our country, and particularly the Port of New Orleans, in the Port, as such, to the Port, as such, to the Port. It cost, as such. I've heard a little while ago, from Mr. LeBlanc, we must retain the stability or at least some form of it that this legislature has, but to me why in just this little instance to one occasion we're calling upon merely a majority of the legislature to determine the fate of the membership to which, and many others, if in some way it might become part, I realize it on that occasion. I urge you to defeat this amendment.

Question

Mr. Willis Tom, I am not obsessed with the delusion that two equals three. Why, you have not given a signed majority vote to the present legislature, secured by a vote in a future legislature, by the one that would act on the legislature, and I think it has a constitutional mandate that we adopt this charter. We would determine the fate of the membership of all ports.

Mr. Willis And this violation from a majority to a two-thirds is what makes this amendment isn't it?

Mr. Casey No question about it, than my amendment in it.
cause we have not been able to resolve our problems that it is a legislative job and we should let the legislature take the time, the time it's going to take to study this problem in ironing it out and working it down. After they have done so you may come up with a composition of a commission and then lock it in. I don't feel that is being unreasonable. It's all that it's being fair and just to all of the citizens of this state. I beg of you to consider it. Do you really know how many members, or where they come from, are now presently serving on the Port Commission? Do you know its makeup? Do you know what it will be? Are you satisfied with it? If so, vote against the amendment. But if you have any questions, Mr. Gauthier, you've got a legislative problem and let the legislature decide upon the membership, and then to take it out of the political arena, lock it in by two-thirds vote thereafter. Please consider it before you cast your vote. Thank you.

Questions

Mr. Gauthier, does Orleans Parish have seven Senators?

Mr. Gauthier I believe you're correct. Mr. Roy.

Mr. Roy Then, if this doesn't pass, it would take... all Orleans Parish would have to do is to pick up another six Senators and prevent any type of meaningful application of law to this area that has been needed to constitutionalize the enclaves at the state line. They will never be able to be changed. Is that right?

Mr. Gauthier Chris, for once I think you hit the nail right on the head.

Mr. Anzalone Mr. Gauthier, do I understand from the meaning of your talk that you are looking for is a little bit of flexibility in these appointments?

Mr. Gauthier That's correct.

Mr. Anzalone But yet, what you're really saying is that after we get it the way we want it then we want it to become inflexible again which is the same problem that we've got now.

Mr. Gauthier You're right, Joe. You're very right. After the way we want it, all of the people, not a certain few, but all of the people. We want a good preface to it, Joe.

Mr. Anzalone One more little quick question. How many people decided who was going to be on this thing in the first place?

Mr. Gauthier You'd have to go back to the history books, Joe. I couldn't tell you that, and I don't believe anybody in the room could tell you that.

Mr. Casey Mr. Gauthier, I'll never understand, and I'm asking you a question, how all the people are making this determination when it's a simple majority of the legislature as distinguished from a two-thirds vote of the legislature, and is not Mr. Anzalone correct that a simple majority of the legislators may initially, under this amendment, it is possible might do a very bad job, and then in the future after that, it can only be changed by a two-thirds vote. Is that not correct?

Mr. Gauthier Tom, I'm even amazed that you have asked such a question. You profess to have so much faith in the legislature and in a democracy which, as you know, majority rules. It amazes me that you even ask this question.

Mr. Casey Well, couldn't the legislature under this amendment indicate or state or require, under this process now, that the governor would make all the appointments? Couldn't the legislature do that?
I would plead with you to give this amendment your serious consideration. It's a very serious amendment. It does what I think, and what I think you ought to be done. What you thought ought to be done and what ought to be done in this state when it comes to our ports. It provides a method for doing something that we haven't always been able to do in the past. We do take a parish or two and extend the jurisdiction of a port, like it's very likely we might have to... It's been said about the great growth from Baton Rouge down to New Orleans, and if you ride along that river road, there is a tremendous amount of growth. It's been said about the Super-pump Act for us to do that as we are going, if it takes in two or three parishes, you have the flexibility to change, a two-thirds vote of the legislature. If you think it's easy to get two-thirds of the legislature to agree on anything, I'm telling you it isn't. It's difficult. Please, please go along with this amendment.

Amendment

Mr. Fynter Amendments sent up by Delegate Jenkins as follows—apparently, a lot of these were lost, we've been repassed out, I believe—Amendment No. 1. Page 26, line 12, in Convention Amend. No. 1, proposed by Delegate Jenkins, and adopted by the Convention on October 4, 1973, on line 8 of that amendment, after the words "The legislature." and before the word "may"—insert the following: "may consolidate or abolish any such commission or district or"

Explanations

Mr. Jenkins, Mr. Chairman, and delegates, if you look at section 4 of the section, as we have it, it says that the legislature may disband, reduce, or withdraw from any such commission or district, any of its powers and functions, or any such consolidation, in an extreme case, to abolition of a commission, or district, and that is a desirable thing to have time in the future line work we have in the law. If we adopt this section, it is in the case of the superport, where the superport has been created by statute not hundreds of years, and yet, if we want an effect, be ratifying and endorsing everything in that bill by virtue of this section. Now, is it necessary that we not do it in a strange way? Is it necessary that the legislature could not do anything what it has done in the past, if we adopt this section, in order, be a possibility in the future that we could go and modify, the private, the private, the personal, or the private, the personal, which will save the taxpayers of this state three or four hundred million dollars. Certainly, if a private individual were to do such a work, the state of Louisiana would not want to promote it, and it didn't take any money to abolish such a statute, the statutory authority. Also, the future changes, it is a matter of what consolidation of the port we have done in either case. The two-thirds resolution in section I, I think, will apply, the two-thirds resolution in section A, I think, will apply as to consolidation by adoption. And it would protect each and every part of the state if it's done in either case. The two-thirds resolution, in section I, I think, will apply as to consolidation by adoption. And it would protect each and every part of the state if it's done in either case.

Mr. Jenkins said he would object to make any amendment.
and terminal districts; 

(B) The legislature—this is the insert—"may consolidate or abolish any such commission or district or may diminish, reduce, or withdraw from any such commission or district any of its powers and functions and may affect the structure and organization, distribution, and redistribution of the powers and functions of any such commission or district, including additions or reductions of its territorial jurisdiction, only by act passed by a favorable vote of at least two-thirds of the elected members of each house."

(C) The legislature shall make provisions with respect to the membership of the herein provided commissions. On reorganization of any such commission or district, it may be changed only upon a two-thirds vote of the elected members of each house of the legislature."

Explanation

Mr. Dennery Mr. Chairman, I'll be pleased to answer any questions. I had explained it before Mr. Poynter revised the language.

Questions

Mr. Newton Moise, did you...you left the language of the Jenkins amendment in. Is that right? I didn't catch it.

Mr. Dennery Yes.

Mr. Newton Moise, I wish you'd look at your language in Section (C). I think maybe it might be better to say "the legislature make provision for determining the membership," or something like that. I think the language is a little vague. Maybe Style and Drafting could do something about it...

Mr. Dennery Well, Mr. Newton, that's the language that the convention just adopted. That's Senator Nunez and Representative Tapper's amendment. I didn't want to bring that question up again. It'd been brought up enough.

Mr. Newton I mean it might be just locking people in there, is what I'm talking about...persons, instead of a method of...

Mr. Tapper Mr. Dennery, I believe I understood you to say that you amended in no way affected the amendment that was just passed, and I think you're referring to Section (C) which says that "the legislature shall make provisions with respect to the membership of the herein provided commissions." However, the wording of our amendment was that the membership...or the provisions shall be by majority vote of the legislature, and I'm wondering, since your second sentence in paragraph (C) refers to two-thirds, if you would not be implying by Section (C) of your amendment that it would take two-thirds to make provisions for the makeup of the...

Mr. Dennery Mr. Tapper, this is a Xerox of your amendment. I don't think any change was made, unless Mr. Poynter made a change.

Mr. Poynter That's just a Xerox, Mr. Tapper, of your and Nunez's and Mr. Gauthier's amendment.

Mr. Duval Mr. Dennery, this is merely a technical amendment, is it not, reversing the paragraphs to make your intent clear? Isn't that what it is?

Mr. Dennery Yes, it merely reverses (A) and (B).

Mr. Champagne I have the same question that Mr. Newton had, and I know we adopted it, but I don't know if this doesn't say, like you say "these five people are going to be in there," you have to have a two-thirds vote to change it, to get them out, or to even change those names. I know...

Mr. Dennery Mr. Champagne, I can't answer that question because I didn't draft the amendment.

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Chatelain].

On page 26, line 12, in Floor Amendment No. 1, proposed by Delegate Dennery, and adopted by the convention on today—amendment just adopted—on line 22, or said amendment—and incidentally, that's down in (C)—after the words "membership of the" delete the remainder of the line and at the beginning of line 23, delete "provided commissions." and insert in lieu thereof the following: "Board of Commissioners of the Port of New Orleans."

It would make the first sentence read as follows... (C), if you've got that Dennery amendment, just adopted: "The legislature shall make provisions with respect to the membership of the herein provided commissions, once the membership... No, I didn't do that right, either... "The legislature shall make provisions with respect to the membership of the Board of Commissioners of the Port of New Orleans."

Then pick up "Once the membership is established."

Explanation

Mr. Chatelain Mr. Chairman and fellow delegates, I wish that you'd give me your attention just for a few minutes. I'm not going to fight this real hard, but I think it should be put before the people of the State of Louisiana, that this fight is... in the Port of Orleans, not the entire State of Louisiana. For eight months I sat on this committee, and we'd had more meetings relative to this Port of Orleans than all others put together. I feel that the in-fighting in the three parishes around the Port of Orleans has caused this problem. I'm not faulting Jefferson Parish, St. Bernard Parish, or Orleans Parish, but the problem has been going on for eight months in this Constitutional Convention. I feel... my amendment will put the problem exactly where it belongs in that area. Let's limit the Board of Commissioners to the Port of Orleans in Section (C) of the amendment just adopted. I feel that's where it belongs; that's where the problem is, and let's put it squarely, squarely where it belongs. Let's not involve the Port of Lake Charles, the Port of Baton Rouge, the South Louisiana Ports, and other ports in this state. Let's let the fight be in the Port of Orleans area only. I urge your support of this amendment.

Questions

Mr. Rayburn Mr. Chatelain, would you briefly tell me what this amendment does?

Mr. Chatelain Yes. It limits the possibility... of the...one-half of the legislature to debate the Port of Orleans only, not the rest of the ports in the State of Louisiana.

Mr. Rayburn Would you explain the "one-half of the legislature?"

Mr. Chatelain Yes.

Mr. Rayburn Well, what are you talking about?

Mr. Chatelain Well, I'm talking about one-half of the legislature now, in Section (C), can change the commissions and the boards of all the ports in this state.

Mr. Rayburn Do you have any ports in your area?

Mr. Chatelain Yes, sir, Port of Lake Charles.

Mr. Rayburn Well, what are you doing to them? Port of Lake Charles is about as far as you, or further, than New Orleans is from me. I mean, what effect will this have under the present language that we just adopted? I can't understand the divi-

[1629]
Mr. Chatelain: Well, I try to show the power of this state that a majority lies in the Port of Orleans area, they're the three parishes adjacent to the Port of Orleans. Let's put it this way that area is not involved all the ports. We're writing a constitution for the future of this state, not just for one section of this state, for all of the state.

Mr. Rayburn: You're just going to let the members of the legislature in that area vote on anything?

Mr. Chatelain: No, sir.

Mr. Rayburn: Well... explain how you said you are going to divide the legislature on voting. I wouldn't follow you there.

Mr. Chatelain: Well, Senator Rayburn, I think you fully know what I mean... I mean that a majority of the elected thirty-nine senators, and one hundred and five representatives of the State of Louisiana.

Mr. Rayburn: As I understand it, your amendment just deals with the majority vote for the original composition, the membership of the board is that right?

Mr. Chatelain: That's exactly right.

Mr. Rayburn: You would have... you would have that Majority Rule Legislative Composition Act deal only with the Port of New Orleans?

Mr. Chatelain: Right.

Mr. Rayburn: With another port.

Mr. Chatelain: That is right. Exactly.

Mr. Roemer: Did you know, I opposed your amendment.

Mr. Chatelain: Sir! I didn't hear you.

Mr. Roemer: I just would, was opposed to your amendment. Do you know that?

Mr. Chatelain: That wouldn't be the first time. Mr. Roemer: Recognizing that.

Mr. Roemer: Was the effect of this amendment, as I said, just to make a port out of New Orleans? As you're treating the other ports in the same way, as we would be treating a third.

Mr. Chatelain: The amendment says for the Port of Orleans, not all the ports. We have given years and years of time and effort and money in this thing, to make the Port of Orleans a viable port and not the ports around it.

Mr. Roemer: I agree with you. Mr. Chatelain: We made a mistake, a lot of people are against it, and now we're trying to get a second chance from the rest of the state, which I think is wrong. But that's the way we're looking at it.

Mr. Roemer: I hope, Mr. Chatelain, what would we do, section by section, or the Port of New Orleans, I can't see that you're going to get any votes to start with.

Mr. Chatelain: Mr. Chatelain: I think the Port of Orleans is a very important section of our state. We've been working for a long time to make it viable, and now we're trying to get a second chance from the rest of the state, which I think is wrong. But that's the way we're looking at it.

Mr. Roemer: I agree with you. Mr. Chatelain: We made a mistake, a lot of people are against it, and now we're trying to get a second chance from the rest of the state, which I think is wrong. But that's the way we're looking at it.
61st Days Proceedings—October 5, 1973

tured, we did put in our committee report the proposal that the legislature, for a period of ten years, could change the makeup or the membership of the Dock Board of New Orleans. All that this legislation is to do is to let all of the ports throughout the state. I think it’s time, maybe, we begin to think a little bit about the politics of all of this. I realize that among some of the ports in the Port of New Orleans this is going to be a very... the people... some of the people are not going to like it. But, I don’t believe that that should preclude us politically or in any way to pick on the Ports of Baton Rouge, of South Louisiana, of Lake Charles, and I’m saying to you that if this amendment is adopted, at least, it will bring down the enemy only of those who would be supporting the Port of New Orleans. But, why should we go out now and pick on these other ports where they have no problems? I say to you, I think that you’re making a big mistake, if you do that. So, since the problem is localized, I suggest to you that, even though it is not the best constitutional method of approaching a problem, that we must pass a constitution, and we don’t need any more enemies than we already have to the passage of this constitution, and therefore, I suggest to you that you limit the committee to the New Orleans, the Port of New Orleans, instead of making it apply to all the other deep-water ports.

Questions

Mr. Weiss Delegate Perez, would you say then, that the Port of New Orleans is quite unique and different? Of course, it has a different volume and load, and the commissions and the board that constitute it is entirely different than the rest of the ports of the state, and that we’d just as well call a spade a spade and label it for what it is, and let the constitutional article constitutionalize it, rather than to say we’re introducing a large commission which is apparently occurring?

Mr. Perez That’s correct. You see one of the problems involved is that the Port of New Orleans has been in the constitution; the method of appointment of its membership has been in the constitution for these many years, and, as a result, it was virtually impossible to change that... the makeup of the membership, and it was because of that fact that all parties involved who testified before the committee, I testifie... that there was an animosity with regard to the Port of New Orleans, that the Constitution put the provision with regard to a minority being different than the rest of the ports of New Orleans. But, I don’t believe it’s wise to subject all of these other deep-water ports to that same situation.

Mr. Weiss In how many previous constitutions has the Port of New Orleans been constitutionalized?

Mr. Perez Well, the Port of New Orleans dates back into many of the earlier constitutions. I couldn’t tell you how many.

Mr. Weiss Many previous constitutions.

Mr. Perez But, some of the present provisions relate back to earlier provisions... provisions of earlier constitutions.

Further Discussion

Mr. Reeves I rise to oppose this particular amendment. It’s not the reason that I favor the Port of Orleans, but I do favor the Port of Orleans, the Great State of Louisiana, and I favor the entire state. What we’re writing is a constitution for the future, not a constitution of the past, and I don’t know if you realize what you’re doing, but, I have been a member of the Subcommittee on Ports and Transportation Districts; I know what you did. I hope that you will listen to the people and what you did do. If you would just be seated a moment and listen and find out what you’ve done for the past two days.

First of all, beginning of Section 50, you said “All deep-water port commissions, and all deep-water port, harbor, and terminal districts... as they are now organized and constituted, including their powers and functions, including the Port of Orleans, and territorial jurisdiction, are ratified and confirmed, and shall continue to exist, except that.” I would go on down. I don’t know if you know what that means, but that means that the Port of Orleans, the Port of Baton Rouge, the Port of Lake Charles, the Concordia Parish Port Commission, and the South Louisiana Port Commission are all constitutionalized. Now, then, for one second I would like to tell you what the Lake Charles Port Commission has in it in reference to its members. We find that the... first now, this first provision from the constitution of 1921 which you ratified, in case you didn’t know it—we find that the “first vacancy on the board shall be filled by appointment by the governor, with the advice and the consent of the Senate, from a list of three nominees from the Rice Growers’ Association.” Presume that, fifteen, or twenty, or thirty years from now, the Rice Growers’ Association... which central office is located in Lake Charles, happened to move. Say it moved to Alexandria. You can’t go on down and say if the Port of Lake Charles... that’s from anywhere else; it’s in the constitution; you just wrote it in. What I’m saying to you is, if you pass this amendment, that you are simply making it necessary for the Port of New Orleans to be able to be changed. I don’t know what we are going to be needing to be changed in the Port of Lake Charles, or the Port of... of the South Louisiana Port Commission in the future years, but if we continue progressing, as I hope we will in this state, it may be necessary that we change the powers and functions of the way we’ve got it set up now, you can change them, but if you put it in there that just you can change the Port of Orleans, you can’t change anybody else. Sit down and realize what you’ve done. It is unbelievable what you really have done. You’ve got in here, on down in the Lake Charles Port Commission, that, not only the rice growers are on the Port of Lake Charles, but you’ve got the Lake Charles Maritime Commission. Presume that something happened to it, and some of you say, well, nothing’s ever going to happen to it, but no one would have thought that there would have... ended a cotton exchange in Orleans Parish, but it did. That was written in 1921. The cotton exchange does not exist anymore, you can forget it. But, let’s think in the 1921 Constitution, and you exist under it, and this is what’s wrong. We’ve got to realize that we’re writing a constitution which is going to be good for 50 years, not one for the past. This is not an Orleans provision; this is a State of Louisiana provision, and I would hope that you would vote no on this amendment. No for the city of New Orleans does not own the port; the great State of Louisiana does. We can be a great state; we can continue to be a great state, if we all stay together, but let’s be together, and not single out the city of New Orleans or the Port of Orleans as a certain problem. Let’s take care of everybody. I’ll yield to questions.

Questions

Mr. Bergeron Terry, I’m in agreement with what you’ve said. Every time people get up to the microphone many of them have said, “We’re not talking about the Port of Orleans, which pertains only to New Orleans; we’re talking about a port which pertains to the State of Louisiana.” Do you agree with me on that?

Mr. Reeves Yes, sir.

Mr. Bergeron In the past articles that we’ve completed, we’ve only mentioned New Orleans one time. Do you realize that?

Mr. Reeves Yes, sir.

Mr. Bergeron It’s been our job, and it seems like
Further Discussion

Mr. Ullo. Mr. Chairman, I've been a member of this committee, and this amendment was introduced by me, and I'd like to say a few words about it. I've been a member of this committee for many years, and I've always been opposed to the idea of local government. I think that the state should have complete control over all matters that affect the people of Louisiana. I believe that this amendment is a step in the wrong direction, and I would like to hear from others who disagree with me.

Mr. Weiss. I disagree with Mr. Ullo's position. I believe that local government is necessary for the good of the people. I think that the people should have a say in how their communities are run, and this amendment allows for that. I urge everyone to support this amendment.

Mr. Lanier. I would like to add my voice to those who support this amendment. I believe that local government is necessary for the good of the people, and I think that this amendment is a step in the right direction.

Questions

Mr. Ullo. Mr. Chairman, I have a question about this amendment. It seems to me that the definitions in the amendment are ambiguous. How do we know that the definitions are clear and unambiguous?

Mr. Lanier. Mr. Chairman, I agree with Mr. Ullo's concern about the definitions. I think that we need to clarify these definitions to ensure that they are clear and unambiguous.

Mr. Weiss. Mr. Chairman, I would like to suggest that we add a clause to the amendment that clarifies the definitions of the terms used. I think that this would help to ensure that the definitions are clear and unambiguous.

Explanations

Mr. Perez. Mr. Chairman, I would like to clarify some points about this amendment. I think that this amendment is necessary for the good of the people. I urge everyone to support this amendment.

Mr. Ullo. Mr. Chairman, I disagree with Mr. Perez's position. I believe that this amendment is a step in the wrong direction, and I would like to hear from others who disagree with me.

Mr. Lanier. Mr. Chairman, I would like to add my voice to those who support this amendment. I believe that local government is necessary for the good of the people, and I think that this amendment is a step in the right direction.

Mr. Weiss. Mr. Chairman, I would like to suggest that we add a clause to the amendment that clarifies the definitions of the terms used. I think that this would help to ensure that the definitions are clear and unambiguous.

Mr. Perez. Mr. Chairman, I would like to clarify some points about this amendment. I think that this amendment is necessary for the good of the people. I urge everyone to support this amendment.
of the convention, it appeared to many of the delegates that these particular definitions, especially those seeking to define powers, functions, structure and organization are certainly not needed in any way in any constitution that we might adopt. I don’t know of any serious objection to the deletion of these kind of definitions and I would urge that you go along with the recommendation of the coauthors and myself that the definitions be deleted. With respect to the definition of local or special law, it may be that some definitions should be provided at some time, but certainly not in this particular manner, which really doesn’t define what a local or special law is. It just says what it is not. I believe that at some time later on there might be a necessity to give consideration to a definitions section for the entire constitution and, of course, the other definitions that we would approve of at this time, excluding the ones that hopefully will be left out as a consequence of the amendment here proposed, then could be relegated to that definitions section. So, I urge that we adopt this amendment which would delete the provisions of the committee report, lines 6 through 16, page 28, and line 22 and 23.

Question

Mr. Vick Do you know of any constitution of these United States that has a section on definitions?

Mr. Gravel No, Mr. Vick, but I can conceive of the possibility that we should have some definitions, but certainly not these kind of things. I urge the adoption of the amendment.

[Amendment adopted without objection.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Denney], on page 28, line 17, after the words and quotation mark, “general law” and before the word “means” insert the following: “or law.”

Explanation

Mr. Denney The purpose of this amendment, Mr. Chairman and delegates, is that I find in eight places at least in this section the word “law” is used and in other places the words “general law” are used, and I believe that the intention of the committee was the use of that word “law” implied the use of “general law”. So, therefore, I have amended the definition to say the words “general law or law” shall mean a law of statewide concern and so forth.

Question

Mr. Stagg Mr. Denney, I have seen definitions before and I think there is a general theory of definitions that you don’t use the word itself in describing what the words mean, and if we read what your amendment does, it says “general law or law means a law”. Is that what you intended to tell us?

Mr. Denney Yes, sir, Mr. Stagg, because it doesn’t mean a law. It means a law of statewide concern. That’s the purpose of it. Mr. Poynter has pointed out to me however, that the amendment is slightly incorrect and it should read “or law”. Is that right?

Mr. Henry Of course, he’s right, Mr. Denney... and Mr. Stagg.

Further Discussion

Mr. Perez You know, when you’re hit with an amendment like this which may or may not have some significant meaning, I really don’t know what to say about it, except for the fact that we do have this definition and I really don’t know exactly what the purpose of the “or law” means, and all I’m trying...
to say to the convention that I am not sure what it means and I don't know what to do about it.

Recess

Amendment

Mr. Poynter Amendment No 1 [by N. Poynter], page 26, at the beginning of line 15, change "to" to "in," page 20, line 24, change the [71] to [72].

Explanation

Mr. Perez The only purpose of this amendment is to correct several of the definitions inasmuch as we have taken several of the definitions out.

Questions

Mr. Roy Well, it goes to the substance of it, and I am just wondering, on line 32 when you speak of a vessel of 25 foot draft and engaging in foreign commerce that don't.

Mr. Henry Mr. Roy, I think your business is out of order. It is 72, and I don't know what it really is. This is a technical amendment that the gentleman has offered....

Mr. Roy I know it's a technical amendment and I don't know about ports and drafts of vessels, but I'm wondering if we say that a deep-water port commission, and I know they're interested in it, does it have to accommodate a vessel that draws 25 feet of draft and actually is engaging in commerce.

Mr. Henry Mr. Roy, please. What you're talking about is if you don't like it, but he's got a technical amendment up here and I don't believe your amendment has anything to do with it, although I don't think any of us have had the benefit of an ably reading the technical amendment, but it's out of order.

Constitution of the United States: Article III, Section 2

Amendment

Mr. Poynter Amendment No 1 [by N. Poynter], page 26, at the beginning of line 15, change "to" to "in," page 20, line 24, change the [71] to [72].

Explanation

Mr. Guarrisco It is a very bad amendment. I am asking to delete all definitions in their entirety. I have before me the whole page of definitions in their entirety.

Questions

Mr. Poynter Mr. Guarisco, are you aware that in the Constitutional there is a definition of terms?

Mr. Guarisco Well, then, you're giving your opinion to deleting that same definitions as are in the original on fire and police and municipal civil service, are you?

Mr. Guarrisco when I get to it, I'll do that.

Mr. Zervigon Mr. Poynter.

Mr. Poynter Mr. Guarisco, the only definition I saw had definitions in it, and I think the Illinois Constitution has definitions in it, and do you know that I as a layman appreciate the fact that I can understand some of the terms used in the Constitution?

Mr. Guarisco Mr. Zervigon, first of all, I checked the Illinois Constitution and it does not have definitions of terms, for in a constitution you would like to have definitions that you could understand it, and this is perfectly agreeable to be in the statutes and the civil code, the civil code of procedure and so forth, but not in a constitution.

Mr. Derbes Mr. Guarisco, can you define interstate commerce for us, 15 words or less.

Mr. Guarisco Mr. the courts say that...

Mr. Derbes Don't you think it is your function to anticipate and don't you think it is your function to provide for clarity where necessary so that we are actually saying what we mean?

Mr. Guarisco I don't think, put by definition, the interpretation of this constitution is not going to be by the legislature. It's going to be by the court.

Mr. Burns Mr. Guarisco, do you think that when the voters read this whole constitution before they vote on it that they would like to have those definitions so they could more intelligently vote on it.

Mr. Guarisco I think I know what you mean. I think I mean I don't think we ought to put down and we couldn't do for each article we should have definitions, take due process, equal protection of no law.

Mr. Layton Mr. Poynter, I have a point on the page that I would like to bring out of it that is very important. The words "shall" be construed as "will" or "may" be construed as "shall" under the Constitution of Illinois, and then you have the courts handle that. I don't think the words "shall" be construed as "will" or "may" be construed as "shall" under the Constitution of Illinois, and then the courts handle that. I don't think the words "shall" be construed as "will" or "may" be construed as "shall" under the Constitution of Illinois, and then the courts handle that. I don't think the words "shall" be construed as "will" or "may" be construed as "shall" under the Constitution of Illinois, and then the courts handle that. I don't think the words "shall" be construed as "will" or "may" be construed as "shall" under the Constitution of Illinois, and then the courts handle that.

Mr. Guarisco I don't think it is very important.
know what a deep-water port was if we didn’t have it defined?

Mr. Perez: I have no idea. That’s the whole purpose of these definitions and they are all an integral part of the whole local government proposal and without the definitions we have nothing.

Further Discussion

Mr. Gravel: Mr. Chairman and ladies and gentlemen of the convention, I just want to make one point clear because there may be a misunderstanding about something and I’m not suggesting that Mr. Guarisco didn’t have the right to present his amendment for he didn’t, but he had indicated to me as the author of the previous amendment that he was going to withdraw that amendment and I know that I made that representation to a number of those who signed the amendment that we’ve just adopted that I was the lead author on, and I wanted to make it clear that I wasn’t aware of the fact that Mr. Guarisco had changed his mind. I’m not criticizing him for it. I think, however, that I must say that I definitely feel that we do need the remaining definitions that are in this article. I urge that you defeat the amendment, because in the document we have tried to no other speakers, would move the previous question.

[Previous Question ordered. Amendment rejected: 10-99. Motion to reconsider tabled. Previous Question on the Section ordered. Section passed: 105-7. Motion to reconsider tabled.]

Motion

Mr. Perez: Mr. Chairman and ladies and gentlemen of the convention, in accordance with the intention that was announced yesterday that we would now move to return the Local Government Committee Proposal to the calendar with subject to call with the understanding that Revenue, Finance and Taxation will begin their work on the property tax problem and that immediately thereafter that we would then call back from the calendar the Local Government Proposal and go through the remainder of the provisions.

[Motion to return Committee Proposal No. 17 to the Calendar subject to call adopted without objection. Motion to take Committee Proposal No. 33 out of its regular order adopted without objection.]

Recess

[Quorum call: 93 delegates present and a quorum.]

Reading of the Proposal

Mr. Poynter: Committee Proposal No. 33 introduced by Delegate Alphonse Jackson, Chairman of the Committee on Bill of Rights and Elections, which is a substitute for Committee Proposal No. 20 also by Delegate Jackson on behalf of the committee and other members...delegates members of that committee. A proposal making general provisions for elections.

Explanation

Mr. Jackson: This is going to be brief. Mr. Chairman, ladies and gentlemen of this convention, Article 3 of the proposed new constitution for this state is embodied in the Committee Proposal No. 33. We believe that this is a very important document because in the document we have tried to...we have tried very strongly to emphasize the fact that voting is a basic right, that voting is important to the democratic process in a way that all of us must be aware. We have also tried by way of this article to preserve the integrity of the electoral process in this state. We believe that voting is a sacred right probably the most precious thing that Louisianians will ever own, so therefore we ask your full consideration of the sections contained in this proposal, and I would now ask the Clerk to read Section No. 1, if there are no questions.

Reading of the Section

Mr. Poynter: Article X. Elections

Section 1. Free Elections

Section 1. Elections shall be freely and fairly conducted on a periodic basis. No laws shall interfere with the free exercise of the right to vote.

Explanation

Mr. Jackson: Section 1 of this article is found in most of the constitutions of this country in which we live. We have researched the question fully, we think that this section provides for the general impetus and philosophy of the present constitution yet, it assures that we will have fair and free elections on a basis authorized by the legislature or by this constitution, and we believe that this is a very important section and we would ask for your adoption.

Questions

Mr. Sutherland: Mr. Jackson, in regard to this section...I’m in favor of free elections but what does this do for age requirements such as 18 to be able to vote. It says no law shall be passed to...

Mr. Jackson: There is a provision in this...in the Bill of Rights Article that establishes 18 year old...the 18th year as the time for voting. We’ve already adopted that in the Right’s article.

Mr. Denney: Mr. Jackson, refer to the first sentence and the last phraseology there, "elections shall be freely and fairly conducted on a periodic basis". Does this not imply or negate the possibility of holding special elections?

Mr. Jackson: I don’t think so. What we were after...we wanted to be sure that elections were held in accordance with time as designated by statute.

Mr. Denney: What you’re referring to is regular elections, is that correct?

Mr. Jackson: Yes.

Mr. Denney: Well, that’s why I asked the question, by just putting "elections" do you not imply at any rate, negate the possibility of having special elections?

Mr. Jackson: I don’t think so.

Mr. Fontenot: Mr. Jackson, that last sentence, "no law shall interfere..." kind of bothers me, because you have laws in your statutes requiring registration and residency requirements and all these other kinds of laws on the books which would...are for the regulation of voting privileges. Don’t you think that somebody might say that this interferes with my right to vote. I mean, these laws are necessary but somebody might say that this is interfering with my right to vote.

Mr. Jackson: No, I don’t think so.

Mr. Fontenot: Mr. Jackson, that last sentence, "no law shall interfere..." kind of bothers me, because you have laws in your statutes requiring registration and residency requirements and all these other kinds of laws on the books which would...are for the regulation of voting privileges. Don’t you think that somebody might say that this interferes with my right to vote. I mean, these laws are necessary but somebody might say that this is interfering with my right to vote.

Mr. Jackson: No, I don’t think so.

Mr. Fontenot: If you look at the complete article you will find in the sections provided for registration. You will find in there provisions made for residency requirements and what have you. So I do not see how that language would interfere with the requirements as suggested by way of this section...by way of this article.

Mr. Roy: Mr. Jackson, to make that last sentence
a little more lucid, what we had planned was that the people who have the right to vote, if they don't exercise it, we don't want anybody interfering with it. They couldn't stop you and arrest you for a bunch of things, or kill people right before an election, and then you had the right to vote. And it was implied in that that you had to, of course, meet voter qualifications in another section, being at least eighteen and what have you. So, there is no prohibition, right.

Mr. A. Jackson That's true.

Amendment

Mr. Pointer Amendment No. 1 to Hr. 61st and Mr. 20-20-20. On page 1, between lines 12 and 13, insert the following:

Section 1. Election Code

Section 1. Subject to and not inconsistent with the provisions of this constitution, the legislature shall adopt an election code which shall provide for the registration of voters and for the conduct of all elections.

Explanation

Mr. Gravel Mr. Chairman, ladies and gentlemen of the convention, this proposed amendment, which I believe is being distributed to you now, begins at the very outset of the elections article to say something that I think is of overriding importance with respect to the conduct of elections. It says very clearly that "subject to and not inconsistent with the provisions of this constitution..."

Mr. Chairman, I wish you would ask Mr. Jackson, Mr. Roy, please, to let me make my statement before they start arguing.

Mr. Henry Mr. Gravel, I want to say about this, that I have been trying during this whole convention to get Mr. Roy settled down. He belongs more to you than he does to me. If you can't put him up with him—good luck.

Mr. Gravel Mr. Chairman, if I had been able to settle him down, I would have done it. That's why I'm trying to appeal the case to you.

Mr. Henry I want to ask the sergeant-at-arms to seat Mr. Roy.

Mr. Roy, take your seat, in all seriousness.

Mr. Gravel I recognize that you, as always, want to speak. Mr. Roy. I have decided the reason they elected you to this convention was to get you out of town.

Proceed.

Explanation Continued

Mr. Gravel I want to make it clear that what we are doing here, and I realize that there is a part of this provision in Section 1 of the committee proposal. At the very outset, I think, though, that this convention should adopt the provision suggested by this amendment to the effect that the legislature shall adopt an election code which shall provide for the registration of voters and the conduct of elections. Let me say this, that in the event this particular proposal is accepted by the convention, then a substantial part of what is otherwise contained in Committee Proposal No. 11 will not be required. Frankly, I don't think it should be placed in the constitution, that is, a good part of it. Now, let me speak on something that I believe I know a little bit about this. It is: the problem that we have, presently, and need to know now is how to conduct an election. And how many of us want to see elections conducted in the future. You will all recall that Governor Edwards, at one of his principal campaign visits to the people of the State of Louisiana, said he wanted to do something about the election process in this state that the idea of having a first primary, a second primary, and then a general election was outmoded. It caused all sorts of problems for the
Mr. Gravel. I think Section 2 certainly would not be required.

Mr. Sandoz. Mr. Gravel, if we adopt your amendment, could it not take the place of the entire proposition?

Mr. Gravel. Well, a good part of it, yes, sir.

There might be--it really could do it, Mr. Sandoz, but, there may very well be some very, very important things here to this convention you know that some of you, or a majority of you, may feel just have to be put in the constitution. I think we should weigh and consider each section carefully in that light. I don't want to say let's just disregard all the committee has done. But, most of what is in here could be absorbed, Mr. Sandoz, by my amendment. Yes, sir.

Mrs. Miller. When we look at Section 3, Mr. Gravel, isn't it true that some of the federal court decisions have already taken place, like the secret ballot, no matter how much we would like to defend it and have this right in the constitution. Under the federal court decision, anyone can go into the booth with the voter, if the voter requests assistance--under the federal court decision. So, I think I agree with you in principle that we... that most of this is statutory in this proposal. We have so many problems that we need to straighten out with good legislation, rather than with the constitution.

Mr. Gravel. That's why... thank you, Mrs. Miller. The reason I said an election code was I don't think it can be done simply by saying "by law" or "by statute." I think we need in Louisiana a comprehensive election code. I might say this, that the secretary of state, two or three other officials--I think the registrar of voting machines and others--are at this time working on a modern, streamlined election code. I know Mr. Landry can tell you more about that, because we have gotten provisions from other states. We are working laying the base or the groundwork for that kind of action by the legislature.

Mr. Willis. We are still talking about Section 1, which you seek to amend?

Mr. Gravel. That's correct.

Mr. Willis. Now, take this proposition--a man is presumed innocent until proven guilty beyond a reasonable doubt by competent evidence. Suppose a man is in jail and you apply that second sentence to Section 1. I know Ambrose Landry can tell you more about that, because we have gotten provisions from other states. We are working laying the base or the groundwork for that kind of action by the legislature.

Mr. Willis. I see what you are trying to do is to abdurate initially the legislative powers, and then we'll go to the finessse.

Mr. Gravel. Exactly. Frankly, I do have serious problems with both Section 1... each section in Section 1 needs to have some further things said. If we were not going to delete them, then I think they require extensive amendment. I think we will elongate this article by amendments and by exception, if we don't adopt, initially, this first proposal.

Point of Information

Mr. Abraham. On this amendment, the way it reads, if it's inserted between lines 12 and 13—the question is: is this going to replace the existing language or does the other language come behind it or what? I don't understand how it's going to fit in.

Mr. Poynter. No, unless there was subsequent amendment, it would not come in. Because it doesn't amend it. It would insert this ahead of the present Section 1. Then the present Section 1, presuming this amendment was adopted, would be open to further consideration by the convention.

Further Discussion

Mr. Jenkins. Mr. Chairman, delegates, Mr. Gravel's amendment really puts the committee at a disadvantages. We were placed in a position of having to defend in advance stuff that already appears ahead. In regard to, like Section 12 and Section 15, let me just say that there are substantive things in both of those sections that we want to protect. We want to ensure, for example, that we will always have commissioners and particularly poll watchers at elections. We are mandating that commissioners and poll watchers be included in the system devised by the legislature. We are not devising the particulars of that system, because we don't think that is necessary. In Section 15, for example, we require that there be a determination of contested elections, as opposed to some commission that would resolve disputes and things of that nature. We have gone over the election law of this state. It is lengthy. We have boiled it down to a bare skeleton outline. Frankly, I think it would be very difficult to boil it down even more. I am confident in Section 17 that the legislature will establish a code of elections which will deal with all the details of election law. Certainly, the language of Mr. Gravel's amendment would be perfectly acceptable to me in Section 17, in place of the language we have there. The difficulty that I see is starting off with this, because I don't think it is the first thing that should be said and attempting to indicate that we can leave out a number of these sections, I think it would be bad judgment to leave out any of these sections, because each one of them has something quite substantive in it that's important to preserve. We would not want a system, for example, that would do away with secret ballot or allow proxy voting or allow public funds to be spent for or against candidates for office or which would deny the right of citizens to engage in political activity and on and on and on. The purpose of Section 1, as written, is to be an introduction--a general statement--getting into this election law; to give the courts a general guide; that our elections are going to be fairly and fairly conducted; and that laws should not interfere with the right to vote. Now, I guess if you look at any language written in this constitution if you want to see monsters in it, you can—buy this language in Section 1 of the committee proposal is straight out of at least five or six other constitutions which say almost precisely the same thing; the fact that elections are going to be free and that they are going to be fairly conducted; they say that no law shall interfere with the right of suffrage. That hasn't created any chaos or problems in those states. Section 1 is really meant to be read in connection with other sections that you will find in this article. We have, for example, in Section 12 that we are going to have a system of commissioners and poll watchers chosen by the legislature, this has to be read in connection with Section 1. So, that any system devised by the legislature is going to have to be a fairly conducted system, in the selection of commissioners and poll watchers. So, what I would like to urge you to do is...at this time I urge Mr. Gravel. I think if he offers it at...when we get to Section 17, at that time and at that point, it would be an ideal place to have a section, because some of the delegates here have not had an opportunity to read our proposal or to study election law. Please, don't shoot from the hip and start prejudging our section and our article before you even get into the meat of it; that just is not going to
61st Days Proceedings—October 5, 1973

be a good approach to this topic at all, or urge the defeat of this amendment.

Mr. Anzalone. Mr. Jenkins, as I look at this amendment in the light of the arguments of Mr. Gravel, we must conclude that we wish to be careful in our open primaries in the context of the Constitution. I think even if we adopt it, it's unlikely that it will work.

Mr. Jenkins. Well, Mr. Gravel lays that I think we wish to adopt it, that it won't work and I agree with him.

Mr. Anzalone. Well, you know, just that what I was thinking is that I can remember the day when we got into a little discussion about the recommendation of the local and Parochial Article. We all agreed that 80% of people should happen to it. I bet you there aren't a lot of people thinking about that.

Mr. Jenkins. That could be, Mr. Anzalone.

Mr. A. Jackson. Mr. Jenkins, didn't the committee conclude that we don't need any language in the article that would prohibit open primaries?

Mr. Jenkins. Yes, that's correct. Mr. Jackson, we were very careful throughout it to do that.

Mr. A. Jackson. Isn't the committee on record as to our position on support of open primaries, and we thought that we would be dealt with in the election code?

Mr. Jenkins. Yes, that's correct, Mr. Jackson. Of course, open primaries in here we don't prohibit it. We leave it up to the legislature.

Mr. A. Jackson. Isn't it true that we didn't mandate it because the subject was too comprehensive to be dealt with in this article? We tried to set forth the basic rights and protections thought to be important and left the whole question of open primaries to the election code provision.

Mr. Jenkins. That is correct. That was certainly one of our considerations.

Mr. Anzalone. Mr. Jenkins, Mr. Gravel said that section was unnecessary, isn't it a fact that it mandates what the committee felt that we should have this in the future? I don't think prevention registration, if that was not in there, it could be done away with.

Mr. Jenkins. Yes, Mr. Anzalone, that is correct.

Further Discussion

Mr. A. Jackson. Mr. Jenkins, let's face this, the convention is not going to do anything that Mr. Gravel has said again. I think you ought to use what you've always done. We attempted to put institutionalize basic, fundamental matters pertaining to the right to vote. We have a code of elections we've provided. You deal with this in what Mr. Gravel has suggested out, the whole point that there were certain things you want to mean and the people who were here present to know that it was a permanent registration. May I add to it.

Mr. Jenkins. Twenty, twenty-two, twenty-two, fifty, we're dealing with these things and people's names, so we want it.

Mr. Anzalone. Chairman, we're dealing with the state and, while such, we just want to make sure that this annual data is there. Are you going to take this Section out? Take out Section if that's what you feel that this is the better answer. We talk about the legacy of the original. That's something we can't have assistance in a real voting, under certain conditions, when we can't see.

Mr. Jenkins. That does vitiate, if you're talking, but what it does mean is that the legislature can never say in the future that to vote for your candidate you must stand up and vote in the state or declare, if you don't want to, you are voting. We talk about the state and the machines that have been used in the past, people cannot be counted publicly. You know, if you want, somebody else can have a table, and we don't believe that's what's happening to it. I bet you there aren't a lot of people thinking about that.

Mr. A. Jackson. That's a real party. If you want to talk about the last time the Gravel amendment, I think it is at least the fact that when we talk about the legislature's right to deal with you are not out of the State of New Jersey, and that you can't vote, that's what you want. If you want to talk about the legislature's right to deal with that, you will not be limited by a state legislature. You will have a federal system and a federal party. It is not the State of New Jersey of the current Constitution. If you want to talk about the legislature's right to deal with you are not out of the State of New Jersey, and that you can't vote, that's what you want. If you want to talk about the legislature's right to deal with that, you will not be limited by a state legislature. You will have a federal system and a federal party. It is not the State of New Jersey of the current Constitution.

Mr. A. Jackson. That is quite a challenge, I think it is at least the fact that we talk about the legislature's right to deal with you are not out of the State of New Jersey, and that you can't vote, that's what you want. If you want to talk about the legislature's right to deal with that, you will not be limited by a state legislature. You will have a federal system and a federal party. It is not the State of New Jersey of the current Constitution. If you want to talk about the legislature's right to deal with that, you will not be limited by a state legislature. You will have a federal system and a federal party. It is not the State of New Jersey of the current Constitution.

Mr. Jenkins. I think you thought that we would have this in the future. If we provide that this would have open primaries in the future. If we provide that this would be done away with, you would not be limited by a state legislature. You would not be limited by a state legislature. You would have a federal system and a federal party. It is not the State of New Jersey of the current Constitution.
61st Days Proceedings—October 5, 1973

mean that nobody who came in second gets elected to the office. The other sentence is not inconsistent with it because you could have a tie, and you could put a semicolon and say "however, the legislature shall provide for a method of breaking ties." you recall, we took that out of Executive Article on my motion because we read this particular provision to you in the future.

I'll yield to any questions.

Point of Order

Mr. Riecke The speakers are discussing the whole article here, whereas, what we have before us is just the Gravel amendment. I submit that the Gravel amendment and not inconsistent with the provisions of this constitution.

We can discuss the rest of the thing after we pass on this. We are wasting time.

Mr. Henry I think Mr. Roy's remarks are well taken because to understand the Gravel amendments you have to understand the Mr. Gravel. While it does not mean that the rest of the section won't be in order, it's possible if you adopted this amendment that could happen. I think that's what Mr. Roy is pointing out. So, he is speaking on....

Mr. Riecke But, is every speaker going to discuss all the amendments and then we are going to come back to this?

Mr. Henry Now, you have been here just as long as I have. But, I think it's not that a speaker might discuss on the floor of this convention. We do allow a great deal of latitude and we....

Mr. Riecke But, I'm trying to cooperate with you in speeding up this thing....

Mr. Henry I appreciate it, sir.

Mr. Riecke Thank you.

Mr. Roy Mr. Riecke, I agree with you to the extent that you have stated what you did. I just want to make sure that you all knew what we were talking about.

Further Discussion

Mrs. Warren Mr. Chairman and delegates, I hope that I won't offend my very, very good friend, Mr. Riecke. I'm not an attorney, but Mr. Gravel opened up the door because he said his amendment would cut out other parts of this proposal. I asked him from the floor what amendments did he have in his mind that he wanted to cut out and he wasn't sure. The first time that I have seen this proposal was today. I had to ask for it. You may have never been around quicksand, but I know you have seen many shows and if you get in quicksand you just go straight to the bottom. If election... your privilege to vote is very important. I heard a number of our distinguished delegates mention here a few weeks ago, and I discussed them on the floor, that whatever the legislature gives you... they can take it back. If they don't want you to have it, in this case, they don't even have to give it to you. In this instance these persons states that most people don't have much concern about, they are willing to leave this up to the legislature. I tell you, dear friends, I have a lot more faith in the legislature than I have said, but, I'm not willing to leave all of this up to it. I'm not saying that I would not like to see some of this probably deleted. I'm not saying that I am trying to keep anybody from carrying all the campaign pledges, but I didn't come to this convention to try to help anybody carry out their campaign pledges. I don't think that's what we came here for. I think we should look at this thing real carefully, consider it all the way down the line. If Mr. Gravel's amendment is going to cut out a lot of things that he said it is going to cut out, I don't have the chance to have some debate on it, I am not for Mr. Gravel's amendment.

I don't think you should be either. So, I'm going to ask you to defeat Mr. Gravel's amendment.

Do you have any questions?

Question

Mr. O'Neill Mrs. Warren, wouldn't you kind of like to know what sections they are proposing to take out in case this thing would pass? I sure would.

Mrs. Warren I asked from the floor, and I got supposedly some would. But, I would just like to know. If somebody has one on elections in their hip pocket; they can pull it out now, because I would like to see it before I vote on it.

Are there any more questions?

Further Discussion

Mr. A. Jackson Mr. Chairman, ladies and gentlemen, Mr. Gravel is a scholar and a gentleman, but even with those attributes, oftentimes you can find him in error. He suggested to you that we ought to start off with his amendment. I don't know anything that's more sacred, I don't know of anything that is more important, to the people of this state than to assure them in this constitutional provision, that we ought to have free elections.

Now, we are not opposed to open primaries. We are very much aware of all the problems that we have in this state as it relates to elections. Therefore, you will find a provision in this proposal calling for an election code. We have no objection at all if Mr. Gravel were to offer his language and at that time to amend that section to make it read as he would desire, to cover all of the points that concern him, but, we are very much opposed to suggesting that we ought to adopt this amendment at the beginning of this article in order to delete other sections. Now, he suggested from this platform that he wanted to eliminate Section 2. I would remind you that Section 2 is a very, very important section; Section 2 is the backbone, I think, of a free democratic society. It calls for and places in the constitution the principle of permanent registration. I don't have to tell you ladies and gentlemen all of the pains that some people in this state endure when we do not have permanent registration. I don't have to tell you of all the people in this state that were purged from rolls time after time after time. Do we want to revert to those days? Do we want to return again an atmosphere where people did not believe that they had the right to participate in a democratic election? Is it that we want to deny certain people the right to participate? If Mr. Gravel is wrong when he says that Section 2 should not be in this constitution. It is not only basic, but, it is important; it is not only a right, but, it is a right, it is not only a right, but if our democratic process is going to endure, we are going to have all of the people participating. I would ask Mr. Gravel to withdraw his amendment and offer it again at the appropriate time and place. I believe that these sections ought to be considered as they have been offered by way of this committee and that each of them are important. We certainly want to emphasize that we have no opposition to open primaries, that we asked for an election code to be established by the legislature, I do not believe that this amendment is in order at this time if it is designed to delete Section 2 and other important sections of this article.

Question

Mr. Lanier Delegate Jackson, is my memory correct in that in the Bill of Rights we guaranteed the right to vote as one of the rights in the Bill of Rights that would be preserved inviolate and inalienable?

Mr. A. Jackson That is correct. But this provision here talks about the apparatus to which individuals can exercise that right—elections.
Further Discussion

Mr. Burson: Mr. Chairman and fellow delegates, the reason why I joined in cosponsoring this amendment was, as Mr. Kelly so well stated, we are not, by this amendment, supplanting anything in the committee proposal. We are simply wanting to establish at the outset what we are mandating the legislature to pass an election code. Now, we have heard arguments up here about what, about Section 2, the rights guaranteed under Section 2, those guaranteed under any Section 13 and so forth, we can cross these bridges when we get to them. But the main thing is to go ahead and get this mandate. I raise in favor of this and ask that we all support Mr. Gravel in this amendment.

Mr. Burson: Closing

Mr. Burson: Mr. Chairman and fellow delegates, we all know the reasons why we need such a code in this state. We know the tremendous expense of getting three elections that have been voted upon for public office in recent years in the State of Louisiana. In many cases, this expense becomes a prohibitive factor in preventing worthwhile candidates from running for public office. This is something that needs to be dealt with drastically. It needs to be dealt with at one by the legislature. We know that the provision of conducting elections is related inextricably to the problem of campaign expenditures. In the United States, we all know that that provision has reached the highest level of our government today. The need for campaign money is directly related to how many elections you've got to run, and how long these elections are, and the procedures involved therewith. The amendment was made up here, that no public funds should ever be expended for elections or for candidates. I'm not sure about that. I'm sure consideration being given to the national level right now to some sort of public funding for many election campaigns. Certainly, this is the kind of issue that that legislature, with its ability to investigate these things thoroughly, should be able to consider at length the connection over absentee ballots, that we have had in this state, unfortunately, been one that has probably had more contention than just about any other absentee ballots in recent years. We had a problem, and that problem needs to be rectified and expunged and the totaion: I am, certainly, not ready to say that whatever our feelings have been in the political process in the Landry Parish, any one having anything about the history of that area knows that St. Landry Parish lead the way, with a doubt, in providing an open registration to all of the people of our parish. At the present time, we have only million votes, about 90 percent of the registered voters in a parish with a population of a little bit over ninety thousand. And I don't know why, in any event, the problem we were involved in one of those groups that Mr. Jackman was talking about, but we got

[1610]
Mr. JENKINS. Mr. Juneau, do you realize that this same language is found in a number of other state constitutions, and that it has caused no problems in those states?

Mr. JUNEAU. Well, I can't... I'm taking your word for it. Mr. Jenkins, I don't know that, but if you say that it has caused no problems, so be it. I'm just saying I, personally, see problems, and I can only speak for what I can read by the language here. In that connected section, I see nothing that would have read to you the provision which was taken from the model state constitution, which I understand was sort of a gleaning of the best speeches of many of the constitutional provisions across the state, and which has no such language in it.

Mr. JENKINS. Do you understand, also, that the purpose of it, and our intent of it, is to simply give the courts a general guide by which they can insure that every procedure and every law that we may have done is done in a fair manner?

Mr. JUNEAU. I understand the intent, and I whole-heartedly endorse the intent of the committee. Mr. Jenkins. My only problem is I think that it creates more problems than what was originally intended.

Further Discussion.

Mr. J. JACKSON. Mr. Chairman, ladies and gentlemen of the convention, I rise in opposition to the amendment as proposed. As you can recall, on the first amendment that came before you, there was some considerable concern on part of the committee as to if other sections... was this an attempt to delete other sections. It has become very obvious that even by the comments of, I believe that's Mr. Newton, I believe of the person speaking before me. He said that based on the adoption of the Gravel amendment, that he very seriously questioned whether we should have Section 2 in there. I think that Mr. Jenkins has drawn a distinction in the Bill of Rights we did provide for the right to vote in saying that that's ininvolutive. But, at the same time, we've got to consider the free exercise or exercise of a person's right to vote. It has been stated to you very clearly that this language does appear in other constitutions, and that more generally, in terms of court interpretation, this would not provide any conflict whatsoever between the Bill of Rights or Section 6 or Section 2. On the matter of special elections, that's more periodic than special elections? I... my experience has been that you have periodic special elections. I don't think that we are to be so embedded in the problem that... that we might be denying special elections because I do not believe that the language
As presented by the committee, says anything about the removal of special elections. In fact, as I read the article and I hear the comments of the speakers up to this point, it's very obvious that I think that one of the fears that the members of the committee and the members who spoke in opposition to the Gravel amendment are becoming very obvious, that, in effect, when we adopted the amendment, we, in effect, even though it didn't say anything about the removal of special elections.

In fact, as I read the article and I hear the comments of the speakers up to this point, it's very obvious that some of the fears that the members of the committee and members who spoke in opposition to the Gravel amendment are becoming very obvious, that, in effect, when we adopted the amendment, we, in effect, even though it didn't say anything about the removal of special elections.

I think, that some of the fears that the members of the committee and members who spoke in opposition to the Gravel amendment are becoming very obvious, that, in effect, when we adopted the amendment, we, in effect, even though it didn't say anything about the removal of special elections.

I would assume that we delete Section 3. I would suggest that if you do have any serious problems with the wording as being proposed by the committee, then I would suggest that we prepare an amendment to provide the kinds of language to safeguard whatever particular interest a delegate may have. But, I suggest to you, as the language as written, and the arguments against Section 1, one that is...would be in conflict with Section 6 does not really hold that much merit. The fact that it may be in conflict with the recent amendment, we have adopted, and Mr. Gravel and the proponents of that amendment, and even Mr. Burson indicated that that was not the effect. Really, that matter of special elections, it does not do any harm or violence whatsoever to special elections. So, I would ask that you support the committee and reject the amendment. That if there are amendments in terms of the language that is proposed, that we entertain and we vote as to whether putting in proper language. I don't think that...to say that we do not...that this may conflict with some other language in this proposal is valid in the light that the committee has had numerous discussions concerning inclusion into this delegate proposal. I'm sorry, this committee proposal. I would ask you to reject the amendment.

Recess

Announcements:

[Previous order referred. Amendment rejected 66-3B. Motion to reconsider tabled. Motion to take up other orders rejected: 12-6-3.]

Reports of Committees:

[Present order referred.]

Announcements:

[Previous order referred.]

Adjoind to adjourned session Saturday, October 6, 1973.]
62nd Days Proceedings—October 6, 1973

Saturday, October 6, 1973

ROLL CALL

[70 delegates present and a quorum.]

PRAYER

Mr. Alexander: Oh, Lord God of our Fathers, Thou who has been so good to us in the past, we come this morning again to discuss these problems that confront us in our state. Bless each one of us individually, make us contemplative people with these problems. Guide us that we may serve our people well. Make us trustworthy and honest, and then when we come to the end of our toils and struggles in this world, we pray that Thou will grant us admittance into Thy Kingdom where we shall praise Thee forever. In the name of Jesus, Amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

REPORTS OF COMMITTEES LYING OVER

[2 Journal 602]

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Mr. Poynter: Committee Proposal No. 33 introduced by Delegate Jackson, Chairman on behalf of the Committee on Bill of Rights and Elections. The proposal is a substitute for Committee Proposal No. 20 by the same gentleman on behalf of the Committee on Bill of Rights and Elections and other delegates, members of that committee. A proposal making general provisions for elections. The status of the proposal is that the convention has adopted a new Section I dealing with an election code, has voted on the deletion, and Section I, constituting lines 13 through 16 of the proposal, has a contemplated amendment, I presume, by Mr. Duval under consideration at the present time.

Personal Privilege

Mr. Tate: Mr. Speaker, fellow delegates, the radio reports that the Egyptians and Syrians have invaded Israel on this Yom Kippur, their Jewish Day of Atonement. It brings to all of our minds the fragile nature of world peace and civilization. I think it might be appropriate for...just to bow our heads for just a second or two to pray to our Lord that the cessation of hostilities is accomplished quickly.

Amen.

Amendment

Mr. Poynter: Amendment No. 1 [by Mr. Gravel] on page 1, between lines 12 and 13, immediately below Section I as added by Floor Amendment No. 1 by Delegate Gravel, proposed and adopted by the convention on Saturday, insert the following section: "Section 2. Election Code:"...add this please, to your copy, an addition in the title of the section..."Section 2. Election Code; Right to Vote." If you would insert that on your copy, 'Right to Vote.'

"Section 2. Subject to and not inconsistent with the provisions of this constitution, the legislature shall adopt an election code which shall provide for the permanent registration of voters and for the conduct of all elections; except as otherwise provided in this constitution, the right to vote in elections is guaranteed to all citizens of this state." Explanation

Mr. Gravel: Mr. Chairman and ladies and gentlemen of the convention, if I may say so quickly before going into the amendment, I'd like to announce that at least in part, Judge Tate's supplication for peace has been partially answered. Chris Roy and I have reestablished our partnership, and we are going to continue together. I hope, for many years yet to come. I'd like to also point out and state to the convention that although this proposal appears to be my proposal, it's joined in by Mr. Burson who was not here at the time that the proposal was typed up. He's authorized us to say so.

Now ladies and gentlemen of the convention, I think there was some misunderstanding yesterday with respect to the Intent of Section I that this convention adopted. I believe that there will be no question, but that we were not, Mr. Burson and I were not, proceeding with any ulterior motives at all, and after meeting with members of the Bill of Rights Committee on an informal basis, and discussing this matter with other delegates, it appeared that there was some rather serious concern as to whether we might be trying to get away from the idea of permanent registration of voters and, also, getting away from constitutionalizing, without any doubt and without any question, the concept that voting is a right. I'm sure everyone has those thoughts in mind, we have prepared a new section which I hope will pass. If it passes, then it will be in order to delete Section I, that we adopted on yesterday. Let me then say very clearly and explicitly to you, or at least as clearly...as clearly and explicitly as I can, what this proposal does. May I suggest we listen to gentlemen of the convention, that it is significant and important, although the three concepts encompassed by this amendment are basic.

No. 1. This amendment directs the legislature to do what we all know needs to be done and that is adopt an election code. I don't think I need to elaborate upon the necessity that we have in the State of Louisiana a compact document dealing with registration and the conduct of elections.

No. 2. This amendment, in addition to what we did yesterday, now makes it entirely clear that the election code must provide for permanent registration. We have permanent registration in every parish in the State of Louisiana now with the possible exception of one. I think I'm wrong about that. So all we are doing with that provision is maintaining the permanent registration system which we have in the State of Louisiana.

The third thing, that this does, and it does it without any question, is to say that voting is a right and not a privilege. We are going to eliminate forever, if we adopt this amendment...I hope we do...the argument that is sometimes made that the opportunity to participate in free elections are a free society is a privilege. So, clearly we want to establish that principle in the constitution. I think it's important to observe that this amendment makes other provisions of this constitution here relevant, because it could very well be said that...are there...very well be asked, "Are there any limitations on the right to vote?" There are limitations on that right only hear me, to the extent contained in the Bill of Rights, where we have set forth the age...the minimum age qualifications for voting, and provided...and provided on the constitution already in the Bill of Rights, those instances where the right to vote can either be waived or more correctly, in that say, forfeited. We are going to eliminate all of that already in the Bill of Rights. I think one of the things that we could do, and should do, is to adopt this amendment and to announce to all of the people of the State of Louisiana, the sections as taken, that we want a streamlined, comprehensive code of election laws, that we want permanent registration and that our citizens have the right to participate in the election processes.

Mr. Chairman and ladies and gentlemen of the convention, that's what this amendment does that we join together and adopt this amendment and the concepts embodied therein. I'll yield to any questions.

Questions
Mr. Abraham: Camille, suit to be sure I understand what is meant by permanent registration. What would be the effect of this present provision that if you do vote for so many years that you have to reregister and this type of thing?

Mr. Gravel: That's an appendage to the concept of permanent registration. Absolutely, there'd be no question about it. At a matter of fact that's part of the necessity to keep live, vital election rolls up to date. That is correct, Mr. Abraham.

Mr. Haynes: Mr. Gravel, is the right to vote guaranteed in the Bill of Rights that we already passed?

Mr. Gravel: I think it's implied. It's implicit to some extent in the words that are used. But this here in the elections article is a clear-cut statement without any doubt that is what we are talking about. There may be some, there is some language, I think, in the Bill of Rights that says the right to vote, but we are going a little bit further than describing the voting process. We are saying that the right to vote is guaranteed under this constitution. I think it could be argued by Mr. Lanier, but the right to vote has been treated and given consideration and probably it does exist there. Now, the right to vote could be modified, I would think, unless we have this language. I want to stress this fact abundantly as to what we are talking about.

Mr. Lanier: In this last clause, "except as otherwise provided in this constitution, the right to vote in elections is guaranteed to all citizens of this state." Would this mean that if there were a person charged with a capital offense in jail on election day, unless there was provision in the constitution that said you didn't have to take him to the polls, that it would be the duty of the sheriff to take him to the polls and allow him to vote in and cast a secret ballot?

Mr. Gravel: Mr. Lanier, I don't think that it would require that, in my opinion. I think the man would have the right to vote. I think right even have to be given the opportunity to vote. I think, personally, I have no problem with the idea that someone should have the right to vote who has not been convicted of an offense. Now, whether in the legislation could realistically say that there is a forfeiture under those circumstances, rather than say it, but I think the right to vote would be guaranteed. I think you could take away certain positions by virtue of a condition where it might be necessary to give this opportunity, the right to vote, to the polls, or in other words, the legislature could provide for the opportunity to vote. I wouldn't want necessarily that this provision be interpreted, whether it be in a jail or a hospital, to take another place, a similar place, if you disqualified yourself in any other method of voting other than going to the polling booth.

Mr. Lanier: Now, this language here, subject to and not inconsistent with the provisions of this constitution, it would have to take into consideration other provisions of the new constitution or the new state constitution. What would happen in the situation where there was this provision with this language turned out to be in conflict with other provisions? How would that conflict be resolved?

Mr. Gravel: By the courts.

Mr. Abraham: Mr. Gravel, you think it's a conflict with the second point? I don't think that it would be.

Mr. Gravel: I think it's a conflict with the second point. I don't think it would be. I have no doubt that the courts would have to decide that, or whether it is a conflict. I think we have the right to vote, and we have the right to vote.
Mr. PoynTER. “Amendment No. 1 [by Mr. Gravel]. On page 1, between lines 12 and 13, delete Floor Amendment No. 1 proposed by Delegate Gravel and Burson and adopted by the convention on yesterday.”

Explanation

Mr. Gravel. They delete the action that we took yesterday relating to the Election Code because that action is fully encompassed and made part of the section that we just adopted. Therefore, that amendment is now unnecessary.

[Amendment adopted without objection.]

Reading of the Section

Mr. PoynTER. Original Section 2, lines 17 through 20 of the proposal.

“Section 2. Registration of Voters. Section 2. The legislature shall provide for registration of voters embodying the principle of permanent registration.

Personal Privilege

Mr. Gravel. Mr. Chairman, I think it, some of the delegates, I think, may be a little bit concerned about it and confused. I think we would clear everything if we could make a technical amendment to make the amendment that was just adopted instead of being Section 2, Section 1. I think the Clerk would ordinarily do this, but maybe we, I mean, if everybody was here, unanimous consent of this convention, could designate the section just adopted as Section 2 instead of Section 2.

I so move, Mr. Chairman.

Mr. Henry. Well, wait, Mr. Gravel. Now you just can't move it like that.

Mr. Gravel. All right. I'll get an amendment, then, on it.

Mr. Henry. What we are going to have to do is call from the table...

Mr. Gravel. No. No, I'm not going to do that.

Mr. Henry. Well, I'm sorry, but, you know, we've got to go by the rules here. So, we'll just clean it up some other way.

Recess

[Quorum call: 95 delegates present and a quorum.]

Personal Privilege

Mr. Mire. Thank you, Mr. Chairman. Ladies and gentlemen of the convention, I would like for you to give me your attention for just a little while this morning. I think next week we'll probably be getting into what we all consider probably the most important one phase of this convention ... property tax. We've talked about rights. We've talked about the legislature. We've talked about the judicial system. Now we are going to get into everybody's pocket. I believe that everybody is going to be very much interested in what we are going to do.

I'm asking you today, over the weekend, each one of you to go back home, take a little while, go back and talk to your assessor, look at a specific piece of property, not some sophisticated figure, or some sophisticated survey that somebody has made, put together, they may give you some percent, some may give you some statistics, so-called. I ask you to look at your own home, your own lot, your own business, your brother's business, your mother's business, your father's business. Go to your tax assessor, find out what it's assessed. Find out what it's placed on the tax roll by now. Then look at fair market value. You know what it's worth. You know what today it would bring on a fair market on the market. Look at it. Figure out for yourself what percent you are assessed. I don't want you to put no assessor on the spot. I don't want you nobody on the spot. I'm not trying to take away from anybody. I'm only trying to get to the facts of the matter...the facts of the matter. Satisfy yourself so that next week when we start talking about this proposal, you will, yourself, feel that you can intelligently question it, intelligently appraise it and, I think, vote for the best interests of the people of the state.

Thank you very much for your attention.

Personal Privilege

Mr. Lowe. Mr. Chairman, fellow delegates, just two things I'd like to mention to you very briefly. Number 1, we said we'd pay off on the tenth and the twenty-fifth. I think we are going to be able to make payday Tuesday. I imagine we're coming back Tuesday. If not, it will be Wednesday. But if we're back Tuesday, we'll be able to pay Tuesday.

Secondly, I think we have gotten into the convention to the extent that many of you would like to know something about finances. As we have been mailing to you monthly a summary of all the financial transactions of monthly and for the year to date in the "CC/73 Reporter", I'm not sure that that's adequate for you. I don't think I can discuss with the Chairman the earlier part of this week, the necessity, probably, for putting in the official Journal a tran...record of all of the financial transactions from the year to date, and the current month in the official Journal once a month so that we would have permanent record. So starting next week, we will publish in the official Journal the transactions from January 5, 1973, through September 30, 1973, that period for the year to date, along with a monthly statement compared to the budget so that you can see how much we are over and under budget for the year to date, and how much we are over and under budget for the current month. Now, in addition to that, a question you have that you'd want to go into the details behind those figures, you contact me and we can give you anything that you need that would back up those figures that you can take home and answer your constituents or anything else. So starting next week, we will publish in the official Journal all of the financial transactions.

Thank you, Mr. Chairman and delegates.

Mr. Henry. We have, now, two sets of amendments to go with this Section 2. Mr. Clerk? We don't kind of recapitulate for the delegates where we are and what we've done up to this point.

If you will, ladies and gentlemen, please give Mr. PoynTER your attention so he can sort of bring everybody up to where we've done so far.

Mr. PoynTER. On yesterday, at the very outset, prior to the consideration of the original Section 1, Mr. Gravel proposed and adopted an amendment providing with respect to an election code which became, in effect, a new Section 1. Subsequently to that, Mr. Juneau offered an amendment which was adopted by the convention which deleted the original Section 1 from lines 13 to 16. Mr. Gravel then offered an amendment which followed that Section 1 which he had added and was, in part, the same, dealing with an election code which he re-numbered Section 2, which of course, was adopted. Thereafter, Mr. Gravel moved to reconsider, call from the table and reconsider, and the convention voted to delete the Section 1 that he proposed in this convention adopted. As a result, there is only one section which is presently adopted to this proposal. It is styled Section 2 as opposed to Section 1. There is key variety at the present time, which is the Gravel amendment which I'm sure you still have on your desk.

If you now presently have under your consideration, the old Section 2, being Registration of Voters, constituting lines 17 to 20 of the amendment...of
Mr. Warren. May I, if I may, ask a question. There is a word in this Amendment, I think, that is not clear to me. The word is "right," as it is used in the sentence, "I am of the opinion that the word "right" should be changed to "registration," as I think that would be more in keeping with the language of the Constitution.

Mr. Abraham. Mr. Chairman, I am sure you are aware that the word "right" is used in the Constitution in a different sense from that which is being used in this Amendment. The word "right" in the Constitution refers to the right to vote, whereas in this Amendment it refers to the right to register. I think that the word "right" should be changed to "registration."
with the party, though, and not with the courthouse, not with the state.

Mr. Munson: How are you going to go about registering with the party?

Mr. Abraham: That should be the party's problem. They should set up the machinery for that.

Mr. Hernandez: There's one question I want to ask about this. Under the terms of your amendment, a card-carrying communist can just walk in and register and not have to indicate that he is a communist?

Mr. Abraham: Do what, now?

Mr. Hernandez: A card-carrying communist, a member of the communist party, can go in and register and vote in the primaries and in no way indicate he is a communist.

Mr. Abraham: His party affiliation is no problem to me, and should not be any problem to the state, as much. We're talking about the right of people to register to vote. I should be able to go and register to vote, period. I'm not going down to register by a party; I'm registering to vote. If this man wants to belong to the communist party, or the American party, or the democratic party, that's his business. Let him go register with that particular party. But, we are inserting party politics, now, into the person's right to register to vote, and this is what I am talking about.

Mr. Hernandez: Well, this does give them the right, then, to...to a card-carrying communist to go vote in the elections without indicating that he is a member of that party.

Mr. Abraham: Well, Mr. Hernandez, I'm not going to get into a discussion as to what card the man carries. All I am saying is that he carries whatever card he wants, and when he registers to vote then he should not have to declare his affiliation.

Mr. Arnette: Well, I'd like to clear up maybe a little misconception here. Couldn't a card-carrying communist go down and register as a democrat?

Mr. Abraham: Certainly he could.

Mr. Henry: Or a republican.

Mr. Fulco: Mr. Chairman and fellow delegates, I only wanted to say that if we pass this amendment, it will take away from an amendment that will later come to you on Section 7, the necessity of specifying party designation opposite the name of a candidate on the ballot. Now, I hope that you will vote this down, because the people have a right to know what party you belong to. In fact, it's a courtesy. It's a courtesy to the people of your own party, if they're not aware of the fact that you are a democrat, or republican, or whatnot. It's the most absurd and ridiculous thing you've ever heard of, not to have a party designation on the part of a...of your registration. So, I won't take up any more of your time. Mr. Speaker, are there any more speakers?

Mr. Smith: Mr. Fulco, don't you and I about twenty others have a lot better amendment than this will do? This one won't do anything, will it?

Mr. Fulco: That's right. We have about...Mr. Smith and I have about twenty-five coauthors on an amendment calling for an open primary. It will require opposite the candidate's name, the party designation. Now, if this amendment is passed, it will nullify the party designation on the ballot which, I think, is something that the people should have and have a right to know what party the candidate is a member of.

Mr. Rayburn: Mr. Fulco, if this amendment is...if it happens to be adopted, which I hope it won't, will it, in the future, be able to nullify in all party elections? I could run as a republican, a democrat, and an independent?

Mr. Fulco: Well, it would appear to me that you would, yes.

Mr. Stinson: Mr. Fulco, when you said that this thing, if adopted, wouldn't do anything, don't you think you were in error? Don't you think it would do a heck of a lot?

Mr. Fulco: Well, what I say is this: sure, it can do an awful lot.

Mr. Stinson: Well, you said it wouldn't do anything.

Mr. Fulco: No, I meant it wouldn't do anything insofar as...

Mr. Stinson: You meant it wouldn't do anything good, that's what you meant, wasn't it?

Mr. Fulco: Well, nothing good, no.

Mr. Willis: Mr. Fulco, how would the registrar of voters prepare a poll list for a democratic primary unless they are delineated as to who is what?

Mr. Fulco: I think your point is well taken. I don't see how they could show any number of...what number of republicans, what number of democrats, what number of any...

Mr. Willis: It's not a question...I don't mean a question of numbers, I mean a question of kind.

Mr. Fulco: Not quantity, but quality.

[Motion for the previous question rejected: 24-68.]

Further Discussion

Mr. Gravel: Mr. Chairman and ladies and gentlemen of the convention, first of all, I'd like to state that philosophically I'm opposed to this amendment, whether it be in the constitution, or the statute, or anywhere else. But, I don't intend to make any long statement to you about it. I do suggest, however, that this is precisely the kind of thing that the legislature can and should consider in the adoption of an election code. I don't...I want to emphasize that I don't mean by that, that I support the concept because I think it shouldn't go in the constitution. I don't think it should even go in the code. But, nevertheless, the legislature, when it considers the code, can and should consider this kind of a proposal. Frankly, I think, as a consequence of what we have already done, that not only do we not need this amendment, but there's doggone little that we need in the rest of this article. Thank you.

Further Discussion

Mr. Stagg: Mr. Chairman and fellow delegates, there have been many self-servings declarations made from this podium and, at this moment, I don't intend to depart from that normal practice. When this convention undertook the debate on this subject yesterday, I said Mr. Abraham's amendment on this subject. It had previously been, I think, entered as a delegate proposal. He also had a delegate proposal on open primaries. Mr. Gravel said that philosophically he's opposed to this. Other speakers preceding me and questioners have stated that this would impede the voting process in some way or other. But, the principal point Mr. Gravel made was that this kind of situation and this kind of language ought to be in an election code. To a degree, I disagree with
This is a basic principle. The mechanics of the open primary is legislative and statutory in nature, and the mechanics of an open primary needs to be debated in the halls of the legislature in the states rather than in the halls of this committee. I'd like to point out to the delegate that you do not register as a democrat or a republican, or as an independent in Arkansas, or in Mississippi, or in Alabama, or Georgia, or in Connecticut. You do, however, register by political party in Louisiana and in Florida. I think that this state is going to change its election next, but I cannot foresee for you to tell you what those changes are going to be. I cannot, in Mr. Willis's words, with fastidious precision predict to you what kind of open primary we will have in the future, but we are about to have a dozen different kinds of open primary. In Texas, for instance, where you are simply a registered voter on election day you go to the precinct building. In one room the democratic primary takes place. In another room, in another part of that building, the republican primary takes place. When you walk in that building and when you enter one of those primary rooms is where you become, or announe, or declare, or affiliate—not in the registration rolls of the state of Texas. The point I would like to leave with you, and quite firmly is, believe that the state has an obligation to register its voters, but I do not believe that the state has an obligation of preventing the registering the members of political parties, whichever they may be and however you choose to be affiliated. This is a duty of the political party. From this podium, it was said a few minutes ago that we don't have a two-party system in this state. Well, I don't agree with that, and as you damn well know, I don't. But, I don't believe that if that was true, that you can say of the democratic party in this state that it is also a democratic party by comparing it with other democratic parties in other states that are highly organized, that have computer printout lists of their affiliated voters, who collect party dues every year, and use it to prepare and put out on elections. We don't sit in the democratic party in this state in that fashion, and perhaps we should. The democratic party in Louisiana, from my long-time observation of it, is a collection of individuals who are registered as democrats, and in many cases have no affiliation with any other democrat in this state. I don't say that the registering is the regular party. I believe there is a party that is a party only a heart band of some fifty thousand and every individualism citizens, whose tribe, I hope, shall be the future increase. But will we have a better two-party system, if we remove the necessity of registration by political party? I can promise you we will, we will have better intending political parties. Give me the intensity for a person desiring his party affiliation, is a necessity, in order to a registered voter. Let me leave it with you as this is, in the very young state, it is the basic difference, is that through the registrar of voters, to register voters at the duty of the political party to list three persons affiliated with them, and it's the business of the state to go.

Vick Chairman Lacey in the hall.

Mr. Alexander

Mr. Chairman, fellow delegates, a feel that loutforgenomen because of a two-party, too share in no real way to differentiate between a man and his political party. It is no longer the duty of the candidate, and the candidate, to some extent, another, take in the title of one party, the duty of the candidate, who is the...
Mr. Anzalone: Do you realize that we still have the primary system in the laws of this state?

Mr. Abraham: Yes.

Mr. Anzalone: Well, how in...how on earth is this going to work if you're talking about primaries and you have no party affiliation?

Mr. Abraham: Very simple, Mr. Anzalone.

Mr. Anzalone: I hope it is.

Mr. Abraham: I don't see any reason why the parties can't set up their own registration system the same as the state has set it up. All I'm trying to say here is that that state does not need to get involved into registering people by parties.

Mr. Juneau: Mack, let me see if I can understand. In other words, you are not precluding the state will run the elections through the voting machines and so forth, are you?

Mr. Abraham: Do what, now?

Mr. Juneau: You are not saying that the parties will establish and run the elections through the voting machine system, are you?

Mr. Abraham: No, sir.

Mr. Juneau: Well, then, how are we going to end up with the state running the voting machines, the mechanics of the election, and then, they in turn have to take a list which is given to them purportedly by a party as to who is or who is not a republican or democrat. How would you do that?

Mr. Abraham: It's done elsewhere, Mr. Juneau, and I'm sure it can be done here. I'm not...I don't know the actual mechanics of it.

Mr. Juneau: You are not saying that the parties will establish and run the elections through the voting machine system, are you?

Mr. Abraham: No, sir.

Mr. Juneau: Well, then, how are we going to end up with the state running the voting machines, the mechanics of the election, and then, they in turn have to take a list which is given to them purportedly by a party as to who is or who is not a republican or democrat. How would you do that?

Mr. Abraham: It's done elsewhere, Mr. Juneau, and I'm sure it can be done here. I'm not...I don't know the actual mechanics of it.

Mr. Juneau: You are not saying that the parties will establish and run the elections through the voting machine system, are you?

Mr. Abraham: No, sir.

Mr. Juneau: Well, then, how are we going to end up with the state running the voting machines, the mechanics of the election, and then, they in turn have to take a list which is given to them purportedly by a party as to who is or who is not a republican or democrat. How would you do that?

Mr. Abraham: It's done elsewhere, Mr. Juneau, and I'm sure it can be done here. I'm not...I don't know the actual mechanics of it.

Mr. Juneau: You are not saying that the parties will establish and run the elections through the voting machine system, are you?

Mr. Abraham: No, sir.

Mr. Juneau: Well, then, how are we going to end up with the state running the voting machines, the mechanics of the election, and then, they in turn have to take a list which is given to them purportedly by a party as to who is or who is not a republican or democrat. How would you do that?

Mr. Abraham: It's done elsewhere, Mr. Juneau, and I'm sure it can be done here. I'm not...I don't know the actual mechanics of it.

Mr. Juneau: You are not saying that the parties will establish and run the elections through the voting machine system, are you?

Mr. Abraham: No, sir.

Mr. Juneau: Well, then, how are we going to end up with the state running the voting machines, the mechanics of the election, and then, they in turn have to take a list which is given to them purportedly by a party as to who is or who is not a republican or democrat. How would you do that?

Mr. Abraham: It's done elsewhere, Mr. Juneau, and I'm sure it can be done here. I'm not...I don't know the actual mechanics of it.

Mr. Juneau: You are not saying that the parties will establish and run the elections through the voting machine system, are you?

Mr. Abraham: No, sir.

Mr. Juneau: Well, then, how are we going to end up with the state running the voting machines, the mechanics of the election, and then, they in turn have to take a list which is given to them purportedly by a party as to who is or who is not a republican or democrat. How would you do that?

Mr. Abraham: It's done elsewhere, Mr. Juneau, and I'm sure it can be done here. I'm not...I don't know the actual mechanics of it.

Mr. Juneau: You are not saying that the parties will establish and run the elections through the voting machine system, are you?

Mr. Abraham: No, sir.

Mr. Juneau: Well, then, how are we going to end up with the state running the voting machines, the mechanics of the election, and then, they in turn have to take a list which is given to them purportedly by a party as to who is or who is not a republican or democrat. How would you do that?

Mr. Abraham: It's done elsewhere, Mr. Juneau, and I'm sure it can be done here. I'm not...I don't know the actual mechanics of it.

Mr. Juneau: You are not saying that the parties will establish and run the elections through the voting machine system, are you?

Mr. Abraham: No, sir.

Mr. Juneau: Well, then, how are we going to end up with the state running the voting machines, the mechanics of the election, and then, they in turn have to take a list which is given to them purportedly by a party as to who is or who is not a republican or democrat. How would you do that?

Mr. Abraham: It's done elsewhere, Mr. Juneau, and I'm sure it can be done here. I'm not...I don't know the actual mechanics of it.

Mr. Juneau: You are not saying that the parties will establish and run the elections through the voting machine system, are you?

Mr. Abraham: No, sir.

Mr. Juneau: Well, then, how are we going to end up with the state running the voting machines, the mechanics of the election, and then, they in turn have to take a list which is given to them purportedly by a party as to who is or who is not a republican or democrat. How would you do that?

Mr. Abraham: It's done elsewhere, Mr. Juneau, and I'm sure it can be done here. I'm not...I don't know the actual mechanics of it.

Mr. Juneau: You are not saying that the parties will establish and run the elections through the voting machine system, are you?

Mr. Abraham: No, sir.

Mr. Juneau: Well, then, how are we going to end up with the state running the voting machines, the mechanics of the election, and then, they in turn have to take a list which is given to them purportedly by a party as to who is or who is not a republican or democrat. How would you do that?

Mr. Abraham: It's done elsewhere, Mr. Juneau, and I'm sure it can be done here. I'm not...I don't know the actual mechanics of it.

Mr. Juneau: You are not saying that the parties will establish and run the elections through the voting machine system, are you?

Mr. Abraham: No, sir.

Mr. Juneau: Well, then, how are we going to end up with the state running the voting machines, the mechanics of the election, and then, they in turn have to take a list which is given to them purportedly by a party as to who is or who is not a republican or democrat. How would you do that?

Mr. Abraham: It's done elsewhere, Mr. Juneau, and I'm sure it can be done here. I'm not...I don't know the actual mechanics of it.

Mr. Juneau: You are not saying that the parties will establish and run the elections through the voting machine system, are you?

Mr. Abraham: No, sir.

Mr. Juneau: Well, then, how are we going to end up with the state running the voting machines, the mechanics of the election, and then, they in turn have to take a list which is given to them purportedly by a party as to who is or who is not a republican or democrat. How would you do that?

Mr. Abraham: It's done elsewhere, Mr. Juneau, and I'm sure it can be done here. I'm not...I don't know the actual mechanics of it.

Mr. Juneau: You are not saying that the parties will establish and run the elections through the voting machine system, are you?

Mr. Abraham: No, sir.

Mr. Juneau: Well, then, how are we going to end up with the state running the voting machines, the mechanics of the election, and then, they in turn have to take a list which is given to them purportedly by a party as to who is or who is not a republican or democrat. How would you do that?

Mr. Abraham: It's done elsewhere, Mr. Juneau, and I'm sure it can be done here. I'm not...I don't know the actual mechanics of it.

Mr. Juneau: You are not saying that the parties will establish and run the elections through the voting machine system, are you?

Mr. Abraham: No, sir.

Mr. Juneau: Well, then, how are we going to end up with the state running the voting machines, the mechanics of the election, and then, they in turn have to take a list which is given to them purportedly by a party as to who is or who is not a republican or democrat. How would you do that?

Mr. Abraham: It's done elsewhere, Mr. Juneau, and I'm sure it can be done here. I'm not...I don't know the actual mechanics of it.

Mr. Juneau: You are not saying that the parties will establish and run the elections through the voting machine system, are you?

Mr. Abraham: No, sir.

Mr. Juneau: Well, then, how are we going to end up with the state running the voting machines, the mechanics of the election, and then, they in turn have to take a list which is given to them purportedly by a party as to who is or who is not a republican or democrat. How would you do that?

Mr. Abraham: It's done elsewhere, Mr. Juneau, and I'm sure it can be done here. I'm not...I don't know the actual mechanics of it.

Mr. Juneau: You are not saying that the parties will establish and run the elections through the voting machine system, are you?

Mr. Abraham: No, sir.

Mr. Juneau: Well, then, how are we going to end up with the state running the voting machines, the mechanics of the election, and then, they in turn have to take a list which is given to them purportedly by a party as to who is or who is not a republican or democrat. How would you do that?

Mr. Abraham: It's done elsewhere, Mr. Juneau, and I'm sure it can be done here. I'm not...I don't know the actual mechanics of it.
Mr. Roy, with regard to preserving the voting machines inviolate until election contests have been settled. The objection was raised about what the second primary, etc.; these Court decisions have to be resolved before the next primary election anyway, don't they, in order for... you know whether that primary is going to have to be held? So, that doesn't cause any problem.

Mr. Roy: That's correct, Mr. Jenkins. If they don't try to do it, a federal court will enjoin the election in any event.

Mr. Anzalone: Mr. Roy, if the legislature, in its infinite wisdom, should decide that the only absentee voting that was going to occur would be those by people who are employed out of the state, or people who are in the service of their country, do you think it would be constitutional under the provision that you have here?

Mr. Roy: I am not certain. Under state... under state law it probably would be closed; under state law it would be constitutional. Under our provision it couldn't be constitutional because we leave it up to the legislature.

Amendment

Mr. Paynter: The first amendment that the huddle agreed to go with is Mr. Ambroise Landry's amendment.

Amendment No. 1. On page 1, line 25, immediately after the word "inviolate" and before the word "unless insert the words "as provided by law".

Explanation

Mr. Lanier: Mr. Chairman and fellow delegates, Delegate Ambroise Landry is not with us today. We had a death in his family, and he asked me to present this amendment on his behalf. He has prepared notes which I, who am employed out of the state, for people who are in the service of their country, do you think it would be constitutional under the provision that you have here?

Mr. Paynter: The first amendment that the huddle agreed to go with is Mr. Ambroise Landry's amendment.

Amendment No. 1. On page 1, line 25, immediately after the word "inviolate" and before the word "unless insert the words "as provided by law".

Explanation

Mr. Paynter: The first amendment that huddle agreed to go with is Mr. Ambroise Landry's amendment.

Amendment No. 1. On page 1, line 25, immediately after the word "inviolate" and before the word "unless insert the words "as provided by law".

Explanation

Mr. Paynter: The first amendment that the huddle agreed to go with is Mr. Ambroise Landry's amendment.

Amendment No. 1. On page 1, line 25, immediately after the word "inviolate" and before the word "unless insert the words "as provided by law".

Explanation

Mr. Paynter: The first amendment that the huddle agreed to go with is Mr. Ambroise Landry's amendment.

Amendment No. 1. On page 1, line 25, immediately after the word "inviolate" and before the word "unless insert the words "as provided by law".

Explanation

Mr. Paynter: The first amendment that the huddle agreed to go with is Mr. Ambroise Landry's amendment.

Amendment No. 1. On page 1, line 25, immediately after the word "inviolate" and before the word "unless insert the words "as provided by law".

Explanation

Mr. Paynter: The first amendment that the huddle agreed to go with is Mr. Ambroise Landry's amendment.

Amendment No. 1. On page 1, line 25, immediately after the word "inviolate" and before the word "unless insert the words "as provided by law".

Explanation

Mr. Paynter: The first amendment that the huddle agreed to go with is Mr. Ambroise Landry's amendment.

Amendment No. 1. On page 1, line 25, immediately after the word "inviolate" and before the word "unless insert the words "as provided by law".

Explanation

Mr. Paynter: The first amendment that the huddle agreed to go with is Mr. Ambroise Landry's amendment.

Amendment No. 1. On page 1, line 25, immediately after the word "inviolate" and before the word "unless insert the words "as provided by law".

Explanation

Mr. Paynter: The first amendment that the huddle agreed to go with is Mr. Ambroise Landry's amendment.

Amendment No. 1. On page 1, line 25, immediately after the word "inviolate" and before the word "unless insert the words "as provided by law".

Explanation

Mr. Paynter: The first amendment that the huddle agreed to go with is Mr. Ambroise Landry's amendment.

Amendment No. 1. On page 1, line 25, immediately after the word "inviolate" and before the word "unless insert the words "as provided by law".

Explanation

Mr. Paynter: The first amendment that the huddle agreed to go with is Mr. Ambroise Landry's amendment.

Amendment No. 1. On page 1, line 25, immediately after the word "inviolate" and before the word "unless insert the words "as provided by law".
against the constitution. There are cases in the present constitution where when it wasn't practiced, the courts have said it had to be practiced. It means and the vote will be open. That's precisely what it means, and I think certainly public bodies should vote openly. That's what this means.

Mr. Arnette. Stan, would you consider making a technical amendment and changing the language to English, and say an open public vote or something of this nature?

Mr. Duval. Well, the reason I'd be reluctant to doing that because this is a term notwithstanding what Mr. Tapper said that's in the present constitution. It's been interpreted by case law and why don't we change habeas corpus to free the body. It's been interpreted, we all know what it means. The law...the courts know what it means who have to interpret it. We don't have to interpret it.

Mr. Roy. Stan, I didn't hear every comment, but for the benefit of everybody here, viva voce doesn't mean by voice vote, necessarily; it means a show of hands--just an open vote.

Mr. Duval. Yes, sir. That's what it has been interpreted to mean. Right.

Mr. Roy. There's no question about that is there?

Mr. Duval. No question about it at all. Anywhere.

Mr. Velazquez. Basically presents city council from meeting in a dark room somewhere and passing laws, is that correct?

Mr. Duval. Thank you. Thank you. Yes, sir.

Mr. Velazquez. Thank you.

Mr. Stagg. Mr. Duval, wasn't one of the things that the delegates acknowledged was their intended purpose is that to write a new constitution which could be easily understood by every citizen without having to go to see his lawyer? Don't you agree, that such words as ors dire, habeas corpus, ex post facto, ex officio, viva voce, are words that can better be said in English for the understanding by the ordinary citizen? Do you further note, sir, that if you would change that viva voce to an open vote then I would most happily support your amendment?

Mr. Duval. Mr. Stagg, I certainly don't mind doing that. It's just that this has been...if we do that to ex post facto; I think it's been interpreted over the years and the courts, who have to interpret this document, have been interpreting and when we start changing the words then the courts may well change their interpretation. This is the basic reason for that. But...open public vote...it says exactly...perhaps...

Mr. Stagg. Then when you use the voting machine and an open public vote will get away from viva voce meaning to vote by voice.

Mr. Roemer. Stanwood, do you know what veritas means?

Mr. Duval. Yes, sir.

Mr. Champagne. Just one short comment, you do know that I had rather have it in French, sir.

Mr. Duval. Well, I assume that's a question.

Mr. Singletary. Stan, where is the...what's the citation for the language you are using in the constitution?

Mr. Duval. Article VIII, Section 7 of the constitution which says...I'm reading from it...and all elections by persons in a representative capacity the vote shall be by viva voce. This is in our present constitution. It's been interpreted by the courts. It's clear what it means. There's no...that the vote be open...

Further Discussion

Mr. Anzalone. Mr. Duval, it is with a great deal of humility and with heartfelt thanks that I, as a well-agreed Italian, and representative of those similarly situated, rise to thank you for your attempt to put into this constitution words from that which is the true language of romance.

Further Discussion

Mr. Roy. Ladies and gentlemen of the convention, as I can understand it, the committee has no real feeling about this, but I have a certain feeling I wish to share with you. Then, I'm going to ask Mr. Duval may be to withdraw his amendment and come back with it. Since it could be argued that we would be mandating secrecy in all voting, even with respect to elections of presidents, of police juries, and all that---and that's not what we intended---then I certainly would be for his first comment in that in all elections by the people voting shall be secret. I think that ought to be made pretty clear and we ought not to ever get away from that. So, if his amendment could be divided, I would have asked that it be divided then and Mr. Poyneter tells me it can't. Then, with respect to viva voce voting in the different boards and police juries, and whatever have you, that have, I have no real strong feeling one way or the other, but if we delete it, if we could divide it and deleted No. 2 then it would be up to the legislature in its current session to decide whether it was going to allow school boards to vote by a show of hands, viva voce, or to require secret voting, or not to say anything about it. All I'm saying is that I think the first statement he makes is real good because it makes it very clear that in all public voting by the people, it has to be secret, whereas, in other areas we may provide for a viva voce voting. I just don't know how I would vote on a second issue. So, I would like to ask Mr. Duval if he would consider withdrawing his amendment, resubmitting it, so that it could be divided on those two issues because I think, I think it's real important. I think some people have a definite feeling about No. 1; No. 2 is here or there; No. 3, they may be for or against it altogether.

Question

Mrs. Warren. Mr. Roy, I really don't want to have to come up to that mike and talk this morning. I'm concerned about you saying...school boards not having open meetings. The way I look at it, like school boards are like children, and like all that thing, but I am not for any school board member being able to go and have any secret meetings. That's a lot to ask. I am up against our problems in Orleans Parish and I don't even single out, but I just think that this is good and it should be in there. I was just about to save time and not get up there and speak in favor of this amendment.

Mr. Roy. Well, Mrs. Warren, I understand your position and I'll probably will vote that way, but there's some people in here who do think that you can---you should be able to have secret balloting or voting in those particular types of areas and all we're doing is, you're going to make them who would want to have the public secret ballot the way; secret. You may make them vote again? Mr. Duval is really clarifying it because they're opposed to what you are for which is, open voting in school boards and what have you. That's all I'm saying.

Mrs. Warren. Well, I'll talk at that time.

Further Discussion

Mr. Burson. Mr. Chairman, fellow delegates, I rise
62nd Days Proceedings—October 6, 1973

Mr. Cranshaw: Mr. Tagger, are you willing to let
the minutes of the United States Supreme Court
be read into the record? I understand there
was a filing by the Equal Rights Amendment
organization that there was a problem with
the language that was used.

Mr. Tagger: Yes, sir.

Mr. Cranshaw: The same as was filed in the Maryland
Legislature.

Further Discussion

Mr. Cranshaw: Mr. Tagger is a member of the
American Civil Liberties Union Committee. I
heard he had a meeting with the Governor of
Maryland on this particular subject as well.

Mr. Tagger: Yes, sir.

Mr. Cranshaw: The same as was filed in the Maryland
Legislature.

In Support of Amendment

Mr. Gage: In support of the amendment, I think it's
true that the present constitution allows a number
of participation in government, but it does not
provide for a representative capacity to vote openly and
publicly. I believe that that makes a number of differences
in the way we do things, and I think it's necessary to
provide a system that will allow for more active participation.

I think we have been providing a representative capacity
in our voting system for a long time, but I believe that the
present system does not provide for enough public involvement.

I believe that the present system does not provide for enough
public involvement. I believe that the present system does not
provide for enough public involvement. I believe that the present
system does not provide for enough public involvement.

In Support of Amendment

Mr. Gage: The question is, is the present system
adequate? I believe that the present system is adequate
because it allows for a representative capacity to vote
openly and publicly. I believe that the present system is adequate
because it allows for a representative capacity to vote
openly and publicly. I believe that the present system is adequate
because it allows for a representative capacity to vote
openly and publicly.

Mr. Gage: The question is, is the present system
adequate? I believe that the present system is adequate
because it allows for a representative capacity to vote
openly and publicly.

Mr. Gage: The question is, is the present system
adequate? I believe that the present system is adequate
because it allows for a representative capacity to vote
openly and publicly.
Mr. Lanier  Another problem; are you aware of my parish, is that we have a large offshore industry?

Mr. Avant  I'm aware of all that, Mr. Lanier, you're not telling me anything new; we discussed this yesterday.

Mr. Zervigon  Mr. Avant, isn't this a change from the work that we did earlier in the convention where by and large we've kept things more or less as they are and provided for orderly change by the legislature or other responsible bodies?

Mr. Avant  Ms. Zervigon, I don't know that we have done that, but I will admit that this is a substantial change in the law, for what I consider to be a very good purpose.

Mr. Cowen  Mr. Avant, do you think that this amendment will tend to make elections more honest?

Mr. Avant  Yes, sir. I certainly do.

Mrs. Warren  Mr. Avant, I'm...when your amendment came before and you started talking I thought about one thing. The Constitution of our convention is in session now, it's going to be elections all over the state. We're going to have one in the city of New Orleans on November 10th. Now, we might get bogged down here on something or other. We might get bogged down and I won't be able to go home and vote and I won't be able to vote absentee so I think, I think that you're trying to cure one thing and...one ill and you're going to make another one. What would you think...

Mr. Avant  I'll put it this way Mrs. Warren. I'll be very blunt. I think that more wrongs are committed and have been committed by the absentee voting system as we now have it than would be committed or done if we adopted this amendment, and perhaps some people did not get a right to vote or did not get to vote when really they should have voted. Do you understand what I'm talking about? I just think that we've got to make up our mind and decide which is...in the public interest and go that way. Knowing full well that whatever we do it's going to have some rough edges somewhere.

Mrs. Warren  I'm just sorry to disagree with you.

Mr. Tapper  Jack, did you know that I agree with your theory; however, I'm afraid that it's because so many people are not going to be able to vote, like college students, like fishermen that was mentioned before, or oil field workers that work seven on and seven off, or ten on and five off. I just...I'm very leery about this. Don't you think we're going to disenfranchise a lot of voters?

Mr. Avant  I don't think we're going to disenfranchise that many, Mr. Tapper, because I know in my own mind that the vast majority of the absentee ballots that are cast are not cast by people in that category. They're cast by people who just choose to be somewhere else doing something else on election day rather than going and exercising their right to vote.

Further Discussion

Mr. Roy  Ladies and gentleman of the convention, the committee opposes this amendment as a whole and I'll just say a couple of things, but list a bunch of people. Mr. Avant keeps talking about you're going to have rough edges whenever you deal with something that you're trying to cure one defect. That's true, but why have the rough edges in the constitution? Why not let the legislature deal with this and if there are rough edges then the legislature for the year to year to smooth them out. Once we're put something like this in this constitution and just disenfranchise a bunch of people there's hardly any way to get it out. Now, let me tell you how...
Mr. Speaker: The Chairman, Mr. Perez, has the floor.

Mr. Perez: Mr. Chairman, I rise to make the amendment.

Mr. Chair: Mr. Perez, am I to understand that you desire to make an amendment?

Mr. Perez: Yes, sir, Mr. Chair.

Mr. Chair: Mr. Perez, are you now amending a bill which has been referred or have you an amendment to the rules of the House, Mr. Perez?

Mr. Perez: I am amending a bill. The amendment is concerned with the issue of disfranchisement.

Mr. Chair: Mr. Perez, you have the floor.

Mr. Perez: Thank you, Mr. Chair. I rise to speak on the issue of disfranchisement.

Mr. Chair: Mr. Perez, the amendment has been considered and the question of its adoption is now before the body.

Mr. Perez: I will move to strike out the word "disenfranchise" and insert the word "franchise". The amendment is concerned with the issue of disfranchisement.

Mr. Chair: Mr. Perez, an amendment has been moved to strike out the word "disenfranchise" and insert the word "franchise". The question of its adoption is now before the body.

Mr. Perez: Mr. Chair, I rise to move to strike out the word "disenfranchise" and insert the word "franchise".

Mr. Chair: Mr. Perez, the amendment has been considered and the question of its adoption is now before the body.

Mr. Perez: I will move to strike out the word "disenfranchise" and insert the word "franchise". The amendment is concerned with the issue of disfranchisement.

Mr. Chair: Mr. Perez, an amendment has been moved to strike out the word "disenfranchise" and insert the word "franchise". The question of its adoption is now before the body.

Mr. Perez: Mr. Chair, I rise to move to strike out the word "disenfranchise" and insert the word "franchise".

Mr. Chair: Mr. Perez, the amendment has been considered and the question of its adoption is now before the body.

Mr. Perez: I will move to strike out the word "disenfranchise" and insert the word "franchise". The amendment is concerned with the issue of disfranchisement.
The Landry amendment followed the preservation of the ballots with respect to contests for elections, and doesn't have anything to do with voting by secret ballot, and what have you, which you've already voted for. Remember that this very amendment came in section...in the second sentence of Section No. 3, and we felt that that was correct and should be that, the only reason people of the legislature should provide some method even though we thought it was covered by the amendment...by the section...we still went along with it because we felt that it specifically clarified that, so don't be misled into thinking that we've given everything over to the legislature. We have not allowed the legislature to deny secret voting nor to allow proxy voting, as was suggested. It'll yield to any questions.

Further Discussion

Mr. Warren Mr. Acting Chairman and delegates, I'm back again. The very thing that I was so interested in and was so glad that we were going to get in this constitution was to see that our school board meetings would be open, and we would know how our representatives voted, this thing going; this amendment. It could have been left to each delegate in this convention to send a copy to the school board if they had wanted to, but the information was here for them to get and I'm going to ask them to insist that they give us this right of representing us fairly, so I'm going to ask you to vote against this amendment, and let us keep Mr. Duval's amendment in here. Thank you very much.

Further Discussion

Mr. Jenkins Mr. Chairman, this proposal has been submitted to public hearings on repeated occasions. The office of the secretary of state has rebutted the director of the board of registration of the state. The League of Women Voters and other organizations have gone over this proposal; they think it provides the basic protection that we need in our electoral process. You know, we can draft a beautiful constitution. We can grant in the Bill of Rights, the appropriate rights that people ought to have. We can set up a sound structure of government, but if we don't have an election process that is fair, and that works, and that is invariable, we can say good-bye to all those other things, because we'll have no effect on them and that will flout them. We have taken the election law that was in our State Constitution and boiled it down to its essentials about as bare and basic as you can get, but under no circumstances would we ever want the legislature doing away with the secret ballot, or allowing proxy voting, or saying that ballot cannot be publicly counted. All those are in the present law now; there's no change. We've allowed more discretion for the legislature in absentee voting; we've allowed the legislature to provide in more detail about preservation of ballots. We just can't eliminate things like this from this constitution, and we have a constitution. The purpose of this constitution is to provide certain permanent protections that cannot be done away with by the legislature, or by the executive, or by the judiciary, and that's all we've done here. Certain fundamentals, certain basics...we just can't do without these basics, so I urge the rejection of this amendment.

Chairman Henry in the Chair

[Previous Question ordered. Record vote ordered. Amendment rejected. 34-0. Not to reconsider tabled.]

Amendment

Mr. Poynter Delegate Gravel has an amendment, and it's just now being distributed.
Amendment Mr. Jenkins. On page 1, line 59, immediately after the word "publicly" and before the word "and" insert a period, and delete the remainder of the line, and delete line 6 in its entirety. Reinsert the language for clarity, the desk copies... and delete the remainder of line, meaning line 55, including all Convention Floor Amendments thereto, which is for clarity, and delete line 6 in its entirety.

Explanation

Mr. Gravel. Mr. Chairman, and ladies and gentlemen of the convention, I'll be very brief on this. As a consequence of adopting Mr. Landry's proposed amendment that is handled by Mr. Lanier, saying that the ballot would be preserved inviolate, and I think as provided by law or something to that effect, you've made this completely unnecessary in the constitution. So this then, can and should be considered...this language can and should be considered by the election code. That is, in effect, what you've already said by adopting the amendment that Mr. Lanier presented or behalf of Mr. Landry. This language is unnecessary in view of the right and power of the court, in adopting this amendment which simply takes out of this provision, that particular language that now has already been relegated to the statutory area. I move the adoption of the amendment, Mr. Chairman.

Further Discussion

Mr. Jenkins. Mr. Chairman, I certainly wish we had been as brief in some of the previous articles as some people would like to have us be here. We have a provision that says something when we say the ballots shall be preserved inviolate as provided by law until any election contests have been settled. That says something! That says the legislature can't pass a law which requires that permits the destruction of the ballots right after the election. If the legislature, when it makes such provisions, does that, the courts will rule it unconstitutional. But, this one clause as written now, and as amended by Mr. Landry, is the only protection we have against such a law. If you have no way of verifying election results other than the tally originally developed, you don't have any real way to check the validity of those results. Absentee ballots should be preserved inviolate. The machinery as far as I'm concerned, should be preserved inviolate. The way we have it written now, saying that all ballots shall be preserved inviolate as provided by law until any election contests have been resolved, prevents the legislature from doing something which will allow the destruction of those ballots. Certainly, they can have a statute, a rule, regarding it, but that will allow their destruction. Now, that's important. That's important to the integrity of our election process, we're talking about the election process, it's not well taken at this point, so I urge the rejection of it.

Question

Mr. Roy (Mr. Jenkins) do you realize that if Mr. Gravel's amendment becomes the old situation where you have a right without a remedy? If the legislature says that all election contests must be disposed of in five days, then it won't make any difference anyway if there is a valid contest. They'll destroy the ballots after five days, and even if the election was stolen from you and you didn't know it, there would be nothing you could do. Here's a new constitution and that those ballots will be preserved until the election contest is over. Do you realize that?

Mr. Jenkins. I think you're right, Mr. Roy.

Mr. Roy. Then isn't that the teeth of present federal jurisprudence that will not allow any state to continue where there has been a substantial violation of citizens' right, and elections will be held up, and we want making throwing the ballots to the federal government. If we keep it on our own courts.

Mr. Jenkins. Yes, Sir.

Mr. DeBlieux. Mr. Jenkins, under the provision as presently written with Mr. Landry's Amendment, wouldn't the legislature have the right to get those rules anyway?

Mr. Jenkins. Yes, Sir. The Senate, they can set the rule, but they can't do anything that would allow the destruction—the immediate destruction of ballots before election contests have been settled. They can only regulate that they can have rules regarding it, but they've got to have a system that does preserve the ballots inviolate. That's the mandate here, and if the legislature didn't do that, the court's would enforce it anyway.

Mr. DeBlieux. Well, what I'm thinking about in that preserving this is, isn't it possible that the... if there is an election contest in the first primary, you might tie them up and get to use this much later over a certain period of time. If the legislature is going to provide the rules, they can do it and set the rules which would be reasonable anyway, couldn't they do that?

Mr. Jenkins. No, Senator, as you know, right now, we have summary proceedings that require election questions to be resolved in forty-eight hours. In many cases we're going to continue to have that, and by saying as provided by law, we give the legislature leeway to provide for things like that. But, without this provision the legislature would come along and pass a law saying the ballots would be immediately destroyed without this, but we'd prohibit that with this language.

Mr. DeBlieux. I think that if the legislature is going to provide it, don't you think the legislature is going to provide the rules? Well, then, it is necessary to have this particular provision in it.

Mr. Jenkins. No, because the legislature, for example, might be completelysilent in such a case. This provision would give us more protection because we know that they would have to be preserved inviolate in some manner.

Mr DeBlieux. Mr. Jenkins, do you advocate fullblown obviousness? Obviousness to the delegate of the fact that he's now in, and do you remember that I was a very lose vote, and that the line was in the ultimate end, what resolved in his contest. It was a contest of fact that he is now in.

Mr. Jenkins. That's correct. Mr. DeBlieux. I think Senator DeBlieux should be looking at it as we have new. Let me say in addition, don't know how many delegation here have read our present election law in our constitution. I hope over this weekend. If it's possible, we will take the opportunity to have it in election operation, taken out in the protection that the people have in our election process, and we're many of those efforts to this what is going to the bare bones, and when we take efforts to take out everything is really get worried. If anything, people should be thinking that we make more restraint in this article, not out what few we have we need everyone. We can get to have some elections, and everyone that are going to be preserved inviolate.
62nd Days Proceedings—October 6, 1973

stution, could possibly help solve problems rather than, on the contrary, create them. Let's just suppose that in a first primary election there was a contest between the candidates for governor, and as a consequence of the contest, one of the candidates demanded a statewide recount. That means something, I suppose, to the committee—it means very little to me—and to them it may mean, andnder this law, they would almost require—they would require—that all those voting machines would remain in fact and inviolate—whatever that particular word means in relation to voting machines—until any election contests have been settled, until the processes of the state and federal courts, even, had been concluded. Now, what's going to happen to your second primary, if there is one? Or what's going to happen to your general election if there's no second primary? Ladies and gentlemen of this convention, this language now, as a consequence of the Landry amendment, is meaningless because it simply says that "as provided by law, ballots shall be preserved inviolate until any election contest has been settled." So that leaves it up to the legislature to implement this; it's not self-executing or self-operative. All I'm saying in this is, it is cluttering up this language. It is cluttering up this section, and clutters up the article. There's nothing here about when an election contest has to be had, how long it's going to be there, and to settle it. As a matter of fact, there are two words in this particular part of this sentence that really should cause all, constitutionally, some serious concerns. One of those words is "inviolate" and the other one is "settled." I don't think this means much. Now, I don't think there's any doubt but that if we adopt, and we're certainly going to do it if this constitution authorizes it, and the constitution passes, an election code, that we're going to adequately provide for the preservation of ballots and counting them and determine whether there was an election contest. I urge, ladies and gentlemen, that you support this amendment, and that we delete this provision because it's totally unnecessary, and in addition to that, it really creates problems that perhaps it is intended to solve, and just doesn't solve it. That's all I have to say on it.

Question
Mr. Jenkins Mr. Gravel, isn't it true, that right now, that if a person appeals an election outcome, which he can do only within a very limited period of two or three days after the election, that in fact, a person has the right now under present law, and all the machines may have to be looked at again, and so forth, and that this provision simply maintains that present situation? Isn't it also true that...

Mr. Gravel Just a second, I want to answer you one at a time. That particular provision has efficacy in meaning in very, very few cases for the simple reason that a great majority of the cases are not settled or determined in any way whatsoever, but are dismissed by the courts as being moot because the time has expired, or the time within which the secretary of state has to print the ballots and mail the ballots has expired. Those are the kind of problems, Mr. Jenkins, that have got to be considered in their totality in the election code. You very seldom settle or conclude—now hear me well, settle or conclude—an election contest under present law. That's one of the big problems that we have now. The courts just are not finally determining. And when saying is that in an election code, that entire process has to be treated fully and comprehensively, and not touched on lightly, and I think, very inadequately...

[Record vote ordered. Amendment rejected: 40-60. Motion to reconsider tabled.]

Reading of the Section
Mr. Pynter "Section 4. Residence of Elector—
Section 4. No election shall be held in a bona fide residence by temporary absence due to any employment, including military service, or while studying or visiting away from his voting district."

Explanation
Mr. Roy Ladies and gentlemen of the convention, before you get all upset about the use of the word "residence" let me tell you why we had to use it. We had a lot of input from Mr. Bellar who was the secretary of state's office. Mr. Bellar, I'm sure, Mr. Ambrose Landry sat in a lot of our meetings... there were other people, there was the league of Women Voters as well as Mr. Russell Gaspard who is with the Board of Registration, and was once a registrar. The present federal law and federal jurisprudence is that any person who arrives in a particular place can step off of the bus—now let me say you may not agree with it, and that's why I want to explain it, because we can't control that particular matter—but some of us the federal in Baton Rouge may go down to the registrar's office and register to vote in Baton Rouge because all that is required now, under federal jurisprudence, and federal legislation, is that you be resident by 8 o'clock of the day that you want to vote, and that's a requirement with respect to voting. Now, you cannot vote, though, unless you've been there thirty days and the federal law has allowed for some type of administrative procedure whereby you are in the process of registering at least thirty days ahead of time before you can vote. But, that has nothing to do with the fact that you may still have a domicile, which is a legal word which means that you live in Alexandria like I do, and have the intention of making that your home. Now, what would be the practical effect of the matter is that I have the absolute right to go down here and register in Baton Rouge—East Baton Rouge Parish—because I'm a resident here. I've lived here, I work here, and I'm here more time than I am in Alexandria, as a matter of fact, right now. If I choose to, and if I'm here for thirty days, I may then vote here in East Baton Rouge Parish. There's nothing we can do about that. Now, the fact of the matter is that, though, I lose my right to vote then in Rapides Parish, unless after I vote here, I go back to Rapides and reregister over there. So, you can be registered in two places, as a matter of fact, but you may vote in only one which is the last place where you registered to vote. Now, we simply provide here that, and this is taken to great extent from the present constitution, that the fact that you are temporarily out of the state or city of your area, to employ in the military service, and that would amount to employment with the United States government. You may be an offshore worker working in the north sea at this particular time, or while studying or visiting to where you don't lose that residency, so that the legislature may not pass a law in the future that says if you're not at home all the time, or if you're not a domiciliary of a certain place you may... you lose your residency. Now, as much as you may disagree with the idea that the federal government in his stopgap here, there's not too much you can do about it, and as Mr. Vick pointed out, all this will have to go to the United States for approval in the end, in any event. That's simply what we provide for, and if you have any questions, I'll be happy to answer them. It's Article VIII, Section II, of the present constitution.

Question
Mr. Lanier Mr. Roy, would you agree that if this is controlled by a federal law and there is nothing we can do about it, we really don't need this anyway?

Mr. Roy Well, Mr. Lanier, that same argument can be made with respect to a lot of things that we've done in this constitution. I feel I'm of the
opinion that we should add capes on Louisiana, and Louisianians wear them. We don't have to go to federal court to determine it, and there is no need for the legislature to start trying to pass stuff that is unconstitutional, and it's presently Article... Section 11 of the present constitution, and we have just cut it down some. Federal law doesn't prevent the loss by temporary absence, incidentally, of the right to vote or the residency requirement.

Amendment

Mr. Poynter Amendment No. 1 by Mr. Fontenot. On page 1, delete lines 27 through 31, both inclusive, in their entirety.

Explanation

Mr. Sandoz. Mr. Chairman, fellow delegates, again my amendment simply deletes the section. I think with the Gravel amendment, that section is unnecessary. I've read this section; it lists certain things that would happen and why you would lose the right to vote. Illness is not mentioned, it's studying or visiting, but there may be an in-voluntary absence. I just submit that the provisions of this section can be covered by the election code, which is authorized under the Gravel amendment, and it's not necessary to include this in the constitution.

Questions

Mr. Roy Mr. Sandoz, I really can't understand that last statement. You mean to tell me that if you're ill out of the state, you're not visiting?

Mr. Sandoz. Mr. Roy, you specify visiting. I would assume that may be something voluntarily... visiting someone. But illness—you're specifying studying—now, wouldn't illness be a more important reason to be out of the state than studying? I just show that as an illustration or possibility. There may be some other reasons why a person would be out of the state that are not specified here, and I submit that it would give you more flexibility to let the legislature specify those items, and if something would come up later that neither one of us thought about, that the legislature would have a right to amend its statute, and give that as a reason why you would lose your right.

Mr. Roy. You mean to tell me, if you went out of the state on business and became ill while you're elsewhere, that this section doesn't obtain?

Mr. Sandoz. No, I'm saying, Mr. Roy, that you may become ill while you're in the state, and you're moved involuntarily out of the state, and that exception is not specifically mentioned.

Mr. Fontenot. Mr. Sandoz, do you view this section as doing a vain and useless thing to try and control something that is controlled by the federal government?

Mr. Sandoz. I agree with that.

Mr. Fontenot. Mr. Sandoz, is this section worded, I have trouble with this myself. I agree with you. And you think maybe the way it's worded to, it might lead to some bona fide residence by a delegate, that hasn't that. It's kind of ambiguous to me. It should say, "no elector shall lose the right to vote by a temporary absence." And if you do that, and that maybe possibly right solution would be.

Mr. Sandoz. That's right. Mr. Fontenot, I still think it's vague, but principally, I believe it can be better covered by the legislature in a election code.

Mr. Fontenot. I mean, you can't lose your residence just because of a temporary illness. If they want to say you lose your right to vote, they can't just say, lose your right to vote—is that correct?

Mr. Sandoz. I agree with you. Mr. Fontenot.

Mr. Bergeron. Mr. Sandoz, I think what you're trying to say is that this section specifically enumerates certain things, and all of which are left out which may later on be ruled as neither a valid reason, so I tend to agree with you on this.

Mr. Sandoz. Thank you.

Further Discussion

Mr. DeGlocca. Mr. chairman, and ladies and gentlemen, I rise to support this amendment. There is nothing that we have left in the particular proposal, even including the previous section, which was adopted, and I'd like to explain my reason for voting against it. That cannot be taken care of in the election code, in my opinion, every particular provision of this section, this proposal that we adopt hereafter is going to have to be submitted to the department of justice for their approval before this constitution can become adopted. I don't think we should have to do that. I don't think it's necessary, and I ask you to leave all of this stuff which is purely and simply legislative matters, and which can be taken care of at that time, out of the constitution. I just want to bring that to your attention, and let you know what you're doing right now. You're cutting a lot of stuff in this constitution which is going to require the approval of the federal government before we can adopt it. I just ask you to leave it out.

Questions

Mr. O'Neill. Please. Mr. Chairman, I know what you're saying. It's there. I would ask you to the justice department. Write it for me. Instead of even attempting to write it here, let me do what you're saying.

Mr. DeGlocca. Mr. DeGlocca. If you knew Mr. Sandoz, if you knew Mr. Bergeron, the justice department of the federal government, like any other department of any state government, has an opinion on what it is?

Mr. DeGlocca. Absolutely.

Mr. Bergeron. Mr. DeGlocca, I think that it will probably still exist as part of the constitution, and the Justice Department will have some ways of dealing with it, and I think we're not going to have any more problems. I'm sure that isn't what the proposing.

Mr. DeGlocca. I think that would be wise.

Mr. Bergeron. Mr. DeGlocca, if we want to have this constitution, we are foisting with federalism, don't we?

Mr. DeGlocca. I think we are; should it.

Mr. Bergeron. I think we not; given that we think we have to have it in the constitution.

[1658]
law, in their constitution, a similar provision. If I could have your attention for just a moment, I think I could, by answering these questions, throw light upon a few of these questions that have been raised. Virtually every state has a similar provision. Now, let me give you some examples. The state of Colorado has Article 7 of their constitution. Article 1, Section 4, Suffrage and Elections says "for the purpose of voting an eligibility to office, no person shall be deemed to have gained or lost by his presence or to have lost by reason of his absence," and so forth, and spells out the particulars. Look at the state of Nebraska..."for the purpose of voting, no person shall have gained or lost a residence," and so forth. State of California..."for the purpose of voting, no person shall be deemed to have gained or lost a residence," so forth. State of Louisiana...the same thing. Now, there's no way this provision can be ruled unconstitutional by the justice department because it doesn't deny anyone the right to vote. What it does is, it grants certain people the right to vote; it protects the right to vote in certain instances. It specifically protects the right to vote when you're temporarily absent for certain reasons. Now, the legislature can come along and say well, there are other reasons, there are other ways that someone's right to vote may be lost. If they're temporarily absent because of illness from the state, the legislature could protect that. They can extend the franchise to other people, but the legislature here could not take away the franchise. Now, here's why it's so important. It's because of political vendettas, primarily, and that the primary reason why its been included in all of these other state constitutions. It's an attempt to prevent the case that might arise when you have someone who is away at war in the armed forces, away on business, and then some legislature, knowing that in...having that in his mind, the fact that that's his opponent, manages to pass a bill through the legislature which says that someone must have continuously resided in the district for a certain period of time. We have many instances of people being elected to office who were in the military, elected to office in this state...not even in the country, instances where they were in school and not residing in their district. If we don't have such a provision in this constitution, the legislature could, because of some legislator's vendetta, attempt to exclude someone from running for office on the basis of a bill which would preclude such a person from running for office; so the attempt here is not to exclude anyone from running for office, but to say that they simply say that some people are protected in their right to vote even though they may be temporarily absent. It's not an attempt to conform to federal law particularly. It's obviously within the purview of federal law. What we're doing is protecting against certain actions by the legislature which might be detrimental to the right to vote and hold office of some of our citizens, so that's why we need it in here. It is important. Other states have recognized that importance, and we need to defeat this amendment.

Further Discussion

Mr. Burson. Mr. Chairman, ladies and gentlemen, I rise in support of Mr. Sandoz's amendment for two brief reasons. First of all, we already have set out that the legislature has to write a comprehensive election code, that that code has to guarantee important rights such as permanent registration. We've guaranteed the secret ballot, etc. This is very little else, in my view, in this article that could not more properly be addressed by the legislature than a constitutional convention. Stop and consider well, if you will, that fears about the legislature running away with some important voting right, are groundless for two reasons. First of all, said this morning, "They must think we are going to open Jackson and let the population there come to run the legislature. We are not going to pass an election code which does away with the secret ballot, or with commissioners, etc." Well, I have to agree with that. That makes sense. Secondly, the justice department will have to review under the Civil Rights Act, the Voting Rights Act, anything the state legislature does. It's hard for me to see how, then, the state legislature could run rampant, doing away with important voting rights or election rights. Finally, if we make a mistake in our deliberations here and adopt even two or three sections in a lengthy elections article that do not pass muster by the justice department, we're in a heck of a fix. How do we then change it? Since the constitutional convention has adjourned sin die? We can't, as I see it. So we then have to go to the voters in Louisiana and ask them to approve sections of an election article that the justice department has already ruled are unconstitutional in light of the U.S. Constitution, which is sort of an absurd circumstance to me.

So I, generally, in sympathy with the view, that with a few possible exceptions—and I am going to look at each section as it comes up—but certainly with regard to our section 4, constitutional convention has adjourned sin die? We can't, as I see it. So we then have to go to the voters in Louisiana and ask them to approve sections of an election article that the justice department has already ruled are unconstitutional in light of the U.S. Constitution, which is sort of an absurd circumstance to me.

Questions

Mr. Burson. Mr. Burson, in Mr. Jenkins' remarks, he mentioned the names of several states that have very similar provisions. Would you care to comment on that in light of your remarks about the justice department? Because if his remarks are true, and I take it to be true, then it would mean that the precedent has already been set and that the justice department has not found any particular ruling...or any unfavorable...given any unfavorable ruling as it relates to the states that he named. So, I don't...how...would you care to comment on that?

Mr. Burson. Johnny, I don't know. I haven't done the research on that, but I cannot...I'm talking about the Louisiana State Legislature. I cannot believe that the Louisiana State Legislature would make an election code residence requirement more restrictive, for instance, than the section that's been proposed to us today. I don't know why they'd want to. As far as other states, I don't know. There are two explanations that I can think of. First of all, I don't know how up-to-date the research is, because we have to remember that the Voting Rights Act is a very recent piece of legislation, comparatively speaking. It's been in effect now, I believe, since 1965, so it's very possible you could have had something within the last decade that would not have had to pass muster under the Voting Rights Act because nobody had complained about it.

Mr. Kean. Mr. Burson, in all of the references that Mr. Jenkins made to other constitutions, and in the reference he made to Article VIII, Section 11 of the Louisiana Constitution, it said that these temporary absences not only didn't lose the bona fide residence, but they would not have gained a residence by reason of them. That language is not in this section. Do you know any reason why not?

Mr. Burson. No, sir, and I imagine the reason why it's not is that it would probably be in conflict with the federal position on the question, which really renders this whole thing sort of irrelevant.

Mr. Willis. Mr. Burson, recalling the exodus of the day of The Grapes of Wrath where people would remove themselves and the California not knowing whether they were coming back or not, and contemplating simultaneously the fact that domicile is
residence was intent. Now, assume for the purpose of this example and question, that a total of ten thousand people, some one thousand people would go to California with no intent of staying, but with intent of coming back. Now, they use this independent clause, the last one in this section—visiting away from his voting district and going to California, with no intent to come back or stay, maintain their permanent residency here. They've got to be given absentee voting rights and they can control an election in my city.

Mr. Burson Mr. Willis, in my old hometown—which has fifteen hundred and fifty people in it, there are nineteen hundred and fifty people according to the last census, there are still fourteen hundred people registered to vote. I think that's because a lot of them have been living in Lake Charles for ten or twenty years. I think that if there's anything that will impinge upon fair elections in the community, it's that kind of thing, for whatever it's worth.

Reading of the Section

Mr. Poyneter Section 5. Political Activities Section 5. No law shall deny the right of each person to organize, to affiliate, or otherwise to support or oppose any candidate or proposition, except as otherwise provided in this constitution.

Explaination

Mr. Jenkins Mr. Chairman, this outlines a most important political right that our citizens have, that has to be considered and dealt with when we talk about election law. Naturally, there is a provision in here that says "except as otherwise provided in this constitution." That is specifically meant to refer to Civil Service or other provisions that we might place in the constitution limiting the right of individuals to engage in certain political activities. It is meant specifically, though, to do a number of things. For one thing, it is to protect the right of our citizens to join organizations in order to express their own political views. To deny the existence of any really would prohibit them from engaging such an organization. It is meant to allow people to affiliate themselves with any political party they choose, or at least to protect any law which would prohibit them from doing so.

We have a situation that arises as a result of the presidential election last year where a large number of people in this state really lost their party affiliation, the name of the American Party. Because their candidate did not receive five percent of the vote in the election, they no longer are officially designated as members of the American Party. They have the right to designate themselves a member of the Party, or Independents who want to affiliate with themselves with their minor parties are also permitted to affiliate. They have the right to associate themselves with a member of a Party, or Independent who wants to affiliate with themselves with other parties and have been denied that opportunity. It is specifically meant to protect the rights of certain unorganized groups. For example, the legislature would not have a provision, the legislature should not provide for a law saying that two men who have the same name could not affiliate themselves with other parties and have been denied that opportunity. It is specifically meant to protect the rights of certain unorganized groups. It is specifically meant to protect the freedom of association of individuals who do not have a political affiliation in our constitution. The right of people to organize in these activities, for example, does not just do it

Mr. Burson Mr. Jenkins, if you agree with me that the Communist Party has, as the major plank in its platform, the overthrow of the government of these United States by violence, are you any other means?

Mr. Jenkins No, I don't think it would, Mr. Burson. Not to the extent that their rights to affiliate, or to organize, or to support or oppose any candidate or proposition, except as otherwise provided in this constitution.

Mr. Burson I'm not talking about that. I'm talking about the right to associate with any political party, when you have a group, is that objective of the American

Mr. Jenkins No, I don't think it would, Mr. Burson. Not to the extent that their rights to affiliate, or to organize, or to support or oppose any candidate or proposition, except as otherwise provided in this constitution.

Mr. Burson I'm not talking about that. I'm talking about the right to affiliate with any political party, when you have a group, is that objective of the American

Mr. Jenkins No, I don't think it would. I'm talking about when you have a group and you organize that political party, and you say, for example, you don't qualify the area. Are you and, say, by your support, thereby organizing in the state of Louisiana, support or otherwise of that party?

Mr. Jenkins No, I don't think it would. I'm talking about when you have a group and you organize that political party, and you say, for example, you don't qualify the area. Are you and, say, by your support, thereby organizing in the state of Louisiana, support or otherwise of that party?

Mr. Burson I'm not talking about that. I'm talking about when you have a group and you organize that political party, and you say, for example, you don't qualify the area. Are you and, say, by your support, thereby organizing in the state of Louisiana, support or otherwise of that party?

Mr. Jenkins No, I don't think it would. I'm talking about when you have a group and you organize that political party, and you say, for example, you don't qualify the area. Are you and, say, by your support, thereby organizing in the state of Louisiana, support or otherwise of that party?

Mr. Jenkins No, I don't think it would. I'm talking about when you have a group and you organize that political party, and you say, for example, you don't qualify the area. Are you and, say, by your support, thereby organizing in the state of Louisiana, support or otherwise of that party?
Mr. Jenkins. This won't deal with that from the standpoint of ballot position; but certainly it would mean that regardless of what percentage a party got, a person could affiliate himself with that party. That's the point I think the section would make.

Amendment

Mr. Poyn ter. Amendment No. 1 [by Mr. Sandoz]. On page 1, delete line 132 in its entirety, and on page 2, delete lines 1 through 5, both inclusive in their entirety.

Explanations

Mr. Derbes. Ladies and gentlemen, I'd like to call to your attention a fact that's currently before you is the Sandoz amendment and doesn't have my name on it, but Mr. Sandoz has asked me to handle it. I rise in support of it and I'd like to add my name to it as a coauthor. The effect of the amendment is to delete what is Section 5 in the present committee proposal. Let me say this to you. I believe like all well-intentioned people, perhaps the way it should be, that the committee's reach in this particular instance has exceeded its grasp. The problem is basically one of draftsmanship, and the problem is one of providing for exceptions to a basic rule. Now if you read the section, it seems to have a great ring of truth to it. Listen to it. It says, "No law shall deny the right of each person to organize, join, support or oppose any political party or organization, or to support or oppose any candidate or propound otherwise except as is provided in this constitution." Now that sounds real good. But let me explain to you what I, as an attorney and as a person who has considered this section, believe to be some of the faults of the section. First of all, I think basically, one's right to organize oneself and to express one's political beliefs through political activities is a right protected by freedom of speech, both in the American Constitution...the United States Constitution and in the constitution of this state presently...which is presently, the law and which we have proposed.

Secondly, I feel that the way the committee proposal is presently worded, it has the effect of denying to the legislature the right to regulate campaign practices and contributions and activities of legal entities, both individuals and corporations. We have several, what I regard, as worthless laws on this book or on page which provide that campaign contributions by corporations are prohibited in some cases, campaign activities by corporations are prohibited. To my mind, that wording simply means not only individuals, but also corporations. That's the first problem. Secondly, as I am sure you are all aware, there are a great number of current issues...and I think very worthy activities of campaign practices and campaign activities in this country...activities which have surfaced, I think, as a result of the Watergate investigation...that we are doing. It seems to me in this section, is we are prohibiting the legislature from enacting reasonable laws regulating campaign contributions and campaign activities of both individuals and corporations. I think that such laws and such regulations as may be enacted by the legislature can be very salutary and very helpful to the political process.

So, I suggest to you that in this particular area there are so many exceptions, and proper exceptions, to the general rule which we enunciate in the section--exceptions which cannot be conveniently and effectively provided for in this constitution--that the only way to properly handle the exceptions is to leave it up to the legislature. And when you agree, based on, I believe, this argument that such exceptions should be left up to the legislature, it follows very logically from that point, that the whole area should be left up to the legislature and I believe that indeed it should be left up to the legislature.

So, I urge you to support the Sandoz amendment. I urge you to delete from the committee proposal the language which forms Section 5.

Questions

Mr. Kean. Mr. Derbes, as I understand it...do I understand your explanation correctly that a "person" is broader than an "individual"...

Mr. Derbes. That's correct.

Mr. Kean. Under this section, corporations would be constitutionally authorized to expend funds to support political parties and candidates?

Mr. Derbes. I think your question is a very good one, Mr. Kean. Essentially, we have present laws on the books in Louisiana which prohibit certain types of corporations from engaging in certain types of political activities, accumulating funds therefore, and the like. I think persons, as the committee proposal is currently phrased, is broad enough that it would include corporations.

Mr. Willis. Mr. Derbes, because your argument charms me, to make what first appeared to be a kitten to be as big as Mike, the tiger, would it please you, sir, to request the opening of a machine so that I could join in this amendment and that would put an end to it all.

Mr. Derbes. It would please me, Mr. Willis, if you would do that.

Mr. Willis. I would give you the advantage since you have the mike.

Mr. Derbes. Well, if there are no speakers, I would simply move the previous question.

Mr. Willis. That is as effective.

Mr. Vick. Are you going to introduce your amendment?

Mr. Derbes. If the Sandoz amendment fails, then I would introduce my amendment which is on the desk and bears my name. But I am rising in support of the Sandoz amendment, because I...for the reasons already stated.

Mr. Vick. Why did you offer this one then?

Mr. Derbes. I offered it merely in anticipation of a possibility that the Sandoz amendment might fail.

Mr. Vick. Well, wouldn't this...wouldn't you be satisfied with this as an adequate substitute for Section 5 as written?

Mr. Derbes. I could live with it, but I would prefer the Sandoz amendment. I could live with my amendment, sure.

Mr. Vick. Well, the Sandoz amendment is to delete the...

Mr. Derbes. That's correct.

Unless there are other speakers, Mr. Chairman.
Mr. Smiley, Mr. Chairman, ladies and gentlemen of the Constitution, I would ask that you consider the Senate proposal as drafted. I suggest that if you have some problems with the language, that you deal with it briefly, before coming up to the platform here. I talked to Mr. Jenkins about his concerns, but you know that's like a double-edged sword. I want to separate the organizations that exist within the state, that people in power--people with limited understanding of those organizations--see as being anti-government, as being difficult. I would suggest to you that the history of civil rights organizations in this state, could very well have been eliminated, categorized in the past as being anti-government, or with the influence of government. I say that a person ought to have the right to join whatever organization that he wants to join. I think that once he breaks a law of the State of Louisiana and the federal government, then that provides the kinds of checks and balances that we need if we want to keep this country moving.

Mr. Chairman, I hope you'll have an opportunity to talk to Mr. Jenkins about his concerns. I am not prepared to say that we're in an age of stigmatization, but I am suggesting that even everything that they do, you know, are really in the interest of the country. I am not prepared to say that we're in an era of civil rights organizations that have become--organizations that have been classified as anti-American, as, we know, as a matter of fact, that at least seen and support any organization that exists in this nation as an organization that does not violate our state--of our federal Constitution and the law across the land. I don't think that is, and we keep it more transient. I don't think that is true.

Mr. Jenkins, Mr. Chairman, and colleagues, you don't have to go all the way to the Senate, and the Senate--where we have the option of being anti-government, or with the influence of government. I say that a person ought to have the right to join whatever organization that he wants to join. I think that once he breaks a law of the State of Louisiana and the federal government, then that provides the kinds of checks and balances that we need if we want to keep this country moving.

Mr. Jenkins, Mr. Chairman, and colleagues, you don't have to go all the way to the Senate, and the Senate--where we have the option of being anti-government, or with the influence of government. I say that a person ought to have the right to join whatever organization that he wants to join. I think that once he breaks a law of the State of Louisiana and the federal government, then that provides the kinds of checks and balances that we need if we want to keep this country moving.
or the Black Panthers, or the Black Muslims, or the American Party, or the John Birch Society, or somebody. We are afraid to let them discuss, afraid to let them organize because we don't have the courage of our convictions, or we're too apathetic to get organized or something; I don't know what. Now, if there were technical objections to this section...let's offer amendments to change it. If we want to change "right of each person" to "right of the individual citizen," so that it doesn't extend to rights particularly held by corporations, I don't have any objection to that. That's not the point we are getting at anyway. We're trying to give constitutional protection to basic political freedoms; the rights to organize in groups for political purpose; to organize in parties for political purpose; to express your ideas and engage in political activities; to support your candidates, to support your propositions or to oppose them.

If we don't, we have no protection in this constitution for a lot of groups, such as teachers, for one, who can be denied their basic rights by a mere statute without such protection. How we've seen in the past how various groups were persecuted because their ideas were unpopular, because they had only tiny minority support. Mrs. Zervigon, this is not in the present constitution and I didn't say it was. I think if more people would read the present constitution and read the election article, we'd probably have fewer problems in our discussion of the election provision that we've proposed. If some people would look into the election laws of other states and see how they do it there, they'll find that all the things proposed here aren't so strange and unusual.

Did you know, for instance, in the state of South Dakota they don't have registration of voters at all? In most states, a majority of the states, you don't have registration by parties, and I think over this weekend, one of the best things that we could do would be to read our own constitutional election law and get a couple of other constitutions and see how they do it in other states. But this section is one thing we need greatly, to protect the basic political freedoms of all the citizens of this state. Offer some amendments if you're not pleased with the particulars of it, but let's have a provision of this nature in this constitution.

[Previous Question ordered. Record vote ordered. Amendment adopted: 59-29. Motion to reconsider tabled. Motion to return to other orders of business adopted without objection.]

[Announcements]

[2 Journal 6/8]

Personal Privilege

Mr. Schmitt Before we leave today, I think that we should take into consideration that there are other alternatives besides the assessors' plan. I've offered certain amendments which are being presently prepared by the staff, which would do the filing: No. 1, take the state out of the property tax business. No. 2, establish classifications of property in the State of Louisiana, namely, residential, commercial, industrial, agricultural and all other property. It would also require use value for agricultural, horticultural, and timber lands in order to give these people certain types of benefits. It would also establish a review system in certain other systems so that people could complain about their property or other classes of property when they feel aggrieved. It would also leave with the assessor his job, that is the responsibility to assess property. The assessor would have the responsibility under this plan of establishing percentages of the fair market value for each class of property, and also establishing what the fair market value is and assessing the value of all property within his district. This would be subject to review by the local governing authority which would be either the police jury or the city council in that particular area.

Next, it would be reviewed by the Louisiana Tax Commission and the final appeal would be to the courts. I just leave you with this thought in mind that this would take us out of the problems which we have had in our committee. It also would make a much better and a more saleable type of constitution because if the parishes so wanted, they could leave their classes of property the same as they have established at the present time. Therefore, there would be virtually no increase or decrease in particular classes of property and the taxes that they pay within that district. However, it would allow us for the opportunity for change into the future.

I just give you these ideas so that you might ponder them and decide for yourself whether you want the state to control the local governing authorities or you want them to determine their future.

Thank you.
ROLL CALL

[Delegate names read]

PRAYER

Mr. Smith: Let us pray. We, as well as our Heavenly Father, the giver of every good and perfect gift, to the Father, the Son, and the Holy Spirit, and give you Thy love and Thy mercy and Thy peace. Help us, O Father, today to do Thy will. Give us Thy divine guidance and wisdom as we work on this constitution. Help us to walk humbly to do justly in the love of mercy. May the words of our mouths and the meditations of our hearts be acceptable in Thy sight. O Lord, our strength and our Redeemer. Amen.

PLEDGE OF ALLEGIANCE

PETITIONS, MEMORIALS AND COMMUNICATIONS

THE JOURNAL

READING AND ADOPTION OF THE JOURNAL

UNFINISHED BUSINESS

PROVISIONS ON THIRD READING AND FINAL PASSAGE

Mr. Hardin: Unfinished Business. We have Committee Proposal No. 33. Section 1 was added by amendment, later deleted by amendment. The original Section 1 was deleted. Section 2 was added by amendment. Section 2 in the original document was deleted by amendment. Section 3 has been amended and passed. Sections 4 and 5 have been deleted by amendment. Section 6...

Reading of the Section

Mr. Hardin: Section 6. Privilege from Arrest

Every qualified elector shall be privileged from arrest in going to and returning from voting, and while exercising the right to vote in all cases, except felony or breach of the peace.

Explanation

Mr. Vick: Mr. Chairman and fellow delegates, this is a copy of the Constitution of 1921. Section 6 of Article VIII. That said: "Electors shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest during their attendance on elections and going to and returning from the same. We have just changed the language a little bit, as you can see. Mr. Chairman, I have an amendment and will yield to any questions.

Reading of the Section

Mr. Lanier: Section 7 candidacy for Public Office

Every qualified elector shall be denied the right to seek public office in the election district in which he is registered, except other wise provided in this constitution.

Explanation

Mr. A. Jackson: I think this is a transitional section with the proviso which sets forth the eye requirement for public office. What we are saying here simply is that if you are a qualified elector, you do not have the right to run for office in the election district in which you are registered.

Bill Adkins

[1664]
you had two residences?

Mr. A. Jackson Well, you can violate the law, if you want to, but the law is rather clear on it.

Mr. Lanier Well, the present constitution, as I understand your digest, says that you have to be a resident of the election district.

Mr. A. Jackson That's correct. That's...

Mr. Lanier If you move away, you lose your office.

Mr. A. Jackson Well, I think that we had...we set forth the requirements in the section that was deleted, but I think the law is rather clear on that.

Mr. Tate Mr. Jackson, Mrs. Zerfigno raised a question that gives me some concern. We have not put it in the constitution that a judge can't seek any other office except the judicial office, but it's in the case of ethics and also the legislature passed a law. Now, I also understand that the registrar of voters, and someone around can correct me if I am wrong, but there's a statutory prohibition against him seeking office. Of course, registrar and maybe for a period backwards. See, there are some offices that, for reasons of public policy, you want them to use their judicial or registrar office to build up a political...

Mr. A. Jackson We have a section, Judge, to deal with that in Section 11 of the Election Article deals with the registrar of voters.

Mr. Tate And it specifically provides that he can't seek office or something?

Mr. A. Jackson Yes, we have...we set forth the conditions in Section 11.

Mr. Tate Well, we're still...I don't know what other offices there are like that. I know there are judges, I know there are judges, and I wonder...that's the point of the concern that unintentionally you may prohibit the legislature from making certain types of offices forego running for other offices because of their sensitivity and so on. I'm just asking questions, I guess, sir.

Mr. A. Jackson Well, I can't...we discussed the question at length, and we did feel that it was necessary to put a section on the registrar of voters, and we thought the whole problem as it relates to the judiciary was already cared for. We didn't...we couldn't think of any other prohibitions that we should exercise.

Mr. Tate Well, now, for instance, the civil service...I believe they have a prohibition against political activity. Now, whether or not that is wise or not, this would say that they can't...you either have to provide in the constitution every time you don't want someone to run for office, or else you've got a right to run for office.

Mr. A. Jackson Well, I think that that problem or question as it relates to civil service will be cared for in the constitution. Of course, personally, I have some strong feelings as to its validity, but I think it's...I think that that question, well, I know that that question is going to be cared for.

Mr. Tate Well, the only office, I really can't think of another provision right now. If judge...

But, I do know that...there...for reasons of public policy, in the past, they have held certain offices so sensitive so I wonder if it's wise to put it in the constitution?

Mr. A. Jackson Well, as I indicated earlier, I think we've cared for the ones that we know about.

Mrs. Warren Mr. Jackson, I think we discussed--Mr. Lanier brought the question up--we discussed being domiciled within a resident, meaning that you lived in it. We discussed that kind of procedure, and when I looked at this, I thought that that was a qualified election, or I talked to those who think that they had gone through the necessary procedures of being living in there.

Mr. A. Jackson That's exactly right. If he...

Mrs. Warren I wanted to be sure, though, before I...

Mr. A. Jackson If he was not...I mean, if he didn't possess the necessary residency requirement, he wouldn't be a qualified elector.

Mrs. Warren Thank you. That's what...

Mr. A. Jackson Mr. Lanier knows that; he just wants to aggravate me on the first thing.

Amendment

Mr. Poynter Delegate Sandoz sends up amendments as follows: Amendment No. 1. On page 2, delete lines 11 through 15, both inclusive, in their entirety.

Explanation

Mr. Sandoz Mr. Chairman and fellow delegates, this amendment deletes this section. The primary reason for it is as I have outlined on Sections 5 and 4, previously. I believe with the Gravel amendment that this section can be better attended to in the election code, which will be and shall be enacted under the authority of the Gravel amendment, by the legislature. The...some of the questions that were asked of Mr. Jackson concerning the fact they may be...this prohibits the legislature from imposing certain other restrictions or additional qualifications. Some of the questions that were raised by Judge Tate about judicial officers seeking other offices, those are some of the reasons why I think that we need the flexibility of the legislature and the election code rather than freezing this into this constitution. Therefore, I submit that this section should be deleted and be relegated to the election code. I yield to any questions.

Question

Mrs. Warren Mr. Sandoz, I believe in trying to cut the constitution down, but I want to ask you one question that comes to my mind. We say we're going to leave this to the legislature. The...we're talking about running for office, can you see where the legislature would change this to suit their own needs? They run every four years, you know. Could you see any problem here?

Mr. Sandoz I see no problem, Mrs. Warren. I see no problem.

Further Discussion

Mr. Jenkins Mr. Chairman, what we are really dealing with here is the question of a basic political right. If we don't have a section like this in here, we won't have any logical link or connection which gives to every citizen the right to run for public office. We have, of course, given in the Bill of Rights, the right of each citizen to serve as an elector and to vote. We've made that right, except under certain very limited circumstances, inalienable. But, if there are going to be other restrictions on who can seek office, certainly those restrictions should be important enough that they are either provided in this constitution or that a mechanism is provided in this constitution for setting those additional qualifications. We have provided, of course, in our civil service
Mr. Jenkins. Well, unless we made an exception for the first out, I think a lot more people have a right to make voluntary, and to take and give up, if they choose, any office, than we have even made.

Further more...

Mr. Jenkins. Well, unless we made an exception for the first out, I think a lot more people have a right to make voluntary, and to take and give up, if they choose, any office, than we have even made.

Further more...

Mr. Jenkins. Well, unless we made an exception for the first out, I think a lot more people have a right to make voluntary, and to take and give up, if they choose, any office, than we have even made.

Further more...

Mr. Jenkins. Well, unless we made an exception for the first out, I think a lot more people have a right to make voluntary, and to take and give up, if they choose, any office, than we have even made.
Mr. Gravel I said one was...that there were... steps had been taken with the idea in mind of preparing an election code by this administration, and some work along that line has been done by some of the state officials who are charged with the responsibility for conducting elections. That's correct.

Mrs. Warren Well, I think the question was put to you that you would probably be helping to write it.

Mr. Gravel Well, now, Mr. Jenkins just said that.

Mrs. Warren Well, I mean, you kind of...He said it, but you kind of nodded your head to give me the idea that it was. I'm just trying to find out.

Mr. Gravel Well, I'm going to quit nodding my head because I believe you read, sometimes, more into it than I do.

Mrs. Warren All right, now. You've answered that. You have an amendment here. You say you think Mr. Sandoz's is good, yet, still, you have an amendment here that is going to delete part of it and leave part of it. Now, which one do you think is the best?

Mr. Gravel No, I am supporting the Sandoz amendment. I hope it passes. If it doesn't pass, I want to insert the words "as a voter" to make it clear what we're talking about with respect to registration. It doesn't do any...it's more of a technical change than anything else. I hope that the Sandoz amendment passes. If it does not pass, then I think the language itself should be amended, Mrs. Warren.

Mrs. Warren I hope it doesn't pass, so somebody else can bring something a little bit better before us.

Further Discussion

Mr. Goldman Mr. Chairman, fellow delegates, I rise to ask you to defeat this amendment because I have another amendment that's coming up. I don't know how long it will be before it's ready, but I think it will satisfy everybody. I think this fact ought to be in the constitution: that no qualified elector shall be denied the right to seek public office. My amendment will read as follows: "No qualified elector shall be denied the right to seek public office as provided in this constitution."

Questions

Mr. Willis Mr. Goldman, I'm not trying to be facetious, but what...but your amendment would just say that no one would be denied the privilege of seeking public office as provided in the constitution?

Mr. Goldman That's correct.

Mr. Willis Well, why do you want to say that if it's provided in the constitution?

Mr. Goldman Because I think we want to tell the people of Louisiana that everyone qualified elector has the privilege of running for office. We want it in the constitution, so there will be no doubt about it.

Mr. Willis Well, if you say "as provided in the constitution," it must be elsewhere provided, must it not?

Mr. Goldman Well, the code will be provided through the constitution by the legislature, and in the Bill of Rights it's provided. That reference, as provided in the constitution, takes care of reference to both of those. I think we ought to say in the constitution that every qualified elector is eligible to seek public office, or shall not be denied the right to seek public office.

Mr. Willis Well, don't you think that that passage would be about as ponderous as the provision that every individual, or elector, or citizen, or person should have the right to see, to live, to breathe, and to die?

Mr. Goldman I think we have that in the constitution already, and I don't think it's ponderous at all. I think it's perfectly plain.

[Previous Question ordered. Record vote ordered. Amendment adopted: 67-20. Motion to reconsider tabled.]

Reading of the Section

Mr. Paynter "Section 8. Vote Required for Election Section 8. No person shall be elected to any public office unless he has received the highest number of votes cast for that office. The legislature shall provide a method for breaking ties."

Explanation

Mr. Vick Mr. Chairman and fellow delegates, this was included for the obvious reason that it should be that someone in high office said, that the...in order to make it perfectly clear that anyone who receives the highest vote in the election should be elected. Now, in the current code there is a provision for drawing straws in the case of a tie, and I understand in election contests for this office, that is, as delegate, in Orleans Parish they flipped a coin; we have the registrar here from Orleans Parish who, I believe, conducted that coin flip. But, it's a simple statement, and unless there are any questions, I move for its adoption.

Questions

Mr. Riecke Ken, in a case where they have...where the law provides that, like in the school board, where the highest number of votes is not the one elected if you have more than two candidates. Doesn't this contradict that?

Mr. Vick Well, then you'd have a runoff, wouldn't you?

Mr. Riecke Yes, but in the election he would receive the highest number of votes, but he would not receive a majority. Doesn't this contradict that?

Mr. Vick No, I think that there's a sense of finality. Louis, and it, in the case of a school board election, it would seem to me that if you are electing one, and two...you have a runoff situation, shall we say, well then, after the runoff if you had a clear-cut victory, well, that would settle the question. If it was not a clear-cut victory and if, indeed, a tie, the legislature would provide for tie breaking. I don't know if that answers your question.

Mr. Riecke It doesn't, no. It doesn't say that in your amendment.

Mr. Vick Well, Louis, what can I suggest to you is, then, an amendment may be in order to clarify it.

Mr. Riecke Okay, thank you.

Mr. Arnette Mr. Vick, it seems to say here that you would have to run in a single-member district. In other words, this would have to dual districts because suppose you have three people running for an office, and it is two seats to be filled. The
pers in getting the second highest number of votes, even though it would be over a majority, he would not be elected, according to this provision, you see that as a problem.

Mr. Vick well, Mr. Precke has just pointed up the problem insofar as school board. It may conceivably arise in other contests. However, as you recall, the first amendment to this constitution, accepted was to create single-member districts in the legislature, of course.

Mr. Arnette well, I'm talking about something like, say, city council. Like in New Orleans, you've got three or four councilmen running at large.

Mr. Vick Two.

Mr. Arnette Okay, two running at large. You've got, say, four in the race. One of them gets a thousand votes; one of them gets nine hundred and ninety-nine; one of them gets one vote and one of them doesn't get any. Well, according to this, the man who got nine hundred and ninety-nine votes wouldn't be elected because he didn't receive the highest number of votes for that office.

Mr. DeBlieux Mr. Arnette touched upon the same question I have. This doesn't even provide for a majority, the vote. I'm wondering about this: where you have only one position to be filled, and you have several candidates running in that race and neither one of them receives a majority. Would this... could the person receiving the highest number of votes, under this particular section, say that he was elected to that office?

Mr. Vick That's within the realm of conjecture.

Mr. DeBlieux And yet, he would not have received the majority?

Mr. Vick That's also within the realm of conjecture.

Mr. DeBlieux Where you have multiple offices to run, then you might have two candidates that might have a majority of the vote. But the second man may not... since he didn't receive the highest number of votes, it might be contended that he wasn't elected to the office. Isn't that correct?

Mr. Vick I would suggest to you, Senator, as I suggested to Mr. Riecke, that an amendment most certainly would be in order to clarify that.

Mr. DeBlieux Don't you think this could be better taken care of in the election code, we should delete the whole section?

Mr. Vick That also might be a remedy.

Mr. Roemer Fendall, over here: the little guy right here.

Mr. Vick Right Right.

Mr. Roemer I can't make sense of this. There are two sentences back to back, which doesn't seem to be unusual of the confusion of this particular article. It says that "No one shall be elected to any public office unless he has received the highest number of votes cast for that office." And in the case of a tie, who received the highest number of votes?

Mr. Vick Well, they obviously both did. That's why the tie-breaking provision to there.

Mr. Roemer Well, you say that he shall not be elected unless he receives the highest number in the case of a tie, nobody receives the highest number but the legislature could see one with

Mr. Vick No. I would assume that if one flipped

In a case, there is giving the majority within the situation. The situation we're discussing is a tie vote, and I don't know when you break ties other than this. So, I would say, Mr. Roemer, that the flipping of the coin is a way of breaking the tie.

Mr. Vick Convincingly, the legislature would provide that.

Mr. Plynter Amendment item A. Delegate Sandoz as follows: Amendment No. 1 on page 1, delete line through 20, both inclusive in the entirety.

Explanation Mr. Sandoz, Mr. Chairman, fellow delegates, this particular amendment I think, rather than the particular section is bad for several reasons. Mr. Zervigon, who I lean on heavily back there for advice, also points out to me that you will have a situation where a person who got the highest number of votes and then it would subsequently be decided that he acquired that right to those votes by fraud and yet, he couldn't be denied a right to take office under this constitutional provision. We have many other problems that have been pointed out to this particular section by the Senator, which were asked of Mr. Roemer. Again, I submit that this section can be better covered in the effective code. We have no comparable provision in any of the existing constitutions. I submit that it is best to delete this section.

I'll yield to any questions, Mr. Chairman.

Mr. A. Landry Mr. Sanddz: if we were to adopt the proposal, wouldn't we be putting into the Constitution what the Legislature has already done for primary elections, and isn't that the general election laws?

Mr. Sandoz Yes, I think we would be.

Mr. A. Landry All of this set out in the general election laws and if we wanted, we would all be doing is putting it in the Constitution. Isn't that correct?

Mr. Sandoz Right.

Further Discussion Mr. Jenkins Mr. Chairman, one of the reasons why this section was, to take care of a particular problem that might arise if we had a law which said that because a governor wins, that all of his tickets went in with him, we wanted to prohibit that situation. We think we have the situation. Of course, in the next sentence I don't know why it causes problems with some people, but it is exactly the first sentence. The first says that the election of an elected unless he has a majority. The second sentence provides an exception to that, namely, where there is a tie with regards to multlet-office elections. This does not, in anyway, as such, affect other provisions, the idea being that we take two. When one is elected and the other is not, then we would have to be sure that we're not going to have any of these situations. By this language, an amendment would have to be sure that we find some difficulty with the language.
either because someone doesn't understand it or because it is not written in a way that everyone agrees with. The argument was made to delete it. Listen, you can't get any more basic than the fact that people, when they are elected to office, ought to be the ones who receive the highest number of votes. Now, we have in this constitution, in the Legislative Article, gone into intricate detail about three readings of a bill and public hearings; we went into that. That was into great detail in the Executive Article, in the Judicial Article. We even talked about judges' retirements. In the Local Government Article we went into details of ports and levee districts and all sorts of things. Now, we have here a simple section that requires that before people can be elected to office, they must have received the highest number of votes; something like that cannot be relegated to an election code. An election code will be a lengthy, detailed explanation of election law. We are talking here about basics, and this is as basic as you can get. You know, I fear that too much personality has gotten into the discussion of this article. I know you know that so you people on this committee oppose some of the work of the Local Government Committee, and some people still have that on their minds. But you know some people proposed an alternative Bill of Rights a long time ago, and wanted to junk the whole Bill of Rights. Extending our personal controversies and old grudges and animosities isn't going to make for us a better constitution. If people are voting on that basis, they are making a terrible mistake. We can't cut off our nose to spite our face. This is extremely important. Let's don't open the way for people to be swept into office even though they haven't received the highest number of votes. We might have a popular governor who passes through the legislature provisions saying that, in the next gubernatorial election, people will run by tickets and the whole ticket of the winning gubernatorial candidate will be swept into office. We can't allow legislation like that. We can't allow leeway for it. We have to have protections against it. So, let's adopt this section. Let's make any amendments that need to be made. But, let's adopt this basic protection. So, I urge the defeat of the amendment.

Question

Mr. Stovall Mr. Jenkins, do you know that most of us feel that this is unnecessary, not because of any personal animosity, but because you really haven't presented any justifiable reason for it being in the constitution?

Mr. Jenkins Reverend Stovall, I thought I had, really, explained some justifiable reasons, certainly relative to the ticketing thing that are included in here. I think that for one thing we need protection against ticket sweeping into office by people who haven't received the highest number of votes. Certainly, we need provisions that will protect us in this basic way. I mean, my goodness, if we don't, we are having a possibility where laws could be passed that would provide that someone other than that person who receives the highest number of votes could be elected to office under various circumstances. We might have, for instance, one party split up in office if the head of the ticket of that party were chosen for office. There are all sorts of punitive legislation that could be passed, and that's why we need this provision in here.

[Previous Question ordered. Record vote ordered. Amendment adopted 70-22. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter "Section 9. Limitation on Term of Office Section 9. No term for any public office elected by the people shall exceed four years, except as otherwise provided in this constitution."

Examination

Mr. Jackson This section is similar to one that's in the present constitution; of course, there are some exceptions. We have provided for those exceptions as they relate to the judiciary and for district attorneys. Of course, I know there will be some questions raised about school boards. We have received information that the Committee on Education will provide for the exceptions in the Education Article. If there are no questions, Mr. Chairman, I move for the adoption of this section.

Questions

Mr. Anzalone Mr. Jackson, at the present time, are there some city court justices in the state who have six-year terms?

Mr. A. Jackson I... yes. I have been informed....

Mr. Anzalone Are these people now incorporated in the constitution?

Mr. A. Jackson I would think so. I see Judge Tate nodding his head; he said that they were provided for in the article on the judiciary.

Mr. Anzalone But, how about the ones that are yet to come?

Mr. A. Jackson What?

Mr. Anzalone How about the ones that are yet to come, the new ones that we are going to set up, hopefully?

Mr. A. Jackson It's cared for.

Mr. Anzalone It's cared for?

Mr. A. Jackson Yes.

Mr. Anzalone Are you satisfied that they will also be entitled to a six-year term?

Mr. A. Jackson Yes.

Mr. Anzalone Will you please cite me your authority?

Mr. A. Jackson You see me after class.

Mr. Riecke Mr. Jackson, I don't believe the juvenile judges in the city of New Orleans are covered in the constitution or in the judicial amendments. Wouldn't this mean that they would be cut from eight years to four years?

Mr. A. Jackson I don't think so. There is a delegate proposal on juvenile judges and the provisions of the juvenile court. I'm trying to look in the article to see if it's provided for; I'm not sure, Mr. Riecke.

Mr. Riecke I don't think it is, but if it is, it's all right. But, if it isn't, this would cut their term to four years.

Mr. A. Jackson As I thought, I thought my memory serves me... it served me correctly, there is a proposal that will care for that, Mr. Riecke.

Mr. Riecke Well, I hope it passes.

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Casey]. On page 2, delete lines 21 through 24, both inclusive in their entirety.

Examination

Mr. Casey Mr. Chairman and delegates, Section 9, being a limitation on terms of office for any office held in Louisiana other than those offices
63rd Days Proceedings—October 9, 1973

Specified in our Constitution, which we will discuss in more detail later, is the principle of separation of powers. The Constitution of Louisiana provides that the legislative, executive, and judicial branches of government shall be separate and distinct. This separation of powers is designed to prevent the concentration of power in one branch of government and to ensure the checks and balances among the branches.

Mr. Robb: Mr. Chairman, I understand the importance of the issue at hand. I believe that the legislature should have the authority to establish traffic ordinances, but I also believe that the courts should have the authority to interpret and apply these ordinances. It is essential that the courts have the power to review and determine whether the ordinances are constitutional and fair. This is necessary to ensure that the rights of individuals are protected and that the government is operating within the bounds of the Constitution.

Mr. Boudreaux: I agree with Mr. Robb. It is important that the courts have the power to interpret and apply traffic ordinances. This is necessary for the fair and equitable administration of justice. It is also essential that the courts have the authority to review the constitutionality of these ordinances. This is necessary to ensure that the government is operating within the bounds of the Constitution and that the rights of individuals are protected.

Mr. Young: I disagree with Mr. Robb and Mr. Boudreaux. I believe that the legislature should have the authority to establish traffic ordinances, and that the courts should have the authority to interpret and apply these ordinances. It is important that the legislature have the power to make decisions that affect the lives of individuals. It is also essential that the courts have the power to review the constitutionality of these ordinances. This is necessary to ensure that the government is operating within the bounds of the Constitution and that the rights of individuals are protected.

Mr. H artillery: I believe that the legislature should have the authority to establish traffic ordinances. This is necessary for the fair and equitable administration of justice. It is also essential that the courts have the authority to interpret and apply these ordinances. This is necessary to ensure that the government is operating within the bounds of the Constitution and that the rights of individuals are protected.
Mr. Zervigon. Mr. Vick, this has in it a prohibition for campaigning for or against candidates, appropriating money for or against candidates of two political organizations. If I read it correctly, it doesn't say anything about public money for or against an issue like a bond issue or an amendment or something like that.

Mr. Vick. That's correct; it does not.

Mr. Zervigon. D.K.

Mr. Vick. I move its adoption.

Mr. Fontenot. Mr. Vick, would this include, possibly, not only bond funds but also services rendered? Take, for instance, a city council who are up for reelection, providing gravel and other services to the local people to get the local people to vote for them. Would this be prohibited if we adopted this language?

Mr. Vick. The intent of this section is a clear, unequivocal prohibition to forbid the use of public monies to finance a partisan, political campaign.

Mr. Fontenot. It has nothing to do; then, with the possibility of the police jury or the city councilmen doing special favors for individuals to get them to vote for the incumbent at reelection time, does it?

Mr. Vick. Well, I don't know what you mean by favors. But, if you are talking about taking money from the public well to advance the cause of any individual in a partisan manner, I would say that clearly...is a clear prohibition.

Mr. Denney. Mr. Vick, you are familiar with the present federal law which permits a deduction on an individual income tax return up to fifty dollars, or whatever it is, in connection with political contributions. Would this prohibit a similar provision in the state law?

Mr. Vick. No, as I...I didn't answer that...in response to Mr. Champagne's question. I didn't answer the way I would answer your question, which is that that is private monies...those are private monies.

Mr. Denney. Well, of course, it permits the deduction from a tax return and, at that point, the taxes are public funds.

Mr. Vick. Yes, but that theoretically in an induction.

Mr. Denney. Correct. I just wanted to be sure in case this state ever adopts a similar law.

Mr. Vick. No. This would not prohibit that sort of thing—public monies.

Mr. Lanier. Is this type of activity presently prohibited by statute?

Mr. Vick. Only insofar as the use of public monies are concerned to advocate as in the last, I believe, general election, advocating by an agency of a provision that would be favorable to them. The statute deals with the use of public monies—prohibits the use of public monies to advocate an issue that they are particularly concerned with, and that is, soliciting votes as it were. It is not an educational thing; that's what the statute permits. They lose the abuse that Mr. Wall was attempting to correct was the solicitation of votes and not education.

Amendment

Mr. Poynter. Amendments sent up by Delegate Avant as follows:

Amendment No. 1. On page 2, line 27, immediately after the word "candidate" and before the comma "," insert the words "or proposition.

Mr. Avant. Mr. Chairman and gentlemen of the convention, this is, as you can see, it is a very simple amendment. This section with the amendment that I am proposing would read that "No public funds shall be used to urge any elector to vote for or against any candidate or proposition, nor appropriated to any candidate or political organization." My amendment simply adds the words "or proposition." Now, what that is aimed at is to prohibit the use of everyone's tax money being spent by some particular government agency or governmental subdivision to promote propositions of one sort or another, which everybody may not be for. In most cases, everybody is not for. Now, this would apply not only to bond issues, but such things as constitutional amendments, proposals to amend a local home rule charter, or any other type of proposition, of whatever nature it might be, that could appear on the ballot and be the subject of vote by the people. I submit to you that that is only right, and only just, and only proper. I dare say that there has never been a proposition appear on a ballot which has not been used to gain the good will of everybody in the public. Otherwise, there'd hardly be any need to have an election. If there is an amendment afoot to accomplish a certain thing, or if there is a bond issue afoot or to accomplish a certain thing, it should be up to the people who favor that and the proponents of it to put up the money to pass it. That takes the tax money of all of the citizens and spend it for that purpose. Such as television advertisements, radio advertisements, newspaper advertisements, door-to-door solicitation, or any other type of politicking in other words, this amendment simply makes it clear that public funds shall not be used for political purposes, whether it is to promote the particular candidacy of an individual or to promote the particular wishes of a certain segment of the population, insofar as some political proposition is concerned. I urge you to support this amendment.

Questions

Mr. Rayburn. Mr. Avant, would you mind defining as to how far this language could go? I'm very familiar with the bond issue that was called by the local school board. Several letters to the editor in our local paper were along this line. What will the money be spent for? How much will be spent at this school or that school? The school board came back with a very definite and complete definition of how every dime of the money would be spent in the event the bond issue passed. Certainly, they didn't pay for that purpose. I'm not afraid of Mr. Wall nor do I think they should have. It was public information, and it was information that the people desired. Under your language, I'm afraid that unless they pay to pay for an ad themselves, outlining the proposition or the proposal, that they could not do it.

Mr. Avant. Mr. Rayburn, this is not aimed at the dissemination of factual information. If you will read it, it says, "used to urge any elector to vote for or against." It is not aimed at matters that are strictly educational.

Mr. Rayburn. Mr. Avant, I know, Mr. Avant, but what's got me concerned, if I'm having to vote on a bond issue, and I want the facts to make my mind up, whether I'm for it or against it, and the local school board printed the facts as to what the money would be expended, that might have a lot to do with whether I was for or against it, and that's what I'm thinking about, and that's what concerned me, and that's why I asked you, would you give me your opinion as how far-reaching this language is.

Mr. Avant. I think that they have to urge you, and the language of this section is what is says, "to urge any elector to vote for or against any candi-
date. Now, I ran an advertisement, say maybe, unless a certain sum in an amendment to pay, which will permit monies to be spent for a certain thing, such a relocation of a railroad, if you remember, this would issue $800,000 in federal funds, that's not urging you to vote for or against that. As long as it's true, I don't think or educational, I'm not arguing about that. I'm talking about when you get on the television, and they actually poll, and they urge you to vote in a certain way.

Mr. Sheehy. Mr. Avant, you remember Mr. Lennox, as you pointed out, you're in the sixty-third district, and your name for Mr. Lennox. Mr. Avant, I think this amendment was adopted, and we're discussing this particular amendment. In this amendment, the council is asking the voters to vote for an amendment that was in the particular amendment. You're, what you're proposing here would prohibit that, and that's what you're asking at right?

Mr. Avant. My amendment would prohibit the use of public funds to urge any elector to vote for or against a proposition, not prohibit the use of public funds to set forth specific non-controversial factual information, which the public may need.

Mrs. Corne. Mr. Avant, my question was answered. In part, by your answer. Mr. Riecke, the mayor, yesterday, Mr. Riecke, it was quite about how the issue was decided, we didn't think that Mr. Riecke, the city council, trying to inform the public on public improvements were needed, and certainly that would be in the right of urging the people to vote for, since the city council would then be the ones who are promoting the deal.

Mr. Avant. Mrs. Corne, I can tell you that tomorrow we're going to have a hurricane, and the winds are going to be a hundred and ten miles an hour, and there's going to be fourteen inches of rain dumped into this area within about an hour and a half time. I can tell you that, if it's true and it's factual, without telling you. Now, Mrs. Corne, you'd better get out to a higher ground. Do you see the line I'm trying to make?

Mrs. Corne. Yes, sir.

Mr. Avant. As long as it is factual information, and does not get down to the level of politics, I see no objection to knowing that you, that you should know, and I think that much public money is spent, not on education, but purely and simply politics, under the guise of education, perhaps that is the kind of thing that we're trying to stop.

Mrs. Corne. How would we then police the tricks?

Mr. Avant. Mother.

Mrs. Corne. How would we then police the trick?

Mr. Avant. I'm sorry, I didn't hear you.

Mr. Corne. I said, "Are there all kinds of tricks to that trade, you know?"

Mr. Avant. Oh, yes, madam, we can't write anything that's going to be absolutely one hundred percent big proof. We can go back over everything we've done, and I can tell you all kind of things that might happen, whether they will happen or not remains to be seen.

Mr. Chatelain. Delegate Avant, I've got a thing or somewhat of a friendly question, and here, my problem, we have a public in south Louisiana, and in particular, Lafayette Parish, where the city council and the police jury make contributions, annual, to certain organizations, such as Chamber of Commerce, Mardi Gras Association, and the safety council, and in some instances for the payment of a policy in our city that the chamber of commerce will endure certain public bond issues, such as school bond issue, and certain improvement

[1672]
Mr. Leithman: Well, I think the fact that yes or no was not used, if you’re going to urge the people to vote for this proposition... if you don’t have to say “this proposition,” you say “Please, get out and vote on Nov. 15,” and here you are presenting them the facts. I think it’s something unwritten, that you’re urging the vote for it, in essence.

Mr. O’Neill: Ken, my question was in the same line as Bob’s. Just want to know: do you think that what you did would be prohibited under this amendment by Mr. Avant? I really don’t, but I’m asking you if you do.

Mr. Leithman: I think it would be because if you, again as I mentioned to Mr. Munsen, if you’re urging the people to vote on Nov. 15, and you’re itemizing what they’re voting for, I think, whether it be written in black and white, yes or no, I think you’re urging them to support it.

Mrs. Warren: Mr. Leithman, you made a statement at the podium a minute ago. You said there might need to be some restrictions there. Now, what restrictions do you think should be put there?

Mr. Leithman: I really don’t know what restrictions. I think those restrictions that should be placed, should be placed in the statutes, and not in the constitution. Along the line as a limitation, maybe a small fraction or percentage of your bond issue might be appropriate, something of this nature, where it may be utilized in newspaper advertisements or things like this, but I just don’t see a blanket prohibition. But, I think there, perhaps, should be some limitation as to what monies, how much monies, and it may be a fraction. Mrs. Warren, of the bond issue. That may be appropriate, but right now I’m not prepared to tell you, but I think whatever restrictions you come up with, whatever limitations you place, should be done in statutes.

Mrs. Warren: Thank you.

Mr. Champagne: Don’t you agree, Mr. Leithman, that if we included this provision in the constitution, that we would probably open the road to new legislation? Is there any way we can get around this? Did we have to say... to vote “yes” without actually putting “yes” and so forth? In other words—and you answered the other question already—this could well be taken by the legislature, rather than imbedding it in the constitution?

Mr. Leithman: Very definitely so.

Mr. Roemer: Kenny, there was a line of questioning earlier, that tried to get you to answer whether or not in your advertisement, you solicited a yes vote or a no vote, on an issue. Isn’t that somewhat a hard line to draw, when you present an advertisement that lists all these points as the good things, and all these things as bad things, and then say “get out to vote.” Isn’t that the same thing in your mind as soliciting a vote one way or another?

Mr. Leithman: Oh, yes, if you’re itemizing what monies are going to be spent for, this is the projects that will be constructed by virtue of this bond issue, and you ask the people and you urge them to vote on Nov. 20, or whatever have you, I very definitely say... you’re urging them to vote for the proposition.

Further Discussion

Mr. Be Blieux: Mr. Chairman and ladies and gentlemen of the convention, I want to rise in opposition to this amendment, and I’ll tell you the reason why I believe so. I agree with Mr. Avant and those who proposed that taxpayers’ funds not be used under certain circumstances to advance the interest of candidates or political propositions. However, the language that you have mentioned, to me does not seem to accomplish this purpose cannot be placed in this constitution, and I feel that that you ought to do this by statute. Legislative authorities, you can spell it out in detail, as exactly what is meant, and not prohibit the legitimate use of public funds, sometimes, for giving factual information. Now, as I see it, if you have spent some amount of money that’s being advertised, one person may consider it factual, the other person will consider it political. You’ve got a grey area there, and I just feel like it ought to be spelled out in detail in legislation, so that you can guide him accordingly, and putting a general provision, like this, in your constitution, is going to prohibit the fact that you can’t spell it out in detail, and make it necessary to accomplish the legitimate purpose of your legislation, you should consider the illegitimate or desired things that you want to prohibit by this legislation. I don’t think you ought to use this kind of language in the constitution, whatsoever.

Vice Chairman Casey in the Chair

Further Discussion

Mr. Riecke: Mr. Chairman and delegates, I rise in opposition to the Avant amendment. This amendment provides that no money shall be spent for the support of any candidate or proposition. Now, as Mr. Leithman said, this will not affect school boards. In the parish of Orleans, we had schools that were a hundred years old, forty-five and more children to a class. The general public doesn’t know who’s told what. We need this amendment to build schools. The general public is averse to any new taxes or any bond issue, unless they know it’s going to be well spent, and how it’s going to be spent. Now, every man and woman here would vote against a new tax, or a new bond issue, if they didn’t know specifically, what purpose it was going to be used for. Now, we were able, at the school board in New Orleans, to tell the public: this is what we need the bond money for; this is how we’re going to use it; these locations are where we’re going to use it. Avant amendment would... now, I, as an advocate, it would not be interpreted to give information, but only if it was to urge, as it says in there, to urge people to vote for or against something. Well, now, in the name of common sense, can you say, “We need schools; we need more classrooms; we need this or we need that,” without urging anybody to vote for it. Any judge—Mr. Leithman is a judge—but, if I were a judge, and we put in the school board that we need the money for this purpose, certainly, that’s urging the public to vote for it. This is a bad amendment, and if the legislature feels that there’s any improvement on this, that they can make, well, let’s leave it up to the legislature. Please vote against this amendment, and I understand, Mr. Lennox’s amendment following this is just as bad, or worse, and I’m going to urge you to vote against my good friend, Mr. Lennox, too. Thank you.

Further Discussion

Mr. Chatelain: Mr. Chairman and fellow delegates, I will take but a minute, to have to be in opposition to this amendment. I think it’s very bad for many reasons. In the city of Lafayette recently, two months ago, we passed a bond issue, for 15,000,000 for schools, and the city’s budget was 15,000,000—not to try to sell this—they offered it in it’s right perspective to the people. I felt this was at that particular time, and as many other
people felt, it was a good thing to do because without having something in writing, and something on the media to tell them the need for these improvements, the people would not have known of the vote for them. I think the progress and everything in this bond issue was greatly needed for the city of Lafayette. I could go on and on, but I feel that most of you feel that Avant's intentions were good, but I believe that we've got a situation where we'd better not take a chance with. I urge you to please vote it down, and, perhaps, some things can come down from those of there, no other speakers, Mr. Chairman, I love the previous question on the amendment.

Mr. O'Neill E.B., did various people vote against this bond issue in Lafayette?

Mr. Chatelain Absolutely, we had some vote against it. About sixty-five percent had voted for.

Mr. O'Neill Well, what you're saying, then, is that even though those people opposed it, you're using their tax money to help finance a campaign for this bond issue. That's exactly what you're saying, right? Even though they're against it, their tax money is being used.

Mr. Chatelain Yes, but, you know, those same people still live in Lafayette, and I hope they will continue to live there.

Mr. Cannon Mr. Chatelain, I was just trying to hypothesise the situation as to how a court might view public money spent, informing the public of the need of the schools, and what have you, right after the bond had called the bond issue election. If the school board, by an action, official action of that body, calls a bond issue election, doesn't this automatically put them on record for voting for it. Therefore, any money spent would be proper under the Avant amendment?

Mr. Chatelain Absolutely right... by inference, you tell then you're for it. That's exactly right. There's no other way you can deny it. I'm not a judge like Mr. Riecke said, but I'd certainly have to rule in that direction. Thank you very much.

Further Discussion

Mr. A. Jackson Mr. Acting Chairman, ladies and gentlemen of this convention, I rise in opposition to this amendment, not that I am mindful of the national abuses, but I have against perpetrations of the people of this state in this area. But, I rise in serious opposition because I think that we are playing into the propaganda that will further weigh the abuses that have been so vividly pointed out by the maker of this amendment, and I refer to the whole area of public education and its importance to the growth of this state. I don't believe that there is a delegate in this Constitutional Convention that will deny that public education at this moment, in this state, and in this nation, is in serious jeopardy, and people today are not being as rational as they ought to be, when they vote on propositions relating to education. They are being emotional, and it is, therefore, placing school boards in very, very serious positions, as they try to provide proper financing for public education. I know that all of us are not upset from the past election, the abuses that you heard about here. But, I just ask you to think about what public education means to this state. I ask you to think about the needs that we have in public education, and I ask you to think about all of the bond issues that are failing all over the state, simply because people are emotional, simply because people are emotional, and not dealing with whether or not a black child is giving it its fair chance, or a child blue or red equilibrium. I believe that you would give full consideration to the importance of public education in this state. I would seriously urge you to recognize that school boards will have lots of very important boys and men, to work on and put all their very emotional, emotional, and deal with the facts as well. Whether or not a bond issue fails, I think that this is a good, very harmful, and it is going to make the federal government to seriously reconsider the expenditure of the public education. I think that this would make the federal government to seriously reconsider the expenditure of the public education. I will not give up until there is some correction of the education experienced in some of the states, and it will not put our state twelve years or fifteen years or forty years, but at least it will not do it. The public education in this state, and will put our state twelve years or fifteen years or forty years, but at least it will not do it. The public education in this state, and the president and recognize that they need the latitude to try and save public education for the state of this state. I urge you to vote against the amendment.

Further Discussion

Mr. Jenkins Mr. Chairman, what is the purpose of this amendment? Its only purpose can be to secure a true reflection of the public will, without candidates or government forcing the people... If an election is not free, it is not one, and how can an election be free, if there is a government propaganda machine at work? If the government starts putting out television ads, newspaper ads, radio spots, school boards, and telling the people to vote a certain way, then it is not a free election. It can't be a free election. In certain areas, there are multiple local governing authorities and school boards not giving substance about needs, and television commercials, saying for such a bond issue, vote for proposition number. I have in my files in my office, a newspaper article put out. It doesn't say, the reason this bond issue is proposed is because we need so many schools to meet projected populations. It says on the front cover, vote for proposition number. Yes, for this bond election. Now, what is the difference between propaganda and that is what is the difference? There is no difference. That's exactly what I am afraid of. I am afraid of television screen, and of television ads, commercials, the television screen, and of the television ads, commercials, flashing a commercial, ten-year bond, asking for money, for public education. I am afraid of the Orleans Levee board is affected by that. I think my rights as a citizen are being taken away, and my rights as a citizen are being taken away, and I think your rights are too. We have a... what is the name of it? Mining, on more taxes. Now, look at the situation... given us. In Revenue and Taxation, a situation, there are no village limitations. You, what you're asking for this money, use it to get it. Use it for public education, without limitation, what will our tax be? In this state. Will there be any end to it? No, the argument is made, well, there is a need. Well, if there is a public need, then these will be public funds, and the government gives more for a proposition, and thus there will be public, and unaffiliated white, and in many instances, it is far from true. So, give us a more free election, that's a free election. The freedom of speech, the freedom of the press, is not where we are.
what the English words mean, "urge, vote, for or against." That's not what it means. It means just that. If you tell them to vote for something, then you are in violation of this section, not dissemination of information. So, let's maintain a system of free elections. Let's prohibit government involvement in the election process. If government is involved, it becomes catching because it is not a free election. There is no true expression of the public will. It is a fixed election, a rigged election, a propagandized election, and there's no place for it in this sort of society.

Further Discussion

Mr. Lennox Mr. Chairman, fellow delegates, the committee proposal on this particular subject matter is certainly O.K., and I'd have no fault to find with it, other than it does not go nearly far enough. Now, I can't improve on the dialogue that Mr. Avant is related to. I am in favor of his amendment, but I would like to say to you, in discussion with him I understand he's going to ask in a moment for a suspension of the rules to withdraw this amendment, and to come back with a minor change in that amendment, which might be found more palatable to a greater majority of the delegates on the floor. Now, let me submit to you that this particular amendment contracts a federal statute. Really, the only difference being, is the federal statute has penalties tied to it. If you violate the federal statute, there are penalties involved. There are no such penalties involved in this amendment, the Avant amendment, that's before you right now. Now, as a very young man, I watched the careers of Mr. Riecke and Mr. Sutherland, as school board members in Orleans Parish, and I submit to you that they both served with honor and distinction. But, I can tell you otherwise that school boards in this state have not been devoid of corruption over the years, and there have been scandals with school boards, and if there's any question about that, Mr. Jackson, see me after class, and I'll give you a few examples of the subject. I would urge that you consider Mr. Avant's proposal to suspend the rules, and make an amendment, and resubmit this amendment, after which I would urge your adoption of the amendment. Thank you.

Questions

Mr. Juneau Ed, I agree in concept with what you're saying. It does bother me to put it in the constitution. You said that there was a federal law, pertaining to very much the same subject, but I want to clarify this. The federal law you're talking about is in a statute, and has nothing whatsoever to do with the Federal Constitution. Isn't that correct?

Mr. Lennox Well, in fact, that's correct, but I think we both recognize that the Federal Constitution was written back in the eighteenth century, and we're talking about a twenty-first century constitution.

Mr. Juneau Then, what have we is sort of a prohibition in the state constitution, but with no criminal sanction, or no sanction built into the constitution. Isn't that right? That's what we'd have if we pass this amendment.

Mr. Lennox Our amendment, as it's presently drafted, embraces no sanctions, but I think you could, you or I could go to court, and stop a public agency from using tax funds in this manner, under this amendment, the Avant amendment, to this article.

Mr. Juneau Can you visualize, within the Executive Department in the state, a situation between, let's say, Arkansas and Louisiana or Mississippi and Louisiana, where the Executive Department will want to advocate a certain position that would involve two states?

Mr. Lennox I think that's possible. I think they'd just have to find some way to do it without using public money.

Mr. Juneau Or they would be prohibited in this kind of case under this?

Mr. Lennox Be prohibited from using public funds. That's the intent of the amendment.

Motion

Mr. Avant Mr. Chairman and fellow delegates, I would withdraw the amendment. I would resubmit it exactly like it is. That is, inserting the word "or proposition" in the same place where I now have it, but I would add a new sentence to the section at the end of line 28, following the word "organization" and the punctuation mark ".", which sentence would read: "The legislature shall pass laws to abolish and draft guidelines." I would then, if I am permitted, explain the amendment, as re-submitted.

(Amendment withdrawn.)

Amendment

Mr. Poynter It keeps the first amendment and adds — the way I think we can do this, Mr. Avant adds Amendment No. 2 as follows:

On page 2, line 28, immediately after the word and punctuation "organization," add the following, "The legislature shall pass laws to implement this prohibition."

Explanation

Mr. Avant Let me explain what I am trying to do. In the first place, I ask you to heed very well the words of Representative Jackson and they were so profound, I think, that I wrote them down, I think, in an exact quotation. He stated that "he is not unmindful of the many abuses that have been perpetrated against the people of this state in this area." Now with that in mind, that's why I offered this amendment. I want to do something about those many abuses. Now I am the first to admit and the first to recognize and I don't disagree in philosophy at all with friends like Mr. Jackson and Mr. Riecke and others—that there may be certain cases where you need to get certain laws before the public. But in my mind there's an entirely different... in that... and straight out and out simple politicking. Now I think that what we are doing here is simply putting in a general proposition, a constitutional mandate that you don't use public funds for political purposes. You don't use them to support candidates, you don't use them to politick your little pet projects. We then mandate the legislature to do something about that, to implement that prohibition. The legislature, in its wisdom, will be able to establish and draw guidelines which would draw the distinction between education and politics. I am the first to admit that sometimes it may be a fine line. But going back to Mr. Jackson's statement, there have been many abuses perpetrated against the people of this state in using everybody's tax money for some politician or some group's little project. Even after the people's tax money has been spent, they still couldn't convince the people, and they voted down the scheme. That has happened time and time again.

Mr. Casey Mr. Avant, may I interrupt you just a minute. I think you were recognized, really, to explain the purpose of the change. I think it would be appropriate to make additional remarks during your close. I think I'm obligated to recognize the other speakers.

[1675]
Further Discussion

Mr. Hunter. Mr. Chair, regarding the amendment, I rise to support Mr. Avant and Mr. Zeno's amendment. I do so primarily based upon the statement and the facts as they stand in regard to the many abuses that have transpired in years gone by in the use of public funds to present to the public of the state only one side of an issue. Of all of the issues that have ever been put to the ballot in this state, we can recall only a small percentage that the people were allowed to have both sides of the picture. Now the legislature of this state, in the passage of the general appropriations bill, appropriated two and a half million dollars for the printing of this convention during this fiscal year. Wrote a specific prohibition that these funds could only be used for the passage or defeat of the work of this convention. I think they did so wisely, because I don't think it right to take public funds and perpetrate something upon the people without giving both sides of an issue.

Take for example, the ant of the levee board of New Orleans that has been entangled here from this microphone. You go back to the time when the referendum was before the people for the passage of those constitutional amendments, and you remember the spot advertisements on television paid for by the New Orleans Bookkeepers Association, what they said, and vote for the ordinance. You did. They didn't give the other side of the picture. It was very unfair to a person throughout the state, who was not a resident of Orleans, to know what the real matter was.

Let me tell you, in a matter of our state what has really happened, and I take it for granted. Let's say where a vote is taken in favor of to and two, or call an election to raise the fare for public conveyances. Whatever comes up, say in the normal, of course, rules apply, if you go to the point of the funds to present both sides to the people, the public at large.

Mr. Avant. I rise to speak about the amendment. Mr. Conroy, I don't have any objection to the amendment as it has been stated, but I do say that it is a very broad one, and by this broadness it is possible that the use of funds for certain purposes—such as the use of money to help elect a candidate for office, or against any candidate, was a flat, absolute prohibition against the use of funds for certain purposes. But if, after the amendment has been considered, dilute the effect of the prohibition as was written insofar as it applied to the areas originally covered by saying that the legislature will implement this.

Mr. O'Neil. Mr. Conroy, I think it is one.
63rd Days Proceedings—October 9, 1978

for want of somebody other to ask it of, I guess, but first of all, do you see this essentially as a self-executing provision and one in which persons aggrieved, general voters or taxpayers, would have standing to raise it, in opposition to expenditures of public funds? I think these are two key questions. I was wondering what your thoughts were on it.

Mr. Flory: I think your question is a good one, Mr. Derbes. If you read the language of the section where it says "to urge," I think that is the criteria which would give a person standing in court if he felt public funds being used improperly.

Now, the reason for the additional language submitted by Mr. Lennox and Mr. Avant was to let the legislature prescribe the ground rules on what is meant by the word "urge" as far as public bodies, and with particular reference to school boards, in furthering a particular increase in ad valorem taxes, or whatever taxes, to present a fair and true picture as to what the needs of the system might be.

Mr. Derbes: But, do you take the position that a principle part of the amendment as phrased, gives substantive legal rights to taxpayers and citizens, or is it really a public policy statement which would have to be implemented by further legislation.

If the answer is "yes" to the latter, than it would seem to me to be unnecessary in the constitution.

Mr. Flory: I think the language that was added was a matter of clarification for those whose interests were... Mr. Henry: The gentleman has exceeded...you have exceeded your time, Mr. Flory.

Further Discussion

Mr. Stovall: Mr. Chairman, ladies and gentlemen of the convention, I originally asked to be put on the list in order to move the previous question, because I think it was quite obvious that this is a bad amendment, and we should vote it down and move along.

However, as the discussion has proceeded, and as Mr. Avant has seen it necessary to add a further amendment, I think the issue has become clearer, and I feel the need to discuss it for just a couple of moments.

To begin with, Mr. Avant felt it necessary to add the statement "the legislature shall pass laws to implement the provision," which in response to Mr. Derbes' question was recognition that it is not self-operating. It needs further legislation. It seems that we should simply leave it to the legislature rather than putting this kind of provision in the constitution.

The legislature can deal with it in order to correct the abuses without placing unnecessary restrictions on school boards and other legitimate public bodies who might feel the necessity to use limited funds in order to promote certain provisions that might be before the public.

The question that is before us is this. Do we want intelligent, informed voters, or do we want ignorant, blind, uninformed voters? It seems obvious that there are times in our urban society when very even a citizen-politeness must be acquiesced with the details of different provisions. They need to be informed through the mass media concerning definite provisions that might need their support and their advisability.

So, I encourage you to reject both of these amendments, and let's adopt the section that is given to us by the committee as it has been presented. Thank you.

Questions

Mr. Toomy: Reverend, wouldn't you think the adoption of this amendment, which would weaken the part that we have presently written on the prohibition against money...

Mr. Stovall: I can't understand your question, Mr. Toomy.

Mr. Toomy: ...the adoption of this amendment, wouldn't it weaken the prohibition that we have written in the section against public funds for candidates?...learn it more or less to the discretion of the legislature?

Mr. Stovall: Yes. If you add Mr. Avant's amendment, you are subjecting the Amendment No. 1, where it refers to money being used by a candidate, to some changes there.

Further Discussion

Mr. De Blieux: Mr. Chairman and ladies and gentlemen, this new amendment isn't any better...as good as the previous amendment which Mr. Avant withdrew, because all that this amendment says is that the legislature shall implement it. If you can't implement it to start with, how can the legislature detail it because all this does is prohibit the use of funds for any sort of a proposition that you might want to carry it.

Now, as I stated before, and I wanted to let you know again, that the only thing that you are doing here is telling the people that you can't say what is good or what is bad or what is right or what is wrong in speeches. In spite of what those who propose this amendment say, because if you like the proposition, you are going to say "it's a use of public funds." If you are against it, you are going to say "it's a use of public funds for political purposes." It's just hard to detail that type of information in a constitutional amendment like this. I think it's better to leave it to the legislature to say how, when and where, and where they cannot be used, funds of this sort, for the advertising of any issue or candidate, or whatever it may be. I just think it's a bad proposition. We ought to leave it to the legislature to set the details.

Question

Mr. Willis: Senator, if we project your argument you just made, would it not be more behooving for us to strike out the entire section and leave it to the legislature?

Mr. De Blieux: I have an amendment to do exactly that, Mr. Willis.

Mr. Willis: I'll embrace it.

Further Discussion

Mr. J. Jackson: Mr. Chairman, ladies and gentlemen of the convention, I'll attempt to be very brief in my remarks. Let me suggest to you that...as obvious by the conversation here, that you have fifty percent on one hand saying about the abuses of the school boards and the levee boards, and fifty percent on the other hand saying that we ought to allow the people to be protected. It seems to me that if we voted for the Avant amendment, that we're just satisfying one fifty percent on it. It seems to me that we ought to delete, as Senator De Blieux has suggested, delete the section, leave it silent, leave it to the legislature to make the necessary corrections according to the situation that arises. I grant you that there is some talk about public funds for political campaigns. There is some talk about the necessity of school boards to present issues to the people. Can that very well be construed as being, and I imagine a court could possibly interpret it as being that it's political advertising. I don't think that we can solve the intricacies of the problem by adopting the Avant amendment. I would suggest strongly that, for the reasons that I just outlined, fifty percent on the part of the necessity, for the school boards and public agencies, to adequately inform, and to promote the interest and they are elected...most of them are elected by the elector-
Mr. Wall. Mr. Speaker or Mr. Chairman, fellow legislators, this is a time that is very difficult, very difficult. We set down administrative rule or law, or say the provision in this constitution you quoted to me, it is difficult to a certain extent. Yet, it is one that is very important if we are to maintain free communities in this state that is not dominated by a particular group. I find it is not easy for you now as it used to be, but the government of all kinds, Mr. Gravel, I was told to you, Mr. Legislator, and all men of all the political entities. In 1950, when I came back to this place with the increased strength of this chamber, your influence in your magazine, your high school, every convention that went to town, they sent a delegate to every convention. I was the majority in the Senate. I didn't want to call them. I didn't want to count them. I didn't want to call them. I didn't want to call them. I didn't want to count them.
Mr. Avant. Mr. Sutherland, is there anything in my amendment that would change the most commendable way in which you say your school board did operate?

Mr. Sutherland. I don't know of any, Mr. Avant.

Mr. Avant. And isn't it a fact that all this amendment would do be to mandate that all such public bodies operate in that commendable fashion?

Mr. Riecke. After you spoke, I didn't know whether you were for this amendment or not. Are you, or aren't you?

Mr. Sutherland. I see nothing wrong,...I told you when I got up here I wasn't urging you to vote for or against it. I wanted to give you the facts. I'll let you decide whether you want....

Mr. Riecke. You're neutral.

Further Discussion

Mr. Aertker. Mr. Speaker and ladies and gentlemen, I know it will come as no surprise to you when I say I rise in opposition to this amendment. When I heard Mr. Avant introduce the first amendment, I was opposed to it. When I heard him introduce the amendment to the...and withdraw it and introduce another one, I'm still opposed to it, but for the simple reason that all I can see that he did with the second amendment was he inserted the subterfuge to get around the provisions of the first amendment.

I want you to remember when Mr. Avant presented this and he was being asked questions, what he said was, what he thought about it was he thought that it meant so and so, he intended that it meant so and so and that there were a lot of questions to be answered about a lot of things involved in this thing. I tell you that when we have something presented to you with that many doubts and that many points involved into it, why we would ever give any consideration to putting that as a part of this constitution that would be binding in its effect just would amaze me to think that we would give consideration to it. I would like to reecho what Mr. Sutherland has told you. As superintendent of East Baton Rouge Parish for the last few years, I have personally spearheaded five elections and we have never expended one single dime for any televison, for any newspaper, for any radio advertising. Our sole expenditure was when we passed the resolution authorizing the call for any tax election we authorized an expenditure to issue a brochure. That's the brochure, incidentally, that Mr. Jenkins had referred to. I respectfully request you should say yes. I think that, as a school board, we ought to give some thought to "What is the responsibility of the school board?" What is the reason why people put them in there if it isn't to give them information about what is good in education, and what is needed in education? This is necessary in order to explain to the people what they need in education. I'll take it one step further; what is political about telling people of this state that they need a school in this community and they don't build a certain school, and if they don't implement a certain program, what's going to happen to the education of their children.

I state to you that it is a responsibility of the school board. It is not a political deal when a school board gets a tax election for the benefit of the children of that community. I urge you, when you give consideration to voting for this amendment, that you think about what you would be doing. Don't stifle the initiative and the operation of the local school boards in this state; vote this amendment down.

Questions

Mr. Jenkins. Bob, are you aware that other public bodies, perhaps not the East Baton Rouge Parish School Board, but other public bodies have purchased television time, newspaper ads, radio spots, etc., aren't you?

Mr. Aertker. I'm aware, Mr. Jenkins. I would suggest that this is an abuse--an absence, it an abuse--why not handle it through the statutes where it should be and not put it in this constitution to handle it?

Mr. Jenkins. Aren't you also aware that in the brochure, for example, that the East Baton Rouge Parish School Board put out that on the front cover it did say "vote for" these propositions. It wasn't just an explanation, isn't that true?

Mr. Aertker. That's correct.

Mr. Jenkins. That's it too true. Bob, that in many instances--I know in our own parish--public school facilities, mimeograph machines, telephones, meeting rooms, have all been used to actively go out and urge people to vote for propositions appearing on an election ballot.

Mr. Aertker. That's probably true. Incidentally, Mr. Jenkins, I'm going to ask the question because one of the things that really had me confused as I listened to Mr. Avant present this proposal, I said, "You know what I want to say is that if you ever have a tax election and no public funds could be used for it, that meant as superintendent, I wouldn't be able to even go out to a school because I'm on the payroll of that school system. If I wouldn't even be able to go speak at anything on that, because I would be using time that should be diverted into something else. It got, to me, to be even that ridiculous as to how you delinate as to what exactly was public funds in this.

[Previous Question ordered.]

Closing

Mr. Avant. Mr. Chairman, fellow delegates, I don't have any doubt but what I could pass this amendment if I would just exempt school boards from it. But what's good for levee boards, what's good for city councils, what's good for other governmental subdivisions is good for school boards. Now I can't for the life of me, understand somebody coming up here and saying, "Well, why don't you contemplate doing what you intend to prohibit, but don't prohibit it." I doubt the sincerity of that type of logic. And I'm trying to attempted to make abundantly clear, I see absolutely nothing operating in the way Mr. Sutherland said that the Orleans Parish School Board operated when he was a member of it. Maybe of course, I think they are under a duty to do that. But I think when they go beyond that and they start using public funds, whether it is a school board or any other public body, for political purposes to politically a certain particular pet proposition that some politician may have, and they are using your tax money for it, when you may be against it, that that's wrong.

Now all this amendment does it say that you shall not do that and the legislature shall provide the ground rules. It's simply like in the Constitution of 1921 when they put in there the language "gambling is a vice and the legislature shall pass laws to suppress it." Now the legislature passed laws suppressing gambling in your own home where it wasn't conducted as a business. I say that we need to go on record...the people of this state, I am sure would want to go on record as saying that "thou shalt not use my tax money to promote political propositions or candidates." Once we have gone on record and said that I'm perfectly willing to lie it up to the legislature in its wisdom to provide the ground rules. The key language is "urge any elector to vote for or against any proposition."

Now, the legislature can put some meat on those bones. The legislature can say was what is legitimate
education, and what is pure and simple political. I don’t think that you can justify—and as Mr. Wall said, don’t say it doesn’t happen because it doesn’t happen when you buy whiskey, to throw barbecues, to do all sorts of plain old common ordinary garden variety political activity to get various and sundry political propositions passed. It has happened. It is going to happen if we don’t do something about it. Here is the time and the place to start, by putting a simple statute to this principle in this constitution, and then leaving it up to our elected representatives in the legislature to put meat on the bones of that proposition as they will. Many other fundamental principles that we are incorporating into this document.

I urge you to vote for this amendment. I say again, I don’t see how anyone can vote against it when they say they have never done it and have no intention of doing it.

[Recording vote ordered. Amendment rejected. 48-57. Motion to reconsider tabled.]

Amendment

Mr. Poynter. Senator De Blieux sends up the following amendment:

Amendment No. 1. On page 2, delete lines 25 through 28, both inclusive, in their entirety.

Explanation

Mr. De Blieux. Mr. Chairman and ladies and gentlemen, I think this amendment is very simple. It is a matter which I think that the legislature can deal with adequately and they should, and they ought to. Any kind of language or restriction we try to place in the constitution is going to be somewhat in my opinion, make it very difficult for the legislature to deal with. The legislature can put the details exactly as public funds may be used if they can be used, for purposes and when they cannot be used. They can spell it out as when public funds will be considered as unlawful in the advertising of any political issue. I certainly think that this is the proper way. Certainly, we don’t want to put a restriction in our constitution that may sometime eliminate what I consider, right now, is a very serious drag upon our political system, and that is having some sort of a public finance campaign funds for candidates so we can elevate to that necessity of principle sell that soul to certain interests in order to get elected. Because as you well know, the candidate usually that has the most money is the one who is usually successful. I certainly think that ought to leave that avenue open in the event we should see fit to do that at some future date. I ask you to concur in the amendment.

[Previous question ordered. Answer not ordered. Amendment adopted 48-57. Motion to consider rejected.]

Personal Privilege

Mr. Rayburn. Mr. Chairman, in a matter to expedite time, I would like just to suggest that in the future when we have an abundance of amendments and one opens up the entire section, that we take that amendment up first. We have waited about an hour and a half here or two hours this afternoon and finally turned around and accomplished that very thing. I don’t believe, I hope you wouldn’t get any statute where you had a bunch of amendments and one did delete the entire section, we should consider that one first. I merely suggest in a matter to save a little time because I got awful sleepy, dozed off a couple of times over there, and there’s a lot better things I could be doing, Mr. Chairman.

Mr. Henry. Your point is well taken and I let the last amendment go through when we thought they would clean it up, but we won’t go that route again. Thank you, Mr. Chairman.

Reading of the section

Mr. Poynter. Section 1. The Register of Voters.

Section 11. The governing authority of each parish shall appoint a parish register of voters who shall provide and receive such compensation as may be determined by law. No person shall serve as a registrar of voters while a qualified candidate for any elective office.

Explanation

Mr. Roy. Mr. Chairman, ladies and gentlemen of the convention, we only sought to make one real important change here, and that is, not penalize a registrar of voters from seeking office within a year after the time that he is no longer a registrar of voters. We just saw no reason to believe that just because you were a good registrar of voters that you should be prohibited from seeking office within a year of the date. So the committee changed the structure of the previous constitutional section and statutes to say that you may not serve as the registrar of voters while a qualified candidate for any elective office. The specific reason being, that we just felt that once you qualified as a candidate you would qualify for any other...into any other issues as to once a candidate or once while campaigning you get into trouble because some registrar may be interested in running for office while you have sought to be a candidate for the office, but may not have actually qualified and there would be no reason to preclude him from serving as a registrar of voters yield to questions.

Vestiges

Mr. Abraham Chris. I know that the intent is not to do so, but does this prohibit a registrar of voters from taking a leave of absence in order to run for office in case he was defeated, then he could go back to his job or what?

Mr. Roy. We specifically concern ourselves with that and when it says that he may not...don’t think there’s any provision for leaves of absence, but once he qualifies as a candidate he can’t serve and I think that would knock him out of the race because, he’s got...there’s no provision.

Mr. Lanter. Mr. Roy, I had previous discussed this matter with you and Mr. Vick, but so the record is clear on this point, is the intent of your committee to do away with the present State Board of Registrars? May be composed of the governor, the lieutenant governor, and the speaker of the house?

Mr. Roy. No.

Mr. Lanter. You have a provision to provide for it some other place?

Mr. Roy. No, we don’t. We just have this, this doesn’t deal with that particular matter. I mean it’s still in existence.

Mr. Lanter. Well, if the new constitution does not contain a provision for the State Board of Registrars, would it not be abolished?

Mr. Roy. Well, you’ve got me at a point where I really don’t know how to answer it. The State Board of Registrars is not dealt with in this particular section in any way. I’ll have to look.

Mr. Lanter. Well, was it intended to be deleted?

Mr. Roy. No, it was not. It would still be statutory law in my judgment.

Mr. Lanter. If I present...constitution, I’ll have to look.
Mr. Roy: Well, it would still be... well, then we'll have to put it in somewhere else if you want it. We don't... not... this doesn't take it out if that's what you are talking about and we didn't intend to take it out. But, we haven't put it in anywhere else and I don't know if it belongs in this section or not. Perhaps, it does.

Mr. Lanier: Well, are you aware that the present State Board of Registration has the absolute right to remove registry of voters in the parishes with... at will? Are you aware of that?

Mr. Roy: Yes, I am. I don't think this takes that away. In other words, Walter, the way I look at it, what we don't put in here, constitutionally, in the schedule will be any constitutional amendment that we don't propose or we don't specifically take out of the '21 Constitution will go into the schedule as statutory law, as I understand it. You'd still have the State Board of Registration and it would still have the powers that it's got right now.

Mr. Lanier: Well, are you aware of the fact that I'm opposed to giving up State Board of Registration as presently constituted that type of power? Are you aware of that?

Mr. Roy: No, I'm not.

Mr. Lanier: Do you feel that type of power should be given to an individual or a group to remove a registrar of voters at will?

Mr. Roy: No. I really don't because I always think that you have to remove for cause if you're going to remove anybody.

Mr. Lanier: What would be the position of your committee, if any, on that particular point?

Mr. Roy: I can't answer for everybody else, but if you came up with an amendment that says that you could only remove a registrar for cause I'd be much in favor of it because I don't believe any human being should ever be removed from office without cause.

Mr. Roemer: Mr. Roy, you, in answer to these board of registration questions which I think were very appropriate by Mr. Lanier, you said well, if it's not in the new constitution then we... it's automatically in the statutes, wasn't that your answer?

Mr. Roy: I said that it's my opinion that in the end we don't necessarily retain in this constitution will have to be relegated to the schedule in some way or another.

Mr. Roemer: Ok. Now, following that same logic, why do we have to have this section at all? Why don't we regulate the whole thing in the schedule? I mean, what have you done with this section, that can't be done in the schedule?

Mr. Roy: Roemer, that's my opinion and you're on your way to convincing me that I'm probably wrong about it.

Mr. Roemer: Thank you.

Mr. Roy: In fact, you have convinced me. I just got in from talking to a group and I'm not with it yet. Any other questions?

Mr. Stagg: Mr. Roy, one of the questions asked, I think by Mr. Lanier, had to do with what happens to the Board of Registrations and I'd like to ask you if in the Section 12 of the Executive Article where there was added, "there shall be a Department of Elections and Registration headed by the state commissioner of elections, who shall administer the law relating to the 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 statutes." Do you believe, Mr. Roy, that the provisions for this kind of powers in the Department of Elections and Registration does effectively do away with the Board of Registration?

Mr. Roy: I don't know why we are talking about the Board of Registration when we're talking about registrars here.

Mr. Fayard: That wasn't my question, Mr. Roy. My question is, that when approving an elective office or constitutional office that we have provided for, we have at least established a term even for Supreme Court justices and also the governor; did your committee give any study or any thought to establishing a term for the office of Registrar of Voters?

Mr. Roy: Well, we did, we felt that since registrars were a peculiar animal in a way that they come about—they are appointed by the local governing body, the parish governing body. We didn't want to impose upon that body a set period of time and they had historically served during the term of government if you know, of course, and when you and you just couldn't get into it. We didn't want to put him back in politics.

Amendment

Mr. Poynter: Amendments sent up by Delegates Ginn and Reeves as follows: Amendment No. 1. On page 2, delete lines 30 through 32, both inclusive, in their entirety, and on page 3, delete lines 1 and 2 in their entirety and insert in lieu thereof the following:

"Section 11. The governing authority of each parish shall appoint a parish registrar of voters, whose compensation, powers, functions, and bond shall be provided for in the election code. No person shall serve as registrar of voters who has qualified as a candidate for elective office."

Explanation

Mr. Ginn: We're concerned here with your parish registrar of voters and we had been working on it and we hope we have the solution here, we hope. First of all, we're concerned with their lifetime jobs and how we don't want to impose upon those people and how long they are going to see. We just felt like the legislature ought to set that term of office so you would know when that term would end and you would know the political aspects of this job. There again, your election codes set up by the legislature would handle his term of office. Your powers and functions are self-explanatory. Now, about bonds, we had to include bonds in here because anytime you have a public office, they have to handle the money, you have to have that bond provision in there... it is necessary—and there again, your election code in that sentence. In this last sentence of this amendment, "no person shall serve as registrar of voters who has qualified as a candidate for elective office." Well, we saw a problem here of... of a conflict of interest and... several candidates running for office who may be friends of the registrar of voters;... all kinds of prob...
63rd Days Proceedings—October 9, 1973

less. your list of registrar of voters is that good, we feel like there may be some politics involved there.—helping friends out. we didn't want to keep quiet to be had to put this provision in there. that's about the size of it i'll be glad to yield to any questions.

Mr. Denzler. Mr. Ginn, your question really is in connection with the last sentence, who has qualified as the candidate for elective office, when he suppose a man previously qualified, and ran and was defeated and subsequently was appointed to a registrant of voters; he would come under the prohibition there because he has qualified as a candidate.

Mr. Ginn. well, that may be the case, but we didn't... or it might not be the case it depends on the title of when he was qualified.

Mr. Denzler. well, that's what I'm asking you. in other words does this mean that if he is qualified... if he has qualified then at that point he can no longer serve, or does it mean if he ever in the past qualified?

Mr. Ginn. well... it's just a prevention to keep him from running for office at that time, that's what we are trying to accomplish.

Mr. Denzler. I'm sorry, but I did not understand your provision for removal. You said something about it, but I didn't quite follow what you said. What provision is there for removal?

Mr. Ginn. That would be taken care of in the election code, but my comment was that... the legislature would set that term of office and you would know when that man could be removed, if it was necessary.

Mr. Ginn. Yes, sir.

Mr. Rayburn. Which means in my opinion, that once he's qualified he could never serve.

Mr. Ginn. I understand that and I agree with you. I think that it's just wordy and that we need to rearrange.

Mr. Rayburn. I understand your question. Now, I think we would have it by saying instead of who has qualified, but while qualified.

Mr. Rayburn. And to do it. because I got a registrar of the qualified court, he got unqualified, but he did a registrar, and I don't want to knock him out.

Mr. Perez. Mr. Ginn. I'm generally in favor of your amendment, but one of the things that troubles me is where you say that these various terms of offices, etc., shall be provided in the election code, and it may be a number of years before we actually adopt an election code. would you allow to saying is provided by law instead of in the election code?

Mr. Ginn. Well, I would hope that the legislature would deal with it and that's what I want to do. just put that responsibility there in the legislature as in providing that election code.

Mr. Perez. Well, would you have any objection to that saying it? By law rather than it in the election code.

Mr. Ginn. I wouldn't necessarily have any objection to saying it. I mean, the whole is we just want the legislature to do it. we want them to have that responsibility.
Mr. Perez: Well, that's very difficult to say because the election laws of this state are very complex. It took to revise such things as our Criminal Code and other various codes that we have, many, many years. I don't know how many years it will take to revise all of the election laws of this state. It's a very complex subject matter and it could take many, many years.

Mrs. Warren: Maybe, you should have got up here a little bit earlier.

Mr. Gravel: Mr. Perez, were you here last week when we adopted the first section of this article that prohibited the registration part of the election code which also -- were you here then on Saturday, when that particular provision that was adopted on Friday, was amended to state that there should be...there would be provisions in the election code for permanent registration?

Mr. Perez: Yes, well, I wasn't here on Saturday, but I'm familiar...

Mr. Gravel: You're aware of it? All right, sir.

Mr. Perez: That those provisions were adopted. My only point here being that the way that this particular amendment is phrased, that it may be many, many years before we adopt an election code. I'm afraid of what may happen in the meantime with respect to the Office of Registrar of Voters.

Mr. Tate: Mr. Perez, as an expert in local government, do you have any concern at all...

Mr. Perez: Judge, any person who claims to be an expert, is a damn fool. I don't claim to be an expert in anything.

Mr. Tate: Well, I claim you are anyway. I guess I'm a damn fool.

Mr. Perez: I am what, sir?

Mr. Tate: An expert.

But, do you have...the present constitution provides not only that the registrar can't serve while he's a qualified candidate, but he cannot be a candidate for twelve months after he leaves office. Does it concern you at all that, that former constitutional prohibition is not maintained? Under the current basis was it...it's a sensitive office, one we want to keep out of politics...

Mr. Perez: Under this particular provision, the legislature can deal with this particular amendment. The present law says no registrar of voters shall be elected or appointed to any other office within twelve months after vacating that of registrar.

Further Discussion

Mr. Gravel: Mr. Chairman, and ladies and gentlemen of the convention, I rise in opposition to this amendment primarily because of the provision in here that authorizes the legislature to fix a term of office. Now, I know that may sound rather strange to most of you because the obvious feeling that every legislator I know, would have without maybe giving it too much consideration, is that some term of office should be fixed for registrars of voters. Let me suggest to you that there's a very many...there are very many valid reasons why that should not be the law. In the first place, there is no provision of the law at this time that fixes a term of office for registrars of voters. At the present time, they can be removed by the Board of Registration under the provisions of Article VII, Section 18, of the constitution for no cause at all. There's no guarantee that they are going to continue in office for any specified period of time. But, they at this time can even be removed for no cause at all, which many of us, of course, feel is a very, very bad situation with respect to the law. What I think we've got to do if we do anything at all, about registrars of voters, is to maintain them in the same position that we maintain our civil service employees; our school teachers under the tenure provisions that we've adopted into the statutes, and give them protection and insulation from arbitrary action by the appointing authority. That is, generally the police jury, and which, of course, constantly and consistently could make political demands collectively and individually upon the registrar of voters, if his office is permitted to be politicalized. Now, I would suggest to you that we give consideration to deleting this particular amendment, and then, perhaps determine whether or not we haven't gone as far as we need to go by adopting the initial section that we adopted in this article; where we said, that the election code would provide for permanent registration. Certainly, a provision with respect to permanent registration could, and should encompass in the election code a section or a part that would deal with the appointment, qualifications, period of time which they would serve, and things of that nature. Insofar as they relate to the Office of Registrars of Voters. So, I would urge that we defeat this amendment for the reason that it can cause more problems than I think its authors seek to cure by the amendment, and that we give consideration either to deleting the entire section, or perhaps, coming up with some amendments that would meet the very many serious objections, that have been already added to the proposal. If there are no other speakers, Mr. Chairman, I would...

Questions

Mr. Kelly: Mr. Gravel, am I to understand that your basic objection to this amendment is the phraseology in their term of office?

Mr. Gravel: Yes, Mr. Kelly, because that's the...those are the words that would really politicalize the office.

Mr. Kelly: Well, are you aware that assuming that this amendment does pass, which I do favor, I have an amendment to this amendment that would delete those words?

Mr. Gravel: If you had that amendment I could then...if we cleaned up the last sentence to say what I know the authors intended it to mean I think, then we would have a provision that would be satisfactory.

Yes, Mr. Chairman.

Mr. Roemer: Mr. Gravel, as I understand it then, you are opposed to this amendment, basically, because of that phrase "term of office." Is that correct?

Mr. Gravel: That's correct. Yes.

Mr. Roemer: If that is deleted then, how will there be any provision for removal and in whose hands will that be?

Mr. Gravel: I think we would have to say that that should be...how they should be done, either in this section or leave it up to the election code to provide for removal.

Mr. Roemer: Well, I noticed that you had an amendment earlier which said that "the governor shall remove." Are you going to push that amendment on us?

Mr. Gravel: Well, knowing that you are not going to support it, for that reason, Mr. Roemer, I might withdraw it.

Mr. Roemer: Well, do you have any alternatives to a term of office, then, if it's not going to be the governor?
Mr. Gravel. I hadn't thought of any, but I'm sure we could come up with something.

Mr. Roemer. Well, wasn't it my understanding before you took the mike earlier that you had supported this amendment? Wasn't that the impression you gave me?

Mr. Gravel. You read the Ginn-Reeves amendment?

Mr. Roemer. Yes.

Mr. Gravel. No. I didn't say that I would support it. I thought that this was an alternative that would be, should be, presented to the people, so I stated up here at the huddle too, Mr. Roemer.

Let me make it clear, so there is no question about it. I was asked to prepare the amendment that was distributed to all of you by the registrars of voters, who are here today, and asked me to prepare and submit this amendment. They are not unwilling to go with the amendment as proposed by Mr. Ginn and Mr. Reeve. I think that it presents some problems, and I'm saying so, yes, Mrs. Warren.

Mrs. Warren. Mr. Gravel, do you know what disturbs me most is whether you said that the registrar of voters could be removed for no cause at all?

Mr. Gravel. That's the present law.

Mrs. Warren. Right. Now, you said that amendments could be drawn. The only objection that you had was a term of office. What about drawing up an amendment and presenting it with proof that there would be cause for them having to be removed? That nobody should be able to remove just blank blank because I don't want you any more.

Mr. Gravel. Well, in the amendment that I had distributed—which we haven't discussed yet—I did make the provision that there could be removal by the governor for cause.

[Previous question ordered.]

Closing

Mr. Reeves. Let us get this situation into perspective. What we intended to do was to establish that the parish registrar of voters shall be appointed by the governor, or removal by the governor, or removal by the parish governing authority. We feel, first, that registrars should have no business removing, by the simple fact of him not wanting a registrar of voters in a parish. We feel that this should not be done. We did, also, feel at the same time, that the registrar of voters should not be placed at the discretion—or his removal placed at the discretion of the police jurors, who appointed him in the beginning. We felt that this could possibly bring an alliance between police jurors and registrars of voters. So, simply, we said that the compensation, the term of office, the powers and functions, and the bonds shall be provided for in the election code. We attempted to leave it up to the Louisiana Legislature—-who we trust—to establish an election code, to set forth the term of office, the compensation, and the powers and functions of the registrar of voters. We do not want to establish the registrar of voters as a lifetime position. I feel very strongly against this. I will look any registrar of voters in the face and say, it is wrong for a man to be appointed by a group of police jurors and then to sit there, forever and ever, until he dies, without being able to be removed by anyone. This is against the democratic process of which I so very strongly am in favor of. It's wrong for an individual to be appointed and not be able to be removed. But, at the same time, it's wrong for that individual to be appointed by the parish police jury and then removed arbitrarily by the governor of the State of Louisiana, who ever that governor happens to be. At the same time, it's all wrong. We didn't intend to establish and had at the registrar of voters might have happened to may support or the past election and by the Louisiana law. We have twelve police jurors. By a vote of seven to five a registrar of voters could be removed arbitrarily by the police jury. If you had the provision or power of the legislature to provide for the compensation, the compensation—-and the bond is also provided for by the legislature through the election code. The power and functions, and the bond is also provided for by the legislature through the election code. We feel this is a good compromise. We do not want to establish the registrar of voters as an autonomous power of body not able to go back to the electorate, not to back to anyone, just sit there. If you remember back, we eliminated the Louisiana Supreme Court, from having a fourteen-year term. We provided one better representation, we gave the voters a ten-year term. If you give the parish registrar of voters a lifetime term or terms... putting no term of office there, or provision of no term of office, you are going to give the local registrar of voters a lifetime term. This is not what I want. This is not what I think the people of the State of Louisiana want—-for this is not democracy. Democracy provides that the people that are appointed or elected should have the right to come before the people. We feel that this is a compromise. I hope that you will vote for it.

Question

Mr. Cannon. I have two questions. Mr. Reeve, did you know that in your... using the word in your proposal term of office—whether it be for four years, six years, ten years, or whatever... you internationally the office in that this particular individual is going to have to get reappointed once during that period of time, you know, as versus an unlimited term? Did you also know, that under your proposal... and get this real close—that doing a good job in the office of registrar of voters for a certain number of years really, in effect, by paying for removal?

Mr. Reeves. Mr. Reeve, you are a politicianized type of person. I know... Congress should have a firm and find out about politics. We just appointed a new registrar of voters and it was an existing game of politics.

[Amendment proposed.]

Mr. Poynter. Amendment 2. Proceed to following page, delete lines 29 through 52, both inclusive, in their entirety and on page 1, delete lines 1 and 2 in their entirety.

Explanation

Mr. Tocque. Mr. Chairman, fellow delegates, there is nothing in section 11 that was not be handed by statute to have the adoption of the amendment.

Further Discussion

Mr. Kelly. Mr. Chairman, ladies and gentlemen of the convention, I rise in opposition to the amend you have to do this. I have to be removed. Now, if we receive any reference in this institution concerning registrar of voters and can possibly the first sentence—-even of the Ginn amendment or as of
the provision as it is now written, "The governing authority of each parish shall appoint a parish registrar of voters." If we remove this entire paragraph and put nothing in its place, then you are not going to have your local people making this appointment possibly. You are locking it in by at least putting something into this constitution concerning the governing authority of the parish making the appointment. If you take it all out, you put it all in the hands of the legislature. The minute you do that, they could come up, they could create some special cases, and they could put the entire thing in the hands of the governor or any other political body, concerning the appointment of your local registrar of voters. For this reason, I recommend wholeheartedly that you vote this amendment down.

Further Discussion

Mr. Stagg Mr. Chairman and fellow delegates, I'll make as short a speech as Max Tobias made in presenting his deletion amendment. If you have been for local government and for home rule since we have been in this battle, then your vote is against the Tobias amendment. The registrar of voters ought to be appointed by the local government. We get follow Mr. Tobias' advice and leave this thing twisting in the wind. I urge you to vote against the Tobias amendment and let the voters be appointed by the local government.

Further Discussion

Mr. De Blieux Mr. Chairman, ladies and gentlemen, I rise in support of the Tobias amendment. There is nothing whatsoever in the Tobias amendment that says the local governing body can't appoint the registrar. The only thing is, is what it says that it's the election code it can be provided for if the deletion is carried out. The other provision--the terms and conditions--the local governing body can appoint the registrar, how he can be removed, safeguarding him from being removed because of anything of that sort. I certainly think that we can go ahead and handle that, as well as all of the rest of this proposal by the election code. We don't need to clutter up the constitution with a lot of meaningless--you might say--legislation, and that's what this amounts to. I ask for your support of the Tobias' amendment.

Further Discussion

Mr. Perez Mr. Chairman, ladies and gentlemen of the convention, in my judgment the provision that the governing authority of each parish shall appoint a parish registrar of voters is a must provision in our constitution. Let me, if I may, go back a little bit in history and see whether we might recall some of the problems and abuses which we had in the city of New Orleans--many years ago--when the governor had the total authority to appoint the registrar of voters. That was, probably, the biggest political plum of any of the gubernatorial appointments. It was subject to a great deal of political abuse. In my judgement, we must, we should put a provision in the constitution which assures that the registrars of voters will be appointed by the governing authority of the various parishes. Now, I will be coming with an amendment--right after this--which will provide that whose compensations, powers and functions, and other provisions with respect to such office, shall be provided by law. I believe this will pretty much take care of the objections to the last amendment, but at the same time, to assure that the governing authority of each parish would appoint the registrar of voters, which would get away from the possibility of a statewide abuse, by some governor, some day, trying to control registrations all over this state--which in my judgement--is a very, very dangerous thing for us to subject the people of this state to. If you reject this amendment, I will offer an amendment shortly afterwards--hopefully--when this is defeated, which I hope will straighten out the problem.

Judge Tate

Questions

Mr. Tate Mr. Perez, when your amendment comes, do you anticipate that we would keep on as statutory material in the schedules, the present method, which has worked pretty damn well?

Mr. Perez Well, the present method, yes. I believe that under the amendment, it says "shall be provided by law" that would do away with the present provisions, until such time as it might be amended.

Mr. Tate This would be kind of a transition material that we could keep on when we get to that transition business.

Mr. Perez That's correct. That would do away with the possibility that it would wipe out the present law, when you said it must be put in an election code.

Further Discussion

Mrs. Warren Mr. Chairman and delegates, I was really wanting to support the proposal by the committee. Mr. Gravel brought up a very interesting question which kind of disturbed me a little bit--where the registrar could be removed without cause. Mr. Perez brought a question into my mind that the court might be years coming into effect, it was going to take so long. So, I'm not wanting to leave all of this up to court. I think that we should defeat this amendment. I think it's too important to let the registrar of voters just be hanging loose, and we don't know which way he is going. I think we should come up with an amendment. I think if Mr. Perez is going to draw an amendment, I would like to get with him and put in there that this person could be removed by the local governing authorities that appointed him, but, for a cause. I'm going to ask you to defeat that amendment.

[Previous Question ordered. Record vote ordered. Amendment rejected: 5-98. Motion to reconsider tabled. Motion to temporarily pass over Section 11 adopted: 84-15.]

Reading of the Section

Mr. Poynter "Section 12. Commissioners and Poll Watchers

Section 12. The legislature shall provide for the selection of commissioners and poll watchers at every election."

Explanation

Mr. A. Jackson Mr. Chairman, ladies and gentlemen, this is a rather simple section. I don't think that it bears the responsibility of the time of this convention by way of explanation. I think that it is rather clear. It leaves the old regulation relative to this proposition up to the legislature. I, at this time, would move for the adoption of this section.

Questions

Mr. Bergeron Representative Jackson, I'm looking at the way Section 12 reads, "The legislature shall provide for the selection of commissioners and poll watchers at every election." Does this mean that at every election they will have to provide for a different way of selecting commissioners and poll watchers?

Mr. A. Jackson I don't think so. I think it simply means that at each election you will have commissioners and poll watchers.

Mr. Bergeron Is this the present language we now
Mr. A. Jackson: Well, but language be damned, strictly, I believe it makes it mandatory to have a present constitution wherein the whole business of Commissioners is not mandated.

Mr. Besche: Well, in the context of the amendment you had with you-- it's just that the last few words are a little confusing, but, I won't object to it. Thank you.

Mr. Jenkins: Mr. Jackson, don't you think it would also be arrived in the election code.

Mr. A. Jackson: It would probably be handled in that fashion.

Mr. Jenkins: Mr. Jackson, isn't it true that one reason that it is necessary to include this section in this article is the fact that this amendment to the Constitution--that we will not all have poll watchers who are, of course, chosen by the candidates to safeguard the candidates interest at an election? That we will always have poll watchers provided at elections, and this mandates the legislature to provide a system for choosing such poll watchers.

Mr. A. Jackson: That is correct.

Mr. Jenkins: And also, isn't it true that it also provides that we will have a system of commissioners and that this means that commissioners can be selected in some fair and reasonable way. But, we must have commissioners and poll watchers and the election judge cannot do away with those things. Isn't that correct?

Mr. A. Jackson: The section mandates commissioners and poll watchers.

Amendment

Mr. Pointer: Delegate Sandoz sends up amendments. Page 2, delete lines 3 through 5, both inclusive, in their entirety.

Explanations

Mr. Sandoz: Mr. Chairman, fellow delegates, I don't want to sing the same song over and over again. But, again, I submit that the provision of Section 12 can be better covered by the Legislative Act in the election code. It is not necessary to include this section in this constitution.

Questions

Mr. Jenkins: Mr. Sandoz, at present, candidate for office—any candidate—demand that he has in the election place a poll watcher. This provision mandates such a provision in the future, because it poll watchers is a term of ordinance that they will have poll watchers. Isn't it a good protection to have, so that no election judge in the future could say that maybe only commission etc., for example, could be present at the polling place. Isn't this a good protection for us?

Mr. Sandoz: Mr. Jenkins, I certainly am in favor of commissioners and poll watchers, but, I have enough confidence in the legislature to feel that they will provide for both in the election code.

Mr. A. Jackson: Mr. Sandoz, isn't it true that poll watchers are not paid?

Mr. Sandoz: That's correct.

Mr. A. Jackson: Haven't it been your experience that that even though poll watchers are summer, unless they are very much to the candidates, they never show up at the polls?

Mr. Jenkins: That's been my experience.
law and say that on every bond issue, on every local election and so forth, that instead of the local committees promulgating the returns of the elections, it will be done by the secretary of state?

Mr. Vick

Well, Mr. Perez, Mr. Bellar, who is one of the attorneys for the secretary of state was present during our deliberations and it was at his insistence—not at his insistence, but at his suggestion and admonition that this language be included. Now, you may find it objectionable and, of course, if you do then you are entitled to attempt to change it.

Mr. Perez

My question is whether this makes a change in the present law because of the fact that your returns of elections are promulgated either by your parish committee, or by your senatorial district committees, or by your congressional district committees, or the various other state central committees and so forth. In this case, it is rather similar to the provision about the promulgation by the secretary of state of the returns of every election in the state under all conditions and that's what concerns me about the language.

Mr. Vick

That's what it says and you may be correct that it may change the law.

Mr. Burson

Mr. Vick, I haven't looked at the law in this matter as closely as you all have. But, I'm under the impression, now, that the procedure followed on bond and tax elections would be that the tax embodied be it—drainage districts, school board, city council, or police jury would be responsible for promulgating the returns. In many cases, most cases, probably the secretary of state would have nothing at all to do with the promulgation of at least that type of election as distinguished from an election where you had competing candidates, or in a party primary, or otherwise, or a general election. Did you all look at that aspect of it?

Mr. Vick

As I said in answer to Mr. Perez's questions, Mr. Bellar after hours of consideration on the wording...on just how the wording should be...how precise the wording should be to achieve what was desired. This was what the committee came up with. Now, if it does do violence to the promulgation in bond elections that is inconsistent with the Constitution written in 1921, I can't answer that. I don't know that.

Mr. Burns

Mr. Vick, in following up Mr. Perez's question. I take it that under this wording that every parish election, every judicial district election, every senatorial district election or whatever the nature of the election, that the local election commissioners would take all of their election returns, their tally sheets and so forth, and send them directly to the secretary of state at Baton Rouge?

Mr. Vick

It is my understanding, Mr. Burns, and I most certainly prepared to stand corrected if I am wrong, is that the preliminary returns are, you know, always in order. In other words, obviously candidates and those interested in particular issues want to know what the returns are. But, promulgation means official—the seal of the secretary of state goes on the official returns. They now vary one or two votes, or three of four, or a dozen or so but...it doesn't mean that the candidates would not know as soon as the returns were added up. Promulgation is a term of art.

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Sandoz]. On page 3, delete lines 6 through 9, both inclusive, in their entirety.

Explanation

Mr. Sandoz

Mr. Chairman, fellow delegates, the justification that I heard in the explanation of this section from Mr. Vick was that it would provide a uniform form of stating the returns. Well, my answer to that is that this can be done by statute or in the election code. Hence, there is no reason for or need of this section. Furthermore, I want to point out that when we adopted Section 7 in the Executive Department, we have a provision in there concerning the powers and duties of the secretary of state that we shall prepare and certify the ballots and promulgate all election returns and amendments to the election laws except voter registration and custody of voting machines. I submit that this section as in a number of these others can be deleted, without in any way affecting the constitution.

Questions

Mr. Rayburn

Do you have any idea how much that would cost for him to promulgate every little election, in every little area, in every little district in this state?

Mr. Sandoz

You, probably, are the best qualified one here to estimate that, Senator.

Further Discussion

Mr. A. Landry

Mr. Chairman, fellow delegates, I'm not here to tell you to vote for or against the amendment. But, I would like to explain to you the need of uniformity. Just like some time ago, we took the Judiciary Article that was an amendment to give uniformity for office hours for the clerk of court. I supported that amendment. We need uniformity in election returns, and I will tell you why. As most of you know, the secretary of state does promulgate the returns of the state officials. The Local Democratic Executive Committee promulgates the returns of the local officials. The Republican party promulgates the returns of their candidates. The State Central Committee in an election for congressman, they in turn promulgate the returns of the election. In the last election, for instance, the local committees can make the corrections if the commissioners have made an error on the tabulation sheet. But, the secretary of state receives these tabulation sheets from the commissioners—maybe this is a legislative matter. We have a lot of legislators here today, so I thought I would talk to them, also, today. The fact remains that once the secretary of state receives the tabulation sheets, he promulgates the returns of the state officials. Three days after the election, the clerk of court in the presence of the committee, the candidates, tabulates the votes makes any corrections that there be made of their tabulation sheets. The local committees must take the corrected tabulation sheets in order to make their promulgation. However, there is nothing in the law for us, whereby we must send to the secretary of state a corrected tabulation. For instance, in the last election, we had two gentlemen who ran for State Central Committee, and the House Select Committee on Dave Robichaux as the winner. Thirty days after the election, the Democratic State Central Committee met in Baton Rouge and after the committee had met and adopted the returns of the election—without reading them—the gentlemen went out to check and found out that Mr. O'Quinn had won the election. Of course, the time had kicked in by then and him to file a lawsuit—that thank goodness both of them were good friends, and automatically Mr. O'Quinn
Mr. Rayburn: Would you mind defining for me, in your opinion, the words "district court"? How far could you contest it? You just... I use here "district court". Would you define district court for me, in your opinion?

Mr. Guarisco: Well, Mr. Rayburn, the district court is certainly the first court of record in our judicial system. Its functions are set out in our Judicial Article that we had previously adopted. I don't think that any way you could interpret the first court of record being the last court that would ever hear the contested election. I think you can go through the judicial process once you get into court the first time.

Mr. Tobias: Mr. Guarisco, following up Senator Rayburn's question. He says a person may contest in the district court in Kentucky have a civil and criminal district court which would it go to?

Mr. Guarisco: Well, I Mr. Tobias, you know you know that prompts me to say that, what I said one line in a committee, that that asks the fact that such a drunkard uses a gun, if second support, not elimination...

Mr. Rayburn: Amendment Mr. Rayburn, Amendment No. 14, page 6, delete lines 9 through 14, both inclusive, in their entirety.

Mr. Sandoz: Mr. Chairman and fellow delegates, I agree with everything that's in this section, but I just submit that it should not be in the constitution, that it should be in our election code, urge the adoption of the amendment deleting the section.

Mr. Denmany: Mr. Sandoz, are you keeping the good record of speakers with regard to this article that you have normally kept?

Mr. Sandoz: I might spoil my image; I decided not to keep a record on it.

Further Discussion

Mr. Jenkins: Mr. Chairman, delegates, this section gives our citizens a very important right that they have had forever. A right which persons in virtually every other state have. Really, it would be a travesty to take it out of the constitution because it is, of course, possible that the legislature would not provide for this situation, and that the standing of an individual to go to court in this case would be denied. The right to register and vote would be quite meaningless if a person had no procedural way to enforce that right. This section gives him a way. If he is denied the right to register, then he can go to the district court, and in a summary proceeding have his right decided. Also, it preserves the integrity of his own right to vote because your right to vote doesn't mean a whole lot if there are a lot of other people whose names are on the rolls illegitimately. So, this gives him the right to go to district court and have those names purged, if they are there illegitimately. If you look at Article 4, it's the age of our present constitution, you will find the equivalent present provision. It says, any person possessing the qualifications for voting prescribed by this constitution who may be denied registration shall have the right for relief to the district court having jurisdiction of civil causes for the place in which to register and shall then try the cause giving it preference over all other cases before a jury of twelve, nine of whom must concur to render a verdict. This section shall be a final determination of the cause. The trial court, however, may grant a new trial by jury in no cases shall any appeal lie or any other court exercise the right to review. We have simplified that language, taking out the unnecessary details, but preserving for our citizens their right to go to court and in a summary proceeding have standing to present to either the court that they are raising, or to have illegal names removed from the rolls. My goodness, let's don't take this basic protection. It would be a shame if our citizens somehow lost this right. So, I urge the retention of this section, and the defeat of the amendment.

Questions

Mr. Kilburn: Mr. Jenkins, the reason the article in the section there, does that mean that any person would have the right to take a contest of every other right to be on the registration roll. In other words, would without being a qualified elector himself...

Mr. Jenkins: That's right. If any person may do...
that. Of course, I suppose that we could say any elector, but when we are talking about the right to challenge your denial of registration, well, you see you might not be an elector if you hadn't been allowed to register. So, we have to give that right to every person.

Mr. Rayburn: Woody, believe me, I'm not trying to pick this thing, but I did promise to try to submit back to the people a little shorter constitution. I notice here where you say at the bottom, 'that these we shall have preference over all others.' Then, right in the next section which we are not discussing now, but you are saying if a person gets elected or an election has been contested, you make no provision. They can wait a year to decide it. I wonder what the rush is.

Mr. Jenkins: Well, we are continuing present law in that regard, 'Sixty.' The present law says, 'giving it preference over all other cases.' We are doing that because if it's right before an election and there are names standing on there illegally, you'd want to immediately have them removed so that you wouldn't have a fraudulent election. Or, if your election were coming up and you weren't allowed to register, well, you would need to act immediately in order to be able to vote. So, that's why the provision is there in the Constitution and should continue to be.

Mr. Poynter: 'Section 15. Election Contests.' The legislature shall provide by law for the judicial determination of contested elections.

Mr. A. Jackson: Mr. Chairman, ladies and gentlemen, this section makes no changes in the present law. It tracks the language as it is included in the present Constitution. I move for the adoption.

Amendment

Mr. Poynter: Amendment No. 1 [by Mr. Sandoz]. On page 3, delete 'cases 15 through 17,' both inclusive, in their entirety.

Explanation

Mr. Sandoz: Mr. Chairman, fellow delegates, again I have no objection to the language contained in here, that the law shall provide for judicial determination of election contest, but I submit again, that this should be a part of this election code and not a part of this Constitution.

Question

Mr. Warren: Mr. Sandoz, I might not get a chance to ask you this question. Have you gone through all of the rest of the proposals and have you decided what we are going to delete? So, if you have, let me know and I... I can be studying to find out what is in it before I get to it.

Mr. Sandoz: I haven't done that yet, Mrs. Warren.

Further Discussion

Mr. Jenkins: Mr. Chairman, let me read you the present constitutional section. It's found in Article VIII, Section 12, Election Contests. It says: 'The Legislature shall provide by law for the trial and determination of contested elections of all public officers, whether state, district, judicial, parochial, municipal, or ward except governor or lieutenant governor, which trial shall be by the courts of law, and of the domicile of the party defendant.' The thing that this section would accomplish is to make sure that contested elections will be decided by the courts of law because it says 'judicial determination of contested elections.' It would not allow an election commission; it would not allow some public official such as the commissioner of elections to make that determination. If it was not allowed, I suppose we would not allow the legislature, say, to vote on it, or something like that. It requires that the courts of law make this determination, and we thought that the reason that was included in our 1921 Constitution was that the drafters of that document felt that these contests should always be determined by judges who are elected by the people—not appointed by someone who have access to the jurisprudence in the area and can make a determination based on law and facts rather than some political whim. I think we need this section, and I urge the defeat of the amendment.

[Previous Question ordered. Record vote ordered. Amendment adopted: 70-26. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter: 'Section 16. Election Fraud.' No person shall cast a vote in more than one place, nor offer or receive anything of value in exchange for a vote, nor engage in any other form of election fraud. The legislature shall enact laws to suppress such acts as possible, and penalties in such cases may include suspension of the right to vote and hold office for a period not to exceed five years.

Explanation

Mr. Jenkins: Mr. Chairman, delegates, the equivalent section in the present constitution is Article VIII, Section 23. It discusses corrupt practices, disenfranchisement, grand jury investigations, district attorneys. We have taken that section and shortened it considerably. I suppose the most important part of this section is the second sentence. It is absolutely necessary, if you are going to disenfranchise people for election fraud. The present Constitution says that 'whoever is guilty of election fraud--buying, selling votes, things of that nature--shall be punished by the right of suffrage and from holding any office of trust or profit under the United States, or under the laws of the State of Texas, or from the right to vote for a period of five years.' A permanent exclusion of someone from voting or holding office was, perhaps, too great a penalty to impose for election fraud. However, we thought that it if someone is so discrete that he should go through the process that he engages in such activities, that he ought to be denied the right to participate in such activities for a set period of time.

We arbitrarily established five years as that period. It is particularly important that this section not be deleted. If this section is deleted, it will be impossible, under this constitution, to disenfranchise anyone or prevent them from holding office if they have engaged in election fraud—if they have bought or sold votes. It will be impossible because the right to vote is guaranteed under the Bill of Rights and a person is restored to the right, the full rights of citizenships, under the Bill of Rights, after completion of the term for a felony or a misdemeanor. So, you can see unless we here, say that people can be disenfranchised for a fixed period, they will not be able to be disenfranchised by any election code or provision thereof. So, if you think that buying and selling votes, vote fraud, is so serious that people ought to be denied the right to vote for a period of five years, you will have to adopt this section or it... or something equivalent to it. An election code could not legally provide that protection. So, I urge the adoption of this section.
Mr. Perez—would you mind telling me what these words mean: "no person shall register and vote in more than one place?"

Mr. Jenkins—That means that just as the present constitution it's illegal to register and vote in more than one place, that you can only register and vote in one place.

Mr. Perez—Do you mean at the same time?

Mr. Jenkins—Well, of course, at the same time.

Mr. Perez—Well, by problem, again is, and I'm reading the words, is whether once you registered in one place you may remain registered that way forever. In other words, or if the interpretation is otherwise, since we have no problem, we have no residency requirement now, that it means that a person may register in one place today, and the next place tomorrow, and the next place the day after—This first clause concerns the very much. Would you explain it?

Mr. Jenkins—Certainly. I feel that a person should not be able to register in more than one place, and I hope that this language prohibits him from doing it. I think that it is the intent of it. I think that this is a problem that this convention should be concerned about because under federal court decisions, certainly there are no durational requirements for registering to vote. You do have to be a resident of an area, but there is no durational residency requirement. As soon as you become a resident of a new place, without such a provision, I fear that it may be possible for people to go around registering in more than one place and voting in more than one place.

Mr. Dermer—woody, under the right to vote section of the Bill of Rights, Section 19, as I understand it, the right to vote may be suspended when the person is under an order of imprisonment for conviction of a felony. Therefore, if the legislature determined that vote fraud was a felony, you would achieve the same result that you just spoke of: would you not?

Mr. Jenkins—Well, Moise, you could only do it for the period of his imprisonment, you see, or his probation. You...he may get off with a suspended sentence, for example, but he would still be able to hold office and be still able to vote. So, the only way that we can prohibit from voting and holding office if he is not actually in prison or under probation or parole would be with this constitutional provision. Let me explain that briefly one more time because I know a lot of people weren't really listening. There are three ways to disenfranchise a person: election fraud—buying and selling votes, voting in more than one place, and things of that nature. I, if we specifically provide in this constitution that the right can be suspended for a period of time, such as five years, if we delete it, an election code cannot possibly, legally provide such a thing because the Bill of Rights would be superior to any election code, and the Bill of Rights gives a person the right to register and vote even if he has been convicted of such a thing. unless he is actually in prison or under parole or probation. So, we need the section if we are going to have this extraordinary penalty under these circumstances. So I urge the adoption of this section.

Amendment

Mr. Eythinger—Amendment No. 1 [Ms. Sandoz] on page 3, delete lines 1 through 8, both inclusive, in their entirety.

Explanatory Note:

Mr. Sandoz—Mr. Chairman, fellow delegates, applying the provisions of this section, however, I cannot envision the legislature authorizing persons to register and vote in more than one place, but submit again, that this is the type of
63rd Days Proceedings—October 9, 1973

Mr. Sandoz Well, it would be a question as to which provision would control as the courts would interpret it.

[Previous Question ordered. Record vote ordered. Amendment adopted: 78-22. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter "Section 17. Code of Elections

Section 17. The legislature shall provide for a code of elections".

Mr. Chairman, I might say at the outset there is a committee amendment to delete this section.

Mr. Henry Committee amendment to delete the section. That's the one that's already been taken care of. Right, Mr. Jackson? Provided for that in the first section. This is an amendment to delete Section 17.

Amendment

Mr. Poynter Amendment sent up by Delegate Alphonse Jackson.

Amendment No. 1. On page 3, delete lines 26 through 28, both inclusive, in their entirety.

Of course, Mr. Sandoz had an amendment just like it.

[Amendment adopted without objection. Motion to take up other orders adopted without objection.]

Announcements

[Journal 615-616]

[Adjournment to 9:00 o'clock a.m., Wednesday, October 10, 1973.]
Mr. Stagg, Mr. Chairman, fellow delegates, this morning we approached this constitutional convention with the hope that we would get results that would be of benefit to the people of this state. We have been working on this convention for the last several weeks, and we have hoped that the results would be of benefit to the people of this state.

Mr. Stagg, Mr. Chairman, fellow delegates, this morning we approached this constitutional convention with the hope that we would get results that would be of benefit to the people of this state. We have been working on this convention for the last several weeks, and we have hoped that the results would be of benefit to the people of this state.
64th Days Proceedings—October 10, 1973

Mr. Chatelain. Mr. Chairman and fellow delegates, I'm not aggrieved; I'm happy and enthusiastic this morning. Yesterday morning at seven o'clock a.m. I met with the in-person officers in the city of Lafayette, for the second time in three weeks, at their request, and they were very happy to see me, their chief servant. As with the local Parochial Government Committee, they are very happy and enthusiastic and accept the proposals as they came out of this convention. I want to bring you good tidings today, from the seventy-three's hundred percent for the new proposal, and I feel sure they'll do everything they can to help sell this constitution. Thank you.

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Mr. Paynter. Committee Proposal No. 33 introduced by Delegate Alphonse Jackson, Chairman on behalf of the Committee on Bill of Rights and Elections, which proposal is a substitute for Committee Proposal No. 20, also by Delegate Jackson, on behalf of the committee, and other members of that committee.

A proposal making general provisions for elections.

The status of the proposal, at this juncture, is that the convention has adopted, as amended, a new Section 2, has adopted, the proposed Section 3 and 4 proposal, as amended, has deleted all other sections of the proposal, save for Section 11, which has been passed over. In addition, there are amendments pending at the desk to propose the addition of new sections to the proposal.

[Motion to revert to Section 11 previously passed over adopted without objection.]

Amendment

Mr. Paynter. Amendments proposed by Delegates Kelly, Winn, Roemer, Gravel, and others:

Amendment No. 1. On page 2, delete lines 30 through 32, both inclusive, in their entirety and on page 3, delete lines 1 and 2 in their entirety and insert in lieu thereof the following: "Section 11. Subject to and not inconsistent with the provisions of this constitution, the governing authority of each parish shall appoint a parish registrar of voters, whose compensation, removal from office, bond, powers, and functions shall be provided for in the election statute. As a candidate for public office, the registrar of voters shall forfeit his office. No law shall provide for the removal from office or for the appointment of a registrar by the appointing governing authority."

Explanation

Mr. Kelly. Mr. Chairman, ladies and gentlemen of the convention, I refer you to Section 11, as it is written here. Quite frankly, there are about three issues involved in this section. One is, who is going to be the appointing authority? Quite frankly, I think there is very little controversy among the authors of the different amendments up here, concerning that issue. My amendment would say that "the governing authority of each parish shall appoint a parish registrar of voters." All right, not further inconsistent with Section 11, as written by the committee, it would say that "his compensation, bond, powers, and so forth, would be determined by law." Now, we do say "the election code." Quite frankly, I admit this could be an issue, but I won't argue that issue at this particular time. I mean "law," "election code." It's one of one, or other, as you see it.

Now, the same language or the same concept was attempted to be traced, that is in the committee proposal, trying to avoid the clause, we simply said that "upon quitting as a candidate for public office, the registrar of voters shall forfeit his office." Under the committee proposal, it would say, "no person shall serve as registrar." This could possibly mean that he would take a leave of absence, and yet, in fact, forfeit his office at that time. The last statement in the amendment be represented is, that is, that no law shall provide for removal from office of a registrar by the appointing governing authority. No, under Section 11, as it's written now, there is no requirement of the governing body that the registrar be removed from office. There is no reference to a commission, as we have in the 1921 Constitution, and I refer you to the 1921 Constitution, Section 8, Article VIII, Section 18, which deals with a commission which sets up the three board panel of the governor, lieutenant governor, and speaker of the house, which provides for the removal of the registrar of voters. Now, the primary purpose for putting this last statement in there, "no law shall provide for removal of a registrar by the appointing governing authority," is to, at least, try and take some of the local politics out of this office. I can foresee that where you've got a registrar of voters that is absolutely and completely controlled by the appointing authority, then you've got problems. I can also see, that where, let's suppose that an election is coming up, and the police in charge of the appointing authority, whoever it might be has the absolute right to remove that particular registrar, they can go out there, they can even make the registrar campaign against you. Let's suppose you're one in a particular parish, say, you've got a family that is politically strong, and it's really important to have this particular family, or this particular group backing you. If you're the Camroux, where you've got four or five candidates for one of these local offices, would go to this particular group, four or five of them, or however many it would take to be a majority, especially if they have the power of this removal, and say, "all right, now, you all come on and go along with us on this thing, and we'll make ole brother-in-law over here, the registrar of voters." What we have done in this amendment is to try and prevent a situation like that. It says that the legislator, if he is going to provide for removal from office, with the limitation that no law will provide for the removal from office by the same authority that does the appointing. It's that simple—you're either for the concept or you're against it.

Questions

Mr. Abraham. Mr. Kelly, this last sentence is what I was concerned about. Maybe I am unaware of what the problems may be, but I wonder about putting the registrar of voters, the same as any other parish employee, in that... the example you used, if you voted for me, we'd make my brother-in-law the registrar of voters. Well, doesn't that same philosophy apply to all of these various parish jobs? Couldn't they do the same thing with the other employees, or why is there a problem with the parish registrar of voters?

Mr. Kelly. Well, I can just foresee that... something that is as basic as voter registration, I mean I don't like to think of someone who is handling the registration books of a particular parish, who is in charge of the registration of voters in a particular area, is an ordinary common employee of a particular political subdivision. I think it's a very important job. And I mean, I can't even equate this to an employee of a political subdivision, Mr. Abraham.

Mr. De Blieux. Mr. Kelly, I just want to be sure about this division. Do you mean that, if a registrar of voters qualifies for office, then he is no longer a registrar, and even though that registrar does resign, he cannot be appointed as a substitute registrar, unless he's reappointed, or something of that sort?

Mr. Kelly. That's correct, Senator. In other words, I don't think that this stops him from ever becoming the registrar of voters again, assuming that he was defeated, but during his period of qualification and during his post, he cannot be appointed as a substitute registrar. Now, if we assume that he was defeated, and he can come back and obtain the removal process
t away. Thus, I do not think that if you took it away from the local governing body, who had the power of appointment, it would be a question of the governor, the lieutenant governor, or the speaker of the house. Mr. Burns, it is beyond my imagination that a governor, or a speaker of the house, or a lieutenant governor, for that matter, would put into a particular parish, against the wishes of an entire police jury, and, for political reasons, take away the registrar of voters, I can, now, upon recommendation, say, of the appointing authority, a substantial majority of them. I cannot say what this commission, as it presently stands, would do.

Mr. Burns. That's true that this is a present law, and how thought we were here to improve a lot of these exceptions, and while it's almost unbelievable a situation that you just described, it has happened in the past.

Mr. Kelly. I think it has, and Mr. Burns, just on the other hand, I'm just as afraid of the registrar of voters' position being a political issue, yes, every gallon of water that goes to the state either, and if it's all played right back into the hands of the appointing authority, I think that's what it's going to be a political influence for Mr. Burns. Sure, you want to think that the registrar of voters could be removed by the local governing authority for cause.

Mr. Kelly. Well, let me say this, Phil. I know that I could name many, and it's always very fine to throw in the word cause, but I feel like I've (laughing) long enough, to know what for some reason, to name what I'm saying, I don't think anyone knows what it means.

Mr. Burns. Well, let me say this. Mr. Perez. I can't know whether you can answer this. Because you are here to the amendment, but Mr. Kelly said that in a number of cases voters resigned, and if he lost, he would come back, and be the governor?

Mr. Perez. The present law requires that a registrar of voters resign or be removed by the local governing authority for cause.

Mr. Perez. The present law requires that a registrar of voters resign or be removed by the local governing authority for cause.

Mr. Perez. I'm sorry. I do not know whether you can answer this. Because you are here to the amendment, but Mr. Kelly said that in a number of cases voters resigned, and if he lost, he would come back, and be the governor?

Mr. Perez. He presently holds the position of lieutenant governor of the state. Now that he is again governor, he has been reappointed for that position. Mrs. Warren. Well, I was wondering when the present law was changed to leave two registrars of voters. You do not wish to have the present law changed, and if I'm right, it is not. Why, the position, then what would happen? If he were no longer reappointed for that position?

Mr. Perez. Well, I don't have the precise answer. I believe that this question will be answered. You would wish to have it changed to the present law?

Mr. Perez. I think it would be desirable to have the present law amended. It is not as desirable as some things. The present law, however, is not a subject of your amendment. The present law is not a subject of your amendment, but I think it would be desirable to have the present law amended. You would wish to have a registrar of voters for the state, and a registrar of voters for the state?
Mr. Perez: Well, it leaves the same problem as we had yesterday when that particular provision was defeated and creates additional problems. Yes. That I wish to make in the... when Mr. Kelly was at the microphone. The last sentence of the Kelly amendment leaves, I think, this whole matter kind of hanging there kind of twisting in the wind, to use a phrase of recent origin.

When we were interested in the office of the legislative auditor, in order to protect the office of legislative auditor from an excessive zeal in the performance of his work and the numbers of people he might make unhappy, while he was appointed by the legislature by a majority vote, he could only be removed by a two-thirds vote of both houses of the legislature. I would like to suggest to Mr. Kelly and the authors of these various amendments, perhaps the basis for a compromise, I seek to do over the question of voting on it by the local governing body. Could it be possible that you would find acceptable that he could only be removed by a two-thirds vote of the members... all of the members of the local governing body. It would seem to me that if a local governing body by a two-thirds vote of the members... I would like to suggest to Mr. Kelly or the authors of these other amendments as a possible way of solving this end of the dilemma caused by the last sentence in the Kelly amendment.

Mr. Stagg: Mr. Chairman, I have only one point that I wish to make in this... when Mr. Kelly was at the microphone. The last sentence of the Kelly amendment leaves, I think, this whole matter kind of hanging there kind of twisting in the wind, to use a phrase of recent origin.

When we were interested in the office of the legislative auditor, in order to protect the office of legislative auditor from an excessive zeal in the performance of his work and the numbers of people he might make unhappy, while he was appointed by the legislature by a majority vote, he could only be removed by a two-thirds vote of both houses of the legislature. I would like to suggest to Mr. Kelly and the authors of these various amendments, perhaps the basis for a compromise, I seek to do over the question of voting on it by the local governing body. Could it be possible that you would find acceptable that he could only be removed by a two-thirds vote of the members... all of the members of the local governing authority. It would seem to me that if a local governing body by a two-thirds vote of the members... I would like to suggest to Mr. Kelly or the authors of these other amendments as a possible way of solving this end of the dilemma caused by the last sentence in the Kelly amendment.

Mr. Stagg: Mr. Chairman, I have only one point that I wish to make in this... when Mr. Kelly was at the microphone. The last sentence of the Kelly amendment leaves, I think, this whole matter kind of hanging there kind of twisting in the wind, to use a phrase of recent origin.

When we were interested in the office of the legislative auditor, in order to protect the office of legislative auditor from an excessive zeal in the performance of his work and the numbers of people he might make unhappy, while he was appointed by the legislature by a majority vote, he could only be removed by a two-thirds vote of both houses of the legislature. I would like to suggest to Mr. Kelly and the authors of these various amendments, perhaps the basis for a compromise, I seek to do over the question of voting on it by the local governing body. Could it be possible that you would find acceptable that he could only be removed by a two-thirds vote of the members... all of the members of the local governing body. It would seem to me that if a local governing body by a two-thirds vote of the members... I would like to suggest to Mr. Kelly or the authors of these other amendments as a possible way of solving this end of the dilemma caused by the last sentence in the Kelly amendment.

Mr. Stagg: Mr. Chairman, I have only one point that I wish to make in this... when Mr. Kelly was at the microphone. The last sentence of the Kelly amendment leaves, I think, this whole matter kind of hanging there kind of twisting in the wind, to use a phrase of recent origin.

When we were interested in the office of the legislative auditor, in order to protect the office of legislative auditor from an excessive zeal in the performance of his work and the numbers of people he might make unhappy, while he was appointed by the legislature by a majority vote, he could only be removed by a two-thirds vote of both houses of the legislature. I would like to suggest to Mr. Kelly and the authors of these various amendments, perhaps the basis for a compromise, I seek to do over the question of voting on it by the local governing body. Could it be possible that you would find acceptable that he could only be removed by a two-thirds vote of the members... all of the members of the local governing body. It would seem to me that if a local governing body by a two-thirds vote of the members... I would like to suggest to Mr. Kelly or the authors of these other amendments as a possible way of solving this end of the dilemma caused by the last sentence in the Kelly amendment.

Mr. Stagg: Mr. Chairman, I have only one point that I wish to make in this... when Mr. Kelly was at the microphone. The last sentence of the Kelly amendment leaves, I think, this whole matter kind of hanging there kind of twisting in the wind, to use a phrase of recent origin.

When we were interested in the office of the legislative auditor, in order to protect the office of legislative auditor from an excessive zeal in the performance of his work and the numbers of people he might make unhappy, while he was appointed by the legislature by a majority vote, he could only be removed by a two-thirds vote of both houses of the legislature. I would like to suggest to Mr. Kelly and the authors of these various amendments, perhaps the basis for a compromise, I seek to do over the question of voting on it by the local governing body. Could it be possible that you would find acceptable that he could only be removed by a two-thirds vote of the members... all of the members of the local governing body. It would seem to me that if a local governing body by a two-thirds vote of the members... I would like to suggest to Mr. Kelly or the authors of these other amendments as a possible way of solving this end of the dilemma caused by the last sentence in the Kelly amendment.
Mr. Landrum. Mr. Chairman and fellow delegates, I would hope that you'd support the amendment of Mr. Kelly's. I am also looking for an additional recommendation that if you believe you have witnessed some of the things that I have witnessed and others have witnessed, pertaining to registration. ... There was a time when I wished we would have had a registrar of voters removed by the local governing body; when old people had to stand in line from six o'clock in the morning to four o'clock that evening, there would be some out at the door... right at the door, and that door closed in their face. You can't vote, you cannot register. You can look at the expression of sadness on their faces, and with the determination, "I'll be back tomorrow." Many of these people had to go through this three and four days in a row. Not one, but hundreds of people. Thousands were turned away... could not register. So the office of a registrar of voters is a very powerful office; I know because I served as field organizer. I served as coordinator of most of your registration drives in New Orleans. But now, we cannot go back to that type of system of having our people become registered voters. I do believe that the local governing authorities should be able to remove anyone from office. If they hire them, they should be able to remove him. I also feel that the local registrars of voters should have some means of being able to appeal this... say to the legislature or to the governor. But just to say to leave it totally in the hands of the legislature without some way out, I believe that local governing authorities should have some say-so about who is going to register their people, who is going to be responsible for the registration of their people. For that reason, I believe that Kelly's amendment is a good amendment, with some modification. I urge your support of it.

Further Discussion

Mr. Burns. Mr. Chairman and fellow delegates, I think we are all here for a common objective, and that is to get this constitution adopted by the voters when we finish with it. With that thought in mind, I see no reason to go out of our way and wave a red flag, so to speak, in the face of sixty-three or sixty-four police juries throughout the state, together with whatever number of citizens are interested in this particular question, by putting in this amendment the prohibition, forever, of local authorities from some future date or condition that responsibilities of officers of the legislature take whatever action it sees fit with this particular question, and not have us by our action here today, put this positive prohibition and name the local governing authority that they shall never have that right either now or in the future. I think we are just looking for trouble and antagonizing a lot of governing bodies throughout the state, where it's not necessary.

Question

Mr. Burns. Mr. Burn's, don't you feel that the original concept of the Committee on Bill of Rights and Amendments in Section II, which left this discussion of removal to the legislature would be far more preferable than us trying to decide that question here?

Mr. Burns. Absolutely, Mr. Burns. I particularly object to us being responsible for having this permanent prohibition in it in our Constitution.

Mr. Burns. Isn't this the kind of situation that would be peculiarly subject to statutory resolution when one reads the same section with the words 'red flag'... that would want to give the power to one agency and then the other, and that would be worked out in statute where we aren't here.

Mr. Burns. Absolutely.

Mr. Stinson. Mr. Burns, with reference to the last sentence, don't you feel that if the empowering authority has supervision and no say so that these registrars are going to get rights independent and not responsible to anyone?

Mr. Burns. I think that that... more than likely to be the result. As far as I personally am concerned, I think the one that has the power to appoint should have the power to remove, but I haven't even argued that question.

Mr. Stinson. If the governor or some group in Baton Rouge is the only one that can remove, don't you think it will really throw it into politics?

Mr. Burns. That's right. That was my first statement.

Further Discussion

Mr. Fulco. Mr. Chairman and fellow delegates, I just wanted to say that I think we are making a mountain out of a molehill. I think the committee... I mean the amendment by Kelly really complicates the situation. It really confuses the situation. I think Burson used the phrase that I was going to use and that was, "let the power to appoint have the power to remove.

Now, I favor the... I appreciate the explanation that Perez gave of his amendment. I think his amendment is in line of thought... that point of his amendment is well taken. Let it be settled by law that the governor or some group in Baton Rouge is the only one that can remove, and that's how much better than the Kelly amendment.

I urge you to defeat the Kelly amendment and vote the Perez amendment. Thank you.

Questions

Mr. Landrum. Mr. Fulco, in the present legislation having to do with the removal of the registrar of voters, don't you find the words where the governor, lieutenant-governor, speaker of the house, say remove, at will, rather objectionable?

Mr. Fulco. Well, I do, definitely. I've seen so much of that in the past. If I recollect, this amendment really confuses the situation. I think Burson used the phrase that I was going to use and that was, "let the power to appoint have the power to remove.

Now, I favor the... I appreciate the explanation that Perez gave of his amendment. I think his amendment is in line of thought... that point of his amendment is well taken. Let it be settled by law that the governor or some group in Baton Rouge is the only one that can remove, and that's how much better than the Kelly amendment.

I urge you to defeat the Kelly amendment and vote the Perez amendment. Thank you.

Mr. Landrum. Mr. Fulco, don't you feel that the original concept of the Committee on Bill of Rights and Amendments in Section II, which left this discussion of removal to the legislature would be far more preferable than us trying to decide that question here?

Mr. Fulco. I do. I think it's difficult.

Mr. Landrum. Now, do you think the last sentence could be deleted and it would be a line amendment?

Mr. Fulco. Well, that...

Mr. Landrum. Because when I say your part, that's exactly what I want, the last sentence. I don't particularly care for the last sentence.

Mr. Fulco. I don't either. That's a point that I have toward it.

Mr. Kelly. The only change that I would propose to make, and then I think this will get more in the spirit of Mr. Gavel, is that we would say that at least Mr. Gavel's agreement with this if we have agreed to withdraw and not to have a... let it be written, with the exception that it would read, 'and functions shall be provided by law for the election..."
Mr. Dennery. Mr. Kelly, in listening to the various remarks that have been made, I noticed that several people said that they thought this was a good idea provided the removal was for cause. Now, why would you not, in amending this, insert those words when you have provided removal without cause, whether it be by the legislature, by the governor, by the board of elections, or by the local governing authority? I think is what your amendment is aimed at.

Mr. Kelly. I would have no objection to it. I mean, I don't want to just keep amending the thing up here without the copies being redistributed. But I mean I have no objection to that as far as inserting the words "removal from office for cause." I have no objection to that whatsoever. I think that's what we are really getting at.

Amendment

Mr. Poynter. All right. Mr. Kelly also does want to make that last change that's suggested by Mr. Dennery. Mr. Kelly's amendment would read as follows: Section II... Instructions stay the same...

"Section I: Subject to and not inconsistent with the provisions of this governing authority of each parish shall appoint a parish registrar of voters whose compensation removal from office for cause, bond, powers and functions shall be provided for.

"Pick up with the next sentence on the next line: ‘Upon qualifying as a candidate for public office, the registrar of voters shall forfeit his office. No law shall provide for the removal from office of a registrar by the appointing governing authority.'"

Questions

Mr. Lanier. Mr. Kelly, why do you feel it's necessary to put this language at the beginning "subject to..." and not inconsistent with the provisions of this constitution?

Mr. Kelly. Walter, I was hoping you would ask me that question because you and I fought a big battle here about two months ago. I don't want to get mixed up with the commissioner of elections and the secretary of state again.

Mr. Lanier. Now, let me ask you another question. We've been talking this phrase into a lot of other provisions that we've been going through. What would happen if two of these provisions happen to be inconsistent with each other? Which would prevail?

Mr. Kelly. I don't think... and I have read the provisions relating to the powers, functions, and duties of the secretary of state and of the commissioner of elections. They are not in conflict at this time. In order to assure that this article would not create any conflict in the Executive Article, that is the specific reason for inserting the words "subject to and not inconsistent with the provisions of this constitution".

Mr. Landrum. Mr. Kelly, the last sentence, why do you find it necessary to place it.

Mr. Kelly. All right. Reverend, as I said, I think now we have boiled this thing down so that is really probably the only issue left in the amendment. It's just... I mean, that is the gut issue, as I see it. My primary reason for putting that in there is to assure that the registrar of voters in a particular parish is not completely embodied within the local political party, or particular political party. I gave a hypothesis in my opening... when I was explaining the amendment whereby I tried to explain this. I said at that time that I could foresee a situation where every time you had a new police jury or a new appointing authority—whichever authority it might be—come into power that this office would be up for grabs. I meant there would actually be politics... say, "alright, you do this and you do that, and we'll see that you get elected registrar of voters." I just think that this is too important an office to be in the absolute control of politics like that, if you want to say it that way. I think that what we are doing here, we are saying that "the legislature shall provide for removal from office for cause." That's the real issue right there.

Mr. Landrum. Mr. Kelly, this way. Are you saying, in effect, that the only individual who can remove the registrar of voters would be the governor because, well, then if not the governor, who else could do it?

Mr. Kelly. Quite frankly, Reverend, it's not saying that at all. I meant the language just simply says that the "removal from office for cause..." shall be established by law. The legislature can go to any method, procedure, a distinct commission or the side. That's the way it's handled right now. That's what I'm afraid everyone doesn't understand. They keep talking about red flagging in the face of local government. Let's understand one thing. Local government doesn't have this power at this particular time. I might add that the registrars of voters in this state don't want to be placed into this political situation.

Mr. Landrum. Now, he can be removed by the governor. I'm just trying to find, under the... as it... as the officers, the registrars operate now, they can be removed by the governor under the present law.

Mr. Kelly. No, sir. Article VIII, Section 10 provides that a commission composed of three members, the governor, the lieutenant governor, and the speaker of the house have the powers of removal.

Mr. Landrum. Well, of course, the last one I saw removed was by the governor. But, I'm trying to find that other agency, or that other individual, that other officer who can remove them except-- unless it's the local governing body or the governor himself.

Mr. Kelly. Well, I think that we need an independent commission somewhere besides the appointing authority to take care of the removal situation. Reverend. In other words, I don't think we necessarily want the governor. I don't want the governor to have the control of the thing. We can't know you don't. But, at the same time, I don't want the same governing authority that made that appoint- ment to have the uncontrolled discretion to effect that removal, either. That's the basis of this last sentence.

Mr. Wattigny. Mr. Kelly, I'm for your amendment. The only thing that enters my mind is why we have stayed away from a fixed term on these appointments.

Mr. Kelly. A fixed term?

Mr. Wattigny. Right. For the registrar.

Mr. Kelly. Well, quite frankly, I cannot support a fixed term for a registrar because I think that is really going to put it into politics then. In other words, it's going to be... I can foresee that as being like a... local superintendent of education or schools—whatever the appropriate name is where every so often someone besides the appointing authority, I meant he would actually be running a little race... two or three guys. I meant they would be vying for this position within the police jury or the appointing authority. Now, I meant if we are going to go so far as to have the terms for registrars of voters, then you might as well go on and make the office a parish-wide elected office.

[1697]
Mr. WATTS. Well, that might not be a good thing.

Mr. WILLIS. Mr. Kelly, putting aside... I want to put the question. Mr. Kelly, you've mentioned that the legislature shall not be subject to the question of the commission of elections in the way we have it in this section... I mean this section to the first section... and depletes this section of total efficacy?

Mr. KELLY. I don't think so, Mr. Willis. It is my opinion that it does nothing.

Mr. WATTS. Well, we have in the first section that the legislature shall enact an election code. Then we have into this section---lay aside the commission of elections, and the secretary of state---now we have in this section, "subject to and not inconsistent with..." that means that the legislature shall enact an election code...

Mr. WATTS. I'm coming to the question. I'll let him put a question mark to it, your... Mr. Howard, Mr. Mitchell. Does not, do you see, the thrust of my question?

Mr. KELLY. I see the thrust of your question. I think you and I just disagree upon what you say it does and what I say it does.

Mr. WATTS. Well, it's a wholesome disagreement.

Mr. RAYBURN. Mr. Kelly, I've always tried to be fair. I don't think I have always been. But I read here where you say 'no law shall provide for the removal of office from a registrar by the appointing governing authority.'

If you have the governing authority of your parish or your parish passed a resolution and the existing law that we now have in effect stays in effect, what do you think if they passed a resolution unanimous that the registrar of voters is drinking on the job, he hasn't opened his office on time...We, therefore, request that you remove him. Do you think that that resolution would have any bearing on whether he would be removed or not?

Mr. KELLY. Yes, sir. I certainly do.

Mr. RAYBURN. All right, well do you think then this language is really going to do what those registrars think it's going to do if those local governing authorities don't want him?

Mr. KELLY. Yes, sir. I think that that's what it's all about, you and me being in the situation where you've got dereliction of duty, and you've got a unanimous resolution passed by the appointing authority even under this... the language of this last sentence, whether or not to have the removal powers and then the removal powers will be established by the legislature... I think if this resolution is presented to that removal authority, he will think that he has the advice of it. But yet, at the same time, I mean if two or three guys in the police jury or on the appointing authority happen to put a resolution that the registrar of voters, because his politics are maybe not quite in line with theirs. Well, then, I don't think that they should be able, under a resolution, to an ordinance or anything other law, to remove the registrar of voters. That's the thrust of your language, isn't it? Any resolution that he's authorize... All right, straighten up or get our

Further Discussion

Mr. Perez. Mr. Chairman and ladies and gentlemen, I regret having to get up here again, but because of the fact that we have to leave the building without the authors having an opportunity to say what they have to say. Let me make a certain point, cleaned it up, but every certain extent, have you finally indicated some more

Mr. Perez. Mr. Chairman and ladies and gentlemen, I regret having to get up here again, but because of the fact that we have to leave the building without the authors having an opportunity to say what they have to say. Let me make a certain point, cleaned it up, but every certain extent, have you finally indicated some more
64th Days Proceedings—October 10, 1973

rule, and let's don't talk about what may be the way to proceed and the way to remove those people from office. It's just this simple: do you want to remove the registrar of voters away from the town, and then you don't have to worry about the possibility—-or even leave that possibility with the legislature—that the registrar of voters could be removed. If the governing authority then you make him beholden to the people who has got to be accountable for insofar as his job is concerned. You're not ever going to get him free from political activity. Right now, the registrar of voters, in most instances, with rare exception, has been operating on a merit system type of employment or civil service type of employment. I think it's important to get away from the concept of home rule when we're talking about the principal official in the parish who is in charge of the very basic that leads to all elections, and that's registration. That doesn't relate just to the elections in the locality. That registration roll relates to all elections that are conducted throughout the state of Louisiana. So let's don't be misled about the fact that here we are taking something away from the governing authority. We're not taking anything away from the governing authorities are not in any different position insofar as the appointive power is concerned. Let's make sure that when the legislature does provide the method for removal of registrars of voters that it's done in any way that the legislature, in its wisdom, thinks it should be done, and for cause, but not by the appointing authority. It would be in an unconstitutional way. If it wanted to on an individual basis and on a collective basis, dictate to the registrar of voters. I urge that you support the Kelly amendment that is before you as it's been amended. Thank you very much.

Questions

Mr. Burson Mr. Gravel, don't you think it would be wiser to leave this decision of removal to the legislature, so that in the event that a particular scheme did not work out, they could come back and change the statute to meet whatever problems arose?

Mr. Gravel That's exactly what we're doing, Mr. Burson, except that we're saying that the appointing authority shall not be the removal body or the removal machinery with that same authority. That's the only thing. We are leaving to the legislature with that one restraint and restriction.

Mr. Burson My second question would be—-I know that you were involved in the events of that time to some extent—don't you share my concern that we might have a replay of what we had during the Rainach era when the pressure for improper registration practices came, in some cases more from the state level than it did from the local level, if you leave this, say, just totally divorce it from the local unit?

Mr. Gravel That has nothing whatsoever to do with it, Mr. Burson. That is partly an unhappy practice and procedure flowed from some unconstitutional laws that directed that procedure. I don't think that has any bearing on it.

[Previous question ordered.]

Closing

Mr. Kelly I just have one or two brief things to say possibly reverse just a little Mr. Perez's psychology. Frankly, I think we've got a good amendment here now, and he spoke only concerning "the subject to and not inconsistent with" and I've heard some other people object to this language. Then in that case, I suggest that we go ahead and adopt this amendment, and then follow up with an amendment by someone. If you want to remove it, let's determine the removal of this language at a later date. With regard to that last sentence, and that is the key to this entire amendment, I think I can say it no better than I had previously stated it; I don't think anyone can express it better than Mr. Gravel expressed it earlier. Now, Mr. Perez would like for you to go back and defeat this amendment and pick up his. You've got copies of it laying there, and it just simply says that "the governing authority of each parish shall appoint a parish registrar of voters." Now, the key words here are "whose compensation, powers, functions,"...it says nothing about removal from office. It would be my interpretation then that the inherent power to appoint would infer the inherent power to remove, so I would say that this would not necessarily...

Questions

Mr. Bergeron Don, to presently remove a registrar, you have the governor, lieutenant governor, and speaker of the House of Representatives, am I correct?

Mr. Kelly That's right.

Mr. Bergeron And any two can remove the registrar. Well, under your amendment with that last—now this is far my own information—that last sentence... would it leave the authority there?

Mr. Kelly Pardon.

Mr. Bergeron Where would the authority be?

Mr. Kelly It would leave the authority with the legislature to provide by general law the means, methods, procedure, and causes for removal. In other words, the legislature would have the discretion to set forth the procedure, and method, and so forth, of removal.

Mr. Bergeron They could leave it in the hands that it is now where they could change it, is that correct?

Mr. Kelly They could leave it in the hands as it is now. They could establish an entirely separate more independent commission. We'd leave that to the discretion of the legislature.

Mr. Bergeron Thank you, Don.

Mr. Nunez Mr. Kelly, aren't what you and the advocates of this amendment saying that "we trust the legislature, leave it to the legislature halfway; you don't trust us all the way, just halfway, put a prohibition that they can't do certain things." Isn't that what you're saying here?

Mr. Kelly Well, Senator, I have seen the lobbying forces of all sides down here, and I'm relatively new to this game concerning local authorities, and then the concept of statewide, and so forth; and all I'm saying is that they can set up the procedure and so forth for the removal, but at the same time I don't want to take any chances that this could throw this office right back into a terrible political situation as I see it.

Mr. Nunez So you're saying that the legislature would possibly do that by putting this provision in here, you'll stop the legislature from doing that?

Mr. Kelly That's absolutely correct.

Mr. Nunez You trust them halfway then.

Mr. Landrum Mr. Kelly, don't you know that I trust our local officials as much as I trust the legislature? But, now tell me this, don't you think the power to remove should be by the local governing authority, but all with the understanding that the registrar have a way out that he could appeal his case to the legislature or to the governor?

Mr. Kelly Well, let me say this, Reverend, if you said that he had a... I meant, we haven't provided
for that... In other words, I can foresee where the legislature could possibly set up initial proceedings still within the local governing authority, but yet, if by any chance of that local governing authority can remove for cause, who is going to determine cause assuming that we don't spell it out, and let's assume that the legislature doesn't spell it out. The time is going to be determined in a court of law, as I would assume. It's my understanding that the local governing authorities of most political subdivisions contribute heavily to the salaries, and so forth, of the judiciary at this particular time.

Mr. Gravel. Mr. Kelly, you stated that, in answer to the question put to you by the distinguished senator from Plaquemine and St. Bernard, that perhaps you only--Jefferson and part of Jefferson--that you're only trusting the legislature halfway, which I think is a low percentage, but did you detect that there was some limitations of trust on this legislation in the local and parochial Government Article, section by section?

Mr. Kelly. Slightly. Mr. Gravel.

[Amendment adopted: 64-19. Motion to reconsider tabled.]

Amendment

Mr. Payster. In Floor Amendment No. 3 [by Mr. Cannon], proposed by Delegate Kelly, et al. and adopted by the convention on today, strike out lines 8 and 9--if I counted correctly, that last two lines of said amendment, strike those two lines out in their entirety and insert in lieu thereof the following: "The registrar may be removed from office for cause, only by the governing authority of the parish."

Explanation

Mr. Cannon. Mr. Chairman, ladies and gentlemen of the convention, I think what we had...this last sentence of the Kelly, and others, amendment...This last sentence obviously caused some people, you know, some concern, because it makes this absolute prohibition against the governing authority of the parishes from removing from office the registrar of voters. I strongly disagree with Mr. Kelly about...

Point of Order

Mr. Roy. Isn't what Mr. Cannon trying to present us with exactly what we just argued about for an hour and voted on, namely, whether the removal for cause was going to be that way or not?

Mr. Henry. No, it's not, Mr. Roy.

Explanation continued

Mr. Cannon. Well, I will make it short, Mr. Roy, and I'll try to be considerate of this body. I'd just like to draw out a few things. The state puts up half the salary for the deputy, the local governing authority puts up the other half, and may add as much as two thousand dollars a year to the registrar of voters salary, and quite often pays the full salary of other deputies. I'll give you an example, particularly from East Baton Rouge, of an operating budget for the registrar of voters office of a hundred and thirty thousand dollars. The state only puts up approximately twenty thousand I think we have, in other sections of this constitution, we have removed the appointive power of the governor, and I think from the state level transferred it to the local level. Particularly, I want to call your attention in the case of the sheriff. I think the sheriff has under the Creelthen administration the very thing that I find repugnant, and I think it has been corrected, just think, that these words at will of the ability to receive at will, is wrong, and I think we all found that, by Mr. Kelly, adding this in there, that is entirely deleted that portion. But, what I'm trying to do is make this thing consistent with the other governmental attitudes and the other provision, that have prevailed on this constitutional Convention. If you look at the article, in our Local and Parochial Affairs Proposal, in text 17, 2) The local governing authority is going to exercise budgetary and fiscal control over the veterans, like I say, the local governing authority contributes rather heavily to this, and again, I think we've got a situation here that is just diametrically opposed to this last particular sentence, and I would...you know, since we already have debated it rather well, if there are no questions of me, I'd like to call for the question in the interest of time.

Questions

Mr. Fulco. Mr. Cannon, isn't the police jury nearest the people within its parish?

Mr. Cannon. Yes, sir, they are.

Mr. Fulco. They are subject to removal by these people in the parish...the voters.

Mr. Cannon. Yes, sir, through an election process.

Mr. Fulco. They are going to have to show responsibility so as their action toward the registrar of voters concerned, isn't that true?

Mr. Cannon. They certainly should, or be voted out.

Yes, sir.

Mr. Fulco. And if the registrar of voter has so many complaints--justifiable complaints against him, aren't the people in that parish going to be given better service insofar as the police jury action toward the registrar of voters is concerned?

Mr. Cannon. I certainly think so, and I think that's exactly the place for it and the purpose of my amendment.

Mr. Fulco. Now, wouldn't it be wise then, for the responsibility of the registrar of voters, be with the police jury rather than a body of a group of people for away from that local area?

Mr. Cannon. I certainly think so, Mr. Fulco, and certainly it should be for cause...it should not be "at will" as the present law exist.

Mr. Fowler. Mr. Cannon, you wanted to have some time. Don't you think it would save us a great deal more time if you would withdraw your amendment, because the Kelly amendment was passed by a two-to-one vote just a moment ago?

Mr. Cannon. Well, I'd like to call for the questions, and we can see that, Mr. Fowler.

Mr. A. Landry. This day be regrettful, Mr. Cannon, but are you fully aware that we voted a moment ago, and for the sake was in the amendment that we voted on?

Mr. Cannon. Yes, sir, I did.

Mr. A. Landry. Are you fully aware that we voted a moment ago, and that this power be at the local level rather than the local level by the amendment that we just approved?

Mr. Cannon. There's no question that the legislature, I think, is going to have to make the provis in regard to the provisions of removal by law? Now, whether or not this removal power should stay with the local...
64th Days Proceedings—October 10, 1973

Mr. A. Landry Well, aren't you definitely aware of the fact that we do not want the appointing. That is sixty-four people in this body do not want the appointing people to have the power of removal? I mean, you are aware of that?

Mr. Cannon I'm aware of the past vote, yes, sir. I'm not aware of that feeling.

Mr. Gravel I ask leave to call the attention of the legislature to the action of Governor Edwards in designating Secretary of State, the custodian of voting machines, and others who have been primarily concerned with the election process and the legislative council, are fines coming up this same week towards the formulation of election code. The reason I say it that way, there's been no formal putting together of a committee, but the principal people, including the representatives of the Clerks of Court Association, are informally working now towards getting ready to recommend the basis for an election code, that's correct.

Mr. Abraham This may be premature, but do you know whether or not that they have been talking along these lines of having, say just one general primary where everybody runs at the same time, and you vote for the person and then you have one general election? Is this what they're talking about?

Mr. Gravel That's correct, Mr. Abraham, and let me just say this, too, in that regard. We attempted at the very beginning of the legislation—after Governor Edwards was elected—we attempted to get everybody together to work up the amendments to the existing law that would be removal, that, and hopefully, it could be submitted to the legislature, and we found that because of some problems in the existing constitution and because of the problems that we have in our election law in Article 18 that it was just not feasible to do it at this time. An effort has been made to try to do it, but we don't really have the vehicle to do it under existing law. We definitely have the vehicle to do it now, as a consequence of the adoption of the first section of this article.

Mr. Abraham Well, as you know, I've discouraged placing statutory material in the constitution, and I would withdraw my amendment knowing, if I'm assured that this type of thing will be considered, and we will attempt to have this type of election.

Mr. Winchester Mr. Gravel, would this do away with the Democratic Executive Committee and Republican Executive Committee, as we now know them?

Mr. Gravel Well, now, I don't know whether that would or not. That would not necessarily... In other words, my concept of it would not necessarily preclude the existence of those committees. My concept of... We're talking about two elections, and we're not talking at this particular time, about party affiliation and party machinery. But those are the kind of questions we could get into, and start arguing about if we get into any detail a whole lot, Mr. Winchester.

Mr. Winchester But, a committee would have to run the election though, wouldn't it, and call it, and so forth?

Mr. Gravel Provision, that's right, for the election machinery certainly is going to have to be set out in the election code.

Mr. Winchester Thank you.

Mr. Stinson But that running would be from Baton Rouge, and not from the individual parishes, wouldn't it?

Mr. Gravel I don't understand your question.

Mr. Stinson The question raised by Mr. Winchester, if the committees would do it, and I said someone would do it, and of course, anything that's done has to be done by someone, doesn't it? Under this, it would have to be run from Baton Rouge, and not locally, wouldn't it?

Mr. Anzalone Mr. Gravel, are you doing this for the reason that you've been over at the Independence Hall now for about two months fighting the governor, and every opportunity... everything that he wants, you voted against it, and now we're here where he may be listening in and you're going to take his side this morning just for that reason?

Mr. Gravel Yes, sir, that's the reason, Mr. Anzalone.

Mr. Smith Mr. Gravel, didn't the governor state also to me over the phone, in case his concept is not now in the election code, that he would veto the code?

Mr. Gravel That's exactly what he said—said that this election code was passed by the legislature that did not embody this concept, he would veto it.

Mr. Abraham I understand that there already is a committee of some sort that is working on this election code. Is that correct?

Mr. Gravel There's a kind of unofficial designation that the secretary of state, the custodian of voting machines, and others who have been primarily concerned with the election process and the legislative council, are fines coming up this same week towards the formulation of election code. The reason I say it this way, there's been no formal putting together of a committee, but the principal people, including the representatives of the Clerks of Court Association, are informally working now towards getting ready to recommend the basis for an election code, that's correct.
Mr. Stagg: That's the only way it would be worked. It could be worked, wouldn't it, if you didn't have your local committees.

Mr. Gravel: Well, as you correctly say, something has to be done, and I imagine the election code will provide for it.

Mr. Stagg: I didn't say anything had to be done, I said there would have to be done.

Mr. Gravel: Yes, sir. That's right.

Mr. Gravel: Will you yield to a question from Mr. Stagg?

Mr. Stagg: Those three... will be here longer than you will.

Mr. Gravel: Thank you.

Further Discussion

Mr. De Bie: Mr. Chairman, ladies and gentlemen, I will make it very short. I understand there's a proposal being prepared now to be submitted to the next session of the legislature with reference to a new code of open primaries. This question has been asked and brought up here quite a bit about the time limit and everything. I just let that information go to you so you can all use your minds with reference to that particular issue.

Further Discussion

Mr. Fulk: I just wanted to say, Mr. Chairman and fellow delegates, that as the prime coauthor of the amendment that was to call for an open primary, I'm in favor of this amendment that's pending.

Mr. Gravel: Amendment No. 1, as proposed by Mr. Amherst, on page 9, line 10, add the following:

"In the event of any such election, amendments shall be submitted to the electorate, either by initiative, referendum, or by the legislative branch, submitted to the electorate, either by initiative, referendum, or by the legislative branch, submitted to the people of the state."

Amendment

Mr. Avant: Mr. Chairman and fellow delegates, if you will recall, we had considerable discussion. Mr. Chairman and fellow delegates, I said, if you will recall, we had considerable discussion on the general subject matter yesterday.
64th Days Proceedings—October 10, 1973

they're doing, and why they're doing it, and what's going to happen if the bond issue is adopted.

Mr. Newton Jack, do you really see any difference in urging somebody to vote for a particular bond issue, in presenting the favorable facts of...in favor of the proposition only? Is there really any difference there?

Mr. Avant Mr. Newton, if I understand your question, I would answer this way: that it's been designed to permit local governing authorities, or any particular governmental authority, to use news media to set facts so accurate that the reasons for...of certain propositions. In other words, give the people the facts as to what is going to be done with the money, as to how much it's going to cost, as to how it will affect homestead exemption or be affected by them, and such things as that. It is designed to prohibit such things as having barbecues and furnishing booze, and other various sundry items of political persuasion, at the expense of the general public, in order to put forth and across a certain political proposition. Does that answer your question? If it doesn't, I'll answer another.

Mr. Lanier Mr. Avant, just for the sake of the record: what would you construe to be political organizations as you have it listed in your amendment—says no public funds shall be appropriated to candidates or political organizations.

Mr. Avant Now, let's get one thing straight, Mr. Lanier. That particular original sentence in this proposal is not of my origin; that was the committee section as you will recall. My amendment simply inserts the word "proposition" in the first sentence and inserts the second sentence. But, you asked me the question, and I would answer it this way: that public money should not be appropriated to be given to, say, the Democratic Party or the Republican Party, or local political parties. I can name several that, or you can probably think of several political organizations in your own area. I know of a few in this area, but private political organizations—people who get together for political purposes. That's what it means to me. Well, since I've answered all of the questions, or attempted to, that anyone had care to ask, I have made the explanation, I think you all understand what we're trying to do, and what we want to do, and the abuses that we want to stop and the things that will be permitted, and the abuses that will be permitted. With that, I ask that you vote favorably for this amendment.

Further Discussion

Mr. Bollinger Mr. Chairman, fellow delegates, I haven't been up here for a good while, but I think this is an important issue. I presume that's a hint. But, I seriously think that this is an important issue because you look at our representative form of government, you seem to think that because you are represented in a public body, that whatever this public body does is done for the good of the whole. Look at the actions of the legislature in a lot of cases with regards to constitutional amendments. It takes two-thirds of the votes of the desk in this House plus an equal vote in the Senate to get a constitutional amendment on the ballot; but look how many we've had, and you all know they're not all good. Many legislators will admit to you that they vote for them because it's an issue for the people to decide. Conversely, you have a proposition that's put before the people, a lot of local governments who are affected, use public funds to advocate the passage or defeat of this; that is, what the word "proposition" refers to in Mr. Avant's amendment. This is the good point; this is the point that was not stressed enough, in my opinion. What's wrong if I'm opposed to an issue; I call it the rotten stink like all else? Why don't they pay for my point to fight the issue, or if I'm for it, and the public body is against an issue which we're for, why don't they pay money to advocate the passage of a proposition?

Why should public funds be used on a lopsided basis? I move the adoption of the amendment.

Questions

Mr. Chatelain Delegate Bollinger, this is my problem with this: you have the money. I'm a little confused at this second sentence that says "However, this provision shall not prohibit the dissemination of factual information." Now, do I understand you to say that you could spend money...can the political subdivision spend money to disseminate this information?

Mr. Bollinger Yes, sir, there's no question about that the public has to be informed to vote intelligently on a proposition. The amendment limits the money being spent to only dissemination of information and not the advocacy of defeat or passage of the proposition.

Mr. Chatelain My second question please. Supposing, for instance, that a city council or a school board voted to have a bond election for the purpose of building buildings, etc., and three or four more of the other political subdivisions in that parish were against it, can political subdivision No. 2 then spend money to oppose the bond issues for the schools?

Mr. Bollinger Right now, I would say they can; however, I don't think it should be allowed. I don't think either side should be able to spend public funds for the passage or defeat of that kind of proposition.

Mr. Chatelain Thank you.

Mr. Deshotes Delegate Bollinger, I'm in agreement with the first part of your sentence, but the first sentence that you have has two thoughts in it doesn't it? First of all, you're talking about an election, and in the second part you're talking about the person, isn't that right? Now, if you read the first sentence, and you read, "No public funds shall be..." and then skip over to the third sentence, "appropriated to any candidate or political organization." Now, a candidate can be in more than one capacity, can he not? A candidate could also be in office on some other...in some other capacity, could he not? Could not this prohibit him from getting his salary?

Mr. Bollinger I don't think so, Mr. Deshotes, because he's getting his salary for executing the functions of an office and not for campaigning for his reelection or for election to a different office.

Mr. Deshotes But, you see you have no...you have no qualification as to that in your sentence.

Mr. Bollinger I don't see why it has to be qualified. He is not receiving funds for the advocacy of election or reelection to an office, he's receiving funds for the job he is doing in that office. I don't think there's any question about that.

Mr. Deshotes Mr. Bollinger, would you, when you sit down, reread your first sentence?

Mr. Bollinger I don't see the problem.

Mr. A. Jackson Delegate Bollinger, how does the last sentence of this amendment differ from the present law?

Mr. Bollinger Delegate Jackson, I don't know what the present law is with respect to the use of public funds.

Mr. A. Jackson My second question: are you aware of the fact that this problem that you're attempting to correct by way of a constitutional provision has been dealt with in the legislature and can be dealt with effectively, by way of statute?

Mr. Bollinger If it has been dealt with, in my
opinion it s a poor job of enforcement because any
time, on the local level—I'm not really familiar
of it for that county—I know that you have any sort of proposi-
tion proposed to the people, it is obvious that the
public funds are used to advocate passage or
defeat, so if there was legislation to this effect, it is not enforced.

Further Discussion

Mr. Riecke Mr. Chairman and gentlemen, you will
remember, yesterday, I was one of those who vigor-
ously opposed the Amendment because I felt that it would prevent the dissemination
of information on bond issues and other matters for the school
system. Now, the Jefferson Parish people—It was
brought out yesterday—lost a bond issue because the
people didn't know what it was all about, and
after, on the second time, they informed the public
what they were going to use the money, bond money
for, then the people were satisfied. Now, we all
remember a couple of years ago, when the constitu-
tional amendments on the ballot—there were fifty-
two constitutional amendments. Now, some of those amendments were real good, really needed for their
communities, but because there were fifty-two amendments and nobody knew what they were about, the people voted against all of them. This is the way people vote; I vote that way, and you vote that way. If they want to put something on a ballot and I don't understand it, for safety's sake I vote against it. This amendment has been changed to add that there's no...that this provision shall not prohib-
it the dissemination of factual information relative to any proposition appearing on the ballot.
To me, this corrects the thing that was wrong with yesterday's amendment, and I've talked to as many people as I could that voted with me yesterday and against this amendment, and they feel that this
takes care of the situation and does permit the dis-
semination of information. I'll be glad to answer
any questions.

Questions

Mr. Arnette Mr. Riecke, the way you read this,
do you think this would prevent any factual informa-
tion, such as the facts given out in the Jefferson Parish case, from being disseminated? The second
sentence specifically says that they may disseminate
information.

Mr. Riecke But, it wouldn't prevent it; it would
permit it.

Mr. Arnette That's what I'm saying; you can...

Mr. Riecke It would permit it; that's right.

Mr. Arnette Right. So, this wouldn't prevent
anyone from giving out the information, and subse-
sequently, in other words, the thing would pass be-
cause the information was given out. Is that not
correct?

Mr. Riecke Correct.

Mr. Hayes Mr. Riecke, would this permit the school
boards to use public funds to disseminate this infor-
mation with? You could use public funds, what I'm
saying, to disseminate this information with?

Mr. Riecke Purely for informational purpose, yes

Mr. Hayes Of

Mr. Keener Mr. Riecke, just to save time, in
your conversations around the floor, is there any
one opposed to this? I haven't heard any opposi-
tion. Do you think there's anyone opposed to this
amendment?

Mr. Rieke I've talked to a great deal of a
great many people, there were two of the opposed
I don't know how the vote will come out

Mr. Planchard Mr. Riecke, I have some concern on

the words. Mr. Riecke, this provision shall not
prohibit the dissemination of factual information
relative to any proposition appearing on the bal-
let. That dissemination can be made with any
funds whatever, but nothing is indicated
that you can use public funds for this purpose. The first sentence prohibits the use of public funds
for this specific thing. The dissemination and the
payment for the dissemination of information are two
different things, as I see it, and that's the

Mr. Riecke Well, you may be right, but by inter-
pretation of it is the implementation the first
paragraph which says no public funds shall be
used. Then the second paragraph people ents
making an exception. Thank you.

Further Discussion

Mr. A. Jackson Mr. Chairman, ladies and gentle-
man of this convention, I rise in opposition to this
amendment. I don't think that it's much of an im-
provement over the amendments offered on yesterday,
to deal with this problem. I think the convention
has acted wisely in its action on yesterday, when it
deleted this section from the proposed elec-
tion article, and I say so because this is a con temporary
problem that is going to be from time to time,
and five years from today. I would suspect that we
are going to look at this whole business of how we
finance education in the schools, we have attempted to deal with this problem, while not
completely, by way of statutes. This is the
way that this problem ought to be dealt with that
confronts us presently. It ought to be dealt with
by way of statutes because none of us can anticipate
the kinds of needs and the kinds of directions that
the whole business of financing education will take, as
therefore, I would urge that we would throw this
amendment and leave it to the legislature to
deal with because I think that they can make the
kind of temporary, can place the kind of temporary
and contemporary changes that ought to be placed
to solve the problem as it confronts us presently.
I do think that this last sentence is going to lead
me to all kinds of interpretations, and you are
likely to find yourself in all kinds of situations and
confusions, as it relates to interpreting the last
sentence. I don't think that it is going to enable
school boards once again to be protected in the
case of public education because they are not going to have the power to act wisely and prudently as it
relates to bond issues. So, I would again urge
the rejection of this amendment.

Questions

Mr. Willis Mr. Jackson, I want to tell you that
I subscribe to everything that you said, and in the
way you said it. I have four questions to substanc-
te what you say as valid. No. 1 is it not true
that the pen is mightier than the sword?

Mr. A. Jackson Well, it depends on who's using
the pen and the sword.

Mr. Willis Well, when talking in generalities.
I'll use your answer would be yes, one would be.
Now, does not this last sentence with which you
quibble, and with which I quibble, tend to encourage
the spending of public monies for a propagandize?

Mr. A. Jackson I think yes.

Mr. Willis And, if that tendency is carried to
its limit, would it not encourage a private citi-
zen against the proposition to spend unless they
are against his own money?

Mr. A. Jackson I think yes.

Mr. Willis Well, that would be like playing cards
with a fellow and lending him money.

Mr. A. Jackson I think that you're correct.
Mr. Willis  Now, the third question is; isn't a half-truth the worse kind of untruth? Assuming your answer to that is yes--and mine would be--that isn't a fact that is the school board, or whoever wants to put up a proposition, only tell the people half the truth about that proposition, they are not telling them the whole truth, which is what you swear to as a witness, then they might be telling them a gross untruth, isn't that correct?

Mr. A. Jackson  I think you raise a rather interesting point that ought to be considered.

Mr. Willis  I applaud your statement that the legislature can better handle it with the proper exceptions to this general and becoming proposition, but there should be exceptions to every general rule.

Mr. A. Jackson  I appreciate your observations.

Mr. Sandoz  Mr. Jackson, isn't it true that this section is not self-operative, and it would require legislative action to enforce it?

Mr. A. Jackson  There's no question about that; that was the question I proposed to Mr. Bollinger.

Mr. Sandoz  Isn't it also true, sir, that you have some provisions in here already in your statutes?

Mr. A. Jackson  That is correct.

Mr. Sandoz  Isn't it true that if there's any problem with the enforcement, that it exists under the present law, and this would not solve that problem?

Mr. A. Jackson  There's no question about that.

[Motion for the Previous Question rejected.]

Further Discussion

Mr. Derbes  Ladies and gentleman, I won't take much of your time. I'd just like to point out a couple of things here in the interest of trying to do this as effectively as possible. I don't think that this kind of language belongs in the constitution that we're proposing today, and I'll tell you why. I particularly agree with Mr. Avant's efforts, but I don't think that the succinct language which we can only use in this constitution for something that we seek to prohibit and the areas that we seek to permit. I would like to point out a couple of things to you. First of all, as I understand the constitutional principles which authorize certain bond issues include, in the ordinances passed, language which explains the benefits or advocates that the issues are in the interest of the local governing authority. It would seem to me that this kind of language would be prohibited by this particular amendment. It also occurs to me that this amendment is not self-executing. In other words, it does not necessarily give taxpayers, or voters or citizens, a right to challenge efforts on the part of local governing bodies, or contributions made on the part of the public programs and such advertising campaigns. What I'm suggesting to you is that although something might be prohibited by this language, perhaps the voters or the taxpayers may regard it as not a challenge it, and that such standing might have to be provided by legislative act, which means that we would have to revert again to the legislature for specific authorization. Now, I want to argue with the language of the amendment itself. First of all, I spent about three years in the newspaper business, and, frankly, I don't know what factual information is. I mean, I think I know what it is, but what it is to you and what it is to me may be two different things. Believe me, I have argued with a lot of reporters and a lot of writers about what is factual and what is not. Secondly, "to urge" means to me to advocate or to persuade, but such urging can be either implicit or explicit; indeed, it can even be subliminal. I don't know when urging begins and when mere presentation of facts ends. I think it's something which can be much more clearly defined by the legislature. We are not fundamentally altering the sentence and extend it more by virtue of the emptiness, in which case I regard as the emptiness and the vagueness of this proposition, and give it a broader effect and more pervasive authority than you or I, or all of us as a delegation, would intend it to have. It is general, vague, stolic, universal language, and when the courts are trying to fill it up with something specific, what we're heading for may be something completely different than what you or I would want at this juncture. So, I urge you to consider it very carefully. I'm not opposed to it in principle; I just don't think it belongs in the constitution because in legislative act it can be specifically set forth and provided for in all of the necessary particulars. Thank you.

Question

Mr. Flory  Mr. Derbes, how do you reconcile the fact that you felt it strong enough to place in the constitution the proposition for historical preservation districts like the Vieux Carre, and yet, you're not willing to put in the constitution protection of the public fisc?

Mr. Derbes  Well, Mr. Flory, I suggest to you that we can, that the two of us, or all of us, can sit down and we can agree on exactly what my amendment on historic preservation districts means. I suggest to you that the two of us cannot sit down, or this body cannot sit down as a whole, and agree on what this amendment really means because it's too general.

Further Discussion

Mr. Newton  I will try to be brief. First of all, I want to say that I think that the campaign of the Orleans Levee Board for the passage of a constitutional amendment in this last election, or when they were trying to get those levee districts, that the amount of money they spent and they way they did it was one of the greatest abuses of the public fisc that I have ever seen. But I rise in opposition to this amendment. This material is statutory, first of all. I don't think it does what it sets out to do. The second sentence allows the spending of public funds for dissemination of information, let me point out to you that there is no limitation whatsoever on the spending of public funds. They could spend money on high-powered advertising firms, and you know what kind of people can do with money. And the dissemination of information--a good public relations firm can make it come out any way they want it. I urge the defeat of this amendment.

Further Discussion

Mr. Burson  Mr. Chairman, fellow delegates, I am against this amendment for three basic reasons. First and foremost, it seems to me that this is the kind of thing that involves subtle distinctions that can only be made in legislation and cannot be made in a constitutional provision. I share the distaste of the previous speakers for the type of use of public funds as was demonstrated by the Orleans Levee Board in campaigning for its levee protection provisions during the last constitutional amendment election. However, it seems to me that the first sentence of this amendment absolutely prohibits the use of public funds for or against any proposition in whatever way it might be construed that one were urging someone to be for the proposition or to be against the proposition. It is absolutely prohibitive in any way affected by the second sentence which merely says that you can disseminate factual information. Of course, you can disseminate factual information. But, it does nothing to exclude the absolute prohibi-
Mr. Burson, didn't you tell me yesterday that you would support this amendment that you would be for it?

Mr. Burson. No, sir. I said that I was for the principle of not using public funds to solicit votes for or against a proposition. However, I also indicated to you that I thought that that was a matter that probably could be best handled by the people because it seems to me you've got to make some distinctions here, and you cannot distinguish in a constitution.

Further Discussion

Mr. Warren. Mr. Chairman and fellow deputies, I didn't get a chance to ask Mr. Derbel the question that I wanted to ask him, but in the meantime, I did go behind in the room and I asked our staff that the state have to it, help us in our deliberations, and I asked Mr. Hargrave and I asked Mr. Meier what this amendment would do. They told me what it would do, and I'm satisfied. Now, maybe they would tell you a little bit better than I can tell you now. If you feel that they can, they are right here, and I won't mind calling on them to come down and explain it. What this amendment is going to do, and I'm told it would do, Mr. Avant and then want to do. Now, Mr. Burson is more interested in the public school system that I am. He is no more interested in the children of the children, I understand. I can tell you there is not hardly a award given in our city, that I don't attend if I don't attend if. I must be out of town you can use that. I know that a lot can be cleaned up in our system. I know that we need a one-cent sales tax for the improvement of our school, and where the schools didn't you get it yet. I just want to ask about how much money the sales tax, the one-cent sales tax, brings into our city, and how much money goes through for the public schools. I do know that we can have abuses in public schools and I think we should have it, and I didn't think we should be
Mr. Roemer. Well, you are the second or third speaker who said that you had no quibble with the intent behind this amendment. Is that true?

Mr. Jack. That is correct. I don't think the public funds, Mr. Roemer, should be used at all on these kinds of things, and I'm afraid, though, the way this uses in the second sentence that they can get the message over and use our money and really be campaigning for or against some proposition. I'm not bothered about the candidates.

Mr. Roemer. I understand that; I understand your reason. But, I wondered that—for those of us who share with you the intent to support what this tries to do, I was wondering whether you disagree with the wording, are you working on an amendment that would clarify your objections? I mean, are you concerned that the information you give us something to work with if this really is no good?

Mr. Jack. No. I'd be glad to sit down with you, but I'm not a lawyer. I'm not worried about it. I think it's really ought to be statutory. It won't hurt to put it in the constitution, but I don't know that we should put everything. But, I think, all we'd have to do— you and I can draw an amendment—just tell the Clerk to draw one like that and take out that second line.

Further Discussion

Mr. Juneau. Mr. Chairman and fellow delegates, I won't take up much of your time, but it's just been amazing to me. We are sitting here and everybody is agreeing that the concept that's embodied in this amendment is good. They said, "You know, we've had a lot of problems on the levee board, and I remember that problem spending forty thousand dollars and fifty thousand dollars, but I'm just afraid maybe it's not that we ought to relegate discussion to a legislative act." It seems to me that this is a pretty good amendment. It seems to me that we have an amendment before the Congress which is the same prohibition that we are operating the Constitutional Convention of 1973, and I can't think of anything in the last fifty years that's more important than this Constitutional Convention. I have a specific prohibition which prohibits this convention for using money to advocate the defeat or passage of this constitution. I believe we can do that. I believe that if we infringe upon the rights of one person in this state, be it in the local election or in a state election, to tell him that we're going to pass or defeat a constitution with his money, I think we are doing wrong. I think if we've done a wrong to one taxpayer in that regard, then it's bad. For that reason, I think that the amendment simply is this. There is here a man. Mr. Planchard brought up what I consider to be a problem in the second sentence because it doesn't, I agree. I refer to the Congress of 1973. I'm going to have an amendment. If this one passes, to clarify that problem. But, that's not a reason to vote against this amendment. If you agree in concept, I submit to you that what this amendment will do in our constitution, it's going to make a man on the local level, or on the state level, a little bit more aware of what he is doing when he gets ready to spend fifty and sixty thousand dollars of local money to hire an advertising agency to put through a proposition they may only get through by fifty-one percent. I think that's a good concept. I think it will make him more conscious when he says, "The information we're going to put out, Mr. Ad. Man, better be factual because if not, we're going to get hit with a suit which is in direct contradiction of the constitutional provision. Mr. Chairman, are there any other speakers on... Questions

Mr. Roemer. Mr. Juneau, did you hear all these speakers say that this should be relegated to the legislature in the form of a statute?

Mr. Juneau. I heard some people say that, yes, sir.

Mr. Vick. Do you know that Mr. Well proposed this as legislation and couldn't get it passed?

Mr. Juneau. I wasn't aware of that, but if you say it's so...

Mr. Vick. And that's the reason it should be in the constitution.

Mr. Juneau. Well, my answer to that, whether it was proposed or wasn't proposed, Mr. Vick, I think it's of sufficient magnitude to be in a constitution. We're talking about the public's money, and I think this is the kind of prohibition that ought to be in a constitution.

Mr. Jenkins. Pat, as chairman of the Public Information Committee, you've had to deal with this very question in promoting the work of the convention. Have you had a great deal of difficulty or have you been able to work it so that you can explain the convention's activities without advocating passage or defeat?

Mr. Juneau. I think that we are not able to buy buttons and banners and things of that nature, Mr. Jenkins, but I think that we can use the media, all phases of the media, to get out the word, and legitimately so. To my knowledge, we haven't got any complaints saying that we have overstepped the bounds in that regard. I think that the job can be done, yes, sir.

Mr. Willis. Pat, assuming public funds were used to disseminate information with respect to that "igloo" in New Orleans, the big one, what percentage of truth of that information is now residuum or is left? Do you follow my question?

Mr. Juneau. I'm not sure that I do, Burton.

Mr. Willis. We were told, as I recall, that it would cost so much. What percentage of truth was that in the initial story?

Mr. Juneau. Are you talking about with regard to the cost of the convention? I'm not sure that I understand you.

Mr. Willis. Well, I'll be specific. We were told, once upon a time, that the dome stadium would cost in the vicinity of thirty-one, thirty-two, thirty-three million dollars. Now, what percentage of truth was that to information disseminated to us at that time?

Mr. Juneau. Well, my answer to that, Burt, would simply be this: That I think, putting into the constitution, that you have used the language "factual." Of course, you know everything is subject to lawsuit, and this would be no exception. But, I think that we have done to the maximum extent possible, as the legislature could do no more, to mandate that you shall go no further than factual information. I can... I'll be your reaction, Burt, that it would be awfully difficult for a man on the local level or on a district... or on the Superdome, to overstep the bounds. If we would have had such a prohibition in our constitution at the time, I think that there would be an awfully more careful step would have been made at that time.

Mr. Willis. But you realize that there is no provision in this amendment to put anybody under oath with respect to the truth, the whole truth, and nothing but the truth.
Mr. Juneau. [In consciousness of that, yes, sir.] Mr. Rayburn. Mr. Juneau, what committee do you chair in this convention? Mr. Juneau. Public Information, sir.

Mr. Rayburn. Do we spend any money on...for public information, to your knowledge, or to inform the public as to what we're doing? Mr. Juneau. Yes, sir.

Mr. Rayburn. Do you see any difference in the monies that you have in this body that the school board or some other public body might want to spend to inform the citizens of what they were planning or what plans they had to do?

Mr. Juneau. No, sir. I don't see any problem at all. I do...I would think this distinction would exist, Senator Rayburn, that if we were to come out with advertisements, "Support the Constitution." "Information of no regard, Check Yes," as would a school board, and spend thirty thousand dollars in the regard of that document for the advancement of the passing of the constitution. If a school board would do that, I think we would both be doing wrong. Hopefully, we haven't done that, yet, in this convention.

Mr. Rayburn. well, do I understand you to say, Senator, that you intend to spend a nickel asking the people to support any phase of what we're doing down here? Is that your opinion, or is that your statement now?

Mr. Juneau. It's my understanding, Senator, that through the act of the legislature which appropriated the money--this legislature--this Senate and this House specifically said that no money shall be used by this convention to advocate the passage of this constitution--not public money in that regard. That's my understanding of the legislation.

[Previous question ordered.

Closing

Mr. Avant. Mr. Chairman and fellow delegates, I ask you to listen to me and I ask you to think about what this convention is doing. I want to say that I cannot understand, for the life of me, the people who come to this microphone and say we have never done this. We have never spent public money in the fashion that you are seeking to prohibit because we don't think it's right, but we don't want you to put it to a test in the constitution. I don't understand it. Now, I want to apologize in advance to any people whose sensibilities may be offended if I get emotional. I was criticized for that the other day, but I want to tell you where we are, as far as I'm concerned. You have, in your wisdom, seen fit to recommend to the people of this state, that we put a provision in this constitution that will permit local governing authorities to create districts that will be able to appropriate my property or my neighbors' property, to float a bond issue for that purpose, to build an industrial plant on my property, my neighbors' property, and then turn around and sell it to whom they will.

Now, you are asking us to take my tax money and my neighbors' tax money and spend it to convince the voting public that that's the right and proper thing to do. That's what you're doing. You're dogging right. That's what you are being asked to do. The only thing I want to leave with you is that you get emotional. Yes, because I still believe that I live in the United States of America, and if to day ever comes that you can do that, then I ask you why did the boys die on the beachhead of Normandy, in the jungles of southeast Asia and at Pearl Harbor. That's what it's all about. You're telling me that you want to take my property and my neighbors' property away from me, then turn around and sell it to whom other private individual. Then you want to take my tax money tofinance and promote that kind of a campaign well, let me tell you how if that's what you believe, then vote against this amendment.

[Amendment adopted 64-4.]

Mr. Pointer. Amendment No. [Ad. Mr. Juneau on page 28, line 29, for Amendment No. Proposed by Delegate Avant, et al., adopted by the Convention on this day and on line 6 of said amendment, after the words "shall not prohibit" and before the words "the dissemination", insert the words the use of public funds for.]

Explanation.

Mr. Juneau. Mr. Chairman and members of this convention, I won't take up much of your time other than to tell you this was the amendment which was discussed just here previously. I treat this amendment as being a clarification of what the intent was. If we do not adopt this amendment, then it would be a hiatus that you could not possibly use public funds even for the dissemination of factual information. I certainly don't think that that's the intent of the members of this convention 1 of course, an open to any questions.

Questions.

Mr. Denneny. Mr. Juneau, I take it that the addition of the language which you suggest would permit, for example, during a political campaign for public office, the use of a publicly owned television station to permit all of the candidates to appear on public television. That it would also permit the use of a publicly owned station to disseminate information by any governmental official on any proposition that might be before the public. Is that correct?

Mr. Juneau. I think that the amendment was originally drafted, that the language with regard to the dissemination of factual information pertains only to a proposition. Therefore, the use of public funds by a public body could be used by pamphlets or television-wise, to factually disseminate whatever that information is, whenever that cost could be absorbed, yes, sir. I do not true that, though, with regard to candidates because the same sentence, as I read it, has nothing whatever to do with candidates, but only with regard to a proposition.

Mr. Denneny. Well, in other words, you feel that the first sentence would prohibit the use by a publicly owned television station to permit all of the candidates for a particular public office to appear and speak their piece, for example?

Mr. Juneau. Yes, I think that the amendment would not be public funds used to urge any elective to vote for or against it would not. In my opinion, prevent a forum for a discussion of a cause in the public body, that would not be for or against.

Mr. Denneny. Thank you, sir. I wanted to mention this on the record.

Mr. Chachla. Delegate Juneau, do you realize that when you in the discussion asked previously I said that I was concerned about, and I can much better live with the amendment all that is now amended?

Mr. Juneau. Well, the point I made, Mr. Chachla, when the remarks I made that the amendment was amended at the time we voted on the previous amend-ment.

Mr. Willis. Pat, I can live well with it now with your words. To make you have no fight. Everything had a limit--like. What is the limit on the use of public funds. Here it falls deli-
Mr. Juneau. Well, it is a limitation with respect to public officials and not to public funds for the dissemination of information. But, I think that the proper purpose of a constitution is to properly harness, I should think that the limits would be the best harness, and it is devoid of limit.

Mr. Juneau. Well, the only answer to that: you would be talking about, I assume, a dollars and cents figure, and I just don’t think that would be appropriate in the constitution, myself.

[Previous Question ordered. Amendment adopted: 91-3. Motion to reconsider tabled.]

Point of Information

Mr. Tate. Mr. Speaker, as a point of parliamentary inquiry, now the new amended section is going to require sixty-seven votes to pass?

Mr. Henry. That’s correct.

Amendment

Mr. Poynter. Amendment No. 1 [by Mr. Derbes]. On page 3, line 28, in Floor Amendment No. 1 proposed by Delegate Avant and adopted by the convention on today, at the end of line 8 of said amendment after the word and punctuation “ballot” add the following sentence: “Any elector shall have standing to contest an expenditure of funds prohibited by this Section.”

Explanation

Mr. Derbes. Ladies and gentlemen, I acquiesce to the convention’s greater wisdom in adopting the Avant amendment, although I had some misgivings about it. I would like, now, to make it clear that any elector has the right to challenge unauthorized uses of funds that seem to be prohibited by the amendment. In the past, in some instances, persons who were registered voters—but not property owners—were deprived of this right. It seems to me that that’s the kind of problem that this amendment would fix. At least I hope it would. I merely try to anticipate that problem and make it clear that any elector has the right to say, or to allege, that the public fiscal use of funds prohibited by Mr. Flory’s expression—is being damaged by an unauthorized expenditure of such funds. He can’t be bounced out of court simply because he is not a property owner, or simply because he doesn’t have a specialized interest in this area. I suggest to you that this amendment really makes the entire provision operative.

Vice Chairman Casey in the Chair

Question

Mr. Roy. Mr. Derbes, do you mean that an elector from Alexandria could file a suit in Orleans Parish to challenge unauthorized expenditures on a basis and have standing in court, even though he is not from there and has nothing to do with the election?

Mr. Derbes. Good question. Maybe you ought to draft another amendment, Mr. Roy.

[Amendment withdrawn.]

Amendment

Mr. Poynter. The instructions [an amendment by Mr. Derbes] say the same, the language or verbage was changed as follows: “Any person who is an elector and who is a domiciliary of the district or districts wherein the election is scheduled, shall have standing to contest an expenditure of funds prohibited by this section.”

I’ll do that one more time. The initial language would read as follows: “Any person who is an elector and who is a domiciliary of the district or districts wherein the election is scheduled, shall have standing,” etc.

Explanation

Mr. Derbes. Again, I think that if you are going to say that people have a right to say that if you are going to say that “public funds cannot be expended in a certain way,” the only way that individuals then can challenge such expenditures of state funds or public funds, is through access to the courts. Unfortunately, the line of cases which has developed the arguments of standing, and the principles of standing, have occasionally excluded ordinary citizens—that is, electors, registered voters—as the basis that they were, in some instances, not owners of real property or they didn’t have a specialized interest in the conduct of elections. In other words, that they were merely, merely electors and ordinary citizens and they had to demonstrate greater interest that that in order to succeed. So, I suggest to you that if you really want to say what you mean in the Avant amendment, that you should adopt this amendment as a supplement to provide all citizens of the area affected with access to the courts. It seems to me to follow from the premise of the Avant amendment—which I had my own disagreement with—but now I would like to make it clear.

Questions

Mr. Munson. Mr. Derbes, the electors or the people you are concerned with in that particular district, don’t they have that right now to go to court? Is it prohibited now for them to file suit?

Mr. Derbes. I thought I explained that to you, Mr. Munson. In some cases, in some elections, for example, I can call your attention specifically to the thing that we have been discussing—the Orleans Parish Levee Board’s expenditure of funds—in order to advocate, or in order to publicize, or provide information on the constitutional amendments that were advanced recently. A group of citizens went to court and were bounced out of court challenging that public agency’s right to spend the money. They were bounced out of court, because they weren’t owners of real property. I am merely trying to clarify that issue, I am merely trying to say that all persons are aggrieved by such an expenditure and if they are citizens of the state and domiciliaries of the area, they should have the right to challenge it.

Mr. Munson. What would you do in the case of a minor who is a property owner and a resident, but is not an elector?

Mr. Derbes. He wouldn’t have any rights under the amendment, Mr. Munson. He would ordinarily not have any right to bring suit in his own name, any way. He would have to be an elector.

Mr. Munson. But, he is a property owner, isn’t he?

Mr. Derbes. No... if you...

Mr. Munson. But, he would be affected even though he was a minor?

Mr. Derbes. No, no. The amendment, as it’s phrased, reads in the conjunctive rather than disjunctive. It says “Any person who is an elector and who is a domiciliary of the district or districts,” etc. So, we would have to fulfill all both.

Mr. Munson. You got me then, because I didn’t understand what you were saying, being a farmer.
Mr. Arnette. In other words, he has to satisfy two requirements, rather than one or the other.

Mr. Arnette. Mr. Arnette, there are two things that upset me about this. First of all, suppose as a taxpayer of the state, I'm taxed—well, appropriation gets the money to the levee board of New Orleans; or New Orleans Levee—Board and they spend my money to do something that I don't want them to do that is against the constitution, why shouldn't I have a right to bring suit about it?

Mr. Arnette. Well, what I'm trying to suggest to you, Mr. Arnette—you see this illustrates the very point of my original disagreement with the Avant amendment, namely, it tries to do too much with too few words. But, I would like to point out to you that by a legislative act, additional provisions could be made whereby Arnette, who lives in Jennings, could challenge something that occurs in Orleans Parish, if the legislature in its infinite wisdom deems that it is necessary to do so. And since everybody is worried about where we are going to get general laws and Mr. Vick mentioned that Mr. Wall introduced provisions that were rejected by the House and Senate, I suggest to you that the only way to make the provisions of the Avant amendment truly operative to the benefit of all people is to give them standing.

Mr. Arnette. Why don't you just leave it to the legislature? Now, you say, of course, why wait for the general law? But, the problem with your thing is, if you state this in the constitution, it seems to limit it to those people that you name and they shall have standing.

Mr. Arnette. No, sir. It does not say that.

Mr. Arnette. There is implication to be made there...

Mr. Arnette. No, no. I simply grant the standing and the legislature can supplement that by additional provisions which would make... which would say their things and give them other access to the courts. I'm looking at the original roll called on the Avant amendment. I notice that you voted yes, or yes, Mr. Arnette. I, frankly, can't imagine why you are not in favor of by amendment.

Mr. Arnette. Because, I think it is too restrictive.

Mr. Arnette. Mr. Arnette, did you know that I am against your amendment, I'll answer your question that you just proposed to me. It's because the present law is any interested taxpayer has standing to challenge the illegal expenditures of public funds.

Mr. Arnette. All you are doing, Mr. Arnette, is object to my amendment, Mr. Arnette. Are you objecting because it merely contains... it merely contains the existing law?

Mr. Arnette. Mr. Arnette, you're an attorney and a lawyer, but, I have an attorney. Do you assume that the school board spent three thousand dollars to present our case? Let's assume that the people voted for it overwhelmingly to get it passed, I'm assuming that. Now, how do you suggest the school board spend the money, because it was earmarked by the voters?

Mr. Arnette. Mr. Arnette, if that was a justifiable question of your, I think you should have that in mind when you vote, and advocated the Avant amendment that I just proposed to you and the other amendment that I advocated.

Mr. Arnette. Mr. Arnette, there are two things that upset me about this. First of all, suppose as a taxpayer of the state, I'm taxed—well, appropriation gets the money to the levee board of New Orleans; or New Orleans Levee—Board and they spend my money to do something that I don't want them to do that is against the constitution, why shouldn't I have a right to bring suit about it?

Mr. Arnette. Well, what I'm trying to suggest to you, Mr. Arnette—you see this illustrates the very point of my original disagreement with the Avant amendment, namely, it tries to do too much with too few words. But, I would like to point out to you that by a legislative act, additional provisions could be made whereby Arnette, who lives in Jennings, could challenge something that occurs in Orleans Parish, if the legislature in its infinite wisdom deems that it is necessary to do so. And since everybody is worried about where we are going to get general laws and Mr. Vick mentioned that Mr. Wall introduced provisions that were rejected by the House and Senate, I suggest to you that the only way to make the provisions of the Avant amendment truly operative to the benefit of all people is to give them standing.

Mr. Arnette. Why don't you just leave it to the legislature? Now, you say, of course, why wait for the general law? But, the problem with your thing is, if you state this in the constitution, it seems to limit it to those people that you name and they shall have standing.

Mr. Arnette. No, sir. It does not say that.

Mr. Arnette. There is implication to be made there...

Mr. Arnette. No, no. I simply grant the standing and the legislature can supplement that by additional provisions which would make... which would say their things and give them other access to the courts. I'm looking at the original roll called on the Avant amendment. I notice that you voted yes, or yes, Mr. Arnette. I, frankly, can't imagine why you are not in favor of by amendment.

Mr. Arnette. Because, I think it is too restrictive.

Mr. Arnette. Mr. Arnette, did you know that I am against your amendment, I'll answer your question that you just proposed to me. It's because the present law is any interested taxpayer has standing to challenge the illegal expenditures of public funds.

Mr. Arnette. All you are doing, Mr. Arnette, is object to my amendment, Mr. Arnette. Are you objecting because it merely contains... it merely contains the existing law?

Mr. Arnette. Mr. Arnette, you're an attorney and a lawyer, but, I have an attorney. Do you assume that the school board spent three thousand dollars to present our case? Let's assume that the people voted for it overwhelmingly to get it passed, I'm assuming that. Now, how do you suggest the school board spend the money, because it was earmarked by the voters?

Mr. Arnette. Mr. Arnette, if that was a justifiable question of your, I think you should have that in mind when you vote, and advocated the Avant amendment that I just proposed to you and the other amendment that I advocated.
Mr. Avant Mr. Chairman, I waive and use the words of my friend, Mr. Willis, "Just hang in there, baby." [section passed: 67-26. Motion to reconsider tabled.]

Amendment

Mr. Poynter Delegate Conroy sends up amendments dealing with citizenship. This adds: On page 3, line 29, the following section:
Section--and let's change it to 19, Mr. Conroy. "Section 19. Citizenship. A person who is not a citizen of the United States shall not be a citizen of this state."

Explanation

Mr. Conroy In reviewing the action which the convention has taken so far and in reviewing Article VII of the present constitution on elections, there were two provisions which I found that we had not dealt with. I refer to the provisions that we should consider and not simply fail to deal with. I bring these each before the convention as a whole, so that there can be a clear understanding as to what the convention intends or intends to say. The first of these two amendments is the one that you have before you, dealing with citizenship. Unfortunately, in the circumstances here, I am going to have to ask you to take a provision of the United States, native born or naturalized, shall have the right to vote. In what we have done so far we have not cut to being a citizen of the United States, in connection with the right to vote. In the Bill of Rights Committee Proposal, we said "Every citizen of the state upon reaching eighteen years of age shall have the right to register and vote." In this proposal, we have said that "The legislature shall provide for a Code of Elections and except as otherwise provided in this constitution, the right to vote in elections is guaranteed to all citizens of this state. Again, in both these cases, no reference is made to being a citizen of the United States. However, in the article on the executive branch, when we dealt with qualifications for office for the executive branch, we stated that any state and county elective office, a person must have attained the age of twenty-five years, be an elector, and be a citizen of the United States. I think there is some confusion, therefore, at this point as to whether there is any possibility of a person being a citizen of the State of Louisiana and not being a citizen of the United States. The Fourteenth Amendment to the Constitution of the United States deals with a converse principle and says that "Any person who is a citizen of the United States shall be a citizen of the state in which he resides." But, there is simply no definition in our constitution of what a citizen of the State of Louisiana is. Now, we intend that a citizen of the State of Louisiana can only be one who is also a citizen of the United States. I think we have to say so. Otherwise, it is possible and under some United States Supreme Court decisions, it may be closer to reality than you might at first think. It would be possible for a person who resides...an alien who resides in the State of Louisiana to claim that he is a citizen of the State of Louisiana, even though he is not a citizen of the United States. This is the purpose of this amendment, was simply to clarify it, and to make it clear that a person could not be considered a citizen of this state, particularly in reference here to the question of voting unless he is a citizen of the United States and not the native born here or naturalized under the laws of the United States. I'll yield to any questions.

Mr. De Blieux Mr. Conroy, if I'm not mistaken, I know it has been the law for some time that a person has also been interpreted as being a corporation. Now, I know you did not mean that in this particular amendment. Don't you think it might make this clearer, if we added in the word "a natural person" in order to be sure of being fully understood? Because as an elector, I think that's well understood that that must be a natural person, but in this particular amendment just as you have worded it here? Now, of course, I believe we have had clarified before in our law is...a corporation could also be a citizen, you see. Now, I believe though, that you would need that clarifying word in there.

Mr. Conroy Senator De Blieux, I would have no objection to adding any clarification. But, I don't think it's necessary in this because this is purely in the negative, to exclude from citizenship in this state any person who is not a citizen of the United States. If you wanted to make further exclusions from citizenship, explanatory exclusions, I certainly have no objections to it, but this is simply to deal with that one single problem. As I said, anyone who was born or naturalized in the United States, you may exist in addition to the problem I'm addressing myself to. But, I don't think that changes the purpose of it or is needed for the purpose of my amendment. In order to be a citizen of this state, you must be a citizen of the United States. As a matter of fact, you have to be a citizen of the United States. I just noticed that in this copy that's typed here; that would have made it clearer...it would have conformed to the language of the Fourteenth Amendment.

Mr. Gravel I have the same problem as Senator De Blieux had. Are you saying that you are willing to withdraw the amendment or word it to read, a person who is not a natural born or naturalized citizen of the United States? Mr. Conroy Yes, that's what my rough draft had said. I'm sorry that that language isn't in there.

Mr. Gravel I would be for it, if that language change was made.

[Amendment withdrawn.]

Amendment

Mr. Poynter [Amendment by Mr. Conroy]. Would read as follows:
Section 19. A person who is not a natural born or nationalized citizen of the United States shall not be a citizen of this state. "Native born or naturalized." All right.

Explanation

Mr. Conroy The "native born or naturalized" is the language in the present constitution, in connection with voting. The section as it reads is, "A person who is not a native born or naturalized citizen of the United States shall not be a citizen of this state."

Mr. Henry Is that the way your copy reads, Mr. Clerk? We want to make sure that...All right.

Questions

Mr. Bergeron Dave, you said you were going to refer us to some information in our constitution. Is that Article VIII, Section 1, you are referring to? Mr. Conroy Yes.

Mr. Bergeron I'm just wondering how up-to-date this information is; it's supposed to be up-to-date completely. But, making a comparison of age, I find every citizen of this state and of the United States
States, native born or naturalized, but not less than twenty-one years of age possessing the following qualifications. So, I'm just wondering if this is the update section we are looking at.

Mr. Conroy: That's the present constitution. The United States Constitution, somewhat supersedes itself with regard to twenty-one years of age.

Mr. Bengeron: Than you, Dave.

Mr. Duval: David, you are on the Style and Drafting Committee, are you not?

Mr. Conroy: Yes.

Mr. Duval: I noticed that in the Executive Article the words "citizens of the United States" were omitted in the Style and Drafting copy.

Mr. Conroy: Yes, with a note from the staff that it says, "You couldn't be a citizen of the state without being a citizen of the United States." I asked the staff, did they have any authority for this, and they have been unable to find any authority for that statement.

Mr. Duval: I was just wondering, is that the type of technical corrections that they are making?

Mr. Conroy: Well, the purpose of my amendment is to add and correct the technical corrections being made here. Mr. Duval.

Mr. Guarisco: Mr. Conroy, are you attempting to possibly disenfranchise persons who may be allowed to say emigrants and persons who have never become naturalized citizens of this country-to disenfranchise them from possibly becoming citizens of this state, irrespective of their allegiance to the United States?

Mr. Conroy: At the present time, a person who does not...an alien who does not become a naturalized citizen of the United States is not entitled to vote in the State of Louisiana, is not a citizen for the purpose of voting. That's correct. My purpose here is to bring this question before the convention as to whether they intend to continue that restriction or whether they want to change it. But, at the present time, that is the provision of the constitution.

Mr. Guarisco: Of what constitution?

Mr. Conroy: The Constitution of Louisiana. That you have to be a naturalized or native born citizen of the United States, in order to be a voting citizen of the State of Louisiana... Mr. Guarisco: As the state election, in the state election?

Mr. Conroy: Yes. Yes. That's the present law. Now, if we intend to change it, that's up to the convention. I don't think the convention has intentionally done so to date in the references that they have made. I just want to bring it clearly before the convention to make a decision. I think that a person who shall be a citizen of the United States before he should have the right to vote as a citizen of the State of Louisiana, that is the purpose of bringing this before the convention.

Mr. Newton: I really want you to clear this thing up for me, because if you aren't a citizen of the United States, unless you are a citizen of a state... Mr. Conroy: That's not so.

Mr. Newton: And you can't be a citizen of the United States unless you are a citizen of a state. Mr. Conroy: No... Mr. Newton: You have that right. Your first statement was not accurate. Mr. Newton. The Fourteenth Amendment to the United States Constitution says, Anybody who is a natural born or a naturalized citizen of the United States is a citizen thereof in the state in which he resides. That shall give you the exact language of the Fourteenth Amendment as soon as I find it.

Mr. Newton: I would like to see it.

Mr. Conroy: I read this in a Supreme Court decision the other day that just came in June, which said that a state could restrict the right to vote in certain cases but couldn't restrict a person from being a... having to work under civil service.

Mr. Tapper: Mr. Conroy, how does your amendment read now as it has been changed? You are talking about native born...

Mr. Conroy: ...or naturalized. A person who is not a native born or naturalized citizen of the United States shall not be a citizen of this state...

Mr. Tapper: What is your definition of naturalized?

Mr. Conroy: A naturalized citizen of the United States is one who has become a citizen of the United States pursuant to the naturalization laws of the United States. This is the same language that is used in the Fourteenth Amendment to the United States Constitution which says All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside.

Mr. Tapper: What about the case where a child born of parents who are citizens of this state and of the United States who are abroad when that child is born? The child is not a native born?

Mr. Conroy: Under the rules... Yes, he is. Under the United States, rules of the dual citizen. He has the right to elect to age twenty-one.

Mr. Tapper: I understand, Mr. Conroy, the United States Constitution and laws, but we are talking about this...your amendment that you're attempting...

Mr. Conroy: No, I think he is born a citizen. He is born a citizen.

Mr. Tapper: Not under your amendment. I

Mr. Conroy: Yes, he is. My mother happened to be exactly in that category, and I know that she considered a native born citizen of the United States...

Mr. Goldman: Mr. Conroy.

Mr. Conroy: Yes, Mr. Goldman.

Mr. Goldman: Mr. Conroy, I have a question about the language in your amendment. In the second sentence it says, a person who is not a native born or naturalized citizen of the United States shall not be a citizen. Wouldn't it be better to say, the person shall not be a citizen because he shall not be denominated as such?

Mr. Conroy: Mr. Goldman.

Mr. Goldman: If he is naturalized at a later date...

Mr. Conroy: Again, I just don't agree with the language I don't like it.

Mr. Goldman: Shall we hold over it in the future.

Mr. Tupper: The kind of a question I'm asking about these double that you raise here, it about the right to become naturalized. Naturalization was never in effect there, it merely settled here and they automatically be a naturalized now.
64th Days Proceedings—October 10, 1973

Mr. Conroy Well, I don't think we have to worry about those people, Mr. Toca, because they wouldn't be with us any more and their children would have been...

Mr. Toca Oh, yea, well they've got some still here.

Mr. Conroy Their children who have been born in the United States would be citizens of the United States. Therefore, there would not be a problem...

Mr. Toca I don't agree with you, no, sir. They got some people still living here.

Mr. Conroy I must have misunderstood your dates.

Further Discussion

Mr. Denney I appear here primarily because the Chairman failed to recognize me for a question, although I was wildly waving my hand in the back. I do not understand why Mr. Conroy's amendment does not follow the language of the Fourteenth Amendment which says, "All persons born or naturalized". He says a person who is not a native-born or naturalized citizen. Therefore, the door is open for a difference in interpretation. But beyond that, I disagree with Mr. Conroy's interpretation of the Fourteenth Amendment. It seems to me that if you read the Fourteenth Amendment it clearly says—it defines who are citizens of the various states. "All persons born or naturalized in the United States and subject to the jurisdiction, of the state wherein they reside." Therefore, anyone in this state who resides here and who is a person born or naturalized in the United States is a citizen of this state, and by the Fourteenth Amendment is also a citizen of the United States. So it seems to me we are putting unnecessary language into the constitution. For that reason I urge that you consider very carefully before you adopt the amendment which changes the language in the constitution in the Fourteenth Amendment.

I yield to any questions, Mr. Chairman.

Questions

Mrs. Corne Mr. Denney, it just seems to me like there are some people who have come here—say during the First World War period who certainly would be still living. Many of them—since having married, say, American soldiers, they were automatically accepted in this country as citizens. Would these then come under the heading of naturalized American citizens?

Mr. Denney Yes, ma'am, I believe so. I think the naturalization law specifically says so.

Mrs. Corne It would be automatic naturalization?

Mr. Denney That's my understanding of the law, yes ma'am.

Mr. Arnette Noise, one thing that concerns me. You say it's unnecessary. But this is exactly the opposite language of the Fourteenth Amendment. In other words, the Fourteenth Amendment says, "if you are born in the state, then you are a citizen of the state and the U.S." O.K. But this is just the opposite. It says, "if you are not a citizen of the United States, then you are not a citizen of this state." Isn't that correct?

Mr. Denney Except if...there is a negative pregnant in the constitution of the United States which says that "if you are a citizen of the United States, then you are a citizen of the state in which you reside."

Mr. Arnette Exactly correct. But what about the situation where a person is not a citizen of the United States?

Mr. Denney Then he is not a citizen of the state in which he resides.

Mr. Arnette You mean under the Federal Constitution?

Mr. Denney That's my understanding of it.

Mr. Arnette The Federal Constitution regulates who can be a citizen of this state?

Mr. Denney That's my understanding. Yes, sir.

Mr. Conroy Mr. Denney, if I had been able to find anyone who could give me authority for the statement which you just made, I wouldn't have presented this amendment. If you can find any, I'd be happy to see it. But as yet, I find nothing, as I indicated originally...

Mr. Denney The authority is Denney.

Mr. Conroy Thank you, Mr. Denney.

Mr. De Bieux Mr. Denney, do you know of any case to where a person could be a citizen of this state without being a citizen of the United States?

Mr. Denney I can't conceive of any, no sir, Senator.

Mr. De Bieux Well then, what purpose would this serve in our constitution?

Mr. Denney That's exactly what I say.

Further Discussion

Mr. Pugh Mr. Chairman, fellow delegates, I commend Delegate Conroy for bringing this to our attention. There were some oversights earlier in the work that we have done. However, I suggest that we vote against this amendment because, I believe, one, it should be under Bill of Rights, if at all; two, I think Style and Drafting will at this point be the only committee who might go back into the earlier sections, or articles mentioned by Mr. Conroy, and bring to our attention the corrections that are needed there so that we will not have the oversights in those articles mentioned by Mr. Conroy.

I reiterate, I don't believe we are prepared to intelligently vote on this amendment now. I believe that if there is to be a provision comparable to this in the constitution, obviously it ought to be under Bill of Rights and not under the election section; and third, I think the Bill of Rights can correct the errors which we might have committed earlier in the passage of some of the amendments or some of the sections in the articles.

Thank you.

[Previous Question ordered.]

Closing

Mr. Conroy I think Mr. Pugh's comment is correct in its direction, but I think it is misleading a little bit in the...in what the Style and Drafting Committee can do. I am a member of that committee, and it would certainly be my suggestion if this amendment passed to try to put the appropriate language in the appropriate place, my concern, at this point, is that without an expression from this convention that we intend that a person would be both a citizen of the state and of the United States in order to exercise the right to vote—that the Committee on Style and Drafting would be powerless to do what Mr. Pugh has suggested we ought to do to. So I urge you to vote for this amendment. I assure you that the Committee on Style and Drafting would try to rearrange the language so that it did appear in the proper place. But there is no other way we can do it at this point since we've passed the earlier section in this particular article, and we have passed the section...the comparable section in the Bill of Rights Article. The
Mr. DeBilieux: I am going to pose the same question to you which I posed to Mr. Deneny. Can you give me any example how a person could be a citizen of the State of Louisiana without being a citizen of the United States?

Mr. Conroy: I know of no prohibition of the legislature of the State of Louisiana saying that any person who has resided in the State of Louisiana for three months would be a citizen of the State of Louisiana. I know of no prohibition of that. As a matter of fact, absent any declaration of what the definition of the State of Louisiana is, I think that a person who simply resides in this state—an alien who resides in this state—would have a justifiable claim to whether or not he is a citizen of this state without having done anything more.

Mr. DeBilieux: Mr. Conroy, don't we have laws that say that the federal government, and only the federal government, can naturalize aliens?

Mr. Conroy: To become a citizen of the United States.

Mr. DeBilieux: Yes. That's the only way...Isn't that the only way that a citizen—a person who is an alien can become a citizen of the United States?

Mr. Conroy: Of the United States. But I don't think that that's the same...

Mr. DeBilieux: Mr. Conroy, but that doesn't mean the United States can spell out what the law are with regard to the state creating a citizen of that state. We have many honorary citizens, for example. If I had been able to find the answer to the question you asked, and I did pose the same question to the staff. I would have agreed that this amendment was unnecessary. But I could not find those answers in any authorities, whatsoever.

Mr. Newton: David, this or similar language was in the 1903 Constitution which would, in effect, prohibit the legislature from providing for naturalization laws for the State of Louisiana. Isn't that right?

Mr. Conroy: That's the effect of it. It is in the present Louisiana Constitution. That's where I got it from, as I explained originally, not out of the air.

Mr. Newton: Do you know of any clause in the Federal Constitution that would prohibit Louisiana from having naturalized citizens who were citizens of this State but not citizens of the United States?

Mr. Conroy: No, I know of none.

Mr. Newton: It would be possible.

Mr. Conroy: As a matter of fact, I think it would be a reserved power under the Eleventh Amendment.

Mr. Hayes: I think we probably could clear this up if you could answer two questions. One is, what is a citizen of the State? Could you give a definition?

Mr. Conroy: I agree with you. I think I could. In that question, I wouldn't have answered this.

Mr. Hayes: I have here, fall personal law or naturalized in Louisiana, in a few different situations who are citizens of the United States.
Mr. Conroy: I don't think that a temporary change of location of an apartment or something like that, certainly wouldn't be a change within this provision. Senator Nunez, that's... I read you the present constitution. If it wouldn't have affected it under the present constitution, it certainly wouldn't affect it under this provision.

Mr. Nunez: Would you call a temporary change for two years...would that be temporary...because many of them stayed two years away from their...their...where their residence because there was no way to get back. There was no oil, water, gas, lights etc. It lasted that long.

Mr. Conroy: Senator, were they ousted out of office under the present constitution? If not, then mine is no more restrictive because the present constitution says, "Whenever any officer changes his residence from the district, parish, municipality, or ward in which he holds such office, the same shall thereby be vacated." That's the present constitution.

Mr. Cannon: Mr. Conroy, I'm noting in your language here that you're implying an active...an act on the part of an individual to change his residence...

Mr. Conroy: Yes.

Mr. Cannon: ...from one district, or one area that he represents, or some defined area that's referred to in this constitution. What if the district lines change and I'm... I mean if they change upon him...

Mr. Conroy: I don't think that would affect his ability to continue to hold the office under the way this amendment is worded.

Mr. Cannon: Well, I mean in these days of court ordered reapportionment and things like this.

Mr. Conroy: But it would...depending on what the rules were for election the next time around, he'd have to qualify for election the next time, but this says "he changes the domicile from that required as qualification for election to the office..." So he held the proper domicile and didn't change his domicile, I don't think this provision would affect him in any way.

Mr. Cannon: Let me ask you this. What about a district attorney, say who represents a multiparish area, and it gets severed and...

Mr. Conroy: Well, you're going to have two district attorneys then. If you have...that'll normally provide for the election of these district attorneys to...the next election again. He is not going to have to live in the district in which he wants to hold that office.

Mr. Cannon: Right.

Mr. Tobias: Mr. Conroy, I'm reading Section 4 of the legislative proposal, and it refers to what happens after reapportionment. Do you see any conflict between your proposal and this? Why or why not?

Mr. Conroy: You said you were reading it. You'd have to wait awhile for me to read it. But I read it previously. I did not find any conflict.

Mr. Tapper: Mr. Conroy, isn't it a fact in recent years there has been much, much litigation over the term "residency"?

Mr. Conroy: Yes, I imagine there always will be where...

Mr. Tapper: Isn't it a further fact that the courts, the federal courts, have held that a man can have more than one residence...

Mr. Conroy: Yes.

Mr. Tapper: Legal residence?

Mr. Conroy: Yes.

Mr. Tapper: My last question is, then, why put residency in this constitution in this section when there is so much controversy over it? Who shall determine where a man's residence is. Suppose I have...

Mr. Conroy: Mr. Tapper, we have that requirement in the constitution already, in connection with his election to office. If he doesn't change it after he's qualified for election on living in the district, he is not going to have any problem. But the same...it doesn't create any new problems. The problem already exists in connection with qualification for office.

Mr. Jenkins: David, it's been suggested that perhaps this question should be handled in an election code. But it occurred to me that possibly it would not be legally possible for an election code to handle this. Would you discuss that point?

Mr. Conroy: Mr. Jenkins, I do not think it could be handled by legislation because if, in this constitution, we set up an office and say that for that particular office you must be a resident of a particular district for a certain period of time, and then contain nothing...have nothing further in the constitution with regard to removal of that person from office by virtue of leaving that particular residential area, or the residence that he's in. I don't think that the legislature could then come behind and provide for the removal of an officer whose qualifications are described in this constitution. I don't think that constitutionally the legislature would have that right. So that if, if this convention desires to cope with this concept, they think they have to do it here in the constitution.
Mr. De Bieux, Mr. Chairman, ladies and gentlemen,

I just wondered if we shouldn't take that vote over. I think there is something under the present constitution that you cannot vote upon, something that you have an interest in. Clearly, if I remember correctly, Reverend Stovall had an interest in this particular provision, and he voted. It's not the question of how he voted, but the fact that he had an interest. I know we have taken some votes over when somebody had an interest before.

[Previous Question ordered on the Proposal. Proposal passed: 116-0. Motion to take up other orders adopted without objection.]

Announcements

[Journal 621-622]

[Adjournment to 1:00 o'clock p.m., Thursday, October 11, 1973.]
ROLL CALL

[103 delegates present and a quorum.]

PRAYER

Mr. Champagne Let us pray.

Lord, grant me the serenity to accept the things I cannot change, the courage to change the things I can, and the wisdom to know the difference.

Amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

Personal Privilege

Mrs. Miller Ladies and gentlemen of the convention, do come before you on a point of personal privilege, on behalf of the four Vice chairmen of the convention. As you know, you all can often get very much out of order, and sometimes the decisions get very technical, and we don't think that Mr. David Poynter is invaluable. As you know, when he's up there, he's constantly telling us what to say. Very seldom does he make the wrong move, but, you know, our Chairman says occasionally he makes a mistake. But, when we hit revenue and taxation, it's going to be very important that he doesn't make any mistakes. On this occasion I'm thinking, and so that he can stay in practice on telling us what to say, we have brought him this Charlie McCarthy doll.

PROPOSALS ON THIRD READING AND FINAL PASSAGE

[Motion to suspend the rules to take Committee Proposal No. 23 out of its regular order adopted without objection.]

Reading of the Proposal

Mr. Poynter Committee Proposal No. 23, introduced by Delegate Stagg, Chairman on behalf of the Committee on the Executive Department, and other delegates, members of that committee.

A proposal prohibiting dual officeholding in any state and local government. "Article_, Section. Dual employment and dual officeholding. Section Paragraph (A). Except as otherwise provided in this section, no person holding, under the government of this state or any of its political subdivisions, any office or employment of trust or any office or employment which entitles him to any per diem, salary, or other emolument of office shall at the same time hold any other such office or employment with the United States, any foreign power, or any other state, nor shall any such person hold more than one such office or employment with this state or any of its political subdivisions."

Mr. Gravel This proposal, in my opinion, is a bad one. It is an attack on the dual officeholding provision in the constitution, a strong dual officeholding and dual employment prohibition article. The language contained in the first paragraph is, to some extent, a rewrite of the present provisions of the constitution, but in part, I think, has been strengthened to make it clear that no person shall hold two public offices, or be employed by any government, or two separate governments at the same time, or two separate parts of government. That is the general provision of the article. The next two sections provide for specific exceptions, which the committee felt should be spelled out in the constitution, and the final section authorizes the Board of Ethics, in those instances where the public interest is not adversely affected, to make additional general or special exceptions. I don't think it would serve any useful purpose for me to restate what is clearly demonstrated by reading of the article, as to what we're trying to accomplish. I do think it's important to restate that the committee felt that there should be in the constitution a strong, definitive provision with respect to dual officeholding and dual employment. Mr. Chairman, I'll answer any questions that any of the delegates have with respect to the proposal.

Questions

Mr. Duval Mr. Gravel, this proposal changes the law quite a great deal. Does it not?

Mr. Gravel Yes, it does.

Mr. Duval There previously was no constitutional provision applying to dual employment. Is that correct?

Mr. Gravel That's correct.

...there's a statute on it, but no constitutional provision.

Mr. Duval As this presently reads, a person, let's say, who's a secretary or a clerk for a municipality or a political subdivision, could not run for office. Is that correct?

Mr. Gravel I think that person could run for office, but if elected,...

Mr. Duval They would have to give up their job, right?

Mr. Gravel Unless the Board of Ethics felt, that by maintaining that employment and holding the office, the public interest was not adversely affected. That's correct, Mr. Duval.

Mr. Duval Now, I notice that in this proposal school teachers are specifically exempt, and what I'm wondering is: how is there a logical distinction between school teachers and all other employees, either directly or peripherally connected with the state or its political subdivision?

Mr. Gravel The committee felt, after weighing the arguments both ways, that this was a valid exception that could be made because of the number of school teachers that, of course, existed throughout the state, and because we did not want to require school teachers to give up their jobs in order to hold an elective office and particularly in order to service members of the legislature.

Mr. Duval Well, what I'm wondering about: why is it going to be...why are school teachers going to be treated differently than all the rest of the employees? What makes them so different?

Mr. Gravel Mr. Duval, we just felt that this particular category was strong enough to be placed in the constitution, and we'd leave other consider-
Mr. Contractor: You mean strong enough to take charge that there are so many school teachers?

Mr. G. L. Contract: Correct, and that...

Mr. Gay: Mr. Gravel. In your Section 11, under your exceptions, looking to number 5, these persons on boards, committees, and other instrumental in policy making or advisory functions, a couple of questions about that. Now, under these policy-making boards, there could be just any number of boards and a person could serve on just as many, as you know, thirty, forty, or fifty of them under this. Why do you take the exception of policy making boards?

Mr. Gravel: Well, we made that exception because we didn't consider that, that the service on such a board constituted either the holding of an office or employment--more in the public service capacity, like Mr. Bussiere. You know, serves on a number of boards, and other people serve on a number of boards.

Mr. Slav: Mr. Gravel, would you clear up one thing. I don't think that the service means that a fellow could not be on the school board who was holding, one other office. Says as deputy sheriff?

Mr. Gravel: That is correct, yes it would.

Mr. Slav: Now, a man could not be a school board member and a deputy sheriff. What about a member?

Mr. Gravel: Unless the board of Ethics made an exception in his case, specifically, he could not, under this language.

Mr. Slav: Well, now, my point is that most constables are deputy sheriffs in Rapides Parish, and I think that it is a matter that, maybe, we should clear up because...

Mr. Gravel: Well, I think that would be covered because the constables are... either they are ex officio deputy sheriffs, as I understand it. I agree with you that this is possible an area that could be clarified. I don't think there'd be any problem with the other that isn't language or by action of the Board of Ethics.

Mr. Slav: Mr. Gravel, you say "dual office holding." Now, in other words, I was a triple office holder, is that all right?

Mr. Slav: It might have been all right under the title, it's not all right under the body of the act.

Mr. Burn: Mr. Gravel, the question may have been asked, I wasn't listening. Under that Paragraph (B) Subsection 3, "Board," would that prohibit a member of the school board, for instance, from running for the legislature?

Mr. Gravel: Yes, that would.

Mr. Burn: One other question, you understand?

Mr. Gravel: I wouldn't hold both offices, as a member of the school board and as a member of the legislature unless specifically authorized by the board of Ethics.

Mr. Burn: At the present time, I am a member of the Southeastern Louisiana College, I am member of the legislature, unless specifically authorized by the board of Ethics.

Mr. Gravel: I think he would come under the exception in Section 11. We have one member of the Southeastern Louisiana College as a member of the legislature, he is a member of the legislature.

Mr. T. H. Gravel: I think he would come under the exception in 11. We have one member of the Southeastern Louisiana College as a member of the legislature.

Mr. Rayburn: Mr. Gravel, if I understand this correctly, you are making a new rule without any previous rule being made. In a school board, would the member from the public schools be able to be the member from the public schools, the public officer, or would the member from the public schools be able to be a public officer from a public office?

Mr. Gravel: I think the interpretation would have to be made in that particular case by the ethics board that the public interest was not adversely affected. I'm not holding two jobs.

Mr. Rayburn: Well, now, read here where it talks about public employees, would that include all school personnel and all types of education?

Mr. Gravel: The language specifically refers to teachers in the public education system.

Mr. Rayburn: Would a college professor be classified as a teacher, in your opinion?

Mr. Gravel: Yes.

Mr. Gauthier: Camille, it says, which is the only one any per cent, salary, or other compensation of office. That's any per cent, any amount of other service.

Mr. Gravel: That is correct.

Mr. Gauthier: For instance, in some of the school communities, my home town, Bayou, Bayouville, my father's been a member of the city council for twenty some odd years, they are have a salary of fifty dollars a month. He would now be prohibited from holding any other public office.

Mr. Gravel: He would be disqualified by the Board if there were any question--the proposal seeks to, whistle-blowing, from holding two jobs. Two public employees, two public positions, unless exempted from the provisions of the section, or unless the public ethics board determines, that the public interest is not adversely affected in the particular instance, before it finally, that's what we intend to do, Mr. Gauthier.

Mr. Gauthier: This, in each case, the Board would have to determine what would be the effect on the pupil, as adversely, or not adversely affected is that correct?

Mr. Gravel: The Board of this law, determines, it is a general matter that would apply to every body of, in a school or any other capacity that would be correct.

Mr. T. H. Gravel: This determination in the present application?

Mr. Gauthier: I think it in the statute. Mr. Gravel?

Mr. T. H. Gravel: So, in each case, the Board would have to determine what would be the effect on the pupil, as adversely, or not adversely affected is that correct?

Mr. Gravel: The Board of this law, determines, it is a general matter that would apply to every body of, in a school or any other capacity that would be correct.

Mr. Gauthier: This determination in the present application?

Mr. Gauthier: I think it in the statute. Mr. Gravel?

Mr. T. H. Gravel: So, in each case, the Board would have to determine what would be the effect on the pupil, as adversely, or not adversely affected is that correct?
Mr. Gravel  No, I don't...I'm not hearing. I'm not getting your words. There's something wrong with the mike or my ears, one or the other.

Mrs. Wisham  No, I think it's the mike. A teacher can train other students under them, and we are paid per diem to do it; we are paid so much per month, say, fifty dollars a month for each student. Will that prevent me from doing that? That will be an extra salary.

Mr. Gravel  Is that a public employment separate from your employment as a teacher?

Mrs. Wisham  Yes, it is.

Mr. Gravel  I think you probably would have the prohibition, unless the Board of Ethics would authorize that category of conduct.

Mrs. Wisham  Well, my second question was: we do have resource people coming into the, say, the parish on the playgrounds and helping us...university professors come in.

Mr. Gravel  Aren't they working on just one job when they're doing that?

Mrs. Wisham  Well, sometimes, we do pay them extra for coming in.

Mr. Gravel  If there were two separate employments, one by the school board and one, let's say, by LSU, then I think that would have to get clearance from the Board of Ethics under this language. We realize that possibility does exist.

Mrs. Warren  Mr. Gravel, some of our teachers teach in the public school system during the day, and they teach at our universities sometime at night. Now, this would prohibit that?

Mr. Gravel  If they are separate employers, yes, it would, I think.

Mrs. Warren  Number two...

Mr. Gravel  Unless the Board of Ethics would rule that they could do it, that public interest was not adversely affected by that.

Mrs. Warren  Well, how would the Board of Ethics go about doing it, when you put this in the constitution like this?

Mr. Gravel  Just the way they...you know, they would act under the same procedure.

Mrs. Warren  They'd make some exceptions to that.

Mr. Gravel  Let me ask you a question. They would act just as they act now. A request is made to determine whether or not the particular situation that is presented to them constitutes dual employment, adversely affecting the public interest, and they would make a determination. That's how they would act.

Mrs. Warren  Well, in this event, you find some of the federal funded programs. If a teacher's teaching in a public school system, the only way she could participate in a federally funded program, they would have to go through the public school system that he or she is working in?

Mr. Gravel  If that's a separate employment, there would have to be either a general or a specific authorization by the Board of Ethics, upon a determination that such dual employment was not...did not adversely affect the public interest.

Mr. Avant  Mr. Gravel, do you agree that if this section or proposal is adopted as it's written, it would make the Board of Ethics just about the most powerful agency in the state?

Mr. Gravel  No, I don't agree.

Mr. Avant  Well, let me ask you this: I know for a fact that Judge Alvin Rubin teaches at the Law School, or he has taught at the Law School, since he has become a United States District Judge, and as I understand it, he would be prohibited from doing that under this amendment--under this proposal--unless the Board of Ethics decided that it wasn't contrary to the public interest for him to do that. Then they could say, Judge Rubin, it's all right for you to do that. That's right, isn't it?

Mr. Gravel  They could certainly do that, and certainly would, of course.

Mr. Avant  Now, my good friend, Mr. Kean, who's a delegate to this convention and who for many years was the city-parish attorney for the parish of East Baton Rouge, he also taught at the Law School. As a matter of fact, he taught me. The same Board of Ethics, though, could decide that it would not be in the public interest for Mr. Kean to do that. Could they not, sir?

Mr. Gravel  It might so decide. It's inconceivable to me that they would because I don't see why the public interest would be adversely affected in that case, but that's something that would be determined by the Board of Ethics, based on all the facts and circumstances.

Mr. Avant  Don't you think that's an awful lot of power to be giving to one nonelective board?

Mr. Gravel  I think it's enough power to correct some of the rampant abuses that we have in the state where we have dual officeholding and dual employment that leads to many of the corrupt practices that we have in Louisiana. I think it's a small price to pay, Mr. Avant.

Mr. Pugh  I believe this follows along with what Delegate Avant said, but if we, so far, provided in this constitution any other authority to any other board or group--perhaps the judiciary to interpret--but any other board or group to, in effect, amend the constitution by one of their rulings?

Mr. Gravel  I don't agree that we do that here.

Mr. Pugh  You don't think that they may not add exceptions in Subparagraph (B) by finding that those do not, in effect, adversely affect the public interest?

Mr. Gravel  All they do is set down a standard saying that people may hold two jobs or two positions that do not adversely affect the public interest, and require the Board of Ethics to make the determination.

Mr. Pugh  Thank you.

Mr. Roemer  Camille, could you refresh our memory on what we've done here vis-a-vis the Board of Ethics? I mean, who are they? Have we done anything in this constitution...

Mr. Gravel  We have not structured the Board of Ethics. All we've done, as I recall it, is to provide that there shall be a Code of Ethics.

Mr. Roemer  I see.

Mr. Gravel  We have not specifically structured a board.

Mr. Roemer  Well, how do we get a Board of Ethics now? Who appoints them? Do they run for the job?
65th Days Proceedings—October 11, 1973

Mr. Roemer: Are you telling us the legislature appoints the Board of Ethics in this state?

Mr. Gravel: Yes, sir.

Mr. Roemer: And, if we do nothing to the contrary in this constitution, the governor would continue to appoint the board. Is that not true? Is that true that the governor would continue to appoint such a board?

Mr. Gravel: Yes, sir.

Mr. Roemer: Well, I think that... I'm not sure. Mr. Roemer, but I believe they are appointed from panels or from categories by the governor.

Mr. Roemer: The governor appoints the Board of Ethics?

Mr. Gravel: I believe so from specific categories.

Mr. Roemer: And, if we do nothing to the contrary in this constitution, the governor would continue to appoint such a board. Is that not true? Is that true that the governor would continue to appoint such a board?

Mr. Gravel: Yes, sir.

Mr. Roemer: I don't know. Mr. Stagg's pointing out something to me that says we've passed the Board of Ethics. I don't know whether... I think we did provide for a Board of Ethics, but I didn't think we have provided for it's [its] structure yet, at this time. I don't know. He's saying something over here.

Mr. Roemer: Well, I think somebody, don't you agree, that somebody ought to address themselves to who is the board, what their responsibilities are...

Mr. Gravel: Mr. Roemer, I tried to answer that as well as I could a while ago. I said that I hoped that this convention would structure the Board of Ethics. This is not the place, I don't think, to structure it. I think if we adopted this, then it would become very important to determine what the structure of the Board of Ethics would be, and how it would be set forth.

Mr. Roemer: Well, I'm not suggesting that we structure it here, am I, Mr. Gravel? I'm just suggesting that we consider their importance.

Mr. Gravel: Oh, yes...

Mr. Singleterry: Mr. Gravel, would you explain to us a little bit about the interpretation of the article, under the old constitution, and how the committee proposal differs? It seems that the old constitution has, to my knowledge, has functioned all right.

Mr. Gravel: Well, we've really been operating both under the provisions of the old constitution, or the present constitution, and the statute. There is a dual officeholding statute, too, besides the provisions in the constitution that relate to dual employment. But, this is a composite of some of the concepts in the existing law, together with what the committee--a majority--of the committee--felt was a refinement of a concept that we believe should be built into the constitution and a strong dual officeholding and dual employment prohibition law.

Let me just add this observation to clarify things. Mr. Stagg hands me a copy of Committee Proposal No. 72, which, at least, adopted, provides that the Code of Ethics shall be administered by a Board or Boards of Ethics created by the legislature with such qualifications, terms of office, duties and powers as provided by law.

Mr. Singleterry: I was just wondering if you could tell us how your committee proposal differs.

Mr. Gravel: I can't hear you.

Mr. Singleterry: Did you tell us how some of the important differences between the committee proposal and the old constitution? For instance, here we have district attorneys that are constitutional convention delegates, and we're all delegates, and this has not been held to be a violation of dual officeholding under the old constitution. Could you explain some of those things?

Mr. Gravel: I don't believe I could detail the differences at this point. Mr. Singleterry.

Mr. Goldman: Mr. Gravel, could you explain, in either, as examples, those boards which have advisory capacities only? I don't quite understand what kind of boards or commissions those are.

Mr. Gravel: Well, very often there will be, either appointed by a public official, or by a department head, or an agency...

Mr. Goldman: Oh, you mean like a committee if one hundred for a project for a city or something like this.

Mr. Gravel: Any number of boards. There are a number of boards that have to be constituted for advisory purposes under the federal programs.

Mr. Goldman: Such as a board I happen to be chair- man of such as the advisory board for the city school system for career education, that would be strictly an advisory-type board.

Mr. Gravel: I think that's right.

Mr. Goldman: That wouldn't prohibit me from serving on a state commission that the governor might appoint me on?

Mr. Gravel: That's correct. You'd be exempt.

Mr. Goldman: All right. Now, let me ask you one other question: serving on more than one state commission would be prohibited, wouldn't it? The same person serving on more than one state commission, such as the television Authority and the Governor's Committee on the Employment of the Handicapped, unless the Board of Ethics?

Mr. Gravel: Unless the Board was solely policy-making or advisory if they had performed any other functions--any administration or anything of that nature--then, of course, there would be a prohibition, but if you look at the Committee Proposal, Section 1B, subparagraph 3, you could call it, I think it will answer your question.

Mr. Goldman: Well, then, why I asked about what an advisory board really was. I wasn't sure.

Thank you.

Mr. Stagg: Mr. Gravel, in the Committee on the Executive Branch we had in our program of work both the Board of Ethics and dual officeholding assigned to us, and it got your recollection that we brought to the floor of the convention floor. On September 15, the proposal on making provisions for a code of Ethics and a Board of Ethics first, because the jobs of the dual officeholding division was the allowance of a provision for a Board of Ethics to decide whether to dual officeholding, or a proposed dual officeholding, adversely affected the interest of the Board of Ethics, is that not the structure of it?

Mr. Gravel: That's right. That is the succeeding Committee Proposal No. 72. They really do interrelate to some extent.
Mr. Stagg. Is it not your—was it not the considered opinion of the committee, that the Board of Ethics could, by a successive series of rulings, set up categories that would be affected to where every individual case would not have to go to them, but they would, by the setting up of the procedures and the decisions of the board, form a body of rulings by the board to which a citizen could refer to see whether or not his activity was against the dual officeholding provision in the constitution?

Mr. Gravel. That's correct. The language, I think, clearly encompasses the possibility and the probability that the Board of Ethics can rule generally and specially. They can rule and say that as a class, certain kinds of double employment are permitted, so that it would affect maybe hundreds, or even thousands, of people. Then, there may be a number of instances where rulings have to be made on specific and unique facts.

Amendment

Mr. Poynter. These are the Anzalone, Tobias, and Gauthier amendments. In my opinion, there's a set of amendments passed out with just the names of Anzalone and Tobias. That is not the set. The one that has the coauthors: Anzalone, Tobias, and Gauthier.

Amendment No. 1. On page 1, delete lines 12 through 32, both inclusive, in their entirety and on page 2, delete lines 1 through 31, both inclusive, in their entirety and insert in lieu thereof the following: "Section (A) The legislature shall enact laws defining and regulating dual employment and dual officeholding in state and local government."

[Amendment withdrawn.]

Amendment

Mr. Poynter. [Amendment by Mr. Anzalone] "Section (A) The legislature shall enact laws defining and regulating dual employment and dual officeholding in state and local government."

Explanations

Mr. Anzalone. Ladies and gentlemen of the convention, the Committee on the Executive Department has struggles with the idea of dual officeholding. There were certain concepts that we could agree on, but every time we came up with a provision, it was so far-sweeping that it it didn't fit with everybody in the State of Louisiana. I am sure that most of you would agree that dualism in office holding is wrong. This article prohibits the election to elective office and has this right. It prohibits legislators, for instance, from accepting employment in any other state agency, to keep them free and independent, and it is right. But, let's look at some of the things that it does that are wrong. Mr. Slay, you asked a question concerning your constable and the deputy sheriff. No, sir. That's got to stop. A full time job, for instance, cannot be a part-time garbage collector. A state trooper cannot be a night watchman at L.S.U. But just, the provision does provide that anyone who is lucky enough to serve on a board, commission, or other instrumentality, performing solely policymaking or advisory functions, at fifty to seventy-five dollars a day can most certainly hold as many of them as he can get appointed to. Well, this isn't right. Subparagraph (B) deals with the fact that the board of ethics is constitutionally authorized to make exceptions. A board of ethics, in my opinion, said that the board of ethics, by this provision, would be constitutionally authorized to make sweeping changes. Now, what does that mean? Does this mean that the board of ethics on its own volition can make all of the changes that it wants to, and if the legislature disagrees, then the board of ethics is going to rule? It just will not work. The board of ethics is given the authority and the duty to handle every one of these cases. We have information that leads us to believe that there are approximately fifteen or twenty thousand of these things in the state now, at a minimum figure. Is the board of ethics...how are they going to handle it? A commission of seven people, how many years is it going to take them to get these provisions decided? Mr. Sixty made a question a while ago. Could a man who is a constable drive a school bus? Not under this provision, he can't. If he was lucky enough to finally get that school bus, and he came to the Board of Ethics and said "gentlemen, I would like to have your permission to do it," they'd say "come back in about two years because the docket is slightly crowded right now, because we've got about another twenty-five thousand cases to hear." Ladies and gentlemen, the twelve hours that was allotted to the Committee on the Executive Department was simply not enough time to present something to this convention in the form of a prohibition against dual officeholding and dual employment that is going to be satisfactory anywhere across the realm of this state. This is just not satisfactory...what we have now. The only thing that we're saying is, is that "yes, we do want to prohibit dual officeholding because it is not right." Another thing that we are saying is where the legislature finds it advisable to do so, they can prevent dual employment. But, I cannot see for the life of me, how you're going to disrupt the democratic process of this state, by letting a man who is on the lower echelon of a salary scale, seek part-time employment with another state or parochial agency. This is what this provision does, and it's bad. I ask you to vote for my amendment, and let the legislature study the problem and come up with an answer.

Questions

Mr. Keen. Mr. Anzalone, if I understood the statement of the Chairman, if we approve your amendment, then we can go home. Is that correct?

Mr. Anzalone. I don't know, Mr. Keen. I don't know whether I'm going to vote to go home or not. But, it seems like that's what going to happen.

Mr. Smith. Mr. Anzalone, if you left this to the legislature, do you think they'd ever do it?

Mr. Anzalone. Well, Mr. Jasper, the only thing that I can tell you is that we've got a lot of "the legislature shall!" in this convention, and we don't have anything in here to say what's going to happen to them if they "shut it up!" But, the only thing that I'm saying is that I would much rather leave it up to the legislature rather than put something in here that's going to affect twenty-five or fifty thousand people that don't necessarily need to be affected. In answer to your question, I hope that the provision that we have provided for the legislature will make them independent enough to do it.

Mr. Smith. Probably some of the legislators now holding dual offices?

Mr. Anzalone. Sir?

Mr. Smith. Don't you think some of them now are holding dual offices—legislators?

Mr. Anzalone. I understand that they are.

Mr. Smith. It would be kind of hard for them to do this, wouldn't it—take themselves away from their job?

Mr. Anzalone. That particular one? Yes, sir, I would agree to that.

Mr. Goldman. Your amendment doesn't prohibit one who is holding office from running for another of-
fice while he is holding his present office.

Mr. Anzalone. No, sir, it does not.

Mr. Golan. Do you think that would be a good idea this time to have that prohibited?

Mr. Anzalone. No, sir, I do not.

Further Discussion

Mr. Rayburn. Mr. Chairman, and fellow colleagues, I rise in support of this amendment for many reasons. I personally know of a few people who are constable and justices of the peace. I think the bill, about twenty dollars a month, and some of them work for the city, and some of them work for the parish road system. Some of the work for levee districts in order to make a living. Under this proposal, you would deny them of that right. But, you would deny that a professor outside here at 1 L U, who is making twenty thousand dollars a year, that he can get a grant to make a survey or do a little research and pick up twenty or thirty thousand dollars out of that. But, you're saying to the little person over there, who might be a J U, or a constable, that he can't be a constable in a state institution. I think this amendment will leave it to the legislature, and I hope the legislature will not legislate with something that is as drastic as and one-sided as this proposal is. If we do adopt something, I ask you to go along with the amendment.

Questions

Mr. Stagg. Turn about, fair play, Senator. In the provision of the current amendment under debate, it says that the legislature will regulate dual office holding, and that it will prohibit dual office holding.

Mr. Rayburn. That is correct, Mr. Stagg. Dual office holding. In my opinion, means an elective office or an appointed office.

Mr. Stagg. Alright, now, Senator Lyman, one of your fellow senators, is an elected member of the state board of education. Are you saying that the legislature will prepare legislation that will prohibit your fellow senator from holding that other elected public office?

Mr. Rayburn. I'm saying, Mr. Stagg, that if you adopt this amendment, the legislature will have a mandate to pass laws to do that. I can't speak as to whether or when they will do it.

Mr. Stagg. That was our problem. Now, I've got one further question. Do you know of an instance where a member of the Senate who serves with you, either personally or his law firm, represents the health agencies of this state for an annual fee of some eighteen or twenty thousand dollars. Do you consider that the legislature would pass legislation that would prevent that?

Mr. Rayburn. Mr. Stagg, you being a lawyer, I think that's a fool question. I ask you to know lawyers' [lawyers'] are exempt from doing this. They can work for any state agency and collect any fee they want, but if they give me a sua curia, I'm a crook.

Mr. Stagg. Well, Senator, I have never said that you were a crook. It would even be found jury that you did not. I would like to point out to you that that was the Committee proposal we were trying to eliminate. One of those obvious discrepant things. Now, if you look about that, there are a number of people in this state that have constable and justice of the peace, and quadrangle office holding, where one man holds dual duties.
Mr. Jenkins: Yes, Joe. But, you see, that is so general and so vague, that it's not clear what it does. For example, herein we make an exception for serving on commissions of a policymaking or advisory nature; in the legislature they might well make exceptions for all sorts of things—serving on boards of whatever nature, serving in all sorts of positions where there is not a great deal of remuneration, and so on. Because of the vague nature of it, I think probably the only thing we'd be doing is prohibiting, maybe, serving in two elective offices. But, we're much leeway that we're not really giving protection, I don't think. Let's define it a little more thoroughly; let's don't be afraid of words; let's work out the words.

Mr. Anzalone: Woody, you have just touched on the problem that we have struggled with in our committee for the past six months. Now, sitting here saying that you want to reject this amendment, because you don't trust the legislature in what it's going to do, is one thing, but if you've got something better, bring it up; because I've been lookin' for it, and I haven't found it yet, and that's the reason I put the amendment in there.

Mr. Jenkins: Well, I think the place to do it, Joe, is in that first paragraph, the last sentence, where it specifically prohibits dual officeholding and dual employment to the state. I think there, if we say--instead of what it says--if we say, "prohibit dual officeholding," and then "prohibit the holding of both an office and a position of employment"...leave out that dual employment. I think that will solve the problem...keeping, down the in the lower part of that first page, the provision excepting teachers.

Mr. Anzalone: Would you write that up and present it?

Mr. Jenkins: I'd be glad to. But, if we adopt this amendment, that's going to be moot, so I....

Mr. Anzalone: Do you think that this is better than what we have now, as a committee proposal?

Mr. Jenkins: I think the committee proposal basically is good, but we need to make some technical changes in it.

Mr. Anzalone: Technical?

Mr. Jenkins: Sure.

Mr. Gauthier: Woody, in light of what you just said, in regards to dual office holding, or office holding and employment, are you then saying that the small communities who pay their elected officials possibly fifty dollars a month, or even less--in some cases perhaps a few dollars more--they would be prohibited from being employed by the local governing body, is that correct?

Mr. Jenkins: Well, that's the case now, as I appreciate bring it. Of course, we have certain exceptions, Wendell, noted in there. If they're serving on an advisory commission, or something like that, that should be exempt. But, if they're not...my goodness we have 3,6 million people in this state; we have plenty....

Mr. Gauthier: Then there are some exceptions, is that correct?

Mr. Jenkins: Yes.

Mr. Gauthier: Well, would you want to list these exceptions in your proposal?

Mr. Jenkins: Yes. I think as the committee has done it. There are some other exceptions that need to be made; let's make them.

Mr. Gauthier: Do you think we would cover them all that should be in, or do you think there's a possibility we would leave some out by error?

Mr. Jenkins: No, I think we can if we're thoughtful about it, Wendell. I think basically the committee....

Mr. Gauthier: I agree with you in principle, but I don't think that we can do it in the time permitted. I don't see how it's possible, but if you have such an amendment, I'd like to see it.

Mr. Jenkins: I'll be glad to draft some.

Mr. Avant: Mr. Jenkins, there is something here down on line 29 that I don't understand, and I wonder if you could explain it to me. It exempts from this, members in the reserve of the armed forces and the national guard. Now, I can recall, I think, at least three members of the legislature who were elected while they were on active duty with the armed forces. One of them, I think, was in Korea, but he knew he would be back here in time to serve in the legislature. Now, would this prohibit a man like that from running for office?

Mr. Jenkins: No, Jack. As I appreciate the Executive Committee Proposal, it prohibits them from serving in those two capacities; it would not prohibit a person from running while in one of those positions, so....

Further Discussion

Mr. Abraham: Mr. Chairman, fellow delegates, let me read to you the article in the present constitution on dual officeholding. Article XIX, Section 4, says "no member of congress nor person holding or exercising any office of trust or profit under the United States, or under any State, shall hold foreign power, shall be eligible as a member of the legislature, or hold or exercise any office of trust or profit under the State, nor shall any person hold or exercise at the same time, more than one office of profit, except that of justice of the peace and rotary public provided this section shall not apply to officers in the Reserve, United States Army, Navy, Marines, and National Guard." Now, we have a provision in the present constitution prohibiting dual office holding. By reason of the provision that was there, because there was no means by which determinations could be made of whether a particular position was dual office holding or not, we attempted to strengthen this provision. Now, the intent on the part of this proposal to prohibit a person from being on, say, the city council of a small town and working in a lesser job with the highway department. There is nothing in here to prevent a policeman from running for the city council or being on...not running for the city council, but for being on the school board. What we're trying to prevent here is a person using his office to further his own personal means. Now, Paragraph (d) of this proposal clearly states that the board of ethics will be able to make rulings and determinations, and will be able to make general rulings exempting certain people from the provisions of this office holding. Because this provision does not adversely affect the interest of the state, and this person can hold these two jobs or he can hold this one elected office and hold this other job, what we are trying to prevent for instance, is a person who is on a school board--an elected office--from promoting himself into a job as a school bus driver, or from a person who may be in the legislature, from promoting himself into a job with the highway department. This is the type of thing that we're trying to prevent in this article. There is a part pertaining to on the committee, or on the part of this proposal, to say that this guy who's got this small job--part-time job--with the highway department or small...can't do party-time as a deputy sheriff or anything like that. Because there has been no one to make rulings on these things, to really say whether this is dual
officeholding or not, we have provided for a board of ethics. Now, we went through this committee proposal and a number of different versions of it. All of this fits in with this code of ethics. I urge the rejection of this Anzalone amendment, if you please, because there are two things to pass, then how are they going to determine what is dual officeholding and what is not? I say the best way to handle this is to make a strong restriction, and that is the board of ethics, and the restrictions whenever it sees that the interests of the state are not adversely affected. I urge the rejection of this amendment, and the adoption of the proposal as submitted by the committee.

Further Discussion

Mr. Arnette I would like to talk briefly on the committee proposal and on the amendment under consideration. First of all the committee proposal, the intent of the particular provision, was to do away with all the abuses that you hear about on the press:—hear about on the radio and T.V.—about people holding two different offices or having several little state jobs. This is what we sought to get rid of. Secondly, the section as proposed by the committee does not prevent anyone from holding two office-holding jobs against the state interest. It doesn't flat out prohibit any dual employment. If you want to hold two jobs, you can, as long as it doesn't conflict, if it is not against the interest of the state for you to hold these two jobs, then you get permission from the ethics commission to do so, or the ethics board to do so. The third point, any man who has honest intentions, and non-conflicting positions, need not fear this provision at all. It doesn't prevent him from holding two jobs in state government, or one in state government and one in local government, if they don't conflict with the state interest, and that's the way this particular section was described. Another point: if this was designed to get rid of the political hacks, the political deadheads, who hold more than one state employment or hold a office and, as a consequence, get state employment,—this is what it was designed to prohibit. An honest hardworking individual, the tobacco chewers back home that some people are always talking about, don't have anything to fear from this, because it isn't aimed at them. They can hold two jobs; they can hold three; they can hold five if they don't conflict with the state interest, and that's the way the provisions written and that's the impact it will have. The board of ethics could very easily make several general provisions, do this dual employment provision; they could make a hundred general provisions that are not against state interest. If a close case comes up, sure, there should be a decision, and they should be nine times out of ten, or probably more than that, they wouldn't have to be any special decision. But let's get down to the real meat of it. People have brought up the issue of apple pie things like, well, my poor old man back home, he's making twenty dollars a year, and you're preventing him from earning another twenty dollars at another job. No, we're not preventing him from doing that we're not preventing him from doing anything like that, unless it is against the interest of the state for him to hold more than one job, that's what we seek to prevent, that's what the section provided by the committee does. It doesn't prevent this, any more than holding dual employment with the state, only if it conflicts with state interest, and that is, I think, a we want to prohibit, I think this section is not doing it. We want you to recognize dual officeholding, meaningless, dual employment provision such as we have now, or do you want something that is going to be a free for all? Well, we can put up a law on the books that what the law is and we can have it to you that the committee proposal was not exactly what it appeared to be, but I hope all you to leave it in the legislature. Mr. Chairman, if there are no other amendments that I have the previous question.

Mr. Warden Mr. Chairman, I want to say that this is just a nice way of doing things. I think in our legislature for that way a dual office holding is we are not going to be in the best interest of the people.
65th Days Proceedings—October 11, 1973

Mrs. Warren If it affects him, if it was in his interest, how could you then say it wasn't also in the interest of the people, whether it was or not?

Mr. Gauthier I agree with you.

Mrs. Warren Alright, then, so what we're doing...passing the buck. We've been doing it six months, and we've been working on it six months and we can't come up with nothing, so you delegate just go home because we, in this committee, can't come up with nothing. This is what you're saying, is that right?

Mr. Gauthier I don't follow you completely, Mrs. Warren, but if you're saying we're passing the buck to the legislature, I would have to agree with you to some extent. Yes, we are passing the buck, simply because I don't think we want to outline in this constitution what exactly dual employment is, what dual office is, and then go into the list, from what I could understand, it could entail a very long list of what dual employment is. I feel, at one point, it will have to be listed, and certainly not in this constitution.

Mrs. Warren One more question, real clear. Now, the committee. Mrs. Anzalone said the committee had worked on this for six months, and they couldn't come up with nothing.

Mr. Gauthier That's correct.

Mrs. Warren Are you all saying that just because you worked on it six months that you can't spend a little time and do something with it?

Mr. Gauthier No, I'm not saying because I wasn't on the committee, but I don't think we have the time now, and I don't think the constitution is the place to do it. I think, rather, that we should mandate that the legislature do it, and that's what this amendment does, Mrs. Warren.

Mrs. Warren To pass the buck.

[Previous question ordered. Quorum Call: 109 delegates present and a quorum. Amendment reread. Record vote ordered. Amendment adopted: 86-29. Motion to reconsider tabled.]

Amendment

Mr. Poynter These are technical amendments [by Mr. Casey] going to the title of the proposal. On page 1, delete lines 6 and 7 in their entirety and insert in lieu thereof the following: (it deletes the title and inserts this) "Defining and regulating dual employment and defining, regulating and prohibiting dual officeholding in state and local government". An amendment to the title.

[Amendment adopted without objection. Previous question ordered on the Section. Section passed: 102-11. Motion to reconsider tabled. Previous question ordered on the Proposal. Proposal passed: 104-10. Motion to take up other orders. Record vote ordered. Motion

adopted: 67-40. Rule suspended to allow Committee on Legislative Powers and Functions five additional days meeting time to study Style and Drafting recommendations.]

Report of the Secretary
[I Journal 626]

Personal Privilege

Mr. Fontenet Fellow delegates, if you give me your attention for a minute, I'll try to explain some of this information that's being passed out at the present time by the research staff. I went to the tax commission yesterday, and I got some information concerning the assessment rolls, which I didn't have the information during the committee discussion on this proposal on our Revenue, Finance and Taxation Committee. But, I do have the information now. For what it's worth, look over it and see what your assessment rolls in your parishes look like. Go over it with your tax assessor. Ask him what it means, and next week whenever you have to decide on some of these very crucial issues, especially concerning homestead exemptions, raising them or lowering them, see what effect it will have on your tax rolls. I was one of the members on the committee on Revenue, Finance and Taxation. I was the youngest member, and I probably had less knowledge of the whole tax structure. I really want you to get this information so next week whenever you do start voting, you can make some kind of intelligent vote. I don't necessarily ask you to vote the way I vote because I'm not always right, but I do want you to have some information behind you that you can make an intelligent vote. This information, if you look at it very closely, will be helpful to you. I hope so. Thank you very much.

[Motion to adjourn to 1:00 o'clock p.m., Wednesday, October 17, 1973. Record vote ordered. Motion rejected: 54-54. Motion to adjourn to 9:00 o'clock, Wednesday, October 17, 1973. Record vote ordered. Motion adopted: 60-55.]
Wednesday, October 17, 1973

ROLL CALL

Delegates present and a quorum.

PRAYER

Mr. Burns

Let us pray.

Our heavenly Father, we thank Thee for having brought us back safely over the weekend. We ask, as we approach one of the most important weeks of this Convention, that Thou would give us the necessary wisdom and tolerance and patience that we may act in the best interest of the people and the taxpayers of the State of Louisiana. W- ask this in Jesus's name Amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Mr. Rayburn

Mr. Chairman and fellow delegates, our committee has met for several months, as you’re well aware, and I think that we have one of the most divided committees that I have ever served on, or have ever attempted to chair. I have had a very difficult job in trying to have a quorum, and I think we’ll probably make a little progress now. So, finally we called the third vote, and I said, well, we'll probably make a little progress now. So, finally we called the third vote, and I said, well, we'll probably make a little progress now.

Explaination

Mr. Rayburn

Mr. Chairman and fellow delegates, our committee has met for several months as you're well aware, and I really believe that we have one of the most divided committees that I have ever served on, or have ever attempted to chair. It's so divided that on our last meeting I think we had five votes which were tied. Finally, two members had to leave, and I said, well, we’ll probably make a little progress now. So, finally we called the third vote, and I said, well, we'll probably make a little progress now. So, finally we called the third vote, and I said, well, we'll probably make a little progress now.

Motion to waie
at least seven amendments to our present constitution, and changing some fifty statutes and our laws to guarantee to the people that their property taxes will be fair and will not be shifted from one taxpayer to another to any great extent. In closing, please understand that the total proposal, as it is called, "the assessors' plan," is based on a meaningful homestead exemption, which would not only allow the exemption, but would, in fact, reimburse the taxing districts with the funds lost through this program. I ask your favorable consideration to this proposal, with the recommended amendments, and I'll be happy to answer any questions that you may have.

Questions

Mr. Burson Mr. Mire, one question that I haven't been able to get the answer to in the reading and so on that I've done--or I get different answers from different people depending on who I ask--is what basis does the Louisiana Tax Commission use for taxing public utilities? What percentage of value?

Mr. Mire There are various bases by which they arrive at values for public service properties. Some is what they call schedules, or so much per mile for poles or wires or something like that, and that mileage assessment is based on their cost when they, in fact, put that line down or put that set of wires out on the poles. Some other properties are based on the present cost today. They use different bases...

Mr. Burson Well, then, what percentage of that basis do they assess it?

Mr. Mire Well, in some cases twenty-five percent of it, but it could be a cost that some of the intangibles are taken out of. So, it's a cost of the real property, and not the total cost of the installation of the total thing.

Mr. Burson Now, is it correct to say that this Section I of the committee proposal would leave the assessment of public utilities to the Louisiana Tax Commission, as it is today?

Mr. Mire No. It would leave it to the Louisiana Tax Commission, but they would, in fact, have to now assess it at the fair market value, and fifteen percent of that fair market value.

Mr. Burson They would have to use the fifteen percent instead of the twenty-five percent, or whatever else they were using right now.

Mr. Mire Yes, sir, and it would have to be based on fair market value, and not on cost or, you know, a broken down cost or schedule.

Mr. Burson Well, the problem I have is: how do you judge the fair market value of a pipeline, a thirty-six inch pipeline, in the ground?

Mr. Mire Well, I'm sure that that is a problem to many people, but there are, I can assure you, ways of appraising pipelines for any property, or anybody's property. They have to have some measurement of their wealth somewhere, in stocks, in accounting, and, of course, we could in fact demand these documents.

Mr. Burson The reason this problem concerns me is in St. Landry Parish we have a hundred, three million assessment total and twenty-three million of that is public utilities, so it seems to me that if we drop them from twenty-five percent down to fifteen percent that we've lost approximately forty percent of one-fifth of our total assessment under the present scheme.

Mr. Mire It's the consensus of the assessors and the Louisiana Tax Commission that if public utilities are assessed at fifteen percent of fair market value, statewide, they will probably appreciably go up instead of down.

Mr. Burson Would you believe me if I told you my assessor doesn't see it that way?

Mr. Mire Well, I would probably believe you, yes, but he probably hasn't looked in depth at it because it is positively worth more than what they are using on their reports today.

Any other questions?

Mr. Champagne Mr. Mire, are you in agreement that in all probability this convention should settle this on a statewide basis, rather than leave it to parish by parish, because if we do not, we may involve some problems in courts later on?

Mr. Mire Yes, sir, very much so.

Mr. Champagne So, we should definitely try to get the best of our ability to settle this problem on a statewide basis?

Mr. Mire Yes, sir, and have a statewide uniform base.

Mr. Keen Peg, one of my difficulties is trying to understand the categories or classifications that you've broken down your property into. One of the questions I have is what does the committee define as improvements to residential property? Would that include an apartment building, for example?

Mr. Mire Yes, sir, it does, sir. It will be all residential improvements.

Mr. Keen So, that an apartment building which is productive of rent, used commercially, would then be assessed at ten percent of its value, while the inventory of the corner grocery store would be assessed at fifteen percent of the value.

Mr. Mire That's absolutely right.

Mr. Keen What is the basis for the committee's distinction in that regard?

Mr. Mire Well, we feel that residential properties, you will in fact be helping the renter, the homeowner by having this particular assessment; and then on your businesses, they have ways of writing off and charging off some of these taxes a little bit better than the residential people.

Mr. Keen ...I believe you made some comment about other amendments. Did you say there was a proposed amendment with respect to the homestead exemption, and if so, what is your recommended change?

Mr. Mire I really think we ought to wait, you know, to when we discuss the homestead exemption section...

Mr. Keen Well, it makes a difference to me at this point because if you put certain property on, at ten percent of its value, and then have a high homestead exemption, you are in a fact creating an exemption rather than a classification in your first section. Are you not?

Mr. Mire Well, then, in that case the majority of the committee decided to, in fact, amend our proposal to four thousand dollars for homestead exemption and five thousand dollars for veterans and people over sixty-five.

Mr. Keen Now, one other question: in East Baton Rouge Parish, as I understand it, talking with the assessor, he puts inventory, for example, on the assessment rolls at thirty percent of value. This would reduce it down to fifteen percent of value.

Mr. Mire That's correct.
Mr. Kean: Now, will East Baton Rouge Parish, for example, make up its loss in tax base under those circumstances?

Mr. Mire: Again, Mr. Kean, I think if you question your assessor a little bit closer, that if he does get real and actual inventory figures, that he probably feels that he will not lose any tax base in the East Baton Rouge Parish.

Mr. Kean: Well, he says he will, and that's what concerns me.

Mr. Mire: O.K., I'm going again by the Louisiana Tax Commission. These are the people that accept these reports. Of course, they are certainly checked by the assessor, but if we get accurate inventory figures, statewide, from the business people, although many of them are using twenty-five percent and twenty percent, we feel that at fifteen percent we're not going to lose any tax base there.

Mr. Kean: You would then anticipate, for example, that insofar as land is concerned, on which there are no improvements, that the raising of that to ten percent would then offset the loss on other property when you bring it down to fifteen percent?

Mr. Mire: There will be some shift in where the value is going to be, and there will—there's no question about that—but not exactly how much, where it'll go, I don't know. I can only answer in my parish as to what would happen.

Mr. Kean: Well, this is what bothers me is trying to find out, in light of these percentages, where the shift in the tax burden is going to go, and can your committee tell us that?

Mr. Mire: Well, in various parishes, it's going to go to various properties, depending on the practice in that particular parish. But, now it's going to be uniform statewide. It has not been that way before, as brought out by the court case. Now it will be.

Mr. Kean: But, you do acknowledge that these percentages, with varying percentages between different kinds of property, will bring about an adjustment in the tax burden and will place on some properties an increased tax burden.

Mr. Mire: Yes, but we feel that the percentages that we have proposed will shift the burden of taxation the least from the people that are presently paying it today.

Vice Chairman Casey in the Chair

Mr. Abraham: Mr. Mire, in the Paragraph (E), where you are saying the legislature may provide for the determination of use value, or the use of a use value factor in determining the fair market value or the assessment ratio, what do you do where you have, for instance, two pieces of commercial property side by side within a municipality, and one is being used, say, as a department store, and as such that particular piece of property has a very high fair market value because it has an operating business on it, whereas, right next door to it, you have a piece of property that, maybe there are a couple of homes on it, and these homes are being rented out for beauty shops and this type thing, and, as such, do not produce but very little revenue? Is any consideration being given to use value in that determination?

Mr. Mire: No, sir. In the proposal, the use value will be, I believe, proposed to be used in horticulture, agriculture, and that sort of land, farm land.

Mr. Abraham: Well, don't you feel that that would pose an inequity, that simply because this person owns a piece of commercial property which could be probably developed, or if you had a buyer for it, that the income from this beauty shop that might be located in this old house opposite this piece of commercial property does not actually pay the taxes, or barely pays the taxes?

Mr. Mire: I believe that the appraisal concepts of today consider the highest and best use, and certainly, the use of the property is one of the considerations, but they don't get around the moral appraisal norms, if you're going to have a statewide uniform assessment, and adhere to the constitutionality of the suit and laws in the state, you'll have to apply it like the law says apply it.

Mr. Abraham: One other question you stated awhile ago that, in assessing this piece of land, and so forth, fifteen percent that if they got the figures, which they normally get off of an income tax return or something like that, that the assessors would actually get more money...rather the parishes would get more money. Well, on what basis, then, are you going to arrive at the fair market value for homes and businesses?

Mr. Mire: Well, this would be based on some appraisal practices on homes and businesses, and, of course, on inventories income tax returns are not always the most accurate figure in getting an inventory.

Mr. Abraham: Well, under the present constitution, aren't all these homes and businesses and property now supposed to have been based on fair market value, and everyone is supposed to be using some standard appraisal practices?

Mr. Mire: That's absolutely right.

Mr. Abraham: But, they have not been doing so, have they?

Mr. Mire: That's absolutely right.
uniformly?

Mr. Mire  Let me say this. The assessment on a statewide basis, in fact, based on the equal protection of the law. Any other proposal, other than on a statewide basis, would infringe on equal protection. Well, if these classes have been upheld by the United States Supreme Court as recent as this year, that you can even have classes that carries no taxes as versus some that carries a certain percentage of taxes, and say that it's absolutely permissible.

Mr. Jenkins If, in fact, this plan does meet the legal requirements of the concept of equal protection, don't you think that it certainly violates the spirit of such a law in that it tends to arbitrarily help or hurt different categories of people, depending on the types of property that they have and the uses to which they're put?

Mr. Mire No, I don't feel that way, Mr. Jenkins. I honestly feel that this will hurt the least amount of people possible. In reference to the people who have the least for one percentage, which would be residential properties, these people have no way of deprecating these properties. They pay on appreciated value instead of just cost value, and I think that they're going to continue to pay throughout the years and never can write this off except the specific tax dollar, and I feel that nobody's being discriminated against.

Mr. Jenkins Well, I have one final question then. Don't we have, though, a mechanism to take a count of the question you raise, namely, the homestead exemption? Since we have a homestead exemption, shouldn't all property be assessed at the assessment on a state wide basis, and if then we want to give the homeowner a particular exemption, we can do that? But, why should we assess the homestead at a different ratio from other property and then come back with a homestead exemption as well?

Mr. Mire You can't look at just homestead exemption. There are many, many, many other exemptions that you have to look at, such as farm implement exemptions, industrial exemptions, the various exemptions for different businesses, and some of the inventories, some of the imports, and you've got to look at the whole picture, and this is what we've tried to do. I'm not saying that your argument doesn't have some merit, but we've considered it and don't feel that we've come up with what will be fair to most of the people.

Mr. Lowe Mr. Mire, Mr. Kanot asked you a series of questions, and I think in that series of questions he hit the meat of what we debated for several months. I'm not sure that the delegates got the complete idea of the problem that we had. Don't you agree that our major problem, in all of our deliberations, was trying to establish in our minds what the tax base, at the present time, really is?

Mr. Mire That's absolutely right, Mr. Lowe.

Mr. Lowe And if we knew what the tax base really was, that we could put a pencil to it and tell what actual effect we were going to have from the various percentages and homestead exemption that we've been dealing and talking about.

Mr. Mire You're absolutely right, and the only people that would have any dramatic tax difference in what they're paying today are those who were not assessed properly in a specific class.

Mr. Lowe Right. Now, the next question is, don't you believe that we have to have some difference in classification, and he addressed his question to classifications--don't you agree that we have to have some lower classification for residences and residential property as compared to commercial and industrial property? Don't you think that we have to have a higher percentage on commercial and industrial properties to maintain the present tax base that we have?

Mr. Mire That's absolutely true, sir. That's exactly how I feel.

Mr. Lowe So you would agree that if we came up with one percentage that we would have a much larger shift in the tax burden from one segment of the community--residential community to the business community or vice-versa--depending upon where that percentage was established?

Mr. Mire Yes, sir. I definitely think we'd have a much greater shift of the tax burden.

Mr. Lowe So we want to try to stay away from one percentage, and stay with some difference between the two percentages between residential and commercial?

Mr. Mire Yes, sir.

Mr. Lanier Mr. Mire, I'd like to direct your attention Subparagraph [10] dealing with the assessment procedures in the present constitution, the Tax Commission has the authority to require uniform assessments, and that's in the present constitution?

Mr. Mire Yes, sir.

Mr. Lanier Is that contained anywhere in this proposal?

Mr. Mire Yes, it is.

Mr. Lanier What paragraph?

Mr. Mire The proposal itself says that properties will be assessed uniformly statewide, and then it only says who will assess specific properties, you see. It says "And the assessor will assess a certain type of property and the Louisiana Tax Commission will assess the other type," but they are charged with the responsibility of using fair market value.

Mr. Lanier Well, suppose somebody doesn't use fair market value, is it your opinion that, even without authority in the constitution, and with no statutory authority, that the Tax Commission could require an assessor to assess at fair market value?

Mr. Mire Well, I don't follow your question that this proposal does not provide for fair market value assessment.

Mr. Lanier I know it does, but I'm getting at... suppose somebody doesn't?

Mr. Mire Well, the legislature will have to provide for a police action of a sort that will make it positively that the local governing authority and/or the Tax Commission, both jointly or individually, can, in fact, come in and check and make the assessor do it under certain penalties.

Mr. Lanier Is there any provision in here that says that the legislature shall do this?

Mr. Mire Well, of course, it says that they will establish the law, and I assume that they will because there will be many, many local taxing authorities looking at them to do so. This was discussed at length, and we certainly would like to be positive about that that it will have to be done. We feel that the court order will mandate it, you see. You know, even so.

Mr. Lanier What is the present law with reference
to the authority or ability of a parish governing authority to review an assessment?

Mr. Mire No, sir. Well, presently, he can review the tax roll and recommend to the Louisiana Tax Commission, changes. This is done on an annual basis.

Mr. Lanter Can the local government itself, make any changes or does it only recommend?

Mr. Mire It can only recommend to the Louisiana Tax Commission.

Mr. Lanter Under the present constitution, does the Tax Commission have the authority to mandate the assessor to make changes?

Mr. Mire Yes, sir.

Mr. Lanter But, that authority is not specifically granted in this proposal, is that correct?

Mr. Mire No. We would like that to be statutory.

Mr. A. Landry Mr. Mire, just like Mr. Burson from St. Landry, Lafourche Parish is very much interested in pipelines, and you mentioned a while ago that they were assessed at twenty-five percent of the cost of the pipeline. Is that correct? Did I understand you to say...

Mr. Mire Not necessarily. Some pipelines carry a schedule, but a hundred dollars a mile or twenty-five hundred dollars a mile, or fifty hundred dollars a mile, depending on the size of the pipe. But, that schedule was based on a cost, but that cost might have been twenty years ago. The procedure that they're using is as antiquated as the procedure most of the assessors are using.

Mr. A. Landry In other words, at the present time as I'm looking at a schedule by the Taxing Commission for a thirty-six inch pipeline assessed at twenty-five thousand nine hundred dollars a mile, what assurance do we have, when we seal it at fifteen percent, that this assessment is not going to be reduced?

Mr. Mire Well, the only assurance you have is that...what size pipeline did you mention?

Mr. A. Landry Thirty-six inch pipeline.

Mr. Mire Do you think that a thirty-six inch pipeline—one mile of it—will cost, say what, a half a million dollars? Then fifteen percent of that, what.

Mr. A. Landry I don't know what it costs.

Mr. Mire Not cost, but worth. The only assurance you'll have is that it will be assessed at fifteen percent of what that pipelines fair market value is, you see. Of course, we feel that it is going to be certainly as much, if not considerably more, than the schedule that they are presently using.

Mr. A. Landry So you feel pretty sure that it will be at least that amount or more, is that correct?

Mr. Mire Yes.

Mr. A. Landry Alright. The second thing, I have one more question in regard to valuing in percentages of properties—fair market value of properties—and I'm sure that you're familiar with the fact that over a period of years that we have seen a depreciation of values of land in the state, what happens if, in the future, due to environmental reasons that the value of property drop. What happens to our maintenance millage when we're sealed with a percentage?

Mr. Mire Well, of course, you have no protestation on that today. If the economic situation of a...
of assessor's office, as I mentioned about maps, and about staff, that could, in fact, make these audits or be qualified to make them.

Mr. Goldman Would you agree that although all businessmen in this state are strictly honest, they have various means and ways of providing their inventory values at much less than what they actually are?

Mr. Mire Yes, I believe some people call that a sophisticated bookkeeping system, or something, but I would agree with you, sir.

Mr. Goldman If the tax on inventories is fifteen percent, would you agree that it would provide the incentive for the business people to give a truer value of their inventories, and, also, the assessor's office could check them a whole lot better?

Mr. Mire That's absolutely so, and a very good point because at one time the disparity was as much as from seventy-five percent to, say, fifteen percent, and you couldn't hardly blame a businessman to try to not waste more in line with the other taxpayer.

Mr. Goldman Would you agree also that when we talk about the small businessman as versus the large wholesaler, distributor, businessman, that it's easier at the present time for the tax assessor to reach or get a true of the small businessman's inventory is, and he pays through the nose, whereas the larger business possibly gets a whole lot more break now than he would if we got the true inventory value from everybody?

Mr. Mire There's no question about that. You're absolutely right.

Mr. Roemer Peg, did you address yourself to the problem of the state not now being in the ad valorem tax business, but someday might be? Have you talked about that? Shouldn't we exclude the state from the property tax business? We don't in this proposal. What's your feeling on that?

Mr. Mire My personal feeling is that the state should be allowed to, in the future if they deem necessary, to get back in the ad valorem tax business. It could be to have a meaningful homestead exemption, or even if our oil minerals would continue to be depleted, very possible we'll have to go that route.

Mr. Roemer So, you're saying that we should allow the state the option, at some future date, if the conditions warrant it, to get back in the ad valorem tax business.

Mr. Mire Absolutely.

Mr. Roemer Alright, and that's opposed, kind of, to the local and parochial recommendation, Section 37, which would exclude them from the property taxes.

Mr. Mire Yes, it is.

Mr. Roemer I just wanted that brought out. I happen to support your position.

Mr. Mire Thank you very much. Thank you very much for bringing it out.

Mr. Shannon Mr. Mire, for my information, can you tell me what the consensus of opinion was of what fair market value is?

Mr. Mire Well, fair market value is what a free seller would sell to a free buyer, some certain property, or what the market would, in fact, bear. Even though it would not be, for instance, for sale, but it has to be what appraisals would arrive at.

Mr. Shannon Well, if you don't have any record of that, how are you going to determine it?

Mr. Mire There are many ways to determine it. There are very few properties that some light property doesn't sell somewhere along the way. If it's something that never sells, that you have nothing to go by as to actual sales, then you'd have to look at their worth and see what, in fact, it is worth in some sort of bookkeeping system to be able to tell what it's actually worth.

Mr. Shannon Alright, let's get down to Section 7, Amendment, Paragraph E. Can you give me a little idea of what your use value is?

Mr. Mire Well, of course, use value--there's about thirty-one of the forty-eight states presently using this today--and the legislature has set different criteria in different states, as at... arriving at use value, but it would be based on the productivity of that land and what you could afford to buy it for producing--what that particular property is producing, not that specific property, but what that general area is producing in the area. That's generally the concept.

Mr. Shannon Now, again, in Section C, (E), you say the assessor shall determine the fair market value, and you go in (E) and you say the legislature may, why differentiate here?

Mr. Mire Well, the assessor shall determine the fair market value on all properties except the public service properties. The assessor will determine the use value, as prescribed by the legislature, on farmlands. He'll just have to hire the qualified staff to help him do this.

Mr. Shannon Do you have any idea what this cost might be?

Mr. Mire No, we're studying this, and it'll be considerable.

Mr. Shannon Thank you.

Mr. Mire But, this is not something that we've asked for. It's something that the courts have said we must do.
Mr. Mire. Yes, sir, that would be true if you had, let's say, no classification in all property whether it be land improvements on residential property, and all property had the same percentage.

Mr. Mire. Yes, that would be true where the land would certainly have to be assessed at a percentage higher than the rate, let's say, fifty percent. No matter how much you reduce the millage by bringing up that value, say four or five time, more than other properties, even though you would reduce the millage on all properties equally, they would still have to pay four or five times more taxes on that class of property.

Mr. Casey. And would that be true if you had, let's say, an average of acres, and that land is the same property at all the same assessed areas, yes, and it be land improvements on residential property.

Mr. Mire. Well, of course, what would happen, you would shift the tax burden from other properties to land because land, traditionally, has been assessed at a lower rate. No matter how much you reduce the millage by bringing up that value, say four or five time, more than other properties, even though you would reduce the millage on all properties equally, they would still have to pay four or five times more taxes on that class of property.

Mr. Casey. And that percentage are state-wide from these forty-three parishes is that what you all had calculated?

Mr. Mire. Yes, it was roughly, one hundred, in place of eight percent which we had used to eighteen to twenty percent to try to, at the time, satisfy some of the house assessed areas, but we weren't able to really tell on that.

Mr. Hernandez. Mr. Mire, in question related to Paragraph 19, if the legislature were to discuss the matter, and like to preface my question by making just a few short statements. The first place, as you well know, timber is the only renewable natural resource that we do have. The amount that are renewable and produces in timber depends almost entirely in the way it's handled, the management—that is, planning the way it's planted or whether it's planted at all or not—your fire breaks. All of these problems, there are several that go into determining how much acre of land produces, and the production of that land is governed by the economy of the parish. In other words, it's related—closely related—the production and the economy of the parish. Now, my question is simply this: In Paragraph 3 it says the legislature determines the assessment value of this land state-wide, won't that have a tendency to discourage what we have been trying to do as to costle or even force the large landowner to plant this land, and care for this timberland to increase the production.

Mr. Mire. Well, Mr. Hernandez, you made a very good point at the beginning and you stated now, you know, it had to be well though out of to be able to, in fact, set out a real good land use committee. This is what I see, it is the land use and the state-wide basis I'm speaking of in all cases.

Mr. Mire. Well, the best information that we could get from any parish, many of the parishes that responded to, basically what they felt their property was being assessed today, it seemed like twenty, fifteen, and ten was the one that would more follow what's happening today. We found our position...

Mr. Casey. Twenty, fifteen, and ten what?

Mr. Mire. Twenty percent on inventories and public utilities and that sort of stuff, fifteen percent on land improvements, and ten percent on land, which is what we initially had suggested, or the assessors had initially suggested, but, with a fair greater homestead exemption as we presently have.

Mr. Casey. Alright, well, that would follow then. What were those figures taken into consideration with the increased homestead exemption? How does this affect in those percentages, because that's certainly an important factor?

Mr. Mire. In adjusting the percentages, we, of course, adjusted the homestead exemption. We brought the residential improvements down from fifteen to ten percent and that allowed for an adjustment in homestead exemption.

Mr. Casey. Those were those percentages, twenty, fifteen, and ten, considered in relation, though, to the existing homestead exemption of twelve thousand dollars? Those are the, apparently, the average percentages that are used at this time with a two thousand dollar homestead exemption.

Mr. Mire. This would be, if you take everybody's and this is what we arrived at using every parish...yes.

Mr. Casey. Those are today's figures?

Mr. Mire. Which, of course, we're still at that particular figure with the exception of the twenty percent on inventories and public utilities. We're down to fifteen percent on that and we went down on improved land to ten percent, on residential improvement to ten percent.

Mr. Casey. And those percentage are state-wide from these forty-three parishes is that what you all had calculated?
Mr. Hernandez Thank you very much, sir.

Mr. Mire Alright, sir.

Mr. LeBleu Mr. Mire, you were mentioning the statewide uniform assessment. Would the assessment in each parish be done by the parish assessor or would one, say, statewide board do that assessing?

Mr. Mire No, sir. Without proposal it will be done by the individual assessor...in each parish or taxing district. Now, it will be supervised by the Louisiana Tax Commission. They’ll have, certainly, supervision, and they’ll have a right to come in and see that he is, in fact, doing his job, and they’ll have a right to penalize him, and the local governing authority will have that same right.

Mr. LeBleu Well, it was mentioned awhile ago about the for-profit tax state to go back into the ad valorem tax business...I think Mr. Roemer mentioned that—and the state is not now in the ad valorem tax business.

Mr. Mire No, sir, they’re not, but they are not prohibited from going back; they just, you know, aren’t not in it. But, they are not in fact prohibited from going back. This is all we want to do is just not prohibit them from going back. We don’t want to tell them to go back—leave that, you know, to you all, to the legislators.

Mr. LeBleu Yes, sir. Well, what I was getting to is since the statute is no longer in the ad valorem tax business and collects no ad valorem tax from property owners throughout the state, it seems to me that the governing authority of the parish should be allowed to grant as much homestead exemption as they wanted—say, if we provided a minimum amount here and allow the parish governing authority to set their own homestead exemption because they are the ones who are really involved with the use of the taxes that they collect in each parish.

Mr. Mire With a minimum homestead exemption in the constitution on a statewide basis, I personally would have no objection to your concept.

Mr. LeBleu Another thing; Mr. Mire, you mentioned on this uniform proposal, statewide proposal: assessor’s office would be required to probably hire more personnel, probably a whole lot more equipment, etc. The statutes allow a certain percentage by the legislature of the amount of taxes that are collected, am I correct?

Mr. Mire Well, no, our expenses are fixed by the legislature which we, in fact, get through a percent of the collectable taxes, but we don’t have a fixed percent like the sheriff’s office; we’ve got just a fixed amount by parish.

Mr. LeBleu I see...

Mr. Mire Based on a schedule, you know, that we have had for the last six years or so.

Mr. LeBleu In other words, in order to provide for this additional equipment, etc., you folks would have to approach the legislature to increase that...your office expense in that particular manner.

Mr. Mire Positively—and justified to you all—positively.

Mr. LeBleu Thank you.

Mr. Dennery Mr. Mire, as I understand your committee’s proposal with the amendments which you have suggested, it would mean that residential property of a value of forty thousand or fifty thousand, depending upon whether the homeowner was a veteran or over sixty-five, would be exempt from all taxation; is that correct?

Mr. Mire It would be exempt of all taxes covered under the Homestead Exemption Act, not special districts and such things as that that aren’t and certainly not of municipal taxes in any area but New Orleans.

Mr. Dennery Now, are there any figures which reflect the average valuation of a house today, a residence which is covered under the homestead exemption?

Mr. Mire I think the Census Bureau, you know, has those type of figures, but they are figures that are now a few years old, and under the appreciated values of the materials and labor and what have you in building homes, this is hard to keep up with on a day-to-day basis. But, I would personally estimate that I guess roughly twenty thousand or twenty-five would be the house that’s being built, constructed as a normal residence today.

Mr. Dennery And that house under the present practice, would that have a complete homestead exemption today?

Mr. Mire Yes, particularly in New Orleans. But, in all other municipalities they would have to pay based on what taxes these cities pay. This is the point I want to emphatically make that every other municipality in the state, when we do revalue these properties, are going to have a larger tax base, and these homeowners are going to have to pay more taxes to the municipalities, except the city of New Orleans.

Mr. Dennery Now, one final question, please sir: Under the present constitution the assessors are supposed to assess property at what we now call fair market value—I think the language is slightly different...

Mr. Mire Its actual cash value...yes, sir, Mr. Dennery.

Mr. Dennery Would you say that, in general, the assessors throughout the state have not followed this practice?

Mr. Mire I would positively say that. I think that all of them use actual cash value to determine the percent that they in fact assess. Now, this is something that they’ve been doing for time immemorial.

Mr. Dennery I understand that, but what I meant was, do you think they start with actual cash value?

Mr. Mire Oh, yes, sir. I do believe that they have to have some specific norm to follow, and I don’t know how you can determine whatever percent you are going to use without going to actual value.

Mr. Dennery Would you say that the assessors throughout the state have customarily revalued property every five years?

Mr. Mire No, sir, we have not. I think the majority of them will reassess based on sales or when the property is being transacted.

Mr. Dennery Current sales...

Mr. Mire Unofficially, I believe that the assessor will usually do it immediately after the sale even before the sale, and if you feel you would guarantee the citizens of the state that the assessors would now assess or appraise at the fair market value, and then apply whatever percentages the constitution...

Mr. Mire In our proposal it states that we will have to reappraise within every five year period. I feel that the legislature will have to provide
Mr. Dennery. And the right to enforce that law, would that be. you think. should be given only to the attorney general, to the district attorney, to the tax commission, or to any citizen.

Mr. Mire. I think the local. well, I think every citizen would have the right to assert it.

Mr. Dennery. Thank you.

Mr. Rayburn. Mr. Chairman, I am going to ask various members of our committee to explain the following sections. I would like for Mr. Alario to explain Section 2.

Mr. Alario. Mr. Chairman, and fellow delegates, Section 2, rather self-explanatory in itself, relates to the language that's presently in our constitution. It allows the legislature, if they see fit sometime in the future to increase revenues in the state for whatever need they find necessary to do so in the assessment, and the assessment mills, or adder up to five and three-quarter mills, taxes just as exactly as had been in the past. Last year or so in the special session we removed the five and three-quarter mills tax and replaced it, of course, the revenue with the severance tax--in order that we might be able to remove, or thought we were removing, all the ramifications for asking for a hundred percent assessment or statewide equalization. Now, that we are proposing a statewide equalization, with percentages of ten percent on residential properties and land, and fifteen percent on all other properties statewide, then we feel that in the future the state may just, may want to go back into the property tax business, and if they do, then certainly, they would be able to go up to the five and three-quarter mills. The legislature would be limited, of course, in this fashion, just like in any other taxes, to the two-thirds rule where both houses would have to vote on increasing this tax by two-thirds vote of the members of the legislature.

Mr. Rayburn. Mr. Chairman, I'd like to ask Mr. Chehardy to explain Section 3; Mr. Slay to explain Section 4; Mr. Conroy, Section 5; Mr. Nunez, Section 6, Mr. Champagne, Section 7, and Mr. Bauser, Section 8.

Mr. Chehardy. Mr. Chairman, and fellow delegates, Section 3 is the homestead exemption section and at this point and, based on the contingency that the percentage, and everything else fall, into the proper perspective, will be offered at four thousand or a residence of the average homower, and five thousand with five thousand homestead exemption for veterans and five people over state five this exemption, as you know, and this nothing new extends also to one hundred and sixty five acres. It seems to me that the farmers of the state should be told that the farm up to a hundred and sixty five acres will all be exempt at the rate of four thousand, and if a veteran or veterans or if six persons live together, and Of course, there are the same things in here, which others will explain to you. which will be more simple with it and which would forego any possible hardship plus.

Mr. Slay. I refer to the provisions for the sale of homesteads, incidental with the homestead exemption. The laws of the homestead or homesteads. when we get to the section in full, then, of course, at that time we will give a, in detail, out that section 4 provides.

Mr. Slay. Mr. Chairman, and fellow delegates, Section 4 deals with the 1973 tax acts, and it is believed that it's almost self-explanatory. But, you have to go back to Section 3, which Mr. Alario just explained to you, about the five and three-quarter tax mills that was in last session of the legislature by an amendment. Now in case the state ever needs to, it can go back to the five and three-quarter tax mill. This is saying that if we take this five and three-quarter mills, or any part of that is ever levied, no bonds that are outstanding will be invalidated. If any part of the free and three-quarter mills is needed to retire bonds that are presently being held against the state, that the part that you--Article 1, Section 2, will not egal the state's obligation to pay these bonds. As you read it, it's a very short paragraph and I believe it's self-explanatory, but as we get further along, and if anybody has any questions, we'll be glad to try to answer them. Thank you, Mr. Chairman.

Mr. Conroy. Section 5 deals with the adjustment of the homestead exemption and the homesteads, are designed to alleviate the problem which the taxing authorities might otherwise have or that people, individuals, might otherwise have with the change in the assessment ratio which would have effect in Section 1. Section 1 as you recall, establishes what the ratios of assessments, the various kinds of property would be in the last design of Section 5 is to say that in making the adjustment in millages we're not intending that a local governing unit would make any less in taxes. They're to collect the same overall, same amount of taxes as they would have under the old system, or whatever system was in effect prior to that time. So, now they're to collect the same overall, same amount of taxes as they would have under the old system, or whatever system was in effect prior to that time. Now there are several escape provisons or modifications of this. It's made clear in the last part of the section that this is not to prejudice the taxing authority from collecting additional money in the event they increase millages as provided by law. If they lone additional property on the tax rolls, of course, they're to yet additional monies from that. By reason of increased property values the governing authorities to collect additional money from those. There have been some problems pointed out in this section as it presently exists. One of it I really don't think it's a problem, but it was a matter of concern in the local government community. It is that this section will not allow or to assure that a parishes which has been, in the past few years, say, recognizing a five percent overall increase in tax rolls, they would be able to collect five percent more tax next year after this adjutant went into effect, the year before I think that, at a median, it's intended to have that effect, and I think we have that effect with it having it relatively so recite. The other problem which has been brought to the attention of the committee and was written as it presently written was, in the line of concern, we deal with the question of an increase in homestead exemption, and the resultant loss of revenue that might come from an increase in home homestead exemption. I don't think that the vested property is to deferent in that respect that if the homestead exemption is substantially increased over the level that presently exists in one area, that that increase in homestead exemption would be at the expense of the taxing authority. I don't think that the taxing authority will necessarily worry it would be able to shift the lost revenue that result to an increase in homestead exempted property. Because the revenue that results from the period of homestead property or a ratio of assessment or property which is a home homestead property, or is valued at a homestead property, will it forego exemption in
66th Days Proceedings—October 17, 1973

in Section 2.

Mr. Nunez Mr. Chairman and fellow delegates, Section 6 deals with the tax assessor, his term of office, and his duties. Besides that, the appointment of an assessor in case of death during that time. Prior to 1952, the governor of this state could appoint a person to fulfill the unexpired term. If an assessor were elected for four years and served only two months, the governor had a right at that time to appoint the unexpired term of three years and seven months. However, in 1952, Act 576 of 1952, a special provision was adopted and added to the constitution, which is designated as Section 6 of Article VII. This provision provides the governor could appoint only where the unexpired term was less than one year; otherwise, he was required to call an election within sixty days after the occurrence of the vacancy. During the interim between the appointment and the election of the successor, the chief deputy could act in place of the deceased assessor. The authorization of the attorney general authorized the chief deputy to act as assessor until such time as the governor appointed, or the successor was elected. These two were people of October 5, 1919, May 29, 1933, and November 4, 1965, in the city of New Orleans the board of assessors, composed of seven assessors, would meet and for-

mally appoint a chief deputy as acting assessor until such time as the governor would appoint someone to serve out the interim time, or until an election was held. Thank you.

Amendment

Mr. Poynter First amendment is offered by Delegates Mire, Rayburn, and many others. Now, I believe there were two or three of these passed out, so, this one has... it's a single amendment as opposed to a double amendment.

Amendment No. 1. On page 1, delete lines 23 and 24 in their entirety and insert in lieu thereof the following:

1. All land


Now, there's a very similar looking amendment in which Item 2 reads: "Improvements Used for Residential Purposes." The amendment...that has been withdrawn or not introduced. The one that is introduced, Item 2 reads: "Improvements for Residential Purposes--10."

Explanation

Mr. Mire Thank you, Mr. Chairman, fellow delegates, this amendment simply changes the percent of all land from five percent to ten percent and, in fact, leaves the percent on residential improvements at ten percent. I don't believe that it needs any further explanation. I would like to move that the amendment be adopted.

Questions

Mr. Hayes Mr. Mire, you had all land ten percent and improvements, for residential purpose, ten. That doesn't add up to twenty, does it?

Mr. Mire No, sir, it certainly doesn't, that is just ten percent on each of those classes.

Mr. Hayes I see another amendment here; it says "All land and improvement on residential property"----ten, which looks like it would include the building and the land. This separate one and two, looks like you got the land one thing and then the improvement another--that's why I asked the question, it looked like they were separating them.

Mr. Mire It's just that we are not changing the two classes. We are leaving the land and the one class, and we are leaving the residential improvements under one class, but both will carry a ten percent fair

Mr. Hayes When you put the house on the land, it's still ten?

Mr. Mire Right.

Mr. Hayes All right.

Mr. Stagg Mr. Mire, this is just for clarification. In the committee's printed document, that item two is said to be "improvements on residential property." Then the one that you didn't go with said "improvements used for residential purposes." Then the third one said "improvements for residential purposes." Would you tell me where the distinction lies in the committee proposal, the one you didn't go with and now the amendment that is before the house? What is the difference?

Mr. Mire Yes, sir. Well, they thought that the committee proposal...the language wasn't just completely clear, the fact that it just said "improvements" meant all improvements used as residential property. But, when we decided to use the word "used," we thought then, that it could be that somebody would have--say, rental property--of October 5, 1919, May 29, 1933, and November 4, 1965, in the city of New Orleans the board of assessors, composed of seven assessors, would meet and for-
used as residential property, so you can't assess it this year. So, to clarify that, we then thought the language would be better to--it would be put as the amendment puts it now--"Improvements for residential purposes"--which we felt would just clear the whole thing up.

Mr. Kean Mr. Mire, do I understand that under this amendment, if you had a building which was used for residential purposes on a piece of property, that then you would assign a value to the land and take ten percent of that, then you would assign a value--a fair market value--to the building in the total of the property and take ten percent of that. But, you would not consider the building and the land together for purposes of trying to arrive at the assessment?

Mr. Mire Well, that's correct, you would not. You would have your value on the land and the value on the building.

Mr. Kean Then, you would anticipate, in determining fair market value of the building, that you would have to use some kind of a formula like the reproduction cost less depreciation to arrive at that particular value, because you wouldn't be able to use comparisons which are to both land and the building, would you not?

Mr. Mire Well, Mr. Kean, you are very familiar, I know, from my personal experience with values of properties of which I feel I am fairly familiar with. You know, very well, that when you arrive at the fair market value of property, there are established norms that are considered and that we can't back away from. These are the ones that we purport to use in arriving at a fair market value of a piece of property, no matter what type of piece of property it is.

Mr. Kean But, you would do it...you would break it down into two parts, land and arrive at a value, and improvements and arrive at a value.

Mr. Mire That's correct, sir.

Mr. Kean So, that...would the...in determining the homestead exemption of four thousand dollars, would that be based upon ten percent of the value you gave the improvement, or ten percent of the value you gave the land, or ten percent of the total?

Mr. Mire So long as both values would not exceed the amount of homestead exemption allowed, you'd consider both...

Mr. Kean So that for purposes of the homestead exemption you'd add the two together and take ten percent of that total...

Mr. Mire That's correct.

Mr. Kean If it did not exceed four thousand dollars, then that property would be exempt from those taxes to which the homestead exemption applies.

Mr. Mire Yes, sir. To further clarify your question, and I know that you'll agree with me, that even if when the law provides for a different method allowed either in the constitution or by statute, that the highest and best use of any property becomes really the criteria for the fair market value.

Mr. Kean Well, that's exactly my point, Mr. Mire. Normally, when you consider fair market value, you consider highest and best use and you use either comparable as to some other method to establish that value. But as I understand it here, you're going to break the evaluation process down into an evaluation of land and a separate evaluation of the improvement. Then you're going to take the total of those numbers and take ten percent and if it came out to be less than four thousand dollars, you'd have a homestead exemption which covered that property in the full extent of that property.

Mr. Kean That's correct.

Mr. Mire I think I have any idea what that would be, or what the tax base is. In the past of this state in terms of whether it's going to lower the tax base.

Mr. Kean Mr. Mire, I think that this is exactly what is being done today, statewide, in every case but that we're not having a reappraisal on every five-year or on an annual basis--that this is done only at the time that we're assessing value on a property, but I think this is the very practice that's being practiced statewide today.

Mr. Abraham Mr. Mire, one thing throughout this that still bugs me and that is that we state that the percentage of the fair market value shall be uniform statewide. Now, what provisions do we have to assure us that the establishment of the fair market value will be uniform statewide?

Mr. Mire Well, this is what we're putting in the proposal. It spells out that it will be on a uniform state wide.

Mr. Abraham No, not the establishment of the fair market value. It says that the percentage of assessment shall be uniform.

Mr. Mire Based on fair market value, but the percentage will be based on a statewide uniform fair market value system.

Mr. Abraham Well, what mechanics do we have to assure us that various parishes will be establishing fair market value on a uniform basis?

Mr. Mire I thought I had explained it pretty well. We're going to ask that the legislature do in fact set up the vehicle for inspecting those parishes, either by your local governing authority, the Louisiana Tax Commission, or both, and in fact determining that they are using the fair market value and have absolute evidence that they're using it-- documentary evidence--not anything less than this. Of course, the court says that this is what we'll do too.

Mr. Abraham Well, let me ask one other question then. In establishing fair market value is there any discretion that will be allowed or is it, and I know that it's practiced now on the part of the assessor...of determining fair market value, and we're trying to use because it's a particular item of property which has a commercial building on it, which may be rented or you may have a parking lot next door to it, which actually draws in some income and this type of thing?

Mr. Mire Mr. Abraham, I will try to answer your question this way. As I answered Mr. Kean, we if we go with the land-use concept, greenbelt concept, the legislature would establish the procedure to follow in administering this concept other than that, and I'm sure that you've seen it in the courts everyday. I have never seen any sort of forced sale or any sort of contest where fair market value is something that has to be determined where they don't have an appraiser. In most cases, three appraisers from supposedly experts in the field. They all vary a little bit, and trying to continue to exist, but there's another aspect in practice that's being used throughout this nation that is going to continue to be used.
details as to what happened in our original proposal and why we are trying to change it. If you noticed the Committee Proposal No. 26 that you have in front of you signed by only twelve members of a twenty-three member committee, I think you found that twenty-three felt that we could sign that committee— that proposal, there is eleven of us that did not sign it. This happens to be one of the reasons, the very low rate of assessment, that we felt we could not sign the committee report. We felt that at five, ten, and fifteen percent, that the percentages proposed (1) too low and (2) that the relationship between the percentages proposed (1) five percent, five percent being only one-third of fifteen percent. There was an undue burden being placed on part of the population and too light a burden placed on the other. It was the objectives of all the committee—and I want you to notice in this amendment—twenty-two of the twenty-three members of the committee signed and supported it. It was the feeling that middle ground here, that is, ground that would do justice to the relation between ten and fifteen percent, that is, the group residentially, the middle ground in that it would...these percentages would more closely follow what our statewide averages are now, rather than the five, ten, and fifteen percent. To the best of our ability working along with the tax assessors, working with PAR, working with the census bureau, we found that statewide property is assessed somewhere in the fourteenth and eight percent—give or take a percent here and there. But, that percentage is made up on one side of businesses being assessed at twenty to thirty percent on inventory and that sort of thing, and residential property being assessed anywhere from six to fifteen or up to twenty percent in some cases. The feeling, in other words, is that the ten, ten, and fifteen middle ground doesn't do absolute service to anybody, but it doesn't do complete injustice to anybody, also. It's the feeling that with the ten, ten, and fifteen we can maintain an adequate tax base. Some of you might not agree with that. But, let me point out to you, as the assessors have pointed out to me many times, that the current assessment rates—statewide—are composed of a certain rate on new property and a different rate on the old property, in the terms of the figures we have you to understand that some property has been on the tax rolls for ten, fifteen, and I guess, twenty or thirty years "Fog" and has never been reassessed; it's just...it's practically impossible for the assessor to get around to reassessing all of this property. Today the practice is that he reassesses the property when he is being made that...So, yes, the current sales are fifteen, twenty, twenty-five percent. But, the old property is on the books at a very, very low value that may be more than a point, to points under the court order and under this constitution, we are going to call for a reassessment of all property. So, now all property will be brought up-to-date. So, the ten, ten, and fifteen does, I believe— based on what I can get—does represent a happy, middle ground that will not hurt any parish—this—will not hurt any parish—this—is the historical relationship between business and residences, that is, some small difference in this case—ten percent as compared to fifteen percent. For that reason, I'm supporting this; I think it's a good amendment. I think it serves our purpose well in this convention to support Mr. Mire and the other authors of this amendment.

Questions

Mr. Chatelain Mr. Chatelain, I have some problems that...this is a friendly question. I'm trying to get some clarification. I have been studying for several days the twenty-two contracts, we were changing all land, let's talk about that first.

Mr. Roemer Yes.

Mr. Chatelain From five percent to ten percent. Now, when you...I would like to have a definition of "all land," as you have in this amendment. I'm asked to vote upon "all land" do you mean investment property? all parcels of land...do you mean "all land"? Do you mean all...what it says "all land"?

Mr. Roemer Yes. All land will be valued at ten percent of its fair-market value under this proposal, with the exception of: horticultural, agricultural, and timberland, which will be assessed at ten percent of its use value. But, all land will have this same percentage against it, whether in the fair market or not, it will be ten percent of that value—all land.

Mr. Chatelain Well, that's what I...I want one more clarification. Going back to your committee proposal the words used there were "improvements on residential property." Now, did that mean residential property...means land, building and land?

Mr. Roemer O.K. You will have a ten percent assessment against the value of the buildings and...in addition, you will have a ten percent assessment against the value of the improvements on that land.

Mr. Chatelain All right. Let me ask you...

Mr. Roemer That does not add up to twenty percent. I hope you see that there's two different elements to assets—there is the physical land and there is the improvements thereon. Each will be assessed at ten percent of its fair market value.

Mr. Chatelain In other words, if the land—for instance—a given piece of property is worth ten thousand dollars and the home is worth twenty thousand. What is the total assessment, then?

Mr. Roemer All right. Three thousand dollars, ten percent of ten thousand on the land, which is one thousand dollars and ten percent of twenty thousand on the home, which is two thousand dollars.

Mr. Chatelain O.K. I have one other problem, Mr. Roemer. This problem lies in the area of all other properties. I'm confused, then, between your Amendment No. 2 which would be improvements used for residential purposes. Now, I got to assume that (1) takes care of my land and (2) will take care of my home whether it's a shack or a brick home or whatever.

Mr. Roemer I'm sure you don't live in a shack.

Mr. Chatelain But, I got one other problem. I'm speaking for thirty-three thousand people I represent, not for myself, I can take care of myself, very well.

Further Discussion

Mr. Chehardy Mr. Roemer, fellow delegates, this particular amendment is part of an overall compromise and it fits into our overall plan of assessment. I am supporting it. I am for it. If I would not be elected, I would retain the improvements figures. Actually, these figures here where you reassess the property of this state will probably produce more revenue throughout the State of Louisiana than has ever before...has ever been seen before in our history. I think this, that it does affect a compromise in relationship to the new homestead level proposed that would establish uniform statewide level of assessment with an equality that has never been achieved before, and it will satisfy all of the major faction who have had differences. I urge your favorable vote for this amendment.

Questions

Mr. Den sm ey Mr. Chehardy, I'm confused as to the mechanics of appraising land for residential purposes (A), and then (B) appraising the improvements
on that land. As a practical matter—now you are an assessor—i assure you that the total to be reappraised is the total. Thereafter, under the proposal, if you reappraise the land and buildings, the total will be divided between land and buildings. Is this correct?

Mr. Chehardy: That’s correct, in the past.

Mr. Dennery: Now, under the proposal, if I read it properly, if every five years you are supposed to reappraise and revalue the property, let us assume that land values have remained constant for a five-year period. Previously, there will be a depreciation in the land of that five-year period. Now, how are you going to reappraise at that point?

Mr. Chehardy: We are very simple. In other words, if your prevailing land values in a given subdivision or that particular lot being appraised is worth ten thousand dollars, it would be reappraised at ten thousand, your ten percent on the land section of the assessment would show one thousand dollars. If the improvements under a reappraisal has suffered depreciation and the assessment is to be adjusted on that figure, you would put ten percent of that figure or five hundred dollars; thus, making a total assessment of fifteen hundred dollars.

Mr. Dennery: But, wouldn’t that be different from the first appraisal you made, which you said would be both land and building together? This is what’s got me confused.

Mr. Chehardy: No, sir. Well, actually that isn’t so, because under one...in the first instance, if a man, for example, buys a lot in a subdivision and pays ten thousand dollars; we would take and appraise that at ten percent, put down a thousand on land. He shows...

Mr. Dennery: You mean you would a land at ten percent? You would appraise it at ten thousand dollars?

Mr. Chehardy: Right. Appraise it at ten percent and assess it at one thousand, ten percent of that. Then, actually that is the first appraisal, because obviously that is the best evidence of fair market value. Then, you would have an appraisal of the building and would put a figure on it, but as an appraisal of a subdivision, and pays ten thousand dollars. We would appraise that at ten percent, put down a thousand on land. He shows...

Mr. Chehardy: What was puzzling me, Lawrence, is if you appraise, based on a sale, let us assume, which I would assume normally you would if a property was old within, you know, during the five year period of reappraisal. You would put it En your book at whatever it has sold for at an appraisal, because obviously that is the best evidence of fair market value. But then, you would not have a division between land and building, but what is getting at, though, is the language in this proposal. It would seem to me, you would require you to appraise separately...

Mr. Chehardy: Well, we will, Yes, we are mandated, and we intend to. It is merely a continuation of the idea of a subdivision land and improvements in separate lots. It is the appraisal on our book.

Mr. Dennery: Thank you.

Mr. Teague: In Shreveport prices are sixty-six thousand dollars and land and improvements at forty-eight thousand dollars. If you appraise, based on a sale, I assume, which is the best evidence of fair market value, you would appraise at sixty-six thousand dollars. The land under the fifty year period at that price; the improvements at forty-eight thousand dollars. If you appraise, based generally on new property or for the present forty years at forty-two thousand. However, the city of Shreveport, like five hundred dollars as in the city of New Orleans generally speaking, Bayou Rouge and maybe the other area, was the great problem is to really get at it in a practical way, you know. The idea is, if after the five-year period, do you there under the city of Shreveport, go away from the twenty seven million dollars as in the city of New Orleans, and the fifty year period, I mean...in Shreveport, do you there...that could be the problem.

Mr. Chehardy: Right. Now, we have the situation. Our district is the city of Shreveport, and the population of that city, the city of Shreveport being assessed, is twenty-five percent in the city of the state. This property and other property, sources for the city of Shreveport, something like five hundred dollars per thousand dollars of value when you reduce it to per cent. In the city of Shreveport, for example, you would assume, to make a point, that the city of Shreveport is assessed against what you would. Some of the proposals that are coming to the city of Shreveport as a tax recipient agency in the state...
Mr. Chehardy. Fine, well there are several. All right. That's a good question. Now, in the part of your city in Shreveport, the reassessment of the homestead exemption, we had frozen in, again, into the constitution the same provision that we had with the original change in...when we made the homestead exemption absolute last year. What we have provided for is at this stage, an eighty million dollar guaranteed base of revenue sharing, and that, of course, is calculated to go back to the communities. Actually, the homes above thirty-five thousand dollar valuation, which would be affected statewide, has an average of seven percent. In the Orleans, thirty-six percent of the homes are over thirty-five thousand. In Shreveport, I don't have the percentage in front of me, but I'm certain it is over ten, or twelve percent. You might have that fact and figure with you. Now, that's one provision. But, the main thing, Mr. Stagg, is when there is a reassessment of property in Shreveport, the reassessment, the valuations that will then go upon the books should more than offset the loss because of percentages even if we go into any millage adjustment. But, millage adjustment is also calculated to take care of the homestead situation. Now, and you caught what I said on the bonding base for the school districts; they can still support even though this is an absolute homestead, they can propose to the people a measure and it would be up to the people to decide. Do they want this measure bad enough to waive their rights of homestead exemption? Therefore, the bonding base will not be affected, will not be affected by those two measures. But, I believe the one thing that people have the tendency to overlook and that is the reason I sent the results of raising assessments throughout the country, there has always been an added tax burden, has always worked hardship. There has never been a problem of not enough money. Once an assessor is required to go back in on the homes that have never been reassessed in Shreveport for generations...in Caddo Parish on the farms that have never been reassessed. People face tremendous hardships if you don't have these built-in provisions. That's what I'm arguing through the folders that I sent out with articles, you know, discussing the effects in other areas.

Mrs. Zervigon. Mr. Chehardy, did I understand you to say that the local governing authority can roll up its millages to take care of the amount that it lost because of an increased homestead exemption?

Mr. Chehardy. Not only because of an increased homestead exemption. In other words, they take the total homestead exemption, and they do not take into regard whether it's homestead exemption or not homestead exemption.

Mrs. Zervigon. The total loss...

Mr. Chehardy. The total loss in a district, the total loss in a district. In other words, if they are previously taking in five million, and they take in four million, then there would have to be a millage adjustment. So, if they take in ten million instead of five, they'd have to reduce that millage so people would not undergo the tremendous hardship.

Mrs. Zervigon. Well, that's the way I understood your proposal as it was originally explained to me. Then, as I spoke to other members of your committee, they pointed out to me that in your millage adjustment section you specifically refer to Article XI, Section 1. Isn't that correct?

Mr. Chehardy. That's correct.

Mrs. Zervigon. Why do you specifically refer to that section, and don't you refer to the section on homestead exemption when you talk about running up your millage to make up for your losses?

Mr. Chehardy. Well, in drafting...in drafting that section, that was never considered as limiting it...or never, in my opinion, as interfering with the...it was a choice of language--has having any interference with the homestead exemption or with the effectiveness of this sliding millage adjustment scale.

Mrs. Zervigon. Well, can you tell me why you didn't phrase it so that it says that it makes up the losses incurred by the changes inflicted by this article, rather than by Article XI, Section 1?

Mr. Chehardy. Well, I would say this to you, that I don't believe anything can be clearer. Well, article...the article that we refer to is the article that requires the reassessment of all property, reevaluates the application of new percentages.

Mrs. Zervigon. That's right.

Mr. Chehardy. That, of course, is what will bring about the change--whether you take into contemplation the homestead or not. We had to make reference to it, you know, for that reason.

Mrs. Zervigon. Doesn't the increased homestead going from two to four thousand, especially if levied against a smaller percentage, forgive a whole lot more in taxes than used to be forgiven in taxes? Isn't that correct? So that the...Section 3 has an effect, hasn't it?

Mr. Chehardy. It has some effect, but it does not...But it's provided for, Mary.

Mrs. Zervigon. It isn't mentioned, Mr. Chehardy. Is there a reason why?

Mr. Chehardy. It doesn't have to be. If you read the provision on the millage adjustment, you will see that it does not restrict it at all. The millage adjustment, even if it refers to what brings about a change--in other words, you'll notice what the section says: that in the period of readjustment brought about by reappraisals, application of new percentages to purpose this statewide equality--there is no concern. That's what they're telling you; there's no concern for the various taxing districts because you can then slide, take the total dollar previously received, without regard to homestead exemptions or anything else. If you only receive...if you previously received a million dollars and, therefore, under the reassessment and the application of the new percentages you receive five hundred thousand dollars, then you can adjust your millage to bring it up. It's not...

Mrs. Zervigon. Are you aware that it doesn't mention the homestead exemption...

Mr. Chehardy. Absolutely, and it made no difference, Mary. It doesn't...that's not pertinent to the issue.

Further Discussion

Mr. Schmidt. Although I'm one of the original coproducers in this amendment, I do not feel that we...the convention is taking the proper course with reference to the question of property taxation in the State of Louisiana. There are many things which must be decided prior to the time when we get into the actual percentages. These are, just some of them are: should the state be...
in the property tax business. If it is, in the property tax business, should the local government be given the right to have a different approach to the property question? What classes of property should exist? Should the classes of property be the same as for the state as they are for the local government? Should the local government authorities have the opportunity and the option to encourage industry, to encourage commerce in their various districts? Now, you say how can this be accomplished? I have prepared some amendments which aren't my brainchild, but are...have been prepared from a summation of statements from many other people. I will give the original to you by Mr. Cherhey, some from comments made by many other members of our committee, and by others who are learned in the area of assessment practices.

The classifications of property which I have recommended are: 1) residential property, commercial property, industrial property; and there's one class--agricultural, horticultural and timberland property; and there's another classification--all other property. This would allow, as an example, Jefferson Parish--as farmers, as large agricultural farms--to encourage industry to come in by setting a low assessment against industrial property. Therefore, the local governing authorities should have the flexibility to encourage or discourage industry from coming into their area. And corporations which attempt to get into California have to go under these, and some are not encouraged to come into the State, but they are discouraged because of many environmental problems which have developed in that state. This is a good state as far as the climate goes with regard to industrial development. And many parishes in our state might want to have industry come into them. They should be given the flexibility to encourage these industries through the tool of property taxes. Also, some areas--as an example, Jefferson Parish--have tended to discourage industrial-type development, and they are not encouraged to come into the state, but they are discouraged because of many environmental problems which have developed in the state. This is a good state as far as the climate goes with regard to industrial development. And many parishes in our state might want to have industry come into them. They should be given the flexibility to encourage these industries through the tool of property taxes. Also, some areas--as an example, Jefferson Parish--have tended to discourage industrial-type development, and they are not encouraged to come into the state, but they are discouraged because of many environmental problems which have developed in the state. This is a good state as far as the climate goes with regard to industrial development. And many parishes in our state might want to have industry come into them. They should be given the flexibility to encourage these industries through the tool of property taxes. Also, some areas--as an example, Jefferson Parish--have tended to discourage industrial-type development, and they are not encouraged to come into the state, but they are discouraged because of many environmental problems which have developed in the state. This is a good state as far as the climate goes with regard to industrial development. And many parishes in our state might want to have industry come into them. They should be given the flexibility to encourage these industries through the tool of property taxes. Also, some areas--as an example, Jefferson Parish--have tended to discourage industrial-type development, and they are not encouraged to come into the state, but they are discouraged because of many environmental problems which have developed in the state. This is a good state as far as the climate goes with regard to industrial development. And many parishes in our state might want to have industry come into them. They should be given the flexibility to encourage these industries through the tool of property taxes. Also, some areas--as an example, Jefferson Parish--have tended to discourage industrial-type development, and they are not encouraged to come into the state, but they are discouraged because of many environmental problems which have developed in the state. This is a good state as far as the climate goes with regard to industrial development. And many parishes in our state might want to have industry come into them. They should be given the flexibility to encourage these industries through the tool of property taxes. Also, some areas--as an example, Jefferson Parish--have tended to discourage industrial-type development, and they are not encouraged to come into the state, but they are discouraged because of many environmental problems which have developed in the state. This is a good state as far as the climate goes with regard to industrial development. And many parishes in our state might want to have industry come into them. They should be given the flexibility to encourage these industries through the tool of property taxes. Also, some areas--as an example, Jefferson Parish--have tended to discourage industrial-type development, and they are not encouraged to come into the state, but they are discouraged because of many environmental problems which have developed in the state. This is a good state as far as the climate goes with regard to industrial development. And many parishes in our state might want to have industry come into them. They should be given the flexibility to encourage these industries through the tool of property taxes. Also, some areas--as an example, Jefferson Parish--have tended to discourage industrial-type development, and they are not encouraged to come into the state, but they are discouraged because of many environmental problems which have developed in the state. This is a good state as far as the climate goes with regard to industrial development. And many parishes in our state might want to have industry come into them. They should be given the flexibility to encourage these industries through the tool of property taxes. Also, some areas--as an example, Jefferson Parish--have tended to discourage industrial-type development, and they are not encouraged to come into the state, but they are discouraged because of many environmental problems which have developed in the state. This is a good state as far as the climate goes with regard to industrial development. And many parishes in our state might want to have industry come into them. They should be given the flexibility to encourage these industries through the tool of property taxes. Also, some areas--as an example, Jefferson Parish--have tended to discourage industrial-type development, and they are not encouraged to come into the state, but they are discouraged because of many environmental problems which have developed in the state. This is a good state as far as the climate goes with regard to industrial development. And many parishes in our state might want to have industry come into them. They should be given the flexibility to encourage these industries through the tool of property taxes. Also, some areas--as an example, Jefferson Parish--have tended to discourage industrial-type development, and they are not encouraged to come into the state, but they are discouraged because of many environmental problems which have developed in the state. This is a good state as far as the climate goes with regard to industrial development. And many parishes in our state might want to have industry come into them. They should be given the flexibility to encourage these industries through the tool of property taxes. Also, some areas--as an example, Jefferson Parish--have tended to discourage industrial-type development, and they are not encouraged to come into the state, but they are discouraged because of many environmental problems which have developed in the state. This is a good state as far as the climate goes with regard to industrial development. And many parishes in our state might want to have industry come into them. They should be given the flexibility to encourage these industries through the tool of property taxes. Also, some areas--as an example, Jefferson Parish--have tended to discourage industrial-type development, and they are not encouraged to come into the state, but they are discouraged because of many environmental problems which have developed in the state. This is a good state as far as the climate goes with regard to industrial development. And many parishes in our state might want to have industry come into them. They should be given the flexibility to encourage these industries through the tool of property taxes. Also, some areas--as an example, Jefferson Parish--have tended to discourage industrial-type development, and they are not encouraged to come into the state, but they are discouraged because of many environmental problems which have developed in the state. This is a good state as far as the climate goes with regard to industrial development. And many parishes in our state might want to have industry come into them. They should be given the flexibility to encourage these industries through the tool of property taxes. Also, some areas--as an example, Jefferson Parish--have tended to discourage industrial-type development, and they are not encouraged to come into the state, but they are discouraged because of many environmental problems which have developed in the state. This is a good state as far as the climate goes with regard to industrial development. And many parishes in our state might want to have industry come into them. They should be given the flexibility to encourage these industries through the tool of property taxes. Also, some areas--as an example, Jefferson Parish--have tended to discourage industrial-type development, and they are not encouraged to come into the state, but they are discouraged because of many environmental problems which have developed in the state. This is a good state as far as the climate goes with regard to industrial development. And many parishes in our state might want to have industry come into them. They should be given the flexibility to encourage these industries through the tool of property taxes. Also, some areas--as an example, Jefferson Parish--have tended to discourage industrial-type development, and they are not encouraged to come into the state, but they are discouraged because of many environmental problems which have developed in the state. This is a good state as far as the climate goes with regard to industrial development. And many parishes in our state might want to have industry come into them. They should be given the flexibility to encourage these industries through the tool of property taxes. Also, some areas--as an example, Jefferson Parish--have tended to discourage industrial-type development, and they are not encouraged to come into the state, but they are discouraged because of many environmental problems which have developed in the state. This is a good state as far as the climate goes with regard to industrial development. And many parishes in our state might want to have industry come into them. They should be given the flexibility to encourage these industries through the tool of property taxes. Also, some areas--as an example, Jefferson Parish--have tended to discourage industrial-type development, and they are not encouraged to come into the state, but they are discouraged because of many environmental problems which have developed in the state. This is a good state as far as the climate goes with regard to industrial development. And many parishes in our state might want to have industry come into them. They should be given the flexibility to encourage these industries through the tool of property taxes. Also, some areas--as an example, Jefferson Parish--have tended to discourage industrial-type development, and they are not encouraged to come into the state, but they are discouraged because of many environmental problems which have developed in the state. This is a good state as far as the climate goes with regard to industrial development. And many parishes in our state might want to have industry come into them. They should be given the flexibility to encourage these industries through the tool of property taxes. Also, some areas--as an example, Jefferson Parish--have tended to discourage industrial-type development, and they are not encouraged to come into the state, but they are discouraged because of many environmental problems which have developed in the state. This is a good state as far as the climate goes with regard to industrial development. And many parishes in our state might want to have industry come into them. They should be given the flexibility to encourage these industries through the tool of property taxes. Also, some areas--as an example, Jefferson Parish--have tended to discourage industrial-type development, and they are not encouraged to come into the state, but they are discouraged because of many environmental problems which have developed in the state. This is a good state as far as the climate goes with regard to industrial development. And many parishes in our state might want to have industry come into them. They should be given the flexibility to encourage these industries through the tool of property taxes. Also, some areas--as an example, Jefferson Parish--have tended to discouraged...
tions that were adopted by the people in the United States all have a land use concept. This, of course, is what the Louisiana Farm Bureau wants—primarily the benefits from this proposal. You would have to be a bona fide agriculture, horticulture, or a forestry man, or farm or organized, and you would be assessed land on this particular farm as long as this would be a bona fide operation. Should you be using it just to circumvent, say, properties that you mention that would be the highest and best use would be development and that you'd just purely farming it to hold it and there would be evidence to that case, then the land use wouldn't apply to you.

Mr. Segura: I think this, Harry, answers my question and Mrs. Warren's. The only thing on that particular thing, I read it, and it says "the legislature may." I notice there is an amendment that says "the legislature shall," and do you, as a member of our committee, feel that that will protect the farmer?

Mr. Mire: Absolutely. I absolutely do, and if you notice this amendment that says "shall" is supported by, I think, something like twenty-two of the members of our committee.

Further Discussion

Mr. Keen: Mr. Acting Chairman and fellow delegates, I rise to oppose the committee amendment, although I must say that it is an improvement over what we start with in considering this matter. I think that the convention must recognize this question of property taxation and the need to find some realistic solution to the problem as one of the most important issues to come before the convention. I read some material about property taxation in Louisiana, I ran across an article that was written in the Louisiana Law Review last year by Professor Stagg, who has been a noted authority in this field and whose critique of the property tax situation in Louisiana at that time, equally applicable to the situation now, I think, gives you a pretty good insight into the difficulty of the problem. He characterized the property tax situation in Louisiana in 1942 as a disgrace, and I do not think that there's been much change in that situation since that date.

For that reason, I think we have to seriously, and give our most conscientious effort to coming out of this proposal with a meaningful proposal that the assessors and the other officials responsible for property tax administration are going to make a sincere, bona fide, good faith effort to better administer the property tax on a fair and equal basis. Now, I don't think there's any question about the fact that we must start with fair market value. I think we are now considering what percentage we apply to the fair market value, and I think it should be obvious from the discussions that have taken place on the floor to this point—the questions which were asked of Mr. Chehardy by Mr. Stagg—of the considerable differences between the parishes in dealing with property taxation administration, we would have thought, initially, that these differences lent considerable weight to the possibility of tackling this problem on a local option basis. But, in looking at that approach, there are many problems, and I can only assume that those who worked on the problem over the weekend finally concluded that local option was not a satisfactory solution to the problem. We came back on the topic to the state wide percentage. We reach two problems, as I see it, in this area. One is to come up with a percentage which is not too high to be simple. To complete the tax base of any given taxing authority. The other is to have a reasonable homestead exemption which will not further deplete the tax base of the taxing authority. No classification of the type that is presented here today for several reasons. First of all, it is not classification because classification in the true legal sense involves the treatment of all property similarly situated alike. This does not accomplish that. We have dissimilar types of property within each of the class with which we are concerned included in the committee proposal. Under those circumstances—for example, if we say "all land at ten percent"—does that mean that the parking lot, which might have a very low value or not be of any use whatsoever, the commercial building next door, goes on the rolls at ten percent and might produce just as much revenue to the owner of the parking lot as the parking lot was\

1973

Proceedings—October 17, 1973

Mr. Keen: Let's look at what this would do—not in East Baton Rouge Parish, or Jefferson, or in Caddo, or the more industrialized parishes of this state. Let's look at what this would do in the predominantly rural parishes of this state. If we take all the houses having a value of forty thousand dollars or less off of the assessment rolls by reason of the homestead exemption at ten percent of true value, then who remains on the assessment rolls to pay the taxes? I'll tell you—i't's going to be the fellow that owns the corner grocery store; it's going to be the fellow who owns the little drug store or has the...that operates a restaurant or that local property tax rolls. You are simply going to impose the tax burden that is taken away by the vast extent of the homestead exemption upon people who, in my humble opinion, cannot afford to take up that tax increase. Now, in East Baton Rouge Parish, I think by the time you get through with the homestead exemption and business and industry assessment, you're talking about eighty percent of the property taxes in this parish. Under the circumstances, if you had to load another ten percent on those taxpayers, I guess it wouldn't make too much difference. But, I can see, in the rural parishes of this state, where this extension of the homestead exemption and a ten percent value applicable to true value can end up with those rural parishes simply having no tax base unless you're going to put the load on the remaining people who are on that tax roll, who are the largely the small business, or the able in the various parishes of the state. In the case of general obligation bonds, where the taxing authority is required to levy so much per mile, you have each year to pay the principal and interest on those bonds, that taxing authority has got to place the burden on those who remain on the rolls. For example, in East Feliciana Parish there is a school district bond or a parish wide general obligation for school purposes and we now wipe out the tax base by extending the homestead exemption to four

[1741]
thousand and applying a ten percent valuation to the value of the homestead, that imply means that the taxes have been placed on such a high basis, a Parish has got to raise the millage in that parish to whatever it takes to pay the principal and interest of these bonds. That increased millage has got to be exacted against those who remain on the tax rolls. Now, I say to you, these are serious proposals which we must consider. When we meet at the high homestead exemption proposed by the committee, I tell you, ladies and gentlemen, this is a serious problem if it would require, for instance, going into a Committee of the Whole to consider these problems as it would require further recesse for the purpose of making up other proposals and suggestions. I would prefer to see that than I would to see us propose something as this with all of the ramifications that it has upon the taxpayers of this State. Lastly, the distinction which has been discussed here today between the method of valuing land and the improvements which sit upon that land, to me, is going to raise an intolerable burden upon the taxpayers of this State, whether they know it or not, and appreciate that fact. But, at the present time, you go out and you see a house on a lot. Then you consider the value of that lot with the house on it. It might be twenty thousand dollars, based on comparable sales in the area. This procedure would require you to evaluate the land, and then, by sale of improvements, depreciate a portion of the original value of the property if whatever method you use, you're going to come up with some value for those improvements. Now, that total might result at less than the true market value of the property if considered together, so that you could have a forty thousand dollar house of property considered together which is valued at only a little more than twenty thousand dollars. Under those circumstances only, then, we would wish to have a little refinement in that uniformity of the valuation of twenty thousand dollars, and under those circumstances just try to see what that looks like to the tax base of that community, particularly when you apply the homestead exemption of four thousand dollars. I tell you, ladies and gentlemen, we are treading on dangerous water in some ten with this proposal. I submit to you... 

Questions

Mr. Meyers. Mr. Reay, did you understand me to say that your tax assessor said that he'd prefer a uniform tax?

Mr. Reay. Yes, sir, Mr. Meyers. Mr. Frank Groves of the East Baton Rouge Parish Sheriff's Office was the Mayoral in the City of Baton Rouge last year, and he's been to the City of Baton Rouge last year, and he is acquainted with the property assessment in that area, and that's the way I understand him. Mr. Meyers. Mr. Reay, do you mean you have to deal with the property assessment in that area, and that's the way I understand him. Mr. Meyers. Mr. Reay, do you mean you have to deal with the property assessment in that area, and that's the way I understand him. Mr. Meyers. Mr. Reay, do you mean you have to deal with the property assessment in that area, and that's the way I understand him. Mr. Meyers. Mr. Reay, do you mean you have to deal with the property assessment in that area, and that's the way I understand him. Mr. Meyers. Mr. Reay, do you mean you have to deal with the property assessment in that area, and that's the way I understand him.

Further Discussion

Mr. Reay. Although I believe I am the only member of the committee who listened to a gentleman of this particular area, I am in support of this particular amendment to the proposal because this was a sort of some consideration by some, to be a part of a major or a major amendment there, I did not support it. Now, I agree with Mr. Smith and the others who have spoken here today; this is a serious problem if it would require, for example, going into a Committee of the Whole to consider these problems as it would require further recess for the purpose of making up other proposals and suggestions. I would prefer to see that than I would to see us propose something as this with all of the ramifications that it has upon the taxpayers of this State. Lastly, the distinction which has been discussed here today between the method of valuing land and the improvements which sit upon that land, to me, is going to raise an intolerable burden upon the taxpayers of this State, whether they know it or not, and appreciate that fact. But, at the present time, you go out and you see a house on a lot. Then you consider the value of that lot with the house on it. It might be twenty thousand dollars, based on comparable sales in the area. This procedure would require you to evaluate the land, and then, by sales of improvements, depreciate a portion of the original value of the property if whatever method you use, you're going to come up with some value for those improvements. Now, that total might result at less than the true market value of the property if considered together, so that you could have a forty thousand dollar house of property considered together which is valued at only a little more than twenty thousand dollars. Under those circumstances only, then, we would wish to have a little refinement in that uniformity of the valuation of twenty thousand dollars, and under those circumstances just try to see what that looks like to the tax base of that community, particularly when you apply the homestead exemption of four thousand dollars. I tell you, ladies and gentlemen, we are treading on dangerous water in some ten with this proposal. I submit to you... 

Mr. Meyers. Well, I think all of the amendments that could have been made, something different from what they've brought us to this point, yes. They haven't done it.
valued at fifteen percent of their appraisal, this will cause a landowner who owns an old building in a downtown area to tear the building down and use it for parking lot purposes because then he will be paying property tax rather than given an incentive to build up downtown areas?

Mr. Conroy: Mr. Denney, I'm afraid that a lot of us are at a loss to explain exactly what the effect of these things will be. Nor could I possibly explain what the long-range effects of the proposal that Mayor Landrieu has embarked on in the city of New Orleans where exactly the reverse approach is used to land valuation where he uses a much higher value for the land than for the buildings there. This certainly makes a difference, but all I can say to you is that it seems to me far preferable here where we are faced with it right now...as whether you...to reduce that spread. The committee proposal came out at five percent for land and fifteen percent for other property. So my suggestion to you at this point is, by all means, support this amendment to reduce the problem that you point to. But I agree with you, the problem you suggest does exist.

Mr. Duval: David, this is primarily an information question. I noticed the committee proposal had, in Section 2, under Classifications of improvements on residential properties as an amendment. As I understand it is "improvements for use for residential purposes." Now, one, why did you change the word "property" to "purposes"? Do you know why the amendment changes the word "property" to "purposes"? To what effect does the word "use" have?

Mr. Conroy: I think that all of these were what I would regard as technical amendments trying to clarify the intent of the bill. There is, of course, all land exempt and to...I mean not exempt...to place all land at the ten percent and all property that is actually used for apartments or residences, or otherwise for residential purposes at the same ten percent level.

Further Discussion

Mr. Burson: Mr. Chairman, fellow delegates, let me begin by saying that I am for the amendment only because it is better than the committee proposal but not nearly enough.

I agree with Mr. Conroy that the root problem here is we have to consider the interrelationship of the homestead exemption and this assessment ratio. Now the committee proposal is for a five thousand dollar homestead exemption which means, basically, that property should be taxed to pay no tax. Now, in my parish of St. Landry—which I will confine most of my remarks to because they will give you some idea of the problems created in rural parishes where there are no big industries to soak the property tax that everybody ought to pay. In my parish, four percent of the homes, according to the census statistics that you have, are worth more than thirty-five thousand. We would be left with one or two percent of the homes to pay property tax. At the present time, I am informed by my assessor, who I think does an outstanding job, and about whose performance I have no complaints whatsoever, that thirty-five percent, approximately, of the sixteen thousand homesteads in St. Landry Parish pay some property tax. So we are talking about, then, moving from a situation where perhaps thirty or thirty-five percent of the homestead properties pay property tax or two or two percent of those homesteads pay property tax. Now in my humble opinion, you have created a situation where one of three things then must happen. Either (a) the state government, such as schools, the police jury, and so on, will not have an adequate tax base to run the government; or (b) the taxpayer must pay a second tax on some of the other industries, small home-owned businesses, will have to pay the total tax burden; or (c) the state will somehow or other have to come up with a new tax to supplement to local government the income that has been lost.

Now, let me explain each one of these in turn. Then the first alternative of local government will not have the money it needs to operate upon. The answer to that, as I understand it, is two-fold. They say, "Well, you can roll forward this millage that I have taken away from you to. We have, at the present time in Ward 6 of St. Landry Parish, an approximate millage of twenty-five for parish and school purposes together. Now, the fact that I have taken away from the tax bill to my assessor and other people here more knowledgeable than I, show that we would have to increase our millage, say, approximately to about a hundred and fifty or two hundred mills to make up for the homes that would be taken off. Now this means to me, then, that the agricultural land that's left, and the small businesses that aren't, would have their present taxes quadrupled or maybe quintupled to meet that burden. Would they put up with that? I doubt it. I think as a matter of fact, the next time you came up for renewal of that millage, it would be resoundingly defeated. I would remind you that school taxes right now are being defeated when you ask for an increase for the school all over the state. One was defeated in St. Landry Parish in April. I cannot imagine what the reaction would be to those going to the tax collectors to pay the tax if you ask them to renew a fifty mill school maintenance tax.

Now the second alternative, then, would be if agriculture business and small business would be asked to make up the difference, that the state government some way or other would have to come up with this money. Here, in order to prevent shutting down the public school system, or doing without parish roads, etc. How would the state produce this money? I have not noted a great surplus in the state budget in recent years. In fact, there was not enough to pay a legislative pay increase for school teachers last term. Therefore, I can only conclude that this would require a new tax statewide to come up with this money. Is it just? Is it sensible to tax the people of this state, all the people statewide, to provide a homestead exemption for people living in a forty or fifty thousand dollar home who ought to, I submit, pay something to support their parish services. I submit to you this does not make sense.

Now the second answer, though, we are given by the proponents of this plan is, where all the property is going to be reappraised. Ladies and gentlemen, I don't believe in fairy tales. I like to read them to my children, but I don't believe in them...I don't believe in saying anything political office, I will not do something that is politically unfeasible. Now, we are going to sit here and be naive enough to be believe that the one homestead that's left, the other homesteads of this state will, upon the passage of this constitution, venture out across the length and breadth of their parishes and reassess every single piece of property. In eighty percent of the cases, maybe doubling or quadrupling the value of that property on the assessment roles? I submit to you, we'll have sixty-four new assessors at the next election, if that happens. I don't believe in asking a man to do something that is politically unfeasible. Practically it's not feasible. My assessors tells me this task would take him anywhere from five thousand dollars just to provide the aerial maps necessary to reassess St. Landry Parish. Where is that money going to come from? He's got a staff with three clerks. His assessors tell him that it might take him ten or fifteen people to do this reassessment. It might take him three or four years to do it. While he is busy doing it, you are going to have to roll forward these millages, and you are going to have to roll them forward on the agricultural and small business people that are left. They will have to pay the tax. The institutional tax base will not have a system of public education, you'll not have hospital districts, you'll not have drain- age districts, you'll not have rural roads and the other things that are presently financed by means of the property tax in our local government. I cannot buy this. I don't believe in fairy

[1743]
tales, I don't believe in Santa Claus.

Finally, I would point out, as I did in the question to Mr. Mire, that in our parish, thirty-two percent of the property that we appraise, right now is in pipelines and public utilities. They are assessed at somewhere between twenty and twenty-five percent. Under the committee proposal, this would be mandatorily reduced to fifteen percent, which would be a tremendous reduction and there's no reappraising pipelines. So, if you are going to reappraise a pipeline that's in the ground, I'd like for someone to explain that to me. I would be very interested in hearing this. To say you will, it's going to be assessed at its present fair market value. The tax commission, as far as I understand it, has supposed to have been assessed at the fair market value. We have just like the assessors have been supposed to be assessing property at a hundred percent of fair market value, just like the assessors will be supposed to be reappraising all the property in the parish every five years under this committee proposal. I don't believe it, I think it's unfair. I have a large number of customers, I'll answer any question... I can... which may not be many...

Recess

[I am not sure where the agenda is, but a gentle voice,]

Point of Information

Mr. Burns, is there any chance at this time, to discuss the section on homestead exemption together with this one? The reason I say that, all during the noon hour, person after person that I have talked to were uncertain about voting on this amendment because they didn't know how the homestead tax exemption was going to turn out.

Mr. Henry, well, Mr. Burns, of course, we'll do whatever you want to do. I don't see hardly how we are going to be able to discuss two sections at once... Of course, we'll do whatever this body decides to do. But I don't see how we are going to be able to consider or to take up two sections at the same time.

Further Discussion

Mr. Chairman, ladies and gentlemen,

I would urge you to support this amendment and suggest to you that it is better than the original proposal. As a result of the work that I have done, you do not agree with the percentages in the final result, there is no commitment on your part, or anybody's to stay with the proposal. If you do not support this amendment, then you do stand the chance of ending up with a five percent, ten percent, and fifteen percent percentage.

But I would say, therefore, whether you agree or not, and there are some of you who feel that the ten, ten, and fifteen is not high enough, it's not equitable. You will have your chance later... But I suggest that if you want an improvement over the five, ten, and fifteen, that certainly gives you an improvement. I would, therefore, strongly support this amendment at this time, in the right direction. Whether you agree with it or not, it's certainly better than the five, ten, and fifteen percentage.

I want to call your attention again of the material that has been reproduced that I dug up from the files and had some of the research staff do as well. There is a point to it. I believe that it is not being critical of any one parish or any one individual or group of individuals... It is simply an effort to show you what I believe is in your mind. I would say that if any of you want to contact me personally, I will be glad to give you any further information that was studied for several months. We have spent a lot of reading.
way that anyone is going to come to this microphone and tell you that it's going to serve all of us well, because it's not going to do that. It's impossible. So I ask that you support the amendment that we have before us, support the classes because we have the classes well established in our system. If we don't support them, we are going to have a tremendous shifting of the tax burden from one segment of the taxing community to another segment of the taxing community. I ask that you support the amendment that we have before us.

Further Discussion

Mr. Casey Mr. Chairman and delegates, connection with whether this amendment is or is not adopted, I feel somewhat like a seaman who may have fallen overboard off of a ship which may be carrying a lot of different types of catch from Africa or some place...animals. They yell down to the seaman who is out, 'where are you, our third time and they say, 'well, we don't have a life preserver available, but take your choice. We have, you can either latch on to an alligator or a shark. Just let me know which one you want.' I sort of feel like I'm in that type of position because to me as one delegate from a metropolitan area which is seriously affected by percentages, and that's what we talk about--five percent is certainly pretty bad. It's horrible. Ten percent just happens to be a little bit better and it doesn't leave us as bad a position as we would be with five percent.

Our problems are this in the city of New Orleans. I have been informed or advised that property is being put on our tax rolls when a sale occurs at approximately between twenty and twenty-five percent. I know that for a fact for I have bought and sold property in the city of New Orleans and represent many people who buy and sell property in the city of New Orleans. I know for a fact that that criteria is used. I also represent people who own property in the downtown business area of the city of New Orleans. In the downtown business area of the city of New Orleans, the land was revalued and placed on the assessment rolls at thirty-three and a third percent of value. I'll tell you how that value was arrived at. The board of reviewers in the city of New Orleans obtained real estate appraisal work which was done on the downtown area and fixed realistic valuations and not just realistic. I thought they were personally pretty high...like fifty dollars a square foot for downtown property in the city of New Orleans. That's the basis that's being used in the central business district of the city of New Orleans. The assessment ratios are forty-three and one-third percent of those high figures. Now, granted, I know Buddy Roemer has already pointed this out to me, he'll wager that there's probably property in the city of New Orleans that hasn't been revalued or touched in twenty years. He's right. He's absolutely correct. We don't know how much property falls into that category. But the point is, we are estimating that overall, the overall valuation is pretty close to twenty percent for all property. So what happens when you adopt a ten percent or a five percent. I know you have to evaluate it and you adopt a thousand dollar homestead exemption. Today, in the city of New Orleans, people who own homes are paying real estate taxes. There is not one of them that has asked me as a legislator or as a delegate to this constitutional convention, for relief. They want the services that we provide in the city of New Orleans and they are glad to pay. Nobody has complained about being overtaxed. But you know what's going to happen? The shift is going to occur from the homeowner who is paying taxes today, and having to get a free ride, get a shift is going to go to other property which is occupied by tenants. The increase in taxes is going to be transferred to the tenants which is a large majority of the poor people in the city of New Orleans.

Also, it's going to be shifted to the shop owners...the people who own the shoe repair shops, the launderies, the corner grocery stores, and businesses of that type. It's probably going to shift to certain portions of industry. Although, I understand, and I don't know that this is correct, that industry is pretty well paying their share of the tax burden now and they probably complain less than anybody about the taxes that they are paying.

So all I want to do here at this point is advise caution in dealing with these percentages. I want...I personally, as one delegate, do not want a feeling of complacency or satisfaction to come over this convention if, and when, and I would assume this ten percent figure will be adopted because more people will be satisfied with ten percent than five percent, but have no feeling at all that many people in metropolitan areas, or in rural areas are satisfied with a ten percent figure because it doesn't cure our problem at all. It may help a little bit. Just remember, the idea of this...the shark and the alligator...one's almost as bad for us as the other. Ten percent happens to be a little bit better.

I yield to any questions.

Questions

Mr. Roemer Mr. Casey, I just had two or three brief questions. In your talk you said that the property involved in recent transactions were, to the best of your knowledge, put on the rolls at some twenty to twenty-five percent of the fair market value. Is that correct?

Mr. Casey I'm not sure if I used the words "recent transactions", Buddy. I do know from being intimately involved and passing acts of sales and handling real estate transactions, and I've done more of this over the last few years than I did in the first twelve years of law practice, I know as of that time, say the last four or five years, that has been pretty much the criteria used.

Mr. Roemer But you also know there are seven tax assessing districts in Orleans and they don't all follow the same percentage. You know that, don't you?

Mr. Casey It is my...

Mr. Roemer ...you didn't say that to this convention, but it's true.

Mr. Casey You are absolutely correct that there are seven assessors. I don't know which one of them does not follow that procedure. I'm not going to say that all of them do. I don't know which one does not, though.

Mr. Roemer Well, we know, as a matter of fact, they all don't from testimony in our committee. It can tell you that. Now do you further grant the fact that we do have an unknown amount in our opinion, and the committee, fairly large; your opinion, perhaps, fairly small, of older property that hasn't been reassessed for numbers of years.

Mr. Casey I stated that quite frankly. You were the one that had mentioned that problem.

Mr. Roemer Well, don't you think...

Mr. Casey ...that's the whole problem. We don't know of the full impact or effects...

[Motion to suspend the rules to allow for additional time adopted without objection.]

Mr. Roemer I'll be through in just a second, Tom. We've got to put on our record that you mentioned in your talk that there was...although you didn't call it by name...the central business district that has a thirty-three and a third percent assessment on
Mr. Casey. As of last year, the board of reviewers had taxed a property at a third percent of the 1972 assessment on the land. The land was valued by real estate appraisers. I know one of the real estate appraisers.

Mr. Roemer. I'm not questioning that. I just want to bring that out. It's only thirty-three and one-third percent. Is that correct?

Mr. Casey. That's correct. Yes.

Mr. Roemer. But are the improvements thereon only thirty-three and one-third percent?

Mr. Casey. As far as I know, they are not. I don't know what criteria is used. I would imagine, Buddy, that they fall pretty much into the other category of, let's say, around twenty percent. But I couldn't give you an exact figure. All I said is that overall we estimate that most property is on the tax rolls at about twenty percent when you take an average.

Mr. Roemer. Well, Tom, let me ask you a question. Have you read the testimony in our committee about the central business district which showed quite clearly that the improvements were put on at a reduced... a much reduced rate of assessment, not anywhere near thirty-three and one-third percent? Usually not anywhere near twenty percent. Did you know that?

Mr. Casey. Buddy, I did not have the pleasure of working on the Revenue, Finance and Taxation Committee.

Mr. Roemer. I can tell that by your talk. I was just trying to refresh... A final point. That is, you bring up this thing about the homestead exemption. You and I believe, do you know, share this fear of an exorbitant homestead exemption. This is going to reduce our tax base. But is not the time to bring that up when we are talking about rates? Can't you agree the important thing is the relationship between the rates... not the dollar amount of the homestead exemption yet? We'll get to that in a little while. I have to point you to confuse these people by talking about the homestead exemption yet.

Mr. Casey. Well, Buddy, it's extremely difficult to divorce the percentage and the homestead exemption. The fact remains that if you have a high percentage... this has really not been discussed too much. When you get into the high percentage and low percentage, then how do you go about adjusting the millage to your receive...

Mr. Roemer. I do not want to be antagonistic. I only want to make a point. Do you agree that we have to take the rates first? We are doing it in this proper order. We take the rates first, then the homestead exemption. A four thousand dollar homestead exemption means nothing against a hundred percent assessment practice. That's my point.

Mr. Casey. Well, there certainly does affect the other. Naturally, in the order that we are taking this question, we deal with the homestead exemption. We are forced by our rules to take the homestead exemption last. As obviously, we have to deal with the percentages first.

Mr. Roemer. Well, would you agree we are taking this in the proper order, percentage first?

Mr. Casey. I would say this is the correct order.

Mr. Roemer. Thank you very much, Mr. Speaker.

Mr. Casey. But I wish you would dispense with it.

Mr. Chehardy. Are you aware that there, under our proposed plan, that there are going to be reappraisal of property? You are aware of that fact?

Mr. Casey. Yes.

Mr. Chehardy. Reappraisals Right

Mr. Casey. Are you aware all of this area of Roemer Avenue, such commercial areas, that Roemer Avenue, Elysian to Lane Avenue, Coca Street from Roemer back, this has all been reappraised.

Mr. Casey. I would imagine reappraisals, as I mentioned, reappraisals have occurred as a matter of normality when sales occur. Now, whether routine reappraisals have occurred where ownership has not transferred, I don't think they have known that and I know that.

Mr. Chehardy. Correct. Well, are you aware, also, that this is going to mean a tremendous increase in revenues to the city of New Orleans. Am I right will it mean an increase when you reassess these properties?

Mr. Casey. I would imagine reassessment will certainly be of benefit. However, I would doubt the validity of the extent of benefit is the main thing that I question. If we are only going to use a ten percent figure, this might not be wrong, neither you nor I have these figures, but we wish we did. I think we could discuss intelligently. I think that was part of the problem that we had on the committee. Maybe you all didn't have the full information. We don't know the full extent or the impact of the increase.

Mr. Chehardy. Well, Tom, I might ask you this way, Do you all still own your home at 9400 Boulevard?

Mr. Casey. No.

Mr. Chehardy. Well,

Mr. Casey. My other home is not.

Mr. Chehardy. But you know what? I'm saying, I never. It was never reappraised, was it?

Mr. Casey. I would assume that. Well, my family sold it fifteen years ago. I assume it wasn't reappraised.

Mr. Chehardy. Well, the same way everyone that I know, I know of nobody that's paying more than the sale price prior to a sale. But, are you also aware that there is the taxing district within New Orleans are aware of the provisions in the present.

Mr. Casey. You are talking about the millage just yet?

Mr. Chehardy. Millage adjustment.

Mr. Casey. Well, that's what I'm talking about. I want to see the real picture with that whole deal about the millage adjustment as well. If you would have a twenty percent evaluation, you would have everything you're paying for the effect of property real estate and you may have some peculiar problem. But I don't know quite what the life of use. I'm a little confused here. Let's say, Mr. Casey, you have a tax rate of 20 mills. If you have a ten percent raise, this, therefore, was not paid nor was there and after the way is the impact.

Mr. Chehardy. Well, finally, is partly the
problem, it's not your parish versus mine, because actually...

Mr. Casey No, I realize that, I don't mean...

Mr. Chehardy ...actually, New Orleans, and one or two other parishes, versus the majority of the state. You know, you look at it in that aspect... in that perspective. We...the...I'd say seventy percent of the state has the problem common to Jefferson, St. Bernard and other areas. New Orleans has a problem common to Caddo and Baton Rouge, maybe...

Mr. Casey I wish we could solve everybody's...

Mr. Chehardy Right. But in answer to what you said, I feel the people of this state would feel much safer worrying about their taxes having to go up if they pay too little, rather than turn it over to the city of New Orleans or any other area, exorbitant amounts of money and then hope to God they give it back. Because, I think you'd agree that if we sold all our property and gave it to the city, you'd figure a way to...they'd figure a way to spend it.

Mr. Casey Are you asking a question or making a statement?

Mr. Chehardy Yes, I'm asking you. If we gave them all the money from all the homes in Louisiana, would you think New Orleans could spend that in the next few years?

Mr. Casey Far be it from me that New Orleans... to say that New Orleans could not use as much money to its benefit as Jefferson Parish could. I think Jefferson Parish certainly wants to progress just like New Orleans and build its parks and cultural centers and things like that.

Mr. Chehardy Are you aware that Jefferson has again had, I believe, the biggest gains in the state...twenty-four million in relation to property despite the fact of a low assessment ratio?

Mr. Casey I think that's a compliment to whoever increased the assessments and put that property on the rolls...

Mr. Chehardy Well, we lowered the assessment ratio.

Further Discussion

Mr. Chatelain Mr. Chairman and fellow delegates, I stand up somewhat later than my predecessor here at the podium. I think this is a three-legged stool we are talking about. It's a three-legged problem. I see Sections 1, 3, 4, and 5 all working together. At this point in time, the percentage doesn't mean a great deal to me. But if I have to go by a guide, I have to follow the committee proposal which states down in 3 that the homestead exemption shall be five and six thousand dollars. On that basis then, we are sticking about a fifty or sixty thousand dollar homestead exemption. And I think we ought to take a long, hard look at this. I know, I agree with Mr. Roemer that if we have to take them one at a time. But I think we ought to get some expression from the committee, or for someone to give us some idea as to what we are going to do in Section 3. Now five and six thousand dollar homestead exemptions are going to be a great deal different than if we'd go back to what I think would be reasonable, maybe a three thousand dollar homestead exemption, or twenty-five hundred dollar homestead exemption. This would make a great deal of difference. I can't say at this point, and many of you can't, as to whether you are for the amendment before us now or not because it does bear, if you will read down in Sections 4 and 5 the problem exists there. Number 4 states that "no impairment of existing taxes or obligations." This is a significant point. It does mean a great deal to the various parishes and political subdivisions throughout this state.

All right. Section 5 is a rollback or the roll forward provision. I thought that, too, bears a great deal on the judgment we make on the amendment before us. I would only leave with you the thought that we'd better be very careful, if we accept this, it, which is certainly better than five percent, and it looks like the tenor of the convention at this time is that they could possibly buy this ten percent provision, or amendment. If it does somewhat correlate with a two, twenty-five hundred or three thousand dollar homestead exemption. That's the only problem that I see personal. I think many of you have this same problem. So I would say that let's be cautious. If we do accept this, let's leave it open where we can come back to it and reconsider at a later time, and certainly try not to make such a judgment, will be good for the people of the State of Louisiana.

Questions

Mr. Roemer E.J., you know, I share your concern that we not do anything in haste, and that we try to sort through the confusion on this issue, but I ask you and any other speaker, in the form of this question don't you think that we add confusion here if we don't make the distinction for the benefit of the delegates, that we have to do these things one at a time? Yes, they relate to each other, but we've got to take them in their natural order, don't you think? Would you agree with me that the natural order of things is to peg a fair assessment rate? Then, let's talk about homestead exemption. Then, we've got different arguments to use. Then, we've got different logistics that we need to bear on the point. But, let's start with the rate first. Don't you agree with that?

Mr. Chatelain I'll trade a question to you. I'll answer your question if you'll answer one of mine. "Yes" to your question, and my question to you is this: don't you think that five thousand dollars is too high for homestead exemption?

Mr. Roemer Yes, sir, against a ten percent rate.

Mr. Chatelain Well, that's exactly what I'm trying to get, an explanation from the committee to tell us about where we're headed.

[Previous Question ordered.]

Closing

Mr. Mire Mr. Chairman, fellow delegates, I'm not going to be long, but I thought I had to clear up one point, and this is on those who spoke in favor of a level assessment percentages for all properties. I think the fact that no parish, to my knowledge, no parish, to my knowledge today, uses a level percent of assessment. That includes, of course, East Baton Rouge Parish, Caddo Parish, Orleans Parish, and all other parishes. To my knowledge, they're using a variable so this is the reason why we have a variable, in an attempt to not have a shift of the tax burden from someone who presently is not, in fact, paying those taxes. Other than that, somebody mentioned something about oil and gas properties, let me tell you that all properties, whether they be oil and gas, pipelines, manufacturing plants, or what have you, can be appraised today. You can...somebody insists that they can't hear... I think we have one significant point that you should consider is that all taxable properties are...can be appraised, and a fair market value can be arrived at all taxable property. I mean particularly heard the lawyers get up here and say, "How are you going to determine a fair market value on some specific properties?" Most of them have been in court with successions or with liquidations, or with all sorts of cases that fair market value had to be arrived at. In all cases it is arrived at, and this can be done.
Mr. Pointer. The next amendment set up by delegates McDaniel, Rayburn, Edmond and others is Amendment No. 4, after the word legislature and before the word provide delete the word may and insert in lieu thereof the word shall.

Mr. McDaniel. Mr. Chairman, fellow delegates, this is a very simple amendment, in that it changes one word from directing that the legislature may provide that agricultural, horticultural and timberland will be assessed at its use value rather than fair market value, I'd like to briefly tell you what we're talking about here when we talk about use value in lieu of fair market value. In the commodity we have, we have in commodities that it has many alternative uses. Some of it is industrial sites, commercial sites, residential sites, and the income of this state each of these has a different value. Let's look at this in terms of the public and what's involved. It's in the interest of the urban areas that some of these soil products and open spaces be preserved for many reasons, just as it... very essential to the agricultural base of this state that the tax be in line with its productive capacity in agriculture. Use value is in use in better than thirty states as a basis of assessing bona fide agricultural land. With constitutional provision for this basis then the legislature has the power to make the necessary statutes to make it effective and apply it only to bona fide agricultural land. Let's look for a minute at some of the things this idea could do. By giving bona fide agricultural land this tax treatment and these transitional areas where competition for land is acute, and the person and agricultural production. It's in the interest of the urban people in this day in which we are worried about environment and ecology, maintaining in the basis of the productive capacity of agriculture, we can take some of your foul city air and give back, in the creation of plants, the oxygen that that's essential in the process. Certainly, there's some esthetic values there is some recreational value, and values of this nature in preserving some open spaces. This is tied in with the popularly known area that's known as the greenbelt concept. We need to protect the agricultural base as a source of food and clothing in this state. The farmers are willing to pay their fair share of taxes, and this is not necessarily a shift of taxes. In the State of Washington the study was made upon the use of use value in relation to other taxpayers, and in the highest shift, you're only talking about approximately a four dollar per year shift in an area like that. In an area such as mine, that's predominantly rural, use value and taxes are almost one and the same. It's just in those areas of transition, largely around cities, or along the principal waterways, that if the land was assessed at its value for industrial or commercial sites, a farmer would no longer be able to maintain it in agriculture, so what we are asking here is simply for authority to go to the legislature and implement the plan, so that bona fide agricultural and some of the open land that we have to maintain. Let me mention first of all that the Committee on Natural Resources has approved it, and if the various plans that I have seen, between all of these different proposals for an alternative every one has accepted the value on bona fide agricultural, horticultural and timberland as a basis for assessing it for its tax purposes, I would urge the approval of this amendment.

Mr. Anzalone. Mr. Chair, are you aware that the state legislature has contemplated reforming the state every ten years with the word shall in the institution?

Mr. McDaniel. Yes, sir.

Mr. Anzalone. Would you agree that an amendment that would require the legislature shall provide there would be some justice and it rather than leave it in that the legislature shall, so that it would read agricultural, horticultural, and timberlands will be assessed in the purpose of taxation at a percentage of use value rather than fair market value.

Mr. McDaniel. Well, there was quite a bit of argument as to whether it should be just we brought up. I'm not sure, you say while and shall...

Mr. Anzalone. Yes, sir. In other words, instead of telling the legislature that they've got to do it, we're telling the people of the state of Louisiana that that's the way it's going to be, and do not wait on the legislature to make it. And Mr. McDaniel, I would say that in connection with administration of this, there is going to have to be any statutes developed to implement a program of this nature, so I think the legislature is going to have to act to implement a program of this nature.

Mr. Anzalone. Mr. Chair, are you aware that the removal of these words would not interfere with the legislative process of assisting in the enforcement of this?

Mr. McDaniel. No, I don't really see much difference in the meaning of the word or the shall you're...

Mr. Anzalone. Well, the thing is, Mr. Chair, that you're not going to be able to come to the legislature and tell you're going to do this, if you did it once there and things that and timberlands will be assessed, then that's the way they are going to start it. Mr. McDaniel. You may be right.

Mr. Pugh. If I plant my whole front yard and whole back yard with beautiful roses, do I have a horticultural property, or do I have a horticultural purpose?

Mr. McDaniel. You still have residential property. These are the type ideas that are covered by statutes in the legislature. Most of these states when they get to the enacting legislation to implement programs of this nature, they spell what is bone fide agricultural property, and certain criteria and to use it usually associated with this is such things as rollback of millage, when it does not exceed and things are of this nature, but all this shall be handled in the legislature to where abuses can be corrected or they are surfaced.

Mr. Pugh. You do appreciate that next to most of our cities there are large tracts of land that are sitting there for agricultural purposes and many times they are worth more than the assessed value, and being sold at the convenience of the owner, there's a lever there. Do you think those people ought to pay property taxes than agricultural tax?

Mr. McDaniel. If these are the history and things that land in cotton until it gets harvested, I think he should be taxed on the basis of he takes that land, in a speculative development.
basis, or just because he can put a fence around it and two horses on it, I think these are the kind of inequities that your statute would deal with, that would spell this out in order to restrict it to the bona fide agricultural user.

Mr. Pugh In other words, you contemplate then, that the legislature will spell this out by having an acre for industrial site; the next man wanted to continue growing sugar cane; they'd been growing it there for ten years or twenty, or such period of time. Obviously, he couldn't stand a tax rate at that basis, and if you taxed it at its highest value, you could essentially drive it from agriculture into undeveloped or accelerate the urban sprawl, or something of this nature. It's just that land that's in a transition area, between rural and urban, that would be protection for the man that has a history in agriculture until it does move into commerce.

I urge support of this amendment.

Mr. McCandless These are the type things that other states have done, and I think you could say, such as across the river here because one farmer sold out for two thousand dollars an acre for an industrial site; the next man wanted to continue growing sugar cane; they'd been growing it there for ten years or twenty, or such period of time. Obviously, he couldn't stand a tax rate at that basis, and if you taxed it at its highest value, you could essentially drive it from agriculture into undeveloped or accelerate the urban sprawl, or something of this nature. It's just that land that's in a transition area, between rural and urban, that would be protection for the man that has a history in agriculture until it does move into commerce.

I urge support of this amendment.

Mr. Anzalone Ladies and gentlemen of the convention, as so many people have done today, I'm up here--don't know whether I'm for or against. I do know one thing that I am for use value in the assessment of agricultural, horticultural, and timberlands across the state. I do know the words "the legislature shall" sounds mighty good, but the only problem with this is, when shall they do it. You take in your cases of reappraisal, they shall do it every ten years, and then we spend about seven in the federal court system trying to get it done. I'm going to offer an amendment to this section that merely says that "agricultural, horticultural, and timberlands shall be assessed for the purpose of taxation at a percentage of use value, rather than fair market value." What this does is immediately upon the adoption of this constitution will place this concept into effect, and you will not have the problem of waiting until the legislature decides to "shall". I ask that you vote down My amendment is going to do the same thing that the committee wanted to do. The only thing that differs is the fact that it's going to do it immediately, and not wait upon the legislature to decide.

Mr. Abraham Joe, if you simply use the language that you are proposing, would not this leave it open then for various assessors and various parishes to use different percentages in establishing this use value?

Mr. Anzalone That would be set by the legislature.

Mr. Abraham If I understand you correctly, your amendment will not necessarily mandate the legislature to set a uniform percentage statewide, whereas the McCandless amendment, as we have proposed now, will say the legislature will do this on a uniform basis statewide.

Mr. Anzalone Mr. Abraham, it's inherent in the language of the amendment itself that the legislature's going to have the authority to do it.

Mr. Abraham What is to prevent, then...you made the statement awhile ago that we did not say "the legislature shall" we should not say that because we don't know when they might get around to doing it. Now, if we do not say anything at all, and they are not mandated to do so, will they ever get around to doing it, if they are not mandated.

Mr. Anzalone I don't understand your question.

Mr. Abraham You're saying...

Mr. Anzalone My statement is simply this, is that we are not going to have use value in this state, under this particular amendment, under this particular provision, until such time as the legislature gives it to us. My amendment is going to give us use value on land immediately.

Mr. Abraham The thing that I am concerned about, though, that the use value will be a different criteria...a different criteria will be used in each parish of the state, and no two assessors will be applying the same use value. How do we get uniformity throughout the state in the application of use value?

Mr. Anzalone You get your uniformity, Mr. Abraham, from the provision that you just adopted, which gives you ten percent, until the legislature decides to change it.

Mr. Winchester Are you under the impression that if we use use value, the ten percent applies to the use value?

Mr. Anzalone It would until the legislature changes it, Mr. Winchester.

Mr. Winchester Because ten percent on the use value would be mighty low, in my estimation.

Mr. Thompson May I ask a question? I believe you mistated [misstated] what you meant because, by your amendment, you're saying vote this one down. I don't believe this is really what you want. Why not vote this one, and then come back with your amendment and say "agricultural and horticultural and timber land will be assessed." Just leave the other out, but you need to vote for this other one first because, if you're trying to get this one killed, it probably won't come up. I disagree with your way of doing it. You can pass this that's there now, come back with one that will strike out "the legislature may provide that," and then you accomplish the same thing. So, what I'm saying, why not vote for this one, then come back with an amendment to strike the first five words out, and you'll have the same thing?

Mr. Anzalone Either way, Mr. Thompson.

[Previous Question ordered. Record vote ordered. Amendment adopted. 116-1. Motion to reconsider tabled.]

Amendment

Mr. Poynor Amendment sent up by Delegate Kean as follows:

Amendment No. 1. On page 7, delete lines 11 through 32, both inclusive, in their entirety and on page 2 delete lines 7 through 9, both inclusive, in their entirety and insert in lieu thereof the following: "Section 1. Assessment of Property; Adjustment of Millages."

Section 1. (A)

[Motion to waive reading of the amendment adopted without objection. Amendment withdrawn and resubmitted with corrections.]

Explanations

Mr. Kean Mr. Chairman, fellow delegates, I'm not going to belabor the point which we've discussed at some length previously with regard to the question of classification because, as I attempted to point out in my last discussion of the amendment previously adopted, that I seriously doubted that
that it was a legitimate classification, especially for tax purposes. My impression was that a tax, which as presented by the county assessor was based on the market value, would have to be uniform throughout the state at all times. I would therefore probably not be upset if we were to make some change with respect to value and what is to be done in order that the assessment is as uniform as possible. I would like to hear from the representatives from other states as to whether they have had an assessment which would be uniform throughout the state at all times. I have been concerned about the value of a parcel of land that would not be uniform throughout the state. I do not think that it would be a great difference.

Mr. Kean. I think you have brought the item to the attention of the committee and it should be considered at the next meeting. It is an important item.

Mr. Agent. Mr. Kear, I submit that the item which you have referred to the committee should be considered during the next meeting, and it is an important matter.

Mr. Kean. That is right.

Mr. Agent. But, there are many other questions that come up on the subject, and I think we should consider them.

Mr. Kean. We have already discussed many of them.

Mr. Agent. We have.

Mr. Kean. That is right.
Mr. Abraham In answering the question posed by Mr. Duval, you stated that the zoning restrictions might restrict the use. He was asking about incorporation. Well, what do you do in the instance where you have land outside of an incorporated municipality, but which is still subject to parish zoning restrictions?

Mr. Kean Well, we simply were trying to deal with the municipalities problem in connection with this particular use valuation. We were thinking both from the standpoint of the zoning problem, and also from the situation that you could have in the municipalities, where older parts of the town are occupied by people who have potential purposes which might not be the highest value, or the highest use value, of that particular property.

Mr. Abraham But, could not the same thing apply to property outside of a municipality? It might be in a shopping center area or an area that is commercial property but may have some old houses in there. Does this deny the...use as a basis in determining its fair market value?

Mr. Kean I don't think it would, Mr. Abraham.

Mr. Womack Mr. Kean, under this proposal, this would greatly reduce the tax liability of the industrial giants, would it not?

Mr. Kean I don't know whether it would or not, Mr. Womack. I just don't have the figures that indicate how they are being assessed over the state at the present time.

Mr. Womack Well, I believe someone had used the figures a little while ago that they were assessed at somewhere between twenty and thirty percent, overall. If that's the case, would it not reduce them back to fifteen percent?

Mr. Kean Well, it would...I think in all of these percentages, Mr. Womack, we've got to decide what the percentage applies to. I said earlier, in East Baton Rouge Parish, they assessed inventory at thirty percent. I would be less than candid if I didn't say further that if you took the actual value of those inventories and use that, you'd probably find that you were closer to ten percent. Now, the inventory is concerned, we don't think you can get a true picture of what we're doing at the present time because, in most instances, not using fair market value as the starting point.

Mr. Womack But, Mr. Kean, if we can't get a true picture, then, it looks like maybe we ought to recess and let somebody give us some research on it. I...

Mr. Kean Well, I would be inclined to agree with that, Mr. Womack, but we have not been able to develop that kind of information.

Mr. Womack Let me go a little further. The thing that disturbs me is this: That if we have the industrial giants—many of them—that's not domiciled in Louisiana—and they're already on a corporate tax structure basis as far as federal income taxes, when they save money here at the expense of the homeowner, the small operator, and then they pay half of it back to the federal government in federal income taxes, I don't think we're making too much progress. The thing that disturbs me is: I'm not convinced that in changing this percentage factor here from twenty to fifteen that you're not going to reduce by one-fourth the tax liability of those kinds of people. If you do, then somebody else has got to pick it up.

Mr. Kean Well, as I appreciate it, Mr. Womack, if we go to the market value as the basis against which we apply our percentage ratio, then I'm inclined to think that we would come out about where we are now because the fair market value is, in my opinion, would be above what we are presently applying the present percentages to.

Mr. Lennox Mr. Kean, if you will recall for a moment the situation described by Mr. Jack Avant and describe for me the definition of bona fide use for agricultural, horticultural, or timber purposes, and see if, perhaps, we can't bring a little more light to bear on that situation.

Mr. Kean Well, I would interpret this to mean that you're using that property for a true, bona fide agricultural use. I can cite you an example: In West Baton Rouge Parish. Just recently, there is considerable acreage that is devoted to sugarcane. There's no way in the world that a sugarcane farmer could afford to pay a tax of one hundred to five hundred dollars an acre for land that's going to farmed for sugarcane purposes, and still make a living. Now, that property has probably got a greater value than it has as farmland because it might be sold for industry or for commercial purposes.

Mr. Lennox Well, that situation...

Mr. Kean This would protect that agricultural use. That's all.

Mr. Lennox The situation that Mr. Avant described would not meet the test of bona fide agricultural use, as I understand it.

Mr. Kean That's correct.

Mr. Pugh Mr. Kean, is it not a fact that timberland in the State of Louisiana is presently assessed at two cents per acre, except that an additional two and a half percent for all but pulpwood and five percent for pulpwood is charged at the time that that timber is severed from the land, and that the constitution prohibits the taxes being changed on it?

Mr. Kean If you say that's correct, Mr. Pugh, I'll agree.

Further Discussion

Mr. Alario Mr. Chairman, fellow delegates, I rise to, of course, oppose the Kean amendments as offered to you. I see it as nothing more than an attempt to switch the burden of taxes, or those taxes that an industry is now paying, to put it on the backs of the homeowner, the small operator, of the state. The proposal Mr. Kean has before you, this amendment and further amendments to come a little later, by bringing the homestead exemption down to twenty-five dollars along with this fifteen percent assessment across the board, would mean, then, that the only homes that would be exempt now would be those below sixteen thousand, six hundred sixty-seven dollars. I'm just figuring, in a particular parish that I'm... I had some figures on, that just a simple twenty thousand home that's assessed at ten percent now is fully covered by homestead exemption, not paying a penny of taxes, assessed for two thousand dollars and covered by the two thousand dollar homestead exemption; whereas a high millage, would now be required to pay on that home, where he wasn't paying any before-thirty-three dollars. That doesn't sound like very much money, and it probably isn't, but, when you're talking about sixty-eight thousand homes thirty-three dollars, then we're talking about 2.2 million dollars. With your adjustment in millage, then who's going to get the break of that 2.2 million dollars? It's going to be the industries that are paying it now that are going to have to now...are going to get the benefit of not having to pay this amount of money. I ask that you would stick with the committee proposal, as is, and vote down the Kean amendment.
Mr. Burson. Mr. Alario, do you understand your duty and to the public that the homeowner should not pay thirty-three dollars a year to support the public schools and the public services in his parish.

Mr. Alario. Mr. Burson, if the homeowner is not paying it now, I don't want to advocate raising his taxes one red cent, much less thirty-three dollars.

Mr. Burson. That's true even though he's not a forty or fifty thousand dollars a year, in the future.

Mr. Alario. Well, of course, there are other means of supporting public schools, too. We're talking about the sales tax he's having to pay on the salary he gets, income taxes, and various other taxes that he has to pay. So, we're not only looking at the thirty-three dollars, Mr. Burson.

Further Discussion

Mr. Mire. Mr. Acting Chairman, delegates, ladies and gentlemen, I rise to oppose the Keon amendment plan, and I'm not at all, I feel that I talked to some of the lawyers here on the floor, and from an awful lot of discussion with an awful lot of attorneys about the constitutionality of the first paragraph when he talks about land use in incorporated municipalities, how defined that would be, when we talk about land use in farming and agriculture, you can set up priorities that are pretty well defined and practices that have been defined through the years and have been proven constitutionally. But, I have never heard of a land-user's concern as far as the Kean amendment plan, I think this would sort of sort it if it would be permissible somebody just say, do they want with any sort of land within any municipality. I believe that this is where... why the judge has ruled in the Busse v. Long how that we could do not these things, basically what the assessors have been doing, I just don't believe it would be constitutional, and I feel that it's certainly a shift of the new taxes from industry to the landowner to the homeowners, particularly with what I know is coming from the very same people possibly an amendment to keep the homestead exemption at the level that it is today. I urge you to defeat this amendment.

[Public reading from a newspaper article]

Further Discussion

Mr. Stagg. Mr. Chairman, fellow delegates, I rise in support of the amendment, a lot of people who have not made us your minds out with, would hope that you would not allow those who have already decided how they can vote, well, I'll keep on with it. I want to start from a proposition that there are serious differences among the sixty-four parishes that we all have, be very different, you can see, and that any progress in that direction that we make in this convention will be all to the good, then I think you should carefully read the Keon amendment in my parish, at the end of the session last week, we were suggested to go see the assessor, and to see the school board, and the court, and the other tax recipient agencies, well, I did spend quite a bit of time doing or going over a lot of the day. I came up with a lot of information that I had never seen before, particularly this enormous sale of houses, that our parish property, not just our parish gets its money from and what the, with it all very informations. In Caddo Parish, we have probably this highest assessment ratio in the state. Our mills and our parish mills are, this year, 3.6 mills on a tax base of this year, in the neighborhood of six hundred dollars. We run a right fair city with not a whole lot of problems, what I think we need to do, as delegates, in the field of revenue, finance and taxation, and particularly in the field of ad valorem taxation, is to make as little change all we can with this--not those that we started off with six months ago because those were changes that would wipe parishes like Caddo and cities like Shreveport. Everybody, I believe, know that he has to bear a share of the governmental expenses for schools and for governmental services in his area. I don't believe anybody particularly wants to see his day, to see a tax to support the local government. On the other hand, the assessors' proposal, I believe, unnecessarily will affect the system at the state level, we have tax, taxation exists now, it warps it in favor of the homeowner and to the detriment of commercial and industrial interests, I am not their spokesman, but I do know where the job is and I know where we want to the job will come from for the young people of this state who will start entering the labor market. I do know that the state has for jobs for our people. I believe Keon's amendment to be a fair middle ground. It will affect Caddo Parish somewhat, but not near to much. We all will understand or every dollar that the federal courts don't again abuse the power of telling us how our government shall be run, we have all property subject to ad valorem taxation at fifteen percent of its fair market value. Forbidity assessed throughout the state, prevents the inflation into our current basis and also our system of the United States is that we believe we should adopt it for that purpose and if that means, particularly. You may disagree with the timber and the agriculture and the land use practices of the government, there is, the USF&G, the rollback provision of section 12 of the Keon amendment, and the duty of the tax assessor to do his duty as given in paragraph 9, needs to have...
your attention and your support.

In closing, I think this is a good amendment. The tax assessors could be put into this business by making them show, over a period of five years, at least a twenty percent increase each year toward this goal, and we will have solved the knottiest problem to be faced by this convention. I ask your support for the amendment.

Further Discussion

Mr. Lowe

Mr. Lowe, Mr. Chairman, ladies and gentlemen of the convention, I rise to make only one point, and that's to remind you of the point that I made when I proposed the proposition of this fair market value idea. We have here the fact that there are different classes of property being assessed at different percentages. We're now getting ready to come up with one uniform percent, if we have an area where residences have been taxed at ten percent...have been assessed at ten percent of the fair market value, land at five percent of the fair market value, and business property at twenty percent of the fair market value, and we take all of this property and lump it into one flat percentage of fifteen percent of the market value. It's like taking a tremendous shift of taxes from the residences and the landowners to the...from the businesses and the landowners. We have not made that mistake of shifting taxes in this constitution. I ask you to vote against this amendment and stick with the proposal of different classes of property.

Questions

Mr. Goldman

Mr. Lowe, on this business of the public questioning the fair market value assessment, I can...I want to ask you this question: Wouldn't it be fairly easy for them to question the assessment on homesteads, but wouldn't it be fairly difficult for them to question the assessment on businesses and industry, if they so desired? Isn't that one of the reasons why business and industry should have a higher percentage of assessment than homesteads?

Mr. Lowe

Well, that may be one reason, Paul, but I would say the main reason is that we have system, today, that the classes are deeply rooted into that system, and I hate to see us try to come up with any tax reform. So, that would be two reasons.

Mrs. Warren

Mrs. Warren, Mr. Lowe, I wanted to ask this for a while, and I have something to do with this. How many states give the same incentive to big business as the State of Louisiana?

Mr. Lowe

Mrs. Warren, I really can't answer that because I don't have that information. But, I would think that probably Louisiana gives as good an incentive as any state. I just presume that. But, we haven't found in any of our hearings, any place down the line, that industry is complaining now about the ratio that they are being charged--the percent they are being charged on fair market value. So, I don't see any reason to bring the ratio that we're going to charge on fair market value for land and residences in line with what's being charged on industry. There is, at this moment, that there is a clear-cut distinction, ratelwise, where industry is being charged a higher ratio on the market value than industry and other landowners. I hate to see us destroy the...what's well rooted into our tax system today.

Further Discussion

Mr. Nunez

Mr. Acting Chairman and gentlemen, ladies of the convention, I'll make my remarks brief because I see one grave difference in what we're trying to do here and what the plan as proposed to you does. If you take into consideration the fact that it's supposed to treat everybody equal; let's make all property assessed at the same value; let's make all property in the state, whether it's commercial, whether it's industrial property, whether it's residential property, etc., let's put it all at fifteen percent and let's treat all our citizens the same. But, if you're going to do that, let's go back and say let's don't give any exemptions at all. Let's don't give exemptions for ten years to industry; let's give it to houses, too. Let's don't charge any taxes at all. When a man builds a house, let's don't have any taxes at all on that house. Let's do that, and then we'll be treating everybody the same. You know, the question has come up time and time again about the fair market value. Personally, I thought it was a good formula. I suffered in one of my parishes of fifty-two thousand people, and I lost a million, five hundred thousand dollars. Everybody says it's simply because your parish--and I'll mention it: it's not Jefferson, although I represent part of that parish--but St. Bernard abused the homestead exemption fund. That's as far from the truth as you can get. Let me tell you what actually happened, and I think it's in line with what we're talking about here. Let me tell you what's going to happen to your growing parishes--your parishes that are experiencing tremendous growth--that are being charged, day after day, for ten years. When you bring industry into the parish--and I have had tremendous industrial growth--you totally exaggerate. This isn't my fault, but you don't have a nickel's worth of income coming in. Naturally, when you bring this industry in, your land values go up and you bring people in; people naturally follow industries. You bring housing to bring residences. You need services. That's what happened to Jefferson twenty years ago. It's happened to St. Bernard in the past ten years. One industry brought in twenty-eight hundred employees, and it built about five thousand new, additional homes. Well, who supplies that service? Who builds the sewerage plants? Who provides the police protection? Who provides the garbage pick-up? Who provides the daily services? The local governing authority.

Now, where does the money come from? They can't put it on the industry; the home is virtually exempt; the only place they have to go is to the homeowner. So, what I'm telling you here is that if you tax this property all at the same rate, that if you want to tax all property at the same value—that is, fifteen percent--let's start on an equal premise that all property is going to be exempt for ten years when they come into this state. Let's give that homeowner the same break that you're giving industry. I think it would work, then. Possibly a homeowner would take his house, would buy a home and he doesn't pay any taxes for the first ten years--none at all. If he has inventory, what's we never...we're not going to say that he has inventory in that home of any kind, let's exempt that also, or let's make certain provisions that he's not taxed at the same rate that the other parcels in his home are taxed at. That's what happens, and let's make provisions that on the first of the year, on the first of the year we might be able to push that inventory to Detroit or New York or Chicago where it isn't taxed in Louisiana. That's what you have. Then you'd have everybody at parity; then you'd have everybody on the same basis. Then what I can say, let's that everybody the same. But, as long as you are treating some people...and I voted for all this stuff, by the way. I guess it's as guilty as anybody in giving all these tax breaks to the homeowner. I'll continue to do it because we need jobs and we need industry but, let's don't use the argument that this treats everybody fairly—that this gives everybody the same break. It doesn't. It simply does not. So, I would say to you that the only way...I think the fairest way, and we've been going 'round and 'round this subject since this convention started, but since the day one and I imagine a lot of other people wrestled with it before it involved itself with that same problem. I think the fairest and the most equitable and the best solution is the solution that the committee has come up with—where you tax at a
Mr. Womack Mr. Chairman, members of the convention, as I see Mr. Kean's proposal, it has got to reduce the tax liability of your big corporations. Sammy Hunez presented a bill to that end, but I'm going to touch a little further. As you reduce the tax liability of these people—and keep in mind that that would increase their profits -- and their income tax, on their profits, and it goes to Washington. I guess we'd have to try to figure out some other way to get it back, and then getting it back then, we could render a—of a lifelong enterprise going to a government domiciled far removed from us. But, keep in mind that this responsibility, or liability to themselves has not been back who is it coming back on? The other property owners. You've got a number of areas, and especially in your fast growing areas, to where it's almost impossible for them to build schools buildings because the people that's moving in, that's getting the advantages of the first ten years—and keep in mind that at the end of that ten years a big portion of this property is going to be exempt further because they're going to modernize and ask for additional exemptions. So, somewhere down the line, you're going to shift the burden of the tax responsibility back to the people that you've been trying to get away from—that's the individuals who can least afford to pay it. Now, I asked Mr. Peay a few minutes ago as to what this would do.  

Well do you know if Mr. Steinele and his people didn't think it's going to reduce their taxes, they wouldn't be supporting it and promoting it. So, just keep in mind if it's good for them, it is not good for me as a small owner. So, you take up your mind what it's going to do for your people when you go back.

[Next speaker: Mr. Peay]  

(Closing)  

Mr. Peay Mr. Acting Chairman, fellow delegates, I'll be very brief. I have suggested, by this amendment; what I thought would be a reasonable percentage of value designed to try and achieve, generally, what we have in the state today, so far as the various parishes are concerned. If we stay with the assessed proposal, as I believe Mr. Hill referred to it, I just want to point out to you the effort upon East Baton Rouge Parish where there are presently fifty-six thousand, nine hundred homesteads on the rolls in East Baton Rouge Parish at the present time, which represent a hundred and forty-five million dollars of tax exempt assessment, If the assessor's plan—which would be ten percent of value for the homestead and a further thirty-five percent on the homestead exemption—which would add thirty-five percent more homesteads on the rolls of East Baton Rouge Parish and would increase by fifty million dollars the amount of the homestead exemption, the adoption, that would simply mean, with an average assessment in the parish of about fifty mills, that someone has to come up with forty million dollars a year in tax money to brin in East Baton Rouge Parish back to where it was before. Under these circumstances, it seems to me that if we can come up with a more realistic percentage ratio for purposes of property evaluation for East Baton Rouge Parish, that real little figure would then, with a little help of the state. Then, East Baton Rouge Parish, and I believe every one of the other parishes of this state—substantially in the same situation, they are now. For that reason, I respectfully urge you to see if there are here and then — you are shifting that tax load back to you, but you are really not. But, let's not shift that tax burden at this particular time from the home owner and say, nobody is going to be taxed equally, at a certain ratio, when you have given such a tremendous advantage to industrial growth for this state. Thank you.

Further Discussion  

Mr. Lehardy, Mr. Kean, are you aware that if this plan, if your amendment would pass, it would then become necessary to probably prepare at least ten thousand dollar homestead exemption to offset its disastrous effects?

Mr. Peay No, sir. I don't think that would be the case.

Mr. Lehardy Well, I merely wanted to know if you understood, that is my opinion of your plan.

Mr. Peay Well, that's not mine, Mr. Lehardy.

Mr. Alario Mr. Kean, you said the last but Baton Rouge Parish would be in the neighborhood of five hundred thousand dollars under this plan, how you said there would be some fifty million dollars in assessment that would be knocked off, is that right?

Mr. Kean It would be fifty million dollars added to the homestead exemption in East Baton Rouge Parish.

Mr. Alario All right. Now, that your village somewhere around fifty million.

Mr. Alario Well, how do you get the five hundred thousand out of that then?

Mr. Peay I'm sorry, it would be the five hundred fifty thousand, excuse me.

Mr. Alario No, sir. I meant the fifty thousand.

[Next speaker: Mr. Lehardy]

Further Discussion  

Mr. Tenny Mr. Chairman and fellow delegates, I might have your attention for a moment here. D'Goralamo had requested that I deliver to you this message as we enter into discussion of the exemption tax matter. As you know, or may not know, delegate D'Goralamo had previously made available to me this week, and the message he wished to deliver to you is the following:

"It is with great regret that I was unable to be with you this week at the State Convention. Proposal No. 26 will come to the floor. My feelings and the wishes of my constituents are very much in favor of this proposal. During my campaign for this Constitutional Convention, and every opportunity since then, I have carried to Baton Rouge the thoughts of the people of Douglas. They are very firm, that the guarantee of private homes against exorbitant taxation is the most important issue in this convention. Home ownership is the basic American value. Fifty-five million dollars is the amount of the exemption in the homestead section of the adoption that would simply mean, with an average assessment in the parish of about fifty mills, that someone has to come up with forty million dollars a year in tax money to bring in East Baton Rouge Parish back to where it was before. Under these circumstances, it seems to me that if we can come up with a more realistic percentage ratio for purposes of property tax assessment, then fifteen percent reduction is a little real little figure. It would then, with a little help of the state. Then, East Baton Rouge Parish, and I believe every one of the other parishes of this state—substantially in the same situation, they are now. For that reason, I respectfully urge you to see if there are here and then — you are shifting that tax load back to you, but you are really not. But, let's not shift that tax burden at this particular time from the home owner and say, nobody is going to be taxed equally, at a certain ratio, when you have given such a tremendous advantage to industrial growth for this state. Thank you."
Mr. Poynter: Amendment No. 1 [by Mr. De Blieux] On page 1, delete lines 13 through 17, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 1. (A) All ad valorem taxation shall be based on fair market value of the property. The legislature shall establish uniform procedures for determining fair market value and shall provide for considering use value in the valuation of bona fide agricultural, horticultural and timber land."

Explanations

Mr. De Blieux: Mr. Chairman and ladies and gentlemen of the convention, this amendment you might say, is more in the nature of a technical or a clarification of what we're trying to say, I think, in this particular section. If you will notice we have already taken care of the percentage factorizing in Paragraph (B). We've taken care of the assessors listing the property in Paragraph (C). So, therefore, and also if you will recall that we amended Paragraph (E) this morning to allow for the use value in the assessment of timber land, agricultural land, and horticultural land. So, in order to simplify all of these, I have proposed that Section (A) read as it have it here outlined. I think it would make for much more orderly procedure, it would make a word that would be you might say, more duplication. I think it would be a better basis on which to proceed in writing a constitution. I ask your approval of the amendment.

Chairman Henry in the Chair

[Previous Question ordered. Record vote ordered. Amendment reread.]

Questions

Mr. Chehardy: Senator De Blieux, in other words, this would require an assessor to assess your property at actual cash value on the rolls then. Is that correct?

Mr. De Blieux: This wouldn't require anything more than is already stated in Paragraph (A) of the present provisions which we already have.

Mr. Chehardy: No, sir, what this says here, pardon me...all ad valorem taxation shall be based on fair market value of the property; not on the assessed valuation of the property.

Mr. De Blieux: You've taken care of that in Section (E), there is Paragraph (C) and Paragraph (D), Mr. Chehardy.

Mr. Chehardy: I'm not worried about that. I'm asking you about your provision.

Mr. De Blieux: Well, I'm talking about my provision. It wouldn't that.

Mr. Chehardy: It does.

Mr. De Blieux: Doesn't change that at all.

Mr. Chehardy: Senator De Blieux, your provision would require an actual cash value assessment, and the same thing you acquired in your decision, one hundred percent assessment on the books, and the community would apply the tax against it. That's what you're putting in here.

Mr. De Blieux: No, Mr. Chehardy, wait; let me explain again. The only thing is that you've already...we have already established the fact that we're going to assess property based upon fair market value. That's what this section says, that you will use fair market value in the valuation of property. We have taken care of the percentages in the other; it's not going to change any of that whatsoever.

Mr. Chehardy: No, sir. I want to again repeat to you that when you state...

Mr. De Blieux: Mr. Chehardy, let's not try to confuse the issue.

Mr. Chehardy: I'm not.

Mr. De Blieux: If you'd state something right, go ahead, but let's not try to confuse the issue.

Mr. Chehardy: All right, we're not...I'm going to read your language, and you tell me if it doesn't mean...Well, let me ask you this question. Show me in your provision where this provides for other than actual cash value going on the assessment rolls. Show me, for example, that a percentage of agricultural lands or timber lands or homes will go on the rolls?

Mr. De Blieux: Section (A) as it presently reads in the proposal reads that "all property subject to ad valorem taxation shall be listed on the assessment rolls at its assessed valuation which shall be a percentage of the fair market value." Now, that's what we're using, fair market value. I've used those very words in this particular section.

Mr. Chehardy: That's correct. But this is contradictory to the section you just read, is it not?

Mr. De Blieux: It is not contradictory because your percentages are taken care of in Paragraph (B). We have the use factor taken care of in Paragraph (E).

Mr. Chehardy: Well, if it's in there, why do we need you to repeat it again here?

Mr. De Blieux: Well, I just thought it was a better way of stating than what we already have. Now, if you don't like it, ok. But, I thought we had taken care of the situation in a much better short, concise manner, where everybody could understand it.

Mr. Chehardy: Well, just one more question. Are you aware that no matter which way I read this, I come up with the same interpretation as I did in your suit, which requires a hundred percent assessment which has necessitated this problem in this convention?

Mr. De Blieux: Mr. Chehardy, you should go back and read that suit. It would help you a lot.

Mr. Mire: Mr. De Blieux, did you know that I read it exactly as Mr. Chehardy, that this means, and does in fact say, that we will have to list all property at its fair market value; it doesn't say anything about percentages, and you delete entirely our provision that states that it will be put on the assessment roll at a percent of fair market value.

Mr. De Blieux: No, Mr. Mire, this doesn't say anything about listing the property or assessing the property. This says values of the property--in making your valuation. That's all this section says. This doesn't say a thing in the world about assessments or listing. There's nothing here that says the assessors have to list the property for a fair market value. The only thing that they use fair market value in making their valuation.

Mr. Mire: Which is exactly what we say, but we say that we would list it at a percent of that--you don't.

Mr. De Blieux: So, I just leave out the word percentage; that's all I do because you've taken care of that...
Mr. Mire. Well, did you know that I interpret that to say that we'll have to list it at a hundred percent of value.

Mr. De Blieux. No, you won't have to do that. That's taken care of, if you do that, in your present...and there's another proposal that says that, and I don't have anything to do with that.

Mr. Rayburn. Senator De Blieux, in the committee proposal it said that property shall be assessed at fair market value, is that correct?

Mr. De Blieux. That's correct.

Mr. Rayburn. Now, you're saying here that the legislature shall establish uniform procedure for determining fair market value. In your opinion are you going to make assessors out of legislators?

Mr. De Blieux. No, we're going to have to do that Senator Rayburn, under the law in the proposal anyway, I think. You've got to set up guidelines that the assessors use in determining fair market value. We'll certainly have to do that with reference to agricultural, and horticultural and timber lands.

Mr. Rayburn. What would be your idea then of the legislature establishing a uniform procedure for fair market value?

Mr. De Blieux. That is to tell the assessors so they would be uniform throughout the state, they want a uniform manner of assessment, and so the legislature should provide that uniform procedure.

That's what...that's all that provides for.

Mr. Rayburn. I mean you have no idea what a uniform procedure might be at this time?

Mr. De Blieux. No, I don't, that would be determined by the legislature, just so that all the assessors will be using the same guidelines in determining their assessments.

Amendment

Mr. Gwiner. Here's the amendment to (A) the last pending amendment at the moment to (A) at the desk by Delegate Schmitt. It's about two paragraphs long.

Amendment No. 1. In page 1, delete lines 1 through 17, both inclusive, in their entirety and insert in lieu thereof the following:

Section 3. Assessment of Property, Classification, Assessment. Right of Taxpayer, Adjournment of Millages

Section 9. (A) All property subject to ad valorem taxation shall be listed at the assessment rolls at its fair market value and assessed at a percentage of the fair market value.

Use shall be the basis for determining the fair market value for all land and buildings used for agricultural, horticultural, and timber purposes. Any method may be used as the basis for determining the value of all real and personal property.

Explanatory

Mr. Schmitt. I believe that this amendment would go a long way to curing many of the ills which have afflicted the State of Louisiana in the area of property taxation. It says that it will require the assessor to assess upon the assessment rolls the land at the actual fair market value. It would also require the assessor to assess all property at a minimum of its fair market value so that that it shall be applied for according to its true valuation, any of the tools that which he uses in

in the State of Louisiana, is that it is impossible for any one to come up on how fairly he is being treated with reference to property taxes, because he does in and seen twenty thousand dollars is listed on the rolls for four or five thousand dollars, and he's afraid to file it that the lot of property is perhaps listed at two or three thousand and it's worth the hundred percent assessment, and if he leans on the present law for the one to do the legal duty of bringing any one of the parties named which they have, he to determine fairly what the property —
for the person to have his right to his appeal or to complain, it's necessary that the property be listed at the fair market value on the rolls, and also at the assessed valuation on the rolls.

Mr. Lanier Well, the point I'm getting to is this: If we fix the percentages in the constitution, does it really make any difference which way we do it because, for example, if land is listed at ten percent and it's put in the constitution "at its assessed valuation," all you've got to do is multiply by ten and you know what the fair market as determined by the assessor is, would that not be correct?

Mr. Schmitt Yes, sir, except for the fact that when you get, to as an example, Hibernia National Bank Building, are you going to have on the assessment rolls the percentage for land at the certain amount per square foot, and at the same time, you're going to have combined with that the building itself? I think that if you actually put it down there for the actual fair market value, it would be much more easy for them to determine whether or not it's being equitably applied in that particular case. It would be impossible for a person to go up there when you have ten percent on land and fifteen percent on that building, for them to be able to determine whether or not this is being treated fairly and equitably without the fair market value actually being listed.

Mr. Pugh I notice you used the words bona fide. Did you have in mind perhaps the person or persons may derive a certain percentage of their earnings from these particular agricultural, horticultural or timber purposes?

Mr. Schmitt I have in mind the fact that the legislature could best statute which would define what bona fide farms, in my opinion, would be, in order to prevent certain people from taking advantage of this situation.

Mr. Pugh I didn't see anything in here about the legislature doing that, is the reason that I asked.

Mr. Schmitt They'd always have the authority to do it unless you prevent them from doing it.

Mr. Pugh All right. Would you have an objection to a rollback tax, where if, for instance, the holder of these lands sold them then he would be obligated to pay a tax based upon what he would have otherwise paid in the last three years, to prevent speculation in these three areas?

Mr. Schmitt I have no objection. In fact, that was brought before our committee by some of the actual farming interests, etc., and I don't believe they have any objection to that at all.

Mr. Pugh All right.

Mr. Schmitt And this has been enacted in several other states already.

Mr. Pugh Yes.

Mr. Demner Mr. Schmitt, who determines the percentage of the fair market value under your amendment?

Mr. Schmitt Under this amendment right here, it's not determined who does it. I have later amendments where it shall be established, where it will be debated at that time.

Mr. Demner There's no limit...your limitation on the percentage is contained elsewhere, because the way it's written, it could be assessed at a hundred and fifty percent of its fair market value.

Mr. Schmitt Well, if you will note, that in the committee proposal there's no limitation on its either.

Mr. Demner Thank you.

Further Discussion

Mr. Mire Chairman, fellow delegates, I play in opposition to this amendment, and I'm going to try to be very short. It actually confuses, or tends to confuse, our entire proposal. We've spent some nine months practically, speaking about the ad valorem tax proposal maybe like seventy-five percent of the time we met. We've come up with a proposal that in concept is basically agreeable by twenty-two of the twenty-three members on the committee. Some of them don't agree on some percent, some of them don't agree on the amount of homestead exemption, but the concept statewide, the way that it's going to be applied, has been agreed upon by, as I said, about twenty-two of the twenty-three committees on our committee. Although Mr. Schmitt's amendment does some of the things that we say we want done in our proposal, it tends to leave others in limbo and just confuse the whole issue. I rise in very serious opposition to it, and would like for you to defeat the amendment, and go with...to keep our proposal as is, as far as the determination of how we are going to, in fact, implement this.

Questions

Mr. Lanier Mr. Mire, for the sake of the record, could you tell us why the committee chose to list the property at its assessed valuation rather than the fair market value, as proposed by Mr. Schmitt?

Mr. Mire Yes, sir, this is to dispel the fright of a hundred percent assessment or putting a hundred percent of your property on the line to be assessed by your local governing authorities, including municipalities and also police juries and school boards. They could, in fact, by statutory law, if they could get it passed in the legislature someday, maybe assess you at one hundred percent of value. Whereas, if we peg fifteen and ten or whatever percent we agree on, they could never go any higher than that amount.

Mr. DeBlieux Mr. Mire, you just mentioned the word one hundred percent; can you find me any place in the law where the word one hundred percent is used with reference to the assessment of property, any place?

Mr. Mire Well, fair market value in my estimation would be what the property is worth, or a hundred percent of the value of the property.

Mr. DeBlieux Well, but there's no place in the law where it states where they assess at a one hundred percent of value any place, is it?

Mr. Mire You're absolutely right, but again, I'll say that fair market value...

Mr. DeBlieux Now, doesn't actual value and fair market value--aren't they just about synonymous?

Mr. Mire Yes, sir.

Mr. DeBlieux Well, aren't we using the words when we use fair market value, isn't that about the same thing as what's in the present law?

Mr. Mire I have no argument with you on that.

Mr. DeBlieux All right. Then we're usually... wherever we speak about one hundred percent of value, that's a scare tactic, isn't it?

Mr. Mire No, it's not. If you in fact list at fair market value, that is a hundred percent of the value of the property--as actual value is.

Further Discussion
Mr. Alario: Mr. Chair, I believe the present assessment law is a very unfair one. It gives the property owner an advantage over the taxpayer. Do you think that that is fair?

Mr. Willis: I believe it is.

Mr. Alario: Mr. Willis, don't you think that under the guise of criticism and not considering the fact that no percentage is given, no uniformity is required, and that local government services are not provided, that this amendment shows the weaknesses in that it should have, and that it created more problems than it seems to endeavor to solve.

Mr. Alario: I believe you're right, Mr. Willis.

Mr. Alario: Mr. Willis, what percentage is correct in the constitution at the present time?

Mr. Alario: I believe the present constitution is correct going up to twenty-five percent. Senators, Mr. Alario, The present constitution.

Mr. Alario: The present constitution.

Mr. Alario: If you will, I'll try to explain what the amendment that provides for that in the present constitution.

Mr. Alario: You are, I don't know the number.

Mr. Alario: The gross Kelly for your information, though the gross Kelly is the leading factor in the proposal.

Mr. Alario: If you ask me, what the amendment provides for that in the present constitution.

Mr. Alario: The amendment would be unfair.

Mr. Alario: I believe it is unfair.

Mr. Alario: What it would be unfair is that the amendment would be unfair.

Mr. Alario: The amendment would be unfair.

Mr. Alario: It would be unfair.

Mr. Alario: The amendment would be unfair.

Mr. Alario: The amendment would be unfair.

Mr. Alario: The challenge of this amendment would be unfair.

Mr. Alario: I believe the present constitution is fair. It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.

Mr. Alario: It's one which has been raised.
Mr. Poynter Amendment No. 1 [by Mr. DeBlieux]. On page 1, delete lines 18 through 25, both inclusive, in their entirety--matter of clarity. Senator DeBlieux, add and delete the Floor Amendment proposed by Delegate Mire and adopted today—and insert in lieu thereof the following:

"(B) The classification and rate of taxation shall be uniform throughout the taxing district."

Mr. DeBlieux Mr. Chairman, ladies and gentlemen of the convention, I would like to call to your attention that by striking these percentages, which you are doing, into our constitution that you are completely changing all of the law with reference to taxing of property. I would wish that each and every delegate could read the revised statutes, reference to tax assessments, and some of the cases that pertain to those, so that you would understand the taxing procedure. There is nothing wrong with the law as it is presently written. What is wrong with it is that it had not been enforced. The courts are now on the verge of saying to the assessor, there is a reformation. The law as written is equitable on each and every taxpayer; it gives him a right to protest his assessment. We might need a few changes in that regard. Now, I just want to call this to your attention, let you know what you are doing. I know you are not going to adopt this amendment. Therefore, rather than taking up the time of this convention, I'd just like to withdraw it now.

[Amendment withdrawn without objection.]

Mr. Lowe Mr. Chairman, ladies and gentlemen of the convention, this particular amendment does nothing more than sets new percentages in the original proposal Committee Proposal No. 26--that you have before you. If you look at line 23, 24, and 25 of the yellow copy of Committee Proposal No. 26, the land, improvements on residential property, and all other property, the Amendment leaves the proposal as it is, except substitutes for: All land--10. Improvements on Residential Property—15. All other Property—20.”

Mr. Poynter Amendment No. 1 [by Mr. Lowe]. On page 1, delete lines 23 through 25, in their entirety—and I'm going to add again, Mr. Lowe, including the Floor Amendment just adopted—and insert in lieu thereof the following:

"1. All land-------------------10.
2. Improvements For Residential Purposes---15.
3. All other Property-------------------20.

Mr. Lowe I voted in favor of ten, ten, and fifteen.

Mr. Lowe I believe that we were raising the tax base from what was in the proposal. I would vote for any proposition that raised the tax base, Mr. Landry.

Mr. Lowe I do not remember how many people voted "yes."

Mr. Lowe I think, probably, there was only a few votes against the proposal, Mr. Landry.

Mr. Lowe Well, there were a hundred and seven people who listened fully to the arguments and voted 107 "yes." I just wanted to know if you remembered that?

Mr. Lowe I remember very well, and I remember why I did it, Mr. Landry, because it raised the tax base from the proposal we had before us at the time. I'm still in favor of raising the tax base to something that I feel is more adequate.

Mr. LeBlieux Mr. Lowe, how does the ten, fifteen, and twenty compare to the averages on that types of property, statewide, now? Do you have any idea?

Mr. Lowe Mr. LeBlieux, as I mentioned earlier, I think one of our problems is not having information that we can rely on. Mr. Lowe, I tell you that the reason that I used the percentages in this amendment is because I believe that it closely
Mr. Flory. Mr. Lowe, giving up to fifteen percent on residential property. I ask you the same question. Mr. Chehady ascribed earlier this morning. Is it true, Mr. Lowe, that you have to have a homestead exemption of six thousand dollars, rather than four thousand dollars?

Mr. Lowe. Mr. Flory, a four thousand dollar homestead exemption that's in the constitution, in this particular proposal, would exempt the homestead of twenty-six thousand, six hundred and sixty-six dollars. I believe that exempting a homestead of twenty-six thousand, six hundred and sixty-six dollars is a fair break for the homowner and it does better than a status quo because it puts him in a little bit better position than he is in today.

Mr. Toca. Mr. Lowe, are you aware that this twenty percent would almost put the small grocerian out of business? Are you aware of this on all other properties?

Mr. Lowe. No, sir. I'm not aware of that. Mr. Toca. This is a business that is true, we are giving the homowner a six thousand, six hundred and sixty-six dollar break on the homestead exemption.

Mr. Flory. But, you are giving him less than what the committee proposes in their proposal. Isn't that correct?

Mr. Lowe. Yes, sir. But, there were many of us that when the committee came with ten thousand at ten percent and with a hundred thousand, we thought was too much. When we came with a hundred thousand at ten percent with fifty thousand, we thought it was too much. I'm merely saying that I believe that twenty-six thousand, six hundred and sixty-six is a fair break for the homowner and it does better than a status quo because it puts him in a little bit better position than he is in today.

Mr. Warren. Mr. Lowe, I think you care with the other amendment; it was ten, ten, fifteen. Then, you stated up there a minute ago, which concerned me, you say you were for raising it all the time. Now, are you going to bring this on us now, spoonfed us a little bit at a time, and then come back with another one?

Mr. Lowe. Mr. Warren, you have been sitting in this convention with me for high on nine and a half months now. You know that I have never spoonfed you or any other delegate in this convention that I've ever been on this either, before, neither.

Mr. Lowe. Well, I'm not a spoon-feeder.

Mr. Warren. Here, I might need a spoon-feeding.

Mr. Lowe. Everything I have to answer your question directly. Mr. Warren, everything I have right now is on the table. If this fails, I go with nothing else. If it's passed, I'm happy, and I want no more.

Mr. Flory. In support of Mr. Lowe's amendment because I think it is dealing with a difficult problem, relatedly, I think that we are dealing with sixty-three percent, we will tell ninety-nine-point-five percent of the homeowners in the state. We are not going to get you paying seven, eight, and nine percent, and I don't know, but I hope they would either the rich, or soak industry. As far as I'm concerned, it's an institutionalization of suburban irresponsibility to say that I'll give you a fifty thousand dollar homestead exemption and nothing for the schools, for the health units, for the libraries, the roads, the drainage, and the other protection there. Personally, I would rather pay my taxes locally wherever it causes the way that they are spent, where I have an opportunity to vote whether or not I want those taxes, than I would have to have imposed upon me either by state government or from Washington where I have no vote, all I can do is write the check out and mail it in. I submit to you that we know there are vast discrepancies between the parishes. It's more reasonable to require those parishes that are assessing at a low rate, wherever they are, to roll their millages back--which they can easily do. For those of you that are not familiar with it, when you pass a bond issue today that's to be repaid with a property tax, you get all your mill for that is by law, we are getting the homowner a six thousand, six hundred and sixty-six dollar break on the homestead exemption.
66th Days Proceedings—October 17, 1973

home. But I want you to notice who they put the attack on—the homeowner. The two preceding speakers and the man who proposed this amendment has yet to mention the fact that industry today in Louisiana has spent billion dollars--not million--seven billion from the reach of our taxation. Seven billion. The last four hundred million that was removed recently in the past seven or eight months was that seven percent of what was for new industry; the majority of it was for additions to existing industry. They don't get up here and tell when Coca-Cola builds a new syrup plant to sell your children and my children and ourselves Coca-Colas, they are exempt from taxation. That's not a new business we are inducing into Louisiana, or Pepsi--it's other businesses. They are raping our treasury. But these sad people who cry because of injustice never talk about the whole, about what the industrial exemption has done to the state. Instead, they take the organization or organizations supported by big industry to feed pop to the people of this state, and I refer to PAR and GSRI who are the father and mother...or fathers of this pamphlet that Mr. Burson has spread around. Now, I'm saying this publicly, they show in Jefferson Parish is an absolute. I believe that says that the values stuff they show here prove what will happen under reassessment: (1) every statement they have made in here in relation to Jefferson Parish is an absolute lie; (2) I say that is in the audience, and I say it to PAR and to GSRI. Now here is why. We, when they made this study, we bothered to see how they were making it. What they did, for example, when they say a house assessed at twenty-one hundred and sold at twelve thousand five, they don't tell you that they took an assessment, say in 1969--not assessed under reassessment for the '69 sale. It's common knowledge and has been done for generations. That new sale is not reassessed until the next year. So, therefore, had the values been purchased by the home, the value per square foot of the house were in question of twelve-thousand-five-hundred-dollar house, or twelve-three-hundred-dollar house, the following year would have been assessed at exactly the same uniform percentage. For example, they show two houses sold for seventy-five thousand each--one assessed at forty-five hundred and one at six-thousand-nine. They don't tell you that these two houses would have been put on depending on the year this sale was made. Believe the time it was made we had an eight percent level. They would have been put on at each level, which have been substantially more than the figures shown here. Now, reassessment statewide, just as these local assessments reflect higher prices on sales of these properties, reassessment of the books for years throughout the state as property is sold or reassessed—we are going to get more and more money into this state. If we would give in to the type of percentages that are here proposed by Mr. Lowe, you would bring disaster upon the property owners, the commercial property owners, and the homeowners of this state, the likes that have never been seen anywhere in this country. If you want to know how bad the millage picture is, not only in Jefferson, but in any of the seventy percent of the parishes, you have only to realize that the disaster wrought in New Jersey has been worked with about a hundred mill average and maybe up to a hundred and fifty mills in some districts. Illinois has suffered. If you have bothered to read the material I gave you, you would see that there are proposals such as these that have led to states into disaster. I don't want to get up on every case and bother you with this. But, only...this is all I have waited for this convention to try to solve these problems that don't let disaster befall our state. We have a judgment requiring a hundred percent assessment. We have to do something to solve it if you will just excuse me if I see something that is going to work harm to our people of this state, then I'm going to have to get up and say it. I urge your defeat of this amendment.

Questions

Mr. Toga Mr. Chehardy, wouldn't you agree that Mr. Lowe has made the rich people richer and the poor people poorer?

Mr. Chehardy It would make the rich people poor and make the poor people poverty stricken.

Further Discussion

Mr. Toppy Mr. Chairman, fellow delegates, I too, rise in opposition to this amendment for several other reasons that Mr. Chehardy has mentioned. One, I rise in opposition to the distinction made between the percentage evaluation for assessment valuation between all land and land and between improvements for residential purposes. I see no reason to draw such an distinction, a different percentage figure between the two. This only favors land speculation, for one thing, as opposed to residential properties. Further, many of the people I represent, particularly the young couples and even the aged are renting or buying homes. This would make rental property be exempted, and the rental tenants would...rental property would be included under this No. 2 "improvements for residential purposes." I can only see that by having a higher percentage for residential purposes that the higher taxes for residential purposes, rental facilities, would only be renters this No. 1. Many of these renters not only can't afford...can't afford homes at this time or not willing to buy homes at this time. At least for the people who do own homes, we will lose a homestead exemption--I would hope that we do provide one--and for industrial areas, we provide industrial exemptions. But, no one has thought of the renters. A distinction here between land and residential purposes would only provide for higher taxes for rental property and this would be passed on to the renters. Again, I say I rise in opposition to this: first, that it encourages land speculation as opposed to residential development; secondly, it would pass the tax burden onto the renters who do not enjoy any exemptions at all. I'll yield to any questions, Mr. Chairman.

[Previous Question ordered.]

Closing

Mr. Lowe Mr. Chairman, ladies and gentlemen of the convention, I want to tell you in all sincerity that I hope that today we can adopt a tax base that is adequate to meet the future needs of the State of Louisiana and the taxing authorities that spread throughout this great state. There have been many things said up here today about this particular proposal. I'm not going to try to answer all of them. But, let's just take the proposition of higher percentage for residential purposes would do violence to the renters. We have no difference between this particular amendment and the proposal that we have already adopted. There's the five percent spread between residential property and business property and the proposal that we have already adopted. We have no more than a five percent spread right now between the fifteen percent on residential property and the twenty percent on business property. So, there is no justification in that statement. The rollback provision will take care of any excess taxes that could come from a higher tax. As one amendment, that the rollback provisions are taking care of the excess taxes that could come from a higher base, we are at least providing a tax base for those parishes that find themselves in the position to not have been assessing homes at thirty percent, twenty-five percent, twenty-two percent, and twenty percent. Those people have been doing a good job. Those assessors have been doing a good job. No one would tell them they have done a tough job, we are going to penalize; we are going to take your tax
base away. To, now we take your tax base away, you can't service what you need to service. I hope you take this amendment seriously, because there are many of you that will go home and find that this makes a big difference. There are other taxing authorities that we have destroyed your tax base. I believe that sincerely, or I wouldn't be here with this amendment.

Amendment

Mr. Hamm Amendment No. 1 by Mr. Hamm: In part I, delete lines 18 through 25, both inclusive, and substitute, including the Convention floor Amendment No. 1 proposed by Delegate Mire and others and adopted today—in their entirety and insert in lieu thereof the following:

I. The classification of property subject to ad valorem taxation for the purposes of determining assessed valuation are as follows:

1. Residential property
2. Commercial property
3. Agricultural property
4. Agricultural, horticultural, and timber property
5. All other property

Explanation

Mr. Schmitt The purpose of this amendment is to grant to local governing authorities the flexibility which is necessary for them to deal with the needs of the future. I believe that many of you are failing to see the problems of implementation of a statewide fixed percentage for all purposes.

That is not just for local government purposes, but also for statewide purposes if the state were to get back into business. In our discussion with the governor, it was pointed out and requested by the assessors that they be given the right, at some time in the future, to get back into property tax relief fund. Whether you agree or disagree with this is not an issue. I would like to say that by the division of the property into these five specific classifications, it allows local governing authorities to have more control over the property in the particular area.

It allows them to negotiate with the property owners in order to recognize the needs of the various counties and their particular area. It allows them to negotiate and get a better deal for the taxpayers. I believe that this is not just for local government purposes, but also for statewide purposes if the state were to get back into business.

I believe that this amendment is necessary for property owner to be able to service the property for the needs of the future.

Amendment rejected: 47-S9. Motion to reconsider tabled.
Mr. Schmitt: As you know, we have specifically listed them. But...I...you are correct.

Mr. Mire: Mr. Schmitt, during our committee meetings, do you recall anybody asking for all of these particular classifications...anybody who testified?

Mr. Schmitt: No.

Mr. Mire: Thank you, sir.

Mr. Goldman: Mr. Schmitt, in your delineation of classifications of property, you forgot to add in there, or did you forget to add in, "professional property"?

Mr. Mire: What about "unprofessional property"?

Mr. Goldman: Well, where would professional property come in under these classifications?

Mr. Mire: I would presume it would be under "all other property". However, the specific definitions would be left up to the legislature.

[Record vote ordered. Amendment rejected: 6-106. Motion to reconsider tabled. Motion to take up other orders of the day adopted without objection.]

REPORTS OF COMMITTEES
[I Journal 632]

INTRODUCTION OF PROPOSALS
[I Journal 633]

[Adjournment to 9:30 o'clock a.m., Thursday, October 18, 1973.]